Presidential Emergency Board
No. 243

Between

National Railway Labor Conference

Representing:

Union Pacific Railroad Company
BNSF Railway Company
CSX Transportation, Inc.
Norfolk Southern Railway Company
The Kansas City Southern Railway Company
Alton & Southern Railway Company
The Belt Railway Company of Chicago
Brownsville and Matamoros Bridge Company
Central California Traction Company
Consolidated Rail Corporation
Gary Railway Company
Indiana Harbor Belt Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
Los Angeles Junction Railway Company
Manufacturers Railway Company
New Orleans Public Belt Railroad
Norfolk & Portsmouth Belt Line Railroad Corporation
Northeast Illinois Regional Commuter Railroad Corporation
Oakland Terminal Railway
Port Terminal Railroad Association
Portland Terminal Railroad Association
Soo Line Railroad Company (Canadian Pacific)
South Carolina Public Railways
Terminal Railroad Association St. Louis
Texas City Terminal Railway Company
Union Pacific Fruit Express
Western Fruit Express Company
Wichita Terminal Association
Winston-Salem Southbound Railway Company

And their employees represented by:
Rail Labor Bargaining Coalition consisting of:

Brotherhood of Railroad Signalman
Brotherhood of Locomotive Engineers and Trainmen
Brotherhood of Maintenance of Way Employees
International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers
Sheet Metal Workers' International Association
National Conference of Firemen & Oilers

And a coalition of Rail Unions, consisting of:

Transportation-Communications International Union
American Train Dispatchers Association
International Association of Machinists and Aerospace Workers
International Brotherhood of Electrical Workers
Transport Workers Union of America

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Brian Easley
CHAIRMAN JAFFE: Okay. On the record, please. Good morning, everyone. This is a hearing before Presidential Emergency Board 243, which was created effective Friday, October 7th, 2011, by executive order issued by President Barack Obama. My name is Ira Jaffe, and I serve as Chair of the PEB. I'd like to now introduce the other members of the board. Seated to my far right is Joshua Javits; to his left is Roberta Golick. Seated to my far left is Arnold Zack, and to his right is Gill Vernon. Seated at the table to my left are Norman Graber and Susanna Parker, special counsel to the Board. Before I ask any counsel to introduce themselves for the record, a few preliminary items should be noted. First, these hearings are not public. Attendance is limited to those who are invited by the parties. Accordingly, I need to ask any persons who are not invited to attend, including any members of the public and any members of the press, to please stand and leave at this time. Okay, good. Second, the only
authorized recording of the proceedings are those being made by the court reporter, and so we need to ask you to refrain from using any recording devices of any type. Third, all cellphones, PDAs, or similar devices should be made silent or turned off. We also ask that attendees please refrain from texting or e-mailing while in the hearing room when we're in session. By prior arrangement, the carriers will proceed first with the presentation of their direct case. Counsel, would you please introduce yourselves and indicate who you represent in these proceedings, for the record. DONALD MUNRO, ESQ.: Good morning. My name is Donald Munro. I am lead counsel for the National Railway Labor Conference, including all of the carriers that are participating in this proceeding. With me are my partners, Carter DeLorme and Brian Easley. CHAIRMAN JAFFE: Good morning. CARMEN PARCELLI, ESQ.: Yes. My name is Carmen Parcelli. I'm with the law firm Guerrieri, Clayman, Bartos & Parcelli. I represent the Coalition of Rail
Unions. And with me at the end, or right here, is my partner, Elizabeth Roma. ROLAND WILDER, JR., ESQ.: Roland P. Wilder, Jr., Baptiste & Wilder, Washington, D.C. Our firm represents the Rail Labor Bargaining Coalition, and with me is my colleague, Stephen Feinberg, with our firm.

CHAIRMAN JAFFE: Okay. Welcome. Mr. Munro, are you ready to make your opening? DONALD MUNRO, ESQ.:

Chairman Jaffe, members of the board, my purpose this morning is to introduce the carriers' case. I'd like to do so by outlining the basic themes of our presentation. Others, especially Tim Gradia, the Chairman of the National Railway Labor Conference, will explain the carriers' proposal in some detail. My intent is to sketch the broad contours of our case, not fill in all of the details. Because while this is in many ways a case about data and numbers and details, the essence of the case can be summarized in one word: Fairness. This is a case about fairness, to the employees and to the carriers, but it is also about fairness to those who are not in this room: The employees.
who are represented by the United Transportation Union, to our customers, and to the American public, who rely on this industry. Our ultimate message is simple: You should recommend adoption of the carriers' proposal based on the UTU agreement, not just because it is a pattern, or because it is generous, or because it advances current healthcare policy. You should recommend it because it is fair. Everything else that we will present to you, the themes that reoccur and are woven throughout our presentation, support that core idea. And there are five basic underlying subthemes or ideas that you will hear repeated in the testimony of virtually all of our witnesses. More to help me remember them than anything else, I refer to them as the five P's. They are pattern, preferred position, peer progression, profitability, and productivity. The first three of these are core reasons to adopt the carriers' proposal; the last two are rebuttals to the central themes that the unions have presented, and I would like to briefly highlight each one. And
when I say "briefly," I do mean that I am going to move fairly promptly through the highlights of our case, including some of the key slides that you'll be seeing later in our case-in-chief. So please don't be concerned if you miss or don't have an opportunity to absorb all of the details; this is coming attractions, not the feature presentation.

The first P is pattern. There's no real debate about the pattern principle, what it means, how important it is in railroad bargaining. The basic proposition is that there is a presumption that a settlement with a major union should establish a benchmark for other settlements. It is a rebuttable presumption, to be sure, but there must be a compelling justification to depart from a pattern once it is set. This has been referenced repeatedly over the years, most recently by Presidential Emergency Board 242. And as 242 said, a pattern provides an objective indicator of what should result from arm's length bargaining, which is ultimately the purpose of a Presidential Emergency Board. And as 242 explained, patterns
serve several other critical purposes. It helps provide stability in bargaining. It provides benchmarks. It helps avoid disruptive competition; leapfrogging, piggybacking. And it helps maintain craft parity. Similar thoughts about the pattern principle have been repeated by other boards over the years, as I'm sure you're all aware. PEB 220 noted that pattern helps avoid competition among union groups. Board 186 made reference to the avoidance of piggybacking and leapfrogging. Board 194 made reference to the need for stability in the industry. And Board 228 noted that it helps encourage an organization to lead the way in bargaining. Let me be clear about this. A pattern is not a totem. They are not just invoking it and saying you must accept it. The ultimate point of pattern is that it is evidence of what is fair.

Now, to be sure, the unions have provided in their materials quotes from a number of boards, mostly from before deregulation, to support the idea that pattern is, at best, a minor consideration. But if you actually read the reports they cite, the
1 citations do not help them. These are all
2 references to the PEBs that are in their exhibits.
3 PEB 185, applied the pattern; PEB181, the pattern
4 should be followed; PEB 187, applied the pattern
5 shown by the carriers; PEB 174 said, quote, the
6 fact that other unions have accepted a particular
7 settlement is a fact of which the board must take
8 cognizance, and the offer is not presumptively or
9 grossly unfair or inadequate. The PB 186, after
10 the quote about slavish appearance, and which the
11 unions rely, the board goes on to say that what
12 matters is not the precise formula, but the
13 maintenance of the principle; that the members of
14 an organization shall not be treated more
15 advantageously than members of other organizations
16 who have established the pattern. Again, these are
17 their citations. And even 228 found an emerging
18 pattern and noted that it was influential and
19 rejected union demands that substantially exceeded
20 the carriers' proposal. So let me be clear. We are
21 not saying that as soon as the carriers say the
22 word "pattern" this case is over. You need to
conclude whether there is or is not a pattern. But if you were to conclude that there is, that is more than just significant. We will show you that there is indeed a pattern to be applied here. The UTU is the largest rail union; it represents almost a third of the industry, almost as many as the entire TCU coalition combined, and it has a great deal of bargaining power. The deal on which we relied was reached through tough arm's length good-faith negotiations, as Mr. Gradia will explain to you in detail. We did not get all we wanted, and neither did the UTU. And it has been ratified by a solid majority of all of the crafts that the UTU represents. There are none of the oddities or exceptions that have led to questions in the past. This agreement was not imposed by legislation or binding arbitration. There is no failed ratification vote. We're not talking about a small union with little bargaining power, and this is not an obviously substandard deal. Perhaps the most common objection to pattern which the railroads heard in 1996 and which has been
1 repeated here is that if the carriers' offer does
2 not reflect all the elements of value of the
3 pattern, then the offer is not supported by the
4 pure pattern principle, and we will show you that
5 that is not applicable here. Each element of value
6 in the pattern is fairly reflected in the
7 carriers' offer, including entry rates,
8 certification pay, as well as general wage
9 increases. To refer to the recent decision of the
10 Massachusetts Bay Commuter Rail Panel that the
11 unions have quoted, the carriers have deliberately
12 monetized all of the economic gains that have been
13 extended to the first group to settle. So this is
14 a straight-up quintessential run-of-the-mill
15 pattern application, supported by all the
16 traditional policy rationales that I've outlined.
17 The pattern has been accepted by a third of the
18 industry and one of three major groups in
19 bargaining in this round. It encourages parity,
20 allowing wages and healthcare benefit levels to
21 remain stable among railroad employee groups. It
22 encourages early settlement by protecting the
1 first to the table, and perhaps most importantly,
2 it provides an objective indicator of what is
3 fair. In fact, the coalitions know this is a
4 pattern; that's why they fought so hard against
5 ratification. This is one of the statements from
6 that period, when they said that the UTU deal put
7 their position in jeopardy. There is no reason to
8 say that unless the coalitions realized that the
9 UTU deal would affect them as well. Why else run
10 this frankly brutal campaign against ratification
11 of the UTU agreement? The obvious answer is they
12 knew that once there was a ratified deal with a
13 third of the industry, pattern considerations will
14 apply. And they took their shot at undercutting
15 the UTU and they missed. It's especially notable
16 that even with all of this campaigning, all of
17 this rhetoric, the UTU members still voted to
18 ratify by a 20 percent margin. Clearly, the
19 members of the UTU did not view a 17 percent wage
20 increase as a, quote, rotten deal. And it would be
21 unfair, especially to those UTU employees, to
22 refuse to apply the pattern at this point. That
brings me to my second P, preferred position, by which I mean we will show you that railroad employees are, before any increase, already more than fairly compensated vis-@-vis their peers. And we will show you that in terms of total compensation, wages plus benefits, railroad employees are extremely well paid. Moreover, they enjoy a substantial premium in total compensation versus their peers in other industries. On this slide, rail transportation is the group in red, on the left. Other industries are reflected in the bar graphs to the right, so you can see that rail transportation, average total compensation, exceeds all of the comparison industries. In fact, we'll show you that there is a premium here virtually any way you look at it. Versus average unionized private industry, the premium is 24 percent; versus the private sector, union and non-union together, it's 46 percent; and versus the transportation sector, the one that is most applicable to the railroads, the best comparator, the premium is over 79 percent. Our expert on
compensation and labor economics, Dr. Evans, will
address this in greater detail. But it is worth
noting in this regard, while I have the reference
to private industry up on the screen, that they
rely on the rate of growth in private industry
wages, and that analysis is misleading for several
reasons. First, they've cherry picked a starting
point in 1978 rather than looking back for the
last ten years or the last several contract
rounds. Second, they ignore the fact that railroad
employees were starting from a much higher point,
as evidenced by the fact that there is still a
substantial premium and compensation. And third,
there is no acknowledgment in their analysis of
the fact that private industry includes extremely
high rates of recent wage growth among
professionals with advanced degrees. We'll show
that contrary to the union's expert report, the
compensation premium for railroad employees has
actually been growing, from 75 percent in 2006 to
79 percent today. More broadly, we will show you
that these are really good jobs. They will remain
really good jobs, not just in terms of compensation, but in various other respects as well. The fact of the matter is, and I want to emphasize this point, the railroads respect their employees; we want to treat them fairly, and the labor market has reflected that. You will hear this repeated by a number of our witnesses. These are great jobs; they are highly valued and sought after. In fact, we will show you that even before any increases applied, railroads have had no trouble attracting and retaining talent, which is, as we will show, a fair and objective measure of whether compensation is adequate. We will provide you with both anecdotal and empirical evidence of that assertion, showing that rail jobs are increasingly popular. As this slide indicates, applicants per hire are way up. Professor Topel will explain the results of an empirical study of employee behavior which confirms that not only is there intense competition for these jobs, but once in, no one leaves, all of which shows that railroad employees are more than adequately
compensated. What this slide shows you is a comparison in quick rates. Other industries are reflected above. The railroads are that cluster of lines at the very bottom, and this will be explained in more detail by people who are smarter than me. But the point is that compensation is keeping people in these jobs. We'll also show you that through - primarily through fact witness testimony, that railroad investments in equipment, technology, have made these jobs increasingly safer, easier, and better in many respects. We will also show you that the current position of railroad employees is especially preferred in the current economic context. The union suggests that the board should ignore this, but there is no real debate. The economy is lousy. Average household income has declined 2.3 percent since 2009. Unemployment is at its worst in decades, shows no signs of abating. GDP growth continues to lag despite stimulus efforts by the administration and despite very low interest rates. So if you consider this context, the broader economy, the
1 market in which railroads compete for labor, and
2 where railroad employees start from in terms of
3 compensation vis-à-vis their peers, then the
4 carriers' proposal is fair. A third basic theme
5 you'll hear from us is peer progression, by which
6 I mean I will show you that the carriers' proposal
7 is fair when you compare the proposed increase in
8 total compensation to other settlements, to
9 various external benchmarks. When you total up the
10 wage increases plus the additional compensation
11 elements in the carriers' proposal, plus the
12 increasing value of benefits, total compensation
13 increase over the next six years exceeds 20
14 percent. We'll show you that these increases are
15 better than both recent and projected increases in
16 the general labor market. We'll show you that the
17 proposed increase is better than other union
18 settlements. This is an aggregate average of
19 settlements across all industries. And we'll show
20 you that the proposal is even better when compared
21 to settlements in the transportation sector in
22 particular. So vis-à-vis their unionized peers in
the same industry, this offer is extremely favorable. We'll also show you that the proposed increase far outstrips projected inflation as shown by the Congressional Budget Office, resulting in substantial real compensation growth under the carriers' proposal. I would note here that unlike the unions, we are using a neutral source to project inflation. This is the Congressional Budget Office numbers. We are using a neutral source rather than simply picking a number that suits our case. Needless to say, we believe that doing so makes our data and our assumptions a much more fair and accurate picture of the likely results of real compensation growth under the parties' respective proposals. We'll also show you that even with the modest changes in healthcare plan design that had proposed, our employees will still have a very generous healthcare plan with excellent benefits. And when we say it is generous, we will provide you with objective evidence of that fact. Under the revised plan as proposed, railroad employees will still be
doing better than most; far better than the federal government employees, far better than most other unionized employees. And moreover, while the plan design changes bring us closer to the mainstream, the value of employee benefits will continue to increase. At best, the changes proposed will only moderate that rate of increase while employees continue to enjoy a freeze on their own contributions to plan costs. So by whatever measure you use, any peer comparison you choose, this is a fair deal. This brings me to their main arguments: Profits. Well, we will address this head-on. Contrary to the union's predictions, we do not deny that the industry is doing better financially than it has in the past. I am not here to spin a doom-and-gloom story for the industry. And let me be clear: We are not claiming inability to pay; rather, our point about profitability is threefold. First, profitability is not, should not, be important as an economic matter to assessment of fair compensation in the absence of any sort of commitment to sharing the
risks of profit variability, but the unions have rejected profit-sharing out of hand. Second, the unions overstate, to at least some extent, the industry's financial health and they understate future risks. Third, even if all is rosy now, it would be foolish to simply assume that current profitability will just continue forever. Some level of prudence and caution is always important in business planning, especially in light of capital requirements of this industry. And frankly, this is not a new debate. The unions always argue profits, all of them, including the United Transportation Union, made essentially the same point in 1996, where they said net income is at a record high, earnings are up, operating ratios continue to fall. And in this proceeding, the one in which the UTU is involved, as the unions note in their own submission, the board rejected that argument, noting that profits alone are not sufficient reason to recommend wage increases, and certainly not above pattern increases. Other boards have said the same thing.
Short-term profit should not be a significant consideration unless the unions are willing to accept profit-sharing and thus face the risk of decline in compensation when profits go down. And such risks do exist, much as the unions might wish you to ignore them. The railroad industry is not just an open money spigot. This exists on multiple levels in this very competitive market. And it would be unwise to ignore the larger economic trends and just assume, as the unions have done in their submissions, that traffic and yields will continue to grow indefinitely. If nothing else, the recent experience in 2008 and 2009 should be a stark lesson; that we are still vulnerable to downturns, and when that happens, excess compensation packages do not help. And even if profitability continues, it is worth emphasizing that the carriers are using those profits to reinvest in the industry, which benefits everyone, including the employees. The evidence is clear that reinvestment and income are linked; in other words, the more the railroads invest, the better
they do in the future. And spending on variable costs, including labor, inevitably impact the carriers' ability to invest and to grow. Again, this is a highly competitive market and we need to be prudent in spending, reasonable in setting limits, and realistic about the future. In its outer edges, the profitability issues go beyond the scope of this proceeding; they get into social policy questions about wealth distribution that are more appropriate for Capitol Hill. We are not here to debate those issues; we're here to decide what is fair in this agreement. And in that inquiry, considerations or profitability are not unique to these unions. The UTU made exactly the same points across the table in bargaining, and the pattern agreement was the result; that is what is fair in this context. The final one of my five P's is productivity, and I can be fairly brief about this. Has there been a productivity increase? Absolutely. Are railroad employees responsible for it? No. Productivity in the railroad industry is a function of the investments
in technology, increased density, and changes in product mix. There is no evidence that employees are working harder now than they were 20 or 30 or 40 years ago. If anything, the evidence is that, through technology and improved processes, the jobs have gotten easier. Don't misunderstand. I'm not suggesting that railroad employees don't work hard. I am simply saying that productivity improvements cannot be traced to people working harder than they have in the past. And the irony is that the unions have fought productivity improvements. It's neither fair nor reasonable in those circumstances that they now be paid because of increased productivity, nor is it true that job cuts of 20 years ago justify compensation increases now. The employees who were laid off as a result of mergers and route rationalizations received generous benefits. There is no reason now, a generation later, why the carrier should pay for that again if it is not a rational basis for compensation increases, as our expert, Kelly Eakin, will explain to you. The same is true with
1 respect to the union's reliance on declining unit labor cost, which is one of their key points. The unions ignore the fact that revenue can increase, and therefore unit labor cost can decline for reasons that have absolutely nothing to do with labor, such as increasing prices. In fact, declining unit labor cost has more to do with the railroad's capital investments over the last 30 years than anything intrinsic to labor. It is not credible to claim that changes in unit labor cost justify compensation increases, just as it's not fair to reward employees for productivity growth that they did not generate. That brings me to the end for now. In our case-in-chief, you'll be hearing a lot of numbers from us; a lot of charts, a lot of data, a lot of empirical analysis. The unions in their submission predicted colorful graphs, and I would hate to disappoint them. But overall, I think you'll find that our presentation is dispassionate, it is measured, it's reasonable, and it is grounded in hard numbers and modern economic theory. Prior to the opening of our case-
in-chief, I will give you a brief roadmap to that presentation, including the order of witnesses and the subjects of their testimony. But the thought that I will leave you with is that underlying all of these numbers, all the charts, all of the evidence, is a small set of core ideas. There is a pattern; it will ensure that railroad employees remain among the best-paid workers in America with excellent benefits, and that is more than fair.

Thank you for your attention.

CHAIRMAN JAFFE: Thank you, Mr. Munro. At your convenience Ms. Parcelli.

MS. PARCELLI: I'm sorry, could you repeat?

CHAIRMAN JAFFE: I said, "At your convenience."

MS. PARCELLI: Thank you. Let me just get myself set up. Mr. Chairman and Board Members, again, my name is Carmen Parcelli and I am counsel to the Coalition of Rail Unions or CRU. Now there are eleven organizations in total before this Emergency Board and they are aligned in two coalitions. Collectively they represent 73 percent of rail labor. This morning I am speaking on
behalf of both coalitions in support of their joint proposal to this Board. Now the CRU consists of five organizations. They are the American Train Dispatchers Association, the International Brotherhood of Electrical Workers, The International Association of Machinists and Aerospace Workers, the Transportation Communications Union, which includes its Brotherhood of Railway Carmen division, and also the Transport Workers Union. Now the RLBC consists of six unions. They are the Brotherhood of Locomotive Engineers and Trainmen, the Brotherhood of Maintenance of Way Division Employees Division, Brotherhood of Railway Signalmen, the International Brotherhood of Boilermakers and Blacksmiths, the National Conference of Firemen and Oilers, and the Sheet Metal Workers International Association. Now, I list all of the organizations at the outset, in part, because just by giving their names I think I convey a sense of the great diversity that exists among these organizations and the crafts that they represent.
Among the Coalitions, we have both operating crafts, that is the engineers and trainmen, and non-operating crafts. Among the non-operating crafts, there are crafts that you find in the engineering departmentsthe maintenance of way and signalmen, as well as the shop crafts, the train dispatchers and the clerical craft which is encompasses a wide variety of positions. Given this diversity, the fact that all eleven organizations come before you united under the banner of their joint proposal is quite remarkable. Recently on various commuter railroads and also at Amtrak, we have seen this kind of coordination and unity on the labor side. But in the case of the national railroad (ph)railroads, however, this is a true first. Now at the outset and on behalf of both Coalitions, I would like to thank the Board Members for agreeing to serve in these proceedings. You know, among the many unique and somewhat odd features of the Railway Labor Act are PEB proceedings. You know, almost always under the RLA the parties negotiate
for a considerable period of time, both in direct

negotiations and then in the mediation process.

That is as the parties have done in this

proceeding as well. So in contrast to the kind of

leisurely pace that you find in negotiations, once

a release occurs, we travel at warp speed. So we

thank you very much for making yourselves

available. I am sure that there was considerable

juggling of schedules in order to be here with us

and we truly do appreciate it. We also wish to

thank you for taking on the demands of a

proceeding such as which, of course, is made all

the more formidable by the compressed time

schedule of the Railway Labor Act. So if there is

anything that the organizations can do to make the

work of this Board an easier task to undertake,

you need only ask. Now at the outset I would like

to briefly give a review of the Coalition's joint

proposal. It can be found as Exhibit 1 in our

materials and I believe it was also circulated for

Board Members even prior to our submissions. So

just in a nutshell, the proposal is this: First,
19 percent general wage increases over five years.

Five years. Maintenance of the status quo in terms of health and welfare which means that employee healthcare contributions will remain at $200 per month unless and until changed in the next round of bargaining. We also seek improvement in vacation benefits, generally by adding an additional week depending on years of service. We also asked for a proration of vacation benefits for employees who would otherwise not qualify for any vacation benefit at all under the existing rules and the proration would be based on the number of days that they work in the prior year.

Fourth, we ask for a restoration of the ratio of supplemental sickness benefits to pay which existed and the conclusion of the last agreement. We also ask that these ratios be maintained with subsequent general wage increases. We also seek agreement that the carrier shall provide the organizations with certain basic information reasonably necessary for both contract negotiations and grievance handling. We seek a
standard savings clause that preserves more favorable terms which may exist or be negotiated on a local basis. And finally, we seek five-year contract duration from January 1, 2010 through December 31, 2014. All organizations are united in this proposal. It represents a fair settlement of this dispute. Our demands are fully justified and we are prepared to demonstrate that through these hearings. Now Don said he would save his, but I am going to give now a summary of the presentation we intend to bring before the Board. The case for our joint proposal will be supported by the testimony of several witnesses. We will have TCU President, Bob Scarletti, and BRS President, Dan Pickett. So they will give the Board introductory remarks including an overview of the essential justifications for our proposal, especially in light of the rail industry's robust financial returns and labor's contribution to the carriers' prosperity. They will also respond to the carriers' proposal, of course based on the NCCC's agreement with the United Transportation Union,
1 UTU. And they will explain to this Board why the
terms of the UTU agreement are unacceptable to the
Coalition. We will next turn to the expert
testimony of Tom Roth of the Labor Bureau. Mr.
Roth is a labor economist with particular
expertise in rail labor issues. He has appeared
before numerous past PEBs and he will address
several topics. He is going to discuss the current
financial condition of the railroad industry with
particular emphasis on the fundamental changes
that have allowed the carriers now to produce
their record-breaking profits. He will also
analyze the Coalition's joint proposal in terms of
wage trends, overall costs, and the carriers'
ability to afford the proposal which apparently
they don't deny. He will also compare the value
of the Coalition's proposal to the proposal
offered by the carriers. And then on health and
welfare issues we are going to have three
witnesses. First we will have Bill Hildebrand,
BMWED Executive Assistant to the President. He
will testify regarding the development of the
National Health and Welfare Plan which really was designed to suit the particular needs of railroad employees who work in a dangerous profession. He will also discuss the history of joint labor and management oversight of that Plan. Lastly he will explain the history and development of the separate health and welfare plan that is maintained by the carriers and the UTU. Next we will rely on expert testimony from Glen Kowalski, Principal Consulting Actuary with Cheiron, which is a nationally recognized benefits consulting firm. He will address the costs of the national plan, particularly the lower than average increase since the parties' last agreement. He is also going to present to us some relevant market comparisons. He will also address the effect of the carriers' proposal on participants and the impact on the finances of the Plan. And lastly in terms of health and welfare, we will hear from TCU Vice-President Joel Parker and he will discuss how health and welfare relates to our proposal overall and the carriers' proposal overall. Now with
respect to vacation benefits, Bill Bohne, IBEW Director of the Railroad Department, will discuss these issues. He will go through the history of the National Vacation agreements in the industry and how the benefits in those agreements have failed to keep pace with the benefits enjoyed by other U.S. workers. Then Dennis Pierce, President of the BLET, will also present regarding the justifications for our vacation proposal. Next we are going to bring Mr. Roth back to explain the Coalition's proposal regarding supplemental sickness benefits which merely seeks to maintain the level of benefits agreed to in the past. And then finally, we will hear from Roland Wilder, attorney for the RLBC, and experienced labor counsel, and he will give a presentation regarding the Coalition's information request proposal which simply seeks basic information sharing between the parties as an aid to collective bargaining and grievance handling. So following the witness testimony regarding the Coalition's joint proposal, each Union will also give testimony that
relates to its craft-specific proposals, but we will save and introduce those witnesses to you later in conjunction with their testimony. Now there are two over-arching issues in this case and I intend to spend my time this morning addressing those. First is what I refer to as the financial or the economic case. The second, of course, is the pattern argument, based on the UTU agreement. Now having read the Carriers' written submissions we appear to be in agreement that these are the fundamental issues in this case, which really transcend the specifics of both sides' proposals. Now of course, the Carriers understandably reverse the order of the two issues, emphasizing pattern above all else. At its heart, our financial case rests upon basic notions of fairness and equity and simply stated by PEB 2-26 where the Carrier is, quote, a thriving enterprise, it is proper that the Carrier shares this success with its employees. Profitability, usually described as ability to pay, is nearly always a factor considered in PEB proceedings, or in interest
1 arbitration more generally. To try and argue
2 otherwise is to swim against a strong tide. And we
3 know because we have tried. Moreover, in some
4 cases ability to pay is not just one factor among
5 many, but becomes a central focus. Most obviously
6 this happens when a Carrier is failing
7 financially. But we submit that ability to pay
8 should likewise be a central focus when a Carrier
9 is extremely profitable. And the Carriers before
10 this Board are extremely profitable. There is
11 really no debate about that. I think we heard
12 that. In an otherwise dim financial period for
13 this country, the railroads have been and are a
14 shining light. In fact their performance is so
15 good it is difficult not to sounds somewhat
16 hyperbolic in describing it. So that is why we
17 have largely preferred to let the financial
18 numbers speak for themselves. So I am not going to
19 stand here this morning and recap all the
20 financial metrics. Those are summarized in our
21 opening submission and our economist, Tom Roth,
22 will walk the Board through all the various ways
in which the robust financial health of the Carriers is measured. I did, however, want to highlight one financial figure that really stands out at least for me. And that is the amount spent by the Carriers, the four major Carriers, on stock repurchase programs from 2006 through 2010. Of course stock repurchase simply involves buying back shares from stockholders and thereby decreasing the number of shares in circulation and driving up the price per share. Okay? Stock repurchases are something that cash-rich companies do. It gives the stock prices at least a short term boost. Often repurchase signals that management believes the company is undervalued. The four majors collectively spent over $2 billion in share repurchases in 2006, over $6 billion in 2007, over $5 billion in 2008 and over $3 billion in 2010 when they resumed their repurchase programs. That is a total of $16 billion over the last five years. In addition, the three publicly traded majors, that is CSXT, NS and UP, have already announced that they plan to further reduce shares
1 in 2012 and 2013 by at least three percent each year. Having engaged in a truly ostentatious series of these stock buy-backs, and with plans for more of the same, the Carriers still insist that labor is demanding too much. But as a key point of comparison, for all the Carriers before this Board the total cost impact of our joint proposal is valued at $4.9 billion over five years. Thus we are asking $4.9 billion for labor as compared to $16 billion and counting in stock buy-backs. How then are we asking too much? Now the Carriers and I think we heard it really cannot deny the obvious fact that they are very profitable companies. It doesn't appear that they are seriously going to try to do so before this Board. Instead so, they assert that recent gains are, quote unquote, fragile and that the future is clouded with uncertainty and risks. Just as an aside, if the Carriers' position is fragile, then pouring billions of cash in to past stock buy-backs with more of the same planned, seems ill-advised to say the least, if you are in a
1 fragile condition. But that is an aside. In any
2 event, we plan to explain, and have done so at
3 length in our written submission, that the
4 Carriers' current performance is no mere flash in
5 the pan. Okay? Instead their current health is
6 attributive to deep structural changes that took
7 place in the industry deregulation of most rate-
8 setting under the Staggers Act. Massive
9 abandonment of unprofitable lines both before and
10 after deregulation. A wave of consolidation which
11 has left only four majors and a variety of
12 technological advances, most significantly,
13 intermodal. These fundamental changes and years of
14 steady build have set the table for the current
15 bounty. No one is forecasting that the industry
16 fundamentals will suddenly alter. As for the
17 laundry list of vague potential risks that the
18 Carriers that appeared in their Summary of
19 Position I'm referring to page 26 none of those
20 future potentialities are unknown to the markets.
21 Indeed, the Carriers cite such risks as changes in
22 fuel price and the impact of weather-related
events. Investors know these things and yet they continue to view rail equities and stocks to buy and hold forever. They view them as stocks to buy and hold forever. Stuck before this Board with the inconvenient fact of double-digit profits, it appears that the Carriers will also attempt to argue that profits simply don't matter. As stated in their Summary of Position I am referring to page 24, quote, as a matter of labor economics, employer profitability is not and has never been a consideration in setting appropriate levels of employee compensation. That is quite an extreme position to stake out. I will be interested to hear their experts defend that position. Suffice it to say it is not a view that we believe most labor relations professionals would agree with and it certainly lacks support in past PEB decisions. In addition to claiming that profits never matter, the Carriers also assert, inconsistently, that profits only matter when employees have accepted cuts in the past. Even if you accept the notion that past sacrifice is
required in order to share in the financial good
times, the employees before you have given. PEB
219 where the Carriers argued vigorously that
their financial position was precarious and
unfortunately were believed. Led to a two-year
wage freeze, to dramatic changes in health and
welfare which directly targeted employees'
pocketbooks. There were also very substantial
changes in terms of work rule concessions. As Tom
Roth will explain, rail employees have never fully
recovered from PEB 219. And in addition, the
structural changes in the industry have exacted
their heavy toll. Jobs lost, displacements, the
demands of changing technology to name but a few.
Thus, if sacrifice is required to claim a share of
the Carriers' profits, then these employees
deserve a full helping of the pie, not merely the
dieter's portion that the Carriers are offering.
Okaypattern. It is a word that looms large in
nearly every PEB proceeding and as a result there
is a substantial body of PEB precedent that is
built up regarding the pattern principle. Those
precedents address both what constitutes a pattern and if there is a pattern, what that pattern consists of. So here we have the Carriers contending that an agreement formed with only one organization representing only 27 percent of the workforce sets a pattern that eleven other organizations should follow. To call such an agreement a pattern would be a substantial departure from past PEB decisions. It would also be very detrimental to healthy bargaining and labor relations in the industry. Past PEBs have been clear. In order to serve as a guide for other recommended settlement, a claim pattern must be, quote, clearly established and ascertainable. According to past Boards, this requires proof of pattern settlements covering a majority of employees. Thus in PEB 178, one I don't think Don referred to, agreements with four shop-craft unions covering 23 percent of employees did not constitute a pattern. As that Board wrote, quote, to adopt the pattern argument as decisive under these circumstances it seems to us, would be to
push it to unreal proportions. Likewise, PEB 66
had settlements reached with one-third of
employees said that did not constitute a pattern.
In PEBs 228 and 230, settlements with three unions
covering 45 percent of employees were
characterized as an emerging pattern which would
not be afforded presumptive weight or controlling
weight. And PEB 186 found that, quote, 60 percent
is not an overwhelming pattern figure. Sixty
percent not overwhelming. In fact, the vast
majority of PEBs have turned to the pattern
principle in cases where 80 or 90 percent of
employees have settled. So why have past PEBs
insisted on a majority in order to find a pattern?
Well they have so held because settlements with
only a minority simply do not provide sufficient
evidence of broad acceptability among employees.
But in the face of the sound policy adopted all
these president precedents, the carriers still ask
this Board to push the pattern principle to unreal
proportions. This Board should not. Now not only
does UTU represent only a minority of employees,
it is also only one union. As far as we are aware, including our review of the pattern cases that the carriers have cited in their submissions, no PEB has ever found that an agreement reached with only one union constitutes a pattern for all others to follow. And it is clear why an agreement reached with only one union should not be adopted as a pattern. An agreement formed by only one union may merely reflect the unique concerns and circumstances of that organization. And we know that to be true in this case. In fact, the circumstances under which the UTU reached its agreement with the Carriers could not be more unique or idiosyncratic. As explained in our papers, in May of 2007, the UTU entered into an agreement to merge into the Sheet Metal Workers. Now under the terms of the merger agreement on January 1 of 2008, the UTU was to cease to exist as a standalone labor organization and it was to become a division within the Sheet Metal Workers. Before the merger could be implemented, however, a group of UTU members sued
to repudiate the merger asserting they had been
misled about the terms by both the UTU's former
leadership and the Sheet Metals. Although the UTU
initially opposed the lawsuit to enjoin the
merger, after a change in top leadership, the
union reversed position and supported the
injunction. Some UTU officers, however, continued
to support the merger. So a flurry of additional
litigation ensued and eventually a federal court
ruled that UTU's challenges to the validity of the
merger should be trexcuse meshould be determined
under the arbitration provisions of their merger
agreement. And so law professor, Michael Gottesman
was selected to act as the arbitrator. And on this
very Monday, Arbitrator Gottesman ruled on the
issue and ruled that the merger between the two
unions was properly consummated and that, quote,
the merger should be implemented at the earliest
possible date. He also found that the UTU had been
in continuous breach of the merger agreement from
January 2008 to the present. Where now in this
long running saga? I don't know. I suspect the
parties are still sorting out their respective positions in the wake of Arbitrator Gottesman's award. So perhaps we'll learn more over the course of these proceedings. I will say of my colleague, Roland, the Sheet Metal Workers are part of his coalition, the RLBC, would like to say a few words after my opening on this topic. The carriers, of course, were always fully aware of the dispute over UTU status as an independent organization. In fact, at the beginning of negotiations with the carriers it was unclear whether it would be the UTU or the Sheet Metal Workers who would be engaged in national handling. However, both the UTU and the carriers took the position that UTU was the proper party. And now these carriers want the board to recommend an agreement formed by a union engaged in, frankly, one of the messiest internal battles that one can imagine. You know it is really difficult to believe that the bitter internal strife caused by the merger struggle did not impact the decision making of the UTU leadership at the bargaining table. It's just
difficult to believe. But even beyond the merger mess, the UTU agreement is clearly a deal targeted to the unique concerns of employees represented by that organization. As you will hear in testimony, the UTU has gone its own way in terms of health and welfare issues since 1999 when the union formed its own healthcare plan with the carriers. You know the UTU also believe that it had obtained considerable advantage from removing some topics from national handling and relegating them to local handling where they felt that they could ultimately walk away from these issues if the carriers weren't offering a significant enough value for them. You know in short the agreement just speaks largely to the particular interests of UTU represented employees and for that reason too should not constitute a pattern. And there's yet another reason to refuse the pattern argument and that is the potential impact of coalition bargaining among rail labor. UTU is the only union in this round of negotiations and the last not to bargain as part of a coalition. Now for decades
the carriers have complained about having to negotiate separately with a host of different labor organizations. They've complained about rivalries among the unions and how that's destabilizing. They've argued that the pattern principle is necessary to present one organization from attempting to leapfrog ahead of another. But now there are two major coalitions negotiating jointly, having placed any rivalries to the side, and seeking common terms not one-upmanship. And what do the carriers do in response? They focused on making a deal with the one organization that was negotiating on an independent basis. We submit that this board should not validate the carrier's attempt to circumvent our coalitions by blessing an agreement reached as a pattern for all of us. Oh I think I might have said one final point too soon. I have one final point with respect to pattern. The carriers claim before this board that they are offering terms to us which are comparable in that value to the terms of the UTU agreement, Don addressed this, but they are not. Tom Roth
will walk the board through the specifics on this,
but I'll just give you one example. The carrier's
proposal includes the elimination of the fifth
year of reduced wage scales for new hires just as
it's provided for in the UTU agreement. However,
most of the organizations before this board did
not have wage progressions as long as five years.
For example, Maintenance of Way has a two year
wage progression. And the TCU clericals have a
two year wage progression. Therefore elimination
of a nonexistent fifth year is meaningless for
most of the employees before you. So the claim of
pattern is just false from beginning to end
because the carriers are not even offering us
terms equivalent to the UTU agreement. The UTU
agreement, which even the carriers admit, is not
as good as the agreements that we reached in the
last round of bargaining. In closing, I just want
to share one final point. This really is final.
Railroads always have been and are still a world
of their own. They have the Railway Labor Act
which they only share with the airlines. There is
an entirely separate federal retirement program
for railroad employees in lieu of social security.
There's also a federal unemployment insurance
system only for railroad workers. The railroads
are governed by federal entities devoted solely to
the industry such as the Surface Transportation
Board, the Federal Railroad Administration, the
National Railroad Adjustment Board, and now the
railroads have set themselves apart in an
additional respect. They are able to maintain
record breaking profits even through a
recessionary period and out perform nearly all the
rest of American industry in terms of every
commonly used financial metric. So as the carriers
present their parade of experts who will seek to
compare our jobs to those of workers in other
industries and explain how our healthcare benefits
are out in the mainstream, we urge you to keep in
mind this simple truth. The railroads are and have
always been a world apart. Railroad employees
deserve a settlement that reflects the unique
circumstances of their world. The coalition's
1 proposal accomplishes this. We submit that the
2 board should recommend its terms. Thank you.

3 CHAIRMAN JAFFE: Thank you Ms. Parcelli. Mr.

4 Wilder.

5 MR. WILDER: Mr. Chairman and members of the board,
6 over my years of association with Carmen I've
7 learned that she means what she says. She said a
8 few words and she means it, and there will be only
9 a few words. As indicated our firm is counsel for
10 the Rail Labor Bargaining Coalition. What that
11 means is that we are the bargaining agent for the
12 six constituent organizations that belong to the
13 RLBC. None of those organizations is the Sheet
14 Metal Workers' International Association. The
15 Sheet Metal Workers have represented shop craft
16 employees in the rail industry for over 100 years.
17 Recently the Sheet Metal Workers and the UTU
18 decided to merge. The entered into a merger
19 agreement and formed a constitution known as the
20 SMART organization. Recently on Monday Arbitrator
21 Michael Gottesman, in a long awaited award,
22 concluded that the pattern of conduct engaged in
by the United Transportation Union over the time
from the entry into and the effective date of the
merger agreement and the SMART constitution
constituted a "continuous breech" of those
documents. Now the legal implications of the award
on a whole host of UTU actions over the period in
which the merger agreement was in effect is
something that will be sorted out largely in other
forums. What the UTU. Excuse me. What the sheet
metals workers have instructed me to advise you
this morning is that its position is that the
actions in continuous breech of the merger and the
SMART constitution include the entry by the UTU
into the agreement with the carriers that is
portrayed as setting a pattern for the industry.
As I say, the legal implications of this will be
played out, I expect, in a different forum. We do
not intend to attempt to obtain any type of
resolution of these problems here, but you had to
know the Sheet Metal Workers' position in this
point. Thank you.

COURT REPORTER: Take five.
CHAIRMAN JAFFE: We're running ahead of schedule which actually pleases us to no end because we've got a very full docket. Why don't we take just a few moments and then we'll be ready to start with the carriers' case. It's now 10:10. Maybe 10:20 everybody back and ready to roll. Thank you. We're off. (inaudible at 0:09:56) If everyone could please take their seats.

COURT REPORTER: You could speak into the microphone.

CHAIRMAN JAFFE: I could do that. If everyone could please take their seats so we could resume. Back on the record please.

MR. MUNRO: Mr. Chairman, members of the board we're now ready to move to the carriers' case in chief. I'd like to start by just providing a roadmap for our presentation. The initial presentation will be by Mr. Gradia, the Chairman of the NRLC, who will provide you with a summary of the carriers' perspective on this bargaining round, the UTU pattern, and how it relates to the carriers' proposals. We'll then move to the bulk
of our case which is the total compensation
analysis which consists of a number of different
components. First we'll hear from Doctor Murphy
who will set forth his theory of compensation.
Second, Doctor Evans will testify regarding
benchmarking. Third, we will have a short
presentation in two parts on productivity. Doctor
Eakin will testify regarding the big picture on
productivity, and then Lance Fritz, the Chief
Operating Officer of Union Pacific, will provide
the case study in productivity. We'll then move to
the evidence of adequate compensation from
employee behavior including a presentation by
Doctor Topel on retention and turnover as well as
a statement by Lisa Mancini, the Executive Vice
President of Human Resources, from CSX who'll add
some color to that topic. That will conclude the
presentation today. For tomorrow we hope to begin
with a presentation by BNSF Chief Executive
Officer Matt Rose on railroad economics followed
by a statement by Mark Manion, the Chief Operating
Officer at Norfolk Southern regarding safety. If I
had my druthers I would have had Mr. Manion follow
Ms. Mancini given that that is part of our package
on the concept of railroad jobs and the nature of
railroad jobs but witness availability trumps all.
That will be the end of our presentation on total
comp. From there we'll move directly into
healthcare. Our presentation by Ben Boley and Dave
Scofield on the nature of the plan design changes
followed by two expert witnesses one on
prescription drugs and the other on medical care.
The end of the day tomorrow will follow the
healthcare case with two relatively brief
presentations; one on wages by my partner Brian
Easley. Because wage is a component of total
compensation many of the same principles apply.
Mr. Easley will simply explain the same points
that we've made with respect to total comp are
equally applicable with respect to wages. Last
we'll have an overview of the carriers' position
on work rules by Carter DeLorme. Since our
affirmative case is no work will change this will
be a brief presentation. We will be prepared to
respond to the unions request for workable changes in our rebuttable case next week. We'll have a brief conclusion by me and/or Ken at the end of the day tomorrow. We hope to get you out of her well in advance of the 5:00 p.m. deadline. With that I will introduce our first witness. Ken Gradia is the Chairman of the National Railway Labor Conference and the chief negotiator for the railroads in this round of bargaining. He has been with the NRLC for a very long time.

MR. GRADIA: It seems longer all the time.

MR. MUNRO: Thank you.

CHAIRMAN JAFFE: That's fine. May I ask the reporter to swear in the witness please?

COURT REPORTER: Raise your right hand. Do you swear the testimony you're about to give in this case will be the truth, the whole truth, and nothing but the truth under penalty of law?

MR. GRADIA: I do. Mr. Chairman and members of the board good morning. Don thank you for the introduction. I understand that there may be some problems with acoustics. If there are problems
1 during my presentation and I don't see them,
2 please make me aware, someone, and I will try and
3 speak up so folks can hear me.
4 COURT REPORTER: Pull that mic a little bit closer.
5 MR. GRADIA: Closer? Does that work?
6 COURT REPORTER: Great. Thank you.
7 MR. GRADIA: At the outset I want to emphasize that
8 nothing we will say in these presentations should
9 be taken as a criticism of our employees or their
10 bargaining representatives. In the heat of
11 collective bargaining disagreements and this is
12 the last however, most recently since 1996 in rail
13 freight bargaining, we should not lose sight of
14 our shared interest in the continued success of
15 our industry. I've spent most of my professional
16 career, as Don recounted, in railroad labor
17 relations working with all of the idioms in this
18 room. Occasional profession disagreements have not
19 and do not in any way detract from my respect for
20 their contributions. Collective bargaining works
21 best when management and labor work together
22 diligently and creatively to fashion agreements
that address each side's needs in a fair and reasonable manner. And in a multi employer, multi union environment such as ours pattern bargaining plays an especially critical role in fostering voluntary settlements and ultimately labor stability. Indeed rail management and labor have followed that formula successfully in the last two bargaining rounds negotiating a succession of voluntary settlements founded on pattern setting agreements. If that process is a founder then bargaining will inevitably break down if one side or the other refuses constructive engagement on critical issues or is determined to substantially surpass what other unions have achieved across the table. And that's the dynamic that's really at the heart of this proceeding. The unions in this dispute dismiss our agreement with the UTU, a voluntary settlement, covering the employees represented by the single largest rail union as utterly inconsequential. They demand substantially more in wages and additional compensation plus enhanced benefits, but they refuse to even
consider one of our principle issues health plan reform. And for these reasons the stakes are much higher than simply the terms and conditions of our next agreement. At its most fundamental level this proceeding is about the present and the future course of national bargaining in our industry.

Your recommendations will inevitably heavily influence the outcome of this bargaining round. And that in turn will influence future actions, strategies, and decisions both of rail management and of rail labor. Pattern bargaining in this industry in national handling is a long settled expectation. It demonstrably serves critical interests of all of the stakeholders not just the parties, that's to be sure, but also the National Mediation Board, our customers, and ultimately the public interest. Every labor organization including the ones before this board has reaped the benefits and the protections afforded by pattern bargaining at various times in past bargaining rounds. We believe that adherence to pattern principle is essential to lay the peace
and stability, that the UTU agreement does indeed constitute a pattern, and that this board should recommend application of that pattern to resolve the bargaining disputes before you. My presentation will address all of those points, but let me begin with an overview of our proposal. There are four elements, four pieces, to our proposal and that proposal is, of course, based on the UTU national agreement. The first piece is wages. Our proposal is 17 percent over six years, 18.24 compounded. Second piece is special compensation adjustments. There are two that were found in the UTU agreement one dealing with entry break disposition the other with certification pay. Third piece is package of planned design changes that in our view and, as we will explain, will help curb overuse of healthcare services and thereby help contain the incessant increase in escalation of plan costs. And final piece is work rules. The disposition are a no change. The UTU agreement as we will explain with the exception of a very minor rule does not contain work rules, but
1 does contain a mechanism for referral of selected
2 issues that parties have engaged in bargaining to
3 local handling. In sum our proposal would provide
4 roughly 21 percent in increase in total
5 compensation over the six year period taking into
6 account the cost of benefits. A little later I
7 will get into much more detail about each of those
8 elements, but I want to begin my presentation here
9 with a brief history of how bargaining ensued in
10 this bargaining round. As you can see there are
11 three basic groups on the union side bargaining in
12 this round, Railway Labor Bargaining Conference,
13 The UTU and its yard masters division, and what we
14 term here the TCU Bargaining Coalition which I
15 believe they are referring to themselves as CRU
16 for the purposes of this proceeding. On our side
17 these are the participating railroads consisting
18 of four major carriers, Class one's two smaller
19 Class one railroads and a collection of smaller
20 regional and local carriers. Together the carrier
21 group represents some 95 percent of the industry.
22 Let me make a brief comment about something that
was presented in the opening remarks from the
union counsel. I think I heard it accurately that
there was an implication or a suggestion that both
the CRU and the RLBC were negotiating in a joint
or coordinated basis. That is simply not factually
correct. They are joined together at this
proceeding. In the course of the bargaining,
however, they certainly bargained on their own.

Did they coordinate outside of the bargaining
environment? That I don't know, but they did not
bargain together. They were not bargaining in any
way jointly at least as far as I could tell. The
second point I want to make is this. At the
inception of bargaining we approached all of these
groups in the same manner. We presented two them
an indication of the areas that we thought were
most important, and we invited engagement. Each
side had the full opportunity to take us up on our
offer to proceed we hoped constructive engagement
leading to agreement. As I will detail in a bit
UTU took us up on that. The other two union groups
did not, and that is why we are here today. (audio
interruption) Round of National Bargaining where we've had this basic alignment. Last time, it worked out a little differently. In that round, this was the 2005 National Bargaining Round, the first deal reached in National Bargaining was with the RLBC. And ultimately, it was the UTU that faced and ultimately accepted a patterned settlement. But to be sure, there was a pattern established and followed throughout that round. It so happened that the RLBC negotiators set that pattern in the deal that we struck with them. Now the unions have suggested that (inaudible) places that the last round settlement supports a recommendation for even higher wage disposition here. And in my judgment, that experience is more properly viewed as a cautionary tale, and as a cautionary tale about fixed labor costs and costs and economic unpredictability. In that settlement, we agreed to a 17 percent wage package. The settlement occurred in early 2007. It's a five-year deal, running through 2009. As I said, that became the pattern for all the organizations.
Unfortunately, like most businesses, when that
deal was cut, we did not foresee the economic
catastrophe just around the corner. It so happened
that the deal struck was back loaded with the
largest wage increases occurring in 2008 and 2009;
four percent in 2008, four and a half percent in
2009. As it turned out, of course, those increases
far exceeded both the labor market and inflation,
and worst of all, kicked in at the very time the
worst possible time in the teeth of the great
recession. So, if anything, we think two lessons
are properly drawn from that experience. It's a
clear admonition to all, now granting excessive
wages, particularly in times of economic
uncertainty and a need for moderation in this
round. Let me turn to the history of the
bargaining with the UTU. Next slide, please. We
commenced negotiations with UTU early in the 2010,
and ultimately reached a deal with UTU in April of
2011. As you can see from this slide and the next,
the UTU leadership strongly endorsed the deal in
no uncertain terms. And the membership agreed. The
1 deal was ratified ultimately, in early September
2 of this year. UTU, as some of you may know, have
3 what are called craft autonomy rules, under which
4 each of their six respective crafts have to
5 approve the deal in order for the deal to be
6 ratified. All six did. And on an overall voting
7 basis, some 60 percent of the membership ratified
8 the deal, or approved the deal, I should say. So,
9 a solid, a solid, favorable vote by the rank and
10 file. Now, this agreement was a result of very
11 intense and difficult bargaining. At least a dozen
12 or more negotiation sessions and numerous informal
13 meetings and discussions. I should state that this
14 was all in direct negotiation. Mediation was not
15 invoked by either side, so the parties took this
16 on themselves. At the end stages, however, we
17 jointly invited participation on a facilitation
18 basis by board members of the National Mediation
19 Board and they were most helpful in assisting the
20 parties to the end point of a successful,
21 tentative settlement. Now, I note at the outset of
22 this hearing and in some of the rewritten
materials submitted to this board by the organization's commentary about internal divisions and uncertainty growing out of the Smart merger, and the implication, I think, is perhaps even more plain in the remarks today, that the UTU agreement somehow is tainted. It's not the product of real bargaining that the UTU leadership and their bargaining committee's motives and strategy were somehow affected by the discord and the turmoil around the merger. And I suppose the suggestion is that that is a reason to discount, to disregard the UTU settlement. To say the least, inviting such speculation on your part treads on very, very dangerous ground. But I will say this, from my vantage point, as the Railroad's Chief Negotiator throughout those negotiations, from the beginning to the end, President Futhey and the rest of his committee were determined and focused on getting the best possible deal they could. The settlement they crafted was, as I said, ratified by all six crafts and by a solid majority of the rank and file. As we will show, by any objective measure,
the terms of that deal are demonstrably fair and reasonable. So, whatever else one may say about the UTU deal, certainly a suggestion that somehow, someway, it is the product of less than arms' length bargaining is just not so. Certainly not from my vantage point. Earlier on in our discussions with the UTU bargainers, we agreed on an overall approach to negotiations and we would focus on three things: a reasonable wage package, limiting (inaudible) compensation issues on both sides to make it more amenable to finding a pathway to an agreement that would work for both sides, and developing strategies to curb growth and healthcare costs. Now, I want to focus particular attention on that last subject. There is a continued and unsustainable escalation of healthcare costs in this country. It's a national crisis, and that crisis has drawn enormous attention from the President, the Congress, expert commentators, and it ultimately spawned comprehensive healthcare reform legislation. In our experience and the railroad industry sharply
1 illustrates the problem of incessant growth and costs. By 2015, for example, absolute change, or reform, healthcare costs for employee will have tripled since 1999. Obviously, simply unsustainable. There's a broad consensus that a substantial part of the problem at the root of this ever-escalating cost is over-utilization of healthcare services. Wasteful spending on unneeded care. And in that regard, planned design plays a critical role. And unfortunately, we had a big problem in that area. The planned design of our in-network portion, what's called the MMCP Plan, Managed Medical Care Plan, which accounts for the vast bulk of all medical expenditures, some 90 percent, is considerably more generous than, and substantially out of line with prevalent planned design. We have, it was termed first dollar coverage at 100 percent. That is, other than copays, the plan covers all expenditures. It produces a benefit adequacy of 97 percent. That is, the allocation of costs between plan and users, 97 percent of expenditures are covered by
the plan. Because little or no payment by our
members is required at the point of service, and
by that I mean if you go to a doctor, we have a
copay. Other than that copay, everything else is
covered, 100 percent, under the current plan
designed. We were experiencing very costly and
unnecessary utilization of services without, we
found, co(inaudible) (inaudible)ing improvements
to overall health. We had a similar problem in our
drug plan design. Our plan lacked virtually any
standard management programs to promote safe and
effective utilization, and we had a copayment
structure that did not optimize cost effective
choices. We made those points to the UTU, as well
as to the other unions in this round. UTU said,
"Okay, let's take a look at that. Let's
objectively sit down, evaluate the problems, see
if they really exist, to what extent, and are
there areas of change or improvement that we can
agree or justify, and see if we can't fashion a
solution across the table." To do that, we agreed
to engage expert consultants on both sides, to
work together, and their task was to develop recommendations for consideration by the bargainers. Given the complexity and the difficulty of these issues, it was clear that to make real progress, the bargainers needed help and guidance from experts in the field. Those consultants were instructed to come up with a revised design that would encourage prudent choices, make more effective use of available dollars, but without compromising overall healthcare outcomes. All of which would help contain growth in our costs. They were also instructed to search for win-win solutions wherever possible. Changes that would be beneficial, both from a cost standpoint and from an individual member standpoint. They were also asked to investigate and to seek a fair allocation of costs and benefits among employees. Simply stated, to pursue the principle of "those who utilize services should pay for them." But with reasonable limits to protect against excessive financial burdens on any individual or any family.
Now that concept to us seems unremarkable. Point of service cost sharing is widespread if not universal. You will hear much more on that point from our experts, but it is a fundamental point of contention and a difference between the parties, philosophically as to how to address this issue. We also agreed that in connection with this investigation and evaluation of changes, that would be beneficial insofar as cost containment encouragement of more prudent choices, to consider sharing some of the value of those plan design changes with employees by limiting increases in direct cost sharing. A little later, I will describe in more detail the changes that we agreed to. But in the end, I want to emphasize this point. These design changes do not reduce the cost of healthcare to the railroads. What they will do, we hope, is to contain growth in costs, an absolutely essential outcome if we are going to get a handle on the problem of runaway, incessant escalation of healthcare costs. Now, in contrast to the UTU bargaining, the next slide, please.
1 We've got little traction with the other
2 organizations, certainly in the case of healthcare
3 change. As you'll see up on the screen, a sampling
4 of commentary from Mr. Scardelletti, which is
5 typical of the reaction that we got with respect
6 to our proposals for healthcare change. TCU said,
7 the TCU group was certainly very open in its
8 opposition, but they were not alone. Both sides
9 were resistant. Not surprisingly, it was difficult
10 to make very much progress across the. In the case
11 of the CRU group, we had a total of three direct
12 negotiations, meetings in 2010, first year of the
13 new round. Mediation before mediation was invoked,
14 which they did in July of '10, after mediation was
15 invoked, the parties met three times with the
16 mediator present. At that point, the TCU declared
17 that their belief that we were at impasse and
18 demanded a release. Mind you, this is all in the
19 very first year of bargaining, three direct
20 negotiation meetings, three mediation sessions. We
21 met soon after that request was made to the
22 Mediation Board in January of 2011, and the TCU,
after that meeting, again, declared impasse and demanded a release. I'll speak to this a little more later, but essentially, from that point to this point, the record is very plain. The CLU Unions abandoned real bargaining very early on in the process. They were unwilling to entertain any change, in the benefit arena. They were adamant with respect to their own demands, and it seems clear to us, at least, that their hope and certainly their proposal is to evade any engagement on healthcare issues in this realm. Obviously, we think that record was not, should not lead to a two-way reward for intransigence. Now, the OLBC bargaining was more active, but it, too, lacked true constructive engagement. First year of bargaining, we were in direct negotiations. We met some 10 times in 2010, and mediation was requested in early '11, and we had, I believe, seven mediation sessions with them, to no avail. Now, about from RLBC's refusal to engage in what I would term meaningful negotiations on the railroad's healthcare proposals, there was
conversation and discussion and even exchange of
an idea or two in the healthcare arena, but far,
far from any real engagement on the issues that we
believed were necessary to address. We had an
additional obstacle. RLBC had a large set of work
rules and compensation demands, including major
changes in longstanding rules. But we were
unwilling, at the table, to engage or entertain
trade-offs in any form. And they did so, despite
our readiness to refrain on our own work world
changes. Like we proposed to the UTU, we thought
in order to facilitate movement, constructive
movement toward a deal, it was necessary for the
parties to trim their lists. We were wiling to do
that and said so. We wanted to hone in and focus
on the key issues. We did not get from the RLBC a
similar willingness to whittle down their list.
Now, before you, you see a number of issues that
have been advanced to you in this proceeding. Now,
while the demands and the proposals that I've
mentioned remained on the table in the RLBC
negotiation throughout, and indeed, are advanced
here. We really did not spend much time at all on many of them, as you will see in the chart before you. For quite a few years, no real engagement at all. Little more than a recitation of the demand and some cursory conversation about it. Putting aside the merits, for the moment, of these issues, we think it's especially inappropriate for these unions to come before you asking for significant rule change in areas that the parties have barely discussed in bargaining. We think it's improper, inappropriate, and should be rejected. It's also important to note that one of the organizations in the RLBC grouping, the BLET, has already settled on wages and rules with the NSF, with Northland Southern, and with CSXT, and they're in local handling, as we speak, with Union Pacific on wages and rules. So, to the extent that the BLET has demands before you on anything other than healthcare, those demands are perforce limited to in the case of the Class I's, KCS and Soo Line, they're barred by moratorium on everything else, in the wage and work rule area. I should note in
passing that, in the case of the roads that I just
mentioned, that have already settled, their
agreements with BLET, everyone of them has an
incentive based pay arrangement in effect. The
c coalitions have a great deal to say about the
financial and economic position of the industry
and you heard again, this morning, in the opening
remarks of counsel, the same drumbeat. They assert
the we are stronger and more vital than any time
in our history. There's no end in sight to
continued growth and prosperity. But they had no
interest, showing no interest at the national
table in incentive pay, profit sharing and the
like of those sorts of arrangements that would
give them an opportunity to share in that
prosperity. Their demand is strictly focused on
guaranteed wage increases. So, despite their own
predictions, they're completely unwilling to share
any downside risk. Should profits lag or economic
conditions change, it's a one-way street. Let me
talk now about our bargaining history with these
organizations following the UTU agreement. Our
frustration, at any constructive engagement with these organizations, only worsens after the terms of the UTU agreement were released. When we met with the groups, we made it clear that we thought the UTU deal set parameters, a framework for negotiation. We did not say to them it had to follow in lockstep with every term and condition of the UTU agreement. But we did say that the value proposition had to be the same. Both coalitions immediately rejected that notion as any basis for bargaining, and instead, they turned their attention and their energies to attacking the UTU agreement and the UTU leadership in what I would consider unprecedented, lobbying campaign against ratification. Slides that have just been shown are telling you just that, or are giving you just a sampling of some other rhetoric, some other commentary. It went so far as to even sending individuals to UTU ratification meetings in an effort to persuade rank and file to reject the agreement. (inaudible) mentioned this in his opening remarks and it seems paradoxical, to say
the least, if it is true, as the unions will assert and have asserted, that the UTU agreement is irrelevant. It should be given no right, merits, no consideration. Why go through all of this effort? Why the shrill rhetoric? Why all of the energy directed here? And we think the answer is obvious. They know full well that a ratified UTU deal is significant and it would set a pattern. It's the last thing they wanted to see. So, in sum, bargaining stalled with both CRU and RLBC and even regressed throughout the spring and summer of 2011. Coalitions refused to even consider conversations within the framework of the UTU deal. They continued to reject any plan design changes. They refused to modify their own wage demands, which were well in excess of UTU deal. And in the case of the RLBC, continued to press their demands for substantial additional compensation and benefits. Again, they abandoned any pretense at that point, of constructive engagement and were clearly positioning themselves to take the dispute to you, to PEB. So, with that
history, let's turn to a closer look at the UTU agreement, on which our proposal before you is founded. Start with wages. As you can see, we have a package of wages detailed to its beginning in each case, effective on July 1st, running through January 1, of 2015, 17 percent compounded, 18.24 percent. Now, next slide, please.

MR. GRADIA: I want to emphasize a particular feature of the, of the Agreement. We talk of six years of wage increases. The moratorium provision that we propose would allow for reopeners to commence 1/1/15. So the moratorium would run for five years. However, we agreed with UTU that we would provide an increase in January 1, of 2015, the sixth year, subject to a side letter and that side letter which is on the screen before you, essentially provides that if the parties bargaining dispute in the new round is referred to third parties either arbitration, APEB or the like, that the parties are in agreement that the 3 percent increase January 1, '15 would be a complete resolution of the compensation adjustment
issue for that calendar year. So to clarify, wages six years, we've got a moratorium that runs through the end of '14. If the organizations are not interested in the increase in 2015 pursuant to this arrangement, we are certainly willing to agree to the increases as provided 10 through 14.

Next slide please. Now the next several slides will address the two pieces of additional compensation that are contained in the UTU Agreement. First, is extra compensation related to entry rates. For many rounds, the UTU's, one of the UTU's principle objectives has been to eliminate or substantially modify entry rates. And we have persistently and successfully resisted that in National bargaining primarily because of the sheer cost of the, of the change. In this round, the UTU renewed its demands for elimination of substantial modification of entry rates. Now matter of background, the, what I would call the National entry rate provisions that are applicable to UTU are five year entry rate progression starting at 75 percent and progressing in 5
1 percent increments and so full pay five years
2 later at 100 percent. There are more favorable
3 local entry rate arrangements that have been
4 negotiated on their routes more favorable to the
5 employees. And combined as we went into the
6 bargaining uh, there is some a little under 10,000
7 UTU employees on some form of entry rates. In the
8 course of the bargaining, we found the solution
9 that would work for both of us on entry rates.
10 Their desire for substantive change, our desire to
11 manage the change in a responsible, reasonable
12 way. And here is the compromise, what we agreed to
13 do was to give current employees who are or have
14 recently been on entry rates, a partial refund of
15 the savings that carriers realize from entry
16 rates. We also agreed to reduce the existing
17 National service scale from five years to four
18 years for new employees with the right of the UTU
19 to preserve more favorable rules that were in
20 place. The result is on the screen insofar as the
21 outcome of our negotiation. We agreed to a one
22 time set of bonuses, lump sum payments. At the
highest tier, it is $3,000. $3,000 will be payable to employees who qualify, who are subject to the National or five year service scale rate. As you can see those are the numbers, the amount and the approximate number of individuals who we believe will receive that payment. Second tier were the individuals who are subject to non-National rules. That included, for example, employees on BNSF portions of Union Pacific. For those individuals, they would get a lesser payment because they were subject to less onerous entry rate rules. They would get a $1,200 payment. You see the numbers there. The remainder of the employees, UTU population, gets nothing and you see the numbers there. When you do the math uh, you come up with an average of roughly $711 per individual craft wide as a result of this provision. The second piece of additional compensation agreed to in the UTU Agreement is certification pay. Certification pay for the UTU comes out of recent legislation mandating issuance of rules by the Federal Railroad Administration requiring conductors like
engineers that, who have, who are already subject
to certification requirements and have been for a
decade or more to be certified. Certification
under the regulatory scheme essentially means that
among other things affected employees are at-risk
of being unable to work in their craft if they
lose their certification. The UTU sought
additional compensation for that risk and for what
they believe to be additional responsibilities
attended to individuals covered by the
certification rules. We ultimately agreed to
resolve that demand by providing $5.00, a flat
$5.00, per qualifying start to individuals working
on posi-, working on a start that requires
certification, not all starts will require
certification. Those rules are still uh, are not
yet finalized and so the details are yet to be
determined. But they certainly will be clear that
there will be jobs that require certification and
others that do not. But the pay, the $5.00
allowance will apply only to a start that requires
certification. Now that $5.00 is the same payment
that was, that came out of a National arbitration, an interest arbitration involving the locomotive engineers that was in 1997. Now this payment, this new form of compensation, certification allowance, will not take effect until the later of July 1, 2012 or the effective date of the FRA rules. We estimate that this certification allowance will impose an additional labor cost of some 21.2 million dollars. That figure is based on our estimation of annual starts among eligible employees so approximately 4 million, 4.2 million. Now using an estimated population of about 30,000 employees on the covered properties before you if you do the math that amounts to about $708 per individual, about average individual, or an individual in the entire population. Now the organizations talk about many unique elements of value in the UTU Agreement and I am sure you will hear more about that. But the fact is there are no other elements of value in the UTU Agreement other than these two plus wages. Additionally, as I will show you later, every element of value in the UTU
Agreement is accounted for in our proposal before you. Next slide. The final element of the UTU Pattern Agreement is work rules. As I have said at the outset, the UTU Agreement is essentially compensation; GWIs plus the two other compensation elements I just covered and healthcare. The only item that might conceivably be termed a work rule in the UTU Agreement is a technical change in how we measure and apply probationary periods. That's it. Other areas that the parties discussed extensively but were unable to resolve at the table were referred to local handling on a voluntary basis for quid pro quo bargaining on such terms as the parties may mutually agree. It is not Section 6 bargaining. It is local discussions. If they lead to value for value exchange so that so much the better but that is the forum to which these issues have been referred. As you see those are the areas that we had talked about extensively with UTU but were unable to resolve and we thought the best disposition, the fairest disposition, would be to
refer them back to the properties. So the upshot is this, there are no rough rule provisions of any substance in the UTU Agreement. That brings me to healthcare, plan design changes which certainly from our perspective were the linchpin to the deal. Now these changes are focused on the MMCP in network portion of the plan and on pharmacy benefits. I talked at the outset of our plan being a first downer coverage plan lacking many common plan design features found almost everywhere else in the world certainly in the, in the private sector. The UTU Agreement includes two design changes of that type that we will show or will be found in virtually every medical plan design; co-insurance and annual deductibles. Let me start with the deductibles. Current plan design in network there are none. The UTU Agreement provides for what we will show to be unusually modest annual deductibles $200 per individual, $400 per family. Co-insurance currently none, carriers pay all other than as I said the co-payments now provided in the current plan design. Tier 2, we
have a very, very modest indeed generous provision
compared to most plans. We provide a 5 percent co-
insurance and, as I mentioned, there were, we had
in mind the necessity to address the concerns that
UTU have expressed about controlling or managing
in worst case scenarios the placement of some sort
of reasonable limits on exposure on an overall
basis of individuals and families. And as you can
see, the co-insurance of 5 percent caps out at
out-of-pocket maximum of $1,000 on an individual
basis, $2,000 on a family basis. Now for larger
families in particular and our plan covers more
dependents than most and our experts will explain
that phenomenon as well. The $2,000 maximum is
especially generous. Now I mentioned earlier the
admonition to the experts from the bargainers that
they were to search for win-win solutions wherever
possible. Let me highlight three of those that
came out of the UTU Agreement. Would you go back
to the previous slide? The first one uh, previous
one, the first one I want to call your attention
to is at the bottom of the slide the other co-
payments. Note in the emergency room urgent care center, convenient care clinic, current plan design proposed plan design, in our discussions with UTU and with the experts, we focused a great deal of attention on the problem we were having with overuse of emergency room facilities uh; very expensive to use uh, and way out of line with what our experts were telling us were typical experiences. So we needed to come up with a solution to address how do we manage that problem? How do we encourage the appropriate, more appropriate cost effective use of emergency rooms? And the answer that we got was, "Why don't we look at tiering the available options for care outside of normal doctor hours?" This is what we came up with. UTU said to us, "Well, can't we create a, a structure under which we will encourage good choices? Good choices from the standpoint of the plan but good choices too from the standpoint of the individuals from their own exposure, their own cost exposure." And this is what we came up with. "Convenient care clinics," we said, "ought to be
at the lowest tier whether it is a CVS or Walgreens or that sort of care can handle an awful lot of routine sorts of medical interventions that may come up on a weekend or at night when your regular doctor is not available. Drop the co-pay for that to encourage use as we did there $10."

Urgent care next tier up, we said, "Why don't we create further incentive to utilize urgent care relative to emergency room?" The answer was, "Okay, let's drop the co-pay there and then let's enlarge the co-pay on emergency rooms." Obviously, this creates and encourages steerage, steerage in the right direction; steerage that ultimately will, will give the employees, their families, the care that they need but at a more, in a more cost-effective way. Next slide. Two other examples of win-win; the if you look in the chart insofar as current plan design and proposed plan design take a look at the generic co-pays. In each case, our Agreement provides for dropping in the case of mail order substantially reducing the co-payment to encourage use, greater use of generic drugs;
again, a win-win solution. Third item not on the chart but I will mention is we made provision on a voluntary basis for additional counseling and resource services to employees and their families without co-payment or co-insurance to assist them in the difficult choices in care management and receipt of care. The next item I want to mention is what did we do with respect to allocation of cost and fairness of costs. I mentioned to you that one of the things that we were going to look at was a means of sharing the savings of, and savings I use advisedly because it is really avoided costs attendant to these design changes. And what we looked at was what could we do with employee cost sharing as a result of implementing these changes. And what we found ultimately we were able to do and we reached an agreement on it was to place a freeze on employee cost sharing. And that freeze will fix, will, will keep the cost sharing at a $200 level, the level that the organization has also proposed or seeks in this proceeding. We will keep that in place until July
1. of 2016, unless the parties when bargaining reopens in the next round provide otherwise. So the absolute certainly through the up until the, the end of December of '15, the, I'm sorry, '15, uh, we have a, a, we will have a freeze on contributions at the $200 level when the, when bargaining round reopens that will be, that is a subject but unless the parties voluntarily agree to something different it is fixed in place until July 1 of '16, a long period of certainty insofar as cost sharing is concerned. And our healthcare team will go into this in much more, much more detail uh, but uh, bottom line is this, in this, certainly in this area. The coalition unions would have you believe that what the UTU Agreement does and what we propose here are catastrophic radical changes to the benefit plan design that would essentially gut it. But here are the facts. Employees independence after, after these changes are made will still receive medical and drug benefits far better than what most Americans receive. The benefit adequacy of the Plan's MMCP
in network program under the revisions will drop from 97 percent to 91 percent and for the Plan as a whole they use an 93 percent and 89 percent. As we will show you in much detail that is a level that few if any plans approach in this country. Second, carrier healthcare spending will not be reduced by these changes. Growth in our costs will be moderated which financially is really no different than a wage increase. Someone has to pay for those increases under and that someone is the railroads. So, in conclusion, the UTU Pattern Agreement provides on a total compensation basis an increase of nearly 21 percent. This is wage increase, special compensation and the increasing cost of benefits, certainly generous by any objective measure. That brings me to the next subject. Why should the UTU Agreement serve as a pattern? Don's already explained the reasons that past boards, commentators have identified for application for pattern the need for the pattern. I want to address it from a different perspective and that's as a negotiator. I believe the failure
1 to follow a pattern, failure to recommend a
2 pattern here would be disastrous to future
3 voluntary bargaining and hence labor relations
4 stability here is why. First off, this Agreement
5 covers a single largest rail union and certainly
6 that should matter. Second, the organizations have
7 been unrelenting in their oppositioning to and
8 criticism of the deal. Giving them more than the
9 UTU will certainly validate those criticisms,
10 reward their intransigents. And it is hard to
11 imagine any more discouraging or detrimental to
12 voluntary deal making in the future. And think
13 about it from a union bargainer's perspective. Any
14 time you are faced with the opportunity to cut the
15 first deal in a multi-union, multi-employer
16 setting you know that it carries some risk. What
17 if the other unions are going to do better? What
18 if they do, do better? Your career, your future,
19 essentially are on the line. Rank and file measure
20 performance in part by what is delivered and they
21 compare. These employees all work together. They
22 certainly are acutely aware of what happens in
every bargaining setting. It is just plain human
nature to avoid risk. Why stick your neck out if
you believe that whatever you do, that will set
the floor for someone to do better and put you in
the position of having to chase after that perhaps
the next time if there is a next time for you as a
union leader. Third, reasons to reject the pattern
that had been raised in the past are simply not
applicable here. This is a voluntary deal that
wasn't imposed by arbitration or by Congress. It's
been a, it's ratified, affirmed by a solid
majority for the rank and file. It's perfectly
translatable to these other unions. There are no
difficulties or obstacles to a fair translation of
this package to the other unions as I will show
you in a moment. And this should be contrasted to
many of the other boards that have expressed
reservations or qualms about pattern application.
Whether it was concerns about a special pay
element such as went through over miles or an
increase in over miles meaning when you are
dealing with non-operating crafts. There is no
credible argument as we will show that real wages
have failed to keep pace with inflation or that
any of these crafts have fallen behind their peers
which are factors that have also been looked at
and cited as a reason to depart from a pattern. In
fact, as we will show recent wage increases if
anything have substantially exceeded inflation.
And finally, there are no special compelling
circumstances here. Coalitions cite profits as a
reason to exceed the pattern and that's no more
unique to them than it was and is to UTU. UTU
cited the same sort of evidence; the same
considerations in our bargaining. That was
factored into and considered by the bargainers.
Nor is there anything unique about these
organizations that would justify a different
outcome on healthcare. And there are many reasons
as we will explain to maintain continued
uniformity of benefits for all Agreement
employees. And finally, they talk about their own
special interests but again UTU had special
interests. We accommodated those special
interests. We are prepared to give the same fair equivalent value to these organizations for their own special interests. Bottom line is this is a fair deal. It is a reasonable deal. Let me explain how in our view it should be applied to the coalitions. I am going to start with the fundamental point that I would call the value proposition. Now our offer is going to reflect value for every element of the pattern Agreement. As I said at the outset, we are and have been willing to move pieces around to accommodate particular interests or goals of the organizations. But the outcome has to stay within the parameters of the same value proposition as a total package. For example, it certainly would be unfair contrary to pattern considerations to allow the unions to get as they are seeking a package of special compensation elements that exceed what we gave to the UTU in the case of entry rate, lump sums and certificate pay but also get UTU wages per more. There has to be an overall equivalence to maintain fairness. So let's go through how we
would provide that fair value to the coalitions.

Up on the screen first are the wages and those are easy; so one for one equivalence. You take, you read across we are offering the exact same increases to the coalition unions as the UTU got.

Now we are also rowing (ph) as I said if the organizations are insistent on having a wage deal that runs 2010 through 2014 to provide the identical UTU wage increases for those periods as well. If we move into the sixth year, as I said, we are willing to provide that same 3 percent increase but subject to the same understanding that we reached with UTU. Now, entry rates, this one is also easy. We will give the organizations the exact same terms in entry rates that we agreed to with UTU. Now, is that less than what UTU gets or the individuals would get on a per person basis, (indecipherable at 0:30:28)? Yeah, of course, but that's because they are fewer people on entry rates in these crafts than the UTU. The value proposition is simply this fewer people on entry rates means we get less value from those
entry rates. UTU value is keyed to what do we receive? What in value do we get from those individuals being on entry rates? So it's perfectly reasonable that what they would get would be tailored to what we get in return. But we are certainly mindful of the points that the unions have advanced in this regard insofar as different circumstances; different facts with respect to these crafts; different entry rate arrangements. So we are open to an alternative. If the coalition unions do not want those same terms, the identical terms that we offered to the UTU, we will offer them a $300 lump sum for everyone working in the craft. Now that's a little less than the, than the roughly $700 per person value for UTU. But again, that is because the value proposition of the entry rates arrangement in the case of UTU is worth much less to us than it is with these crafts. In short, a true pattern would be the exact same terms applied to everyone. But this in our view is certainly a fair alternative. That takes me to the second piece of additional
compensation and that is cert pay. A cert pay is complicated by the fact that it is rooted in external events; passage of legislation and ultimately implementation of Federal rules that will not be applicable to these crafts other than as I mentioned already is in place with regard to locomotive engineers. And it is justified by the employment risk that only conductors will face as a result of a certification regime. Thus, it would be perfectly plausible for us to say that the other crafts should not get an equivalent. And if you look back to prior bargaining when the locomotive engineers received certification pay through arbitration in subsequent bargaining rounds there were no arrangements agreed to provide cert pay alternatives to crafts. It was limited to the craft as to which the change had an impact. Nevertheless, and by the way that included UTU who vigorously sought certification pay in various forms and guises in subsequent bargaining after the National arbitration with the BLAT to no avail. Nevertheless we have included something in
our offer that provides what we believe is an
equivalent to cert pay in exchange for settlement
of everything else. Now the idea comes out of the
our yardmasters negotiation, yardmasters being a
component of the UTU. The yardmasters in the
negotiation demanded their version, their
equivalent of cert pay, saying, "If the, certainly
if our parent organization gets this we ought to
get the exact same thing." What we ultimately
agreed to however, with the yardmasters was a
special wage adjustment. That special wage
adjustment effective June 30, 2011 was twelve and
a half cents per hour. That twelve and a half
percent, cents per hour produces the average
equivalent of about a half point GWI for these
coalitions. So what we propose is to apply that
across the board; that special wage adjustment
that the yardmasters receive that was negotiated
as in lieu of as an alternative to but in
recognition of the certification allowance paid to
the training of conductors, we would apply that to
all of the coalition's effective June 30, 2011.
Now again, is that less per person on average than the UTU cert pay? Yes, it is. Are there good reasons for that? We, we believe so. First, special adjustment would take effect at least one year or sooner than cert pay. Cert pay cannot take effect any earlier than July 1, '12 it may be later than that depending on the timing of the FRA regulations. Second, this wage adjustment is (inaudible) so it is subject to all further increases through compounding. The UTU cert pay is a flat $5.00. Third, and this is quite important here, our offer is predicated on the notion that the same plan design changes that we had with UTU will be implemented as of January 1, '12. If there is any delay in that timing than we will lose the benefit of those changes. We will have no way to recover it. Unlike wages there is no retroactive capture of the benefits of plan design change. As matters now stand we think it's quite doubtful, however, that we will be able to implement plan design changes for these organizations as of January 1st, even if your recommendations are
adopted soon after the issuance of the report we have to go through bargaining, put a language, settlement language into Agreement form; union ratification votes would have to ensue. The end result is we're probably looking at some time in the first quarter of 2012 at best to implement these changes with respect to these organizations. So let me turn then to plan design. Again, this is an easy translation. On the left the UTU provisions, on the right coalition unions; our proposal exact same changes. Again, later in our case you will be hearing the reasons behind these changes and why it is critical to maintain uniformity of benefits but the bottom line is what UTU has we propose in identical fashion for these unions before you. Now let's turn to craft specific work roles and demands for additional compensation. The UTU pattern as I explained note what will change, referral of issues to local handling. We propose the exact same disposition for the coalition unions. Now we think most of these issues should fall away once we settle wages
and healthcare plan design issues. That's especially so giving the almost total lack of bargaining over these issues. As noted in our submissions, we think it would be very inappropriate to recommend settlement on matters that have not been subject to serious bargaining.

To say the least, I was surprised to see some seven pages of proposals involving issues that for the most part have received scant attention across the table. Several of the members of this board have certainly recognized in other places in proceedings that matters not fully ventilated in bargaining subject to intensive bargaining had no place before a PED. We suggest the same should obtain here. There are two exceptions. First, as indicated on the screen, we are certainly open to some mechanism for referral of issues to local handling on a voluntary basis. And refocusing attention on matters that have not received real attention across the table that would seem to be an especially appropriate way to address those matters. Second, for the issues that we did
extensively discuss and there are, there are issues of that sort. For example, away from home expenses consumed a lot of time and a lot of attention. We recognize that and there are others. We are willing to move around the elements of value that are in the UTU pattern again that are within the parameters of the value proposition. For example, use the special wage adjustment equivalent of cert pay to address the organizations goals for increases in the away from home expense arena. But again the fundamental point is the value proposition overall must be respected. And that brings me to my final point. This proposal is fair by any measure. It provides real wage growth at a time when most employees even union employees are getting little or nothing in the way of wage increases let alone real wage growth. It will keep in place one of the most generous and comprehensive benefit plans in the country. As our experts will show still well above National norms. For these reasons we ask this Board to recommend our proposal as the disposition.
1 of the bargaining disputes between these
2 organizations and the railroads. We thank you for
3 your attention and would be most happy to
4 entertain any questions anyone might have.
5 CHAIRMAN JAFFE: Thank you Mr. Gradia. We're going
6 to take just a few moments for the Board to chat
7 as a whole and see if there is anything that we
8 wish to pose to you at this time. It's not a full
9 break for the rest of the room. It should be under
10 five minutes. Thank you. We are off record.
11 DR. KEVIN MURPHY: That's sort of the summary
12 slide, which is the next one. So I have six sort
13 of key conclusions that I want to talk about.
14 Number one is how do we measure things? How do we
15 compare proposals? [More cleanly] (ph), how do we
16 take UTU settlement and translate that across and
17 apply it to the other unions? And the answer I
18 came up with is that total compensation is the
19 appropriate benchmark. Economics tells us that
20 total compensation is the right benchmark simply
21 because it's what matters to both sides. When you
22 think about it from the employee's point of view,
the value provided by wages, but also the value
provided by benefits is what the determines
ultimately what they get out of being employed at
a particular job. When you think about it from the
employer's point of view, the total cost per
employee is what matters. Whether they're paying
it in wages or whether they're paying it other
forms of compensation, total cost ultimately
determines their decisions regarding how many
people to hire, whether to expand operations,
profitability of investments and the like. That's
not to say all packages are equal. So you'll also
want to say, well what's that composition of that
total compensation? And I believe you're going to
hear from lots of people talking about changes in
healthcare proposals and the like. But at the end
of the day it's the total compensation that we
think is the best measurer of how to gauge
proposals and how to gauge either the produced
proposals against external data or gauge these
proposals against past outcomes. Next thing is
that the level of compensation has to be viewed in
1 a market context, in particular two dimensions and
2 I'll talk about these in detail later. One is the
3 effect of total compensation on employment, and
4 aggregate economic activity which is obviously a
5 huge concern today given the way the market
6 conditions we all face; and secondly, what's the
7 impact of wages on the ability of employers to
8 recruit and retain their workers? Again something
9 that's critical to think about when thinking about
10 setting compensation. Number three, is the role of
11 profitability and asks is profitability an
12 appropriate benchmark for setting performance? And
13 I'll get back to that when we, when we go through
14 the further analysis. Fourth one is productivity
15 and what role does productivity growth pay - I'm
16 sorry, what role does productivity growth play in
17 the setting of compensation? And in that regard,
18 the coalition is right. There's a link between
19 productivity growth and compensation but it's a
20 quite different one than the one they lay out. In
21 fact, the link between productivity growth and
22 compensation is determined in the broader
marketplace and economics helps a lot to see how
that works and why it works in that way. But it's
not something that holds any firm-by-firm basis.

Finally Number five, I'm going to say that they,
when we apply these principles we're going to see
that the UTU agreement best aligns with numbers 1
through 4. And finally number six, we're going to
try to quantify what the impact would be not just
on carriers but on consumers, the labor market
more generally, and overall economic activity if
the coalition's proposal is adopted in lieu of the
carriers' proposal. So that's where we're headed.

So total compensation. Why should we think about
total compensation? As I said a moment ago, the
best reason is it's what matters to both sides.
From the employer's point of view it what he has
to pay; he has to pay for the wages but he also
has to pay for benefits. On the employee's side,
the attractiveness of alternative jobs depends not
just on what you earn per hour, but what other
benefits you get. Beyond that it's also
quantitatively very important as this pie chart
1 makes clear, that there's about $93,000 up there
2 of total compensation, of which only about $53 is
3 in the form of wages. So if we were to not talk
4 about total compensation in talking about growth
5 in wage - growth from compensation over time, if
6 we just focused on wages, we'd be missing almost
7 half the picture. And it was clear today in our
8 earlier discussions. A big part of Mr. Brady's
9 discussion was about changes in healthcare plans
10 and changes in other aspects of benefits. And
11 indeed in the union's presentation at the
12 beginning, a significant part of the discussion
13 was all the different dimensions on which they
14 were looking for changes as well. So that's why
15 it's better to think about, okay we can talk about
16 pieces but in the end we've got to put those
17 pieces together and say what are they doing to
18 total compensation? That's going to be the key
19 element because it allows us to capture the full
20 pie and also allows us to talk about what matters
21 to the two sides in these negotiations. Okay? So
22 this is just a chart and I'm not going to read it
all. These are just some of the elements that goes into making up that whole pie. So wages and salaries has its components in each of the other pieces. But that top left box is, remember, is a small part, somewhat over half of the old world picture. All right so let's go to the next one. So how, now that we know how to measure compensation, that is we're going to focus on total compensation, how do we think about setting it? That is whether the economic parameters that determine whether we're setting the compensation level too high or too low, and most importantly what are the consequences? So let me focus first on the too-low box, the red box there at the bottom. What happens when compensation is too low? Employees will have an inability to track applicants, high turnover will exist, you have long-term - you have defeat in your goals for long-term recruiting and retention. So is that a problem we have here today? As Dr. Topel was going to talk about in his presentation, there's no evidence that compensation is too low from this
perspective. In fact he's going to show you data which show there were roughly 1 point, almost 1.3 million applicants for 7500 jobs in the railroad unions. That's 170 applicants for every job. So I think that's pretty convincing evidence that we're not too on the too low side. Then you can say, well, when are wages too high? Well, what's the bad consequences of wages being too high? Well number one it's going to raise costs and when you raise cost that's going to reduce employment, so people are going to hire fewer people. And in today's job market context we know that's a big deal. We're living in a world today where there's high levels of unemployment. Raising wages it will reduce employment. When I say reduce employment doesn't mean the jobs necessarily be below what they were before, but below what they would have been had wages not been increased as much. It also is going to reduce the output and raise prices in the transportation sector, and railroad sector in particular, which is going to have adverse consequences on employment in other industries.
1 Because many industries depend on rail transportation to move their goods and services.
2 It's also going to reduce investment. It's going to induce employers to invest less in capital and equipment and other things that expand output. And to the extent they do invest, it's going to be in things that further reduce employment by helping them substitute away from labor. So there's a host of costs. And you might say well aren't those kind of abstract? Can we really measure? And the answer is we can. And they turn out to be pretty big. And I'll come back to that a little later. The ideal spot in the green box is where you're compensating people enough that they are able to look at recruit and retain high quality workers but at the same time avoid the adverse consequences of setting compensation too high in terms of reduced employment, investment and reduced levels of economic activity overall. So that's kind of the framework we want to think about. Want to go to the next slide? So here's how the two proposals differ in that regard. We're measuring things in
1 terms of total compensation, which was point one.
2 And we're looking at (inaudible). So we have
3 starting it today, there's about $93,000 per
4 employee on average. The carriers' proposal would
5 take total compensation up to almost $107,000 by
6 2014. The coalition's proposal, my number are
7 actually a little low because there's been some
8 revisions upward in that number, was about
9 $114.5,000 per employees. The difference between
10 those two is a little over 7 percent. So we would
11 raise the cost of labor in this industry about 7
12 percent above where it would be on the carriers'
13 proposal by 2014 if we were to adopt the union's
14 proposal. So that's the gap we're talking about.
15 And this is, I don't know if you guys like
16 economics, I happen to like it. It's - most people
17 hate it but, this is a concept we use often in
18 economics, probably our most, most central concept
19 which is the idea of the demand. And basically we
20 measure on the horizontal axis the quantity of
21 employment and on the vertical axis we measuring
22 total compensation. And a age old rule minus the
law of demand says if you make something more expensive people will use less. And that's true for labor, it's true for just about every commodity we know of and every type of activity we know of. As you raise the cost, people do less of it. And so this graph simply shows that there's a market level of compensation which is what people can earn outside the rail industry. Now we know the carriers' proposal is actually offering a substantial premium above outside opportunities and Dr. Evans later today will talk about - in fact, that premium is a little bigger than we're showing in this graph here. It's about 80 percent. It's about a 80 percent premium. So for every dollar people earn in outside alternatives, they get about $1.80 in the railroad industry. There's a substantial premium already existing in the railroad industry. And that's a central fact; that's gong to play a really important role. Because what's going to happen when you start with already having a premium of 80 percent, further increases in the premium is going to generate a
1 reduction in overall economic activity. So as you
2 increase that premium that's going to serve to
3 actually further create problems, further reduce
4 overall economic activity. Again the effect I was
5 talking about before. Effects on people, not just
6 people in the room. There's the tendency of us to
7 think about well if I just pay another dollar in
8 wages, that's going to hurt the employer to the
9 tune of $1 and that's going to help the employee
10 to the tune of $1, it's just deciding who gets the
11 money. And the answer is that's not the case. In
12 fact when we raise compensation above the
13 competitive level, that is in this case
14 substantially above the level they can get on the
15 outside, there's an overall reduction in economic
16 activity. And that's not what we need at the
17 moment in the economy we have. Secondly, there's a
18 more direct reaction. There's a reduction in
19 employment. And if you think about the world we
20 live in today, a reduction in employment is the
21 last thing we need. We live in a world today
22 characterized by a jobs crisis. We live in a world
today - I'd like to go to, I think it's on the
next one, yes - all the news is about how jobs are
just not there. And go to the next slide, it's
more quantitative. And you got to hate this slide
because it's so noisy, but let me tell you what it
measures. It looks at several of past recessions,
and it's looking at on a vertical axis how much
unemployment has gone up and you can see the
current recession is the kind of heavier red line.
And unlike in most recessions where there was a
big increase in unemployment, which has happened
here again, this one held at to under, you know,
the biggest increase, that where we're at it
hasn't even started to come down substantially.
And that's what people talk about, the jobless
recovery, the jobs crisis, maybe we'd say. And
policies that would reduce employment in this
environment are going to be particularly harmful
to not just the employees who, if they don't get a
job here aren't likely to find one somewhere else
given the state of the economy, but also on the
overall economy in terms of overall activity. So
this – there's a particular caution I would recommend against erring in the direction of too high of compensation in this particular economic environment. Okay, so there's two salient economic facts that come out of an analysis of markets. First is one, we're starting with a situation where there's roughly an 80 percent premium on wages in the rail industry; and two, we're in a depressed labor market. Those combinations make a higher wage particularly problematic. Well, so what are those impacts? I'll go through them only briefly. So when you raise compensation in the short term, basically you think what's going happen employment's going to go down and because of the labor market conditions we have, rather than just finding a job elsewhere that pays 80 percent, pays, you know, doesn't have the 80 percent premium, in many cases today we're talking about employment moving to unemployment because there just isn't the jobs to be found in this marketplace. Secondly you're raising costs which is going to raise the price of rail
transportation. A higher price for rail transportation is going to reduce activity in other parts of the economy because there are many industries that are dependent on rail transportation as part of their imports they need for moving goods and services around - moving goods around the country. If we move to the long-term impact, what the impact of setting compensation above market? Well, number one, there's going to be less investment. By making investment less profitable, there's going to be less investment in expanding outward. Investment is a key for job growth. It's the major engine that creates more demand for labor in the future. Secondly, the types of investments are going to be altered in the direction of things that substitute capital for labor. And that's not a theoretical prediction, that's the reality of this industry. We have seen tremendous degree of capital for labor substitution in the rail industry over time and later witnesses will explain that in excruciating detail. So we will talk about that.
So go ahead and go to the next one. Okay, now I want to talk a little bit about the alternatives proposed. So, as an economist, when I say how do I think about the setting of compensation? I start with the notion that I worry about compensation to being too low because that's going to prevent recruitment and retention of a high quality workforce; I worry about compensation being too high because that's going to reduce employment, investment and overall economic activity, and harm people, not just people in the room. It's not just shifting money from one person's pocket to the other. Now, the coalition puts forward two main arguments. One is profits. And a profit argument is always a really tempting one because you say well the funds are profitable. We can raise wages and they can afford it. They can afford to pay more. But the truth of the matter is, even when they can afford it, if you raise wages, they're going to reduce their hiring. It may not be that you're actually going to get rid of people you already have, but you're going to not hire people
you otherwise would have. So when the level of profitability is high, the consequences of higher wages don't change. It still changes the level of employment from what it otherwise would have been. It might be reduced hiring rather than reductions, but in an economy like the one we have, where unemployment is so high and sticky, it's staying up, reducing hiring in one of the industries that's doing well is not a good idea. That is, an economy that is desperately needing expansion of jobs and more opportunities for workers, particularly blue collar workers, who've suffered the most over the last 20 years. In that environment, reducing the incentives to hire even in the successful industries that are profitable is not a good idea. Now the second argument that's put forward is productivity. And they point to the fact that productivity has risen dramatically. And as I said earlier, there is a link between productivity and compensation, but it's not the one that the unions discussed. And I'll show you what that economic link is. And again, I'm just
going to do a summary; you're going to get more
detail on, on this later from Kelly Eaken who's
going to talk exactly about it. But using, we
divided the industries into three pieces. We
divided them according to how fast productivity
was growing. We took the lowest productivity
growth industries, that's the lowest there down on
the left. We took the middle third in the middle,
and the fastest productivity growth industry on
the right, which is the highest growth industry.
So there's roughly a third of the industries in
each category. And the blue bars measure
productivity growth. And not surprisingly,
productivity growth actually has been negative in
the slowest growth industries, small positive in
the middle growth industries, and extremely fast
in the high growth industries. So you see the
three contrasts. Now, if you look at compensation
growth over this 20 year period, you'll notice the
red bars are about the same. There's not much
difference in compensation growth, with actually
the high productivity growth industries having
slightly lower productivity growth, I mean wage
growth, than the middle group of industries. And
you may say well, does that make sense? The answer
is it does, actually. Because there's a little
mark - then this gets back to the notion there's a
market out there. Consider somebody like barbers.
Today, barbers make many times what they made in
1900. Even if they don't really cut hair any
faster than they used to, their productivity in
cutting hair hasn't changed very much. But because
there's a labor market out there, in which
barbers, people who become barbers could've gone
into other industries, their wages have been
driven up by competition between the industries
for workers. Take the other extreme. Productivity
in the manufacture of computer chips has increased
several thousand times over time. Workers in that
industries don't make thousand times what they
used to. Why? Again because there's a labor market
out there. So what is the link between
productivity and wage growth? It's not at the
industry level. It actually turns out it's at the
aggregate level. Go to the next screen. This looks at from 1964 to 2008. This is a five-year rolling average - so to kind of smooth it out a little bit - between compensation growth which is the red line, and productivity growth which is the blue line. They're a little bit off in levels but that's mostly because they use different price deflators. But the idea basically you can see the pattern is very clear. That is compensation growth and productivity growth at an economy-wide level tracks very closely. So it's economy-wide productivity growth that drives wages, not productivity growth by industry. Now that makes sense, because if productivity goes up in an industry, and you just said okay I'm going to raise wages to reflect that, that wouldn't encourage investment in all the other activities we want to see happen in that industry, or have the appropriate adjustment of employees between the different industry alternatives. So productivity growth that's not the key. Again the key is to focus on those two things, whether you
1. can hire and retain workers, and number two
2. whether compensation is high enough - is too high
3. and therefore is reducing employment in overall
4. outcomes. Go to the next. I talked before about
5. impacts. Now we're into measuring the impacts. We
6. get asked the question, if we compared the two
7. proposals, can we quantify the impacts that higher
8. wages under the coalition's proposal would have on
9. employment and most importantly overall economic
10. activity? And this is going to turn out to be very
11. important for what we want to talk about here
12. today. So how do we think about it? Well we think
13. about starting with the carriers' proposal, which
14. is already, which is the - see this employment
15. under the UTU proposal? Which is, that's the level
16. of employment we would have if we adopt the
17. carriers' proposal. Now it's true even in that
18. context because there's an 80 percent premium over
19. the outside alternative, that's still kind of what
20. economists call dead weight loss, but lets leave
21. that aside for the moment because that's going to
22. be there under either case. That is, the carriers
are not proposing to reduce wages; that's not what they're proposing to do. In fact, if anything, they're increasing the premium a little bit over outside options. However, if you adopt the coalition proposal, you're going to reduce employment even more, which is going to increase the loss and increase costs on the rest of society by the area of that red trapezoid there, which is estimated in these numbers about $440 million per year. The answer is where does that come from, where does that happen? So think about it this way. What happens is this. We raise the wages of the workers in the railroad industry. That way, that increasing the wages that they're paid, comes from somebody. It either comes from file (ph) and consumers or it comes from the railroads. So all of that money is paid for by somebody who has to pay those wages to their employees. Now in a market like this, most of that is going to get passed through the consumers and consumers are going to bear the brunt of that extra amount. But in addition to that money that they gain, there's
a reduction in employment. And that reduction in employment is shown as the shift from, see that red, goes at the squiggly lines down there? Those are the lost jobs. And because that generates an extra cost, we say well how much is that? Well studies of the railroad industry have shown us that for every 1 percent we increase the wage rate, or total compensation, we will see a 1 percent reduction in employment in the long run. That, what that means is that we're going to have fewer workers employed here, and they're going to, in this case, either move to another industry where they may produce output up to about 80 percent less because of the premium, or they will become unemployed. And in today's world a large number of those people who would've been employed here under the carriers' proposal, would be employed or unemployed under the UTU proposal. That amounts to for every 1 percent, about 1 percent reduction in employment. If we compare the two proposals, compare the union proposal with the carriers' proposal we find a difference of about 7
percent in total compensation. So a 7 percent higher total compensation by 2014, we would expect the difference in employment to be about 7 percent, between one proposal and the other. Now I'm not saying unemployment is going to be 7 percent lower than it is today because maybe unemployment will be 10 percent higher than it is today under the carriers' proposal, but then it would be only 3 percent higher under the union's proposal. So they may add 10 percent more jobs, we'd only add 3 percent more jobs. Or maybe it would be, you know, 6 percent higher under the carriers' proposal and instead it would be 1 percent lower under the union's proposal. But the gap is what we care about. And that's the impact on the economy. So who pays? Who pays? The people who pay are number one, the employees, I'm sorry the customers who pay through higher prices; the employees who would've gotten jobs in the rail industry and have to take jobs in other industries, or in today's world more likely be unemployed. That is where those extra costs come
from. And we estimate that amounts to something around the area of $440 million per year, which is a substantial loss of economic efficiency. And that's not just a blackboard number. That number measures how much less overall economic activity we would have in the economy because of a higher wage rate. So it's a quantifiable, real loss associated with setting compensation further above the level of competing activities. The difference between the coalition proposal and the carriers' proposal would reduce overall economic activity by that amount and probably more because this assumes that everybody who loses a job here gets one somewhere else. In today's labor market, it's probably significantly worse. A substantial fraction of those who would lose jobs in the railroad industry, or would've been hired in the railroad industry, would likely remain at unemployment, which would make that number substantially bigger. So where did we end up? In - you want to go to the next one? So where do we end up? We end up saying that we have a $440 million
per year loss from switching from the carriers' proposal to the union's proposal? That's a real loss showing up as less economic activity in the economy as a whole. If you total that up and assume this is a permanent change, that has a present value of 6 percent interest of about 7.3 billion. Prices to consumers, that is prices to rail traffic are about 1.4 percent higher; it's about 800 million per year in terms of greater burden borne by consumers; in terms of paying more for the rail transportation that's imbedded in the goods and services that they buy; and finally in today's labor market, the burden would largely fall on workers, not just workers here, but workers in other industries who depend on the railroad industry as part of their livelihood. So less employment in the economy overall. Go to the next one. So what do we want to say? What are the economic lessons? And I don't claim to know about everything else in the world or everything - I'm here to talk about economics. And I know there's more in economics than what you guys decide but
the economic lessons I would take away are total compensation is the way to look at it. We don't want to compare one deal to the other, item by item, without asking how do they look when you wrap them all up in terms of total compensation? Number two, the carriers' proposal, which is getting employees, and this is emphasized by Kim so I didn't talk about it too much, maintains and even increases the premium that coalition employees gain relative to other similar workers in the labor market; David Evans is going to talk about that, show that that premium remains on the other 80 percent. Even further increases beyond the carriers' proposal do not provide any benefits. The major benefit one gets from raising wages further in terms of the economic outcomes, is better recruitment and retention of workers, in this case recruitment retention is not a problem. We have large numbers, very large numbers of applicants for every job. And finally, if you go the extra distance, if you raise wages further, then the carriers' proposal, that encloses
additional economic harm that is substantial. One way to think about it is for every dollar of additional compensation, there's about $1.80 of total costs borne by the economy. $1 is borne by the railroad and/or the customers; another 80 cents is borne by reduced overall economic activity. So when you say okay I switched form this proposal to that one, I give an extra $500 million, what that means is there's $500 million in costs that's borne by railroads and their customers, and there's another $400 million that's borne by other people in the economy in terms of reduced overall economic activity. And that to me is the biggest thing to worry about. It's not the impact on the people in this room; it's not the fact that we can say one group can afford it; it's the fact that whether they can afford it or not, other people in the economy are going to suffer. We're going to reduce employment, reduce overall economic activity. And that's true whether the industry is profitable, that's true whether productively growth is fast or slow. When you have
a substantial premium over the outside
alternatives, shifting employment from this
industry to other industries will lead to
unemployment, which is what will happen if you
further increase the wage, will only serve to
reduce overall economic activity. And it's not
something small, it's important given the size of
the premium we're starting from and even more
important given the economy we're in today. And
that's what I want to say.

CHAIRMAN JAFFE: Thank you, Dr. Murphy. We're going
to take a few moments again before we stand in
recess for lunch to see if the panel has anything
it wishes to propose to you at this time, off the
record please. That was actually back on please.
Let's really quickly assess, we're unanimous;
we're in good shape. Thank you very much sir. The
standing lunch, I think we've got an hour in the
schedule. Is that correct? (inaudible). I believe
we have an hour for lunch. 1:45. Sorry, I
should've been in the mic. Thank you. If I could
ask everyone to be seated, please, we can resume
this afternoon. Okay. If everyone is ready, we'll
go back on the record. Thank you. At your
convenience, Mr. Munro. DONALD MUNRO, ESQ.: Thank
you, Mr. Chairman. For our next witness, the rail
carriers would like to call David Evans. Dr. Evans
is one of the world's leading economists. He is
the chairman of the Global Economics Group. He has
tested before a number of government tribunals
in the past, including emergency boards, U.S.
Congress, and various state and local agencies. He
has written extensively on labor economics and the
use of statistics in employment matters. He has
his PhD in economics from the University of
Chicago.

CHAIRMAN JAFFE: Okay, thank you. Can I ask the
court reporter to please swear in Dr. Evans?
COURT REPORTER: Do you swear the testimony you're
about to give in this case will be the truth, the
whole truth, and nothing but the truth under
penalty of law?

DR. DAVID EVANS: I do. Good afternoon. Let me give
you a quick overview of what I'm going to be doing
over the next few minutes. I'm going to be addressing three questions. First of all, how well are the coalition employees paid compared to similar workers in other industries? And I'm going to be looking at the total compensation and straight time wages in order to do that. Second of all, how well have the coalition employees done over time? I'm going to compare their wage growth with similar workers and with increases in the cost of living. And then third, I'm going to look at how do the carrier and coalition proposals compare going forward in time. And then we'll examine the growth and compensation - and inflation-adjusted compensation growth for both of those proposals. Now, in the analysis that I'm going to do in the next few minutes, I'm going to be comparing carrier compensation to other workers in the economy using several different government data sources. Now, for data sources, I'm going to be using - put various sources of compensation into different buckets. So sometimes overpay -
wages, depending upon the data source that I'm looking at. And what I do is I always adjust the carrier numbers in the same way as the government data sources are, so I'm always doing a apples-to-apples comparison. So with those preliminaries, let me turn to the analysis, the total compensation. So let's take a look at where the coalition employees were last year, and I refer you to the left-hand red bar. Total compensation was roughly $93,000 per employee, and that includes wages and benefits. That ranged across the various unions from about $70,000 for the NFCO up to about $113,000. This is the yellow bar for the engineers. Now, I calculated the average straight time total compensation for the coalition employees. I did that by taking the total cost of - of employee compensation for the coalition employees in 2010 and divided that by the total hours worked in 2010, and that gave me the average total compensation per hour of $46.58. So the question I'd rather look at now is how does that
compare to similar workers? Well, the best source of data for a total compensation across industries is the Bureau of Labor Statistics' Employer Cost of Employee Compensation Data that reports wages and benefits for broad occupations. And within the ECEC as it's usually called, the best comparison group are the transportation and material-moving workers, and in fact that actually includes the coalition employees in it. The transportation workers earned total compensation per hour, but averaged $26 in 2010. Now, for completeness on that diagram that you see before you, I also report all private sector workers, and I also report just the unionized private sector. Now, I just want to point out that the three bars on the right-hand side there, transportation and moving, full-time private industry, and unionized private industry, in all those cases these data also include supervisory manager employees including blue-collar, so those numbers are - are actually a little bit - a little bit too high as a result of that, but I didn't have the data available to just
do it for blue-collar workers. So let me turn to something that I'm going to have throughout this presentation, which is an analysis of premium. What I did is I calculated the dollar difference between total compensation for the coalition employees and the employees in the various comparison groups, including the transportation sector. So with regard to the transportation sector, coalition employees earned about $21 more than employees in transportation and material moving, so that's the dollar premium, roughly $21, in 2010. I then calculated the percent premium that the coalition employees got over the comparison group, so the dollar premium was $20.58. To get the premium in percent terms, I divided that into the comparison group, so that's $20.58 divided by $26, and that gives me a percent premium of 79.2 percent. Whenever I report the percent premium today, it's always going to be a calculation that's done in that way. So I always calculate the difference between the coalition employees and the comparison group and then take
that number, that dollar number, and divide it by the dollar number for the comparison group, and that's going to be the standard approach for the percent comparisons that I do today. Okay? So total compensation premium, $79.2 percent. I did another comparison. I compared the total compensation for the coalition employees to 66 industries that are reported by the Bureau of Economic Analysis. Turns out that the Bureau of Economic Analysis, the BEA, is one of the only places that at least I've been able to find that reports, by industry, total compensation for - for workers, so that's the reason for using that particular source here. So they had a total of 66 industries. It turns out that total compensation, uh, for the coalition employees was higher than 54 of those industries, so that's a total of 82 percent of the industries had, uh, more compensation than the coalition employees. Now, in the diagram here, what I've done is I've shown a few examples of those industries. So I've shown some - some of the transportation-related
industries and some other heavily unionized
dustries by - primarily metals manufacturing and
electrical equipment manufacturing just as - just
as comparisons. Now, one of the things I should
point out here is there were some industries where
the average compensation in those industries for
employees was actually higher than for the
coalition employees, but those tended to be
industries where there's a very high proportion of
highly educated workers. So examples of the
handful of industries that have higher
compensation were securities; a well-known
industry that has highly compensated employees,
also highly educated ones. And another example of
one of those industries was computer system
design; obviously another one with a number of
highly educated employees. Let me turn to taking a
look at how total compensation has changed over
time. So what I've done is I've taken a look at
how total compensation changed over the terms of,
basically, the last agreement. The coalition
employees made $17.38 more in total compensation
per hour than transportation workers back in 2006.

The premium increased to $20.58 in 2010, so the
premium increased by the difference between the
$20.58 and the $17.39, so there was an increase in
the premium of about $3. The percent premium
increased from 76 percent back in 2006 to 79
percent in 2010. So that's what I have to say at
this point on total compensation. What I would
like to do now is to turn to straight time,
straight time wages. Obviously a very important
part of total compensation is wages; it's a large
component. In the case of the coalition employees,
it amounts to about 57 percent. The other
important thing about wages is they drive many of
the other benefit components of compensation, so
it makes sense to look at wages separately. In
addition, it turns out that there are more
detailed data available from government sources
that allows me to do more detailed comparisons,
more refined comparisons, with regard to wages, so
that's the other reason for focusing on straight
time wages for a little bit. So let me begin by
reporting the straight time wages for the coalition employees. Again, the average is reported in the left-hand red bar, $26.66. Again, that's in 2010, ranges from $21 per hour for the NFCO up to $36.74 for the ATDA. Now, I'm going to be doing some more refined comparisons in just a second, but we've been talking about the ECEC data and transportation records for a bit. So just to give you that as a - as a starting point, I wanted to share this analysis here with you. The straight time wages for the transportation and material-moving workers in 2010 based on the BLS ECEC data were $17.34. That compares to $26.66 in 2010 for the coalition employees. So let me now turn to the dollar and percent premium. The dollar premium for the transportation and material-moving workers, using that as the comparison group, is $9.32. In other words, the coalition employees had straight time wage earnings that were a little bit more than $9 higher than the transportation workers, again, in 2010. Now, I did a much, much more refined analysis using the Bureau of Census's
current population survey data, and I worked with Professor Charles Fay, who's made a submission on the analysis that I'm going to present here. Now, you're only going to see one slide on this, but as it turns out there's a massive amount of data-crunching and analysis that underlies this. So it's one slide, but in terms of the effort that went into this, it was actually disproportionately larger than one slide. So let me tell you a little bit where we did here in order to come up with a very refined comparison analysis. Professor Fay matched each of the 62 detailed jobs under the ICC categories for the coalition employees to run up more than 500 census job codes. So we basically took the 62 ICC job codes for the coalition employees and we've mapped that to 500 very detailed census job categories, so that's - that's what Professor Fay did. He did that matching exercise. Then what I did is I went to the CPS data and I calculated the average wage rates for the workers in those detailed census categories, mapped them back to the 62 ICC job categories, and
as a result of that had very refined comparisons where each of the ICC 62 job categories is matched to a comparable set of census job categories. I aggregated that up for each union and then I aggregated that up to the coalition total, and I did that by weighting by the number of employees in each of the job categories, so the numbers you see here are built up from that underlying analysis. Now, when I do that, the final result - and the detail for this is presented, um, in much more detail in my report. The result of this is that the average hourly wage for employees working in similar jobs in the economy rose $18.01. These are private sector workers; doesn't include self-employed workers, and they're full time, so $18.01 for comparable full-time workers in the economy; that compares to $26.66 for the coalition employees in terms of straight time wages. So let me now turn to the dollar and percent premium comparison. So the premium - so the difference between the coalition employees and the comparable full-time private sector workers, but comparable
ones, is $8.65, so that's a premium of - I'm sorry, that's - so I skipped a step here, so I want to just take you back to this slide here, I apologize. So the hourly wage premium here is the difference between the $26.66 and the $18.01, so that's a premium of $8.65, and in percent terms that's $0.48, okay? Now, none of the comparisons that I've done so far adjust for education, and it's quite important to take that into consideration. College-educated employees make more than people without a college degree. And as it turns out, most of the coalition employees do not have a college degree; only about five percent of them do. So what I did for this analysis, again, using the current population survey data, and again, using the comparable workers, using the analysis that I did with Professor Fay, is I compared workers in similar occupations with similar educational backgrounds to the coal - coalition employees. And when I did that, I found that after adjusting for education, that decreases the wage for similar workers in the economy to
$16.13. And as a result of that, the premium increases from the $8.65 without adjusting for education to $10.54 after adjusting for education. The premium, straight time wage premium, increases from 48 percent to a little bit more than 65 percent. I also took a look at how straight time wages have increased over the last two contract cycles. As it turns out, it's been similar to private industry. So if a private industry - the growth rate - I don't have the actual number on there, but the growth rate for all private industry is 31.2 percent, and that compares to coalition employees who over the period of 2001 and 2010 had their straight time hourly wages increase by 30.5 percent. So 31.2 percent for private industry versus 30.5 percent for coalition employees, so very, very close increase during that period of time. And I should emphasize that the private industry numbers here includes people with college education and beyond, and of course their wages have been growing more rapidly than those without a college education. Now, I
understand that Mr. Roth, on behalf of the coalition, has argued that coalition employees have not kept up - have not kept up their - have not kept up their increases of wages with other workers. And while I realize that we'd better as next week, there's such a stark difference between the results that he's reporting and what I just showed you, that I thought I might explain why that is if that's okay. His analysis appears in Charts 71 and 79 of his summary statement. And in Chart 71 he reports an analysis for the BRS; these are the signalmen. He compares the wages for the BRS with the Employment Cost Index, and he finds that between 1977 and 2010, the BRS, the signalmen wages, declined by 14.1 percent. And he uses that to conclude that as a result of that, the coalition employees are lagging behind, in effect, private industry. Now, it turns out that Mr. Roth's results will depend upon using 1977 as the base year. I did the same calculations using three other base years. I happened to choose 1994, of 1999, and 2004. Because of the way he reported his
data, those are the only years that I could get data from basically the chart that he produced. By using those three years, I calculated the, uh - the - the difference between the coalition employees and the ECI, and what I find is, for 1994, roughly the same, so basically break - break about even. If I use 1999 as the base year, I find that the coalition employees are about 3.4 percent ahead, and if I use 2004 as the base year, I find that they're about 1.4 percent ahead. So the result of their lagging behind is really dependent upon using 1977 and one of those early years as the base year for the calculation. So let me turn now back to my own analysis. I also examined coalition employees' straight time wage growth over the last ten years relative to the cost of living. So the purpose of this is to see how the straight time wage growth has been in terms of advancing the coalition employees' real wages; their purchasing power, in effect. And again, I looked at two contract cycles, so 2001 to 2006, 2006 to 2010. And to do this analysis, I took 2001
as the benchmark, so I indexed everything to a hundred in 2001. Over this period of time the coalition employees' straight time hourly wages had increased by 30.5 percent by 2010, and over that same time period the cost of living had increased by 23.1 percent. So coalition employees' straight time wages goes up by 30.5 percent over that ten-year period of time, cost of living measured by the CPIU goes up by 23.1 percent. If you take the difference between those two numbers, 30.5 minus 23.1, that gives you a real growth rate in wages of 7.4 percent. So 2001 to 2010, the coalition employees' straight time wages, real growth, was 7.4 percent. What I'd like to do now is to turn to the wage proposals. What I'd like to do is to begin with a summary of the carriers' proposal. Now, this is a six-year proposal; it goes from 2010 to 2015. Under the carriers' proposal, total compensation would increase from a little bit more than 93,000 - the total compensation is that stack on the left-hand side - to a little bit more than $112,000, which is the
stack on the right-hand side, and as you can see
from that diagram, the different colors show you
the different components of compensation. Let me
just report, it might be helpful, the increases in
some of the components of compensation. So the
base wages, those are the two red bars. The base
wages grow 18.2 percent between 2010 and 2015. One
of the implications of that is since base wages
are growing, that also tends to increase many of
the benefit categories. And in fact, overall
benefit would grow, under the carriers' proposal,
between 2010 and 2015, by 23.4 percent.

JOSHUA JAVITS: Can I just ask, do you - can you
point out where the materials that are - calculate
your - your slides are, if they are?

DR. DAVID EVANS: The - I think I'll have to ask
the question of where the slides are. Have the
slides been submitted?

JOSHUA JAVITS: Just so we can follow them. Good.

DONALD MUNRO, ESQ.: The - most of these slides
were just finalized last night. We will be - we
will be providing copies of all of the slides to
the board by the end of the day today.

JOSHUA JAVITS: All right.

DR. DAVID EVANS: Thank you. I wasn't aware that you didn't have, uh, physical copies of the slides.

CHAIRMAN JAFFE: Yeah, although we do have a copy of your report; it's Carriers' Exhibit 6.

DR. DAVID EVANS: Yes, thank you. And most of this information is described and backed up in the report.

CHAIRMAN JAFFE: I understand.

DR. DAVID EVANS: Some of the slides were done - were done last night. Let me turn to the next slide, which calculates the increase in the value of total compensation after adjusting for inflation for the carriers' proposal. Between 2010 and 2015, total compensation would increase by 20.8 percent. Just for clarification, that 2010, our figure there is the - I believe it's a two percent bump-up in wages at that - at that point in time retro - retroactively, so that's taken into account there. So taking all that into
account, total compensation would increase under the carriers' proposal by 20.8 percent. What I did is in order to project inflation I relied on data from the Congressional Budget Office. This is their projections of CPIU; it's the real numbers up until about the middle part of 2011, and then it's their projections going forward. Based on their projections over that time period, the cost of living would have increased by 10.4 percent, so we have a 20.8 percent increase in total compensation minus a 10.4 percent increase in the cost of living, and the difference between those two is 10.4 percent. So coincidentally, you have a 10.4 percent for the increase in the cost of living, but also a 10.4 percent increase for the real - real total compensation. So again, 20.8 minus 10.4 gives 10.4 real growth in total compensation. Now, again, this is a different result than what Mr. Roth reports in his filing, so maybe I should say a few words about that. He finds that under the carriers' proposal the coalition employees would not keep pace with
inflation. He finds again they would not keep pace
with inflation, and this is discussed more in
Chart 67 in his summary statement. Now, let me
explain the reasons for that. Mr. Roth assumes
that inflation will increase by 2.8 percent a year
going forward in time, and as far as I can see, he
doesn't really provide any support for that. It's
quite a bit higher than what the CBO is reporting.
They're reporting numbers in somewhere about the
1.5, 1.6 range going forward in time. It's higher
than - his 2.8 percent is higher than historical
trends over 1990 to roughly the present. It's
higher than the consensus forecasts among
economists. So I think the 2.8 percent that he's
using to forecast things forward is - is
overstated. What I've done in this diagram is I've
shown you how using his numbers of 2.8 percent a
year compares with using the CBO forecast which I
report in the left-hand box up there. So the CBO
reports - the CBO projects for 2012 that inflation
will be 1.5; that compares to Roth, 2.8 percent.
Then CBO is saying 1.3 in 2013, 1.3 in 2014, and
1. 1.8 again in 2015. So if I compound those forward,
2. I find that the CBO is projecting an increase of
3. 6.24 percent up through 2015, whereas Mr. Roth is
4. projecting an increase in inflation of 11.68
5. percent over that time period. So Mr. Roth is
6. projecting 11.68 percent increase in inflation,
7. whereas CBO is projecting inflation of 6.24
8. percent, so Mr. Roth is about double what the CBO
9. is - is projecting, and that's the main reason for
10. the difference, for his conclusion, that the
11. carriers' proposal would not allow the coalition
12. employees to keep pace with inflation. He's
13. assuming a higher rate of inflation over time. Let
14. me turn back now again to my own analysis. This
15. slide shows what happens to the premiums in
16. straight time earnings that coalition employees
17. got in 2010. For the coalition employees, I've
18. calculated how the proposal would change their
19. straight time pay. Using again the CBO forecast,
20. it would go from $26.66 to $31.53. I'm sorry, I
21. said using the CBO forecast. Under the carriers'
22. proposal, their compensation would go from $26.66
in 2010 to $31.53 in 2015. Now, I want to compare that to transportation workers. Transportation workers in 2010 were getting $17.34. What I've done is I've used the Employment Cost Index from the ECEC to forecast the increase in the transportation employees' earnings between 2010 and 2015, and that leads to a forecast that the transportation workers will see an increase in their earnings from $17.34, straight time earnings in 2010, to $20.02, straight time earnings in 2015. So the result of that is the premium that the coalition employees would get under the carriers' proposal will expand from $9.32 in 2010 to $11.51 in 2015. So in other words, the carriers' proposal under these assumptions would increase the premium that the coalition employees are getting, would get, over other transportation workers by about $2 by 2015. Let me next turn to a comparison of the two proposals: The carriers' proposal versus the union proposal. Now, the coalition proposal, uh - the coalition proposal is for five years, whereas the carriers' proposal is
for six years. So what I've done is I've compared both of them just over a five-year period of time, to 2014. Under the coalition proposal, total compensation would increase by 23.1 percent. The carrier proposal would have total compensation increasing by 14.8 percent. So in terms of the growth of total compensation, the coalition proposal leads to a significantly higher increase in total compensation over that five-year period of time than does the carriers' proposal. And then finally I thought it would be helpful to calculate the dire consequence of that difference. So what I've done is I've calculated the cost to the carriers of the two alternative proposals. And what you see on this side is the total annual compensation costs under each of the proposals, and the difference between those two bars is the incremental cost. And if I add those differences up over time, at the end of that period of time the coalition proposal is about $2.6 billion more expensive than the carriers' proposal, so about $2.6 billion more expensive under the coalition
proposal than under the carriers' proposal. And that is my last slide. I'm happy to take any questions if anyone has any. And as I understand it, the slides themselves will be - will be submitted, and more details are in my report.

CHAIRMAN JAFFE: Thank you. Why don't you give us just a few moments for us to go ahead and see if we have any that we need to pose to you at this time? Will you hold, please? Thank you. Two quick questions. The comparable jobs, were you using the same information as in the Fay report?

UNIDENTIFIED MALE SPEAKER: Yes I was. CHAIRMAN JAFFE: That's what I thought.

CHAIRMAN JAFFE: Could you just go over the $2.6 billion on Slide 20 because I started to add them up and it didn't look like it from the bars that were there so it may be my quick, on the fly extrapolation. It looks like there is about $1.2 billion in the last year. Was that right? If it adds up, that is fine. I was just eyeballing it and it looked a little off.

UNIDENTIFIED MALE SPEAKER: I think you are
1 probably reading the chart as the labels probably
2 need an extra decimal on the chart. I think those
3 are actually half a billion. CHAIRMAN JAFFE: Ah!
4 (Interposing) be in line.
5 MR MURRAY: I think there is something left off
6 there. So it must be we'll provide a revised
7 slide.
8 CHAIRMAN JAFFE: I got it. The halves are missing.
9 MALE SPEAKER: The halves are missing.
10 CHAIRMAN JAFFE: Here we go. Thank you very much.
11 We all okay? So we're in good shape. Thank you
12 very much.
13 MR MURRAY: Thank you.
14 CHAIRMAN JAFFE: Are you ready to proceed or did
15 you need a few moments?
16 MR. MUNRO: I believe we are ready to proceed. Our
17 next witness is Dr. Kelly Eakin and he is our
18 expert on railroad productivityits measurement,
19 sources and distribution. Dr. Eakin is a Senior
20 Vice-President at Christensen Associates which is
21 an economics research and consulting firm in
22 Wisconsin. He is an expert in industrial
organization specializing in economic analysis of regulated markets and industries. Mr. Eakin received his Ph.D. in Economics from the University of North Carolina and he has testified before the Surface Transportation Board, among others, on issues relating to the rail industry, capacity and infrastructure investment.

CHAIRMAN JAFFE: Thank you. If I could ask the reporter to please swear in Dr. Eakin.

COURT REPORTER: Do you swear the testimony that you are about to give in this hearing is the truth, the whole truth, and nothing but the truth, under the penalty of law?

KELLY EAKIN: I do. CHAIRMAN JAFFE; Thank you.

KELLY EAKIN: Good afternoon. My name is Kelly Eakin. I am Senior Vice President of Christensen Associates. On behalf of the Carriers, my colleague, Phil Schoech and I have prepared a report for this proceeding. Our report addresses the issues of productivity and labor compensation. My purpose today is to summarize our report and to answer any questions you may have. Let me begin by
stating the key findings of our report. The six
key findings are, one, the Unions' measure of
productivity, freight ton miles per man hour, is
an incomplete, inaccurate and misleading measure
of productivity. Two, there is no correlation
between changes in an industry's productivity and
employee compensation. That is, productivity is
not a basis for compensation. Three, factors other
than labor explain the railroad productivity
improvements. Four, consistent with a competitive
marketplace, the vast majority of productivity
improvements have gone to customers in the form of
lower prices for freight shipments. Five, railroad
productivity improvements have slowed dramatically
in recent years. And six, future productivity
gains will require substantial investment in
infrastructure and technology. Above-market
compensation increases would reduce funds for that
capital investment and impede future productivity
growth. These findings lead us to the following
fundamental conclusion. Productivity improvements
in the railroad industry are an inappropriate
basis for determining compensation of railroad workers. I now turn to the concept of productivity in an industry. Multifactor productivity is the comprehensive measure used by the U.S. Bureau of Labor Statistics to monitor productivity in the major sectors of the economy and individual industries. The measure captures the joint influences on economic growth of technological change, efficiency improvements, returns to scale, and other factors. Productivity measures how effectively inputs are converted into outputs. That is inputs plural. Typically several inputs—labor, capital, materials and energy—are used to produce an industry's output. Consequently, a meaningful measure of productivity must consider the combined impact of all inputs, not just labor. Multifactor productivity, also called total factor productivity, is a complete measure of productivity. Multifactor productivity compares an index of output production to an index of all input usage. If output production increases relative to input usage, then productivity has
increased. We use the multifactor productivity to analyze the performance of the railroad industry since 1980. That is, since it was partially deregulated by the Staggers Act. The red line in this figure shows the railroads' productivity while the blue line represents the productivity in the private sector of the economy. This figure shows that railroads have substantially outperformed the rest of the economy. Between 1980 and 2009, the railroads have averaged 3.5 percent productivity growth per year while the private sector of the economy averaged only about one percent per year. But there are really two stories on railroad productivity. The first story is the productivity spurt immediately following deregulation. Between 1980 and 1986, the railroads averaged 4.7 percent productivity growth. However, the second story is the productivity slowdown. Between 1996 and 2009 the railroads have achieved average annual productivity improvement of 1.8 percent. I will return to the productivity slowdown in a few moments. In contrast to
multifactor productivity, the Unions' measure of output per man-hour is incomplete, inaccurate and misleading. The Unions' measure is incomplete. By focusing only on labor, the measure completely ignores the other inputs used in production. Because it is incomplete, the Unions' measure is also inaccurate. In cases where the amount of labor stays the same but other inputs go down, the Unions' measure would indicate no change in productivity. But in fact, productivity has increased. Similarly, in cases where there is simply substitution of some other inputs for some labor, the Unions' measure would indicate an increase in productivity when, in fact, there has been no change in productivity. The net result of the inaccuracy is that the Unions' measure of output per man-hour overstates the increase in railroad productivity between 1979 and 2009 by more than 100 percent. Furthermore, the Unions' measure is misleading. The Unions apply the commonly used term, labor productivity, to their measure of output per man-hour leaving the
impression that labor has contributed significantly to railroad productivity improvements. However, almost 50 years ago, the noted economist Solomon Fabricant warned of the confusion created by calling output per man-hour labor productivity. He wrote that labor productivity, thus defined, will occasionally be read to mean that labor is wholly responsible for productivity and for increases in it, which is not the case. Despite Professor Fabricant's warning, this is precisely the flawed argument that the Unions are making by introducing their incomplete and inaccurate measure of productivity. Industry productivity and labor compensation are not correlated. Economic principles do not establish a relationship between productivity growth in an industry and growth in compensation paid to workers in that industry. As Dr. Murphy explained earlier, compensation growth is determined by the more general market and at the aggregate level, and not by productivity growth that occurs in any particular industry or at any particular employer.
Furthermore, increases in productivity do not necessarily mean that the firm or industry has the ability to pay above market wages. Competitive market pressures may cause productivity gains to be passed on to customers through lower prices. An example familiar to us all is the computer equipment market. That industry has achieved tremendous productivity improvement passed through to consumers in lower prices for substantially increased computer power which the real compensation per worker in that industry has decreased. An examination of the empirical evidence confirms there is no connection between productivity and compensation paid in an industry.

What we have here is a plot of the average annual growth of multifactor productivity on the horizontal axis against the average annual growth in real hourly total compensation on the vertical axis for the 86 industries comprising the U.S. manufacturing sector. This covers the period 1987 to 2008. Now I will note right here that this is scaled a little bit differently than in the report.
so that it is more pleasant to the eye here. So if you are saying, "This doesn't look like what is in the report," it is the same data, but the scaling is different. So each dot represents and industry. These data are gathered from the U.S. Bureau of Labor Statistics. Now if there were a connection between industry productivity and compensation, then this graph would show a cluster of points along the line with a positive slope. That is, industries with greater productivity would tend to have greater compensation growth and those with slower productivity growth would have slower compgrowth in compensation. But the data are all over the place. Many high productivity growth industries have low compensation growth and vice-versa. In fact, there is no statistical correlation between industry productivity growth and the compensation growth. And the correlation coefficient is the small number in the bottom right there and is -.031. But that is not statistically different from zero, which just confirms there is no connection. Now this is not a
new or a controversial finding Over 50 years ago, Professor Fabricant did a similar analysis of 80 manufacturing industries between 1899 and 1953. He arrived at the same conclusion that the relation between and industry's productivity growth and compensation growth, to use his words, is quite minor, if not negligible. The post-Staggers productivity boom was caused by many factors unrelated to labor effort or skill. Specifically the productivity gains have come from increased traffic volumes, reduction of inefficiencies and technological advances. Additionally, many flexibility additionally, market flexibilities and managerial efficiencies enabled by deregulation have also allowed substantial network consolidation and reduction in employment. Traffic volume growth, and particularly the shift in the product mix toward Western coal and intermodal traffic has been central to the productivity improvements. Deregulation facilitated the consolidation of network and the abandonment of uneconomic track. Technological improvements in
locomotives and tracks have allowed heavier, longer trains to go farther distances. The average train in 2009 was eight percent longer, had 60 percent more total weight and went 50 percent farther than in 1980. Other technological changes, particularly in electronic track and equipment inspection, have led to operational efficiencies such as the elimination of cabooses. Much of the technological improvement has been embodied in new capital equipment that performs functions that labor used to perform. The substitution of capital for labor coupled with negotiated changes in work rules, allowed substantial reduction in employment. All of these factors combined to enable the railroads to exploit economies of density. That is, the railroad productivity story is about density, not about labor. Density is simply the ratio of output to network size. Output is revenue ton miles represented by the blue line in the middle of this graph. Revenue ton miles almost doubled between 1980 and 2008 but has taken a steep decline in the recent economic downturn.
Network size is the miles of road shown by the red line. Miles of road have steadily declined such that today there is just a little more than half the miles of road that there was in 1980. Density, the ratio of output to network size, is given by the green line. Since 1980, railroad track density has tripled. By getting more traffic on a smaller network, average costs have decreased markedly. But the increases in density have slowed considerably in recent years and that is what is behind the productivity slowdown. Furthermore, we find no evidence that rail labor has become more skilled or otherwise intrinsically more productive than has labor in the rest of the economy. In fact, the evidence we have found indicates that in the last decade the educational attainment of the labor force in general has increased relative to rail labor. Thus we conclude that it is factors other than labor that explain the railroad productivity improvements. As I mentioned a few minutes ago, since 1996 railroad productivity has slowed dramatically. Between 1980 and 1996
railroad productivity grew at a rate of 4.7 percent per year, almost seven times the productivity growth in the broader private sector. However, between 1996 and 2009, railroad productivity growth slowed to 1.8 percent per year and the growth in private sector productivity increased to 1.2 percent. That is, since the rail productivity slowdown, rail productivity growth has become more comparable to the productivity growth in the broader economy. This graph shows the year to year changes in productivity for the railroads compared to the productivity changes in the private sector. Productivity growth is more volatile for the railroads than for the broader economy because railroads are more capital intensive and more sensitive to fluctuations in general economic conditions as compared to the diverse industries within the private sector. This figure clearly shows the extent to which railroad productivity growth has declined relative to the private sector since 1996. In fact, in 1997, 1998, 2002, 2003 and 2009, productivity growth in the
1 private sector outpaced that of the railroads.

2 Most of the same factors underlying the productivity boom in the years immediately following the Staggers Act also explain the productivity slowdown. The basic explanation behind the productivity slowdown is that traffic density is increasing at a slower rate, employment has stabilized, the rate of technological advances has lessened, and opportunities for reducing inefficiencies have become harder to find. This bar chart shows that the key drivers of railroad productivity have lower annual rates of growth after 1976 than they had in the first 16 years following the enactment of the Staggers Act. The slowing rate of employment reduction represents the largest differential between the two periods. The other factors in this chart, ton miles, miles of road, length of haul, and train weight all contribute directly to the measure of density.

20 Taken all together, the slowdown in these factors has slowed the rate of increase in traffic density that is on the far left side of the
1. Graphs have slowed the rate of increase in traffic density from more than five percent per year to less than two percent per year. In a nutshell, that is the productivity slowdown story. Finally, the pace of technological advance seems to have slowed and the opportunities for weeding out inefficiencies are fewer. To summarize the productivity slowdown, it appears the low hanging fruit of deregulation has been harvested. This has profound implications for future rail productivity growth which we will discuss in a minute. But before discussing future rail productivity growth I would like to briefly touch upon how the railroad productivity achieved thus far has been distributed among the industry's stakeholders. We have got a pretty good picture of the sources and the extent of productivity improvements but where have the rail productivity gains gone? The answer is that competitive pressures have passed the vast majority of productivity gains on to consumers in the form of lower freight rates. Adjusted for inflation, rail freight rates have decreased by
more than 40 percent since 1980. Our calculations are that these price reductions to consumers account for about 85 percent of those productivity improvements. Now the productivity gains retained by the railroads have allowed the industry to regain its financial health and make necessary capital improvements to foster future productivity growth. This reinvestment of the railroad's shared productivity is demonstrated in this figure. These outcomes—lower rates to consumers, a healthy industry, and sufficient investment to maintain rail system and promote future productivity, are precisely the goals and hopes expressed by President Carter when he signed the Staggers Act.

Now I return to the implications that the current productivity slowdown has for future productivity growth. The opportunities that deregulation presented to reduce inefficiencies and find new market flexibilities, have largely been realized.

Likewise, increased traffic density is increasingly more difficult to achieve. It has a diminishing impact. Reduction in employment has
stabilized. So what is left? What is left as the primary driver of future railroad productivity is technological change, much of which is embodied in new capital equipment. Thus the railroads need to continue to reinvest its productivity benefits in order to maintain future productivity growth commensurate with that in the rest of the economy. Requiring the Carriers to pay above market compensation to labor because of past productivity would impede future productivity growth. First it would decrease the Carriers' ability to self-finance this capital investment. Second, it would decrease the incentive to make investments as the net benefit to the Carriers of any future productivity would be less. Accordingly, above market compensation could have serious adverse consequences for continued productivity improvements. I close my presentation by summarizing our report. The Unions' proposed measure of productivity, freight ton miles per hour, is an incomplete and inaccurate measure. It grossly overstates the productivity achieved.
Furthermore, it misleadingly implies that productivity gains are attributable to labor. We use the correct measure of multifactor productivity in our analysis of the railroad industry. Our investigation clearly shows that factors other than labor explain the railroad productivity improvements. We find no evidence that increases in railroad productivity are directly attributable to labor. We have also examined productivity and compensation across the broad set of industries comprising the manufacturing sector. The empirical evidence shows conclusively that no correlation exists between changes in an industry's productivity and changes in employee compensation. The vast majority of the productivity improvements in the railroad industry have gone to the consumers in the form of lower rates. This is consistent with a competitive marketplace, the productivity gains retained by the railroads have allowed the industry to regain its financial health and make necessary capital investments to foster future
1 productivity growth. But railroad productivity
2 improvements have slowed dramatically. Rail
3 productivity growth has become more comparable to
4 the productivity growth in the broader economy. Achieving and sustaining future
5 productivity growth has become increasingly
6 difficult as economies of density are largely
7 exhausted and the low hanging fruit from
8 deregulation has been harvested. Future
9 productivity gains will require substantial
10 investment in infrastructure and technology. Above
11 market compensation increases would reduce funds
12 for capital investment and impede future
13 productivity growth. These findings lead to our
14 fundamental conclusion productivity improvements in
15 the railroad industry are an inappropriate basis
16 for determining compensation for railroad workers.
17 That concludes my testimony.
18 CHAIRMAN JAFFE: Thank you Dr. Eakin. Off the
19 record go back on. I think we are in good shape.
20 Thank you very much.
21 MR. MUNRO: Thank you. Mr. Chairman, Members of the
Board, our next witness is Lance Fritz, who is the Chief Operating Officer of Union Pacific. He is paired with Dr. Eakin on the productivity story in this sense; Dr. Eakin has laid out the case for you that there is no value offered in exchange for the Coalition's compensation proposal on the productivity front. In other words, there is no quid pro quo for the additional demands in compensation that they have made before this Board. Mr. Fritz will now address this from a somewhat different angle and well I think, among other things, his love for railroading will come through. This is an interesting story in how railroads operate, if nothing else. But it will, I believe, give you a sense of what Dr. Eakin is talking about when he says that productivity is coming from sources other than labor. Mr. Fritz.

CHAIRMAN JAFFE: Thank you. If I could ask the reporter to please swear in Mr. Fritz.

COURT REPORTER: Do you swear the testimony you are about to give in this case be the truth, the whole truth, and nothing but the truth under the penalty
MR. FRITZ: I do.

CHAIRMAN JAFFE: Thank you.

MR. FRITZ: Thank you Don. Can you hear me?

Perfect. Which button? Perfect. As Don mentioned, I am going to put a little bit of flesh on the productivity story that you just heard. So let's get started with a why productivity. The paramount concern of operating executives in the industry is to run a safe and secure operation. Embedded in that is our business model. Our business model starts with service and an excellent service requires continuous improvement in efficiency and productivity. It requires that because we compete aggressively with each other for customers' business. We compete aggressively with other modes of transportation for that business, both of which demand an ever improving cost structure. Our customers demand that we help them with their cost structures so that they can effectively compete for business in their industry. So there is a never-ending demand for productivity improvement.
and efficiency improvement. We attack that in a hierarchy of activities. Typically we start with process improvement because it is relatively straightforward to achieve and it is inexpensive. We augment that with technology so that we can get more out of the assets that we currently own. Ultimately though, it comes down to capital and capacity investment. So the business (inaudible) [0:00:10] pretty simple. Service is demanded and it requires efficiency and productivity improvements, generates cash so that we can invest in capital in order to provide better service and grow. This is a great proof statement. It's a slide that, by the way, uses a productivity measure that's closer maybe to the coalition and to our own expert witness. The key point, though, is the connectivity between capital spending and productivity improvement on labor input. The red line on this chart is capital spending from 1980 to 2010 in America's freight railroads. That's grown by a factor of about 3.7 times over that three-decade period. The blue line is gross ton
miles per employee. That's grown by about a factor
of 4.4 over the same period. Now what I'm going to
do next is I'm going to walk you through a number
of examples that indicate how that capital
investment has generated that labor productivity
improvement. Nowhere in those examples are you
going to hear that we're asking employees to work
harder, to work longer hours, to work in a worse
environment. As a matter of fact, you'll see
plenty of examples where the work environment has
improved. So let's get started. The first example
I'm going to use is really specific to the T and Y
crafts - that's train and engine men that run the
trains over the railroad. This chart demonstrates
that during the last three decades, average tons
per freight train has increased about 61 percent.
Now that's on the backs of some significant
capital investment. We've invested in new cars
that can handle heavier loads. New locomotives
that can pull heavier haul. DPU technology. That's
the distributive power technology that enables us
to take the locomotives at the head end of a train
and distribute them through the train which reduces the stress on couplers and drawbars. There's an investment in premium components in the railroad, in the cars, in the locomotives so that those heavier hauls can be handled safely and in a robust manner. And there's pure capacity investment that's imbedded in this improvement - new sidings, siding extensions, signalization, multiple track. All of that ultimately generates a pure productivity improvement for our train and engine men. They're hauling more freight per train, more revenue per train. It's perfect productivity. Another great example is with our track maintenance personnel. It's a real important function for us on the railroad to dump rock, to dump ballast rock on railroad. It's because the ballast rock is what keeps the railroad secure, longitudinally and latitudinally. The way railroads work is rail is securely fastened to ties, and the ties are imbedded in rock that keeps it from moving. That's what keeps our railroad secure. In the old days a long time ago, it's not
even pictured here, our track men would actually jam bars into the rock around ties, manipulate the rock and the tie until the tie got set down into the rock. What I'm showing here is how the rock's distributed. On the left-hand side is a picture of a trackman walking along a ballast-dumping car and he's manipulating the door on that car with a pole. That's kind of the basic level of dumping rock on the railroad. It's limited to walk and pace, it's imprecise in exactly where the rock is dumped, and it's pretty much a daylight hours operation. We somewhat automated that a little bit in the picture in the middle. Those are gentlemen pushing push-button activated doors. So you got rid of the poles, a little safer. Essentially limited, though, from productivity by the same limitations of the picture on the left. The current state-of-the-art is shown on the right. That's an automated ballast distribution train. We call it a plus train. Those doors on that train are manipulated by a computer. The computer's hooked up to GPS. That train takes a predetermined
route on the railroad and at predetermined
locations the train doors, the car doors
automatically open and dump just the right amount
of ballast in just the right location. And it does
it 24 hours a day. It dumps it about 12 miles an
hour. It's about a six-fold increase in the
productivity of the process of dumping rock, an
obvious productivity improvement in our track men.
Another great example is the tamping. I mentioned
our track men quite some time ago would hand
manipulated the rock in order to seat the ties.
The railroad's invested in new technology some
time ago pictured on the left. That's a single-
head automated tamper. Those come in other
configurations, even get a couple of heads on
those. The way that machine works is it advances
to a tie that needs to be seated into the rock,
and it plunges steel fingers into the rock around
that tie. And the fingers vibrate. And that seats
the tie firmly in the rock. Every time it needs to
tamp it has to advance, it tamps the tie. It has
to advance, tamps the tie. So it's a start and
stop operation. But clearly it's of much greater benefit both to the track men and the Company than doing it by hand. The picture on the right is current state-of-the-art. That's called a continuous action tamper, a CAT tamper. This particular version has three heads on it. The cool part about this machine is that it continually moves down the railroad as it's tamping. So the tamping heads in it go through a cycle where they plunge, tamp while the machine is moving, and then cycle back to plunge again. The machine never stops. So it's got three heads as opposed to one head. It's tamps four times faster. There's many benefits to that right? We get off the railroad faster from the standpoint of maintaining it. The other thing that's pretty cool about this machine is it's got something called a stabilizer as part of its technology investment. There's no slowarder (ph) left behind that machine once the work is done. Unlike the machine on the left, we have to run a certain amount of tonnage before we can bring the track up to track speed. That's a pure
productivity improvement in our track labor. I mentioned premium components before. That story's told pretty much with rail and ties. On this slide and the upper pictures you get depiction of the growth in rail over time in the industry and what a premium rail looks like in cross-section today. So a premium piece of rail today is 142 pounds by 3-foot section. It's got a head hardened through the manufacturing process through a special quench. It's made of high-carbon steel. It's got a big six-inch base. It's a great piece of rail. It generally has many fewer defects in it than historically. It can last longer. It requires less maintenance intervention per year of its life. And it generates fewer defects and fewer exposures to derailments like you can see in that chart in the upper right. The tie stories are the same story. Current state-of-the-art shown in the lower right. That's a concrete tie. It has about two X, two times the life of the tie it's replacing, and it requires less maintenance per year of its life. So in those pictures on the left, on the bottom,
you've got a perfect before and after. That's a piece of railroad that goes right through Houston, a critical area, lot of TIH/PIH shipped. Picture on the left is before maintenance; old ties, old rail. Picture on the right, post maintenance replaced with premium components. Ultimately that's a pure productivity improvement for our track men. Less maintenance per year over the life of the track. Probably the most impressive productivity story in terms of an investment for track labor is the track renewal of train, or TRT. It's pictured in the lower left. So when it comes time to replace rail, usually or sometimes if it's also the same time to replace a fair amount of ties on the same segment of railroad, we'll rebuild the whole railroad. We do that periodically. In the old days, not too long ago really, prior to about 2005, we would use separate gangs typically to do that - one gang to come in and replace the ties; separate gangs to come in and cut out the old rock, put in new rock; separate gang to come in and replace the rail.
This track renewal train does it with one gang. Nine contract employees, 164 Union Pacific employees. It's the biggest gang by far on our railroad. What it does is you can see on the right. Cuts the amount of man days required to rebuild the same segment of railroad, gets the job done faster. Those bars on the right are our actual data from our most recent large-scale TRT project. This is between Joliet, Illinois and St. Louis, Missouri. It's a rebuild of that segment of railroad for what we think is going to be the nation's first high-speed rail program for the Obama administration's initiatives. That's a pure productivity improvement for the rail gangs that work on the railroad. Now there's a great story also for signal men. And this is invention born out of necessity. So we have a mandate in the railroad called Positive Train Control. By the end of 2015, we have to have this positive train control system installed on our railroad. In the case of Union Pacific, it needs to be installed on something like two-thirds, 60 percent, two-thirds
of our railroad. As part of that installation,
we're finding we have to modernize our signal
system across a fair amount of our railroad. And
because we're facing a deadline, we're running
into crunch time in trying to get the work done to
modernize those signal systems. One of the things
we've got to do is install signal masts. That's
the poles that the signal system is on beside the
railroad track. That picture on the left is how we
historically have installed signal masts. You dig
a hole, we lay a foundation, we put a concrete
fixture in that foundation, cover it back up, we
bring some rock-two or three tons, we tamp out a
little rock pad, and then we install a mast base
in the pole on top of that fixture. Takes about 25
hours with a bunch of assembly required. We're in
the process of replacing that methodology with the
method on the upper right. That's a pile being, a
steel pile being driven into the ground. So what
we do is we drive a steel pile, that steel pile
has a template that's placed on top of it, the
template mates with the base of the signal mast
and we install the signal mast on top of the pile.

Takes about an hour, 1/25th of the time. That's going to enable us to have a prayer, a decent shot at hitting this mandate which is a critical aspect for us in the next three years. And it's a pure productivity improvement for signal people. And there's two operators, or an operator inside that track excavator that's on the rail and it's a Union Pacific employee that's operating that piece of equipment. We also use technology, investments of technology to make, to help our track and car men crafts focus their attention on the value-add that they bring to the railroad, right? Here's two great examples on the top or with the track men.

That vehicle on the upper left is called a track evaluation car. That runs at track speed across the railroad. It's got ultrasound imaging on it, laser imaging on it and GPS, and at track speed it looks for defects in geometry or profile. Where it sees the defect it notes it. That's downloaded to a gang that is behind this, a maintenance of way gang, and that maintenance of way gang goes right
to the problem and fixes it. Historically, that
gang would have had to spend time finding the
problem if one existed. The vehicle on the upper
right, that travels a little slower on the
railroad. That's an ultrasonic rail flaw detector.
It's equipped with the ultrasonic devices that
look inside the rail and look for rail defects.
Where it finds it, it marks it. A gang follows it
and cuts out the defective rail and replaces it
with new rail, right? Another pure productivity
play, and the thing is it focuses our workforce on
the value-add as opposed to the non-value-add part
of their work. On the bottom left are two pictures
really and mostly affiliated with the shop crafts,
or really the car men. The lower left is an
ultrasonic wheel inspection facility. That's in
North Platte, Nebraska. It's our biggest, it's
Union Pacific's biggest rail yard. That's a
facility that doesn't exist anywhere else in the
world. What happens is we take our heavy haul
trains through that facility at about five miles
an hour. Every wheel on the train has an
ultrasonic device attached to it that rolls with that wheel for 360 degrees. And it takes an ultrasonic picture inside the wheel looking for defects. When it finds one, it's marked and then that's immediately removed as the train is excited the facility. The installation on the lower right is called a wheel profile measurement system. That's a wayside detection system that's installed in several locations on the railroad. Trains go by there at maximum authorized speed, whatever the track speed is that they're authorized to run at. And that device takes a laser image of every wheel on the train. That laser image is sent back, downloaded to a database in Omaha. And over time the wheels on that car are monitored for flange thickness, for rim thickness, for rim geometry, so that we can find when to replace them before they fail. Okay, so in both instances you've got car men being able to do the value-added work of making a fix instead of looking for a fix to make. Here's another great example of a productivity improvement and this is by process change
predominately with a little bit of investment.

That spaghetti diagram in the left, that's the process that we used to use to repair a wheel in a coal train as it entered North Platte yard. So the old process is wayside detection would tell us we've got a defective wheel and it needs to be replaced. We would take that car out of the train, move it to a repair facility, repair it, put it in a receiving yard, hump it into a bowl, take it out of the bowl so that we can trim it into the spare yard, and then it would wait until there's another train coming in with a like car that needed to be replaced. That process took about 12 days. Move the car all around the yard and it wasted a lot of people's time. Today what we do is we repair those wheels in train. That's the photograph on the right. We chain up the good trucks and the good wheel sets, we use a jacking device that's common in the industry, we jack the cars up in train, they're unloaded, and then we pull out the defective wheel set and install a new wheel set. That's with the new piece of equipment that we
made an investment on. Takes about 15 minutes, the
car's not moving all over the yard, huge savings
for our customers. They don't have to invest in
spare cars anymore; not anywhere near to the
magnitude they used to and it saves us an
investment in spare yard in the capacity to hold
spares. This is a super example for our shop
crafts. So on locomotives today when we buy them,
they have health diagnostics that are on board
that help us find the right fix at the right time.
The way these diagnostic systems work are there
are sensors that are embedded by the manufacturers
of the locomotive, and they monitor things like
the air intake system or the fuel injectors or the
electrical system, and they record faults. And the
faults are defined by the manufacturer - anything
that's outside of what they would consider normal
operating parameter. The problem with these
systems is that on a normal, just like a routine
run for a locomotive, these systems find thousands
of faults. Those thousands of faults get
downloaded to us, the owner, but there's no way to
interpret them. The OEMs haven't given us an
opportunity to interpret them. So what we've done
is our engineers, so working actually with out
shop craft employees, we've designed these
algorithms called RXs. So we take those faults, we
run them through a computer program, and the
computer program sorts the wheat from the chaff,
right, and identifies only the faults that really
probably are something wrong and then identifies
what probably needs to be fixed in order to remedy
that. In doing that we focus our shop crafts right
where the problem is. That information's
downloaded to the shop that's going to fix the
locomotive before the locomotive even arrives. So
now our shop crafts aren't spending their time
trying to figure out what's broken and what isn't.
Even better, locomotives run through the shop
quicker. Even better, we fix more faults as a
result of being able to identify the ones that are
real versus not real. It's a big deal. It's a
great productivity enhancement. The last one I
want to share with you has to do with the clerical
crafts. We've automated a fair amount of clerk work over time. That's no secret; everybody knows that, mostly through computerization. A great example is in revenue accounting. Historically, we would have to have a clerk sift through contracts, sift through pricing tariffs, even sift through contracts between railroads to figure out what a customer needed to be billed, and how that revenue should be allotted between carriers that participate in the move. By automating the billing, what we've done is we have taken all that rote work off of the clerks. As a matter of fact, if the billing system can't figure out the price, what is does is it limits the choices to only the choices that matter in that billing decision and it spits out to the clerk those choices with the difference highlighted. So for instance, if you've got to move and it could be priced two different ways and the only difference is commodity, it would spit out to the clerk, "Hey, I need you to tell me which commodity this is and then I can go ahead and process this way bill." So the clerk...
looks up one thing, commodity. Inputs that and the
bill goes through automatically. It's a pure
productivity improvement in the clerk crafts, and
it makes those jobs a little easier to train when
it's time to replace them. So in summary, what I
wanted to impress upon you today is number one,
just exactly how railroads are using process to
some degree, technology maybe to a greater degree,
and capital to the greatest degree to generate
productivity improvements, specifically labor
productivity improvement. The second thing I
wanted to impress on you is that in no
circumstances that I know of, or that I shared
with you, are we asking employees to work longer
hours, work harder during their hours, or work in
an environment that's more difficult. Generally
speaking, these investments have made the
environment safer. What they've done is they've
focused our craft employees on the value that they
add, the value that they bring to the table. And
the last thing I want to point out is you've seen
a lot of charts on capital spending in the
industry. Capital spending is up. It's as big as it's ever been. Our shareholders are committing more to capital than we ever have. And that's a good news story. It's a good news story for our shareholders, they're getting a return out of it; it's a good news story for our customers because it enables growth, we can handle their traffic, and it's a good news story for our employees because it's enabling us to grow. With that, I'd love to entertain any questions you might have.

CHAIRMAN JAFFE: Thank you Mr. Fritz. Give us a few moments please. We're in good shape. Thank you for the education.

MR. FRITZ: Thank you.

CHAIRMAN JAFFE: I think we're over the prearranged time for our afternoon break. Why don't we try and keep it to about 15 or 20 minutes if we can. Take your seats please so we can resume. Back on the record, please.

DAVID MUNRO: Thank you, Mr. Chairman. We're about to move into the last module of our presentation for today. We've heard from Ken Grodia on the
history of this dispute. We've heard from Dr. Murphy on the relationship, or lack thereof, of profitability to compensation. We heard from Dr. Evans on benchmarking. And we've heard from our two witnesses on productivity, Dr. Eaken and Lance Fritz, who is one of the few people who can (inaudible) about ballasts. The last portion of our presentation goes to our - the point I made in the introduction, will go to the evidence within the industry itself that current compensation levels are more than adequate. I have two witnesses on that point. The first of which is Dr. Topel, who is one of Dr. Murphy's colleagues at the University of Chicago. Dr. Topel is a labor economist. He teaches labor markets and compensation theory at the University of Chicago and he is to tell us about his study of the rail industry.

MALE SPEAKER: Thank you. If I could ask for a reporter to swear in Dr. Topel.

REPORTER: Do you swear the testimony this afternoon will be the truth, the whole truth and
nothing but the truth?

DR. TOPEL: I do.

REPORTER: Thank you.

CHAIRMAN JAFFE: Thank you.

DR. TOPEL: See if I can work this thing. It's a pleasure to be here and talk to you about the dispute between the carriers and the coalition. What I'm going to talk about is to build on some of the themes that David Evans and Kevin Murphy spoke about. David Evans established that compared to other people in transportation, warehousing, individuals - realizing individuals in the rail industry receive about an 80 percent wage premium. And Dr. Murphy went to similar lengths in explaining a lot of the economic implications of that kind of premium. And I'm going to go a little farther along the same lines of talking about economic implications because the question I've been asked to address is whether that premium, or put another way, whether the common level of compensation, which will increase under the UTU agreement relative to other industries is
sufficient to achieve the recruiting and retention objectives of the carriers. That is, are they able to recruit and routinely the workers in a way that meets their objective of running the railroad with the type of skilled people that they need. And I'm going to jump ahead slides because I want to get to what I asked people to insert this. This is a slide from Dr. Murphy's presentation. You might think of it as his Goldilocks slide because there's too low, there's too high and then there's right in the middle for Goldilocks. And if the compensation's too low, you're not going to be able to attract applicants. And, you know, ideally, you would like to be able to attract applicants at minimum cost. So that compensation has to be at least equal to what the employees can get somewhere else in the labor market. It has to be equal to their alternative compensation of what they would receive at their next best alternative use of their time. And then if it's too high, these are the implications that Professor Murphy spent a lot of time on, then the economy is going
to be extraordinarily easy because everybody wants to work in this occupation, but it has other distortionary effects and Dr. Murphy went into and I don't need to belabor. So the question that I want to ask, that I already mentioned, is, is compensation large enough, or high enough, sufficient, to achieve those recruiting and retention objectives of the carriers. And the answer is yes with a lot of exclamation points after it, I suppose, because all the available evidence is consistent with the points made by Professor Murphy and Dr. Evans about the premium. Really employees are extremely well compensated. How do we know? In a nutshell, an opening in this industry attracts not just dozens but hundreds of applications for every opening. And on this first slide, I'm putting up something that I'm going to talk about later, on average in 2010, or over 2010, there were 1.2 million applicants to the four largest carriers. In contrast there were 7,455 people hired for those jobs. So that comes out to about an average of 170 people per job. So
there's an extremely low probability of leaving a job once one applies, but nevertheless people want to apply. Something not working?

CHAIRMAN JAFFE: We were trying to see if we can (inaudible) in the restroom next door who's competing with you. No, we'll find out in just a moment.

DR. TOPEL: Okay, so the reason [we know] (ph) as I said in a nutshell, is that openings attract literally hundreds of applicants. The probability of landing a job for an average applicant is extraordinarily low because there's so many people competing for them. And for those lucky few who are hired, hardly anyone ever leaves. So up here on my first slide when I thought of what the objectives of compensation are. The way that economists think of compensation, the way compensation theorists or analysts think about it, is that it's meant to recruit, retain and motivate employees. What I'm just tried to show you is that these unionized rail jobs are really valuable assets, significantly increased lifetime wealth of
railroad workers. Let me give you a number for that. It's kind of an eye-popper. There's elevated levels of compensation. And the result, an excessive supply of qualified applicants, and that elevated levels of compensation also means that retention is extraordinarily easy. So what I'm going to try to demonstrate for you six key facts. The first has to do with that brief (ph). If you recall, Dr. Evans noted that there was about an 80 percent premium on that total compensation came to about $93,000 a year. That means that the next best alternative use of people's time, the occupations where they can command in ways given their skills, pay about $56,000. So there's a roughly $40,000 premium in there. Now that premium is earned every year. And so over the lifetime of a job that's like an asset that's going, that people get to own once they join the industry. So they want to calculate the present value of that asset and it comes out to be about $600,000. On average, it's higher for some of the unions and the coalition, it's lower for others. We'll get to
that - you don't need to put it up yet. And this
is why people are willing to queue for these
things. It opens into the second part I want to
demonstrate for you is the openings attract
hundreds of applicants, so it's a probability of
getting a job which is already very low. Why are
they making the effort? It's that $600,000 premium
that they'll get if they join the industry. And
then consistent with Kevin Murphy's point and also
David Evans' point about the increase in the
premium over time. What we find is that the excess
supply, this extraordinary number of applicants
per opening, is also rising over time, so that's
the third point. Fourth, another indication of the
relative value of jobs is the quit rate. How
quickly do people leave these railroad industries
to do something else? And what I'll show you is
it's about one-tenth of the quit rate in
comparable industries. So that people are
extraordinarily reluctant to leave once they get a
job. And for senior employees, the quit rate is
almost non-existent. Fifth, I'll show you some
data on job tenure. Job tenure of employees in the railroad industry about double those of people in comparable occupations, which also indicates they're willingness to stay in the industry for long periods of time because of this high compensation. And finally, I'm going to show you data on the propensity to return from furloughs or lay-offs. And even after a year or longer of being furloughed, 75 to 80 percent of people end up returning if they're re-called to the job. So now we can go on to some of the slides. So what I've shown you up here, are the wealth premiums due by people who joined the industry. And these are based on the premiums calculated by Dr. Evans in terms of the annual compensation. Now for some of the earnings, the wealth premium's very large, for some it's smaller, but the smallest is $313,000. Now how did they get that kind of thing? Well here's one of the ways an economist would think about landing a job in an industry that pays such an extraordinarily large premium. Take the average employee who gets a premium of about $41,000 per
1 year in total compensation. If I had been in that
2 job in my late 1920s, in my late 20s, and I stayed
3 in the job until close to retirement, so on
4 average these people stay for 35 years, then I get
5 that premium for 35 years. The present discounted
6 value of that is the value of a valuable asset. I
7 get that stream of returns every year out into the
8 future. And so I calculated that premium for
9 members of the coalition up here. And you notice
10 for ATDA, it's a principal of $1 million. For NCFO
11 it's down to $330,000, and on average for the
12 coalition as a whole is about $570,000. That's
13 what it's worth to get a job; that's the windfall
14 in gains if you're one of the lucky few, as we
15 show in a minute, it is few, who are able to
16 obtain any work in the industry having applied. So
17 that's the reason, that's the carrot that attracts
18 people to the industry. What's the effect of this
19 carrot? Well, here's the evidence that the
20 carriers attract multitudes of applicants for
21 every hire that they have. So for the four major
22 carriers there I show you the number of
applicants, the number of hires, and then
applications per hire, so how many people applied
for each opening in effect. And for the four major
carriers, and as you can see there - does this
work? Yes - for example Union Pacific had 128,000
applicants for 1,328 jobs, which came out to 97
applicants per job. As CSXT, it was 249 applicants
for every opening. If you look over all of these
positions - woops - if you look over all of these,
1.28 million applications were filed for only
7,500 openings. That's 172 applications per
opening. Now, the interesting fact about this, in
collecting these data, I had data for all four
carriers in 2010 but I had data that went back to
2006 for Norfolk Seven and Union Pacific. So I'm
able to show you how this is treated over time.
Back in 2006, as you can see here, there were 51
applicants per job for Norfolk Seven and Union
Pacific but that's increased over time so that
their 170 applicants per job is the same as for
the other two carriers who I only had data for
from 2010. So over time the number of people who
are queuing up for these jobs have increased dramatically. Now that's consistent with two things. As Professor Murphy pointed out, labor market conditions are a lot worse today in 2011 than they were in 2006. So these jobs have become unusually attractive relative to alternatives. And as Dr. Evan pointed out, the actual wage premium has been increasing over time. So even if labor market conditions themselves in aggregate have not changed much, then these jobs were becoming more attractive than they were in the period back to 2006. But that's a really big - you've more than tripled over this period of time the number of applicants per opening. And that's the kind of hiring issue that Kevin Murphy talked about earlier. Now, let me return to, having shown you evidence of people trying to get these jobs, let's see what happens once they have them. So up here I've calculated, I've asked the carriers to give me data on their quit rates over time. So from 2005 to 2010 we were able to follow quit rates. And we also went to Bureau of Labor Statistics
data, a survey that they call the Jolts Data on
job turnover, and we got the quit rates for
comparable industries. One, the upper blue curve
up here, I'll put it over there, is for all
industries, and then the lower dark blue curve is
for transportation services, which actually
includes rail in it. So the gap with it I'm going
to show you, though big, is actually understated,
because the bunch of lines you see at the bottom,
down here, are the quit rates of the carriers, of
the unionized employees of the carriers. And the
difference between these two is roughly a ratio of
10 to 1. So the quit rate of the carriers is about
one-tenth the quit rate of individuals with
comparable skills in other industries. Now you
might note that the quit rate goes down over time
up here. You might wonder why that's true,
especially those dates after 2008. Well a well
known fact about quits is that they're counter-
cyclical. When the labor is pretty bad, you don't
quit your job if you have one. And so you might
ask well isn't that true for the carriers as well?
And you can’t see it as well because it’s so small. It’s like you’re standing really far away, like on Mars or something. Because the difference is little bitty. If you really blew that picture up, you’d see a slight decline in their quit rate as well. But the operative thing here is that people hanging onto their jobs but people in the rail industry always hang onto their jobs because they’re so relatively lucrative, because the premium is so large. Let me give you some examples over in the right hand table what the quit rates for CSX when we had the quit rates for different occupations as well. And you can see they are miniscule as compared to the average quit rate in the U.S. economy which was 1-1/2 to 2 percent per month. The other calculation that we did in regards to quits is to look at how they vary in seniority. Now in most jobs, in virtually all jobs, the quit rate, the turnover rate, is high at the beginning at the job and then it goes down to some stable level over time as people have spent more time there they become more attached to the
1 job or they're just more matched to their job.
2 What's extraordinary here is how fast it falls for
3 people in the rail industry. They find out that
4 they're well-matched to this occupation or these
5 occupations find out pretty soon, and then the
6 quit rate is extraordinarily low after a year or
7 two of service. And what you can see here is once
8 people go out and they've got significant service
9 in the industry, they don't leave. And those quit
10 rates are well below the quit rates that you see
11 in comparable occupations elsewhere in the
12 economy, again indicating the value of this
13 compensation premium. Another indication of the
14 attachment of people to their jobs is how long
15 they've been there. Now this doesn't tell you how
16 long they've stayed and I promised one of the
17 lawyers for Jones Day that I would tell you the
18 bus stop example so here it comes. The data here
19 are collected in the following way and I've
20 collected it from two sources, one from the
21 carriers, where you say how long has an individual
22 employee who I see at a point in time, say 2008,
how long has that employee been working for the carrier? And they tell you the number. And they average everybody's answer to that question and you get the average job tenure of people who are working there in a point in time. We can ask the same question in data collected by the census in the Bureau of Labor Statistics because they survey people and ask them how long have you been working for your current employer. And we can compare those two numbers. And if you compare the two numbers, you'll see that on average for Burlington Northern and CSX, the average job tenure is about 17-1/2 years, straight across the board. I'll come back to the bus stop in just a second. But that's roughly double the averages in comparable industries. People in these jobs stay much longer than individuals in comparable jobs elsewhere and again it's that compensation premium at work. Now you might want to ask the question well this tells us how long they've been there. What if we wanted to know how they're going to be there. What's the completed job duration? And here comes the bus
stop example. If I wanted to know how long people wait for the bus stop and I ask them all how long you've been waiting, they'd tell me how long they've been there. Now one way I could figure out how long they're going to be there is wait until they get on the bus. But statistically if I just walk around (inaudible) to a lot of bus stops and ask people, I'll get them in the middle of their spell. So those people would be halfway through. So the expected completed job tenure an estimate of that on the rail industry would be something in the order of 35 years. You take your 17-1/2 and multiply it by two and that's how long most people who answered the question can be expected to be there. That's a long time. That's a lifetime job in effect for people whose careers must be starting in their twenties or early thirties. Now, the last piece of evidence I'm going to show you on the attachment of individuals to these jobs has to do with the propensity to go back to them if they're laid off. Now laid offs occur in this industry as they do in many blue collar
industries, and employees have the right to be recalled and there are rules about recall and the like. But what we did was to ask the carriers to give us data on each of the individual furloughs that occurred over a period of time. And then we wanted to know if those people were ever recalled and if they accepted the recall offer. And we can tell the difference between the time when the person was laid off and the time when they were offered recall. And then the question is did they come back or did they move on to something else, some occupation or industry? If these jobs are as extraordinarily lucrative as we argued, then you kind of expect that people would be waiting around because this is an extremely valuable asset worth nearly $600,000 to a human person. And most of the furloughs occur among the young. So as you can see here, up to nine months, excuse me up to six months, more than 90 percent of Burlington Northern people returned. Beyond a year and up to 18 months where the data starts getting really noisy, roughly 80 percent are returning. So even
after a year of not working for one of the carriers, when the phone rings and you're asked to come back, four out of five are still available and wanting to come back. They haven't moved on to something else. That's much higher than you would find in returns from lay-offs in other industries, even other unionized industries. So that's our evidence that people are very willing to come back is that again, that compensation premium that's at work. So let me conclude. I've argued that based on the data provide by Dr. Evans, that a union rail job is an extremely valuable, not just job, it's a valuable asset. Once you've got it, you've gotten a windfall. That's why people queue up, try to get these jobs, why they're willing to apply when the probability of getting a job in the current market conditions is so low, well below 1 percent. Existing levels of compensation, therefore, are more than sufficient to meet the curators recruiting and retention goals. And recruiting and retention is the goal of a compensation scheme. There's extraordinary
interest in obtaining railroad jobs that's based on the applicant flow-data that I talked about.

And there's extremely low turnover and above-average job tenure that's based on the personnel files that I've examined. And increasing total compensation is not going to improve recruiting or retention, but it will make the queue, the number of people who try to get these jobs greater, there's going to be more applicants per position, and if premiums are increased, there will be fewer positions for them to fill. And that's what I've have, what I'm here to tell you today. I'll be happy to answer any questions that you might have.

CHAIRMAN JAFFE: Thank you Dr. Topel. Give us just a moment to see if we have any. I think we're all in good shape. Thank you very much.

DR. TOPEL: Okay, thank you.

DONALD MUNRO: Mr. Chairman I think we're ready for our last witness of the day today. Lisa Mancini is an Executive Vice President of human resources with CSX Transportation and she is here to describe another perspective on the quality and
value of current railroad jobs. If I could ask the
reporter to please swear in Ms. Mancini.

REPORTER: Do you swear the testimony you're about
to give on this day is the truth, the whole truth
and nothing but the truth under penalty of law?

LISA MANCINI: I do.

REPORTER: Thank you.

CHAIRMAN JAFFE: Thank you.

MALE SPEAKER: Make sure you're standing next to
the witness.

LISA MANCINI: Thank you and good afternoon. I'm a
relative newcomer to the railroad industry. I
spent the first 20 years of my career in public
service but I am very proud to be part of this
railroad industry, as are many of the people in
this room and even more people out on our systems.

I'm going to tell you about why I think railroad
jobs are really so great. They're consistently
ranked as among the best and most desirable in the
country. CNN Money highlights a newly hired
freight train conductor in their September 1
segment, "Surprising Six-Figured Salaries." In
America’s Best-paying Blue Collar Jobs, January 2010, Ford features signal and track switch repairers, locomotive engineers, railroad brake signal and switch operators. Freight rail is the only industry to make this list three times. The railroads offer a broad range of jobs that allow for rich and varied work experience, with the requirements of a high school diploma, a valid drivers license and perhaps some work experience. I'd like to highlight three of the more common jobs represented in this proceeding. Train dispatchers dispatch and monitor the movement of trains within a defined territory, much like air traffic controllers in aviation. The work with state of the art technology, in a comfortable office setting. Train dispatchers work regular eight-hour shifts and with seniority earn up to 25 days of vacation, 20 personal days, 8 paid sick leave days. Average earnings for train dispatchers in 2010 on CSX were over $87,000 in wages. The top earners, so those that worked a lot of overtime, made over $120,000. Signal workers, another craft
represented here today, install, repair, maintain and inspect our signal system across our wide network. Most are assigned a specific territory, so travel's not required, while others do travel to work sites requiring overnight stays. Signal workers perform physical labor outdoors. They may operate heavy equipment and they're out there rain or shine. Seventy-five percent work five days a week, eight hours a day. Our traveling gangs work four 10-hour days, sometimes linked, so they'll work eight days and then have six days off. Signal workers also earn up to 25 days vacation, 11 paid holidays, up to 2 personal days, 3 safety bonus days off, and average earnings for CSX signal workers last year, $74,318. Again, high earners exceeded over $125,000. Locomotive engineers operate the trains on the railroad. They're responsible for the locomotive, as well as mechanical operation of the train, train speed, and all train handling. Locomotive engineers are promoted from conductor rank, all start as conductors, must understand the physical
characteristics of our railroad including track geometry and signal placement to properly control their train. Now these are more traveling jobs; only 25 percent work 5 days a week in yard or local train service. Thirty-nine percent work varied schedules with overnight stays, and thirty-six percent work on extra boards. On CSX, engineers earn up to 6 weeks vacation, up to 11 personal days and averaged earnings were $79,000, over $79,000. Top earners among our locomotive engineers in 2010 made over $130,000. Although railroading is a 24/7 business, employees are offered a range of work schedules with options for time off as they gain seniority. Looking at all union employees, about half work five days per week in an eight-hour shift. Thirty percent travel and work varied hours. And an additional 18 percent work on extra boards, so the widest variation in hours. In terms of time off, all are provided with annual vacation time depending on seniority up to about 25 days or more. All work under agreements that provide personal days. About
half have paid holidays, others have more personal time off, personal days if they have to work paid holidays, and about half have paid sick time. Although with tenure - along with tenure comes guarantees of pay and benefits for a significant amount of union employees. By agreement, track workers, signal workers and clerical employees with the requisite years of service are guaranteed that neither their guaranteed rate of pay nor their benefits will be disrupted due to circumstances beyond their control. So for example, a clerk with six years of service will continue to receive their pay and benefits whether they're furloughed or whether they're displaced to a lower paid job. CSX cares a great deal about our employees and provides them with outstanding training opportunities. CSX invested 22 million to establish a world class training facility in Atlanta, our Railroad Education and Development Institute or REDI. At REDI experienced instructors teach a comprehensive curriculum with hands-on approach to focus on safety, technical skills and
1 business acumen. Trainees are treated like CSX employees from the start, receiving training pay which is somewhat lower than regular pay but full training pay, medical coverage and other benefits provided under their relevant agreements. This training can be as long as six months. Forty-two thousand employees have been trained at the REDI since we opened the facility in February 2005.

9 Railroad jobs are career jobs that provide tremendous opportunities for advancement and growth. From early on, REDI instructors meet one on one with trainees to talk to them about their career paths. Forty percent of CSX's current management team started in union jobs, including sixty-two percent of our operations managers. Among senior leaders, so assistant vice president and above, 30 percent of our senior leaders started in union jobs and nearly half our operations senior leaders. Our chief commercial officer, number three person in our operation started as a car cleaner, our vice president of strategic planning started as a track worker. So
there are tremendous opportunities for all of
these union employees. While the employees have
opportunities for advancement, many choose to stay
in their craft and for those who do take
advancement opportunities, some decide to go back
to the union because they prefer that position.
This year 126 union employees were promoted to
management, and in the same period 46 voluntarily
returned to union jobs. In exit interviews most
cited pay, benefits and quality of life as reasons
for returning to bargaining unit jobs. Railroads
hire diverse and talented workforce and present
outstanding opportunities for women and
minorities. CSX has won countless prestigious
awards, some pictured here, for our strong
diversity program. This year Diversity, Inc.
magazine ranks CSX 17 amongst top employers for
diversity. Although railroads have a physically
challenging environment, CSX was recognized by
Springboard Consulting as winner of the National
Disability Matter Workforce Award for our efforts
to recruit persons with disabilities. We also rank
third on GI Jobs list of most military-friendly employers. And finally turning to one of our proudest achievements, CSX was selected among 4,000 nominees awarded the 2011 Secretary of Defense Employer Support Freedom Award by the U.S. Department of Defense for providing exceptional support for employees serving in the Guard and Reserves. CSX is the only company to win that award twice. Railroads provide extraordinary opportunities for ex-military and those in the military reserves. One in five employees in CSX has a military background and I'd like to share the story of two of these employees. Scott Mahanes has been a United States Marine for 23 years and a CSX employee for 17. A list of his experiences over the past two decades reads like a crash course in world history as he participated in conflicts around the globe. At the same time, he's advanced through progressively more responsible positions at CSX starting with a job as a roadway mechanic and advancing to director of work equipment standards. John Gipe, locomotive
engineer, joined CSX in 1994. Until 2001, his status as a member of the Army National Guard caused few disruptions to his work life. On September 11th everything changed and John embarked on nine years of continuous active duty where he still serves today. [Well the long truth that only his job was waiting for him] (ph), CSX has provided benefits above and beyond what's legally required including make-whole pay this entire time, so more than 10 years. Why? To quote John, it's because CSX knows that supporting the military and the citizen soldier means the continuing ability to pursue the American dream. Railroads also provide rewarding and non-traditional roles for women. Pictured here is Becky Hamilton. Becky realized long ago that waiting for a train to pass a crossing might not inspire most women to consider a career move. Nevertheless, with a college degree in hand, Becky embarked on a career that she knew would be non-traditional. Fifteen years after her first day on the job as freight conductor, Becky is pleased to
report that CSX is indeed anything but
traditional. In her words, Becky joined CSX
knowing they offered great pay, benefits and
retirement, but quickly learned that it's also a
great company that offers vast opportunities for
women. Becky today is a Safety Manager. There's
been substantial demand for railroad jobs for a
long time and you've heard a lot about that demand
already today. I'll give you a little bit more and
given the recent, both the high compensation and
the recent problems in the job market we've seen
our demand even increase more. While we're
attempting to actively hiring in 2011, U.S. based
employers have announced nearly a half billion
layoffs. This last month alone, 132,000 job cuts
were announced. Although the global and U.S
economies continue to struggle, the railroads keep
on hiring. At CSX we plan to hire 4,000 people
into union jobs this year, over 1,000 of them new
positions, primarily conductors and engineering
jobs. CSX receives tremendous volumes of
applications for each job. I won't repeat the
numbers you just heard, but I'll give you a couple of specific examples. Last year CSX received 1,158 applications for a single road electrician job that we filled. We received 21,298 applications for 26 utility worker jobs. We received 3,450 applications for 4 purchasing and material clerk positions. Demand for jobs remain strong this year. So far we've received about a half a million applications and expect to receive 525,000 by the end of the year, more than 350,000 have been for union positions. Given the ever increasing applicant flow it's not surprising that the quality of our applicants continue to improve and I'll share a few examples. One is from CSX, another I'm borrowing, because it such a good story, from the Norfolk Southern. Our employee Larry Goodnight joined as an entry-level signal worker. He's a former Air Force Nuclear Commander, holds a Masters degree in information and systems management. He recently decided to pursue a job with CSX to build on his background in electronics. He's particularly excited about
working with cutting edge PTC technology. Norfolk Southern's Keith, I may pronounce this wrong, Fitzhugh was given an opportunity to play for the New York Jets, you may have read about him in the newspaper, but he decided to keep his job as a conductor at Norfolk Southern. He cited that he supports his parents and appreciates having a high quality and stable job. Perhaps the best evidence that railroads provide attractive job opportunities is that we want to encourage our children to join the railroad. And pictured here are some people that many of the audience know. Ken Mason Jr., in the vest, safety vest, is a highly talented Florida State University graduate and a third generation CSX employee who joined the company in early 2011 as a PTC helper, one of our entry-level signal jobs. His grandfather and great-uncle each had 40-year careers that started in the mid-1930s. His father, Ken Mason Sr., has a distinguished 35-year career with CSX that began in 1976 as a track laborer. Ken is retiring this month from his current leadership position as
Assistant Vice President of labor relations.

Success in retaining employees is critical to the success of our business. Retention ensures an experienced workforce and reduces costs associated with recruiting and training. Railroad employees enjoy wages and benefits well above those in other industries who do similar kinds of work. Once hired by a railroad, employees rarely leave.

Bargaining unit jobs at CSX are career jobs. Many employees spend their entire work lives at CSX. The average employee tenure further highlights the quality of railroad jobs. The average tenure of a CSX employee today is 14 years, roughly double that of other transportation workers. Over the last three years the average union worker at CSX has 36 years of service at the time of his retirement, his or her retirement. The quality of railroad jobs is further supported by the high percentage of employees that return from furloughs as you just heard. By way of example, our conductors who were recently out more than a year, had an 81 percent return rate. In conclusion, CSX
currently offers outstanding opportunities and plans to continue our workforce and invest in the business to meet future customer demands. This year, despite recessionary pressures, we're investing a record 2.2 billion in our system, adding track and signal crews to enhance our infrastructure. CSX currently receives tremendous interested available employment opportunities. The quality of our applicants is the best we have ever seen in our history. CSX does not need to increase its compensation package to recruit or attract qualified applicants. CSX provides career and employment opportunities for its employees, including employees represented by coalition unions. Job tenure statistics demonstrate that our employees value their jobs. Our turnover is at historically low rates. Our employees return to work even after long furloughs. CSX does not need to increase compensation in order to retain its workers. I hope that I've helped you to understand our commitment to our employees and the pride we take in the high-quality jobs we provide. But you
1 don't have to take my word for it. Our employees
2 routinely let us know how they feel about their
3 jobs and the company. I'd like to close with a
4 quote from a sick - 13-year signal maintainer from
5 CSX that he posted on the Internet to job seekers
6 everywhere hoping for an opportunity to work for
7 CSX. "Be persistent. Don't get discouraged. CSX
8 will be last job you have. It will be worth the
9 wait." Thank you.
10 CHAIRMAN JAFFE: I think we're all in good shape.
11 Thank you very much.
12 DAVID MUNRO: Mr. Chairman if I could just sum up
13 what you've heard today. The witnesses from the
14 railroads have had a couple of central messages
15 about their desire to continue trends of
16 investment in this industry and to hire more
17 employees. And those goals are inconsistent with
18 the coalition's demands for additional
19 compensation beyond the package that the railroads
20 have offered based on the UTU agreement. And
21 moreover, given the lack of connection between
22 productivity and compensation, labor contribution
to productivity, changes, there is no value
offered by the coalitions in exchange for their
compensation demands. Tomorrow we will hear first
from [Matt Rose] (ph), who will highlight further
the capital needs of the industry and its plans
for the future and its hopes for hiring, as well
as from [Mark Manion] (ph), who will address an
additional perspective that has been highlighted
by Dr. Topel and Ms. Mancini on the quality of
current railroad jobs. We'll then move to
healthcare and the additional sub-components of
our case, wages and work rules. Unless there are
any questions from the Board, that concludes our
presentation for today.

CHAIRMAN JAFFE: I think we're in good shape for
today. Thank you very much. We will stand in
adjournment] (ph) until 9 AM tomorrow. Off the
record.
Presidential Emergency Board

No. 243

Between

National Railway Labor Conference

Representing:

Union Pacific Railroad Company
BNSF Railway Company
CSX Transportation, Inc.
Norfolk Southern Railway Company
The Kansas City Southern Railway Company
Alton & Southern Railway Company
The Belt Railway Company of Chicago
Brownsville and Matamoros Bridge Company
Central California Traction Company
Consolidated Rail Corporation
Gary Railway Company
Indiana Harbor Belt Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
Los Angeles Junction Railway Company
Manufacturers Railway Company
New Orleans Public Belt Railroad
Norfolk & Portsmouth Belt Line Railroad Corporation
Northeast Illinois Regional Commuter Railroad Corporation
Oakland Terminal Railway
Port Terminal Railroad Association
Portland Terminal Railroad Association
Soo Line Railroad Company (Canadian Pacific)
South Carolina Public Railways
Terminal Railroad Association St. Louis
Texas City Terminal Railway Company
Union Pacific Fruit Express
Western Fruit Express Company
Wichita Terminal Association
Winston-Salem Southbound Railway Company

And their employees represented by:
Rail Labor Bargaining Coalition consisting of:

Brotherhood of Railroad Signalman
Brotherhood of Locomotive Engineers and Trainmen
Brotherhood of Maintenance of Way Employees
International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers
Sheet Metal Workers' International Association
National Conference of Firemen & Oilers

And a coalition of Rail Unions, consisting of:

Transportation-Communications International Union
American Train Dispatchers Association
International Association of Machinists and Aerospace Workers
International Brotherhood of Electrical Workers
Transport Workers Union of America

Panel Members:
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Roberta Golick, Member
Joshua M. Javits, Member
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CHAIRMAN JAFFE: We're back on the record for continued hearings in PEB 243. At your convenience, Mr. Munro. MR. MUNRO.: Mr.

Chairman, members of the Board, we're ready to

continue the carriers' case-in-chief. For our

first witness this morning, I'd like to introduce

Matt Rose, who is the Chairman and CEO of BNSF

Railway. Mr. Rose also serves on the President's

Council on Jobs and Competitiveness, as well as

the National Infrastructure Advisory Council.

CHAIRMAN JAFFE: Thank you. If I could ask the

court reporter to swear in Mr. Rose, please.

COURT REPORTER: Do you swear the testimony you're

about to give in this case will be the truth, the

whole truth, and nothing but the truth under
penalty of law?

MATT ROSE: I do.

COURT REPORTER: Thank you.

MATT ROSE: Good morning, my name is Matt Rose, and I'm Chairman and Chief Executive Officer of BNSF Railway Company and Chairman of the Association of American Railroads. I've been in my current job for 11 years. I want to start by thanking you for your service on this PEB. It's a fairly unusual event for the rail industry to have a PEB, and I hope I can shed some light on the history of why this PEB process is an exception to the usual practice of negotiations. During my time today I want to discuss three issues. First, the ever-increasing importance of the rail industry to our country to facilitate job growth, reduce our dependency on foreign oil, and improve our environment. Second, why the concept of consensual bargaining and using patterns with large workforces is important to the future to be able to achieve consensual agreements. And third, that the rail industry is moving in the direction...
consistent with public policy on healthcare management and why it's necessary to ensure that unchecked costs don't potentially crowd out other investments. My perspective comes from being a CEO for 11 years and also from 30 years in the field of transportation. It also comes from my work on the National Surface Transportation Policy and Revenue Commission and being a current member of President Obama's Jobs Council. Here's a quick overview of my history in transportation. I started my career as a brakeman in train service with the Missouri Pacific Railroad. After college in 1981, I became a train master. At that time, several railroads where coming out of bankruptcy and the rail transportation industry didn't look particularly promising as a career, so I left and went to the trucking industry for a number of years before returning to the rail industry. For most of my career, railroads have not enjoyed the success that we have worked to achieve today. And if you take nothing else away from our presentation, it's the success of the
transportation companies, ebb and flow, and there is no guarantee of success or prosperity. Over these three decades I've been in transportation industry, with all the changes I've seen, the one constant has been that scheduled rail employees have seen increasing wages despite the ups and downs of the rail industry for the U.S. economy. We all certainly heard this week in the national news, the Wall Street Journal, the Washington Post, The New York Times, about real family incomes this past decade, from 2000 to 2010, have fallen about seven percent; really devastating to the overall consumer. Specifically at BNSF though, and I think this would be a good corollary for the rest of the industry, over that same time, 2000 to 2010, our wages - just wages, not benefit - have increased an average of three - a little over three percent, or at a total of about 40 percent. Scheduled wages in 19 - in 2000, not including benefits, were $66,000 on our railroad. They now average 99,500. I'm sure each of you have heard about the resurgence of the rail industry and
probably wonder why we haven't been able to accomplish labor agreements with the unions represented at this PEB. The past five years, arguably, could be considered some of the strongest years in the past three decades. However, even during this period, industry returns have not exceeded its cost of capital as measured by the Surface Transportation Board. This is due in part to going through the great - greatest recession since the Great Depression, where the industry lost over 20 percent of its unit growth. It's also due to the need to invest an ever-growing amount of capital to respond to the growing demand for more rail transportation. You'll hear from our unions that short-term profitability supports consummate increases in compensation. But as you know, there's no guarantee the profits will continue at current levels, and our unions are unwilling to share the downside risks should profits lag. Given what we've been through during the past five years with the economy and the great uncertainty in our
nation, we quite simply can't be complacent about the future. Why? Let me point out just a few of the risks. The economy; enough said. Second, there's increased economic risk. Third, three years ago, Congress passed the most extensive safety bill by requiring the industry to put in a train control system. It will cost the industry around $8 billion and was a totally unfunded mandate. Four, we face competition from other modes. Railroads continue to face competition from the trucks, pipelines, the water transport. Five, we increase intense competitive pressure within the railroad industry. Six, finally while we all understand that railroading's an outdoor sport, weather has exposed the industry to enormous costs. Speaking personally, BNSF this year suffered over $375 million worth of casualty losses due to the flooding in the Missouri River. There is more and more and more, and I will stop here instead of boring you with the - these risk. Changing subjects, I'd like to talk about the current and the future role of the rail industry
and how that role has changed. When I started in the industry 30 years ago, most Americans, including policymakers, had given up the railroads for dead. About a third of the rail miles were in bankruptcy. Some of the most famous names: Penn Central, Old Milwaukee Road. Early '80s was also a time of trucking and rail deregulation. The belief was that the trucking industry would transform itself from high-paying union jobs to now what's called regular route carriers, mostly nonunion jobs, and they would move our economy. At this time, the price of gas was $1.50 a gallon and global trade was a theory. Over the next decade, global trade started to take hold. The U.S. had a competitive advantage due to slow, low supply chain costs. Thanks to the investments made in the highway, the railway system supports in the airport system. I'm going to throw a couple of slides up here, and this is the first one. When measured by economists, supply chain costs account for a little less than eight percent of our entire gross da - domestic product. By contrast, global
compa - competitors such as China, supply chain costs are much greater; almost 20 percent of GDP.
And effectively what this does, this gives the American workforce the ability to compete on a global scale. Experts agree that, over the long term, freight transportation will grow, and the best measure of this is really population growth. Moving from 200 million people in this country to 309 million people this year will burden the public and the private infrastructure in the future. Now to the change. In the past, the assumption was that the trucking industry would carry the supply chain. Remember the $1.50 a gallon of fuel? Well, it's now in the $3.50 to $4 a gallon. The highway system has seen congestion in every part of the supply chain. There's an awakening in our society about releasing carbon into the air, and much of that - much of our world, of our oil supplies, comes from very unstable parts of the world. All of this lays the foundation for the rail industry recover from its near-death experience and become the workhorse of
the 21st century supply chain, and at no cost to
the U.S. taxpayer. So how do we do that? Well, it
starts with spending around $0.40 of every dollar
in some type of infrastructure equipment. I call
our railroad a capital-thrashing machine. We wear
it out each year by operating almost ten million
units of our economy over it. We need to replace
millions of ties, rail miles, add new locomotives,
freight cars, and new track to meet the needs of
the ever-changing U.S. economy. Unlike highways
and waterways, rail infrastructure is
overwhelmingly privately owned. The railroads
themselves are responsible for the costs of
construction and maintenance. In making this
capital investment, BNSF and all of the rail
carriers have not depended on public partners or
incentives. The freight indus - freight rail
industry was pay almost 99 percent of the capital
required. This year, the nation's railroads plan
to spend a record $12 billion on capital
expenditures as this chart shows, and that's after
setting a record of 10.7 billion of capital
spending in 2010. In total, BNSF invested $39 billion in its overall network from 1996 through the year 2010. $39 billion. To put that in perspective, when I became CEO 11 years ago, the entire market cap of the entire railroad industry was not $39 billion. 2007 we analyzed how much capital would be required to maintain our level of service as freight demand grows as projected. We found that the class 1 railroads will need to invest $135 billion through the year 2035. In addition, we've been asked by policymakers concerned about highway congestion, inadequate funding, high gas prices, and carbon concerns the following question: How much capital investment would it take for the rail industry to accomplish a ten percent modal shift; modal shift meaning to be able to move ten percent of the nation's trucks off the highway system to the railroad system. Well, we've hired a consultant and that has now a significant study underway. Preliminary findings suggested very high levels of rail service could accomplish such a modal shift; however, it will
take a step level change in capital infrastructure, equipment, technology, and many, many more employees, and this capital number will go into the billions. So the question is will we be able to invest this needed capital. Assuming the rail industry can continue to improve productivity at present rates, and absent harmful changes to the economic regulatory model, the railroad should be able to meet the investment challenge required to support this necessary growth. In recent years, there's been a very strong, positive correlation between rail earnings and capital investment. When railroad earnings are healthy, we invest more. These investments equate to more railroad jobs. We know that excess spending on variable costs will impact the ability to maintain sufficient investment in the industry. You will hear a lot about the health of the railroad industry and I'd like to put that in context. Rail industry profitability has historically lagged most other industries. Even in recent years when rail critics have been decrying
record railroad profits, rail earnings have generally been no better than average among all industries. Return on equity, ROE, is a common profitability measure. Based on data from Value Line, which is an investment research company, the ROE for the rail industry has risen in recent years from 8.6 percent in 2003 to 15.6 percent in 2008. In 2008, the industry ROE was slightly better than the median ROE across industries; probably the first time in decades this has happens. Preliminary data indicate that rail industry ROE in 2010 might also have slightly exceeded the median average across the industries. Return on total capital is another common way to measure profitability. By this measure, railroads in recent years have been no better than the average among all industries. As you know, there's two industries under the National Mediation Board. I sit on both the railroad and an airline board, and I'm always struck about how similar these two industries are, but also how different they are. Both are network businesses. Both require heavy
capital investment. We move freight; they move passengers. But when compared in the early '80s, when both industries were deregulated, our positions have flipped. The airline business was mired in bankruptcies much like the railroads were in the mid-'70s. The airlines have had to go back on their commitment to employees, suppliers, and customers. One reason is that the airline industry has been characterized by extreme swings in profitability over the years. The decline after 9/11 is one recent example. This has several unfortunate consequences for labor relations. Airline employees captured above-market share profits when the industry is doing well. Downturns led to cost cutting, wage cuts, pension cuts, and so on. This is not a model we wish to follow. Railroads have followed a fair but careful management of variable cost. Thus, despite the recession, railroads have been hiring, increasing compensation, protecting retirement pensions, and continuing to invest all along. This measured approach is especially important given the
1 unusually high capital-intensive nature of our industry. We have great respect for our employees.
2 The unions are our partners in this. We've been blessed with long-term relationships characterized by stability, labor, peace, and mutual respect.
3 Railroads are willing to share successes with unions. Many of the class 1's have negotiated bonus programs with our various unions, and under this agreement, at least on BNSF, our employees that chose this agreement have done extremely well. In other words, the railroad model has worked. Looking over any multiple of years - 5, 10, 15, 20, 30 years - wages have continued to go up and healthcare costs have increased as a multiple of that. Healthcare costs are certainly the topic that's being discussed in every company, within every city, every state government, and every household. You will hear testimony about the increasing costs forecasted over the next decade in our industry. Healthcare costs are rising dramatically. If nothing changes by 2015, the railroads will triple their healthcare costs per
1 employee just over the past 15 years. Triple.
2 Unionized rail employees have one of the richest
3 healthcare plans in the nations; most don't pay
4 deductibles or coinsurance. Even with the change
5 that we have made with the UTU, it can only be
6 classified as modest when compared to the generous
7 federal government plan. Without changes, our
8 scheduled healthcare programs are inconsistent
9 with public policy, out of step with reality, and
10 don't represent the partnership and the shared
11 responsibilities that we expect from our entire
12 workforce. To preserve stability for the future,
13 it's critical that we follow the pattern. Failure
14 to do - to do so will punish unions that work
15 within the system. It would reward unions for not
16 reaching agreements at the bargaining table. In
17 other words, plan to see many more and frequent
18 PEBs in the future. Settlement of this dispute is
19 critical. If the dispute is not resolved it will
20 lead to a shutdown of the National Rail System.
21 That will cost the economy estimated at $2 billion
22 a day, which is equivalent to a five percent
1 reduction in GDP, which is worse than a recession.
2 A work stoppage would not be good in a good
3 economy much less in a fragile one like we have
4 today. Given the capital needs of the nation's
5 rail network which will create high wage jobs both
6 on and off the railroad, we cannot afford a
7 package that exceeds what we bargained for with
8 the other unions in arm's length collective
9 bargaining. Any dollar that we spend above the UTU
10 agreement is a dollar that is not available to
11 improve our nation's surface transportation
12 infrastructure, which is truly vital to Americans'
13 economic competitiveness and growing future rail
14 employment. Every governor, mayor, senator, member
15 of Congress, DOT secretary, and yes, even the
16 President, all ask me the same thing: How can we
17 get more rail capacity in this country to take
18 tons off the highway, reduce our dependency on
19 foreign oil, improve our environment? The answer
20 is that with responsible and stable labor
21 negotiation processes, sound public policy, and a
22 dedicated group of men and women that number
around 200,000, we can do just that. I want to
thank you for this time today, and if there's any
questions, I would certainly be more than happy to
try and answer them.

CHAIRMAN JAFFE: Thank you, Mr. Rose. Give us just
a moment to see if we've got anything. I think
we're in great shape. Thank you very much. MR.
MUNRO.: Mr. Chairman, for our next witness, the
carriers would like to call Mark Manion from
Norfolk Southern.

CHAIRMAN JAFFE: Good morning. If I could ask the
court reporter to please swear in Mr. Manion.

COURT REPORTER: Do you swear the testimony you're
about to give in this case will be the truth, the
whole truth, and nothing but the truth under
penalty of law?

MR. MANION: I do.

COURT REPORTER: Thank you.

MR. MANION: My name is Mark Manion. I'm Chief
Operating Officer for Norfolk Southern
Corporation. I have held that job since 2009, and
I've been in operations with Norfolk Southern for
36 years. Railroads have made outstanding improvement in safety of operations over the years, and consequently there has been a corresponding improvement in quality of life for our people as well. If you'll look at this graph, you can see that there has been a real success story throughout the industry. And as I look at that, I think back on some of the jobs I had when the injury rates were at - at a much higher level than they are now. I can recall a terminal in particular back in the late '80s where we had an injury rate that exceeded 20; that would be a ratio of 20 per 200,000 man hours, or, on this graph, 20 per 100 full-time employees. That same terminal, these days, in most years, in today's culture, will have no injuries, zero injuries, so great thing to see. And much of this improvement is due to the large capital investments that have been made in infrastructure, equipment, and technology over the years. Now, 2010 was the safest year ever for America's railroads, and that broke the previous record which was set in 2009.
On that graph, the improvement that has been made over those two decades has been 82 percent. Now, according to the AAR statistics, railroads today have got lower employee injury rates than most other industries. If you look at that, railroads have a better injury rate than other modes of transportation. And areas that would be similar to railroading would be heavy manufacturing, construction, and you see that we better the injury rates in those industries as well. As we like to say, it is safer to work for a railroad than it is to work in the grocery industry. Now, if we look at this graph, this is the train accident rate over the last two decades. The subject I was speaking to previously is entirely employee injury. This has to do with train accidents; that is, equipment that would derail on the - on the track and so forth. That rate has decreased over two decades by 77 percent. The industry has invested heavily in CapEx during the last decade. Now, this slide is an indication of Norfolk Southern's investment; the other railroads
would track that same type trend. In the last five years, NS has spent $6.85 billion on capital investment, including the infrastructure, equipment, and technology improvements. These expenditures, among a lot of other things, would include installation of 2,043 miles of ties, or excuse me, of rail. It includes 26,000 miles of smoothing or surfacing that goes on in order to take the irregularities out of the track. It includes the installation of 13.4 million cross ties over that period. During the last ten years, the U.S. class 1 railroads have installed 5.6 million tons of rail, new rail, and they are continuing rail installations at the rate of about two-and-a-half billion dollars annually. Now, sometimes we have expenditures that are due to regulatory requirement; an example of that which Matt mentioned a minute ago is PTC. PTC is designed to automatically stop or slow trains before certain accidents that would be caused by human error. The reality is those type accidents represent about three percent of all train
accidents, but nevertheless, it's a mandate and we are intent on carrying that out. It's going to cost the railroads about $13 billion to install and maintain PTC over the next 20 years. These expenses will divert capital from other resources, but nevertheless, NS and the entire rail industry is going to continue to devote substantial capital dollars on safety, infrastructure, and research and development. This shows capital expenditure as a percentage of revenues. And as you can see on that graph, rails spend in the neighborhood of 17 percent of their revenue on CapEx. You can also see that that is discernibly more than the other areas listed on this same graph; utilities come the closest at 12 percent. Most other industries, including heavy manufacturing, heavy industrial businesses, come in somewhere between three and five percent. The record investments that railroads have made in their infrastructure, equipment, and technology in recent years have made railroads much safer. And in fact, if you look at this graph, there is a clear relationship
between rail investment and rail safety. Investments have increased 42 percent, from $15 billion in 2001 to $21 billion in 2010, while the train accident rate dropped correspondingly 36 percent during that time period. Now, I'd like to show you just a few examples, and there's so many out here it's hard to choose which ones to show. But these will be examples of how we are dramatically improving safety and efficient efficiency through the use of new technology. Also, through operational innovation, all that made possible through capital investment. The first I'm going to show you is a new system for welding joints out in the field. Now, we've been welding rail joints for years, but we are now welding them with a technology called flash butt welding that is producing a superior weld and makes that weld in far less time. And the fact is the statistics bear out that once these welds are made, they are far less likely to break at a later time. Previous welding technology would result in - in these type
joints being the weak link in the chain. And from a safety standpoint, this technology is far superior and we don't wind up with the broken rails that we used to. Turning to our latest designs, our latest generation of tampers. Yesterday, Lance Fritz showed some pictures of tampers as well. Norfolk Southern, in the last several years, has spent $21 million on new tamper technology. And this technology gives us better productivity, better efficient - efficiency, and again provides for a safer railroad. Wayside detectors identify defects on passing equipment. As trains run over the railroad, we have a wide variety of detectors that are stationed along the right-of-way and they look for a variety of different things. They look for roller bearings on the ends of the wheels that are nearing failure. They look for air hoses that may be too low. They look for high and wide conditions on cars that may not be safe for passage. They look for the trucks under cars that may not be steering as well. A wide variety of things, and these are
all issues where the detectors find problems before they turn into an accident; and as you can imagine, that has greatly improved safety of operation out on our main lines. We'll take a look at remote control technology which allows crews to operate the locomotives from a remote control box such as you see in the picture. This technology reduces the amount of communication that goes on between crew members and as a result of that there is simply less chance for error when these operations are taking place. Statistically we know that there is a 20 percent lower injury rate using these operations than using conventional operations. So these examples scratch the surface of the vast technology advances that are being made out on the railroad and that translates into less strenuous strenuous jobs and certainly, safer jobs. Now at this time I would like to show you a short video. It is just several minutes long and what it will depict is the evolution of maintenance of way jobs beginning at the time when much of the work that was done was done in a
manual way and it advances to today where so much
of what we do is done in an automated way: (Plays
video) You know, that video bringsexcuse me. I
think that is the last clip. On a more personal
note, the first job I ever had in the railroad
industry was in 1971. I worked on a section gang.
It was in St. Louis, Missouri, working for the
Missouri Pacific Railroad and everything was done
manually and just like in those video clips, we
carried the rail by hand with rail tongs, we
carried the timbers or the ties by hand, we spiked
the rail by hand, we tamped the ties with ballast
forks and just like you saw there, we even lined
the rail with rail bars all doing it in unison.
And I can tell you it was hugely strenuous work.
And it is gratifying to have seen over the years
how we have transitioned so dramatically due to
the technology and due to the investment to get
where we are today. And the other side of it is
that when we get out on the railroad today, within
Norfolk Southern, our engineering department leads
the way. They carry the flag, really, for the rest
of the operating groups as far as safety of operations, as far as the culture that they have on the railroad. When you walk out among any of our people in the engineering group, whether it is these production gangs or the section gangs, or the communications and signal people, or the bridge and building people, when you walk into their environment they pull you in. And they talk about what the hazards are in the area. They talk about what they are doing. They make you part of their group. They have a culture that they are so proud of. And as a result this has taken years to refine and to develop but it is gratifying to see that sort of thing. Now they, like all of our operating groups, they start their day with safety instruction. Between the safety instruction and discussion they have at the beginning of their day and the warm-up exercises they have, they will take about 20 minutes doing all that. That translates annually into something like $50 million a year and it is a big price tag but it is worth it. That is just the
beginning when they do that, because throughout
the day as they go task to task, they are thinking
about what they are doing and they are going
through their job briefings and their safety
briefings. Similarly, we have quarterly safety
instruction in our engineering and mechanical
groups. We have annual instruction in our within
our transportation groups. In addition to that, we
have what I would call a pyramid of safety
committees. It starts at the ground level and we
have local safety committees on line of road. We
have them in terminals, we have them in our
mechanical shops, we have them in our engineering
groups, and all of these committees all of these
committees these days are chaired by union people.
It wasn’t always that way. This used to be a
function that was handled by supervision.
Supervision is still very supportive and they are
right there with him, but with the participation
of our union or what we would call our agreement
people, you can imagine it is much more effective
these days than it was in the past. Now I say it
was a pyramid because we have safety groups through the safety committees through our organization and those go up to what is a policy-making or steering safety committee group that I chair. It is made up of senior individuals from the company in the necessary participating departments and myself and my predecessors have been doing this for the last 20 years. We go out to a different portion of the railroad once a month and we spend a day and a half. And it is a period of time where we talk with employees. We talk with our people about the business. We listen to them to hear their concerns. We have a variety of safety audits that are made during this period of time. We have a meeting that is separate and apart with all the local chairmen in the area. It is a busy day and a half and it is certainly time well spent. There is a lot more to safety than what I have described and I have kind of hit the high spots. For the last 22 years, NS has been pleased to earn the Harriman Gold Safety Medal. We all like to get awards. I am not nearly so
enamored with the award than I am what that award represents and the award, as you would imagine, is for the lowest rate of injury among the railroads. But what is so important is what this award represents and that is it represents the amount of focus that our people put on the safety process and for ones that have been in the industry for some period of time, as I have, we have seen the tragedies that can occur and it is all about keeping those serious incidents and accidents from happening. The going back just a moment to our engineering group, one thing that a group that personifies what this is all about has been our production gangs. The people that are the people that are doing the work that would appear to have some of the highest degree of exposure out there, the tie gangs and the rail gangs and the surfacing gangs. All of the production gangs on Norfolk Southern in 2010 went without a single reportable injury. And I find that I find that gratifying. This year, I believe they have had one. That sort of accomplishment speaks to the investment we have
made in safety equipment. It speaks to the process and it speaks to the culture that I referred to earlier, but mostly it speaks to the pride and the professionalism of our employees. You simply don't accomplish that type record without a motivated workforce that has a positive attitude, that has a sense of family, and who feel rewarded for what they accomplish. Thank you for your time.

CHAIRMAN JAFFE; Thank you Mr. Manion. Is there anything you want to pose? Do you want to pose anything? I think we are in good shape. Thank you sir.

MR. MUNRO: Mr. Chairman, that concludes the portion of the Carriers' case that relates to total compensation. The various sources of proof that show that the Carriers offer viewed as an increase in compensation overall is fair and reasonable. We would now like the transition to the components of total compensation, including healthcare, wages and work rules beginning with the Carriers' core presentation on the critical issue of healthcare. We have to do a little bit of reshuffling here so we could either take a two or
three minute break if the Board would like.

CHAIRMAN JAFFE: That would be fine. Why don't we go off the record.

MR. MUNRO: Thank you Mr. Chairman. We are now moving into the healthcare presentation. I would like to introduce my former partner, and still good friend, Ben Boley, who will lead the Carriers' presentation.

CHAIRMAN JAFFE: I would like to ask the reporter to please swear in Mr. Boley.

REPORTER: Do you swear the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth under penalty of law?

MR. BOLEY: I do. That may be the first time I said, "I do" since I got married. (Laughter)

MR. BOLEY: My name is Ben Boley. Only my mother called me Benjamin. I am privileged and pleased to be able this morning to present to you the Carriers' case on the healthcare plan design changes that they have proposed. My pleasure will be greatly enhanced if my voice and your patience
endure to the very end. I am an attorney, now a
sole practitioner as a byproduct of growing ever
longer in the tooth. I have, for 35-plus years,
been outside counsel to the NRLC in matters
concerning the freight railroads nationally
bargained health and welfare plans. I have
participated throughout that too long a span of
time in the drafting and development and in the
oversight of the operations of those plans
including, of course, the plan before you, The
Railroad Employees National Health and Welfare
Plan. I am quite familiar with it. Painfully
familiar with it. Sitting to my right is Dave
Scofield. He is a consultant at the benefits
consulting firm of Towers Watson. Dave has been
advising the NRLC with respect to the Carriers'
collectively-bargained health and welfare plans
since the mid '90s. At the outset, his hair was
pitch black and he labored as a luminary for the
benefits firm of Towers Perrin. Since then you can
see what has happened to Dave, and Towers Perrin
married Wyatt Watson in a colossal combination of
consultants. Dave has compiled the various comparisons that we will present to you shortly. He is prepared to respond to any questions you may have about them. And I have also asked Dave to interrupt my part of this exercise if he thinks anything I have said is inaccurate or incomplete. He is charged with throwing me a life preserver if need be. Truth be told, Dave is the (inaudible)trum of what you will see and hear. A brief set of introductory notes we have not planned to address in this presentation, except perhaps here and there and in passing, contentions made in Labor's pre-hearing brief that appear, at least to us, to be misguided. We want to review those contentions much more closely before countering them in any detail later in these proceedings. I also want to apologize if I repeat things that have been said before in this proceeding by Ken Grady or Matt Rose and others regarding the healthcare plan design changes that the Carriers have proposed. You have probably been told this before, but the plan has four separate benefit
packages. Aha. there they are. I will use acronyms
as we go along, probably too often. The part of
the plan that is most significant in these
deliberations is the Managed Medical Care Program.
The second most important plan is the Managed
Pharmacy Services Benefit and the other two are
not significant with respect to the disagreements
between labor and management on healthcare plan
design. The MMCP, the most important of the
benefit packages before you, is the kind of
package referred to as a PPO or Preferred Provider
Organization program. It permits those enrolled in
it to choose each time they wish to obtain medical
services, either an in-network provider or an out-
of-network provider. When I use the term provider,
I mean hospital, physician, registered nurse,
anybody whose services are covered by the plan.
Benefits for services rendered by an in-network
provider under the MMCP are substantially richer
than those provided by an out-of-network provider.
The slide I have a handler down at the end of the
table that shows me the slides and I pull my
earlobe to signal him to move on to the slide
which apparently isn't here.

MR. SCOFIELD: Back one. Here we go.

MR. BOLEY: The MMCP changes proposed by the
Carriers relate solely to the in-network portion
of the MMCP. The in-network portion of the MMCP
accounts for approximately 80 percent of the
Plan's medical benefits. The Carriers have also
proposed changes to the MPSB, the Managed Pharmacy
Services Benefit. They have proposed no changes at
all to the out-of-network portion of the MMCP nor
to the CHCB, nor to the Mental Health Substance
Abuse Program. I hate these slides. I just hate
them. The changes proposed by the Carriers now
appear before you. I am sure you are painfully
familiar with them by now. Currently the MMCP in-
network portion of the program has no deductibles,
no co-insurance, a hundred percent coverage from
the very outset. There are, however, as you can
see there, fixed dollar co-payments with respects
to visits to the primary care physician and other
non-specialists like a registered nurse, for
example, a $35 co-payment when someone goes to a specialist, and then there are co-payments for visits to emergency room or emergency department that terminology is beginning to change these days and I am still hung up on the old terminology. Urgent care centers and convenient care clinics. An urgent care center is essentially a place you can go for something; it is not terribly significant, but it is quick and it is open a lot more often than your doctor's office. At a convenient care clinic you can get even less in the way of heavy medical services. A convenient care clinic is set up usually in a high traffic area near a pharmacy that you can go in and maybe get a flu shot, have your cold examined, something like that. And as you will see when you look to the right hand side, the proposed changes do decrease the co-payments for urgent care centers and convenient care clinics; they do increase the co-payment for emergency room visits which I will get to later. They don't touch the co-payments for primary care visits or visits to a specialist, but...
they do and this is the chief change that we are interested in and that I will explore with you. They do create a new deductible - $200 per individual, $400 per family, no matter how big the family is. If you have eight children, if you are fortunate enough to have eight children, just a $400 deductible. The other part of the change, the change to the MMCP in-network program that we are proposing, is a five percent co-insurance payment.

Co-insurance, by the way, is somewhat of a misnomer. There are fixed-dollar co-paymentsthat is the fixed-dollar amount that the employee would pay when he goes to visit the doctor, for example, and then there is a co-insurance that is expressed in a percentage. After the deductible is paid for services that are not do not attract a fixed-dollar co-payment, the co-insurance is the employee's share of the hundred percent benefit the hundred percent cost. The plan here under this proposal would continue to pay the lion's share of that cost 95 percent, whereas the employee would be asked to pay five percent. And I will get to that
in more detail as we go along. The thing I do want
to emphasize here is that the current MMCP in-
network benefit structure, no deductible, no co-
insurance, is a rarity. You may find one or two
plans out there that have no deductible and no co-
insurance but it is a rarity and it is extremely
generous. The employee pays nothing at point of
service. The only thing that the employee pays,
once more, are the fixed-dollar co-payments that
you see on the board. Now these changes that the
Carriers are proposing, they are important. And
they are important in order to achieve the goals
that the Carriers seek to achieve. That is, bring
the plan design closer to the healthcare plan
designs prevalent throughout our country today, to
curb the excessive overuse of healthcare services.
And overuse that we are reminded of time and time
again in the press in the recent months. And
finally to ameliorate the always, always, always
escalating costs of plan benefits. Sometimes the
costs don'twell, I shouldn't say always, always,
always. I take it back. Most of the timeevery
year, the cost of plan benefits go up. And now I
have to turn to the slides. The next slide shows
the Managed Pharmacy Services Benefit that we now
have the benefits that we now have and you will see
they are all co-payments except for the management
rules that appear at the bottom of which this plan
has barely any. The generic co-payment which, in
our view, is the most important one to focus upon,
will be reduced from $10 to $5. The co-payments
for brand name drugs will go up from $20 to $25
and from $30 to $45 at retail. The mail order
copayments you see again, the generic will go down
by 75 percent from $20 to $5. The brand name drugs
will go up from $30 to $50 for formulary brand
name drugs and from $60 to $90 for non-formulary
brand name drugs. Now this slide shows, in
truncated fashion, the arguments that you will see
or have seen in our brief pre-hearing brief which is
Carriers' submission number five. I will put them
in a different way because I wrote them down here
in a different way than appears on the screen.
First, it is critical to have benefit uniformity
among the Carriers' agreement employees. I am not making that up out of whole cloth. That has been articulated by prior PEBs and by arbitrators outside the railroad industry. Disparate benefits are troublesome. Benefit uniformity is critical. Secondly, this plan design is an outlier. It must be brought closer to the design of a large majority of plans today and thus decrease costly excessive overuse of medical services. Third, the plan must escape an outdated design no longer supported by the reasons for which it was adopted 20 years ago. Fourth, the pharmacy benefits program must more strongly incent employees to use generic drugs and provide for them the beneficial monitoring effect of commonly used clinical management rules. Lastly, the changes proposed by the Carriers reflect and advance the cost containment policy of the Obama Administration and the Affordable Care Act of 2010. As you know, the UTU has accepted the changes that the Carriers here propose. The Board, you, have heard the Carriers' position on the existence of a pattern
that should be followed with regard to all of the
issues in dispute. I want to focus specifically on
the significance of the UTU agreement on
healthcare plan design. Prior PEBs, as well as
arbitrators out of the industry, as I have just
said and now unfortunately repeat myself, they
have repeatedly emphasized that employees working
together while represented by different unions
should, as a matter of sound and healthy labor
relations policy, receive uniform healthcare
benefits. Disparate benefits, PEBs and outside
arbitrators have said, on the other hand, are a
bad thing. This uniformity of benefits principle
has been articulated by the past PEBs that I have
mentioned in the words shown on the slides. Now I
could read you the words shown on the slides but I
object to that. You can see them, I can see them.
What they stand for is just what I have said.
Disparate benefits are destabilizing. Uniform
benefits are important to have and the PEBs have
used the words that you see on the screen to
express that view. You give the Board enough time,
please to read it. Thank you. One particular,
particularly disturbing consequence of a failure
to follow the Uniformity of Benefits principle in
the dispute before you is that so-called ebb-and-
flow employees who move back and forth each year,
during the year, between UTU and BLET jobs. Now
they'll end up, if the carriers' proposals are not
adopted, working together in UTU jobs while having
different healthcare benefits. We'll explain this
situation in detail at pages 11 and 12 of Carrier
Submission Number 5 and I won't go further into it
here. But the situation that would result, there
are many employees that are ebb-and-flow
employees, but the situation that would result is
particularly troublesome. I also want to note that
it is no lack of equivalence between the plan
design changes proposed by the carriers and those
agreed to by the UTU. They are identical. They
are. [They would work] (ph) no major upheaval of
the existing plan benefit structure. These are
added reasons for adhering to the Uniformity of
Principle, Uniformity of Benefits principle, that
I have just explained quite briefly. We submit that this Uniformity of Benefits principle applies in full strength whether or not the plan before you and the UTU plan are looked at as one plan or as two plans. For ERISA purposes, they are two plans. From a standpoint of good labor relations, benefits provided to the carriers' agreement employees should be uniform in either case. Nonetheless, we discuss it pages 7 through 10 of the Carrier Submission Number 5, the relevant history behind the plans and how the plans have come to be joined at the hip. They are, as Mr. Scardelletti, the chairman of the CRRO has said about a year or so ago, no more than technically, his words, separate with, his word, identical benefits. And he's quite right on both cases. The comparisons that are shown in slides that follow - I don't mind slides that are pictures, it's the words that trouble me - make abundantly clear that the plan's current benefit structure is overly generous. Meaning that it is far richer than a very large majority of plans today. Please keep in
mind that if not changed in this round, these extraordinarily rich benefits as shown by the comparisons that we have made will be frozen until new agreements are reached four or five years down the pipe. Over which time span plan expenses will surely increase at a rate well above inflation while employee cost-sharing in total will be frozen. During the same period of time, the trend towards more employee cost-sharing outside of the railroad industry will likely continue. There is no reason to believe that what's been going on for the last two or three years will reverse itself. More employee cost-sharing is the trend that we are now seeing. That additional employee cost sharing outside of the industry when combined with the frozen nature of what will go on within the industry will make the comparisons that we will show you substantially understated. The plan benefit structure will become more and more richer than the comparable plans outside the industry. Note that under the approach taken by the labor organizations every single penny of increased plan
costs will be paid by the carriers until the next round is concluded. As you will see we made comparisons with general survey evidence and separately with data for collectively bargained plans exclusively. Because only 7 percent of American workers are unionized, and because the pool of applicants for railroad employment is likely to include very few union members prior to being hired, the proper comparison that we think you should make is to the general survey evidence. We have nonetheless included comparisons with collectively bargained plans. Those comparisons, we urge, should be given less weight than the comparisons with the general survey evidence that deals with the lion's share of American workers. The data we have looked for, looked to for comparison purposes is broad based. The general surveys we have used include those conducted by the Bureau of Labor Statistics of the U.S. Department of Labor, The Kaiser Family Foundation HRET Annual Survey Reports, which I believe I would call the gold standard, and surveys done by
1  Towers Watson, a wonderful benefit consulting
2  firm, and Mercer, another benefit consulting firm.
3  We also used the reports of the NLRC from the
4  Segal Company and descriptions of collectively
5  bargained plans that we obtained from the Bureau
6  of National Affairs or over the Internet. And
7  perhaps most importantly, we have compared the
8  plan's current and proposed benefit structure with
9  that of the Blue Cross/Blue Shield standard option
10  under the Federal Employees Health Benefit Plan
11  that covers 4 million people, including, I expect,
12  perhaps a few in this room. We submit that the
13  comparisons made with the copious data we have
14  used, must be given far more weight in judging
15  whether the MMCP in-network benefits are overly
16  generous than the weight you should give the
17  comparisons that the labor organizations have made
18  with about a handful of apparently hand-picked
19  plans, namely the plan of federally funded AMTRAK
20  and the plans of four commuter roads all in the
21  Northeast. A road (ph) that the organizations
22  refer to, I think, as the railroad industry
outside of the carriers involved in this proceeding. But there are more than 500 railroads hauling freight in this country today. In any event, when you really want to see what your comparison should be, how do you determine who is closest to the employees represented by the coalition unions before you? The closest comparative is the collectively bargained result with the UTU. That collectively bargained result is the closest comparison you can make. Employees of the same carriers, unionized employees of the same carriers, collectively bargained employees of the same carriers working together. That is the closest comparative. I think the labor - I think, I hope, the labor organizations will agree that the plan provides excellent and generous benefits. We believe that the benefits are overly generous, that they are considerably richer than the large majority of plans today. Let's look at the comparisons that we submit prove that point. The slides that we will show you are arranged in the following order. They begin with several slides
dealing with individual and family deductibles,
following a slide with respect to co-insurance -
several slides with respect to co-insurance - then
some slides dealing with individual and family
out-of-pocket maximums, then with emergency room
co-payments, and finally with the adequacy of a
plan's benefits, which is sometimes referred to as
the plan's actuarial value. We start in dealing
with all those different groups of benefits first
with the general survey evidence, then with data
from collectively bargained plans and finally with
the FEHBP, I didn't put that acronym on the board
but you all know what that is, the Blue Cross/Blue
Shield standard option. The slides for the most
part speak for themselves. We doubt that we need
to say very much to support what they show, you
will see it. You probably have seen it. All of
these slides in this section of our presentation
appear in Carrier Submission Number 5. They're
called attachments to that submission. Our
comments as we go through these slides, because we
don't think we need to say too much to support
what they say, will be brief and hopefully either
pertinent or engaging. If I get confused on the
slides please forgive me. I'll try to recover as
quickly as I can. There's the first slide, you can
see what it says. Deals with general survey
evidence. It will come as no surprise to me
because I've seen these slides once more before.
The far left there is no bar. That's our current
situation. The blue bar, baby blue bar, is what we
propose, and the red bars, the red bars are the
comparators. This is the general survey evidence.
You can see the blue bar is far below the red
bars. Here, again, far left, zippo. Nada. Blue bar
is no more than half the size of the red ones. Now
here we move to collectively bargained plans. You
will see as we go through these slides, and I'm
sure the labor organizations will tell you,
correctly, that collectively bargained benefits
are generally slightly richer than non-
collectively bargained benefits. Here, for
example, as you will see our current benefit -
adia, zippo, zilch - is a lot lower than all of
the red bars. But the blue bar is about the same as a couple of the red bars. Here, this is the family deductible and the comparison is to the collectively bargained plans. Here the blue bar is well below the red ones. And, I want to repeat again, what the bar, or absence of the bar, farthest to the left demonstrates. Now this slide includes both individual and family deductibles on the same slide, just to make things a little easier. Again, none, none. The proposal on the deductibles are the blue bars, and the federal employees plan are the red bars. You can see for yourselves what the comparison looks like. On the next five slides deal with co-insurance, the concept of which I had passed on to you. This plan is self-funded by the way, so when you talk about co-insurance, it's kind of a misnomer. It's what the percentage that the employee would be asked to pay under our proposal after the deductible is satisfied. Right now, there is no co-insurance. This is general survey comparison. As you can see, the amount of co-insurance that we're proposing is
really small. Co-insurance on these plans that we made the comparisons with are much, much higher, as the blue bars, as the red bars, red bars, indicate. The bars here look much the same as in the previous slide. Red bar's big, blue bar's small. Here, the blue bar is no more than half the size of the red bars and my comment on this one is ditto. Same thing. This is the comparison to the federal plan. Their - it's a comparison for hospital and outpatient surgery. Our, again, we start with zip. The 5 percent is what we are proposing and you can see the federal plan is at 15 percent except that for hospitalization, they do not have co-insurance but they charge $250, fixed dollar amount, per admission. We now come to the out-of-pocket maximum. What we are proposing, right now there is no out-of-pocket maximum on the MMCP in-network portion because there's no payment made by the employee. You don't need to protect the employee with an out-of-pocket maximum, an annual amount, if he doesn't have a need to spend - he's not required to spend anything in the first
place. So what the out-of-pocket maximum does is
set a ceiling on the dollar amount of co-insurance
that an employee may be asked to pay. The $1,000
per individual out-of-pocket maximum proposed by
the carriers is very low, as the next slides will
show. It provides the employee with greater
protection than most plans do, than almost all
plans do, against major expenses. As you can see,
here the out-of-pocket maximum for an individual
of a $1,000 per year is a lot lower than the red
bars. Blue bar's small; red bar's high. I should
get contact lenses. Here's the family, comparison
of the family out-of-pocket maximum. Again, blue
bar's small; red bar's high. I mentioned before
that collectively bargained plans, no. That was a
different story. Collectively bargained plans
generally have lower out-of-pocket maximums than
non-collectively bargained plans. But here, the
blue bar is still lower than the red bars, indeed
1/3 lower, than the lowest of the red bars if I'm
looking at the right slide. Which I am. The blue
bar is still the lowest, by about 1/3 and again,
these are collectively bargained plans that the comparisons are made against. It is a strange situation with the federal plan standard option in that they don't have a separate out-of-pocket maximum for single coverage. They treat someone with single coverage as a one-person family. And so therefore it's $5,000, $5,000 in both columns. We do treat them differently. Our blue columns, the proposed out-of-pocket maximums that the carriers are putting forward, are much, much smaller. Much lower, get much greater protection than the out-of-pocket maximums under the federal plan. I'm not sure he's working with me. Careful of that.

MALE VOICE: Try a different signal.

MR. BOLEY: I hate him. These I don't mind, because you have to look at them. Whereas if I put something on the board that is written, that you can read, why? I don't have to read it to you; you can, you can read it. And you'll find some of those coming up, regrettably. We're moving now to the emergency room co-payment. Currently, we have
a - finally, finally, the far left bar has something in it. And we've put it in dark blue. We're the blues; the comparatives are the reds. We have a $25 emergency room co-pay. We're proposing that it be increased to $75. And that $75 figure, you can see how it compares to the comparatives in the red bars. Now, what has happened, we think, is that this low $25 co-payment has led employees and family members to substantially overuse emergency rooms or emergency departments. Emergency room visits under the plan are 65 percent higher than the plan's vendor that books our business. Now this slide shows, we're extremely honest, we show in pink instead of red when the bars are lower than the blue bar. Some collectively bargained plans do have lower emergency room co-pays than the $75 that we have proposed. But bear in mind what I said before. The comparisons are principally to 2010 plan provisions, and the emergency room co-pays of the comparatives are likely to grow over the next four years. While the $75 co-payment that the carriers proposed will not
grow. It will be frozen. The next slides deal with something called adequacy of benefits, or actuarial value. Anytime I see the word actuarial I blanche, but that's why I have Dave here. He will keep me straight. This is the AOB, as the cogniscenti call it, is an expression of the richness of the plan's benefits. It is also, as I said, called the plan's actuarial value. It represents on average the portion of the total cost of covered healthcare benefits paid by a plan. If the plan paid every single dollar of covered benefits and the employee paid nothing, which is pretty close to what we have today, in that case the AOB would be 100 percent. When the employee at cost of point of service begins to pay something, the AOB diminishes. So what this means is and we'll get to the next slide, what this means is that, and I can hardly see what's written in that dark blue column. MALE VOICE: 96

CHAIRMAN JAFFE: 96 percent (inaudible).
MR. BOLEY: Thank you Mr. Chairman. Ninety-six
percent of the cost of covered benefit under the plan, under the MMCP portion of the plan currently, is paid by the plan. And the remainder, 4 percent, is paid by the employee at point of service. The carriers proposal will reduce that 96 percent to 91 percent but nonetheless, and we're talking now about solely medical benefits, nonetheless the 91 percent figure is substantially higher than the adequacy of benefits for the comparatives. Comparators? One or the other. Now it stands to reason, in light of the richness of the benefits of our plan, that it should have a high AOB and as you can see it does. You know my earlobe is going to stretch from this exercise. We've now included in the comparison not just the MMCP, but the medical and pharmacy portions of the plan. That's the - includes the MPSB in it, Managed Pharmacy Services Benefit, and there you can see, all of us can see, what the current adequacy of benefits is of our plan. That it will go down to 89 percent as opposed to somewhere in the 90s, I guess it was 93, yes 93 percent, and
1 that, again, is substantially better than the
2 adequacy of benefits of the comparable plans. This
3 holds true even with respect to the collectively
4 bargain plans that we used as our comparators.
5 Finally, we made a comparison to the adequacy of
6 benefits of the federal plan and you can see what
7 that comparison looks like. The overly generous
8 benefits that the MMCP in their design provides is
9 reflected in the high cost to the plan itself of
10 providing those benefits and to the high cost to
11 the carriers of funding it. The next few slides
12 mostly show comparisons with the cost burden borne
13 by other plans and other employers. The richness
14 of the plan, of the plan's benefits leads to the
15 very high plan costs which we see. The plan's
16 current costs are much greater than the
17 benchmarks, about 30 percent greater, when we look
18 at employee only coverage, single coverage. The
19 relationship is similar when you look at family
20 coverage. We have, in past arbitrations and PEBs,
21 compared the cost of the carriers per hour worked,
1 Labor statistics under employer costs for employee
2 compensation. I think it comes out quarterly, and
3 we think this is a very significant comparison,
4 especially with respect to the unionized
5 employees. Our cost per hour worked is about
6 $6.11, compared to $4.50 per hour worked by
7 unionized employees in this country. That's a big
8 difference. The difference when you compare it to
9 all workers or to workers in the production,
10 transportation, and material moving segments of
11 the work force, even greater. I want to just touch
12 briefly on the argument that Labor has made that
13 the carriers are simply proposing to shift costs
14 from highly profitable companies to sick
15 employees. Previous people who have sat in this
16 chair or stood at this podium on behalf of the
17 carriers have already addressed the relevance of
18 profitability in considering the employee's total
19 compensation. The points that they made with
20 respect to the relationship, in that context, are
21 equally applicable here. The benefits that the
22 employees get are part of their total
1 compensation, obviously. Insofar as concerns the
2 notion that it's intolerable to ask that those who
3 use medical services while others don't should pay
4 part of the cost of the services they use. That's
5 the whole idea of point of service cost sharing.
6 Those who use should pay something for the use,
7 those who don't use should not. This is really,
8 it's old hat. Throughout this country today, as
9 we've shown by the slides that we've shown you
10 before with respect to deductibles, co-insurance,
11 part of service cost sharing is all over the
12 place. And if we are burdening our employees with
13 the small changes that we are making, think of the
14 burden that the country as a whole is placing on
15 those who use medical services through the plans,
16 a huge majority of plans that require point of
17 service cost sharing. This is not something we're
18 indifferent. These employees have had a terrific
19 plan! It's still going to be terrific, but a
20 little less so. They have had free care. Prepaid
21 expenses, not insurances, prepaid expenses. We are
22 asking sharing, we are asking point of service
cost sharing that everybody else seems to have, and yes, of course, if you use medical services the chances are good that you might be sick. A lot of people here are saying, they're not really sick. But the point of the matter is, sick or not, those who use services should pay for them. We're not asking them to pay very much, but we're asking them to pay something. We also think that the wages that railroad employees earn today enable them to be far more able to afford the cost sharing that we are asking than people who currently share costs at the point of service at a much higher rate. People who have bigger deductibles, who have bigger co-insurance, they share those costs in greater magnitude than we are asking well paid employees to do. Finally, it might be worth noting, to the extent that proposed question may influence employees and their families to follow a healthier lifestyle, which everybody is in favor of. We are plagued with problems in this country today that are attributable to smoking, to obesity, to alcohol.
Our employees and their families are no different than everybody else. We have those problems, everybody else has those problems. If having to share costs of point of service may, and I'm not saying it will. If it may persuade people to follow a little healthier lifestyle, we'd all be better off, (inaudible)wise, health wise, everybody. Finally, you will hear from Professor Joseph Newhouse at Harvard. He's got more positions at Harvard than I can remember but I will consult his curriculum vitae before I introduce him. He is probably the country's leading authority on the impact of cost sharing on the use of medical services. His report demonstrates that the empirical evidence, the scientific studies that have been done, from the available data from which to draw reasoned conclusions shows that the changes proposed by the carriers will reduce the use of unnecessary and often harmful medical services, including those attributable to visits to emergency rooms, without on average affecting the health and well-being of
employees and their families. Professor Newhouse has a report and his presentation to you this morning are both grounded in scientific evidence, principally the Rand Health Insurance Experiment, and not on wholly inapplicable suppositions or anecdotal evidence. What the carrier's proposals hope to achieve in this way is to get the patient to push medical providers to further weigh the benefits of recommendations for hospitalization, outpatient surgery, additional tests and imaging procedures among other services against the drawbacks of undergoing those tests and services and the expense to the patient. It is sometimes too easy to overlook the dangers to health presented by unnecessary and expensive hospitalizations, test, imaging and outpatient care. This is an excerpt from a recent Institute of Medicine report that is an example of what can happen when you have too many tests. Not only does it cost more money, but this is what can happen. Now, it doesn't happen to everybody, obviously not. But there are dangers, and those dangers need
to be considered. We've recounted in part four of
carrier's submission number five, pages 23 to 26,
how the current overly generous plan design for
the MMCP In Network Program came into being 20
years ago. And why it has become an anachronism
that has outlived the purpose it was intended to
serve. To save time we will not reiterate that
history here, and leave it to you to read those
pages to see what we have to say. Now, turn to the
proposed changes the carrier's managed pharmacy
benefits program. This slide, once again, shows
you what you've already seen, but because I
promised you I'd come back to it, I put it on the
screen for a second time. Now, ah! There it is.
This slide is all in one, instead of divvying it
up, we threw it all in one here. And what it shows
is the current plan design, the proposed plan
design, what the general survey evidence shows,
and what the evidence from our collectively
bargained plan shows will be the result. The
important thing again, I said it before, I'm not
going to repeat it again. Yeah, I am going to
repeat it again. The important thing is the change in the generic copayment. And as Stuart Piltch will present to you later, those changes are very significant for many different reasons. The numbers against a pink background are the only comparisons that show a more generous set of co-payments than those that the carriers propose and these more generous co-payments apply to brand name drugs only, and not to generics. The carrier's proposal to lower generic copays and to increase brand name copays are designed to create a considerable incentive to continue to use or to switch to generics, and so to realize the benefits from increasing the rate at which generic drugs are dispensed under the plan. The carrier has also proposed to implement clinical management rules that will help to increase the use of generic drugs, as well as improve adherence to prescribed drug regimens and hence, achieve better outcomes, insofar as patient health is concerned. These changes will be good for the plan, and for employees and their families, both financially and
from the standpoint of patients' health. They produce, we think, overall, a win, win scenario, the Holy Grail. These conclusions and the data and reasoning to support them are laid out in detail in Mr. Piltch's report, and will be explored in his presentation to you later this morning. We think it's clear that a principal goal of the President's Healthcare Reform Initiative, and of the legislation that was passed in March of 2010, was and is the containment of constantly increasing healthcare costs, and that changing the design of overly generous healthcare plans, such as we submit the plan before you to make them less rich was and is a step the legislation and the administration intended should be taken to achieve that goal. The quotations shown on the slide are illustrative, I won't read them to you. They're in our submission. They illustrate the concern for the expense and wastefulness of excessively generous plans. Additional evidence of the law's purpose to contain costs through diminishing the use of unnecessary and wasteful services are set
forth in part 6 of our presentation of pages 29 and 32. Adoption of the changes that the carrier's propose would serve that purpose. They both reflect and advance the President's policy. We've put on the screen a graph simply showing what could happen if the so-called Cadillac 40 percent tax survives into 2018 and is imposed upon plans at that time. The gist of this graph is simply to show that we are in a much better position, not a very good one, but in a much better position if the carrier's proposed changes are made part of the national plan, than we would be if no changes are made at all. Obviously, the more generous a plan is, the more costly it is, the worse it is, insofar as our tax is concerned. Conclusions: There they are, but I want to depart from that a little bit because I think that if the changes proposed by the carriers are not adopted, bad labor relations policy will ensue, bad public policy will ensue and we'll all be the worse off for it sooner or later. It is good, sound labor relations policy not to have disparate healthcare
benefits, and the UTU arrangement s not a major earthquake. These changes are not huge! You saw what they were. They are relatively modest. They will, of course, as the labor organizations will point out, say to an employee, "You used to get this for nothing, and now you're going to have to pay a deductible, and you're going to have co-insurance up to a very low, annual, out of pocket maximum" So, yes, of course, I would be unhappy about that, but the policy, the labor relations policy that we think you should serve and the public policy expressed by the health reform legislation, both call fro for an adoption of the carrier's proposals. Thanks for your time, your patience, I must be short, I have to go through all those papers.

CHAIRMAN JAFFE: Thank you, Mr. Boley. Yeah, I've got some I'd like by way of clarification, and to the extent that this is covered in the materials, I apologize if I missed it. Feel free to point me to the appropriate reference. Some of them are going to be fairly focused and specific. Some a
little broader brush. And.

MR. BOLEY: Do you realize, Mr. Chairman, that I said if I can't answer the question?

CHAIRMAN JAFFE: Both of you are welcome, or either of you are welcome to answer, that's fine.

If, yeah, I was going to do that, too. And if in fact, this is something that you were planning to cover at a later point in the proceeding, I'm happy to take that as a response as well at this time. If we're going to hear from Mr. Scofield, we probably ought to swear him in, just to keep the record clean. Can the reporter please swear in Mr. Scofield?

REPORTER: Do you swear the testimony you are about to give in this case will be the truth, the whole truth and nothing but the truth (inaudible) against the law?

MR. SCOFIELD: Yes, sir.

CHAIRMAN JAFFE: Great, thank you. Let me start with some more focused questions that came as a result of the presentation this morning and then follow on some that weren't quite as clear from
the materials as we reviewed. With respect to figures 19A and B, the plan cost information, with respect to both single and family coverage, do those include the $2,400, the $200 a month that employees pay and get funneled through the plan to then provide benefits or are these net of?

MR. BOLEY: These figures are COBRA figures minus 2 percent. The plan vendor tells us how much it costs the plan to cover single employees, to cover families, and that translates into the COBRA amounts that are set for people who exercise their COBRA rights, less the 2 percent administrative load. So, it's the plan cost, it includes whatever goes into the plan, because that's what the plan pays out.

CHAIRMAN JAFFE: That's fine. And with respect to the current mix, in terms of the bargaining unit between single and family, do you have approximate figures on that?

MR. BOLEY: How many are single and how many are family?

CHAIRMAN JAFFE: This one he told me, but I can't
remember.

MR. SCOFIELD: Yes, sir, about 20 percent of the group is single. 80 percent would be considered to have one or more dependents or family. Those with.

CHAIRMAN JAFFE: I'm sorry?

MR. VERNON: With the carrier?

CHAIRMAN JAFFE: No, this is for the carrier's, for this group.

MR. SCOFIELD: I'm sorry. So, about 20 percent are single, 80 percent would have one or more dependents.

CHAIRMAN JAFFE: Fair enough, and just by way of background, do either of you do work with the plan on an ongoing basis? Or is there a separate actuary for the fund and separate counsel?

MR. BOLEY: Both of us work solely for the railroad side of the equation.

CHAIRMAN JAFFE: Okay.

MR. BOLEY: That is not to say that what we do for the railroads are not accepted by the labor organizations.

CHAIRMAN JAFFE: I understand.
MR. BOLEY: Sometimes they do, sometimes they don't.

CHAIRMAN JAFFE: Fair enough. And the plan is a jointly trustee'd one by design, is that not correct?

MR. BOLEY: By collective bargaining, PEBT 219 recommendations included that kind of a set up.

CHAIRMAN JAFFE: Right. I saw that and it also included a recommendation for a neutral, did it not?

MR. BOLEY: It did.

CHAIRMAN JAFFE: Do you know whether that has been implemented?

MR. BOLEY: Never!

CHAIRMAN JAFFE: Never.

MR. BOLEY: We have never had to turn. I say never, never say never. I can't remember any time we have turned to the neutral. There have been times when we wanted to, but the two parties got together and solved the problem.

CHAIRMAN JAFFE: Okay, so it's there by way of design but not utilized?
MR. BOLEY: We usually have some way to break a
deadlock. If deadlock on the committee, laborer
and management must agree when no action can be
taken.

CHAIRMAN JAFFE: I understand. With respect to the
in-network vs. out-of-network benefit utilization,
I think you had mentioned an 80 percent figure
earlier today and I thought in at least one of the
materials I read, and I apologize, I can't lay
hands on it, I had seen a 92 percent figure.

MR. BOLEY: The 92 percent figure was the amount of
MMCP dollars.

CHAIRMAN JAFFE: Right.

MR. BOLEY: That were in the network as opposed to
out-of-network. So that 92 percent of the cost of
the MMCP, which was one of the four programs, I
got this right?

MR. SCOFIELD: That's correct.

MR. BOLEY: One of the four programs. 92 percent o
that was in-network.

CHAIRMAN JAFFE: Okay, and the 80 percent you
referenced today for in-network was the four plans
1  together?
2  MR. BOLEY: Mmm-hmm.
3  CHAIRMAN JAFFE: Got it. The five percent co-
4  insurance feature, is that something that is
5  applicable or inapplicable where the plan has
6  fixed co-payments?
7  MR. BOLEY: Inapplicable.
8  CHAIRMAN JAFFE: Okay. And the prescription drug
9  plan breaks down as many plans do between retail
10  and mail order? Is the mail order roughly a 90 day
11  supply or up to a 90 day supply? As remember, the
12  plans are designed somewhat differently.
13  MR. BOLEY: Up to a 90 day supply.
14  CHAIRMAN JAFFE: Okay. And retail, I think I'd
15  read, was up to 21 days?
16  MR. BOLEY: Yes, sir.
17  CHAIRMAN JAFFE: And current plan on the
18  prescription drug, does it have any limitations at
19  all on out-of-pocket payments? MR. BOLEY: No.
20  CHAIRMAN JAFFE: Okay. And I assume that's proposed
21  to be continued, in terms of the proposal? MR.
22  BOLEY: Yes.
CHAIRMAN JAFFE: The figures that we have with respect to cost, are they all active employees or ado they include any retireds, or the like?

MR. BOLEY: The cost of the plan includes the cost of providing coverage.

CHAIRMAN JAFFE: Right.

MR. BOLEY: Everybody covered by the plan.

CHAIRMAN JAFFE: And are those actives only, and those who may be on COBRA or furloughed or the like, or (inaudible)?

MR. BOLEY: And I have to say that the plan has very generous extended benefits.

CHAIRMAN JAFFE: Right.

MR. BOLEY: For furloughed employees, for suspended and dismissed employees, and for disabled employees.

CHAIRMAN JAFFE: Okay.

MR. BOLEY: And just so that you know, the $6.11 figure that I emphasized in looking at the slide that compared the BLS unionized employees figure per hour, worked hours, that has an adjustment in it that deducts from our costs. The cost for
covering disabled employees and other inactives.

CHAIRMAN JAFFE: Okay.

MR. BOLEY: It would be much higher if we included it.

CHAIRMAN JAFFE: Fair enough. Carrier Submission Five projected a cost to the railroads of just shy of $14,000 per employee per year to provide benefits. It's on bates number 715, if you need to look at the page in the submission.

MR. BOLEY: Okay. I'm sorry, what pages?

CHAIRMAN JAFFE: The bates number at the bottom, 715. I think the figure was $13,965.

MR. SCOFIELD: Yes, sir.

CHAIRMAN JAFFE: And if one then adds to that, the $2,400 a year, the $200 a month, I think you get an aggregate cost, assuming my math is correct, of $16,565?

MR. SCOFIELD: That's correct.

CHAIRMAN JAFFE: That would leave the employee cost, just based on the premiums, not based on any of the stated co-payments, at just around 14.5 percent?
MR. SCOFIELD: Correct.

CHAIRMAN JAFFE: Okay. If there's.

MR. BOLEY: You mentioned before that if we were going to address later in the proceeding, any of these questions, we will address the employee contributions issue.

CHAIRMAN JAFFE: Okay.

MR. BOLEY: How it fits into the picture, how it affects total compensation, how it affects the benefit plan.

CHAIRMAN JAFFE: I appreciate that. Let me pose then, the related, and if the answer is you were covering it later, I'm happy to defer. Have you projected forward what would happen to the cost to the plan if these proposed changes are not adopted? I didn't know if it was the 7 percent number that was in your graph going forward, if there were some other projection with respect to projected rate of increase in healthcare costs to the fund, assuming the existing arrangement? And then obviously, I'm going to shift to the other, which is if the changes are adopted. Same thing
1 projecting forward. Are those the kinds of things
2 that you were planning to cover.
3 MR. BOLEY: Yes, we were.
4 CHAIRMAN JAFFE: At another point?
5 MR. BOLEY: We shall.
6 CHAIRMAN JAFFE: Okay.
7 MR. BOLEY: It depends considerably upon what the
8 trend rate is that you assume going forward.
9 CHAIRMAN JAFFE: I understand.
10 MR. BOLEY: We will cover that.
11 CHAIRMAN JAFFE: I understand and I didn't know
12 what you were assuming, if anything? Okay.
13 MR. BOLEY: We assume they go up, Mr. Chairman.
14 They will.
15 CHAIRMAN JAFFE: Okay, and it will include
16 projections, I take it, if these plan design
17 changes are adopted? The projections as to what
18 the plan will have to bear and then what
19 proportion employees will have to bear?
20 MR. BOLEY: We shall.
21 CHAIRMAN JAFFE: Between contributions and the new
22 deductibles and the new co-insurance?
MR. BOLEY: Just bear in mind that the employee contribution that you mentioned earlier, under our proposal that is frozen until July of 2016.

CHAIRMAN JAFFE: I understand. This page, just a few more brief ones from my end, if I may, and I'll wait 'til you're ready.

MR. SCOFIELD: Sorry.

MR. BOLEY: We appreciate your patience.

CHAIRMAN JAFFE: No, I'm fine. Kind of a generic plan design question since I don't have any experience with this particular plan, I assume at the beginning of each year there's a projection that's made with respect to the cost of providing benefits so that the carriers can make contributions, or is it a complete pay as you go and you look with hindsight? How does it work?

MR. BOLEY: We set up a, there's usually a meeting late in the fall of each year, where United Healthcare shows what they project the costs will be the coming year.

CHAIRMAN JAFFE: Right.

MR. BOLEY: This year, that meeting was not held
because we don't know how you're going to decide this dispute and 70 percent of our employees may have the same overly generous benefits they now have, or more appropriately they will have the same benefits that the employees represented by United Healthcare. United Transportation would have. So, we did not set a payment rate for the carriers for the coming year until we know, have some reasonable (inaudible) to figure out what it may be.

CHAIRMAN JAFFE: Fair enough. Let's go back a year or two, just so I get the principal, if I may. Bless you. Let's go back to 2009. For lack of a better year at the moment. It's somewhat arbitrary. I assume in the fall some number was then projected for a total plan cost for expenses that would be incurred in the 2010 period? MR.

BOLEY: Yes.

CHAIRMAN JAFFE: Is that correct? MR. BOLEY: Yes.

CHAIRMAN JAFFE: And the employee contributions were negotiated and fixed, were they not?

MR. BOLEY: They were.
CHAIRMAN JAFFE: Okay, so that, that stays, regardless of actual experience. Or at least stayed, regardless of actual experience?

MR. BOLEY: It does. It did not always do that.

CHAIRMAN JAFFE: I understand. The plan maintains reserves as well?

MR. BOLEY: Depends upon your definition of reserves. The plan can realize a surplus because of experience in a given year, is more beneficial, more favorable than was projected, and if you use that surplus to offset contributions by the carriers in the following year, what happens is you look to see what you need, you look to see what you have, and that gives you the difference.

CHAIRMAN JAFFE: That’s what I was trying to zero in on. So, at least under an arrangement where the employees' contributions are fixed, rather than as a percentage of the total, the risk, as it were, of the plan either having worse experience or better experience falls on the carrier? MR. BOLEY: Yes.

CHAIRMAN JAFFE: And if it's a percentage of total
MR. BOLEY: I'm not sure I understood the question?

CHAIRMAN JAFFE: Sure, at some point in time they were percentage based? MR. BOLEY: Yes.

CHAIRMAN JAFFE: And presumably, if this plan worked like any other, despite projections being good projections, you almost never hit it on the head, right?

MR. BOLEY: We never hit it on the head.

CHAIRMAN JAFFE: So, in some years, you'd have a surplus based on what was projected, right, and in other years, you'd fall short?

MR. BOLEY: Yes, and, depending on whether the surplus goes up or down, the amount that you have to pay in the following year, the amount the carriers pay, will vary.

CHAIRMAN JAFFE: Okay, and in the past, when it was percentage-based, did you roll that over into the next year or did the carrier simply assume the risk of paying the shortfall if you were under, or pay a little less if you were over, depending on
the experience? That's the question I'm trying to tee up.

MR. BOLEY: In the old days, well, there were two ways of doing it. Several years ago, I can't remember how many years ago, four or five, the arrangement between the parties was that the employees would contribute one half of the increase in the carrier's payment rate from year to year, so that if the carrier's payment rate went up by, say $100 per month, the employees would contribute $50 a month, subject to a carrier. Then, by negotiations, if the party said, "No, instead of dealing with the carriers increase from year to year, we're going to deal with the total cost of the carriers in the following year, and the employees will pay 15 percent." Subject to attack (ph). The $200 that you referred to earlier is the cap and has been for, I guess one, at least a couple of years. It went up, I think, from $166 to $200 last year.

MR. SCOFIELD: 2010.

CHAIRMAN JAFFE: Bear with me one moment. I'm in the home stretch at least. And the only other question I've got by way of clarifier relates to the AOB numbers that you reported in the, both the submission and the slides that we went over. Um, do you know what the AOB is with respect to the pharmacy plan alone?

MR. SCOFIELD: I believe that it's about 85 percent currently.

CHAIRMAN JAFFE: And do you know how that compares with the same comparator plans you were looking at with respect to both the medical only in the mix? The blend of the two?

MR. SCOFIELD: Um hmm. I don't have a specific answer to that right now. I guess we can follow up with that.

MR. BOLEY: We'll get you an answer before this proceeding (inaudible).

CHAIRMAN JAFFE: Fair enough. And along with the projection with the changes would be great, too.

MR. SCOFIELD: Yes sir.

CHAIRMAN JAFFE: Thank you.
UNKNOWN MALE SPEAKER: Sweetie, can we (inaudible) 

UNKNOWN FEMALE SPEAKER: (inaudible). 

UNKNOWN MALE SPEAKER: (inaudible). 

MR. JAVITS: I don't know if you're going to cover this later but the joint trustees, is that uh, do you see that as an effective mechanism for accomplishing some of the goals that the carrier has laid out in the proposal? 

MR. BOLEY: Obviously, the carrier's goals would be more easily achieved if the carriers were the sole governing body of the plan. (CHUCKLING) That goes without saying. So I said it anyway. But the plan can be changed. The unions sitting as labor organizations and the carriers as management people are the (inaudible) of this plan. And they can amend it by agreeing. And unless you can get an agreement you won't get an amendment because the neutral cannot determine whether the plan should be amended. The neutral in the PEB recommendations of 219 and in the agreements that proceeded from it, I believe the neutral only
1 deals with disputes as to the administration,
2 investment and operation of the plan.

3 CHAIRMAN JAFFE: Thank you. That wasn't clear to
4 me, actually. But I've got it now.

5 MR. Boley: Did that respond to you?
6 MR. JAVITS: Yeah, it did. Did some of the plan,
7 did the goals of the, of the carrier, did the
8 carriers attempt to reach agreement with the
9 unions through the joint trustees?
10 MR. Boley: If we can't get them to agree in
11 collective bargaining, you're not going to get
12 them to agree representing the labor organizations
13 in discussions of the Joint Plan Committee. If you
14 put off making these changes on the grounds that
15 the Joint Plan Committee will do it, you're
16 barking up the wrong tree. If they're not going to
17 agree here, if they're going to stand as
18 obdurately (ph) as they have, no change, we can't
19 see the Joint Plan Committee as a vehicle to
20 effectuating the changes we seek.
21 MR. JAVITS: Alright, and if this, could there be
22 an effective joint resolutions system for these
1 types of disputes if a neutral really did have
2 authority to make the ultimate decision?
3 MR. BOLEY: Whether or not the parties would agree
4 to a neutral dictating changes in the plan if the
5 parties couldn't agree, I don't know. You would
6 have to ask, uh, the leaders of both sides, uh,
7 what the position of the parties would be on that
8 question. I'm but a poor third-party observer.
9 UNIDENTIFIED MALE SPEAKER: Thank you.
10 UNIDENTIFIED MALE SPEAKER: (inaudible).
11 CHAIRMAN JAFFE: I think we're in good shape, then.
12 Thank you both very much.
13 MR. BOLEY: Thank you for your patience.
14 MR. SCOFIELD: Thank you.
15 MR. MUNRO: Mr. Chairman, we're now ready to move
16 on to the remainder of the carrier's health care
17 presentation. We were going to flip the order of
18 witnesses and first we have Dr. Newhouse.
19 CHAIRMAN JAFFE: (inaudible) please swear in Dr.
20 Newhouse. (BACKGROUND CONVERSATION)
21 DR. NEWHOUSE: I do.
22 MR. BOLEY: Mr. Chairman, let me introduce the next
presenter. It's a pleasure, a privilege, a high
honor. Professor Newhouse is the great guru, if
you will, of the impact of cost sharing on health
care benefit plans. He goes without an
introduction, but I'll make one anyway. He is the
John B. McArthur professor at Harvard. Harvard to
those who don't know how to pronounce names. He
has written extensively in the area. Attached to
his report is curriculum vitae. We had to cut it
down by almost half in order to make it
reasonable. He is, I think, the gold standard in
this issue. And with that, here he goes.

DR. NEWHOUSE: Thank you, Ben and it's a pleasure
to be with you. I wanted to start get this. There
we go. You've seen this slide in Ben Boley's
presentation, but it will focus where I'm going.
So as you've heard, carriers are proposing a
deductible and a co-insurance. As you heard, those
are not relevant for office visits or drugs, but
you can think of them as applying if somebody goes
to the hospital. Offices and co-pays unchanged as
you heard. Emergency room co-pays going from $25
to $75 per visit. Decrease in co-pays for substitutes for emergency rooms, urgent care centers, convenient care clinic, obviously an effort to try to channel people away from the emergency room for minor problems. I'm going to summarize my main points and then I'll come back to them at the end. These changes that are being proposed will decrease the use of services and therefore, the overall costs of the plan. Anytime one is taking about a reduction in services, there are potential concerns about what will happen to the health of the people in the plan. These changes should have de minimis effects, on average, because there will be some good things and some bad things, and those will tend to cancel out. So the evidence we have on this, the strongest evidence comes from a randomized control trial that I was the principal investigator of, the Rand Health Insurance Experiment. Occurred in the late 1970s, early 1980s. It's still referred to by the Congressional Budget Office as the gold standard in this area. They use it to score or
cost proposals made by the Congress. So for example, when they had to estimate how much it would cost to include the plans in the Affordable Care Act of 2010 and therefore, how much it would cost in subsidies given the premiums in those plans, they used these data. Similarly, the Office of the Actuary at the Center for Medicare and Medicaid Services uses these results to cost changes that would, what might be proposed in cost sharing in Medicare. So there's two main objectives that the experiment had that correspond to the two main points I gave you at the outset. If you vary cost sharing, how much the person pays at the point-of-service, how does that affect the use of services, and how does it affect health outcomes. We also looked at how it affected quality of care and patient satisfaction. There were no effects there so I won't focus there. This is a sketch of the dimensions of the Rand Experiment. I'll call your attention to the bottom bullet there. We covered almost all medical services with very few limits. In that sense, it's
1 a good comparator to this plan which also covers a
2 wide variety of medical services. I'm going to
3 spend a little more time on this slide because it
4 sets up the results that I'm going to come to. So
5 the main dimension of variation in the experiment
6 was in the co-insurance rate with a percentage of
7 medical expenses that the families paid. Some
8 families were randomized to have all care free of
9 charge. I'll call that the free care plan, zero
10 co-insurance. Other families were randomized to
11 pay 25 percent, 50 percent, or 95 percent of the
12 bill. Now in all of those plans, those three
13 plans, the family out-of-pocket in a year was
14 capped at $1,000. These are 1970's dollars. For
15 lower income families, the $1,000 was scaled down
16 as a function of income in families who were
17 randomized to either 5, 10, or 15 percent of
18 income. So for example, if one had a family that
19 made $8,000 in the 1970s, and they were randomized
20 to a 5 percent cap, their cap would have been $400
21 in a year. There's one plan that's a little
22 different and you'll see it on my slides and it is
relevant to the issues we have here. It was a plan that was designed to mimic the prevalent health insurance plans of the 1970s, early 1970s. In those days, hospitalization was typically well-covered. Often there was no cost sharing. By contrast, outpatient services meaning things like office visits often were not covered at all, or if in any event were covered much less generously than in-patient services. And there was a view that said we really should cover outpatient services more generously because the cost-sharing of the failure to cover is a barrier to going in, and we want people to go in so that their problems are found early on. Maybe that'll prevent a hospitalization downstream that would cost money. And maybe it would improve help. So when I compared this plan with the other plans, I can show what the effect is of not covering or covering less generously outpatient services and covering hospital services very well; in fact, covering them completely. This is who was included in the experiment. We did not include anyone who
was either on Medicare, who would become eligible for Medicare. So in that sense, this population is fairly comparable to the population we have here. It was drawn from six sites around the country. We excluded the very top of the income distribution, 1 percent, in fact, of the people in the sites where we operated. Okay. What did we find? This is total spending on medical services in each plan. It's in 1991 dollars. So if you look, but it's the relative height of the bars I want to call your attention to. If you look over there on the far left, the people that had all care free spent a little over $1,000 on health care services in a year. The people that paid 25 percent of the bill up to $1,000 spent almost 20 percent less. Now that 826 number you see there is both the 25 percent they paid and the 75 percent the plan paid. In other words, it's what doctor's hospitals, etcetera, took in in revenue. And as you see the bars decline as the line goes to the right, and if you look over there on the far right, and I can, the individual deductible plan,
this is the plan where outpatient services cost
money and I compare that with the free care plan
where outpatient services are free over there on
the far left. What you see is the free care plan
costs more. In other words, there was no offset
affect. In fact, quite the contrary. That is there
was no offset from the additional cost of covering
physician visits on the free-care plan and saving
money on hospitalizations. There were real
reductions in use. You see the reduction in
physician visits here, a little over one visit per
person less in the 25 percent co-insurance plan
than in the free care plan. And interestingly,
hospitalizations were less, down almost 20 percent
in the cost-sharing plans. Now in those three
middle bars, most of the people that went to the
hospital just hit their stop-loss and spent
$1,000. So in those three plans, cost sharing was
not so different. And if you look over there on
the far right, that's the plan where outpatient is
costly, inpatient is free, and what you see is the
hospitalization rate is higher. That's a
1 statistically significant difference against the average of the three middle plans. Eleven point five (11.5) percent of the people in that plan went to the hospital. In the middle three plans an average of slightly under 10 percent went. And that's relevant to the proposals on the table to put cost-sharing in for hospital services. One can expect that things would look more like the three middle plans versus the right-hand (ph) plan. Now what difference did this all make for health outcomes? We did extremely comprehensive measure of health outcomes. We asked people to assess their own health status overall; physical health, mental health. We also took about 20 clinical measures of their health, such things as blood pressure, cholesterol, glucose tolerance which would test for diabetes, hemoglobin which would test for anemia. We looked at measures of their health habits like smoking and weight. Only two of all these measures showed a beneficial affect of free care. Our comparisons on the health side were free care versus all the cost-sharing plans. High-
blood pressure was better controlled on the free care plan. The difference was about 8/10th of a millimeter of mercury and diastolic blood pressure. Diastolic blood pressure is the smaller of the two numbers your doctor says when he gives you your blood pressure or she gives you your blood pressure reading. But this affect was almost entirely in the lowest part of the income distribution. And that today would be somewhere under $30,000 a year in family income. Probably not that many families in this group that are down at that income level. One other affect, beneficial effect of free care. I mentioned that scope of services was broad. We covered refractions, eye-glasses, frames, not too surprisingly if you heard it was free, the poor people went in and got their eyes tested, got new glasses. So we picked up, this is a statistically significant effect, the average corrected vision, what you saw with your glasses on, in the cost-sharing plan was 20/22.5. So 20/20 was normal here. Goes down to 20/22 in the free care plan. And I bring that up partly to
show that we actually have good precision to
detect very modest effects on outcomes. So the
fact that we failed to detect them elsewhere
suggests that they're de minimus elsewhere. Okay,
that's the main Rand Experiment results I want to
call to your attention. But as you've heard,
there's proposed changes in co-payments for
emergency room services. So I want to look at both
what the Rand Experiment found and a couple more
recent studies found on emergency department co-
pay changes. And the main point here is that
increases in co-pays do reduce the use of the
urgency department and they seem to reduce it
disproportionately for minor kinds of symptoms. So
in the Rand Experiment, people on the cost-
sharing plans used less, went to the emergency
room less than the people on the free plan. That
was true of virtually every kind of service. And
here you see the outcome for sutured and un-
sutured lacerations; that is, cuts that required
stitches and cuts that did not. You see for cuts
that were severe enough to require stitches on the
left there, the visit rate was essentially the
same. But it was about 60 percent higher for
visits that did not require stitches. Now a couple
of studies done at Kaiser Permanente in Northern
California that I would like to call to your
attention. So in 1992, 20 employers who had had
insurance through Kaiser asked that Kaiser raise
their emergency (inaudible) co-pays from $25 to
$35. And a group of researchers at Kaiser decided
to study the effect of this change between 1992
and 1993. They chose two control groups. One was a
random sample of all Kaiser members who were
matched on age and sex and location and another
control group was also matched on industry. That's
a necessarily a somewhat smaller group, but it's a
little more precise. And then they looked at the
charts of the people that had come into the
emergency room, looked at the diagnoses, and
classified the diagnosis into one of the four rows
you see there as always an emergency, so that one,
for example, would be a heart attack. Or the other
extreme, often not an emergency. That would be a
cut that didn't require stitches. And what you see looking over there on the right is the change in the co-payment group there; that is the group that had their co-pays changed relative to the groups that did not. Twenty to thirty percent reduction in the bottom two rows in emergency room use for those kinds of visits. In the top row, always an emergency, diff, two, one, two, minus 10 percent and a plus 7 percent in the two groups. Neither of those is statistically distinguishable from zero. In other words, we can't see a measurable change for that group. There was a second study done roughly a decade later, also at Kaiser northern California, and this was ah, a study of a large number of Kaiser members with varying co-pays over time. Um, and what you see on this slide is that you go from 1999 to 2001, that bar that's going up very fast are people with $20 to $35 copayments. And then there's a small bar to the right of people with even higher copayments, correspondingly on the left. So I was actually personally also part of this study along with
people at Kaiser, and we looked at what happened as a result. I'm going to focus on the group that went from 20 to 35 to 50 to 100 because that's approximately the range we're talking about here. They reduced their emergency department visits 15 percent and interestingly hospitalizations were reduced 6 percent. In other words, the less you went in, apparently, the less likely you were to be hospitalized. (Clears throat.). Uh, the only outcome measure we had in this study was deaths. Now deaths are an arguably relevant outcome for emergency room use. If you have severe chest pain you probably want to get to an emergency room quickly. Um, if I compare the really low copays with really high copays, deaths actually fell in the high copay group, but there's no statistically significant difference in the, with, between the two highest groups. OK. Um, so the, let me come back to the main conclusions here. The higher cost sharing that carriers are imposing should reduce medical care cost and use; that's fairly common sense; if one pays more for something one is less
likely to use it. And then the question is, well, if you use it less, what happens as a result? An often held assumption is that sometimes if I go in more, sometimes the doctor will find something that should be treated, I'll be better off. Otherwise the doctor will say, you're OK, bless you, go home. So on average things should be better off. But the problem is sometimes bad things happen and let me give you an example. I showed you that hospitalization rates were affected. Hospitals are not necessarily one wants to be if one doesn't have to be there. There are things called hospital-acquired infections, which actually can cause deaths. We're on a major campaign to reduce them. Ah, and then I'll tell you about a study I also did in New York state, Colorado and Utah, ah, a decade or more ago, that looked at medically caused error rates in hospitals. In New York state we had 30,000 admissions, 4 percent of the time there was a medically caused error that resulted in death, permanent or total disability, or de minimum
prolonged the hospital stay. And a quarter of those 4 percent were negligent. This, actually extrapolated to the country leads to the figure that about there are about 100,000 deaths a year from medical error. Uh, there can also be, if I go in I can get a test to see if I have something wrong with me. There's no perfect test. If I don't' have it wrong with me it can show, nonetheless show a positive result that needs to be followed up that can lead to bad results, as for example is the logic behind the recent stories behind not recommending PSA tests for men. But on average in other words, bad things and good things can offset. So overall we should not expect that ah the average effect would change With that I thank you, and would be happy to take your questions.

CHAIRMAN JAFFE: (inaudible) Just a couple of modest clarifiers for my education Dr. Newhouse. With respect to the emergency room visit issue, and the change in the copay, um, do any of these studies involve plans to apply the copay where
there is no subsequent admission to the hospital, in terms of utilization rates?

DR. NEWHOUSE: I, I think we did that in the Rand experiment, ah, I can't remember for sure, and I'm not sure about Kaiser, but that would be a standard provision in most health insurance contracts I'm familiar with.

CHAIRMAN JAFFE: I'll be with you one moment. In the (inaudible) of the question I have, if we look at slide 9

DR. NEWHOUSE: Which one is that?

CHAIRMAN JAFFE: That's the patients who pay 25 percent of the bill use 19 percent fewer services it's up on the screen. DR. NEWHOUSE: Yes.

CHAIRMAN JAFFE: This relates Rand study results I think, um. DR. NEWHOUSE: Yes.

CHAIRMAN JAFFE: Has there been any data dealing with the expected change in utilization if one uses not one of these particular rates, but 5 percent rates for example. Would one expect either a linear or some other relationship based on the data?
DR. NEWHOUSE: The answer to, specifically on 5 percent is that, I'm not aware of any large studies in large part precisely because 5 percent is such an unusual coinsurance rate today. Uh, and in part because a lot of plans have copayments now as you saw. The only reason I would think linearity would not be a reasonable approximation would be if people would hit the stop-loss. So we found, in the Rand experiment we looked at behavior before people get the stop-loss as they got close to it and then as they went over it, and we found that when they went over it, they actually used at the rates that were the same as the free-care plan, and then they reverted back the next year when things reset.

CHAIRMAN JAFFE: And do you see the same thing with deductibles?

DR. NEWHOUSE: Well the 95 percent plan is approximately a deductible given the stop-loss. If that 95 were 100 percent it would be exactly a deductible. Ah - -

CHAIRMAN JAFFE: Josh (ph)
MR. JAVITS: Ah comparing your data to the group that we have here of railroad employees, in your sampling I take it there wouldn't be a differentiation. If you had a group which may be more subject to anemic illness from treating (inaudible) whatever it may be, ah, would the frequency or access to healthcare ah, make a difference in those types of cases. That is (inaudible) fall down and break your arm, a situation where you may not know an illness is coming about and the frequency or access may make a difference. One type of differentiation, another type might be distance to medical centers. Railroad employees tend to live in more rural areas. Would that factor make any difference?

DR. NEWHOUSE: So I can't really say about occupational effects. Actually we didn't have enough of a sample expose to diesel fumes to look specifically at that, even if it occurred to us to do that. On the rural area, we do have, of the six sites, two were deliberately chosen to be rural.

We had a northern rural site and a southern rural
site as well as varying size cities that range
from ah, a low of Fitchburg, Massachusetts, which
in those days I think about 70,000 or so, to
Seattle which is our largest site. But we do have
there were no differences by the way across the
sites and how people responded to the plans. The
one difference was actually in the rural southern
site, where in those days physicians did not
actually have appointments. It was first come
first served. And we, well and that, we
disregarded that site. But in the other sites we
looked at a days wait for an appointment for a
non-emergent visit and we did find that if you had
to wait a long time you were more likely to go to
the emergency room. But that, just the plan can't
control people are where they are in terms of
ability to get an appointment to see a physician.
I would point out to you that there's a lot of
emergency room use that's not medical emergency.
By far the greatest use of emergency rooms are for
non-emergent services, and that may be because of
nights and weekends coverage. But it's not
necessarily medical emergency.

CHAIRMAN JAFFE: (inaudible) Thank you Dr.

Newhouse.

DR. NEWHOUSE: Thank you. MR. MUNRO Chairman, for our final witness this morning, uh, I'd like to call Stuart Piltch. Mr. Piltch is going to testify about, ah, the pharmacy aspects of the carriers' proposed changes. He's a founder and manager (ph) director at Cambridge Advisory Group, ah, a team of actuaries, physicians, pharmacists, and experts that focus on total health management issues.

CHAIRMAN JAFFE: Thank you. Could I ask the reporter to please swear in Mr. Piltch. (swears in)

MR. PILTCH: Thank you for your time and your consideration. If I can, um, I'd like to walk through this without necessarily reading slide by slide but just giving you some comments as well walk through. We're at a time when the industry I'm going to define industry for you very quickly, uh is in a highly dynamic state. There are two industries involved here. There's big pharma we
all know about; we see their TV ads and we'll talk
a little about that. And then there's the pharmacy
management industry pharmacy benefit managers,
the people who help the plan, the carriers, the
unions manage the plans and the benefits. We're at
a critical juncture because if we see what's going
on, two critical issues, one, there are a number
of blockbuster, patented name-brand drugs that are
coming off patent. And are about to become
generics. We'll talk about that some more. And at
the same time we're seeing a significant growth in
biologic driven, quote, specialty drugs which are
exceedingly expensive. So we're seeing major
changes going on in the industry and how these
things are affecting costs and quality. In terms
of addressing clinical outcomes, really, clinical
management rules are designed to improve the
health status of the population. We realize that
some people may view these as, quote, impediments,
"I can't do what I want when I want how I want."
The fact is, this is complex. People do need help.
Clinical management rules are based on FDA
guidelines. Each one of the pharmacy managers
including the ones used by the plan have pharmacy
and therapeutic committees that are utilized
outside third-party consultants in the development
of the rules and employment of the rules. There
are auditing of the rules. It is not that those
rules are not followed. Those rules are followed.
We've audited each one of the PBMs, the pharmacy
benefit managers, including the ones used here.
Never found a I'll refer to Ben never's a long
time. In the time that we've, in the dozens of
audits we've performed have not found a single
incidence where the rules as prescribed under FDA
guidelines and/or under the pharmacy and
therapeutic committees have not been followed. And
a quick thought it's always about clinical
outcome, what's best for the patients that are
(ph) cost. In fact there's a percentage of the
time where the drugs that are suggested,
recommended by the third party, that other set of
eyes are actually more expensive than those
originally proposed by the physician. If you were
1 to go to the major pharmacy benefit managers right
2 now, the truth is they all have the same ability
3 to buy drugs at virtually the same cost. So how do
4 they differentiate themselves? It is around
5 clinical management strategies, it is around
6 engagement of the patient strategies. Next slide.
7 If we look at the current designs, they do not
8 optimize the clinical of financial standing of the
9 plan. The two key matrices that we'll utilize to
10 demonstrate that are generic dispensing rates, and
11 adherence rates. Adherence is really compliance
12 with your prescribed medical pharmacy therapeutic
13 treatment. In other word people aren't taking
14 their drugs. The carriers proposals are designed
15 to ensure clinical efficacy. And I want to define
16 efficacy just for one minute. Efficacy is about
17 what is the most appropriate drug therapy to use.
18 And cost efficiency. They're not mutually
19 exclusive. This is about ensuring safety,
20 education, and the use of the proper medications
21 including preferred brand name drugs and generics
22 where appropriate. The combination of the
copayments and the clinical management rules puts things together. And putting this design together, it's not a simple matter of one or the other. To make this work as a whole, to get where, I believe is best for you to go, you want to look at the whole thing. They come together. The sum is greater than the parts. We can take a quick look. We see the existing plan designs and frankly there are a couple of key issues. First, the carriers are proposing, maintaining what is called a three-tier formulary based design. An that means there are three tiers benefits. We're seeing an emergence in the industry about 85 percent of the plans in the industry, in the market utilize such plans. We're seeing the beginning of fourth tier because of specialty drugs. And we're seeing co-insurance. That's not what's being proposed here. I would say to you that if we look at what the focus of this, of this redesign, of this proposed redesign. First, it's a focus on generics. The utilization of generics, ask you remember that generics are subject to the same rules,
1 regulations, testings, quality standards as
2 preferred, as brand-name drugs. They follow the
3 same rigorous conditions put forth by the FDA. The
4 second thing that it focuses on is generics at
5 mail. You'll note that there's a $5 copay for both
6 retail and mail. That is unusual. Normally we will
7 see a differential on copayments two to two and a
8 half times between retail and mail. Reason, mail
9 is much less expensive. So but what is happening
10 here is the carriers are proposing what's going to
11 be the most efficient, cost efficient, place to
12 go, mail order, particularly for what we will call
13 maintenance drugs, okay, these are for
14 nonemergency drugs, and get the 90-day supply. The
15 third thing is that the existing plan design
16 really does not opt - does not create the - the
17 needed spread between the tiers of benefit as a
18 result - and that's - we will see later in the
19 presentation where that's led to poor adherence,
20 poor compliance with drug therapy, and a very low
21 generic dispensing rate that's also caused the
22 plan and participants significant amount of money.
I know one of the questions that has been asked is how about a zero copay, a generic - for generics? Sounds like a great idea in some situations. I'd suggest to you a couple of things. First, and I think this kind of dovetails with what Dr. Newhouse says, when someone does not pay anything for something, the perceived value of it to them may be minimized; in other words, they may not use it. The second issue is if we're really focused on adherence, compliance, which we should be, to make sure people are getting and taking the drugs they need. If there's a zero copay, it is very difficult to measure the adherence level because someone can send in for the automatic refill because it cost zero dollars. If they're going to spend the $5, you know, the acronym, skin in the game. But if they're actually going to spend the $5, we have a better notion, a better sense, that there is the proper level of adherence. The slide we're looking at is a ten-year study by the Kaiser Foundation that looks that copayments, copayment levels, year to year. It breaks out on the bottom,
generics, then we have preferred brand, then we
have non-preferred brand and un-specialty. Try to
put this in contacts - context. First of all, what
most plans are trying to do is keep pace with
pharmacy trend. Pharmacy trend, in the last few
years, has run six to eight percent annually.
Excuse me. In previous years, in the first half of
the decade, we saw it in the 10 to 12 range
annually. There are really three key drivers,
excuse me, around that. First of all, we have
specialty, specialty drugs, which we talked about
before the biologics; they make up typically about
15 percent of spend, which is consistent with what
this plan has. It's not unusual for a specialty
drug to run in the thousands of dollars per
script. Second issue is utilization. Over the last
three years, on a per-head basis, the number of
scripts per person has increased about 25 percent.
I would say to you that that's in no small part a
result of the TV ads we all get to watch where we
say - where they say if you have this, you should
be thinking about this. You should maybe go see
1 your doctor about this. In the old days, which,
2 you know, shows my age a little bit, people went
3 by what their doctors said. People now shop
4 doctors to get the drug that they want. They will
5 say to their physician, if you don't give me this,
6 I'll go to somebody who will. Those are brand name
7 drugs; they're expensive. We'll talk about how
8 that has an effect on some of the needed clinical
9 management rules. The last part of trend just is
10 the increases in brand and newly coming out brand
11 name drugs; not as important as the first two, but
12 something to consider. Our next slide shows the
13 current and proposed copays of the carriers versus
14 the previously mentioned Kaiser study. As you can
15 see, in the existing plan as well as in the
16 proposed plan, the carriers remain below market,
17 below - below all measures in all classes when it
18 comes to the copayment that they are asking for -
19 for cost share. Second thing is you'll note, and
20 Ben Boley spoke to this before, a drop in the
21 level of the generic copay. The goal is to
22 increase generic dispensing rate, to - to incent
folks to do so to get to the most cost-efficient, equal quality level drug. The third piece as we mentioned - as I mentioned earlier, does come down to the non-differential between the mail order and the retail for those who - and it's obvious that some of you are very familiar with healthcare. It is typical to see a differential on copays when ordering through - through mail order because you're getting that 90-day supply versus the single supply; okay, the sort of three-to-one. The carriers are not suggesting that here. They're saying we're going to give up some of the money to try and get people into mail order and into generics. Our next slide looks at the copay spreads. The fact of the matter is that the existing spreads have not resulted in the type of behavior, the type of engagement, that is needed to maintain a healthy population. And we have some slides later that - that will show that. We - while these copayment levels remain below - the proposed copayment levels remain below, quote, market, we do believe that they create the
necessary spread, the necessary incentive, to ask
- to get someone to think to themselves - and to
seek the resources needed - what is the best way
for me to receive treatment, what is the right
drug and what is the right place to get it. Our
next slide shows us - this comes out of business
insurance, and there are some numbers here that
are higher than others. But basically on the
Cambridge Book of Business, which totals over $5
billion in pharmacy spend for 2010, and industry
standard, if you would, the base level is at 71
percent generic dispensing rate. That's what a
well-run plan realizes. There are multiple sources
on this. We talked to the PB - the Pharmacy
Benefit managers. This document, you know, they're
all listed right here. If we look at this plan,
we're at a 68 percent generic dispensing rate. I
would say to you that that ties back to the spread
of the copays that I was talking to you before
about and the lack of clinical management rules to
help people get there. Most folks are not
educated. They can't even - I just had surgery
last week; I'm on a couple of drugs right now. I don't know that I can pronounce their names, okay? So that it's a situation where people - people don't know when they need the help, okay? So the clinical management rules, which we're going to discuss, or their - they're designed to make sure the people get that help. Second consideration, I talked about the blockbuster drugs, and I can list them if you need me to, but I'll honor your time. But basically, this 71 percent that we're looking at right now, by the end of 2012, is expected to go to 80 percent. Some drugs that probably many of us in this room take are about to come off patent, so this is a very opportune time to address the need to focus on generic dispensing rate and incenting folks to do that. And in fact, some people right now, if we do that, if - if the proposal is taken, costs will be lowered significantly for people who are on those drugs, okay. It should also be noted that the gen - most generics, particularly through the mail order that we're suggesting, are driven towards maintenance
drugs, the chronically - for chronic care
conditions which can also be complicators. Most of
those folks are taking more than one drug; three
to five, not unusual. So while I can understand
the perception that while you're looking at
increasing the third tier, that non-preferred,
when you take the total spend that the employee,
that the participant would be asked if they start
taking generics, it would invariably go down.
Also, I'd also - I would note to you that when you
look at the cost of specialty drugs and keep that
- as I mentioned before, and keep that in the
third tier, you really start to see where some of
the - sort of the cost share for the employee or
the participant will remain - will either remain
similar or drop from its present levels. In fact,
later, I will give you a point where we think if
these proposals are taken, we would actually
expect the cost share to drop down on - from a
couple of sides, both on the generic dispensing
rate and on the clinical management rules. I'd
also just tell you that the focus on mail is about
safety; one last item there. Dispensing accuracy
rates; there are numerous studies on this.
Dispensing accuracy rates for mail order are much
higher than on a retail level. More errors are
made when you get your drug on a retail level than
they are through the house, which is more
automated. So again, this is about safety and
cost. Do not want the misperception that this is
dollars first, no thought about what's right for
the patient. The plans' drug adherence rates;
these are really some disturbing and frightening
numbers. And again adherence is compliance with
your drug regiment. You can see the top line looks
at 80 percent. That is the industry standard. If
you get these key chronic care disease states, we
don't have anyone near these numbers. The blood
pressure were up almost at 70. These people are at
risk and of need. They will invariably lead to
higher more complex care medical claims if we
don't do something to address drug adherence. You
all. This plan uses the Medco Therapeutic Resource
Centers as a tool to increase adherence. I believe
that's one of the reasons we've seen a little bit of growth in the last couple of years. More needs to be done. Right now 49 percent of the covered lives in this group fall in the categories of chronic and complex care. So again when we don't have adherence for those types of folks, we have a high at risk population which could lead to some pretty serious costs on the medical side down the road. We talked some about the multiple utilized - that these folks are multiple utilizers and that this switch to generics will help them in terms of lowering their total costs. This chart's a little busy. I'll try and make it short and sweet. This is a case study of an airline which is a Cambridge client. Three years ago their situation was dramatically similar to that of this plan in terms of copayment levels and their spread and the lack of clinical management roles. The proposals that were put into place were, again, very similar to what is being proposed by the carriers. A year later we saw the generic dispensing rate increase the ten percent that we see on this chart. I'll
make this easy. Forgive me. Go to the bottom right hand side. We saw a ten percent increase in the generic dispensing rate. What that also meant was a ten percent decrease in the - almost ten percent, 9.8 percent decrease in overall pharmacy plan costs. So that nobody thinks that we've sort of cherry picked something here, if you look at the studies in the market, if you talk to the pharmacy benefit managers, it is industry standard to hear that you will get a one-to-one savings. In other words for every one percent drop in generic dispensing rate you will get a one percent decrease in overall pharmacy spending. I just gave you this one as a - This is an actual study. It was completed over a 12 month period and the plan runs well. If you look at the next chart again, I'll try to make this. This is Cambridge's work based on what we know about this plan and the carriers' proposal so it actually assumes adoption of all the proposals including the clinical management rules. And what you'll see if you look to the far right on the bottom, just to make it
easy, you'll see that the members are expected to
save about 10.6 percent of their share of costs.
Right now the members spent about 14 percent. The
cost share's about 14 percent on the pharmacy. I
heard a different number on the medical. It's
about 14 on the pharmacy. We would expect that to
decrease if these proposals went through. The plan
would save five percent. We'll see on the next
chart that the dollars are different. As I
mentioned, this is based on the work - all the
proposals and it's based off the Cambridge's
entire business. I heard my friend Mr. Boley say
the words win/win. I would tell you this is a
win/win. Based on the numbers we have that ten and
five become $12.5 million and again this is 2010
dollars. Forgive me because that's what we worked
off of so we didn't trend forward or anything like
that; $12.5 million savings to the plan 4.65
million to the participants. I think this chart
speaks for itself but. The next chart really
starts to gives you the philosophy of clinical
management rules. I'll give you time to read it if
you'd like. Basically a few quick thoughts;
there's nothing new in these rules. These rules
have been around for over a decade. Pharmacists
and physicians have been working with them with
the pharmacy management industry for well over a
decade. It doesn't mean that they've remained
static because of changes in the pharmacy industry
that we've talked about. You know in the
pharmaceutical industry there's always nuances and
changes. But this is not a matter of the carriers
coming forward with something that's not proven or
not out there in the marketplace. It's always
about clinical accuracies, is the term I'll use,
instead of cost savings. No one is going to put a
patient at risk. It doesn't make sense from a cost
of care if you're going to cynical and think it's
about costs. It doesn't make sense from a cost. If
you give them the wrong medicines they're going to
get sick. Also it just doesn't make sense from a
liability standpoint. Nobody's operating that way.
It's about safety, avoiding waste, and education.
I want to give you a sense of what I will call the
first pass rate. In other words the number of
times that - the percentage of the time that it
takes for someone - where the doctor or pharmacist
working with the PBM can't resolve it without
going back to the patient. For the rules that are
being proposed here is one percent or less. So
we're talking about one percent of the time or
less where the patient might have to get involved.
And I want to be clear what happens there. If the
patient is in a situation where his physician or
her physician is in a different place than the
pharmacy manager, a couple of things come into
play. Under healthcare reform there is an appeal
process that has to be expedited over a specific
period of time and it involves an independent
review organization. Secondly, the patient is
given the needed supply of the prescribed medicine
until that is resolved. So nobody's put at risk.
This isn't about emergency situations. I just
wanted to be clear about that. I think if we -
these are the three specific types of rules that
the carriers are proposing. Their market standard
to ensure that the patient receives the right medicine at the right time and the right place. As I said before their design these are designed to put another set of eyes on things. I was only half jokingly spoke about the TV ads that are out there. With prior authorizations, with step therapies, another set of eyes saying is this the safest drug for this person given their condition. Is this the right thing? And for instance if I go to doctor number one who doesn't know I've been going to doctor number two and I've got a drug mix that therefore is not known having a prior auth, having the step therapy protects the patient. So this is about total health management and managing the pharmacy benefit improves the health status of the population. These rules are designed to do that. As I mentioned the doctors and pharmacists have seen these rules and worked with these rules for years. There's nothing new. I'd say to you that the - that these three sets of rules are primarily focused on the drug class, and they go beyond, but primarily focused on the high risk
patients and others. But if you looked at the
therapeutic classes that are being proposed to be
managed they are - they come together for the
group of patients that are high risk, that 49
percent if you would, to help them. And as I was
jokingly saying before you know the TV ads exist.
This is there to offset it. The goals of big
pharma are very different than the plan sponsors,
the participants, and the pharmacy managers that
they employee. I guess I would just say it this
way this is always about clinical efficacy and not
cost efficiency. It doesn't mean that savings
isn't a byproduct. It is. But efficient care,
effective care is efficient care. So they're not
mutually exclusive but they do often go together.
Primary is about safety and quality and you,
therefore, get reduced costs. If you look at the
next page, again, these are in 2010 dollars.
Everything has been. Based on our book of business
this is separate from the savings that we outlined
around the generic dispensing rate. This is what
we would expect the plan to save. These are
estimates. There would also be savings for the participants. Obviously going through step therapy, or going through a prior authorization, or a quantity limit and I'll give you an example on a quantity limit in a minute. If you go through those things and you find that you didn't need something, guess what you saved on some money as a participant. One of the things that I wanted to touch on with safety on quantity limits the DEA ran a program this year where they asked people to hand in their unused prescription drugs. Three hundred tons of unused prescription drugs were handed into the DEA. That's wastage. That's plan costs. Not this plan only but plan costs across cost to the participant. It's not good for anybody. Imagine having those drugs lying around your house with children, etcetera. The rules make sense financially we see here, but they make more sense from a clinical standpoint. The close I'll read the following for you. I say it with no offense to anybody but the current design just adds unnecessary cost to plan participants and it
1. does not optimize health outcomes effect. I think
2. it puts people at risk. The low adherence rates
3. bear that out. The carriers' proposals are modest
4. compared to the marketplace. I could go into
5. greater detail if you'd like, but as you saw there
6. are certainly from the co-pay side there are
7. people doing a lot more. On the clinical
8. management side the rules being proposed are
9. minimal compared even by the type that they are
10. because you've limited them to certain therapeutic
11. classes. Some plans go all out if you would. The
12. proposal addresses the deficiencies of the plans.
13. It's going to reduce unnecessary costs by
14. increasing the use of generic particularly mail.
15. It's going to optimize health outcomes with
16. pharmacy management tools that really need to be
17. in place. And they are in place most everywhere in
18. the marketplace right now. And as I said, it's a
19. win/win. Not to beat that horse to death, but it's
20. a - I would just give you this thought. I've seen
21. pharmacy benefit management become incredibly
22. complex. It's a pretty simple if you think about
it. It typically takes up 18 to 20 percent of a plan's spend. It's a critical sort of spoke or hub in the wheel. It depends on how you want to look at it. It's been made unnecessarily complex but this is pretty simple stuff. People should be given the help to get the right drugs at the right place so that they're safe, they're healthy, and they're paying the right amount and that the plan is optimizing results. Thank you for your time. If I can take any question - If you have any questions, I'd be glad to take them.

CHAIRMAN JAFFE: Thank you Mr. Piltch.

UKNOWN MALE: What do you think?

CHAIRMAN JAFFE: Just two very focused ones. Slides 13 and 16, I just want to understand the projected savings numbers if I could?

MR. PILTCH: Sure.

CHAIRMAN JAFFE: Is 13 inclusive of 16 or separate from it?

MR. PILTCH: Separate from it sir.

CHAIRMAN JAFFE: Okay. And what is the 12.5 based on so I'm clear?
MR. PILTCH: Oh I'm sorry. I didn't mean to interrupt you. If you look at the Cambridge's I'm just trying to find the slides. Forgive me. If you looked at Slide 12 sir.

CHAIRMAN JAFFE: Right. That was from the airline client you had I thought.

MR. PILTCH: No sir. This is.

CHAIRMAN JAFFE: This is from the plan here?

MR. PILTCH: This is the plan. I'm sorry if I wasn't clear.

CHAIRMAN JAFFE: No, I may have missed it.

MR. PILTCH: This is this group.

CHAIRMAN JAFFE: Okay.

MR. PILTCH: The other plan was just a case study. This is the.

CHAIRMAN JAFFE: Eleven was the. Okay.

MR. VERNON: The other one's the airline study right?

MR. PILTCH: Yes sir.

CHAIRMAN JAFFE: I've got it now. So 13 flows from 12?

MR. PILTCH: Yes sir.
CHAIRMAN JAFFE: Got it. And my other question was the airline client. What year did that represent approximately just so.

MR. PILTCH: It was four years - it was done four years ago and completed three years ago.

CHAIRMAN JAFFE: Fair enough. Given the rate that things were changing I wanted to at least understand where it fit historically. You all okay? Thank you very much.

MR. PILTCH: Thank you for your time.

UNKNOWN MALE: District Chairman that concludes the carriers' case in chief on the healthcare components of the carriers' proposal.

CHAIRMAN JAFFE: That's fine. Lunch?

UNKNOWN MALE: Yes sir.

CHAIRMAN JAFFE: Off the record. At your convenience, Mr. Munro. MR. MUNRO.: Thank you, Mr. Chairman. Well, I have exhausted my supply of economists, so I am reduced to lawyers at this point. Mr. Easley is going to put on the carriers' wage case, and as I indicated at the outset, this will be a short presentation. You've heard most of
1. In the context of total compensation, and most of what he will be telling you is simply to indicate that the story is much the same if we were to focus on wages exclusively. He will then be followed by my partner, Carter DeLorme, who will present the carriers' affirmative case on work rules, which is mercifully short, because we have no work rule proposals. Most of our work rule presentation will be then presented in rebuttal in response to the unions' arguments for - of changes in that - in that arena.

2. CHAIRMAN JAFFE: I mean it's my understanding, since counsel must present an argument, we don't need to swear in any of the folks this afternoon.

3. MR. MUNRO.: Yes, this would -

4. CHAIRMAN JAFFE: The remaining - MR. MUNRO.: Thank you.

5. CHAIRMAN JAFFE: Fair enough. Thank you. MR.

6. MR. EASLEY.: Mr. Chairman, members of the Board, good afternoon. We're in the home stretch here. Over the last day and a half, the carriers have presented their evidence and witnesses in support
of their arguments on total compensation.

Yesterday, Professor Kevin Murphy explained that in evaluating the respective proposals of the parties, the Board should compare the total compensation encompassed by each party's proposal. And total compensation is, in the view of the carriers, the appropriate measurement, because it recognizes the full value of the cash and noncash consideration paid to railroad workers for their labor, as well as captures the total cost incurred by the carriers in employing those workers. Having said that, however, we want to focus, for the next 25 minutes or so, on a few issues that deal specifically with wages. In fact, like five points in particular. First, coalition employees currently earn higher straight time hourly wages than their peers in the transportation industry and higher wages than workers with similar skills and educational attainment in other parts of the U.S. labor market. In other words, the wages of coalition employees have not lagged behind anyone inside or outside the transportation industry.
Second, the wage premiums received by coalition employees are not a recent phenomenon. These wage premiums existed at the beginning of the last contract cycle and grew over the five-year term with the most recent agreement. Third, in their proposals, the coalitions have offered the carriers significant general wage increases of 17 percent, or 18.24 percent compounded over six years. These wage increases will perpetuate and even expand the preferred position of railroad workers vis-a-vis their peers in the transportation industry and provide real wage growth of approximately 9.1 percent. Fourth, the wage increases proposed by the carriers exceed current collective bargaining trends in the United States and outpace estimates of job growth in the greater economy. And fifth, the coalitions have offered no compelling justification of their even higher wage demands, which would increase the carriers' labor costs by an estimated $1.2 billion over five years. This difference is sufficient to
pay the annual wages of more than 23,000 additional railroad workers at the wage rates proposed by the carriers. Now, some of these points that we're going to cover were covered by other witnesses; we'll move through them fairly quickly, and some of these slides may even look familiar to you. What you see on the screen now is a pie chart similar to the one that Dr. Murphy showed to you yesterday morning. And in his presentation, Dr. Murphy explained that 57 percent of the total compensation package received by railroad workers consists of straight time wages. Although it's only a little more than half of their total compensation, however, it represents a substantial financial commitment by the carriers. Total annual wage costs for the carriers in 2010 were approximately $4.5 billion. However, even these costs do not tell the whole story regarding the impact of high straight time hourly wages. This is because hourly wage rates affect other forms of employee compensation, such as premium pay, vacation, holidays, other paid time off, as
well as contributions for railroad retirement and railroad unemployment. As a result, and as the graph shows you, straight time wage rates influence about 86 percent of the total compensation package received by coalition employees. In other words, increases in wage rates have secondary effects on other elements of compensation that are linked to wages. In their summary statement on general wage adjustments at page 3, the coalitions and their experts argue that their significantly higher wage demands are, quote, necessary to close the compensation gap between rail workers and the rest of U.S. workers. However, this claim cannot stand up to even minimum scrutiny. As the testimony yesterday established by any objective standard, railroad workers represented by the coalitions are extremely well paid. Yesterday, Dr. Evans demonstrated the significant compensation premiums paid to coalition employees; nearly 80 percent more than other transportation workers. But don't take our word for this. An independent study by
the Blue-Green Alliance, a coalition of labor
unions, including, incidentally, the sheet metal
workers' union, as well as the environmental
organizations, conducted a study regarding the
rail industry and their findings are more or less
consistent with what Dr. Evans told you yesterday.

Railroad workers earn 30 percent more than the
average U.S. income and 74 percent more than other
workers in the transportation sector. The entire
Blue-Green Alliance report is available in the
carriers' appendix at document A-39. This slide
also should look familiar to you. This was a slide
presented to you by Dr. Evans. As it shows, and as
Dr. Evans testified, the average hourly wage rate
for employees in the coalitions is $26.66 per
hour. And as you can see, all the crafts
represented by the unions here make straight time
wage rates in excess of $20 per hour. In contrast,
according to the Bureau of Labor Statistics, the
average transportation worker in the - or the
average worker in the transportation industry
earns only $17.34 per hour. It is worth noting,
however, that this comparative rate for the transportation industry is itself biased upward, because it includes the coalition employees, as well as other employees in the UTU crafts and the yardmasters, who are also part of the transportation sector as well as salaried and other non-bargaining union employees of the carriers. But even using the unadjusted rate for the transportation industry, coalition employees receive an average wage premium of $9.32 per hour; almost 54 percent. Moreover, Dr. Charles Fay explains in detail in his report, which is Carriers' Exhibit Number 4, that railroad workers enjoy significant wage advantage over employees in comparable jobs in other industries and employees with similar educational characteristics. The wage premiums currently paid to coalition employees are not a new phenomenon. Looking back at the last five years, it is obvious that the already large wage advantage that railroad workers have other - over other transportation workers have grown over time. In the last wage settlement, coalition
employees received substantial wage increases of 17 percent over five years. Significantly, coalition employees continued to receive these wage increases even as the economy was mired in the deepest recession since the 1930s, and even as millions of Americans lost their jobs. In July 2009, at the very height of the recession, coalition employees received a four-and-a-half percent general wage increase. As Ken Gradia observed in his remarks yesterday morning, the fact that the carriers were forced to implement such substantial wage increases at a time when industry revenues and profits were plummeting is a cautionary tale suggesting restraint and prudence in the current round of bargaining. The impact of the last national agreement is clear. The wage premiums received by coalition employees continued to grow, not lag behind as the coalition suggests. In 2006, the hourly wage premium was $7.85 an hour, or 50.7 percent. By 2010, that premium had swelled to $9.32 per hour, or 53.7 percent. Indeed, as Matt
Rose noted in his remarks this morning, in both good and bad economic times, coalition employees have continued to enjoy significant wage growth that has outpaced inflation and enhanced their standard of living. The coalitions begrudgingly concede this fact in their wage supplement at page 2, noting that, quote, the last three agreements provided a margin of real wage gain. Indeed, according to the analysis prepared by Dr. Evans, coalition employees enjoyed 7.4 percent real wage growth over the last five-year agreement. As Ken Gradia explained to you yesterday morning, the carriers have offered a generous wage package to the coalitions. As you could see on the screen, it consists of six general wage increases, 17 percent overall, 18.24 percent compounded. One thing I would remind you of from Mr. Gradia's remarks is that the last three percent general wage increase scheduled for January 1st, 2015 under the carriers' proposal came with strings attached. In other words, the conditions were that the one - that three percent GWI would settle wages for the
first year of the next collective bargaining round, and the carriers have offered that - the proposal to the coalitions here under the same terms. But if the coalitions are not interested in those terms, the carriers are prepared to offer a five-year wage proposal and pull that off the table. Significantly, the general wage increases in the carriers' proposal would outpace inflation and result in substantial real wage growth for coalition employees. As David Evans explained to you yesterday, using Congressional Budget Office projections, he estimated that the Consumer Price Index will increase by 9.1 percents by 2015. Now, the wage increases in the carriers' proposal compound to 18.24 percent over that same time period, and so for a real - for a real wage growth standpoint, that represents real wage growth in excess of nine percent, and given the current economic conditions, nine percent real wage growth is extremely generous. In their submission, the coalitions claim that, quote, the carriers' proposal will not enable employees to keep pace
with inflation, let alone increase real pay. You can find that quote at their wage supplement at page 14. Or stated differently on the next page of the same wage supplement, the coalitions claim, quote, the probability of breaking even under the carrier proposal is remote. However - excuse me. Dr. Evans' real wage growth calculations are based upon a different set of data, and that is the Congressional Budget Office CPI projections. As he explained to you yesterday afternoon, the numbers cited to you by the coalitions are based upon consumer price index calculations that - that have no source anywhere else that were just assumed or developed by the coalitions' expert. The CBO, on the other hand, is used by Congress for projecting federal budgets and for evaluating legislative enactments, and it provides a neutral nonpartisan, nonbiased projection of future inflation growth. Even more importantly though, the coalitions take it as a given that real wage growth is imperative under a settlement. In their submissions, they assert, at page 7 of the wage supplement, that,
quote, real wage advancement has been the rule under prior agreements voluntarily reached between the freight carriers and rail labor. However, contrary to the assertions of the coalitions, real wage growth is not a given. Because wages and other employee compensation are typically determined by labor market conditions, as Dr. Murphy explained to you yesterday, there is no certainty that compensation will outpace inflation. In fact, according to the most recent release from the Bureau of Labor Statistics, real earnings for U.S. employees went down almost two percent between August 2010 and August 2011. The recent decline in real earnings is evident in recent collective bargaining settlements reached between management and organized labor throughout the United States over the last couple of years. To be sure, 2010 and 2011 were difficult years for collective bargaining. The lingering effects of the 2008-2009 recession and persistent unemployment weighed heavily in recent negotiations, depressing wages and other economic
items. The carriers' wage proposal exceeds current collective bargaining norms in the United States.

On the figure, you can see the top green line, which represents the first three general wage increases offered in the carriers' proposal, which would be two percent, 2.5 percent, and three percent, yielding a compounded increase of 7.7 percent over that three-year period. In contrast, the middle red line represents the average wage settlement in all collective bargaining settlements for calendar year 2010. Now, the data for that comes from the Bureau of National Affairs. It's published periodically in the Daily Labor Report and compiled on an annual basis. The 2010 dataset is a compilation of 958 settlements across all industries, representing approximately 970,000 employees. And the BNA's analysis can also be found in the carriers' appendix at A-65. So you can see from the BNA data the average of settlements in 2010 was well below what the carriers are offering here - offering here. Year 1 wage increases in 2010 were 1.8 percent, year 2
wage increases were 2.1 percent, and year three wage increases were 2.3 percent for 6.3 percent compounded growth. You may have a slide that doesn't reflect this; it's going to be substituted, my apologies. Okay. Because the BNA only typically reports all contract settlements, it actually has no data for year 4 and year 5 wage settlements, and that's because most wage settlements in collective bargaining are three-year agreements. The statistics for calendar year '11 are even lower. As you can see, the bottom blue line on the graph represents contract settlements to date in the United States in 2011. This dataset is based upon the BNA's release dated October 6th, 2011, and can be found at the carriers' appendix at A-66. This data includes 680 settlements covering 943,000 employees. And as you can see, the general wage increases are trending lower: 1.3 percent for the first year, 1.7 percent for the second year, and 2.2 percent for the third year for a compounded growth of 5.3 percent. But even more tellingly in the 2011 data is that 51
percent of those 943,000 employees are getting no wage increase in the first year of their contract. So as you can see, compared to these figures, the proposals tendered by the carriers in this proceeding are more than generous, and frankly there's no reason to believe that the current collective bargaining agreement is going to improve for American workers in the near term. Recent economic indicators are trending downwards, capital markets are depressed, and concerns about a double-digit recession are increasing. The federal government currently is attempting to implement new stimulus measures and - and trying furiously to pass a jobs bill. Economic uncertainties and persistent unemployment continue to vex the U.S. job market and are adversely affecting wage growth throughout the economy. The care - the coalitions largely ignore current economic conditions in their proposal. Despite the fact that the carriers have offered significant wage increases, the coalitions are asking for even more: Wage increases of 19 percent over the term
of the agreement, or 20.5 percent compounded. Now, at first blush it may appear that there's not that much difference in terms of the carriers' proposal and the coalitions' proposal, given that the carriers have offered 17 percent and the coalitions have offered 19. However, the differences are actually quite substantial. For example, under the carriers' proposal, there are six wage increases over a six-year period. The coalitions offer five wage increases over a five-year period, equating to a higher number. And so if you compare on an apples-to-apples basis, the five-year proposals between the two parties, the difference is actually five percent, or more than six percent compounded. But even in addition to that, there's another component of the coalitions' proposal that makes it even more expensive, and that is the dates of those general wage increases. Under the carriers' proposal, as you can see, the general wage increases are scheduled to be implemented at midyear, July 1st of each year through 2014. In contrast, under the coalitions'
proposal, those wage increases would be implemented on January 1st of each contract year, and that difference has significant consequences.

As - if - if you move that date up to January 1st, the lump sum payments for retroactive wages would be substantially larger, and secondly it would increase labor costs faster because those wage increases would happen earlier in the contract cycle. The gravity of the differences between the parties is evident when the financial impact of the two competing proposals is considered. Based upon current headcounts and requirements, the carriers estimate that over the five-year period their 14 percent general wage increases would increase wage costs by $1.46 billion. In contrast, the 19 percent general wage increases in the coalition unions' proposal would increase the carriers' wage costs by two point - excuse me - 2.69 billion over the same time period. Thus, the total cost differential between the carriers' wage proposal and the coalitions' wage proposal on an apples-to-apples basis is $1.23 billion over five
years. And even though $1.23 billion is obviously a staggering number, the wage cost differential does not even tell you the whole story about the difference between the parties as it relates to wages. In addition to their GWI proposals, the coalitions are proposing significant additional wage increases in their craft-specific proposals. These extra proposals consist of wage adjustments, wage equalization, increased differentials, elimination of entry rates, and elimination of two-tier wage systems. The carriers estimate that the cost of these proposals for additional wage compensation are valued at approximately $470 million over the five-year term of the agreement. And the details and - and counterarguments with respect to the particulars of these wage adjustments are addressed in carriers' submission number seven, miscellaneous compensation issues. But in any event, the 470 million represented by these additional wage items would be in addition to the $1.23 billion difference mentioned just a moment ago. The coalition unions have not offered
any compelling justification for the excessive wage demands that they make in their proposals. They offer no quid pro quo for additional wage increases. As explained yesterday by Dr. Topel and Ms. Mancini, additional wage increases will not yield improvements in recruiting or retention of railroad workers; the coalitions have not even claimed that they would. Similarly - similarly, there is no claim that additional wages will improve productivity in the railroad industry. Indeed, according to Dr. Eakin and Mr. Fritz, productivity improvements are dependent upon continued capital investments. Arguably, allocating more money to labor costs will reduce capital investments and impede future productivity growth. The coalitions offer two primary justifications for higher wage increases. First, the recent financial performance of the carriers, their profitability; and second, higher wage - and they claim that higher wage increases are necessary to compensate coalition employees for wage inequities in the past; most notably, a 1988
wage freeze. Neither is a good reason to increase
the already large wage premiums enjoyed by these
workers. As explained by Dr. Murphy, profitability
is not an appropriate basis for setting wages or
other forms of compensation. To the contrary,
wages and compensation should be determined by
supply and demand in the labor market, and the
financial - and not the financial results of any
employer or industry. Moreover, as explained by
Matt Rose this morning, there's no guarantee that
the carriers will be able to maintain their
current level of financial performance in the
future. Although they cite current or past profits
to support their wage demands, the wage increases
sought by the coalition unions will have to be
paid in the future out of future earnings. And
even though results may be strong today, there are
many risks to the financial performance of the
carriers. These risks are discussed in detail in
Carriers' Exhibit Number - er, yes, Carriers' Exhibit Number 7, the report of Dr. Robert
Gallamore and John Gray. Further, although they
rely on profits to support their wage demands, the
coalitions are not proposing that their wages be
directly tied to profitability. If they were, the
coalitions' proposal would be a profit-sharing
program, much like the BLET has negotiated with
some of the carriers, such as BNSF or CSXT or
Norfolk Southern, but they are not. The coalitions
are seeking significant wage increases that are
guaranteed, regardless of the future financial
success of the carriers. However, as Matt Rose
explained this morning, the coalitions are not
interested in assuming any downside risk in the
event that the financial performance of the
carriers degrades in the future. Indeed, the
coalitions have not suggested that they should
have to return any part of the four-and-a-half
percent GWI that they received in 2009, when
carrier profitability plummeted by more than 20
percent. The coalitions and their experts also
claim that the Board should recommend their
proposals for higher wages based upon certain wage
inequities in the past. In their wage supplement
at page 6, the coalitions explained, quote, that
one of the principal objectives of the
organization's wage proposal is to restore real
pay to the pre-deregulation level; that is, prior
to 1980. Further, the coalitions claim that the
Board should compensate them for wage freezes that
were implemented in 1988, more than 20 years ago,
after recommendation made by PEB 219. Now, it's
doubtful there are even very many workers at the
carriers now that were present when either one of
those two events took place, but be that as it
may, that is their argument. With all due respect,
the function of a Presidential Emergency Board is
not to turn back the clock or to settle scores
from prior PEBs. The coalitions have made these
same arguments over and over again in each
successive national bargaining round without
success, and these arguments are no more
persuasive today than they've been in the past.
The same arguments made by the coalitions in this
proceeding with respect to the wage freeze from
PEB 219 were previously rejected in 1996 by
Emergency Board in PEB 228. In that case, the Emergency Board rejected the backwards-looking arguments of the unions and instead looked at the facts and circumstances at that time in making its recommendations. In so doing, the panel in PEB 228 observed at page 11 of their report that, quote, it cannot be said that railroad employees were subjected to a meager wage package in the five-year period preceding the current bargaining round. Well, as we have shown, the same circumstances apply here today. For all the foregoing reasons, the Board should recommend the carriers' wage proposals as a fair and equitable settlement of the current dispute. Coalition employees are among the best-paid workers in the U.S. labor market based upon their skill and education. The wage proposals offered by the carriers will perpetuate and even increase the preferred wage position of coalition employees and will improve their standard of living over the five-year term of the new agreement. These wage increases are identical to the settlement between
the carriers in the UTU and it must be considered bona fide wage pattern that sets the standard for other industry settlements. The coalition unions have offered no compelling reason why the Board should recommend wage increases that exceed those established by the UTU pattern. Moreover, given the destabilizing effects that would result from recommending a more lucrative wage package than the one negotiated voluntarily by the UTU, the Board should decline the coalition union wage demands and recommend the carriers' proposals.

Thank you.

CHAIRMAN JAFFE: Thank you, Mr. Easley. We'll take a moment, then let you know if we have anything -

MR. EASLEY.: Very good.

CHAIRMAN JAFFE: - else. Back on the record. We're in fine shape. Thank you very much again. MR.

EASLEY.: Thank you, Mr. Chairman.

MR. DELORME: Mr. Chairman, Members of the Board uh, I am the last between you and the summation of our case in chief and I am here to talk about the Carriers position on work rules um, and what
you'll take note of is that from the outset each side took a very different approach to work rule changes in this round of bargaining. From the inception of bargaining through to the presentations and submissions made to this Panel, the Carriers have felt that changes in work rules while desirable would interfere with the core issues between the parties that needed resolution. It appears, however, the Coalitions felt very, very differently. Before we get into the proposals themselves those offered by the Coalitions and the lack of offers of work rule offers made by Carriers, I think it's appropriate to have some kind of framework discussion in terms of how we would expect this issue to be addressed by the Board. We have some instruction from prior Boards which recently PEB242 where it was explained that in negotiations in the industry, it is customary for agreements that amend or eliminate work rules to be fairly focused in nature; to be incremental and to be negotiated with quid pro quos. That admonition is directly applicable to the position
the parties are taking in this Hearing. So here are the Carriers proposals. Uh, the slide is blank because the Carriers made a concerted effort at the beginning of this process to determine what was important to be accomplished in this round of bargaining. We'll talk later that there were certainly proposals that could have been made that were certainly considered internally but ultimately were not being made in bargaining and are not being advanced here. On the other hand, you have the Coalitions union who started out with all of their own Section 6 notices with a variety of different issues some of which overlapped and resulted in these common Coalition proposals and some of which have been left to craft specific discussion. After whittling down those work rules, it appears the Coalitions based on their submissions have sort of two work rules issues that they are advancing as a group. This first involves vacations and that proposal not only uh, proposes to increase the maximum length of vacations for employees with 20 or more years of
service but also have a cascading effect throughout the seniority system to allow people to earn more vacation sooner. And it's axiomatic that vacation is paid time off or foregone productivity for pay. So we'll examine a little bit later what we think those proposals might cost. In addition to that with respect to vacations, they are looking for something that is somewhat revolutionary when contrasted with the National vacation agreements that exist in the relationship between the parties right now. They are looking to allow people who have worked ostensibly less than six months; there are a certain barrier number of days that employees need to work to earn their allotment of vacation for the next year. And what they are seeking is for some pro ration system where apparently they can accrue vacation dependent on how many days that they work. That, that is a very real change from the established vacation procedures between the parties and we think it could be problematic for any number of reasons. They have also on a Coalition basis asked
for a new found right to information request.

Something unlike under the National Labor Relations Act, under the Railway Labor Act is not something that has ever been contemplated before.

And under the auspices of seeking information for administering the contract or adjusting grievances or whatever uh, interpretation the unions might have on that, they essentially want unfettered access to company information with very little, if any, restrictions attached to it. Now there are also a few craft specific proposals that we have discerned at least at this point and we'll know more next week after the unions put on their case.

We certainly know that BLET has uh, sought recommendation of a proposal that they have been unsuccessful in many, many years of bargaining and seeking and now recently unsuccessful in having the Federal Government intervene and mandate and that is Locomotive Cab conditions. They are seeking somewhat of an amorphous right for engineers to refuse to operate locomotives based on their views of their conditions. Um, it's
important to note that right now the FRA is working on a rule making to address this very issue and I think that uh, more importantly than that we need to recognize that BLET has come to wage and work rule agreements with three of the Carriers represented by the Coalition or by uh, by the uh, NCCC. The BMW reproposes sweeping changes to away from home expenses including a requirement that headquartered employees not the traveling system gang employees that were uh, provided certain travel uh, payments in a, in a process for making those payment um, but headquartered employees who are based in a single location to receive the same traveling benefits as those system gang employees. They seek a mandated, single room occupancy uh, proposal for all traveling gangs as well as a variety of financial enhancements to the expenses that they are paid. And finally the TCU proposes an interest arbitration be recommended between a very small segment of workers they represent on CSX which actually only covers a portion of the CSX system.
Now we'll deal with specific nature of their proposals once we hear more about them next week but we think that there's a threshold question that the Board needs to entertain. And that is, "Should the Board entertain these proposals at all?" And for the reasons that I'll describe I don't think the answer is, "yes". PEB242 set up essentially five different ways of looking at work rule proposals to determine whether or not it's appropriate for them to be changed in the concept of an Emergency Board Hearing. They sort of asked five questions that need to be addressed before it appeared that it would be comfortable with making, with granting the Carrier proposed proposals that were involved in 242. First, "Are the changes sought consistent with the existing pattern?" Second, "Have the changes been the subject of intensive bargaining between the parties?" Third, "Are the changes major and potentially destabilizing on core issues?" Fourth, "Are the key, are the changes being sought supported by compelling need?" And fifth, "Are the changes
within the bounds of what could be achieved in good faith bargaining without countervailing substantial concessions?" The Carriers contend that the answers to each and every one of these questions is "no" and because the proposals don't meet these requirements, we recommend that they be rejected. Four reasons to reject the Coalitions proposals that are independent of one another: Pattern, precedent, the Carriers restraint in the surrounded bargaining and the lack of intensive of bargaining of these issues. Pattern is the concept that we're almost tired of at this point. It's been discussed so thoroughly but it is so important. If you look at the UTU Agreement, there are no work rules changes of any substance contained therein. Precedent, what we mean by precedent is that PEBs prior to this one have been tasked with deciding whether very similar if not identical proposals being submitted by the unions should be recommended in this situation. And historically more often than not they are not recommended. Third, Carriers restraint, what we
mean by that is as I indicated in the beginning of the presentation, the Carriers had a very thoughtful and methodical process by which they wanted to approach bargaining and did not want to layer in issues that they knew would overly complicate the result of an agreement. And fourth, no, no intensive bargaining; as I'll demonstrate later the proposals that are being advanced for the most part were barely if at all mentioned during bargaining. Pattern, when you talk about pattern let's talk about where the UTU started and where the UTU ultimately ended up. To be sure the UTU Section 6 notice had at least 25 different proposals some of which highlighted and read here are very similar to the proposals that are being considered or being advanced by the Coalitions in this round. Yet, as you can see, the UTU ultimately decided to withdraw all of those proposals because they through intense bargaining with the Carriers came to the resolution that what mattered was getting the right wage increase for their employees and working through the thorny
issues we heard this morning associated with health and welfare benefit plan changes. And they recognized that those issues were paramount and those were the bedrock of a potential deal. The UTU Agreement components we've talked about again but graphically it makes clear what is involved and what is not involved. The substantial wage increase that Mr. Easley just referred to 18.2 percent compounded that's been offered to the Coalitions here along with the option of having a one year shorter agreement. The modest change to health and welfare benefit plans discussed this morning led by Mr. Boley; those same changes have been offered to the Coalitions unions. Entry rates and lump sum payments and the certification allowance while they work a little bit differently, Mr. Gradia explained how the value associated with that element of the UTU Agreement, has been part of the proposal that we make to the Coalitions and there were no substantive work rule changes. Hence, we don't see why there should be going forward. Why is pattern so important? Why do
we talk so much about pattern? One of the reasons why it is important is that there is a value associated with what the UTU decided to give up and what the UTU decided to accept as part of their Agreement. And as Mr. Gradia indicated, it would violate the pattern principle to allow the Coalitions unions to essentially leapfrog over the UTU when the UTU and the Yardmasters gave up equivalent demands in an Agreement with the Carrier. Mr. Rose spoke specifically this morning about how allowing the Coalitions to achieve more the a PEB process would directly erode future negotiations not just with these parties but with all rail unions. They would be completely disincentivized from coming to voluntary agreements. And thus including work rules changes, recommendations as part of the package at this juncture would be inherently destructive to the long-term stability of collective bargaining in the railroad industry. Another reason why pattern matters that we talked about value, there are actually hard costs associated with these
proposals. Again, we'll know more when we know more about the details associated with the proposals next week but analyzing what is being proposed by the Coalitions we have come to the conclusion that over the term of this agreement it would cost at least a half a billion dollars. And there are many who believe this understates the number. We expect that the Coalitions are going to argue that they have craft or union specific concerns that the UTU wouldn't care about should this Board make recommendations on work rules changes. This slide demonstrates that that's a fallacy. The work rules changes highlighted here are substantial hard labor costs the Carriers would endure on top of the generous wage packages already been offered. Thus it is not credible for the Coalitions to take the position that the work rule proposals that they bring forth here are not relevant to the established pattern. We've talked about pattern now let's talk about precedent. When a set of work rule proposals makes it to the PEB stage, history tells us that Emergency Boards have
more often than not simply recommended most if not all of those proposals be withdrawn. The chart on the screen reflects some of the proposals that are being discussed in this round of bargaining and before this Board and it notes that for the most part changes were not made or recommended on any of those proposals. This is not to say that there haven't been changes with respect to dollar amounts. This is to say that there have not been structural changes to the relationship between the Carriers and the unions relating to these important work rules. So why is that the case? Wa, Why do we believe historically PEBs have refused to make changes or recommend changes in the work rule setting? Well, it may be as was explained in PEB242 that, that there's recognition that the task of the Emergency Board to determine what are the elements that need to be agreed upon or can be agreed upon as a viable basis for settlement. And that that function doesn't lend itself to the consideration of multiple proposals. In fact, as it is reflected in the call out box in the slide,
there is virtually no chance that the comprehensive changes to existing work rules would be agreed to particularly in the absence of countervailing substantial concessions. Where we are today is not at a place where there's further horse-trading to be done between the Carriers and the Coalitions. If recommendations are made they should be made based on the existing proposals that have been argued before this Board. And unless the Board were to deem a particular work rule issue to be of such value that perhaps the pieces on the chessboard should be moved around and the union should be willing to accept less value in some other area, there is no available quid pro quo to reward the Coalitions with a change in these work rules. In other words, changes in a large number of work rules are just not consistent with the focused approach that's necessary in the context of Emergency Board work. Now how does Carriers restraint fit into this discussion? Well, work rules changes are a two-way street. Generally you go into bargaining and
the Carriers have their work rule proposed changes and the unions have their proposed work rule changes and the parties engage in substantial and hard bargaining to come to a conclusion as to what they can stomach and to what they can't. But in this case, the Carriers considered any number of proposals that they have wanted for years to, to have implemented because there are any number of current work rules which overly complicate, are overly costly and they inhibit productivity on the railroads. But this time they made the conscious decision not to eject that into the process because they recognized that it would be a dead-end. The Carriers decision not to advance any of the work rules demands in these proceeding emanated from a desire to concentrate attention on the core issues that we have discussed over the course of our case in chief. What is the right wage increase in, including in that discussion is what additional compensation elements should be considered as well as what is the right mix of a healthcare benefit plan that will benefit both the
Carriers with cost certainty and the employees with cost certainty. Those components led to substantial bargaining where Mr. Gradia pointed out, the Carriers didn't get everything they wanted. Neither did the UTU but an agreement was struck. And rather than advance proposals that would unnecessarily complicate this Board's recommendations, the Carriers decided to focus and present its case on the issues that matter. Finally and perhaps most tellingly, no intensive bargaining; PEB242 and prior Boards have made clear that before you get into the process of adjusting work rules at an Emergency Board stage, they need to be the subject of the crucible of good faith bargaining. Intensive bargaining to see what advancements could be made on the parties' positions. While to intensively bargain on an issue you've got to spend time on it. And as we can see, with the TCU Coalition there is about roughly 25 hours of bargaining time with TCU based on the Carriers representatives notes. And based on those notes, 83 percent of the time they spent
in bargaining was associated with non-work rule
issues. Yes, there was some discussion of paid
time off but the information request proposal that
they bring forward here as part of the Coalition,
the joint Coalition effort and the individual
craft TCU-CSXT interest arbitration proposal
received no time at the table at all. What about
RLBC? Well, the RLBC had and I apologize that
there's a typo in that slide, it should say 55
hours of bargaining not 25 hours of bargaining.
They spent 62 percent of their time on non-work
rule issues and that makes sense. The wages and
health and welfare plans are the big gorillas in
the room with this respect to this round of
bargaining. When it came to away from home
time was spent on that; less than 20 percent spent
on vacations. Again, minutes devoted to travel
allowance information requests and no minutes
devoted to locomotive cab conditions or BLET's
meal allowance. Quickly I want to discuss the
craft specific proposals. We're not sure exactly
the full extent of these proposals but we do

enough to know which ones are significant and

which ones are relatively insignificant. On the

significant end of the scale, again the BMWD's

away from home expense proposal; essentially five

elements that they want to build in or create as

part of the system that would be different or, or

result in substantial changes. They want automatic

annual increases built-in to their per diem

expenses. They want mileage reimbursement for

personal vehicle use to and from the work site.

They want an increased per diem both on meal and

the lodging side depending on how the Carrier

provides lodging. They want single occupancy if

the Carrier does provide lodging and have every

traveling gang member have their own room in

hotels in far flung places across the country. And

perhaps most importantly, they have asked for

headquartered employees, as I said earlier, to be

eligible essentially for travel payments. And back

of the envelope calculations thus far has led us

to believe that at least 120 million dollars in
additional expenses are associated with this single craft specific proposal. The BLET's craft specific proposals are curious in that they already have deals in place with the BNSF, CSNX and Norfolk Southern with respect to wages and work rules. Those have already been put to bed. They're in bargaining with Union Pacific on those issues as we speak. And as they stated in their brief, wages and rules agreements have been reached with those three Carriers and there's on-going property on bargaining addressing the BLET's issue with Union Pacific. So what's left? Well, the folks from the Kansas City Southern and Soo line apparently will be the folks affected by this proposal. And the intra-craft disparity associated with making decisions that have already been bargained locally with three carriers are obvious. The CSXT proposal is even more limited. It involves about 75 to 90 communication workers on just a segment of their system, roughly where the old L and L, L and N railroad is now part of the CSXT property. That's an incredibly narrow
a proposal that also creates intra-craft disparities and in fact the TCU representation of those communications workers is the minority interest of communication workers on the CSXT system as other unions represent a larger number of communication workers there. So where does that leave us? Well, it, it leads us to a path to resolution that is frankly quite simple. For the UTU and the Carriers hard bargaining and discussion on wages and health and welfare benefits led to a deal. There's no reason why that same structure should not be applicable to the RLBC and the TCU Coalitions because based on pattern, we know a UTU agreement is in place and we know there were no work rules involved. Based on precedent, we know that historically more often than not Emergency Boards do not make recommendations on wide-sweeping work rule changes particularly where no quid pro quo is available to the Carriers. The Carriers restraint, the Carriers frankly should not be punished for having a measured approach to bargaining in this round and putting the focus and attention on the
1 issues that mattered. And finally, no intensive
2 bargaining this Board should not recommend
3 proposals that were not thoroughly ventilated at
4 the bargaining table. For those reasons, we would
5 recommend that the Board not make any work rule
6 changes as part of their recommendations. Thank
7 you.
8 CHAIRMAN JAFFE: Thank you Mr. DeLorme. The Board
9 is going to take a few moments to see if we need
10 to pose anything to you by way of clarification.
11 (audio interruption) wanted to know we're in good
12 shape and thank you very much. I think we're
13 scheduled to take 10 minutes. Thought we'd do that
14 and reconvene 10 or 15 minutes from now, 2:40,
15 2:45. Off the record?
16 CHAIRMAN JAFFE: Including the mic? If I can ask
17 everyone to get seated please so we can resume
18 with the last part of today's presentation. At
19 your convenience.
20 MR. MUNRO: Thank you Mr. Chairman. I'd just like
21 to wrap up our case in chief with a summary of the
22 key take-aways, the things we would like the Board
to, to remember above all from our presentation over the last two days. And I think they will be concepts that you're familiar with. I brought the five P's back because my team is tired and unable to do anything else. Pattern, I know Carter's tired of pattern and frankly I could go all day on pattern. We heard from Ken Gradia about why there is a pattern with UTU and how it came to be. We heard about why the pattern is important from a practical perspective and especially in light of the history of bargaining with the coalitions to date, including a lack of any intensive bargaining over a number of the issues, and a complete unwillingness to engage on the critical healthcare concerns of the carriers. Mr. Gradia also explained to you why the carriers' offer is equivalent to the pattern, how there is equal value being offered on these issues, how the carriers have deliberately monetized each element of the UTU deal in their proposal to the other side. You also heard from Mr. Boley with respect to why the pattern is especially important with
respect to healthcare and the interest in keeping the plans on the same page with respect to employee benefits. Finally you heard from Dr. Murphy and his unique perspective on the third party's interest in pattern, those who are not in this room, going beyond just the UTU members who are affected by the outcome of sports recommendations but also the broader social costs of exceeding the pattern agreement. For consumers, in terms of reduced job creation in the overall labor market, and to the public in terms of reduced economic activity. The vast majority of Presidential Emergency Boards that have faced pattern arguments have recognized the significance of them. In Page 8 of our Submission Number 2 on the history and context of this dispute, I referenced the treatise, the Railway Labor Act at 50, which addressed this and noted that in these kind of proceedings, the carriers always argue pattern. And the unions always say, no. There's no slavish adherence to pattern; we have a right to make our own proposals. And, as the treatise
recognizes, emergency boards usually sides with carriers on this point. And that's all we're suggesting here; that this is a straightforward pattern application case. Nothing remarkable about it. Second with referred - preferred position, you heard from Dr. Evans on benchmarking. The carriers offer, oh I'm sorry, the carriers' employees are in a preferred position before any increases are applied, better than the rest of private industry, better than unionized private industry, and most importantly better than comparable jobs. You heard from union counsel yesterday in their opening statement that you can't compare railroad employees to anyone else. And that argument is made by the unions in these proceedings precisely because if you do compare them to anyone else, their case does not look so good. Once you make a comparison, you find that railroad employees are doing better. And that is why they say we can't be compared. They're already doing better than their peers. Railroad employees are better paid and will continue to be better paid, and the notion that
they are falling behind has no support whatsoever.

On preferred position you also heard the internal
industry evidence of adequate compensation. The
proof summarized by Dr. Topel with respect to
metrics from recruiting and retention and tenure
and return from furlough. You heard from Lisa
Mancini, with respect to the quality of life of
railroad employees, as well as from Mark Manion
and how the rail jobs have become increasingly
safer over time, again improving quality of life.
The point is these are good jobs. We are proud of
the fact that they are good jobs. The railroads
respect their employees; they want them to do
well. These are the kinds of jobs, precisely the
kind of high wage, good benefit jobs that the
President has noted as important to this country
and its recovery from the current economic crisis.
The preferred position is especially notable with
respect to healthcare. As Mr. Boley explained, the
carriers' employees current position is better
than virtually anyone else. No deductibles, no co-
insurance, and pharmacy rules that are far more
generous than the norm. The third is peer progression. If preferred position is looking back, peer progression is looking forward. And Dr. Evans explained that there is real compensation growth over the next 6 years under the carriers proposal. This continues a trend of real compensation growth over time. The union's principal argument to you in this proceeding has been, and no doubt will continue to be, share the wealth. You're doing well, share the wealth. That is exactly what the railroads are proposing to do. Twenty percent, more than twenty percent in compensation growth. More than 10 percent in real compensation growth. The railroads are sharing their prosperity with the employees. That's precisely what their proposal provides. And is especially remarkable in the times that we're living in now. There's been multiple reports that Brian referred to of how wage growth is negative or flat. Unemployment continues to suppress compensation. Moreover, as Mr. Easley explained, these employees will do better than virtually all
other unionized employees. Recent settlements, especially with respect to the transportation sector, where collectively bargained settlements are far lower than what the carriers are proposing. This point about peer progression is also echoed in a different way in the healthcare case where railroad employees have gotten very far out in front of their peers. The changes that the carriers are proposing will still keep them ahead while helping to control over utilization and align with peer benefit plans. And the key to the carriers proposal, the overall package, is that those healthcare changes are the quid pro quo for this compensation growth. That leads to the fourth P - profitability. And Dr. Murphy explained why profitability is not relevant to compensation as a matter of labor economics. There is no correlation to profitability and above market increases. Unless, unless employees are willing to take a risk the profits will fall through incentive plans or profit sharing. The fact that the railroads are doing better financially really means only that we
are not raising ability to pay as a defense. It does not mean that the carriers must or should pay more. The pattern and the carriers proposal already reflects the profitability that both sides have referenced. Moreover, as Mr. Rose and other witnesses referenced, variable cost increases, including labor costs, necessarily affect investment. It is inevitable. The suggestion that we can simply put more money into labor costs and with no consequences whatsoever is simply not true as a matter of basic economics. As Dr. Murphy explained, it has both short-term consequences and long-term consequences. In the short-term, it reduces employment and raises prices; in the long-term it affects the carriers' ability to invest and it leads to substitution. And what does substitution mean? It means fewer jobs. Capital investment is especially important in this proceeding for the reasons explained by Mr. Fritz and Mr. Manion. Investment is critical to productivity growth, which benefits both sides, carriers and employees. And there is no guarantee,
as Mr. Rose explained, to assume or to believe that current conditions will persist indefinitely. In fact, it's human nature to simply assume that current conditions will persist. That is why we are always surprised by events such as the recent recession. The carriers are taking a prudent, responsible and measured approach to planning and that will ensure that they can continue to make the sort of investments that will allow the railroads to continue to do well in the future. Finally, with respect to productivity, Dr. Eaken demonstrated that the sources of productivity growth are not labor-based. One point that he mentioned but did not dwell on was the fact that the reduction in employment over time has actually leveled off. So there is no reason to believe that current employees deserve compensation increases due to job losses that occurred 10, 20, 30 years ago. And Lance Fritz provided a good reminder of the real world of railroads that we are talking about here. He showed how technology and investment drives productivity, not additional
labor skill or effort. And the same with Mr. Manion as respect to how investments drive improvements in safety. The critical role of safety in the railroad industry; a symbol of how railroads respect and value their employees. We, and I cannot emphasize this enough, the railroads do care about the employees and nothing we say here should be taken as contrary to that. All of this, all the themes, all of the arguments you have heard from our side, support the ultimate conclusion that an offer based on the UTU agreement is fair. It is fair because it does share the wealth, it does provide real compensation growth. The UTU certainly thought so. We respectfully request that this Board reach the same conclusion. I'd like to thank the Board for its time. I'd also like to thank opposing counsel and the unions for their respectful attention during these proceedings and we look forward to seeing you again next week.

CHAIRMAN JAFFE: Thank you Mr. Munro. Anything additional before we stand in adjournment?
MS. PARCELLI: Is Mr. Gradia going to be called?

CHAIRMAN JAFFE: Will you call in Mr. Gradia as well? We'd kind of like to hear - he was on the.

MR. MUNRO: No sir, we're done.

CHAIRMAN JAFFE: We're done. That's the way I took your last comment. That's fine. With that we will stand in adjournment until Monday. Thank you all very much. Have a good weekend everyone.
Presidential Emergency Board No. 243

between

National Railway Labor Conference

representing:

Union Pacific Railroad Company
BNSF Railway Company
CSX Transportation, Inc.
Norfolk Southern Railway Company
The Kansas City Southern Railway Company
Alton & Southern Railway Company
The Belt Railway Company of Chicago
Brownsville and Matamoros Bridge Company
Central California Traction Company
Columbia & Cowlitz Railway Company
Consolidated Rail Corporation
Gary Railway Company
Indiana Harbor Belt Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
Los Angeles Junction Railway Company
Manufacturers Railway Company
New Orleans Public Belt Railroad
Norfolk & Portsmouth Belt Line Railroad Company
Northeast Illinois Regional Commuter Railroad Corporation
Oakland Terminal Railway
Portland Terminal Railroad Association
Portland Terminal Railroad Company
Soo Line Railroad Company (Canadian Pacific)
South Carolina Public Railways
Terminal Railroad Association of St. Louis
Texas City Terminal Railway Company
Union Pacific Fruit Express
Western Fruit Express Company
Wichita Terminal Association
Winston-Salem Southbound Railway Company

and their employees represented by:

Rail Labor Bargaining Coalition consisting of:
1. Brotherhood of Railroad Signalman
2. Brotherhood of Locomotive Engineers and Trainmen
3. Brotherhood of Maintenance of Way Employes
4. International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders,
5. Forgers and Helpers
6. Sheet Metal Workers' International Association
7. National Conference of
8. Firemen & Oilers
9. and a coalition of Rail Unions,
10. consisting of:
11. Transportation-Communications International Union
12. American Train Dispatchers Association
13. International Association of Machinists and Aerospace Workers
14. International Brotherhood of Electrical Workers
15. Transport Workers Union of America

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Roberta Golick, Member
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(OCT. 17, 2011)

CHAIRMAN IRA JAFFE: Good morning everyone. If I could ask everyone who is still standing to please take their seats we can get started. MALE SPEAKER 1: Great speech. MALE SPEAKER 2: Thank you. MALE SPEAKER 3: Thank you, thanks. MALE SPEAKER 1: Another good day. MALE SPEAKER 4: Good speech.

CHAIRMAN JAFFE: We're ready to begin with the Union's Case in Chief, at your convenience Ms.
1 Parcelli.

2 CARMEN R. PARCELLI: Good morning Mr. Chairman, Board Members. Well since we already gave our opening statement on Thursday, the organizations are ready and eager to proceed with our presentation to the Board. Let me just briefly outline to you the order of presentation because we did make, um, some changes, uh, from what we had initially indicated. We had some concern that we had too much in the first day and wanted to balance it out. So first we'll have introductory remarks from TCU President Bob Scardelletti and BRS President Dan Pickett. Uh, then we will hear from our Economist, Tom Roth; his presentation will likely straddle the lunch break so we'll just have to find a suitable breaking point. So after Mr. Roth wraps up, then we have two witnesses regarding vacation; we'll have Bill BohnH, IBEW Director Railroad Department, and then Dennis Pierce, BLET President. Uh, next we're gonna to bring Tom Roth back, he'll address Supplemental Sickness, and then we'll wrap up the day with a
presentation from Roland Wilder regarding our Information Request Proposal. Then tomorrow we're gonna to start with Health and Welfare and we'll have three witnesses on that, and then we'll move onto the Craft Specific items. So that's how I think that makes a little more sense than we originally had it. Now, after rising rapidly through the ranks of the TCU, Bob Scardelletti was first elected TCU's President in 1991 and he has since been returned to office four times. He has testified before Congress too many times to count and is also a frequent visitor to Capitol Hill to speak with congress members regarding rail labor issues but, also more generally, to speak with them on issues that are of importance to the industry as a whole. Bob has also testified during past PEDs, and he currently acts as Chairman of the Cooperating Railway Labor Organizations, which is comprised of representatives from the Rail Unions that participate in the National Health and Welfare Plan. So with that I give you Bob.

CHAIRMAN JAFFE: Thank you very much. If I could
ask the reporter to, please swear in Mr. Scardelletti. MARK MAHONEY, COURT REPORTER: Sure could. Sir, could you please swear the testimony you're about to give in this case to be the truth, the whole truth and nothing but the truth
[inaudible].
ROBERT SCARDELLETTI: I do. Uh, good, uh, good morning, good morning and, uh, and cer-, certainly an honor to, uh, be here and, uh, before you, and in behalf of our, and, and also in behalf of the, uh, all the Unions here, and to have this opportunity to speak in their behalf. Um, and I want to thank you for accepting, uh, this as-, assignment, which, um, as your experience knows that, it's, it's a difficult job. A, as, uh, Ca-, uh, Carmen said, I'm Robert Scardelletti, National President Transportation Communications Union.
Today I'm, uh, testifying on behalf of 11 Unions that in this room bargain as two coalitions. The Coalition of Rail Unions, CRU; and that's a name we devised just for the purpose of our presentation, uh, basically we had no name before
that, other than a coalition. It is comprised of
five Unions: The Transportation Communications
Union; The International Association of Machinists
and Aerospace Workers, represented by Railroad
Coordinator and President and Directing Chair of
the EIM (ph) District 19, Joe Duncan; The
International Brotherhood of Electrical Workers,
represented by their Railroad Director, Bill
BohnH; The American Train Dispatchers Association,
represented by their President Leo McCann, who I
might add was just, uh, reelected to his position
last week; The Transport Workers Union, uh,
represented by, by their International Vice
President and Railroad Division Director, Gary
Maslanka. My counterpart, next to me, is Dan
Pickett, President of The Brotherhood Railroad
Signalmen. He is the spokesman for The Rail Labor
Bargaining Coalition, the RLBC, which is comprised
of these six other Unions; President Pickett will
introduce them in his testimony. The two
ccoalitions, consisting of 11 labor organizations,
represent more than 98,531 employees of the Class
1 I Rail Carriers Performance Board; 73 percent of
2 the total unionized workforce. These two
3 coalitions stand before you united in their belief
4 that the Carriers' sustained and record-setting
5 profitability is a direct result of the hard work
6 and productivity of their employees. We deserve to
7 share in that success. To reach an agreement
8 between the parties there needs to be trust and
9 respect for each other. I don't think you get
10 there by degrading one of the parties. Every Union
11 here takes great offense after hearing so-called
12 experts telling us we are 80 percent overpaid;
13 undereducated; lucky to have a job; unproductive;
14 overviews our medical plan by going to the doctor
15 for no legitimate reason; and that giving us wage
16 increases could cause a global crisis; and there
17 were some other remarks. I will tell you who we
18 are. We are proud career railroaders, a group of
19 highly skilled professionals, who operate the
20 equipment and use the technology that the Carriers
21 have invested in. We love our jobs. We go to work
22 every day and we give it our all. We are at a very
serious stage under the Railroad Labor Act. The time for clear thinking is at hand. The comments I mentioned only serve to move the parties further apart, so let's just get passed that and, and move to the real business at hand. Before this Board we are pitted against each other, and this is as it must be because we are truly at an impasse. But this is not to overshadow our day-to-day cooperation with each other, and I want to give you just a couple examples, though probably it, uh, could be as, unlimit-, an unlimited number. Thousands of Union reps throughout this industry are working every day with management on the worksite problem solving, helping to keep the railroads running smoothly. Moreover, many of us work very closely with the industry here in Washington, helping them to overcome a tax from the shippers or the Congress. In most cases, and probably every case, all the Rail Unions here, I think, have a good working relationship with each of the Carriers and, in most cases, we've known each other for years. For me, I can say I have
nothing but respect and admiration for the rail industry; it's been my life. The rail industry provides the livelihood for hundreds of thousands of American workers, both on and off the railroads. Although the work is demanding, I have always said we have excellent jobs with great benefits; I say that to our members and I've said it to the Carriers. But that's why we're here, our Unions are here to protect and enhance those jobs. Our level of pay and benefits is the product of over 150 years of collective bargaining; they are the product of working for an extraordinary industry but, even more so, they are the product of a Union contract. Without the Union it would not be this way at all and we do not apologize for that. I hired on the New York Central in 1967 and, frankly, I've seen it all, I've been through everything. I became a local officer of our Union in 1971; moving up the ladder, in 1991 I was elected International President. In my opinion, I have never done anything that would impair the profits of this industry. I have worked very hard
with the industry to achieve the opposite. As to claiming we were intransigent, refusing to negotiate healthcare concessions, you might say that but the Carriers were even more so. With the Carriers it was either negotiate concessions or don't negotiate at all. We believe, in this time of unprecedented profitability, we were justified to negotiate for improvements! Yes, I said improvements. But in negotiations, seeing where the railroads were at, the difficulty we were having, both coalitions, at one point or another, took all their health and welfare demands for improvements off the table. In an effort to move the process forward, we decided only to request to keep the status quo. Now this was no easy matter. Each Union had very serious concerns over issues in healthcare that they wanted addressed. But we did it, and for what, it was still now unacceptable to the Carriers. We then offered to negotiate of the non-cost shipping elements of the Carriers' Health and Welfare Proposal, if that would do the trick, but the Carriers would still
not relent in their demands for cost shifting to
the employees. Intransigent, it was their way or
the highway; negotiate down or don't negotiate at
all. As to the Unions telling our members that we
disagreed with the UTU Settlement, they are right;
we did, of course we did. Our members wanted to
know and we had an obligation to tell them what
their leadership thought of the UTU Agreement. And
the Carriers are correct; we knew they would claim
it was a pattern, just as they're doing. And
finally, and I think this very important, through
all our negotiations never once did they make, did
the Carriers make any kind of coherent wage
proposal, never once. And now, when I look back
and assess what we went through, I can see we
never had a chance, and that's why we're here. The
Carriers' proposed agreement contains smaller wage
increases than we achieved in the last round of
negotiations and is coupled with significant
concessionary health and welfare demands. In
short, we all believe that it is inadequate; we
all believe it is unacceptable to our members and
we all believe it will not ratify. It should be kept in mind that the Carriers could only get one Union to sign the deal they would impose on us, an agreement with one Union, covering less than a third of the workforce has never before, and should never be considered a pattern that all other Unions should have imposed on them. The UTU Agreement falls short because it only provides for wage increases totaling 14 percent over a five-year term, offset by about 1.3 percent in additional health and welfare costs to be shouldered by UT members; effectively reducing the real value over five years to about 12.7. There is a pre-negotiated 3 percent increase in the first year of the next agreement's term, which makes it a six-year agreement for wage purposes. The reality is that employees under that agreement will only see 14 percent over the first five years and 17 percent over six. In contrast, in the last round of bargaining the Carriers agreed to a 17 percent wage increase over five years. So we have 17 percent over six years, verses 17 percent
previously negotiated under (ph) five years.

Moreover, the UTU deal, through healthcare
designed changes, would shift costs from the, from
the Carriers to the employees, through increasing
deductibles, co-pays and drug costs. This is very
unacceptable to us. However, even if the claim
that they're actually offering us, the UTU deal,
does not however, even the claim that they, they
are actually offering us, the UTU deal, that does
not survive scrutiny. In fact, they are not
offering the settlement they made with the UTU
Trainmen and Conductors, which only apply, which
only ap-, what they're offering only applies to
the Yardmaster segment of the UTU; effectively
that's what they're imposing as their pattern,
which covers 2,930, 93 employees, 2,093 employees;
1.5 percent of the total unionized workforce in
this industry. Trying to impose on us an agreement
covering 1.5 percent of our workforce is no
pattern at all; it simply highlights the cynical
nature of their proposal. While the UTU Agreement
contains a number of additional forms of
1 compensation, even if properly valued and added to
2 what has been offered to us, the deal would still
3 fall short of what we consider to be a fair
4 settlement. For instance, the agreement with the
5 UTU grants a FRA certification allowance of $5.00
6 per start. The agreement eliminates a fifth year
7 of the reduced wage scale for new hires, and gives
8 lump-sum bonuses of 12 or $3,000.00, 1,200 or
9 $3,000.00 to current employees and re-,
10 on the reduced wage scale, and there is also 12.5 cents
11 per hour for the rookie (ph) yardmasters and the
12 yardmasters get a little increase in their
13 supplemental sickness. In addition, the agreement
14 provides a framework for further negotiations
15 intended to resul-
16 additional compensation enhancement, alternative
17 compensation, as well as com-
18 and electronic bidding and bumping. We also know
19 that the UTU Agreement met certain political needs
20 as well, because the Carriers have hired numerous
21 entry-level UTU Trainmen and Conductors;
22 shortening the wage scale progression for them and
1 awarding bonuses to reduced wage scale employees
2 addressed a political problem for the UTU
3 incumbents on the eve of their convention, which
4 was just last August. It should be emphasized,
5 once again, that the UTU Agreement was reached in
6 the midst of a long-running battle over whether
7 the UTU's Merger Agreement with the Sheet Metal
8 Workers is enforceable against the UTU. This
9 matter was pending in arbitration while various
10 pieces of related litigation are pending in the
11 federal courts, and was pending in arbitration at
12 the time they were negotiating. The UTU badly
13 needed stability. On October 10th, the arbitrator
14 found that the UTU was in breach of the merger
15 agreement and ordered the merger to be
16 consummated. This development further undercuts
17 the Carriers' attempt to suggest its agreement
18 with, with UTU constitutes a pattern. Had the
19 merger been delayed, or not been delayed, the
20 agreement would have never been made. It's
21 unacceptable to the very Union to which the UTU is
22 merging, the Sheet Metal Workers, whose president,
according to the arbitration decision, tried to block the UTU from reaching an agreement, but it was backblock (ph) by UTU's delaying tactics. What we feel is most upsetting is the Carrier's attempt to achieve healthcare concessions that it knew, at the time, were absolutely unacceptable to every Union here, by negotiating with a Union who everyone knew might not even exist. And to get these changes they offered the UTU, the UTU, and they were rich, specific items that they now argue don't apply to us. I think that cynicism is breathtaking. And finally, the agreement was hurriedly reached only after the National Mediation Board had informed the UTU and the company that the release of the CRU Unions, the coalition I'm involved with, was eminent; in fact, were to be released within, within approximately two weeks before they reached the agreement; release meaning proffer of arbitration. We firmly believe that our Wage and Benefit Proposal was a fair one, particularly in light of the years of Carrier profitability since our last contract.
We're looking for a 19 percent wage increase over the life of a five-year agreement, effective January 1, 2010, with no changes in our health and welfare plan, and a $200.00 per month freeze in employee contributions; and this compares to 17 percent increase in our last negotiated national agreement, current (ph) 2005 thru 2009, when the Carriers' with (ph) profits were about half, half of what they are today. So the Carriers can easily afford the increases we're seeking. The United States Senate Committee on Commerce Science and Transportation, last year reported that the four Class I Railroads are the most profitable businesses in the U. S. economy. They also said that these same Carriers have nearly doubled their collective profit margin in the last ten years. We recognize that we have a health and welfare plan to be proud of and that the Carriers will argue, as they've done in every negotiations, it's too good for us; it's too good, it should be scaled back. Let us not forget that our plan is the product of sacrifice through negotiations are very
hard fought over generations. We are no longer asking for improvements in our plan, which based on any standard of collective of bargaining we would be clearly justified to pursue, but that's it; we are clearly at our line in the sand. When we claim the status quo for our plan, we mean it; we have no intentions of moving backwards. Our members need the medical care our plan provides and the Carriers can afford it. However, it became clear, early in our negotiations, that the Carriers were immovable in their demand that in this round we must agree to diminish our plan by allowing them, in this time of their unprecedented wealth, to shift greater costs to the employees. And when they couldn't get it from us, they vigorously sought it from the UTU, which has a separate plan in the hope of using the UTU argument against us, as they're doing, where proposed cost shifting is nothing more than a way to take back with one hand the compensation that they offer, in an already inadequate wage proposal, with the other. You will hear from our
other witnesses that we are also seeking a long-
overdue increase in vacation, and to restore the
value of our supplemental sickness benefits. Each
Union is also proposing craft-specific rule
changes. Our proposal seeks slightly more than we
obtained in our last round of negotiations, when
voluntary settlements were reached; when the
Carriers' profits, once again, were about half of
what they are today. The rail industry today is
not only among the most profitable businesses in
this country, but it, they are clearly the most
profitable sector of the U. S. transportation
industry. By 2010 operating revenue on Class I
Railroads reached 58.4 billion, an increase of 44
percent over the prior six years, including the
period spanning the great recession. The four
major Carriers, BN, CSX, UP and SFNS (ph) account
for 92 percent of total revenue and employment
associated with Class I Carriers. Over the past
five years these Carrier, Carriers enjoyed average
profit margins of 13.4 percent, enabling these
cash-rich railroads to pay down debt, institute
1 stock repurchase programs and pay record bonuses
to their executives, while, at the same time,
claiming we should settle for less than we
received in the last bargaining round and make
concessions in our health and welfare plan. All
our members can read; they often send me, and
every president in this room, progress reports and
press clippings showing record profits and bonuses
being raked in by the company. They make it
crystal clear to me they expect to be treated
fairly, and fairness does not mean wages inferior
to the last round, and even more concessions in
our health plan. In spite of the fact that the
Class I Railroads own significantly less track and
employ fewer workers than they did in 1980, as of
2008 they're network handled almost twice as much
cargo. Any increases in labor compensation rates
were more than offset by productivity gains, thus
permitting the railroads to make huge profits;
profit per employee was $60,983.00 last year. Our
Economist, Tom Roth, will discuss these material
matters in detail. But the bottom line is that
while labor costs have been flat, labor productivity has expanded. The American Association of Railroads, in its publication this year, stated that "rail productivity is up 164 percent from 1981". Whether as a result of mergers, technological changes, mechanization, automation, increase in skill, education of workers, capital efficiencies, locomotive power, car capacity or shrinking physical plant, the fact is our members have to do much more with fewer people; as European Vice President, Lance Fritz, testified, graphically showing the mast-, how employees must master much more complex and sophisticated equipment and machinery, enabling one worker to accomplish what it took scores of workers to accomplish before. And while pointing to long lines of applicants for every job offered, a dubious standard during the greatest unemployment crisis since the great depression, what they left out was how rigorous Carrier hiring standards have become due to ever-increasing complexity of rail employment. Just recently, the
BNSF, and if you're following my written testimony it says "UP" which is incorrect, the BNSF was unable to hire, after sifting through their thousands of applicants, where it was, uh, unable to, was unable to find a qualified machinist at the locations they were interested in hiring. And so they ended up offering, putting out a bulletin to all machinists on their system, offering them incentives to move to the location where they needed them, 10 to $15,000.00 I'm told; I use that as one example. The analyst's analysis, an analyst, analyst analysts are calling this the golden age of railroads. No place is this more evident than the railroad executive compensation, where favorable financial performance is richly rewarded. In fact, in 2010, 83 percent of executive compensation was supposed to be performance based. So how'd they do? For the year 2010 the CEOs of the big three collected approximately 15 million per man in cash bonuses, stock awards and options, which is over and above their fixed cash compensation averaging 1.2
1 million. Those are very significant sums of money.

2 Total pay for the top five executives in 2010 was

3 up 76 percent over [a 2F4] (ph), while CEO

4 compensation increased 50 percent. Now I'm not

5 claiming some kind of class warfare rhetoric; I'm

6 just citing these levels of compensation because

7 they are a telling barometer of the industry's own

8 view of itself to their top level executives. In

9 every PED report that I can recall, even after

10 Carriers became highly profitable and paid out

11 massive bonuses to their own, they always tried to

12 mislead the PEDs into believing that their profits

13 were an aberration and that financial storm clouds

14 were gathering on the horizon. They always argued

15 that decent wage increases would sink their ship.

16 And in the past they weren't aware of it, but not

17 this time; this time their argument is even more

18 hollow than usual. Analysts predict continued

19 strong performance by the railroads; earnings,

20 profits and yields are projected to continue to

21 grow to record levels. As Economist, Tom Roth,

22 will testify, these predictions are based on their
continued market dominance and pricing power, and
their projected continuing strong volumes in coal
and intermodal traffic. The record clearly
establishes they are reporting to their
shareholders that long-term profit picture has
never been better. A Wall Street Journal columnist
recently named the "Norfolk Southern as one of theive stocks to own forever". Frankly, I don't
think I've ever heard that quote, I mean outside
of this quote that I'm makin', about any other
company, and that's good. The CSX boasted in its
10K reports that it set financial records with
"truly outstanding results for investors". In
fact, CSX is so confident in its future that
Railway Age reports that "it expects to repurchase
300 million in company shares to complete its 3-
billion-dollar repurchase program". A similar rosy
outlook was announced by the UP, who stated
publicly that "in 2010 we achieved more financial
milestones". It appears that investor, investment
icon, Warren Buffet, agrees with us about the
future of the rail industry generally and BNSF
specifically. In February 2010, Buffet's Berkshire Hathaway purchased BNSF for a total investment of 44 billion, making it, by far, his largest holding. At the time he was widely quoted as saying "it was an all-in bet on the future of the U. S. rail industry" and he didn't have to wait long to celebrate the results. In physical year 2010 BNSF was Berkshire's high (ph) Hathaway's strongest performer. Buffet wasn't gloating when he told the shareholders "the highlight of 2010 was our acquisition of Burlington Northern Santa Fe, a purchase that's working out even better than I expected". It now appears that owning this railroad will increase Berkshire's normal earning power by nearly 30 percent pre-tax and by well over 30 percent after tax. Reading the Carriers' submission and listening to their testimony, I was struck by how they seek to portray our position as greedy; that we are unfair for not being satisfied with what they point, paint as a richer than deserved offer to employees who are already overpaid and better off than almost everyone else.
To hear them spin it, we should have been grateful for their offer. Now to reiterate what I said, we do appreciate our jobs and we do recognize they are good jobs, but they reflect the success of the industry we work in and our members' contribution to that success, and they reflect the Union contract. It is not greed or avarice, as stated by the Carriers, to ask for a slightly higher wage increase than we achieved last time, when, when profits have doubled since then; it is not greed to reject the Carriers' proposal for less. It is not greed to ask that there be no cost shifting healthcare concessions, again, in view of their profits, and at a time when we already pay more than anyone else in the railroad industry, and which our consultants will testify later, too, and other witnesses, and when we are continuing volunteer effort, our continuing voluntary efforts to contain cost increases have succeeded in the health plan; it is not greed to insist that drug companies don't have more power over treatment than doctors, giving drug companies
veto power over life and death recommendations of your doctor is not acceptable to us, any more than it is grief for railroad CEOs to argue to their Board of Directors, or I guess in the case of BN, to the - Warren Buffett - that they should enjoy higher compensation than CEOs in poorer industries. That seems to make sense. We don't begrudge them. I don't begrudge CEO pay or executive pay, but there can't be a double standard. We work in a tremendously profitable industry. Our members' productivity has contributed greatly to the bottom line. It is reasonable that they should be awarded commensurately. When the railroads faced hard times, they didn't argue that our members should receive higher increases based on what workers in prospering industries got; of course, it was just the opposite. It's hypocritical for them now to urge this Board to recommend a contract not based on the railroad industry, but on other industries that are struggling to survive. Railroad continues Board to recommend a fair resolution, one that
1 will lead to an agreement, an agreement that the
2 employees will ratify; our proposal does just
3 that. Thank you.
4 CHAIRMAN JAFFE: Thank you. ROLAND WILDER, JR.,
5 ESQ.: Mr. Chairman, members of the Board, good
6 morning.
7 CHAIRMAN JAFFE: Good morning. ROLAND WILDER, JR.,
8 ESQ.: I'm Roland Wilder, Counsel for the Rail
9 Labor Bargaining Coalition. It's my pleasure to
10 both call and introduce the next witness for the
11 Chair and coalitions. He is W. Dan Pickett, the
12 President of the Brotherhood of Railroad Signalmen
13 and the Chairman of the Rail Labor Bargaining
14 Coalition. Dan was first elected President of the
15 BRS on August 21, 1992. He was reelected in 1994
16 and has been elected again to successive four-
17 year terms ever since. Dan is not only a career
18 railroader, he is the son of a career railroader.
19 In 1965, after studying mechanical electrical
20 engineering at Fort - Virginia Western Community
21 College, he followed his father's footsteps by
22 joining the Signal Department of the Norfolk
Western Railroad as a communication linemen's helper. Thereafter, he progressed through various positions at the Norfolk and Western within the Signal Department, becoming eventually a signal maintainer. In 1965, Dan was forced to interrupt his railroad career to serve his country as a communications noncommissioned officer in the U.S. Army. After returning to - from Vietnam, he rejoined Norfolk and Western. Now, during his railroad career with the Norfolk and Western, Western Railroad, Dan had a parallel interest and career. He held a variety of union positions with BRS Local 77. He held a variety of positions with the General Committee of the Norfolk and Western Railway. In 1980, became a Grand Lodge representative. And in 1986, he became a Vice President of the organization, and he served in that capacity until becoming President of the BRS.

Please go ahead, then.

CHAIRMAN JAFFE: If I could ask the court reporter to please swear in Mr. Pickett.

COURT REPORTER: Do you swear the testimony you're
about to give in this case is the truth, the whole
truth, and nothing but the truth under penalty of
law?

W. DANIEL PICKETT: I do. Good morning.

CHAIRMAN JAFFE: Good morning.

W. DANIEL PICKETT: Good morning, Mr. Chairman and
members of the Board. It is indeed an honor to be
here and to speak. I wish it was on different
circumstances. I wish it was getting agreement
instead of this circumstance. But as Mr. Wilder
said, my name is Dan Pickett, and I am President
of the Brotherhood of Railroad Signalmen, and I
have the honor of serving as Chairman of the Rail
Labor Bargaining and Coalition. The RLBC is a
formal coalition of six rail labor organizations
formed for the purpose of bargaining together on a
multi-union basis in the national negotiations
with the rail freight carriers which are
represented by the National Carriers' Conference
Committee. In accordance with the powers of
attorney executed by each of the members of the
organizations, the RLBC is empowered to represent
1 them in this round of national handling and before
2 this Presidential Emergency Board. Our membership
3 cuts across the entire spectrum of the industry.
4 It includes the principal operating organization,
5 the Brotherhood of Locomotive Engineers, IBT,
6 represented today by its National President,
7 Dennis Pierce. Most of the engineering
8 organizations of the rail industry are here, are
9 in the RLBC: The Brotherhood of Maintenance of Way
10 Employees, the Division IBT, represented by its
11 President, Fred Simpson, as well as my own
12 organization, the Brotherhood of Railroad
13 Signalmen, which is included in the Engineering
14 Department. There's three shop craft
15 organizations: The International Brotherhood of
16 Boilermakers, represented by the Director of Rail,
17 Dan Hamilton; the National Conference of Firemen
18 Oilers, SEIU, represented by the President, John
19 Thacker; and the Sheet Metal Workers'
20 International Association, represented by the
21 Railroad Department Director, Larry Holbert. I
22 agree wholeheartedly with the statement just made
by President Scardelletti. What has been said well once need not be said again, so I will not repeat the points he covered. But I do think it is important for this Board to recognize that bargaining in the rail industry was changing in very important ways for the better. This evolution is being threatened by the NCCC's action in this round by first entering into an agreement with the United Transportation Union, then claiming that that agreement represented a pattern and declining a bargaining over anything other than how the UTU's deck chairs might be arranged - rearranged to suit the other organizations. Bargaining with the representatives of nearly three-quarters of the represented employees in the rail freight industry effectively ended after the UTU deal was struck. That deal, as I put in my June 13, 2011 letter to the National Mediation Board, placed a voluntary agreement, settlement of that - of dispute I have reached for all of us. For nearly a quarter of a century after the enactment of the Staggers Act, national handling
was characterized by bargaining between a strong unified industry and some 14 individual unions. The more the industry consolidated, especially with the overall decline in rail employment, the more the carriers' bargaining strength grew to the detriment of organized labor and the members that we represent. National handling played an important role in this dysfunctional imbalanced system. Armed with court decisions that severely limit the right to strike, the NCCC turned to national handling, into a sword which enabled it to dominate negotiations in the rail freight industry. As well as - as will be detailed later in our joint presentation, the result was a quarter of a century of minimum wage growth and stagnant benefits that lagged wage and benefit developments elsewhere in the economy. The Rail Labor Bargaining Coalition was formed at the beginning of the last round of negotiations in the belief that multi-union, multi-employed bargaining, would be more effective and less chaotic than traditional bargaining in the
national level. We also believed that it would produce agreements capable of generating broader employee support because of a multi-union structure would tend to subordinate the union-specific interest of individual organizations into common goals for everyone. Equally important, the RLBC represented organizations appearing today under the CRU banner, resolved to cooperate very closely, freely exchange information, and coordinate their bargaining efforts. As noted, the last round of national bargaining was settled by voluntary agreements which were overwhelmingly ratified by the effective employ in almost all the crafts. Rail labor left the last round convinced that important strides had been made to improve national handling, and we resolved to pursue the same cooperative approach in this current round. Put simply, rail labor did and the carriers did not. When the NCCC could not interest in any - either of the coalitions for obvious reasons in degrading the national health plan, it stepped back in time by entering into an agreement
with the UTU's extraordinary narrow parochial
interests to obtain an agreement on healthcare and
wages that is opposed by every other labor
organization in the rail industry. Like the old
days, this Emergency Board is being told that the
UTU agreement constitutes a pattern for an
industry-wide settlement that should be
recommended. We disagree. Not just because the UTU
rate settlement is inferior to the settlement we
because the UTU settlement. It's just healthcare
costs from extraordinary profitable carriers to
the most unhealthy employees who must rely on the
plan benefits. Not just because the demographics
of the UTU plan are different than those of the
national plan. And not just because the coalition
organizations appearing before you today do not
share the UTU's unique interest. And not just
because the foolishness of claiming that an
agreement with one organization creates a pattern.
We disagree, because the carriers' position before
this Board, if sustained, will waste all of the
progress made toward improvement in national handling. The carriers' position is harmful to the multi-union coordinated bargaining structure that has proved so successful in the last round, and we urge the Board to reject that proposal. Thank you.

CHAIRMAN JAFFE: Thank you, Mr. Pickett. Off the record. (Off the record.)

CHAIRMAN JAFFE: I'm back on, if we can. Am I back on? If I could ask everyone to take their seats, please, we'll be ready to resume. For those in the back of the room, let us apologize. The sound system is cranked up to its max currently. We're going to do what we can during the next formal break both to obtain additional amplification through the hotel sound system and also plug, to a greater extent, some of the gaps in the wall, so hopefully the competing noise from next door will be diminished as well. I think we're ready to resume at your convenience. CARMEN PARCELLI, ESQ.:

Thank you, Mr. Chairman. Our next witness, Tom Roth, likely needs little introduction. For the record, however, his curriculum vitae appears at
the end of his summary statement as appendix A.

Tom has appeared in numerous past PEBs. In fact, I think it's safe to say he's probably participated in more PEBs than any person on the face of the planet. But Tom's involvement in this matter has hardly been limited to the PEB stage. In fact, he's acted as an advisor to both coalitions throughout the course of the negotiation, so he's really been steeped in this round of national handling, as it's fair to say he's been steeped in probably every past round of national handling in recent memory. So with that I'll simply give it over to Tom.

CHAIRMAN JAFFE: Can I ask the court reporter to please swear in Mr. Roth.

COURT REPORTER: Do you swear the testimony you're about to give in this case will be the truth, the whole truth, and nothing but the truth under penalty of law?

THOMAS R. ROTH: I do. Good morning, Mr. Chairman, and fellow Board members. As indicated on the record, I am Thomas R. Roth. I am a labor
relations consultant and financial and economic advisors to railroad organizations and other labor organizations. I'm the President of a firm called Labor Bureau, Inc. and we are the private firm that is - was established in 1923, and we have been providing our services to our clients on a continuous basis over the past 88 years. I mention that because our practice was actually founded in the railroad industry. My predecessor sat in this chair that I have now occupy and in fact had prepared and presented all the economic evidence back in 1937, were issues of similar type, and in fact cover - included similar organizations that are now in this room. At that point, there was some 14 organizations; that was PEB number two. And right - and actually before the day when - when PEBs were actually given formal numbers, that didn't actually happen until later in history, when the NMB realized there'd probably be more than one or two of them. But so the history of the firm goes back, and again I mention it as relevant here in the context of the research that we have
performed. You'll note in my summary statement that I make reference to some points in history that are somewhat removed. This does not require a great deal of research my organization. I can pull off the shelf the PEB records and PEB literature for most of the wage or wage or rule movements and thereby speak with some authority on exactly what had occurred during those years. And when I make reference to PEB literature, I'm not just talking about the reports by the Presidential Emergency Boards themselves, I'm talking about the exhibits and the testimony and the briefs that are filed by the parties during those proceedings. Like the NCCC who I believe has a similar capability, we can perform some rather in-depth research on exactly what has gone on in this history. In a moment, this - it will become clear why I believe that is relevant in this proceeding. Again, in my - in between PEBs, which of course you can't make a living on - they don't occur that frequently - I work, I have extensive practice, in the airline industry and the urban transit
industry. At any point in time I'm - I'm, you
know, managing or participating in interest
arbitration cases in the transit industry on a
fairly regular basis. I have - my shop probably
has four or five of those in the hopper as we
speak, so it's kind of an ongoing part of the
practice. And I will - and again with that, I will
proceed. Let me - in terms of the documents that I
have furnished, the Board has received a written
statement from me and a book of supporting charts
and tables. And I would ask that those documents
be in front of you as we proceed through my
testimony, because I have determined that I would
prefer to work without the PowerPoints and the
slideshow because I believe that's more of a
distraction. I would rather prefer, if the Board
is willing, to have in front of it what has been
identified as Union Exhibit Number 86 and Union
Exhibit Number 87. The - and with all the material
in this substantial record, I will assume,
nevertheless, that the Board members will at some
point read my statement and review the supporting
documents. So I will refrain as much as possible from reading that narrative back at you during this testimony. Also, Mr. Chairman, I understand that - given our compressed time frame, that the board is anxious to hear from me in as expeditious a manner as possible and I will accommodate that and proceed as proficiently as - as officially as I can. But I think it's also imperative that the Board receive the information that I'm offering with the utmost clarity. And so if the Chairman rules, I would encourage interruptions from the Board of any questions it might have as I proceed. I mean it's not going to deter me and you need not wait until a lengthy piece of subject matter is covered before you, you know, raise a question of clarification or otherwise. But that's - I'm perfectly comfortable with that.

CHAIRMAN JAFFE: We appreciate the offer. We may or may not take up on it.

THOMAS R. ROTH: Okay.

CHAIRMAN JAFFE: But we appreciate the offer. Thank you.
THOMAS R. ROTH: Okay, all right. In the subject matter that I would be covering then, there are many points of agreement actually with the carriers' position as I have understood it. And so I'm going to try not to focus on our areas of agreement, but rather on our areas of difference. Most of these differences with the carriers' economic case will be dealt with in our formal rebuttal, but where possible, I will try to weave into my remarks this morning my view of where these differences lie and what my position is on them. As a preface, let me describe what I think the basic and fundamental differences in approach are between these parties. It's best described as the difference between the theoretical and the reality. Now, theories I understand are useful in economic analysis, and I'm not begrudging the good professors their moment in developing and presenting and applying these economic theories to you. But after all and in the end, these are abstractions against which to measure reality. And we would urge the Board to approach the
determinations in this case by recommending - by making recommendations that based upon the real world of collective bargaining in the railroad industry. This requires you, if I may suggest, to - to identify and accept wage criteria and standards for contract determination which can be validated in the experience of the parties. This is especially appropriate where you face a very extensive bargaining history, one spanning well over a century, for all these railroad organizations. We were bargaining with their employers long before - perhaps 50 years before the Railway Labor Act was actually passed. The approach I'm suggesting, of course, requires the Board to ascertain what factors have given weight by the parties, what considerations have motivated them at the bargaining table to make the agreements that they have made. And under some circumstances, in your own personal experience I'm sure you have confronted this, that task is - can be formidable. After all, there is - there may be, and in most collective bargaining circumstances,
no evidence of particular standards, particular
criteria, or the interpretation and application of
those factors that is obvious from the parties'
collective bargaining agreements with their
practice. But here in the railroad industry, we
are more fortunate. We deal with a wealth of
literature on the subject, including the records
that are made in Presidential Emergency Boards,
together with the Collective Bargaining Agreements
that the parties have - actually consummate after
that, those records are complete. I heard from a
CEO, Ross I think, last weekend. He made a passing
reference that - to the fact that this is un-
kind of unusual circumstance, where here we are
before a Presidential Emergency Board, asking for
some intervention on the making of these
collective bargaining agreements. The fact is this
is not unusual. I mean over the past 50 years,
there have been 15 wage or rule movements
nationwide. In other words, a national wage or
rule movements. And I'm not talking about commuter
railroad cases or Amtrak cases, I'm talking about
the line haul freight contracts, and particularly
those that are managed at the collective
bargaining table by the NCCC and their
predecessors. Only four, only on four occasions by
my count, have - has a round of bargaining as a
wage or rule movement been complete without the
intervention of an interest arbitration panel
convened on the Railway Labor Act or a
Presidential Emergency Board. So for better or for
worse, this not an unusual circumstance in the
sense that a PEB has been asked to help the
parties out in reaching a conclusion. You know, I
say that the - that our differences with the
carrier in this round of bargaining, in
particular, with their expert testimony, lies in
the - in the fact that we regard this as an
extension of the collective bargaining process. We
think that - that for the Board to delve into
those standards and criteria in their application,
as validated by the parties' experience, that
we'll validate or we'll permit that, that
interpretation, to apply. Now, it's - the concept
that a bargaining resolution forum lies on a continuum with the collective bargaining agreement. It is so frequently written up in the interest arbitration literature that it's become a cliché. But it is, nevertheless, I think, the really substantial differences in the approaches taken by the parties. Now, this fundamental difference between the carriers' theoretical approach to the case and rail labor's real-world approach will materialize at least four areas that I will address and during the course of my testimony. The first is the use of productivity, the second will be pay comparisons, a third will be the application of the pattern principle, and the fourth will be the financial role that financial and economic condition of the industry plays in the making of railroad collective bargaining agreements, so it's really those four areas. Yeah, and you may find, by the way, that they kind of parallel Mr. Munro's P's. He had six of them; I'm going to cover four of them in - at least. So let me talk about the first
of these, the rate of productivity. Now, Dr. Eakin and I have a difference of opinion over how you measure productivity, but it's actually a very minor point, and I'm going to deal with that when we get to the material that I have prepared on productivity. But in his Exhibit Number 8, this is Carriers' Exhibit Number 8, there were statements to the effect, and I believe I'm quoting properly here, there's no relationship between productivity and compensation. Now, incredibly to me, he stakes out that position as not only a matter of economic theory, but as an empirical matter. Now, first of all, several of the Board members have been involved in urban transit cases, for example, where you - where the undisputed fact is that in major cities the urban transit systems are able to pay their workers compensation levels that far exceed the smaller systems; New York pays more than Baltimore, Washington pays more than Baltimore, Baltimore pays more than Wilmington, Delaware, for instance. I know the Chairman is familiar with this world,
having just completed such a case. But then there's - ask yourself why that is true. In New York City, for example, where you have high density, you have load factors on there, on the trains, which are - which exceed that of smaller systems. The - there's more investment in the capital equipment. The fact of the matter is that their productivity of an employee is much greater because they're carrying more persons, more miles, so your output in passenger miles is higher per person and per man hour than it would be in a smaller system with - that is less dense in population served and where you have smaller trains. That productivity, of course, drives down unit costs or the price of carrying a passenger a mile. That in turn is shared with the employees. It's shared in terms of having - having - being able to support higher compensation levels; that's a truism throughout the urban transit system. But you know, again, you know, we don't have to go there. I mean here's - here's someone who testifies before you. There is no relationship
between productivity and compensation. I guess he doesn't understand how an airline pilot is paid and why someone flying a 777 or a 747 might be earning more than someone flying an A-300 or a 737. The answer is: Productivity. The answer is that, in a larger airplane, unit costs are much smaller, the - the productivity is much higher, and you are able to share that with your employee directly through the compensation structure that is applicable in that industry. So I don't know what empirical evidence he is looking to or toward, but there are real-world examples every - in every industry of what I'm accounting for. But aside from this global application and outside industry, I think the best examples of the connection between productivity and compensation lie in the railroad industry, and apparently Mr. Eakin has never heard of the dual basis of pay. The dual basis of pay has, for generations, compensated employees in train and engine service on the basis of their productivity. As the trains got heavier and there was more weight on
locomotives, they automatically were paid more. As the trains got speedier and got across the tracks more efficiently and quicker because of the - in part, because of the employers' investment in better - in heavier and more powerful locomotives, the train and engine service employees, the BLE, and the UTU automatically had increases in their compensation. It was a direct connection between productivity and their compensation. As their efficiency went up, as they produced more ton miles, their pay automatically went up. If you trace this historically, you can see it in the data. The average hourly earnings for a locomotive engineer or a conductor far outpaced the changes in wage rates per se as reflected in general wage increases under collective bargaining agreements. The delta between those two trends is directly the result of the application of the dual basis of pay, what is, in effect, a productivity escalator that gave the train and engine service employees more money; again, perhaps one of the best examples ever of a direct connection between
productivity and compensation. But I don't have to stop there. This history of railroad bargaining is peppered with increases in compensation that are directly associated with the elevated scale levels of the employees. The Brotherhood of Railroad Signalmen, the BNWE, and the shop crafts as a group, as a group and individually, have negotiated what has been called - what are called scale adjustments. A scale adjustment is something - is an increase in your pay rate, in addition to the general wage increases that may be applicable to the rest of the population, which are directly associated with your elevated skills and your resulting efficiency and productivity in that job. As I said, the history is complex, but it is peppered with these illustrations of where the skill adjustments have been negotiated between the parties as a matter of reimbursement for the encouragement of the employees to gain these elevated skill levels. If you will indulge me, I just want to give you one kind of recent case.
Following the PEB 219, there was a series of -
actually following 219 there were a series of -
not a series, but there were at least two other
PEBs, PEB 220 and 221, and - which had been cited
repeatedly for other reasons in this case. But I
think part of the recommendations of 221, which
involved the machinists, was to negotiate a skill
adjustment. So long story short, parties could not
agree, and that was ultimately referred to an
interest arbitrator, Dick Mittenthal. So Dick
Mittenthal hears the interest case on establishing
the skill adjustment or the skill - well, yeah,
the skill adjustment, the skill premium, for the
IAM. In his award, and I'm going to off - I'll put
this all together for you when we get to our
rebuttal materials. But in his award he states
that - and I quote - the new differentials, while
probably not wholly satisfactory to either party,
seem sensible to me because they reflect, to a
substantial degree, the parties' expertise in
practical knowhow rather than any theorizing on my
part, unquote. Dick Mittenthal understood what I
was talking about by reflecting on the parties' own practice and experience in deferring to it rather than theorizing on what this adjustment should be, and this of course is after he heard numerous days of testimony on the - on the nature of the work, the content of the jobs, the training that they've involved. In the implementation of the Mittenthal award, which, by the way, is dated June 19 - June 1992, there was an information agreement reached between the carriers and the IAM implementing the Mittenthal award; that was reached in July of '92. And by the way, this extra skill adjustment was equivalent to 3.2 percent of the then-existing basic journeymen rate for the machinists. But in the implementation agreement, which is very interesting, you can - you will find, when you read it, after identifying those jobs, those positions that would be subject to the - to the new skill premium, the parties also identified the manner in which persons who were not yet qualified may become qualified to receive the skill premium. Well, guess what? Extra
training and other forms of qualification would enable you to bid on the job that held the skill premium, the point being that there's a direct connection between your compensation and your willingness and ability to be trained and to elevate your skills. The notion that there is no empirical evidence of this in the railroad industry is silly. I want to give you the - probably maybe the best example, because I can - this can go on interminably. There was a - there was a time when the railroads did not come to negotiations or to a PEB and argue as then state blatantly, as they have in this case, that productivity doesn't matter when you are setting levels of compensation for the workers, and that's precisely what they have said in this case when you read their - read their brief. Let me - let me read a - there was a time when the railroads instead would take the position, not that it's irrelevant, or not that there's not a connection between compensation and productivity, but that we have already adequately compensated you for that
extra productivity. Now, in PEB 219, and this is
Carrier Exhibit Number 20, the following statement
was made: The pay of conductors and trainmen, and
I'm quoting, in the UTU have already risen by
virtue of productivity, based payments directly
tied to agreed-upon reductions in train crew
consists. Short crew allowances, productivity fund
payments, and stock bonuses will continue to fuel
this growth. Because these employees have already
arranged to receive payments tied directly to
productivity-related reforms involving their
organization, no logic can support any additional
increases of this sort for them, unquote. That's a
quote from Chuck Hopkins. There's a guy who could
cut a deal. There's a guy who knew the difference
between a theoretical approach and a real-world
approach at the bargaining table. And so what
Chuck, Chuck Hopkins - and for some of the Board
members who may not know, he was Ken Gradia's -
one of Ken's former colleagues and bosses and once
held, and held for many years, the position now
that Ken occupies. And I think before - that makes
me - when Chuck was still working, I could never -

I could never claim that I had more PEB experience

than anybody because he trumped me on that. Chuck

Hopkins was around forever, and as - like I said,

he did not take the position that there's no

connection between productivity and compensation.

Quite to the contrary, he says what would a

productivity fund be for if not to reward for

productivity increases? Part of Mr. Eakin's

presentation on the economic theory, that has no

application in the real world of collective

bargaining in the railroad industry, was the

assertion that there's no empirical evidence that,

"an increase in skills substantially contributed

to the improvement in output per hour." That's a

quote from his testimony. Now this could be big

news in the training departments of the railroads

because they invest an enormous amount of money in

the training of, of an, and advancement of the

skills of the work force so they can transition

employees from the pick and shovel jobs and the

laboring positions into the operation of the high
tech machinery that uh, was um, uh, described by Mr. Fitz, an operating officer in his testimony before you. I would suggest that Mr. Eakin sit down with Mr. Fitz and work this out because it's obvious that there is a, there is a, a direct interest that the Carrier has in elevating the skills of its workforce so that they can now occupy and perform effectively and increase the efficiency of the operation by uh, by um, um, by having the skills necessary to operate the, the new high tech machinery. There is a way to quantify this by the way. Let me give you a preview of what I will present in our, our rebuttal piece. Um, again the subject of Mr. Fitz's testimony was the maintenance of lay employees. This happens to be one classification where the data sources permit us to um, isolate the skill jobs from the non-skill jobs. I-I can't do that with any, any degree of precision uh, for shop crafts, for example, because the reporting divisions on wages all lump everybody together. But in the BMWE craft um, you can trace this
historically. And when I went back to look at the facts in 1980 uh, at the time of deregulation, I found that 51 percent of all of the employees in the BMWE craft and remember they are responsible for all maintenance of way except for signaling which is the BRS job. But 1980 was uh, 51 percent, so 51 percent of the entire population was a laborer that persons depicted in the, in the testimony of Mr. Fitz as walking alongside the, the ballast machines and, you know, and, and the lining uh, uh, rail uh with picks and shovels. When we look at the uh, 2010 data the laborers are now only 20 percent of the entire population. Now conversely the machine operator category went from 19 percent in 1980 to 36 percent today. On top of that, you have a growth in the number of foremen. Now foremen in the maintenance of lay craft are working foremen. They are, they too are the um, uh, are, are trained in the uh, uh in the performance of the higher skilled uh, functions across the railroad. And their numbers went up from 19 percent as well to 26 percent by 2010. The
moral of the story is that in this particular
craft, you have had a change in the mix of
classifications over the period of deregulation
from a laboring class 80 some uh, a majority 51
percent in 1980, to today where it is only 20
percent and 80 percent are in the skilled
categories. Now if that's not a, a contribution by
labor to elevate the skills within the craft I
don't know what is. You should also realize uh,
that the trackmen job, the track laborer job is a
portal position for this particular craft. The
Carriers recruit uh, persons with aptitude with,
who are able to perform the higher level jobs.
They uh, trackmen, that is, are hired at that
portal position and then they can bid and move
upwards within the pay structure and the
promotional ladders to achieve the higher pay and
the more sophisticated, better trained jobs. So
it's not only a change in the global mix of
classifications within the craft that cause an
overall elevation of skill levels within it. It's
also the elevation of the skills for particular
individuals who are hired as laborers, who go 
through training and through uh, and, and result 
in persons who are capable of doing the higher 
job. So once again, I think that the notion that 
there is no connection between productivity and 
compensation is false. I think that there is no 
uh, that, that the whole notion that there, that 
the elevation of the skill levels within the 
population of railroad workers is not subject to 
direct increases in remuneration is also false. 
And anyone who says there is no empirical evidence 
of this has, has not opened his eyes to it and has 
not made the investigation. It's as simple as 
that. The second area is compensation. And again, 
here is another example of a complete failure on 
the part of the Carrier and their uh, spokespeople 
to recognize the rail bargaining history. Uh, 
think about this; the Carriers come before you uh, 
this Board and argue that the Coalition members 
that are represented here on average are paid 50 
to 80 percent over the "market". So this, and I 
think the 80 percent number there are several
numbers floating out there depending on what
source they are using uh, but generally it's the,
when you add in all compensation it's an 80
percent uh, premium as they call it. So you're, 80
percent of your pay. The Board members have to ask
themselves this. How does that happen? How do you
get to a point in 2010 where you are paying your
persons 80 percent over what they should be paid?
Now that by itself is an indictment of every
negotiator representing the Carriers over the past
100 years because you don't get to this (stutter)
particular condition unless, there is one or two
explanations for it obviously. The first is that
the Unions have bargained against Carrier
negotiators that were somewhat inexperienced or
they were uninformed or they were just generally
incompetent and agreed to these excess, overpaid
amounts. Or alternatively, the method of
determining the so-called premium is invalid. The
comparisons are invalid upon which they are based.
The job matching is invalid upon which the total
compensation is based. And accordingly, the
parties have ignored this material and it has wholly failed to motivate them in the past. Now what I'm going to show you when we get to the rebuttal materials is that I can go back into every single, every single just never be absolute in this business but I can go back for a substantial number of cases, going back 50 years and I can prove to you that the Carriers have offered evidence before a Presidential Emergency Board that demonstrated that this is one of the highest, the top four or five highest paid uh, work forces in the country. All right? That has been, that was a given. That is something that they could establish. Now, I believe that that is a function of the uh, the, the, the skills and the compensation that is required of the employer to, to, to compensate adequately the skills of an occupational mix that is required to run a railroad. This is not Wal-Mart. I understand that average compensation in the railroad industry is going to be high and higher than the general private sector which is now dominated by the uh,
service industry where you have persons working at WalMart and similar places or perhaps this hotel and where their compensation in the, in the total will be less than what you will find in the railroad industry. You know why because they don't have to hire in Wal, at WalMart a train dispatcher or an engineer or an IEM skilled mechanic. They don't hire those occupations. So would you expect the compensation to be higher in this, in this industry? I think so. It's just, it, it might be a fact, it's just a fact that's not material in the determination of compensation levels for the railroad worker; not any more now than it was over the past 50 years which, of course, involves the decisions by the parties themselves that brought us to this point of having been overpaid. Uh, there's a, there's a story in the back of my mind that, that um, I, I have to contribute. Uh, uh, the dates and the uh, and the um, and the, and the context but it was I believe it was Ralph Walton (sp?) in PEB 230 but as this evidence went in he inquired, "How long have you been overpaying your
"workers?" And he looked around, "Well, since World War II," was the answer. That says it all. Uh, Ralph Walton understood what I'm talking about. Um, I want to give you one example though because this is classic. You look at the charts of the, of Dr. Evans and um, Dr. Fay (sp?) uh, you'll see that the one that when they line up all of the crafts, a couple that stick out uh, are the dispatchers and the locomotive engineers. Uh, the dispatchers in fact are said to be paid 110 percent premium, in other words 110 percent overpaid. Wow, you know, if, if I saw that, I would think to myself, "You know, that's too good to be true." You know, if you're advocating their position that is absolutely too good to be true. How could it be double what they have to pay? Well, the answer is that isn't true. And if you look at the comparisons that they made and we were offered this 'cause I had dug into all of the OEC data and, you know, all the BLS data on which this, these job matches are made. You will find that they're comparing the train dispatcher on a
line haul freight railroad who's job by the way uh, will be described more thoroughly by Leo McCann, President of the organization, when he testifies. But um, uh, uh, they're comparing that job with a dis-; with a dispatcher such as the person who calls the uh, van that will take you from the hotel to the airport or dispatches taxicabs or perhaps you call up a WalMart and you want something delivered. That person will dispatch a delivery truck. That's their idea of a job match to a train dispatcher and I suggest that they together Dr. Evans and Dr. Fay have not even bothered to find out what a train dispatcher does in the industry. They haven't even bothered and that results in this enormous overpayment that the Carriers themselves are responsible for number one by mutual agreement with the organization. And secondly, has actually grown over time. I remember fi-: I remember 219, the recommendations came out in 219 it strains my memory a bit but um, and Leo can confirm this when he testifies but following 219 there was a general recommendation of general
wage increases. Uh, the dispatchers got more. They
were back to the bargaining table and got 4
percent more than anybody else. Why, why would the
Carriers agree to that if they already were
overpaying these guys by 110 percent? The answer
is they're not. And the answer further is that
whatever these data show, they are not material to
the wage determination in this industry and they
have never been and the proof lies in the fact
that you have this differential today, this
alleged premium, and it has actually grown over
time. How does that happen? Um, this
(indecipherable at 0:12:48) wrote about the third
area and that's the pattern principle. Uh, what,
what, I think what I would like, I-I would like to
perform a service for the Board that would, that I
would offer as follows. Uh, I keep in my office a
catalog of Presidential Emergency Boards and in
that it identifies the case obviously and the
participants but it adds to that record uh, what
you don't have all the time when you read the
reports. And that is the percentage of the
industry participating in the PEB. What percent of
the class one railroads are participating in the
case before the PEB? So I have a record of that
which I have not prepared for this case. It is
just something that we do. Um, and uh, and where a
PEB which is not unusual fails to identify that
statistic we calculate it by going to the record
or going to external sources of, of employment
data for class one railroad employees and
estimating it ourselves. So we have such a
document and I think, it may or may not be helpful
to the Board but I intend to uh, offer it as an
Exhibit when we get to our rebuttal case. But it
is, it is uh, pertinent in this regard. I looked
at the lists and I picked out and it's a subject
of some refinement but I think I got them all uh,
19 cases that the Carriers cite in their brief as
being supportive of the proposition to apply the
UTU pattern in this case; okay, 19 cases.
Invariably, these cases involve a tiny portion of
the industry, in other words, the tail trying to
wag the dog. They involve situations and this
where there is maybe one, two, three, four percent
of the Carriers' employees who are trying to get
something different than what the vast, vast
majority have agreed to. Um, I have, I have
determined that of the 19 cases, 17 of them
involve cases where there is less than 25 of all
railroad workers participating before the PEB. Now
what does that mean? That means that, that the
Boards were more inclined to apply the pattern
principle under circumstances where the vast
majority of all other railroad employees were
already under contract, contracts with similar
terms. That's a qualitatively different than what
they are asking you to do in this case when we
only have 40 percent approximately under contract
and 70 percent of the population before you. I can
only find one case out of the history of the PEBs
that supports the proposition that the Carriers
are trying to promote in this case; where you have
70 percent of the, of employees before a Board and
where the Carriers are asking the minority to uh,
a decision to apply. In the cases where you have
the strongest language on pattern principles and patterns applying I should say more accurately. Cases like uh, 220 and 221 and maybe they were emphasized here because of uh, members acts uh, familiar with those cases and participation on those Boards. But I would remind him and I'm sure he already recalls that um, in 220, 220 was the um, let's see if I've got these right. 220 was the uh, was the BMWE case. And the BMWE case was a Conrail case. In other words, the whole industry settles, all right? The BMWE did not participate with respect to 219 on the wage and (indecipherable at 0:16:56) recommended or determined by 219 with regard to Conrail. Conrail was carved out. So here the BMWE goes before the, the um, Mr. Zack's (sp?) board that would have been um, uh, uh, that was. CHAIRMAN JAFFE: 221 BMWE. MR. ROTH: 221 was that, I got them reversed. Okay I'm sorry, right this, right and this was exactly. Okay, I got the other way around. But the one ca- ; they happened right on (stuttering) the heels of
one another following 219. In the IEM case, now
the BMWE case that I was talking about 220 or 221
that involved the circumstance where the BMWE had
already settled on all under a, under a, under a,
under terms that were applicable to the rest of
the industry, the non-Conrail industry. And so the
question there was, not only was there a pattern
because the BMWE at the time uh, represented only
um, um, that would have been 4.2 percent of the
industry. So in other words, 95.2 percent of the
class one railroads and their employees were
already settled. Moreover, one of the, one of the
principle arguments that the organizations make in
opposition to rigid application of the pattern
principle is that it denies them to right, the
right to bargain. It denies them of their self-
governance and their legal responsibility to
determine for their own persons as their agents,
the terms and conditions of work. Well, if you had
a circumstance where the BMWE not only um, uh, was
seeking to evade an agreement, a pattern
agreement, that it made itself, in other words,
the terms that it had agreed to in all of the
other class one railroads. So the notion that that
particular Board would embrace the pattern in a
very literal way does not surprise me. And if you
get to the other case which was 221 and 221 it's
1.6 percent of the population that has yet to
settle. And that, of course, was the IEN who was
not participating in the Presidential Board 219
and was off by itself. So, 1.6 percent of all
class one workers come to you and say uh, "We want
something different than what 98.4 percent of the
rest of the population agreed to." That's
qualitatively different than, than imposing a UTU
deal which represents a minority of workers on the
70 percent that are before you now. And those are
the kinds of cases where you find the strongest
language in support of applying patterns and those
are the cases that the Carrier cites here but they
cannot come up with a case except for one. I found
one that I think supports their position. It's
114, I think that one helps them because you have
about 70 percent of the, of the uh, class one
workers in front of a Board that ultimately says,
"I'm gonna give you guys what the minority has." I
think that's the exception that proves the rule.
But if this Board were to give any weight to the
UTU Agreement, you would be doing so under
circumstances that are highly unusual and rare in
the experience of the making of collective
bargaining agreements in this industry. And that's
something you have to be conscious of. The last
point of our departure and it's a proper
introduction to the next subject matter which will
be a review of the financial and economic position
of the industry. And this of course is the role of
ability to pay. Now the carriers, as I read their
position, have said that they are not claiming
inability to pay, but I don't know, does that mean
that they have the ability to pay? That's
something that the board will probably have to
sort out. I'm not clear what they're saying. But
what they have made clear, by reading their
materials and listening to their experts, is that
they believe the whole matter is irrelevant. Now
I've got to tell you, this is going to be happy news to my clients on American Airlines. And to the U.S. Postal Service unions as well. And in fact, you know I spent part of my professional life, about ten years of it, doing workouts in the airline industry. I've done 14 restructuring cases where the principle question was whether or not there should be some adjustment or (inaudible) they call the restructuring of labor costs in order to enable these airlines to return to profitability. If only I would have known that it was irrelevant, I'd have been much less kind to the management's position, because as you know, in all of those cases, the plan of reorganization calls for radical changes in compensation levels and benefit levels in order to assure that the plan of reorganization, this is in a bankruptcy concept, an 1113 case, assures that the carrier can immerse making profits in a sustainable way. But there again, this I learned for the first time from Dr. Murphy and also repeated several times throughout the carriers' case on wages and in
their opening statement, that there is no connection between the carriers' financial position and the determination of wages and benefits. Now I have to say that this is the first time, to my knowledge, that the carriers have said that the financial and economic condition of the industry wasn't a weighty consideration. And in fact, in the 70's it was not just a weighty and important consideration, it was the only consideration. It was the one that they said should drive a recommendation by a PEB because there is nothing more important than our financial position and the making of collective bargaining agreements. We'll offered some proof of this, that comment I just made, formerly when we put in our rebuttal case, but I just want to give you a little preview. Here's a carrier's prehearing submission in 1994. I quote, "since the passage of the Railroad Labor Act, each and every emergency board that has had occasion to consider the matter as held that the financial condition and future prospects of the railroad industry are material in
disputes involving proposals that would affect railway labor cost." That doesn't sound like somebody that now argues that the subject is irrelevant. 1967, this is PEB, before PEB 169. Again, this is from the carrier, not from the board. I quote, "ability to pay is a recognized element in wage termination in prior emergency boards that have considered railroad wages, have given this factor considerable weight." Moving forward in time, this is 1971. This is PEB 179 and this is some general observations of the board based upon the record that was made before it. I quote, "it is appropriate at the outset to make some general observations concerning the economic issues involved in this case before we enter into a detailed discussion of wages, wage related and proposals before the board. In the course of their presentation, the carriers placed considerable emphasis upon the current financial plight of many of the railroads of this country. It is a matter of public knowledge that a number of railroads are near crisis situation in this respect and we are
well aware of this important matter." Again, doesn't sound like a situation where the financial condition is irrelevant to the determination of the issues before the board. Again, going forward, this is emergency board 211. This is the Ruckus [ph] board. He's discussing the general standards and I quote, "in developing settlement recommendations the board must consider and properly way the application of the normative settlement criteria used in interest disputes. These criteria include comparability, ability to pay, cost of living." Again, moving forward, this is January 15, 1991. This is 219. I quote, this is the board describing the carriers' position before it. I quote, "the carriers believe that unless the industry can hold the line on wages and compensation and eliminate restrictive work rules, the prospects for the 1990's are abysmal. And the carriers contend that if they will agree to wage increases and rule changes sought by the organization, the entire industry would be awash in red ink by 1994." Of course the red ink that
they're talking about is now the apparent black ink that we see today. So if it's relevant and weighty and important when things are bad, does the converse apply? Finally, again, you can go over every round of bargaining and find this material, but this is more current. This is 1996. This is Dick Littenthal [ph], Bob O'Brian and David Vaughn [ph]. PEB 230. "The carriers assert that a realistic appraisal of the industry economics requires railroads to continue to find ways to reduce their costs, not increase them. To compete in the deregulated transportation marketplace they stress that freight revenues have grown very slowly and that industry profits are attributable to large improvements in productivity which have in turn stemmed from new technologies, a much smaller work force and carefully rationalized rail operations." And the rest of this is important because now he actually identifies the criteria that they used to advance that former proposition. I quote, "they note that the market share of railroads with respect to
1. Freight transportation has fallen, that yields
2. have eroded, that unit prices have therefore
3. fallen, and that capital needs remain high. That
4. return on investment, while rising, still does not
5. compare favorably with most industries, and that a
6. cash shortage still plagues the industry." Now
7. think of those measures that in a mouthful, the
8. Littenthal board had identified. Contrast it to
9. what we have today. Revenue is not declining,
10. revenue is going up. Profits are not flat, profits
11. are going up. Yields and unit revenue is going up,
12. not flat, not down. Market share is going up, not
13. stagnant, not going down. The RRE, return on
14. investment, is not only competitive, but it is
15. superior to the majority of outside industry. And
16. in terms of cash flow, it's never been better, not
17. in the history of the railroad world. And their
18. cash - looking at this last sentence that I
19. quoted, their cash now covers not only taxes and
20. fixed charges but covers them by a long shot. The
21. fixed cost coverage ratio, as we're going to
22. learn, is about 177 percent of fixed charges. So
all of the metrics identified by the Littenthal board, if applied here, would put you at a totally reverse conclusion about their ability to pay. And of course it stands basically for the proposition that they, the carriers, in the real world of collective bargaining and PEB determinations, have relied heavily and extensively on that particular criteria. Now let me add that of course labor and personally myself have pushed back on the subject. We have argued that the situation was never as bad as reported and that the doom and gloom forecast that we often heard in these cases were unduly pessimistic in view of recent trends. Now sometimes, we were successful in persuading boards that the financial condition should be given less weigh than that urged by the carriers. Or at least that there are other important wage criteria that should be given comparable weight. But we have never persuaded a board to ignore such considerations. I wish it were otherwise, but I have never been successful in convincing a board that the financial position of the employer was
not material in the making of a collective bargaining agreement. Now if this board does so, and it follows the position of the employer, it will be the first PEB that I know of that has done so in a case involving a private for profit enterprise, and of course there I'm distinguishing PEB's that may be established in the commuter railroad industry where you have public sector considerations for involving the willingness and the ability to pay a subject matter. Okay, now apart from the relevance and weight of the ability to pay subject matter, the parties are also separated over their views of future performance and when I get to that part of my presentation, that is something we need to focus on. And again, you will find as we proceed through the evidence that this is not a story of overnight success, the current success of the railroads, financially and economically speaking, is not the consequence of some coalition of some external forces that they got lucky over. This has been a process, a painful process that begins in the 70's with the creation
of Conrail and picks up considerable steam with
the passage of the Staggers Act in 1980, and
evolved over many years to the point that we are
today. But the reason why we will demonstrate and
why outside analysts are so optimistic about the
industry is because of the fundamental change. The
structural change that now will dictate the
persistence in profitability and future success of
the carriers. That's my introduction. I'm ready to
put on some evidence.

CHAIRMAN JAFFE: That's fine. Why don't we take a
brief break.

MR. ROTH: Okay.

CHAIRMAN JAFFE: Back on please. At your
convenience, Mr. Roth.

MR. ROTH: Uh, thank you sir. Um, I-I would ask the
Board members to have before them those two
exhibits of mine that we made reference to at the
outset. Um, you'll, you'll note that in just a
couple uh, kind of procedural things um, the,
both, all of the documents that I've furnished
both the statistical supplement and the summary
A detailed Table of Contents which the Board can make reference to in trying to locate some material that I refer to. The Chairman has also asked me if I could remember to identify the table or the reference that I'm making by the page number, the Bates page number so I'll try to do that as well.

CHAIRMAN JAFFE: Thank you.

MR. ROTH: The first thing I want to say goes to the kind of data sources that we have used. There is basically two. One would be the general class one data that has its genesis the outrun reports which are filed by the class one railroads with the Surface Transportation Board and its predecessor, ICC. The second source would be the public information that's available through SEC sources for the corporate entity for the railroads. And so we'll see sometimes I will flip back and forth and I will measure certain performance on the basis on the class one average.
and then on occasion will uh, focus in on the uh, Big 3 or Big 4 as I am calling them. Um, in Table 2 of the Statistical Supplement and this is page 2183 uh, you will see a profile of class one railroads and this is simply documents what I think you already know. I will talk about the major four railroads uh, the CSX Transportation uh, Norfolk Southern uh, the BNSF and the UP uh, they constitute a majority of class one railroads no matter what measure of system size you use. Uh, they are 93 percent of operating revenue; 93 percent of ton miles. They are 92 percent of the uh, employees in the class one sector and uh, they have 87 percent of the miles of road operated. So I guess when we look at the class one data and we flip to the big three or big four you're not losing a lot. You'll see a lot of uh, similarities in the trends because obviously that data is dominated by the big four. All right uh, the first uh; subject matter that I've covered uh, in my statement and it has to do with measures of profitability. Um, this is kind of an ending or
starting where you might otherwise end. This is the bottom line uh, measure or productivity, or profitability. We can explain as we go through the data how we got to this situation where we have these record profits. But the analysis begins by looking at the income statement and uh, measuring profitability by four metrics. Uh, the first is net income, the net income margin uh, that is uh, uh, profit margin. There's the operating ratio; uh, there is return on net investment and finally the return on equity. Um, I don't sense that there's any kind of dispute between the Parties as to these facts or even in recognition that in 2010 and in the prior few years uh, there have been the performance by way of profitability has been excellent in the industry. I don't sense that this uh, uh disputable here. What they have said with some uncharacteristic understatement that it's better than it has been in the last few years. Well, that's not quite true. It's better than it has been ever. It's better than the profit margin has been, it's better in 2010 that it has in the
past 100 years except for uh, except for uh, 1916.

So when we use words like um, um, "This is the best," or uh, "This is uh, unprecedented in terms of profitability." I don't mean that in a hyperbole way quite literally because I have looked at all of the numbers since uh, the turn of the last century and through the current date to come to these conclusions overall level of profit and performance. Um, most of the material, as you can see, begin with the deregulation period. Uh, the uh, I don't want to go into too much ancient history. Uh, Chart 2 uh, which is 2186 uh, gives you the growth and net income for the years 1979 for 2010. 2010 is used to measure performance over the, the post-deregulation period because that becomes the base year. In other words, the, the year prior to uh, the year in which the Staggers Act was passed. So we're looking to performance from the base year of 1979 uh, for all of these indicators. Chart 2 and um, um, uh, is uh, speaks for itself. Uh, as you can see, the, the growth in net income itself has been enormous both in
current terms and, and even in the constant
dollars it has jumped significantly over the past
five years. Uh, Table 4 I would ask you to focus
on, this is at 2187. Are we okay?

MALE SPEAKER: The date stamps are only on the
electronic copies.

MR. ROTH: Okay, than I should make reference to
the, the page in my document. Okay, that would be.

MALE SPEAKER: Right.

MR. ROTH: Table 4 is on page 6. Is that better?

Uh, Table 4 is a statement uh, of the, a Big 4
railroad corporation. It is a consolidated
financial review in, in might words and I measure
what has happened over the course over the last
contract. These numbers are significant, Mr.
Chairman, because they include naturally the
results and the performance that uh, has occurred
in the Great Recession between the end of 2007 and
progressing through 2008. Um, the key lines here
for uh, your consideration would be the change in
railway operating revenue up 33 percent over this
period of time. And again, this is over the course
of the last collective bargaining agreement if you will. So, up 40, from 2004 base year, remember our contract started in, in January of '05 so looking what happened over, since we last entered into a collective bargaining agreement. Revenue up 43 percent but operating expenses up 20 percent so obviously that results in a significant increase in the operating margin. Uh, the operating margin, or operating ratio is the relationship between operating expenses and operating revenues. The lower that number the better it is. And as you can see, it has dropped significantly from, for the Big 4 railroads, from .85 in 2004 to .718 uh, in 2010. That's a change of 1,315 basis points, a significant move. You will note that um, uh, the way I have this structured here have in the top portion uh, this deals with while we're dealing with the railroad corporations it is dealing with their, that portion of operation that is uh, described as the railroad piece; railroad operation. In the day preceding the mergers and the uh, the, of the 1990's, mid-1990's, there was
a time when uh, the major railroad corporations held other interests in companies and uh, maritime companies and even hotels uh, and so as they divested themselves of those enterprises, kind of analysis became simpler because now most of their performance; most of their income and in fact in this case in 2010 99 percent of it came from their railroad operations because they are principally learned that uh, what they do well is run railroads and they got out of the rest of the business. Uh, moving down to the net income line, this is and again I uh, in the way of routine I would exclude any none recurring items. We're looking at uh, any kind of special expenses or would be excluded here in this format. Uh, there, there's none really to speak of. In any event uh, the net income or profit is up 203 percent over this period of time. The uh, the margin is up 854 basis points from 7.3 percent to 15.8 percent over this period. And uh, again I show the pretax income line is somewhat redundant. All margins are up. They're all significantly over the past six
years. At the second portion at the bottom of the Table, second to last portion, we are getting the sum of the uh, reasons why increases in total shareholder return have been so uh, significant.

The first thing in this line is that over this six year period, average shares have been cut by 72 percent so several references to the stock repurchase programs that the corporations are currently uh, um, uh financing. And this uh, kind of a result of that over this period of time in terms of the shares that were taken out of circulation. Uh, earliest per share shot up 266 percent over this period and uh, dividends went up 208 percent on the Big 4. The yields on these dividends has gone up as well. So, Table 4 gives you a look at what has happened on the Big 4 uh, uh, railroads and there, as a subset of the class ones if you will.

CHAIRMAN JAFFE: The exclusion of the BNSF from the bottom data was that because the data was unavailable or was there another reason?

MR. ROTH: We're going to talk about that later.
But, but when this period of time uh, over uh, overcoming the purchase by the BNSF by uh, Berkshire and at that moment um, the, the, of that acquisition the BNSF stock as such was no longer available to trade. Of course, you can invest in Berkshire but uh, you can no longer invest directly so I excluded them from that portion so that I could have an apples to apples look over the two points in time.

CHAIRMAN JAFFE: Thank you.

MR. ROTH: Again another in Chart 3 which is on page 7 of the uh, material you have. This is the profit margin going back to '79 again uh, historic levels in 2010. Big 4 income net income margins and this is the profit margin, this is on, this is Chart 4 and this would be on page 8 and I would ask you to uh, take a look at that. So, a-again we're making the point here obviously that, that while everybody agrees that 2010 was a good year. It wasn't just a good year. It was the best ever. And uh, when and so when you put this in historical perspective you don't see anything like
it. The, the profit margin from 12.8 percent to 15.8 percent for the Big 4, you know, in one year and from the prior peak of 2008 which was the recessionary number of uh, of 12, of 13.2. So, so, you, you can see that the, you know, performance was pretty solid over the whole course of time from 2004 to 2010 but particularly in 2010. I explained a bit about the operating ratios, the second of our metrics. This is on Chart 5 and page 9 of the document and you can see over the operating ratio had collapsed significantly indicating that the Carriers are turning um, um, a greater, greater, generating greater revenue from every dollar than it did on expenses. So this is kind of a measure of efficiency for the organization for every dollar that's, for every $0.73 that they spend on expenses they're turning into dollars of revenue. And that again is also historically high. Uh, look at the operating ratio, like the margins, the profit and the return on investment margins which were um, as good as they have been since um, uh, since the 19-; since
1916. Uh, the operating ratio is better than during World War II as you can see from Chart 6 page 10, just flip the page. This uh, brings us back to 1995 and calculates the operating ratio through the current period. And so while we hit a good point in 2010, it uh, it is, it isn't quite as good as what it was during World War II. They weren't making any money but they were busy. Okay, more rail operating ratios on Chart 7, this is page 11. We can skip over that momentarily. Okay, I'm going to talk a bit about the return on investment. One of the, one of the arguments that the Carriers have made invariably during negotiations and at PEDs uh, was that the earnings alone uh, do not predict the long-term viability of the corporations. That profits have to be sufficient to enable the Carriers to access the capital markets. This is particularly important in an industry that's capital intensive and has, have a large CAPX budgets. Uh, in theory uh, capital will move away from companies with poor returns and in favor of those with better returns. And so,
1 this um, uh, reality becomes important to the
2 extent that the railroads are reliant on external
3 sources of capital such as uh, debt or stock
4 issuance. So we look here at what the Carriers
5 themselves have focused on in prior cases. I went
6 to the extent possible to find agreement with the
7 Carriers on what metrics to look at and then to
8 see how they have performed over time. And one of
9 the big uh, uh, arguments made by the Carriers in
10 the past is that the uh, that the railroads have
11 not been revenue adequate uh, as determined by the
12 Transportation Board. Now it has been argued that
13 this revenue adequacy that if, if the railroad is
14 revenue adequate than the uh, they were not able
15 to compete effectively in the capital markets for
16 the money that they need to fund their capital
17 expenditures. So we'd better look and see what's
18 happened over this course of time with respect to
19 the return on investment as it compared to the
20 cost of capital that was uh, calculated by the
21 STB. Now the first thing that I want to bring to
22 your attention is what is accounted for in
Appendix B of my statement. But we're not going to read that or really review it to any degree but I did want to bring to your attention the fact that in terms of a measure of revenue adequacy, there is controversy regarding the use of the STB determinations. Because essentially the STB determination of revenue adequacy is a regulatory device which has the effect of uh, of triggering certain provisions under the Staggers Act uh, regarding uh, uh, regarding in particular the ability of the railroads to increase their rates on, on shippers captive and otherwise. So as you go through history, the calculation of the cost cap which is peculiar to STB and you need not understand or learn any more about how you do it but they publish a cost of capital statistic. Uh, that's actually on, in Appendix B uh, which is um, Appendix B to my statement. It's Bates page 2130 and I recorded for you there uh, the comparison between the cost of capital, the railroads rate of investment as determined by the STB. In short, there have been very few railroads over this
period of time that have been determined to be revenue adequate, okay, by this calculation. Now I have um, stated and continued to point out that uh, that there is no practical implication on class one Carriers for being revenue adequate as determined by the STB. There is absolutely no evidence of their inability to attract uh, adequate capital to finance their uh, their very aggressive capital program. Uh, that's point number one. Point number two is that, that whatever the determination means and whatever this alleged uh, gap between return on investment and cost of capital signifies that gap has narrowed considerably over time. And, in fact, by - the last analysis, the last published piece of information on this was uh, just recently obtained on the uh, - let's see if I can find that the um, yes in the, it's actually on page 9 of the summary statement. And I, it's during uh, yeah, this is worth noting here, these are the facts that go along with Chart 8 on page 12. If you look at that chart during the first 25 years of STB
determination, following deregulation uh, which covers the period from 1980 to 2005 uh, class one railroads made slow and steady progress at narrowing the gap between the cost of capital and the return on investment. This is uh, indicated in Chart 8. That the cost of capital hovers around 10 to 12 percent range and the return on investment, of course, steadily improved as the railroads became more uh, more and more profitable. Uh, the rate of return on investment averaged 4.4 percent in the 1980's and then as you look at the, at the kind of the, at Chart 8 you'll see the shaded portion are shrinking. During the 1990's uh, the ROI was 7 percent and then between 2000 and 2004 it was .6 percent. So by 2004, the gap which is reflected in the blue portion of the chart uh, actually had approximately 400 basis points. And what I indicated a balance of that analysis is the, as with all other financial measures uh, the class one railroads posted record results in achieving the, the close of this uh, of the, of the cost of capital return on investment gap. And
although this has been a very elusive statutory
target to hit uh, they are now uh, a couple of, or
a point, less than a point uh, percentage point of
erasing the total gap altogether. The last
published information for 2010 uh, the return on
investment hit 10.4 percent against the STB's
determined cost of capital uh, which is 11
percent. Uh, there's a piece and again I, I don't
believe I need to dwell on this but I do uh, urge
you if you have an opportunity to look at Appendix
B. It, it goes to the kind of the weight
importance that should be given uh, this
particular indicator, financial ability. On, on,
on several occasions, the railroads had the
opportunity to participate in rule making that
would have changed the definition or the means of
calculating costs of capital so as to uh, make the
target lower. Uh, they have argued consistently
that the cost of capital number should be higher
because it's not in their interest to become
revenue adequate under the statute. It sounds
counterintuitive if you were to believe that they
considered this an important indicator of uh, financial performance and ability to attract capital in the market. But actually the, the AAL on behalf of the Carriers argues that rural railroads should be less adequate as determined by the STB because to do otherwise would trigger the uh, regulation on pricing and also affect merger considerations, abandonment of lines and other STB determination where the cost of capital and revenue adequacy determination is used by the STB to judge the, whether or not the regulation uh, uh, should be greater regulated. So in any case, it sounds complicated but it really isn't because in the end the only thing that matters is, "Has, have the railroads, in fact in practice uh, had trouble attracting capital to fund their massive investment programs." And so the answer to that is categorically, a categorical "no". In fact, they in recent years as we're going to see when we look at the capital structure data uh, they, the, the external sources of capital actually have shrunk in the, in the capital structure. They've paid
down debt. They haven't gone out and borrowed as much. And they're uh, they're, the, the because they have a great deal of money internally to plow back into the, into their capital requirements, there's no need to seek external sources and they have not. Consequently uh, the whole revenue adequacy determination has become less important than it was even a few years ago. Speaking of the capital requirements, let's uh, let's focus on the next section of the statement. Uh, we can skip over the return on investment. Return on investment has paralleled uh, the other metrics for financial and profitability performance they have gone up and there are at currently record good levels. (audio interruption).capital investments - I just - begins with a discussion of capital needs. And I just noted that a moment ago. We recognize - this is something by the way that carrier experts have talked about. CEO Ross has talked about it. You know, he wants you to be aware of the fact that we have in this industry capital needs and that requires a lot of cash and
a lot of profit and a lot of income in order to finance these capital improvements. We, of course, agree that capital investment is critical to the continued performance of the corporations. In the end capital improvements add to the bottom line by promoting service, reliability and capital efficiencies by reduces slow orders, transit times, the frequency and cost of damaged merchandise. So capital investment is necessary in order to maintain service levels to meet the demand. Demand which then will ultimately increase your traffic and your volumes, lower your unit costs, and create an expansion of the revenue margin which leads to profitability. So it is all interwound and important. We recognize the fact that capital expenditures have been also at record levels. If you look at our Chart 11, which is on Page 21 of the chart book, you can see that in 2010 there's $9.8 billion expended by the Class 1 Railroads in capital improvements. And when you consider the fact, you look at this trend line, this is also reflected on Chart 12, if you
consider the trend line in capital expenditures in light of the fact that the infrastructure has shrunk and that the physical plant has been cut considerably since deregulation, the amount of investment that the railroads have made is even more impressive. Chart 12 on Page 22, the chart book that gives you the capital expenditures for road and structures per mile of road owned. And as you can see, this takes you all the way back to 1950. So in the early 1950s, you can see that there was, that capital investment was weak. This is in part what led to the bankruptcies of course in 1970. The Penn Central went down in 1970. In the early part of the 1970s some 20 percent of all Class 1 capacity was in bankruptcy. That's attributable in main part to the lack of capital investment and the deterioration of the infrastructure during those years, among other factors which are not particularly relevant to this discussion. And from that point you can see, particularly since the deregulation in 1980, the expenditures per mile of road took off. And that
of course reflects a concentration of the same
dollars on an ever-shrinking infrastructure. So
not only are the investments going up in dollar
terms, they're being spread across or concentrated
on a smaller railroad. If you, while I have your
attention here, if you jump to Chart 19, that's
further in the chart book at Page 30 - that'd be
Page Number 2211 in the general record; Page 30 of
your book - you can see how the miles of road both
operated, both track-operated and road operated,
shrank over this period of time, most of it
happening in the first half of the deregulated
period where the capacity went down by 34 percent
between 1979 and 1997. That's about 34 percent
cut. So when you have more dollars distributed
across fewer miles of track and road, obviously
it's going to accelerate your improvement in the
system. And that's reflected both on Charts 12 and
Chart 13, which follows. That's on Page 23 of the
book. So again, this is important. You know, we
understand that capital expenditures are an
important part of the whole industry story of
economic recovery because it promotes service reliability and all capital efficiencies including transit times and other things. Okay, Charts 11 though - where am I - the beginning of Chart 14, I want to turn to the other half of this discussion and that is where does the money come from to finance capital improvements, which everyone agrees is critical to the future of the railroads? Well it can come from four sources.

First you have cash that's generated internally, in other words cash from operations or cash flow, after you meet certain other obligations such as paying dividends. Secondly it can come from the sale of assets. There was a time when the railroads had significant assets that could be put up on the block and when sold generated significant amounts of money for the railroad. The third source of course is sale of equity. You can sale stocks. You can issue stocks and generate capital that way. And then finally the all-popular debt. You can borrow money. So those are basically your four sources. Cash from operations,
sale of assets, sale of equity in the stock market, or borrow. So I want to look at which of these sources had become the predominant means of financing capital today, as we proceed through the book. Now the one thing that jumps out is on Chart 14, is the increase in cash flow. Chart 14 also together with the Table 8, which is on 26, indicate the growth in cash flow. So this is what the railroads have left over from their income from operations after paying depreciation, deferred taxes. That's what we see on Chart 14. On Table 8, we take that to another step and calculate discretionary cash flow, which begins with your income, your operating income, subtracts depreciation, deferred taxes, takes out dividends and your capital expenditures, as well as any debt service. So when you subtract all that, you have your pre-tax discretionary cash flow which is reflected on Table 8. So both, when you look to the discretionary cash flow and the grossed up cash flow, either way the carriers are generating internally from their operations significant sums
of money, money that is used to finance, in the case of the Chart 14, capital expenditures. On Table 8, this is net of the capital expenditures.

CHAIRMAN JAFFE: Unlike Chart 11, are these real dollars rather than level or constant dollars?

THOMAS ROTH: The dollars on Chart 14 are gross, so those are current dollars and not constant dollars.

CHAIRMAN JAFFE: Thank you.

THOMAS ROTH: Focusing on Table 8, which is on Page 26, let's take a look at that for a minute because this is fairly impressive. We talked about the capital expenditures, we talked about how they have grown as the needs of the railroad to compete have intensified, and we also talked about the cash dividends that were paid out to shareholders. But when you lit (ph) all of that out to a pre-tax discretionary cash flow is still at record levels. In 2010 it's $11.3 billion. That's billions - $11.3 billion. That's up from $8.8 billion in 2009 and up from an average going from 2004 to 2008 of under $6 billion. So if you look
at the far right hand column on Table 8, that will
give you a picture of what has been a fairly, you
know, impressive record of generating cash
internally not only to use for discretionary
measure but also to finance their capital needs
and to treat their shareholders to increases in
their dividends. So the moral of the story here is
that the persistent improvement in railroad net
income or profits have enable the carriers to
lower their dependence on outside debt. I
described for you the sources, the kinds of debt
they normally engage in. There's a movement in
recent years to take advantage of low rates of
interest in the general markets and borrow money
in a traditional way but they have also used
equipment obligations and other debt instruments
that are peculiar to the industry to finance those
locomotives and other rolling stock in the past, a
detail which we need not focus on. The point is
that cash flow is exceptionally strong today and
that in 2010 alone it was a record $17.3 billion
and it covered 177 percent of capital
expenditures. That's what we refer to as the cash flow ratio that is recorded for you on, cash flow ratio would be on Chart 15 which is Page 25. So what that means is that in 2010, the cash flow is 1.77 or the - or reflecting the railroad's ability to finance capital expenditures with funds generated internally. The greater use of internal sources of cash to finance their CapEx activities is also made evident by looking at the debt to capital ratio. This goes to the capital structure as the capital structure has the shareholder equity and your debt. And debt as a percent of that total capital is reflected in Chart 16, which is on Page 27. So as that graph shrinks, as the debt to capital ratio falls, it signifies a lower reliance on debt as a means to finance your capital. It's falling in the capital structure. In fact, and it's falling at a rate that is more than significant. It's .146 today, which is less than half of where it was just in 2000, and significantly below the levels that we had at the outset of deregulation. So debt to capital ratio
1 indicates a smaller portion of capital
2 expenditures being financed with external
3 borrowing. The other external sources that I
4 mentioned was the sale of assets and the sale of
5 equity or the issuance of stock. Neither one of
6 those less sources of capital have been widely
7 used by the railroads in recent years. I think I
8 note on Page 14 of the summary statement that, you
9 know, apart from these debt instruments that we
10 discussed, the second external source of capital
11 funds is the sale of property. And in the past it
12 was mainly real estate but it also includes land
13 grants for minerals and coal and gas and lumber
14 and such. Well in 2010 the sale of property
15 produced $325 million in capital which was fairly
16 insignificant for the railroads as a whole. And
17 that source of capital has diminished in
18 importance over the years, which is predictable
19 given the fact that the railroad infrastructure is
20 now highly rationalized, the short lines and less
21 dense rail lines have been sold off along with the
22 property. The third source that are, of external
sources, and the fourth source of capital overall is the issuance of stock. Again, historically when I look at the data, new stock issuance has played a very minor role in capital funding and over the last eight years I was not able to find any equity sales for Class 1 railroads. Not counting, of course, the total acquisition of the BNSF. The strong cash flow together with the availability of the special debt instruments that I discussed made it unnecessary really to attract a lot of capital from outside sources. In fact, in recent years as you have learned, the railroads have engaged in significant stock repurchase programs. So they're actually not selling stock, they're buying their own stock back and putting it on the treasury shelf. In the footnote on Page 15 of the summary statement, which is Record Page 2091, I note that the UP spent $1.3 billion in 2010 purchasing 17.6 million shares. That was followed by $1.6 billion in 2008 and $1.4 billion in 2007 on their stock-repurchasing program. In February 3, 2011, the UP Board of Directors authorized management to buy
another 40 million shares. And the CSX followed suit, as the footnote indicates. So they're purchasing a great deal of their own stock with the cash, discretionary cash that they have. And I also have noted elsewhere in the statement that the carriers have announced, the big three carriers that are now publicly traded, have announced that they intend in 2012 and 2013 to take another 3 percent of their shares out of circulation. That's 3 percent each out of circulation in each of those years. So that's another 6 percent each of a reduction in their shares outstanding. This is what - you know, another hat that I wear in my work, I advise union-appointed Board of Directors on United Airlines and Northwest Airlines when it had a Board of Directors, and U.S. West Airways when it had a union-appointed Board of Directors. United's the only one left that has that function under its collective bargain agreements. My point is that I regularly get through my confidentiality agreements, the same records, the same information
that the Board of Directors get. And I recall that
the discussions about what in the boardroom as to
what occurs when companies have - are cash rich.
What do they do with the extra money? This was not
- this is something that United Airlines dealt
with in the run up in the 1990s when it had more
money than it knew what to do with. Today the
railroads are well positioned. Their liquidity
sits at an all-time high. They have cash and cash
equivalents for CSX, NS and UP alone are almost $4
billion. So the question is what do you do when
you have all that money? Well you can do three
things. You can plow it back into the corporation
and buy financing capital investment programs.
Two, you can pay down debt. Three, you can
increase your return to shareholders by sponsoring
a share repurchase program and drawing those
shares out of circulation thereby increasing the -
it's like a anti-dilution effect on the
shareholder stock. And also for the shareholder
you can finance increases in dividends. Well the
railroads have done all of that. They have so much
money they have engaged in each of those practices that corporations engage in when they have a lot of cash extra, when they have a lot of discretionary cash. Cash above and beyond what is required to finance to again to meet their normal obligations. We saw that their using some of this money to plow back into the enterprise, to finance what might otherwise be borrowed for capital expenditures. But they're paying down the debt; that is becoming the smaller part of the capital structure. And of course we're seeing the most obvious expenditure for that extra cash is for the increase in dividends in the stock repurchase programs that I alluded to. I'm going to talk a bit about the, moving forward here, talk a bit about the market share. We are frequently reminded by the carriers that while all indicators of financial position are positive they may be, they should be regarded as being fragile. That our current position may not hold depending on what the competitive world looks like in the future. So they would argue that there's a continued need to
hold the line on expenses in order to continue to compete. So what I'm going to do with this section of my testimony is look back to see how they are doing in this regard. How they're doing against the competition, how they're doing against market share, and I think this will explain why we see later on in the summary statement all of this evidence of outside analysts being optimistic about the future financial performance and success of the railroads. I think much of that is grounded in what the analysts are seeing by way of improving competitive performance within the freight market that the railroads are currently experiencing. This actually begins in the statement on Page 15 which is Record Page 2091, Page 15 of my exhibit. And I tell the whole story here which I'm not - I don't need to recount for this board - about how in the old days the falling market share was mostly blamed on the competition from the trucking industry which had emerged when in the Eisenhower period the interstate highway system was first conceived and constructed through
the 1960s. So the trucking industry grew, market share for the railroads fell as the competition got stiff and (ph) those markets and in those commodities where the freight railroads competed directly with trucks. And that whole picture has changed significantly. First of all there's, we talk about on Page 16 of the summary statement, the structural changes that railroads engaged in. This whole question about capital or capacity rationalization, that we are identifying for you on our Chart 19, Page 30, where the railroad infrastructure is shrinking. Where they're able to invest concentrated monies in the rehabilitation and the revitalization of the physical plant which leads of course to better service. Better service leads to higher prices; higher prices lead to more revenue; and their whole competitive position is improved. The - looking at the capacity numbers, and this is on Page 17 of the summary statement, in the 19 - and this is reflected on several charts we have - this rationalization of capacity or rationalization of the infrastructure of the
railroads actually begins in the 1950s and 60s. During that period of time, track miles declined by 4 percent and 6 percent in each of those decades. So 4 percent in 1950; 6 percent in the 1960s. And that process was accelerated in the 1970s when 15 percent of the industry's capacity was removed. But it wasn't until after the Staggers Act where the railroad management had the tools to really accelerate that process because now the barriers to line abandonment and sale were erased. And really the Staggers Act launched a wave of structural change that is the background and foundation of the financial state of the industry that we see today. During the 25 years following deregulation, the nation's freight system collapsed through the sales of abandoned and light density lines and through a series of mega-mergers and consolidations. Some 107 miles of track were eliminated; it was about 35 percent of capacity. The car fleet was cut in half; 322,631 jobs were abolished. That was about 68 percent of the Class 1 workforce that we had at the outset of
deregulation. A lot of jobs lost. So by eliminating the excess capacity, consolidating the physical plant through mergers, the railroads were able to increase capital utilization across the board. Now this gets into some of the capital efficiencies and the causes of productivity that were discussed loosely during the employer's case and I will drill down on them when we get to the productivity subject. But clearly nobody has ever said, and I have never said, that productivity gain in the industry comes exclusively from the harder work of the employees. No one has ever taken that position. It comes from the coalition of factors and investments that the management makes into capital. So the capital efficiencies and there's, which lead to labor productivity increases. And I record some of those improvements since deregulation on Chart 20, Page 31, where I show that since deregulation you have 17.8 percent increase in the speed of trains; you have 102.6 percent increase in train utilization. In terms of the trainload it's up 72 percent; the length of
the haul, the length of the trip is up 49 percent, almost 50 percent; and traffic density, which is very important, is up 188.7 percent. That's the measure of capital utilization of your track and road. So by all of these measures, capital efficiency rises by there (ph) over this period of time. Apart from the kind of the capacity rationalization, the second largest factor has to do with - that lead to this foundation of profitability today is the, and improving by the way the future of the rails competitive position, has to do with the growth of intermodal service. I've really said that the, and I think most experts agree, that the transportation market is somewhat compartmentalized. And that is to say there are large volumes of freight movements that are bulk commodities that are handled by line haul railroads that are basically immune from trucking competition. You know, the railroads dominate and have dominated for a long time the long-haul movement of coal, for example, and grain and certain chemicals. On the other hand there is
another compartment of the freight transportation market that today and probably forever will be dominated by trucks which is untouchable by rail at any price. And that of course, is because we don't go, that is to say the railroad can't go where trucks do. And these involve high-valued products moving short distances and light shipments where transit times and reliability is the primary concern of the shipment. Now in between those two segments there is an overlap. There is another very large segment of the freight transportation market where the, which is called intermodal service, where the carriers have gained a great measure of success in recent years. But intermodal moves are transportation of truck, trailers and shipping containers by rail. So with most of the intermodal moves, rail performs the line-haul portion of the move and the truck handles the shorter front and back end loads of the moves. And so the commodities that move by intermodal of course include the full breadth of products and commodities that trucks would
otherwise haul except that the rail is doing the long-haul line haul portion of the move from end to end. So what has happened, and we kind of record what has happened to this segment of the market on Chart 23 - this is Page 34 of the chart book - and you can see that this growing segment, it's expanded greatly. It's 14 times the level of carloads - carloads are 14 times the level they were in 1961 and about 4 times the level that they were at the outset of deregulation of 1979. So again, this is a growth area for the railroads that gives rise to the analysts and other experts optimistic view that demand rail services will persists and persist at a strong level going forward. Because it is within this particular market where the railroad has the pricey advantage over the truck because clearly the length of haul for all modes of transportation are inversely related to unit costs. As the length of the trip lengthens, the unit costs fall down. So the cost advantage - and this cost advantage that the railroads have is magnified when you consider
their fuel efficiency. There's lots of those
two numbers in the public press. There's
advertisements on TV by the railroads to this
effect. But the numbers for your review are on
Page 18 of our summary statement and I note that
in 2010 trains were able to move 1 ton of freight
484 miles on a single gallon of fuel, equivalent
to moving a ton coast to coast on 7 gallons.
That's four times the efficiency of a truck move.
So this cost advantage has enabled the railroads
to capture this intermodal sector. In fact some of
their best customers are trucking companies who
have obviously realized that sending their
products in containers on trucks - containers or
trailers on rail is more cost efficient for
shipping their, serving their customers than it
would be if they were hiring the driver and paying
the fuel to commute across the country. So the
consequence of all this leads to a favorable trend
on the overall market which is captured by freight
railroads. That is indicated on Chart 21, Page 32
of the chart book. That. (audio interruption)
1 Chart 22 on page uh, 33 gives you some information
2 on another way of looking at this fuel efficiency
3 and this competitive advantage that railroads have
4 over trucks. Uh, fuel uh, this chart shows that
5 um, that the revenue ton miles which is the red
6 line has gone, has gone up greatly, in fact volume
7 has doubled over the, the deregulated era but fuel
8 consumption has remained flat. This is the, this
9 is the fuel consumed in the, in the aggregate
10 where 1979 equals 100. So fuel expenditures are
11 flat, volume is going up.
12 MS. PARCELLI: Mr. Chairman, Mr. Roth advises this
13 might be a natural breaking point if this uh,
14 suits the Board in terms of a lunch break.
15 CHAIRMAN JAFFE: That's fine. It's now a little
16 before 12:15. Why don't we try and reconvene at
17 1:00, 1:15, 1:15. (audio break)
18 BAILIFF: Rise, please.
19 CHAIRMAN JAFFE: If I could ask everyone to take
20 their seats again, perhaps we could then resume?
21 Back on the record and at your convenience, Mr.
22 Roth.
THOMAS R. ROTH: Thank you, Mr. Chairman, before
the recess, I believe we have completed our
discussion of the summary statement and related
materials going through the first 18 pages. If
not, I'm going to skip to the next subject, in any
event, which is the relative labor costs and
productivity. There are some differences between
the parties, some of which I've already
identified, and others that may emerge as I
discuss this matter, so I think it's probably
important that you have a crystallized view of
where labor is on the particular subject matter.
First of all, let me say that some of what the
carrier said in, I guess, defense of the argument
they predicted we would make with regard to
productivity is misplaced. They've kind of over-
reacted. This subject matter on productivity and
labor, the world of labor costs, is in my
materials that deal with the financial economic
condition of the industry, and intentionally not
in the materially that's related generally to the
wage question. Or the increases in general wages.
The reason for that is deliberate. The increase in productivity and resulting cuts in labor cost are part of the story, part of the explanation for how the carriers have arrived at the position that they're in today, regarding their financial position. It's the same kind of, again, explanation that you might give another industry that has benefited from increasing productivity and falling unit costs. So, it's somewhat of a straw man to set up a situation where we're saying because of the increases in labor productivity, that equals increases in compensation. That's not to say that the parties themselves in another context, have not directly connected productivity change to compensation increases as I've described earlier this morning. That certainly has occurred, but in this part of my presentation and this part of where labor's argument and position, we are identifying changes in labor productivity as in connection with its effect on unit labor costs and the ability of the carriers over time to broaden the margin, the revenue margin and that is the
difference between the cost of delivering a unit of output and the revenue that they received for the unit of output. But with that introduction, let me go forward. To begin with, you know, we have never taken the position, and I have never taken the position that the sole increase, sole reason for the increase in labor productivity or productivity, generically across the system, is because labor is working hard. We acknowledged, as I do in our definition, our text, which is on page 20 of the summary statement, this will be, record page 2096, and that we will get into some materials in the chart book that relate to the subject. But here is what I described for you in defining productivity. It is the relationship between physical input and physical output. What am I putting in? What am I putting out? It's a measure of a degree to which the physical inputs are usually producing outputs. And productivity, in my view, is best expressed as a rate rather than an absolute quantity, and it's traditionally in the railroad industry, productivity has been measured
in terms of freight revenue ton miles as the physical unit of output. And the input, the proxy for the input, in terms of the factors of production is man hours of labor, which is the most commonly used measure of input. Now, apparently, some of the experts produced by the carriers take issue with this measurement question. And I submit that they file a grievance with their client, because this is. If you go to the 10Ks, for example, of the carriers, and in particular, the most recent one I read was for the BNSF, you will find that within their description of, to the shareholder, of improvements and productivity, they will use ton miles per employee, so I'd sooner remember ton miles per employee, ton miles per man hour, which is a refinement of the employee (inaudible), it's actually a better measure, because obviously, it captures changes in the extent to which there is overtime used to put out more output, but in any event, my point, obviously, is that I'm not inventing this measure of productivity. It is one
that has been embraced by the parties at the bargaining table for decades, and it's also currently being cited and used by the carriers themselves in the context. So, if somebody has some theoretical reason why it is misleading. I'm really not that sensitive, I've been called a lot worse, but Mr. Rankin (Sp?) got great pleasure out of repeatedly saying that I was attempting to mislead the Board in my measurements of productivity. And he had a lot of fun doing that, and that's good for him. But it's, the fact of the matter is that this is a way of measuring productivity in the business. It's not to say that all of the improvement and productivity is attributable to labor's effort. In fact, I say here specifically, that over the years, there's been many sources of productivity gained in the railroad industry. There are technological change, and that's changes in materials and equipment, resulting from investments by the carriers to a mechanism and automation, some other reason why you can get a lift in productivity. An increase in
skill and education of the workers is one, which they ignore, but it is certainly among those factors that contribute to productivity increases. Then, of course, capital efficiencies across the board increases the locomotive power, car capacity, all of that. The (inaudible) physical plant that we described in a fair amount of detail this morning, contributes to the reorganization and centralized control of the railroad and that would also create efficiencies and in improvements in productivity across the system. All of these sources coalesce over the years to cause industry productivity to go up at a rapid pace. So I'm not here to testify that this is because of labor's increased effort, although it's part of it, as I said this morning. Call me old-fashioned, but I remember when the education of American labor force included on-the-job training or when it included the apprenticeship programs that are sponsored by the railroads and embraced under the collective body agreements between the shop crafts and the BRS and the railroads. In the day, we used
to regard that as increased education and skills of the American work force. We heard from Berkshire of Chicago, that that cannot be, theoretically, that you have to discount whatever wages they receive because of lack of their degrees from the University of Chicago and other institutions. Take that for what it is worth.

Productivity. So labor productivity, is, again, has gone up tremendously over the period of deregulation. It's really a two-part story that I'm going to get to momentarily. The greatest strides in productivity gain happened over the first half of the deregulated period and I need to find, let's. Our first reference here is a chart of 25, which is in the chart book at page 36. It is record page 2217 in the Newman's case. And this kind of lays it out for you, the ingredients of this productivity improvement, freight ton miles is what an output is, is up 484 percent, whereas the I'm sorry, I misspoke, the freight weather return miles up 87 percent, that's the green line, total man hours collapses over this time by 68
percent as capacity is drawing down and employees are laid off, so that produces a revenue, freight revenue, ton miles per man hour, of some 484 percent. And you can see why there's been some interruptions in the blue line over time, in the past 31 years, generally speaking, it has been progressively forward. And so the slope of the curve is, I think, when you do the numbers, probably a little stronger in the early years than later years, but it is in continuing. Even over the course of our last agreement, which is chart 26, on the next page in the chart book, you can see that we've had this labor productivity and improvement has persisted. Again, this is all Class One railroads over the course of the last agreement. We have freight ton miles going up marginally, less than 2 percent over the entire period, yet total man hours was reduced by nearly 15 percent and those two numbers together produced increases in productivity of 16.6 percent. That's the way this works. The on chart 27, which is next in the chart book on page 38, this is a table of
employment. You've seen some of these numbers before. You can see that most of the carnage occurred in the first part of the PITLA deregulated period when employment went from 475,000 employees down to a low of well it's kept forming but it's pretty much stabilized over the past six or eight years as compared with earlier periods. But when we say as we do, that this productive decline has been a painful experience for rail labor, I mean that quite literally. These jobs go away, this is, regardless of the income, and that is passed along to the surviving workforce by way of productivity sharing, increases in compensation, for instance, apart from that, there has been a substantial loss of jobs. Some 68 percent. 322,631 jobs abolished since deregulation. Well, the authority, excuse me, carriers have put a price tag on this. If you add up the heads count in each year by the cost per head, as calculated by the carriers, that's some $15.8 billion worth of compensation that has been lost. Now where this this money went to the
railroad and it's been lost to the employees whose
devolved and whose jobs have been
laid off as a consequence of this growing, this
improvement in productivity. Chart 28 is next in
the chart book. It's on page 38 of the doc. This
makes a simple point that the experience in
this industry is really quite extraordinary
compared to the rest of the US business. That
speaks for itself, need no further comment on it.
I want to turn now to the role that productivity
plays in creating a wealth for the corporation.
The analysis of unit labor costs combines the
effects of labor costs and productivity on the
financial position of the employer. If you bring
revenue, which is like I say, a function of the
amount of quality that you put out and the price
you get for the quantity, that's of course, the
revenue, or revenue per unit of output, revenue
per ton mile, in this instance. The cost of the
extent to which you can convert that into profits,
and income to the company is a function of how
your unit costs will behave over this period. So,
if you are you could have a situation as we did for some part of this period where your unit costs are rising relative to the unit revenue and thereby putting a squeeze on the revenue margin. We'll see that momentarily. But unit costs themselves in our industry have been fairly flat for about ten years, and over the long haul have been reduced substantially. This, of course, is a function, labor costs would be a function of the cost of labor, and the cost of labor and the output, or the volume of output, ton miles in this instance. So, if you take, if you look at chart 29, which I refer to, you can see that in terms over the long haul, and terms of freight tone miles, they've risen 153 percent. Labor costs, however, have only gone up by 16 percent. What that does is reduce the unit labor cost by 38 percent over this period of time. Now the red line, as you can see, has actually flattened out in '01 and has crept up marginally, over this period, still far below where we were in 1982. However, it has moved in the other direction as
The reduction in employment and man hours have subsided, in terms of their rate of change. So, for the Class One carriers, unit labor cost was slowly but steadily for years up to a peak of 1982, and afterwards, the costs fell by 49 percent, resulting in a net decline of 38 percent by 2009. That's what that shows. Now, the other half of the equation deals with the revenue margin, track 30, by the way, we can skip over that. That's unit labor cost change, both in constant and in constant dollars. Unit labor costs also can be put in perspective when you're looking at the rest of the US business. That's chart 31, that's simply demonstrates to the board that this experience that we've had in the railroad industry, with respect to unit labor cost is pretty extraordinary compared to the rest of the world. And that brings me to a more important analysis, which begins in chart 32, and this is the what has happened to yields, or average prices per unit of output over this period. There was a time, a 20 year period, in fact, between 1982, and
2001, where stiff competition, freight weight compression, and which is a results in lower average prices because of changes in the mix of the commodities that are transported by the railroad, for those reasons, we've had, actually a decline in the gross average rail prices, the yields. And you can see that reflected in chart 32. So, what has happened, what has been a major contributor to the increase in revenue margin and the employer's profitability is a reversal of that trend. For all of the for the reasons I've explained earlier this morning, regarding the capital investments that were made and the improved in efficiencies and services, and in the growth of the inert-modal sector, for example, they are able now to gain this price authority, as the analysts refer to it. And since 2001, the average prices have gone up by 39 percent, reversing this 20-year experience. And that's the unusual. I should say that's not unusual, that's the product of all of the turnaround that had been ongoing since deregulation by the
railroads, but it is a point of departure and a part of the story and explanation for how we got in 2010 to this record-producing profitability error. The revenue margin is illustrated for you in chart 43, and what this is, is the difference between the unit cost and the unit revenue, so you hear the revenue can go up in one or two ways or both, increasing volume, increasing prices. I'm sorry, and your unit revenue goes up only if, on the margin, goes up only if your prices are rising. Your costs, including labor costs, divided by your unit of output, your ton miles, is your unit cost, which, as you can see, that's reflected by the yellow portion in total, and that has remained fairly flat over the entire 31-year period. What has grown because of this new pricing authority, is the yield, and when the yield goes up, the revenue margin has climbed accordingly. What is also added here, by the way, to what we haven't seen before is, kind of comparison between labor costs and non-labor costs in the expense structure. What this demonstrates is that while
1 unit labor costs have fallen over this period, all
2 other costs, that is to say, the non-labor
3 components of the railroad's cost structure have
4 not gone done. They have fallen, they fell through
5 1999, but have since climbed rather markedly. So,
6 again, to the extent that over this period,
7 there's been any pressure put on the revenue
8 margin, it certainly cannot be laid at the feet of
9 rail labor whose unit costs have continued to fall
10 for the duration or remained flat, relative to the
11 non-labor expenses. Now, another way to look at
12 the role of this newfound price authority is to
13 examine the costlier gap. In past negotiations and
14 before PEBs and interest arbitration boards, the
15 carriers have invariably focused on the cost yield
16 gap as a prominent indicator of their financial
17 position. As we discussed, earlier, between '81
18 and 2004, the average prices were actually and
19 slowly declining in the face of the competition
20 from the trucks and what I call freight rate
21 compression. So, as this occurred, when you
22 compared these declining prices to the escalating
cost of doing business, in terms of the rail, which is reflected here by the railroad cost recovery index, that's simply a producer's price index, if you will. What it has in it are all the components of cost, including fuel and labor, and benefits and other materials and supplies and other components of the expense structure, and what the AAR does is construct an index to reflect the changing rates, changing costs in the rates of those elements of the cost, and so as the cost of recovery index rose and revenue per ton mile, which is the green line on chart 34, remained flat or slowly falling, you can see that what occurred was a cost yield gap. This was a slide, this is a table that was again, produced and developed by the carriers, in all the recent cases, all cases since deregulation, as a matter of fact, in describing their problem. So, what I wanted to do is simply update it while producing chart 35, which brings us forward, remember the prior chart 34, stops at 2004, so let's go from the base year of 2004, to
the current period, by looking at chart 45, which is on page 46 of the chart book. So, this is what's happened over the course of the last agreement. Revenue per ton mile are continuing to climb, that's the blue line, that would be 41.5 percent over the term that we're looking, and the yield went up. I'm sorry, I got the reverse. I misspoke. The red line is the railroad cost as reflected by the cost recovery index, and the blue line is the revenue, the yield, average price, if you will. So, now what we have is the railroad costs going up at a slower rate than revenue per ton mile, indicating a total reversal of the situation as it was presented to Baltimore Board, for example, or the other PEBs over the course of the last few years. So, again, another indicator, one that is cited by the carriers, one that they insist upon, we are looking at, that has now turned on its head, in terms of its measuring of fiscal distress. It is now an indicator that words to support the union's proposition that things are turned around and that going forward we can be
very optimistic about future financial performance of the industry. I should also note that you're going to talk a little bit more about what happened in 2009, during the Great Recession, you can see on chart 35 where costs went and where prices went. This was also during the period where under our last collective bargaining agreement, we got the benefit of the back end loaded general wage increases that Mr. Gradia referred to, it was a 4 and 4.5 percent increase, so there were general wage increases in those years that were fully absorbed, if you will, by increases in the prices charts by the railroads. Okay, I want to look now, to move away and answer some questions about the role of labor costs. I'll move forward. CHAIRMAN JAFFE: We're fine, thank you. THOMAS R. ROTH: Okay, and this would not the chart book printed tells the story in a very clean way, so it's not going to take a lot more work than to review the chart book, beginning on chart 36. It is simply recording the fact that the total return to shareholders has been very strong over the past
couple agreements, and particularly over the last agreement, not only in an absolute sense, but also relative to the rest of the market. What you have on chart 36 spans the last two labor agreements under the organization's national rail contracts, and as you can see, with regard to the, let me see, regard to the UP, and the UP, I'm trying to look like the UP and CSX, I say, okay, that would be the green line and the red line, they're up over 350 percent over this 10-year period. The market, as you can see, is flat. That's the blue line at the bottom. If you put $100 into the stock market, indexed to the S&P 500 you might have $1.05, or what you get $1.02 or something like that today. If you put it into a CSX, or UP stock you'd be doing pretty well. We wrote that the BNSF line stops at the acquisition by Berkshire. We didn't try to embed in here what has happened to the Hathaway, Hathaway Brookshire Hathaway stock over this period. It would not be particularly instructive. If you look at the blue line, that's the not the bottom blue line, but the NS line,
that's up over 250 percent over this period of
time. Chart 37 also goes to the stock price issue.
This is somewhat redundant because we've already
looked at some of these numbers, but these are the
figures for the big three corporations combined.
This is our compositive stock price. When I say
composite, by the way, it would be as though you
had a mutual fund of these three railroads where
you put your investment in. It's weighted by the
number of, not only the stock price but the number
of the shares in circulation, so that's what I
mean by composite price. So, over past year, it's
up 35 percent and that comes off of four prior
years with pretty strong performances indicated.
Next one, as I say, during the recession, it took
somewhat of a beating, not like the general
market, but fell from 5325 to 4280 but then
bounced back almost immediately then hit the
historic levels as the CEOs have described, that
in 2010. Beginning in table 9, which is on page 49
in the chart table book, and continuing, actually
pages 9, 10, 11, and 12, those four tables are
constructed in a similar fashion and perform for you a build up of total return to shareholders something that I will do at the office internally. This other company published information, but what it does for you is trace both the cash dividends per share as well as the stock price over this period of time. In a lot of instances in four years we're looking at the year-end figure. When you put those two together you get total shareholder return because this is assuming that I'm taking those dividends and reinvesting them into stock, so I'm buying more stock with my dividends and that's how I get a total shareholder return that exceeds the independent look at either one of those. Short story here is that over the past, over the contract that we have just concluded, the equity performance for the UP has gone up by, really, 20 percent per year, pretty good return. And over the past two contracts, 10.4 percent. If you flip page to page 50, table 10, same kind of look for the for CSX. Their annual rate of increase over the past (inaudible)
agreement, 23 percent per year, if you look at a 10-year look, this will be like 6.6 percent. Following the time, sometime in 2011, there was a stock split on CSX and so you're going to see some numbers later on that may show smaller dollar amounts per share but there was a stock split. This is an apples to apples look. Stocks, if I didn't already say so, the, anytime there was a stock split, that was taken into account in adjusting the shares and the dividend, dividend yields that are shown earlier in the chronology. I. (audio interruption) .some of these next again. I don't have to read these numbers at you. You can see them almost as quite impressive. Table 13, which is on page 53 of the chart book, this is record page 2234. This is very updated information. When this statement was put together, I don't know, it was in October, or late.early October, or late September, we looked back and produced the, as of.for the five-year period ending September 14, 2011, what Dow Jones was identifying as the 10 best industries based on
stock performance. And there are 150 industrial sectors including this Dow Jones analysis. And as you can see, the railroads did pretty well in this listing. They're all within the top 10, and in fact, the UPCSX would be number three on the list, three and four, respectively, and the railroads as a whole would be number three as an industrial sector by itself, so again, kind of reinforcing the notion that railroads are doing very well, not only in an absolute sense, or by way of historical performance but also against the rest of the market. The big three, you can also look at dividends, per share, and how they have grown, that's chart 38, page 54 of the chart book, it's the dividends to shareholders have gone up 175 percent since 2004, over the course of the last four year, national rail freighted minutes, and last year lone, up 12.7 percent. Chart 39 gives you another look at the dividends. This is from the yearly perspective, and short story here is that yields have tripled over the past five years. That brings me to another indicator that has often
been raised by the carriers and that's bond
radiance. You might, at this point in the record,
Mr. Chairman, or other Board members, reflect back
on the text again, and this is on page 30, of our
exhibit number 86, and the record page number
would be 2106, but I'm not going to read this at
you, but I have an opinion about how truly
valuable these investment, these ratings are,
under circumstances where most experts agree that
if you, as long as you are in the investment grade
category of your bond rating, it's not going to
have, within that, category, you will have the
(inaudible) perceptible differences in the cost of
borrowing money. That's the upshot, and that's
kind of generally demonstrated by looking at the
securities that the investment grade corporations
provide or compete for. All right, the next, I
guess, the next piece of this the one from the
shareholder's perspectives would be the earnings
per share, this is chart 41 on page 57 of the
chart book, and as we know, the earnings per share
is a function of the share price in the, I'm
sorry, profits or net income and the number of
shares in circulation, so we've increased the EPS
and in one of two ways, or in this instance, both
ways, by earning more profit, or by buying back
stock. In this instance, the carriers have done
both. And so you can see this enormous
appreciation in the earnings per share out of a
metric that outside investors look to, not only to
look to gauge the current circumstance but the
prospects for future appreciation in the stocks
that they buy in the real sector. So, short story
here is that the earnings per share for the big
three railroads, publicly traded, have gone up 227
percent since 2004, and last year, up 39 percent,
pretty impressive. I want to take a brief look at
executive compensation. President Scardelletti
made reference to this in his opening this morning
and I just want to provide some numbers that
support the numbers that he had accorded and
introduced. What table 14, page 58 in the chart
book does, is go to form 13A, excuse me, required
of the FCC, by publicly traded companies, is
generally known as this proxy statement, and we've collected those for UPCSX and the NSC for the years shown and simply laid out the various components of their compensation structure, and this is for the top five executives, which, as the Board knows, are the limits of the disclosure required of the corporation. I should (inaudible) by one footnote that what this does not include are the values of their retirement plans. The SECC has the statutes now require them to report on the values of their pension programs, but that had that requirement was installed during the period between 2004 and 2010 and it is currently, of course, reflected in their proxy statements, but when you take a historical look, I couldn't do an apples to apples if I included it, so I excluded that element of compensation, which predictably, is not unsubstantial, that's why they are required to disclose those amounts today, but if you exclude pension, here are the numbers, and again, they indicate for the top five executives, their overall pay, total pay was up 76 percent
over 2005, and for the CEOs alone, it's up 50 percent. And the reason why we do this analysis is not to kind of point to the level of compensation, and there might be some other forum where real labor or unions generally would want to complain about the level of compensation. In fact, there are the forums where shareholders want to complain about the level of executive compensation. But that's not here, and that's not why we raised the issue. I'm more interested in looking to those numbers to trace the effect that the performance, the financial performance that the corporations had on executive compensation, because as we know, if you look at the. I have a distribution here, of total current compensation, and over the years, the executives have relied in great deal on performance-based compensation, variable compensation, if you will. I think the number in 2010 is 83 percent, some 83 percent of their compensation is performance based. Now, the significance of that is their income will go up when performance goes up, as measured by metrics.
for financial performance that are important to
the corporation. And guess what? They're the same
ones that you're looking at. They're the same ones
that I have shown you earlier in my testimony.
They include the operating ratio. They include a
shareholder return, they include return on
invested capital. So, these are improvement in
those numbers, as improvement in that financial
position as measured by those metrics. It will
enable executives to make more money, so to the
extent that the pay goes up, it's because of
financial performance in large measure. I have
often. so, again, just in conclusion, it's just
another indicator of how well they're doing, it's
as simple as that. I have heard, in this record, I
think a couple times, and I've heard it outside
the room, that comments regarding the union's
appetite for variable compensation and performance
based compensation. That again, I think the
argument goes if we are confident in the future
performance of the corporation, then why is it
that we would resist, devoting some compensation
to performance based pay? Well, this is the over
the years, I have been engaged by the
organizations to examine this question fairly
carefully. Of course, I'm not here, I'm not
authorized to negotiate on behalf of my clients,
but I can report to you that elsewhere and during
other rounds of bargaining, they have explored the
possibility of expanding their compensation
structure so as to include some profit sharing or
some other variable form of compensation. I have
sat at the table with them and the carriers on
this question, on occasion, and I can report that
the reason way this breaks down is because of the
carriers' insistence that all of the changes in
pay be devoted to the performance based element.
Now, this is the reality of life, at the
bargaining table. We represent persons whose
straight time pay is $25.83. On a straight time
basis, that's about $53,700 a year, okay, so the
general wage increases that, under the union's
proposal, that's our proposal, all right? For the
general wage increases over the next five years,
1 will produce $32,151 for the average employee over
2 that five-year period. So, that's $6,432 per year
3 per man. Now, once you suck out of that your
4 income tax, because this is marginal pay, okay,
5 I'm not paying my health and welfare on this
6 amount because I've already paid it. But
7 marginally, and incrementally, I'm paying my
8 payroll taxes and I'm paying income tax, and if
9 I'm left with $3,700, $3,800 out of that amount,
10 that's a lot of money. The.it would not be
11 prudent, to put it mildly, for an employee to
12 invest his $3,700 in one stroke. There's no
13 financial advisor that would suggest that you
14 should not diversify. There's no financial advisor
15 that would suggest that you should take all of
16 your incremental money and put it aside or put it
17 at risk, and therefore bar you from being able to
18 finance increases in the cost of food, increases
19 in the cost of rent, increases in the cost of
20 tuition for your family over the next five years.
21 So, this is a different set of circumstances than
22 the one faced by executives or others who, by the
way, have base compensation, guaranteed cash
compensation that exceeds $2M a year. If I had $2M
a year that I could guarantee, I might play in the
market a bit. If I have. If I'm making $50,000,
$60,000, I'm in a wholly different set of
circumstances, and the notion of devoting my
incremental increases on those amounts by
diverting them or putting them at risk under a
performance based program, would just not be
prudent, would not be smart. And it certainly
isn't comparable to what we're seeing for the for
management and executives in this world. I want to
say a few words about, in fact, this is perhaps a
bit a section of my testimony that's maybe more of
interest to the board than some of these areas
we've been covering, because after all, if we look
back at where we are today, I don't sense a great
deal of controversy between the parties in
acknowledging that the financial position of the
companies are strong. They understate how good it
is, and they understate how long and how good it
is historically, but the fact of the matter is
there is no disputing the facts as to where we are in 2010. The reason why I have gone through this kind of painful build up of how we got to 2010, was to help the board understand that the fundamentals of the industry have changed to the better, that the economic condition today in going forward, is predicated on what investments have been made in the past. Both by labor and by shareholders and by management. So, the whole, again, framework for going forward, has now been changed. This didn't happen overnight, it happened over a long period of time, and I tried to give you in my presentation, some of the reasons why these fundamental changes have occurred, because that will give you guidance as to in judging whether or not they will continue to sustain the profitability levels of the corporations. So, let's stalk about future expectations, which is the last segment of this second last segment of this part of the of the presentation. The first thing I want to point you to are the outside analyst's expectations and forecast. Now, why is
this important? This is leading edge. The analysts that follow the railroad sector advice shareholders on. and creditors, it's not just shareholders but creditors, on investments in the railroad industry by looking on a forward basis. They knew that 2010 was good, they know that 2010 were record breaking years across the board by almost every indicator. But that's yesterday. They're interested in what's going to happen next year and the year after that. In advising clients to make investments. After all, if you're just putting money into a railroad today, you have foregone the appreciation that all other shareholders and investors have pocketed in the last four or five years that we've been looking at. So, it's important for the board to understand what the rest of the world is saying. Forget about Tom Roth, forget about any other expert that appears before you in this case. This is independent outside calculations and analysis of the expectations on the future performance of the railroads. And the first one we're going to look
at and this isn't going to take long, because I think the chart book itself speaks volumes. Chart 43, which is on page 60 of the chart book gives you the first of these. This is Morgan Stanley. I can go to any one of these analysis, by the way. I've just give you a selected group, selected not because they are forecasting big change in the positive direction, but because it would otherwise fill up this volume. If you look at Morgan Stanley, this is what, we're reporting on everything that they have projected. The first one is earnings per share and that's for the big three and you can see what's going on. They're all projecting big change, big improvement, 44 percent for UP, about 32 percent for Norfolk Southern and 37 percent for CSX. Here's, by the way, where, the first time where you will see a CSX with the smaller numbers because of the stocks play. Okay, but the relative change is obviously, the trend line is still very significant. Chart 44, page 61, this is Citibank and they have a resource department, they actually put out a pretty big
piece that's called, this time is different rail
out performance, atypical for recessions, and this
is from Citi Investment Research and Analysis.
Now, all this, by the way, is the most recent such
publication. Now, this isn't one of these. This is
the newest means we could gather prior to this
hearing.

CHAIRMAN JAFFE: Why are the 2010 figures different
if these are September 6, 2011 information?
Wouldn't the 2010 numbers whatever they were, have
already been locked in by that point?
MR. ROTH: That's, yeah, the 2010 says actual, 2011
is a.
CHAIRMAN JAFFE: Because they differ from chart 30,
32, to 43.
MR. ROTH: They're going to vary because of the
definitions of the various analysts used for
income, and what they regard as non-recurring
events.

CHAIRMAN JAFFE: Thank you.
MR. ROTH: By known recurring expenses. And so now
we've had a little bit different methodology in
arriving at these numbers.

CHAIRMAN JAFFE: Okay.

MR. ROTH: And so what I tend to do is not compare one against the other, but compare them internally as they publish the (inaudible).

CHAIRMAN JAFFE: I'm fine. I just needed to understand why it was different when it went by the historical.

MR. ROTH: Right, I've asked that question a number of times myself.

CHAIRMAN JAFFE: Okay, thank you.

MR. ROTH: Citibank information, we can see EPS projections very strong. This has taken us through four years, by the way, of our proposed collective bargaining agreement, which, remember, starts in 2010. We already know the first year, actually, we know the first two years, for all intents and purposes of financial performance in this industry, two out of the five years that are, that we're asking you to make recommendations over. This one takes you through the first four years, and as you can see, the arrows are pointed up in a
very distinct direction. Citi also reported on the
author expectations and operating ratios, and you
can see they're falling from what's been described
as record levels in 2010 to even better levels for
going forward. By the way, the way the analyst
works, when they publish something in August, it
reflects actuals for part of the year, obviously,
and then they're forecasting the balance of the
year, so the numbers for 2011, are pretty, pretty
solid. Profit margins, Morgan Stanley reported on
profit margins for two years, and this just tells
us that they're thinking 2012 is going to be
pretty darn good. We're at record levels in 2010.
Those. 2011 promises to be even better, and 2012 is
up from there. Track 47 is the next page, and
please interrupt me if there is some ambiguity to
these charts, but I think they're fairly clear.
This is back to Citi again, and these are profit
margins and while each group of analysts may have
a slightly different method in producing a profit
margin, it's nonetheless net income divided by
revenues in some form or fashion. Morgan Stanley,
chart 48, page 65, these are projected dividend yields, as of September 2nd, so these are hot off the press, dividend yields, expected to climb. The function of increasing stock prices and probably in recognition of the stock repurchase programs that are being planned. In the text I have a summary of what the Wall Street is saying, with respect to the rail industry, this comes from still another source that we haven't seen, this is the S&P Industry Outlook. This was just published last month and when you look at the projections for margins and for EPS, the explanation for that lies in this summary paragraph that I have recorded on page 33 of the summary statement, exhibit no. 86, and I feel we should take a moment to reflect on it. What S&P said in its industry outlook, it was just published last month, was that, and I quote, "Our longer term outlook for railroads is favorable due to the industry's later fuel efficiency and smaller environmental footprint relative to other transportation modes. These factors, along with highway congestion,
driver availability will drive more industrial and inter-modal shipments to rail in our view." Again, part of why you're seeing these optimistic views quantified in terms of the EPS profit margins and the rest. Now, another reason for the analysts' optimism for rail in what is otherwise a weak economy, because remember, Board members, we just pick u the newspaper in the morning and we'll see in the public, in the popular pres that this economy is struggling still, everybody not behind the full recovery everybody hoped for. So, one reason why you have in the face of this, external developments and weak economy, optimism in the future of rail, is that analysts have discovered that rail managements have become very nimble in dealing with a downturn in demand. They have learned, specifically, that labor and fuel can be treated as variable expenses. And they become very, I think nimble is a good word, they become quick and reacting to changes in the marketplace. And I ask you to turn to table 15, which is on page 66 of the chart book, to ill.I have an
An illustration of how this worked over the course of the last recession. And I call this piece managing the recession, and the recession itself, in technical terms, started December 2007, and was over in June, 2009. For freight railroads it's actually, it started before that. Because they saw a decline in their car loadings much earlier than December of 2007, particularly in a inter-modal side, which is a more direct reflection of what's happening in the general freight marketplace because of the commodity mix that is transported by that mode. So, in any case, what happened is that demand begins to slack and fall in the middle of 2007, and I'm going to. what I'm. the measurements that I'm making here is for 2007 to 2009, so it's 2009 over 2007. Capturing the general period of the recession. So, what happens is that demand slackens, volumes fall. Revenue ton miles declined by 13.5 percent, car loads go down by 17.3 percent. So, what does managing do? Well, they stay ahead of the curve. The race to true capacity as quickly as demand falls and they were
very good at that. Employment declines by 9.2 percent, they park locomotives, train miles decline by 19.7 percent, they cut train hours back, again, parking cars, parking locomotives, down 27.9 percent. So, consequently, over the same period of time, during the period I think was called the teeth of the recession, labor costs are cut by 8.2 percent, now labor costs decline by 15.3. So, your total cost of doing business shrank at a rate and at a pace greater than your cut in demand. So, what happens is that the operation ratio holds. The operating ratio is the relationship between expenses and revenue. So, while operating revenue declines by 12.4 percent, operating expenses actually decline by more. That actually improve the operating margin, just by a tad. But the fact that they were able to hold what I describe here as holding the operating ratio constant, was an enormous fee, the consequence of all this, when you climb down the income statement to the bottom line. Again, remember, operating ratios are at the top of the income statement, the
net income and profit margin is down at the bottom. You see that revenue margin improved from .58, or 58 cents, rather, for the per ton mile to 59 cents, and net income improved from. these are margins, so this is the profit margin, the net income margin, actually improved from 12.5 to 13.4 percent. Now, this is remarkable. This is good management. I mean, if you're as long as you're not an employee, this is what the shareholders certainly wanted to see. And this scenario was played out on every railroad and every department, and in every rail yard. And as I said, it was a race to trim capacity and reduce costs quicker than value changed. And the management was able to accomplish this. They not only survived the Great Recession. They not only absorbed I think what's been called our general wage increases during the teeth of this period, but they improved their financial metrics. It's very impressive. Now let us look at most of everything that we have been looking at oh, by the way, I did not I failed to tell you this, but there is we are kind of in
this mixed debate about the role of labor and its contribution to these financial position and this improvement. "What does labor have to do with this," they say. This is what I say During this recession, we lost 15,300 jobs, and the average straight-time rate of $25.83, which is like $1.6 million over two years. Where did that money go? Where did that money come from? It came out of the pockets of the people who had furloughed and are still out there looking for work, because they have not yet been returned to the railroad rules (ph). Railroads are slow to recall because they are figuring out ways to do as much with fewer people productivity. So labor not only contributed; they contributed in a real way the dollars-and-cents way. Most everything that I have been talking about is kind of 2010. We will get some projections by the analysts, but there is some other hard evidence that we can look at to measure what is going on currently. Um, Table 16, which is on Page 67 of the chart book, toward the end here, gives you the actual data from the Form
10-Qs for the Big Three Railroads. I might have
Big, yeah, it is just the Big Three at this point
for the first half of 2010 and the first half of
2011. So we almost so we already figured out that
we have that we have oops, excuse me pardon me
we have already have have learned that 2010 was
a remarkable year, a historic year, but now we are
going to see that 2011 is expected to be even
better. And so when we do a six-month over six-
month look and it is Table 16 Doscrow (ph) CSX
you can see that their operating ratio well,
operation ratio is actually go up in this
instance. The profit, however its margin is going
up by 25% profits are going up by 25.3 percent,
and the net income margin, which was your profit
margin, is going up by 150 basis points. So they
are still doing very well. Earnings per share is
going to be is 31.7 percent higher than the six
months in first half of 2010, reflecting in part a
draw-down on the shares in circulation of 4.8
percent. Debt-to-capital ratio continues to fall.
Some information from Norfolk Southern Again, the
operating ratio has taken up a bit, but the earnings-per-share of 42.3 percent, profit margins rising from 13.9 to 16.1 in the second half of 2011. European is in Table 18, Page 69 of the chart book. Same indication, same trend line. So a third reason, apart from this the structural changes that have been made, apart from the repricing authority that analysts recognize has exists, still, in the marketplace for railroads. A third reason to be optimistic about the rest of the period covering the contract that is now under consideration is that we have got the momentum. You just cannot you we are already, really, two years into the collective bargaining agreement that you have been determining. You do not have to guess about 2011; you know it is going to be a historically good year. There is a piece that I have in here in the text, Mr. Chairman, that I will not read to you. But I ask you to consider it in connection with the new pricing authority, and that has to do with the so-called legacy contracts that will be expiring. The analysts are seeing
this. They report on it frequently, and they track it because it has to do with the renewal of these commercial shipper contracts that the railroads have, that have been that are underpriced. And the railroads claim, when they are brought in line with current prices, this would be a spike in their in their core pricing and their average yields. OK, I let us I will try to move quicker at a quicker pace here or we will run out of time. But part of, uh part of this optimism in the analysts' views is predicated on the story that has flown flowed from the Berkshire Hathaway acquisition. On Page 38 and continuing for a few pages I have recorded for you several important quotations from Berkshire Hathaway sources, including from the from Warren Buffett himself, which summarizes the reasons why he thinks that it was important and, uh it was a good decision, if you will, to invest in BNSF. That is more than an investment; he bought the whole thing. The on February 12, 2010, Berkshire Hathaway purchased 77.5 percent of the Burlington Northern Santa Fe
1 Corporation, and that was the remaining piece that
2 he did not already own. The transaction is valued
3 at $26.5 billion and, again, one of the largest
4 acquisitions in Warren Buffett's career. In any
5 case, the language is there for you to read. I am
6 not going to read it at you. It is, again, all
7 upbeat. It all just kind of reiterates some of the
8 reasons that we have been talking about as to why
9 we should be optimistic about the future of the
10 industry. I have a piece, as well, in here on the
11 legislative risks. You heard some of that from, I
12 think, some of the carrier witnesses, saying
13 that, "While we you know, you never what is going
14 to happen. They might re-regulate us." That is -
15 in the current Congress, that really does not have
16 a ghost chance, but that is my opinion. The other
17 facts that bear on that subject are recorded for
18 you in Pages 41 through 43 of the Summation. Next
19 to follow, we again, we are, you know, looking at
20 2010 performance and the optimism that is
21 expressed by the analysts. You can also go
22 internally and quote the corporate view of where
they think they are and where they think they are going. And we have that for you on Pages 43, 44 some quotes from the CEOs in their messages to shareholders. So I ask urge you to take a look at that, at the appropriate time. I am not going to read those at you. They are predictably a very, you know, rosy picture of what is going to happen over the course of the collective bargaining agreement that is now under discussion. OK, that brings me to the last, uh last piece, last section, if you will, of this of this topic of financial performance. I call this, in the Summary Statement, which begins on Page 46 of our Exhibit Number 86, which is record reference Page 2122. I call this the "Collective Bargaining Perspective on Sharing the Wealth." Um, the [turns pages] The point I want to emphasize here, Mr. Chairman and Board members, is that this panel is in a very unique position. Um, in fact, there has never been a time in railroad history where a Presidential Emergency Board had an opportunity to reflect on a environment economic and financial that was as
strong as it is today for the railroad industry.

Now, that is a big statement unless because, you know, never is a long time, and we are dealing here with, uh, with a period of time that goes back to 1926. But the fact is that this can be done. What I have done for you this will be an important table and chart in our materials. This is Chart 49, Page 70 of the chart book, and I ask that you take a look at it. And what I have done here is I have gone back to the wage and rules movements that are national in scope, that have occurred since the passage of the Railroad Labor Act in 1926. Now, note that I am using as a kind of a proxy for the experience of all the non-operating organizations the specific experience of the BMWE because my records are very strong for that craft, number one. But, secondly, when you go back in time, before the 1970s, when moratoriums were less common, you will find that there were it has difficult to define a wage and rules movement because the organizations were filing Section 6s all the time. You know, they might file
one on wages and then, six months later, file one
on health and welfare, and so on. So it is it is
hard to define exactly what the Wage and Rules
Movement was. But I am confident that I have done
a fairly good job in corralling that issue and
problem in my production of Chart 49. And I had
identified 27 of these wage and rules
movements going back to 1926. Now, note that the
first one is in 1936. So question is, "What
happened between '26 and '36." Well, for the non-
operating craft, the story is this: And perhaps I
have to add a column because there was a wage
movement, but it was not made by the
organizations. It was made by the carriers, and it
was for a 15-percent pay cut during the Great
Recession Great Depression. I am sorry Great
Depression. And that was bargained over
ultimately, with some board of inquiry; I do not
recall, but it was not a PEB. And, long story
short, the wages were cut by agreement, by ten
percent. I think somebody said on this record in
the brief in the in one of the in a brief that
railroad workers never had a pay cut based on ability to pay. That, of course, is not true. I mean, it has happened a couple of times. And, you know, I do not expect people to know what happened in 1936, necessarily, but I know. It was a pay cut of in 1931, it was for ten percent, and it was restored in 1934. But for non-operating millions (ph), the wage rates prior to the movement in 1936 were exactly the same as they were in 1926 because the snap back restored the rates exactly to those levels. So, in effect, there was no change from a decade in non-operator rates of pay, basic rates of pay. In any case, the BMW (wrote rules) (ph) for wages and rule improvements in sometime in 19 before 1940. And what you see on this table this Chart 49, rather are the profit margins for the five years preceding each amendable date. So, in other words, if you look at the far right-hand side, that is that is your (ph) perspective. This Board Number 243 is reflecting on a five-year period, which is which repre is represented by that last blue bar, where the average profit
margin over the preceding five years is 12.4
percent. I should note that we did this quite
literally, so this excludes 2010. It excludes the
banner year that we can really know (ph) what is
happening in 2010 and most of 2011, which are well
above this, uh this blue-line indicator. But just
if you if you do this literally for each of these
wage and rules movements, you can see how your
frame of reference with respect to the financial
condition of the industry is different than any
other board that ever sat. That is significant. If
you look back for example, we have a we have in
this record people quoting PEBs for all sorts of
reasons because many of those boards
185, for example 186 and 187 185, 186, 187, 188
all of those boards were
hearing cases in the period between '72 and '80
where that was their frame of reference. They were
looking at profit margins that were in the twos,
not in the twelves. You know, expectations were
different. And if you give any way to the
carriers' case regarding ability to pay, those
expectations should have been different. Two, uh for example, 219 that would have been out of the 1994 amenable date. That is the realm from July 1988 through 1995. So 219 that is represented by the five-year period preceding it, where the averaged profit margin would be 6.2 percent. So that is how this is read. And, of course, you can do that with every round of bargaining, with every contract period going from amendable date to moratorium, and you can identify the PEBs that participated in those wage and rule movements. Once again, when you go back a long way, you are going to get different dates for different organizations. This is based upon the BMW rule experience, which I think is fairly reflective of the non-op experience. There is a I think I added a companion piece to Chart 49, which is the very last in this chart book. It is Chart 54 that actually gives you the background information that is used to construct Chart 49. So if you want to look at the year-by-year margins from 1911 to 2010, they would be on Chart 54. This is the
source of my comment on this being the best since
for 94 years, since 1916. It will go back a long
time. And the years in which is that we well,
labor took pay cuts would be ref would be on or
around the Great Depression, where you see those
negatives. So the conclusion here is that this
Board views a record with respect to railroad
profitability and general financial performance,
which is far superior to that seen by any prior
Presidential Emergency Board. And this is not by a
small margin; it is by a large margin. Now, I
would go on to say that it is imperative for the
Board to understand that the meaningful,
significant improvement in the Carrier's position
today is attributable, in major part, to
diminished labor cost. The unit labor cost trend,
as I said before, is a function not only of the
massive job abolition but also in the relative
moderation of compensation increases; the two work
together. The former, that is to say moderate
changes in compensation, cause of reduction in
rail labor's living standard, at least since from
at least since deregulation, principally because of the effects of the 219 recommendations. And, by the way, that is another story. The 219 recommendations were never accepted by anybody; they were statutorily imposed. The latter contribution simply creates job instability. I mean, the number of jobs that are abolished over this period of time to get us to where we were are today are enormous. That is real money. That is real pay to somebody. Um, one indicator of rail labor's contribution is shown on Page 49. It is actually the 49 of the text, but it is also, I Chart 52. This is net income. This is profit-per-employee - I am going to put this in perspective of where we are today as opposed to where we were back in the year before deregulation. Every for every employee on the property, in combination, on all Class One railroads, the carriers made $60,983 in profit. That compares with $18,862 (ph) back in 1979. The rail operating revenue itself, which is Chart 51 in the previous page - $53 per $53,000 excuse me
per employee back in 1979, and $385,000 today.

So I guess, in summary, I would say that, when it comes to a fair recommendation, the Board should take into account the life of the industry and its distribution of that wealth among all of the stakeholders. The stakeholders, of course, include, in addition to the general public, shippers and shareholders, and even the management. Now, with regard to the shippers, we know that they have done very well since deregulation. It has been pointed out by the carriers in this record, and I confirm it that in my materials, that adjusted-for-inflation average freight rates actually fell between you know, by 51 percent from 1981 to 2010. Now, that is reversing itself in the current period that we are in, and likely to move in the opposite direction going forward as the rail rates become more realistic in the competitive trucking climate trucking competition climate. But, nevertheless, the WAR has reported that U.S. freight rates today are the lowest in the world. Lowest in the world
wow, that is pretty big, which makes American business more competitive in the
global marketplace. So shippers have done fairly well. Shareholders, as we have learned, have done very well, as well, not only in the current period but since deregulation. I do not have to go through all of those numbers again, but you know what they are. With it, management has done well as far as we can calculate it. We can we are limited to the data that is produced by SEC reports, but we think that the that having a 76-percent increase in your compensation since 2004, the last agreement, gave you a third chunk and fair share of the railroads' performance and wealth. And, of course, there is the public interest, which we kind of ascribed for you in our Summary Statement on Page 50. It even has several elements to it, not the least of which is having an enterprise, an industry that actually makes investment in its own infrastructure without subsidies from by and large some subsidies, but by and large from the general taxpayer. And as
that sector grows, and railroads become more successful and carry more freight, as we hope and intend they will, the public benefits from energy conservation and environmental control and regulation. What we say against this as the next, as I say, stakeholder is that, when while labor has just not fared as well. I mean, we have we have lost more pay, depending on how you measure that; we will get to that shortly. But we have lost real pay, certainly since deregulation period, which means the standard of living is lower - I do not think that is disputed since deregulation. And we have lost just some 322,000 full-time jobs have been abolished since 1979. That is almost $16 billion-worth of compensation that was lost to rail labor. And I think in order to crystallize this contribution that I keep referring to, by rail labor, we should reflect back again on this current recession because I think that is the perfect illustration. From the face of slack demand, the Class One carriers really adjusted costs by lopping off its
workforce, laying off nine percent; some carriers were more than that. Nine percent and saving some $1.1 billion in labor expense over the two-year period spanning the Great Recession. These 15,300 layoffs, by the way, are only recently being recalled. Some of the carriers have already announced that they do not intend to recall anybody. But during that same two-year period and the same two-year stretch that I am talking about, shareholder returns were up 12.3 percent. Class One carriers spent over $20 billion in cap ex programs. The CEOs were well over the 25-percent increase in their realized cash compensation. You know, I was struck when I read the UP's 2009 Annual Report and how they described the shareholders, how they handled the Recession. And I report that for you on Page 52 of our Summary Statement. It is worth reflecting on: According to the UP Management, in response to economic conditions and lower revenue in 2009, we implemented productivity initiatives to improve efficiency and reduce costs. In addition to
adjusting our resources to reflect lower demand,
although varying throughout the year, our resource
deductions included removing from service
approximately 26 percent of our road locomotives
and 18 percent of our freight car inventory by
year-end. We also reduced ship levels at most rail
facilities and closed or significantly reduced
operations in 30 of our 114 principal rail yards.
These demand-driven resource adjustments and our
productivity initiatives combined to reduce our
workforce by 10 percent, while a 16-percent
reduction in volume drove 17-percent decrease in
operating income. Core pricing gains improved
productivity. Cost savings and demand-driven
resource adjustments translate into all-time
record operating ratio of 76 percent for 2009,
outpacing
outpacing our previous record of 77.3 percent set
in 2002.
It is a quote. And I thanks for indulging my
reading that at you, but it is important. You
know, in the day, a "demand-driven resources" are
called employees. Then, of course, we evolved from
calling them "employees" to calling them "human
resources." Now, they say "human" part has been
eliminated, and now they are just "demand-driven
resources." When you read this corporate speak,
which I find really amusing, the "demand-driven
resources" they are talking about are reducing
ship levels. That is laying people off from the
shops. Parking trains, that is, laying off train
generals. That is the "demand-driven resource."
It is a beautiful thing. For us, it is people. To
some persons, some people, it may be you know, it
is "asset utilization." For employees, it is the
pink slip. It is the contribution that they make
when demand slackens. And, you know, I think, as I
said earlier, if unless you are an employee, this
is good management, and it is one of the reasons
why the outsiders outside analysts are so
optimistic about the future of the industry,
because management does has become, you know,
very ruthless in this regard, and they know what
to do with demand-driven resources when demand
slacks. And, as I said, the conclusion here on that point would be that the UP laid off 4,400 employees. They have not yet been recalled, and their loss meant a $406,000 I am sorry - $406 million in annual compensation, which was contributed to the corporate coffers that got them through the Recession. Now, tell me again about how rail labor does not make a contribution to the financial health of the industry. We ready to move on?

CHAIRMAN JAFFE: Is this a good time for a break, or were you heading towards the end?

MR. ROTH: I, no, I, regrettably, will not be on.

[Crosstalk]

CHAIRMAN JAFFE: (inaudible at 28:39)

MR. ROTH: I have another [clears throat] another chart book, but this should not take as long.

[clears throat]

CHAIRMAN JAFFE: I will tell you what, why don't we take 15? MR. ROTH: OK.

CHAIRMAN JAFFE: We convene at about three, off the record. (audio interruption)
1 UNIDENTIFIED MALE SPEAKER: Mm-hmm.
2 UNIDENTIFIED MALE SPEAKER: Someday, I might
3 graduate to a spot in a hearing (inaudible) state.
4 CHAIRMAN JAFFE: At your convenience, please,
5 and at your convenience, Mr. Roth.
6 MR. ROTH: [Clears throat] I am all ready, Mr.
7 Chairman. And I would like to direct the Board's
8 attention to Part Two of the Summary Statement,
9 which begins our discussion of the general wage
10 adjustment issue. And it is at record Page Number
11 2142 in the Union's materials. The first thing we
12 need to do, of course, is just lay out the central
13 ingredients to the Organization's wage proposal.
14 And if you were to turn to Table 21, which was
15 Page 81 in the chart book, you will find the
16 table, where we simply lay out the chronology of
17 wage change under the Organization's proposal. It
18 is pretty simple, as indicated. We are asking for
19 a four-percent increase in the first year of the
20 contract, which commences January 1, 2010; three
21 and a half percent in the second year; four
22 percent in the third; 3.5 percent in the fourth
year; and, in the fifth years, a four-percent raise, each of those effective on the first day of each contract year. The chronology of wage change over the period is shown in the right-hand column. It is a it brings the average rate from $25.82 up to $31.11. The kind of a source of the $25.82 is in earlier materials might be actually, in Exhibit Number 19 and 20, we need to review those numbers. You may find, by the way, that there are differences between the carriers and myself with respect to the kind of calculation of the average straight-time hourly rate. I do not know that those are significant to begin with, but where they vary, it is generally accounted for by the our kind of differences in identifying which reporting divisions of the ICC Report are assigned to which of the organizations. So there is some, maybe, inconsistencies between us on that subject, but they are not material. The $25.82 is probably close to what they have calculated. On over a course of the agreement, as I have indicated, wages will go up by 20.5 percent compounded. That
is an annual rate of increase of 3.8 percent per year. And if you were to calculate the dollars in my pocket, incrementally, over the status quo for the average coalition person, that would be $32,151 on a straight-time basis. This, by definition, excludes any overtime, of course, which varies widely among organizations and even among the classifications within any one organization. So that is a straight-time calculation. What follows in the chart book are a series of wage chronologies, which we are not going to review. What I wanted to impress upon you at this point is that, in our characterizations of wage change, I am very careful to use the actual negotiated general wage increases under each of the organizations' contracts. They vary slightly over the years, as the chronologies indicate. It is important of a lesson, in my view, to look to those contract changes when you are measuring wage rate change, per se, as opposed to a calculation year over year of average straight-time hourly earnings, which does not necessarily
1 reflect wage general wage rate change because you
2 have a change in the mix of the classifications
3 from one year to the next. And even within the
4 same reporting division, you will find a change in
5 the mix between the high high-skilled and lower-
6 skilled individuals, which may cause a creeping of
7 average straight-time hourly rates where no
8 general wage change has been made. Secondly, by
9 way of, you know, measurement here, I am using
10 several of the organizations' wage histories to
11 kind of characterize what has gone on for the for
12 the participants, the in this case before you.
13 They are not all here. For example, I do not have
14 a chronology for the BLE. I may have missing a
15 shop craft or two in this chronology, but what I
16 do have and what I have examined is the BMWE, the
17 TCU, several other shop crafts including the IAM
18 and, I believe, the IBW. I have the BRS. So I have
19 a good cross-section of the organizations that are
20 involved in this case. And I think you will find
21 that, end-to-end, while there may be some
22 variations over the course of this 30-year period.
that we are tracking, there might be some differences year over year, here and there. But, by and large, when we characterize the wage change as being lagging or being or increasing at a certain rate or to a certain degree year over year, it is generally a comment that is applicable across the non-operating craft group and for the BLE, too, for that matter. So, with that introduction, I think that we can dispense of having to examine or look at any of these chronologies individually. I would direct your attention to the our review of the cost of living and rising real wages, which begins at Page Four of the Summary on wage adjustments. That is record Page 2145, and it will involve the series of charts that well, that commence Chart 60 and others of similar kind. And, as I have said, you do not we do not you do not even look at them all in order to draw the proper conclusion because they track one another; they look pretty much the same. Now let us see if we cannot describe the differences that we have with the carriers in
making these calculations. I think both parties are using the Consumer Pricing Index Year for the representing the change in the excuse me, the that is not right. I am using CPIUU, and they are using the CPIU. That is one small difference between us and how we measure inflation, historically. I will get to how we are measuring inflation prospectively in a minute. The other observation that I heard them the carriers make regarding change in in real pay is our selected base state. I am going back to the contract in effect at the time of regulation. So the contract commencing January of 1977 is reflecting all of the wage change experienced by the organizations since deregulation. So it is the last contract negotiated prior to deregulation, so it becomes the base for measuring wage change prospectively. Now, there is when you are looking at real wages and I am looking at Chart you can look at Chart 61, for instance. This is the one that is tracing the BMWE's real wage change. You can see that the red line is pretty flat. This is indicative of the
reality that real wages have been flat-lined for 30 years. There has been no real improvement over this period of time in real wages. Now, if we were to look at the wage chronology itself, which is represented by the green line, you can see where the problem lies. It was during the negotiation/mediation/Presidential Emergency Board/statutory imposition/period, which resulted in the 1988 agreements where we or where we forced crossed the line on changes in CPIW, which is really the cause, if you will, of the real wage lag that has that exists today. The slope of the curves since that point are fairly are in parallel for a fair amount, neither any gain nor loss since that contract, fairly flat-lined. But the period of time governing the 1988 contract, which was, in essence, I want to say 10.5 percent over six and a half years it is in the text. But it was a two-year wage freeze plus minor or marginal wage general wage increases thereafter over an extended period of time. That was the general wage increase piece of the 1980
agreement that was recommended by the PEB 219 and
ultimately imposed on the unions. So we do
not apologize for as we look back over the period
of deregulation for an adjustment that reflects
now, in the good times, a catch-up for the lost
real wages that occurred under that agreement.
Apparently, the carriers are critical of using
that as a base state, but that is the whole
purpose, and I do not back off the notion of
including that period of time in generating what I
regard as a real wage lag over the regulated
period. So it is what it is, and it is as I say it
is in terms of the real wage loss occurring over
that period of time. For the individual
organizations that have that are accounted for in
our wage chronologies, the summary of that real
wage loss is on Page Six of the Summary Statement,
which is record Page 2147. As you can see,
depending on the organization, raises of between
three percent and five percent would be required
on Day One of this contract, simply to restore the
purchasing power of the wage rates that prevailed
back in 1977. And that, of course, is without regard to any real wage improvement, which we believe we that rail unions are entitled to. Now, let's I am going to focus on the chart that it is Chart 67, because I think this is a represents a point of departure between the carriers' position and our own regarding the impact of our proposal on real wage real wages. And, also, this will bear on the implications of adopting a pattern with general wage increases similar to the UTUs on real wages. So I think if you turn to Chart 67, which is let me find that for you 67 is on Page 120 of the chart book 120. It is record Page Number 2301 in the Union's case. Let's I am going to sort out what the factual differences are in this presentation that we made on the prospects of maintaining real pay under the Unions proposal. To begin with, the heavy blue line reflects the actual known change in the Consumer Price Index for the first 20 months of this agreement. One of the differences between the carriers' presentation
of these numbers and my own is that they are using projections for 2010 and '11, which have already been determined to be invalid. Why would you use a projected consumer change in a Consumer Price Index, published by the Congressional Budget Office, for a period of time under this contract where the CPI is increases have already been known? So what I am representing here is that the heavy blue line is the actual CPI. The what is regarded here, what is stated as a projection it is not a prediction. What I am saying here is that it would take a 2.8-percent increase in the CPI for the balance of the collective bargaining agreement, in order for the unions to break even under their proposed changes in general wages. Let me say that again another way If the Panel if the Board were to recommend and the parties were to adopt the Union's proposed general wage increases, our wages would escalate by the 20.5 percent, as reflected over the course of the five-year agreement, represented by the red line on Chart 67. If the CPI were to increase at a rate of 2.8
percent per year from the last know CPI to the end of the contract, we would break even with changes in the CPI. It would be a break-even contract. If the Consumer Price Index rises by more than a rate of 2.8 percent for the balance of this contract, our real pay will diminish. If it increases by less than 2.8 percent, there will be a measure of real wage increase over the course of the agreement. Now, as my text, I thought, made clear but, obviously, the carriers were not reading it this way. I am not forecasting or predicting the 2.8 percent; I am saying that that is what the break-even point is. The fact of the matter is that the CPI is currently running at a rate, which greatly exceeds that. Let me back up a moment. If you look at the blue line, which is the rate of CPI change over the first 20 months of this agreement, the Consumer Price Index is going up by a rate of 3.3 percent. If that were to continue, then, obviously, we would have a diminution in real pay even under the Union's proposal. If you look at the actual change in the Consumer Price
Index on a trailing 12-month basis, it has been going up by 4.3 percent. That is the annual rate of inflation that we are currently experiencing over on a 12-month actual 12-month basis 4.3 percent. If you were to do that same calculation over a trailing six months, the figure is 5.4 percent. The moral of the story is that the cost of living is currently running at a pace which exceeds the 2.8 percent that it that is required to break even. Our carriers, when they perform this exercise, are mistaken in several respects. First of all, they are arguing and it is in their brief, and it is in, I think, Dr. Evans's presentation. It is Exhibit Number Six. Page 33 would be your reference. But you will note there that what is going in is a conclusion that the projected CPI growth over the course of the agreement is 9.1 percent. That is end to end. That is based upon, as I read the footnote, on the Congressional Budget Office projections, which were made for fiscal years 2011 to 2021. OK, and they were issued in January 2011. Now, this
analysis is flawed in two respects. Number one, he leaves out the first view of the collective bargaining agreement and begins the forecast for inflation by ignoring the actual change in inflation that occurred over the first 12 months of the proposed agreement. All right, look at Page 43. Look at his exhibit when you get a chance. You may not do it now. But there was no projected increase for the first year of the collective bargaining agreement. A man adopting the CBO projection of 2.9 in 2011 and 1.5 thereafter, it ignores the fact that the CBO projection is wrong because it is for a year which is now almost gone and will be known (ph) that the increase in the CPI is going to be more than 2.9 percent. So one way to make certain that the CPI is going to go up by less than what I am saying is to look at a period a projection that was made in a period before the actual known CPIs were published. They and every year, at a much smaller rate than what the CBO expected. So you are going to get the real answer if you do not if
you use a projection that ignores the actual
increases. Secondly, you are not going to have the
proper analysis if you are not looking at the same
five-year period that we that the bullet is
looking at. You are determining wages over 2000
from '09 is the base 2010, '11, '12, '13, '14. It
does not make any sense to adopt forecasts in 2015
and beyond. Why not use the actual numbers of the
first 20 months that you know are sound, and then
projections, if you wish, for the balance of the
contract period? So this will motion that, you
know, our proposal is going to cause some
extraordinary increases in real pay or,
alternatively, if the increases proposed by the
carriers were layered on this chronology that it,
too, would maintain real pay is is dependent on a
forecast in inflation that is half the current
rate and less than half of the trailing 12 months,
less than half of the trailing six months. The CPI
will come out on Wednesday. I will give you that
number if we return. But you can bet we are not
we this 2.8-percent number is probably going to
have going to change when we know another month of the CPI. But I will tell you one thing the Congressional Budget Office numbers are wrong and will be wrong for 2011. The next subject should not take that long. This is our comparison with the ECI with the Employment Cost Index. And I know that the that the Board members have seen this data before and are familiar with its construct. The ECI, as you know, is a is the BLS version of the CPI for wages and compensation where they hold constant the changing mix of occupations and industry much the same way as they hold the market basket constant when they produce the Consumer Price Index. So it is the it is agreed among all analysts that, in measuring changes in wages and salaries, per se as well as total compensation, which they also produce - or the best measure is the Employment Cost Index because, unlike changes in averaged hourly earnings or averaged straight-time hourly earnings, you do not have to deal with a with wage drift as it is associated with ele with the
changing mix from low-paid persons to high-paid persons, or the reverse. Sometimes, the changes in the average straight-time hourly rate can go up at a slower rate than general wage increases because you are just hiring cheaper persons. So we are losing using the ECI. We are suggesting that there has been a 14.1-percent wage lag against the rest of the private industry. And it would demonstrate, as well, that that is pretty much accounted for by the 6.5-year contract, which commenced in 1988. That pretty much caused the problem that we are bringing to your attention now. And once again, when you read 219 and you understand how those recommendations were arrived at, in what role the kind of the financial position of the industry played in that decision, then it is my view that you would you would ultimately reach the conclusion that, now that the reverse of those circumstances prevail today, that rail labor is entitled to recover that 14.1 percent. The next piece in here is total compensation. I think several of the carrier
1. experts have testified that really, what you want to look at when you are tracing you know, when you are tracing this these data for reflecting the experience of the workers is to look at total compensation because, obviously, in this real world, benefits are a very important ingredient in total compensation and that, over the years, in this industry and elsewhere, there has been, you know, a shift, if you will, from increases in general wage increases and toward benefits to enhance total compensation for the workforce. So we understand that. I do not disagree with that at all. And I would also encourage the Panel to look at total compensation when you assess the progress that rail workers have attained over the years. When you read through that, we nevertheless find that there is a significant wage lag. In fact, the rate that - the lag on compensation is larger than the lag on wages alone, and that is reflected in the Chart 75 excuse me, it begins with 76, 76, 77, 78 that series, which and the
only differences between those, if it is not 
already obvious, is they are I am looking at the 
wage chronologies and the compensation changes for 
the different organizations. But the slope of 
those curve those the slope of those lines are 
appear to be similar in all respects. It is about 
a 14-percent compensation gap developed by 2009. 
The this only and I can apologize for the small 
print, but if you look at Page 140 of the chart 
book and this is Table 36 this is record Page 
2311 in the Union's case these are the kind of 
the build-ups of the total compensation that form 
the basis of the charts that you find associated 
with the numbers. And they are principally small. 
If you want a bigger version of this, [chuckle] I 
can give it to you. This is all I could fit on one 
page. So if you cannot read it, I understand; I 
can hardly read it myself. But it is what it is, 
is it takes - from a bottoms-up basis, it builds 
up total compensation for the railroad worker 
given their given our compensation structure. And 
then, what I do, is I convert this to a BLS format
1 to make is compatible with comparisons made
gainst the Employment Cost Index. This is a
useful exercise, not only to demonstrate the pace
of our compensation change, historically, but it
also enables the Board to isolate certain changes
in compensation because, clearly, they have not
all moved at the same pace. If you look at and,
this, I begin to discuss at Page 11 of the Summary
Statement. And it actually is based upon Table 36
and others similarly constructed. OK, but let us
turn to Chart 80, which is on Page 137 of the
chart book. And, there, you can see some evidence
of what I have been talking about. Wages have gone
up by at a certain rate. We saw that
independently. What Chart 80 does, and similar
ones constructed, is trace changes in benefits
only. So even if you look at benefits by
themselves, there still is a lag behind the
private sector for railroad workers at some 10.2
percent. And that is because there has been very
little effort in recent years devoted to
improvement in our benefit levels. Notwithstanding
the fact that much energy has been spent at the bargaining table on maintaining and, in some cases, improving the Health and Welfare Program. So what I say in the text, and I think and the numbers bear this out is that rail negotiators have devoted a fair amount of effort at the bargaining table on preserving what is a quality health and welfare program. That is made evident in our changes in the Health and Welfare piece of Total Compensation, which has escalated at a rate which far exceeds the rate of change and other elements of compensation. But what the Board has to take away from this discussion is that, when you add all the benefits together, including Health and Welfare and including the rapid pace of change in a high-quality health and welfare program, you nevertheless have an increase in the railroad benefit costs, which are below what other employers in the economy have experienced for their benefit costs. And that is a very important point. This employer at this industry does not have a health and welfare problem. OK? It does not
have a health and welfare problem that this board has to attend to in this round of bargaining. The changes in total benefits, changes in total compensation have lagged behind the private sector notwithstanding the party's insistence that a quality health and welfare program be maintained, and that those costs continue to be absorbed in major part by the employer. All of that is reflected in these numbers. After all, we are looking at the total cost of compensation for the railroad worker versus the rest of the world.

CHAIRMAN JAFFE: Mr. Roth, could we go back to Page 39, which I assume relates to at least the structure of how one defines benefits on Chart 80?

I think it is the prior page.

UNIDENTIFIED MALE: One forty-six.

MR. ROTH: Oh, thank you 146. Got it. Sorry, I have it.

CHAIRMAN JAFFE: Two quick questions Are the total benefits in Chart 80 and then in (your analysis) (ph) the same total benefits that are listed on Table 39? That is the first question.
MR. ROTH: Yes, Chart 80 is a graph of the data on Table 39, in part, from for total benefits.

CHAIRMAN JAFFE: And if you look, obviously, the "Health" line has gone up roughly sevenfold from '85 to 2009, right?

MR. ROTH: Yeah.

CHAIRMAN JAFFE: Some of the others have gone up significantly less than that.

MR. ROTH: Yeah.

CHAIRMAN JAFFE: So look at "Retirement and Savings." It looks like it has actually gone down as compared to the years in between. Is there a an obvious explanation for that?

MR. ROTH: Yeah, the contribution rates have fallen for the carriers. CHAIRMAN JAFFE: OK.

MR. ROTH: Over that period of time. And what we the cost of the railroad retirement is, for this purpose, is represented by their contribution rate, percent of payroll, which has fallen over this period of time.

CHAIRMAN JAFFE: Got it. Thank you for the clarification.
MR. ROTH: So as you kind of page through the illustrations, we have one for the BMWE, one for the BRC, the Carmen (ph), one for the TCU clerks (ph). In each case, you will find that And, again, I emphasize that that is representative of what is going on here with the rest of the rail organizations, that there has been a focus on the health and welfare subject at the bargaining table. They have insisted that the carriers continue to pay for a quality health and welfare program. That results in that element of compensation going up in cost, numbers that you have already seen from the carrier in this record. But what I am reporting is that those increases in costs for health and welfare have been more than offset by building moderate change in the other elements of compensation, and moderation in wage change, such that, when you add it altogether, total compensation lags behind the rest of the private sector since deregulation. And even if you use base points in between of course, since I give you a time series, you can use any
base state you like to make to draw conclusions as to how this has behaved all over other periods of time. But you will find that there was no evidence that the carriers have been asked to absorb excessive increases in their benefit costs or total compensation because of our insistence that they pay for health and welfare. The other way to look at this is on Chart 84 because this is these are labeled ratios. Just like we did when we were looking at the big picture of the role of labor costs on in railroads, and will have reported to you that total that about 25 cents of every revenue dollar goes to labor. And when we look back at the '79 and earlier years, that number was 51. I think I indicated to you that, if I if you take that number, that labor ratio back 40 years before deregulation, it would have been in the 50-percent range for many, many years. It was not until after deregulation where it collapsed, and now it is 25 cents on the revenue dollar. So what I have done here with Chart 84 and to kind of address further this health and
welfare issue is to break out the "Health and Welfare" piece. The green line on Chart 84, which is on Page 141 of our chart book, represents total benefits. So we can see that total benefits; it is total wages. Wages are 17 cents out of every revenue dollar. The rest, the difference between 17 cents and 25 cents are your total benefits. But what we add here is a breakout of the health and welfare piece. First and foremost, look at the footnote. The data does not allow us to subtract from health and welfare the employers' contributions or costs of nine railroad retirement private pension plans. For some that has never been available; it has never been part of the I-1 distribution of labor expenses, so I am not able to carve it out. It is not even clear to me to whom that cost would be subscribed. The organizations, by and large, have not separate private pensions, [clears throat] so I do not know. That must be non-contract persons, but I do not even know that. I mean, I know there might be a maybe it is a 401-K contribution, or it may
be a certain train and engine employee somewhere that rolls into that; I am not sure, but it is a small number in any event. Health and welfare is clearly the bulk of that expense. And when we look at these numbers that line across the bottom of the page I refine that, for every regular dollar, four cents goes to health and welfare. Those big numbers that have been put on the record regarding the cost of this plan it is four cents on your revenue dollar. And, remarkably, that is a four (ph) marginally; it is about the same as it was in 1984 - in fact, it is the same as it was in 1984 and only a tick higher than it was at the time of deregulation, where it was 32, 33 cents. Thirty-two third I am sorry, 3.2 or 3.3 cents on the revenue dollar. So this is not this is not a problem that has the management has not been able to manage through escalating productivity and collapse of the uniclause (ph) that lie behind these changes in labor ratios. Once again, I reiterate the employer does not have a health and welfare problem that you need to attend to in this
round of bargaining. This is not what this case should be about. Another look at I mentioned labor costs a second ago, and here on Chart 85 is a similar breakout. We have already seen some of these numbers at the high level, where we are looking at total unit costs and total labor costs. This is an interesting chart because you can see that, since deregulation, total unit costs have gone up from about 1. a $1.25 per ton mile to $1.70. Now, if you broke that up, you will see that unit labor costs, however, have fallen from 0.79 to, say, 0.97 (ph), and then pretty much a flat line since that point, but certainly not escalating the way you would the way that non-labor expenses have. With respect to the "Health and Welfare" piece, that is currently a fraction of a penny in 2010. It is 0.138 cents, and that is marginally above the 0.083 cents that existed back at the time of deregulation. And you can see that that red line across the bottom is not moving radically one way or the other; it is pretty much flat-lined. Again, just another
1 indication of how the health and welfare component
2 of unit labor costs have not contributed to any
3 kind of escalation in the carriers' cost of doing
4 business. We have Chart 86 adds just it does not
5 add much at this point. It is this is the change
6 in labor expense and non-labor expense that I
7 referred to earlier. This is pretty obvious. OK,
8 Mr. Chairman, unless there are some questions
9 about the role that the health and welfare
10 has played in this expense structure and how it
11 has been managed over time, I am going to proceed
12 to the next section of our presentation, and that
13 is a look at the carriers' proposal to us as I
14 understand it. And I am going to compare that,
15 ultimately, to the proposal that we have given
16 given you. OK, Table 40 Page 144 of the chart
17 book lays out the change in the straight-time
18 hourly rate for the coalition members under the
19 carriers' proposal as I understand it. And I think
20 this corresponds with the way they have described
21 it in this record. We have general wage increases
22 under their proposal that began July 1, 2010. That
is two percent. It goes to 2.5 percent, to three, to three, 3.5, and three over six years. At the time, this analysis was prepared, I was not aware of any willingness on part of the carriers to accommodate the Organization's proposal for a five-year term, but have since heard on this record that that may be a possibility. So but this is a six-year analysis. So, on a compound annual compounded basis, this is going up by 18.2 percent over time, to 0.83 percent per year of contract term. I the model of mine, which enables us to track changes in the wage chronology it is actually used at the bargaining table to to illustrate for the negotiators the movement of the average straight-time hourly rate and the net rate as proposals are made. And so this has a placeholder for monthly health insurance contributions because it is my view and I think it is probably everybody's view that an increase in your health insurance contribution is is nothing more than a cash compensation issue, and it it subtracts from a general wage increases in
the same manner that a wage increase increases that compensation. So it is nothing more than a wage cut under circumstances where the employee is asked to pay more to his health insurance plan. Since the proposal to the unions does not have an increase that occurs during the course of this six-year period, those are all zeroes OK? so that the gross wage change is the same as the net wage change. So I apologize for having all this noise in here, all these columns because they are somewhat that is, those central columns are unnecessary, but it simply is, as I said, a placeholder for analyzing proposals that are made by the respective parties for changes in health insurance contributions. So that brings us down to the increase per year on a net basis, which is 2.83 percent a year. The next entry here is on the the value of the special adjustment because, as you recall, in addition to the general wage increases, the carriers' proposal to the Organization includes a special adjustment of 0.5 percent, which I included here. It is a
general wage equivalent of that amount, and it is
- -it can be and it is rolled into the when
paid, rolled into the wage chronology that you see
above. So, by the way, just by way of preview,
when I value the dollars in my pocket over the
course of the agreement, I am taking into account
the fact that the half a percent is rolled into
wages and produces more cash by compounding over
the course of the agreement. By way of
presentation here, I wanted to separate it and
show it down below because it is described by the
carriers as a special adjustment and not part of
the general wage increase scheme. If you add that
back in, that is a 2.9 two percent per year of
contract term. Next, we have the since we are
dealing with the net value to the employee and
this is a look from the employees' perspective,
obviously, not a this is not an overall cost
analysis to the employer this is a view from the
employees' level the cost to the employee for
design changes and that is that accounts for the
our carriers' proposal to change health and
welfare design. And there is a whole series of such changes that have been described to you by the carriers and their affirmative case. And, tomorrow, we will hear from witnesses on the Organization's side that will go through those changes. For our purposes now you need only know that, of the total reduction in employer costs to that plan, resulting from the changes proposed by the carriers, I estimate that that value would be $79, approximately, per month, per employee. In other words, the employer costs to finance the Health and Welfare Program would be cut by $79 a month. However, for our purposes here, I am creating a de cost-shifting portion of that proposal to be valued at $58. So this would be the amount the amount of the total savings that is shifted to the employee that also who, on average, would pay an additional monthly contri monthly amount of $58 by virtue of the cost shifting that occurs under the carriers' proposal for such things as establishing a deductible for increasing the co-insurance factors. So, in that
1 respect, there might be some debate over that we
2 will hear more about regarding the effects that
3 the overall proposal has on the pocketbook of the
4 employee. I am giving the carrier the benefit of
5 the doubt here, and valuing the concession out-
6 of-pocket concession piece as being $58. That may
7 be understated. In any event, if it were $58, that
8 would represent the wage increase equivalent cut
9 in pay of about 1.3 percent. Now, I hasten to add
10 that we are not talking about a concession that is
11 uniformly absorbed by the population. Obviously,
12 that would be the average concession value. It is
13 not distributed equally across the population;
14 that, of course, depends on your health record and
15 your utilization of the plan. It could be cost
16 the impact could be much greater on persons who
17 have higher use and lower for those who have less
18 use. But that is the average if you spread it
19 across the population. That cuts the annual rate
20 of increase under their proposal to 2.7 percent
21 per year. At this point, Mr. Chairman and Board
22 members, I should direct you to the table that is
prepared in the Summary Statement. It is way at
the end Page 14. If you could go because that -
this is not reproduced in the chart book, and it
may be something that you need to focus on at this
point. It is rather important in looking at the
various positions that the parties have staked out
here. You will note that, when I am descri as I
describe and value on Table 40 the carriers'
proposal, the next ingredient that I am looking at
is the certification pay. The val the special
adjustment is in there at $1,300 over the course
of the agreement. That, of course, takes into
account the fact that it is will be effective
June 30, 2011, and then paid for my straight-time
pay hours for the balance of the contract; that
way, it would be worth $1,300. The next line item
is "Wage Progression across the System." Now, wage
progression has been proposed as an element of the
carriers' position. In the wage progression piece
that I am referring to on my Table 40 is that
proposal to eliminate the fifth year of a hiring
wage progression for those organizations that have
five years. Well, when you look at the participating 11 rulings (ph) before you, you will find that there are only two organizations that have five-year progressions; one of them is the dispatchers, and the other one is the engineers. And so when I if I were to assume, literally, that that change was applied to the 11 organizations, it would, on average, have little value; it would be washed out. It would have value, obviously and I want to emphasize this it has value to the engineers because they have persons in a five-year progression. It has value to the dispatchers because they have some persons in a five-year progression. I should also add that they have far fewer persons in progression than does the UTU, where the value would be much greater. The reason for that is quite obvious the UTU is a portal position. That is where the engineers are hired until the are promoted to engineers. And when you look at the service distributions that the carriers have furnished, you will find that there are very few
engineers in within their five-year progression relative to the UTU, which had almost had more than almost a third of their membership in a five-year progression. So. (audio interruption) is valued out. It turns out to be of no value to the average coalition participant and so you find a zero there. Now the other change proposed by the carriers has to do with lump sum. If you look at the table on Page 14, you'll see that there is an entry number eight for the entry rate lump sum. So what is this proposal to the organizations? If you have someone in a five year progression you're entitled to a lump sum. Those individuals are entitled to a lump sum. If you are, however, subject to a progression of less than five years in duration, then you're entitled to a lower lump sum. When the carriers - When I look at the service distributions for the coalition participants and I assume that anybody and everybody who is in a five year progression, in other words there are no local rules that would mitigate that, I apply and I value the lump sum to
all of those persons. That would apply, of course, to the BLE and the dispatchers. The TCU has a three year progression. And, again, assuming that there are no local rules that might mitigate that based on the service distribution I have assumed that they're all in a hiring progression. That may not be true. They might have better local rules. But assuming that they all have a three year progression, I added up all those heads and gave them the lower lump sum that is being suggested by the carrier. The BMWE has a two year progression under their national rules, and they too will assume to have no local rules that would better that. And so for all the persons in the BMWE craft that had at least - that had under three years of service, I gave them the lump sum. Now I know that one is overstated in value because the progression for the BMWE craft is applicable only to certain unskilled classifications. It's not uniformly applied across their classification system. So I had no way given the data sources that I had to determine how many of the persons with less than
three years of service were actually subject to a
two year progression so I assumed they all would
get it. So when you average this out across all
the population, this would come up to
approximately $48.00. I think it's far less than
that actually. I think it's less than that because
of the treatment of the BMWE folks, number one,
and others. Now you might inquire well what do the
shop crafts do? What does the BRS do by way of
hiring progressions? Well they by in large do not
have them. They do have apprenticeship programs
where you hire into the craft as an apprentice and
then you work your way up. There's various
apprentice programs depending on the local rules.
They range in duration. The BRS, I think, is
commonly has maybe a two year progression. I'm not
sure. I'm not the expert on that. But the point is
that if you literally apply the carrier proposal
to the organizations who have apprenticeship
programs, which carry separate rates and are
separate classifications under their rules, they
would not be entitled to this entry rate bonus.
And all I can go by is, of course, what the carriers have proposed. That's all I know about. So I think it's probably in the range of maybe its $40.00 a head. When you spread it out it's a pretty minor piece.

CHAIRMAN JAFFE: Can I interrupt you? Excuse me.

MR. ROTH: Sure.

CHAIRMAN JAFFE: You've got evaluation of .3 percent GWI equivalent. Unless I missed it I'm not sure that the record contains the precise figure that you're using for a one percent GWI. Do you have that handy or is that something that would need some research to clarify?

MR. ROTH: I'm sorry. I'm not following you.

CHAIRMAN JAFFE: I assume there's a dollar number that equates to a one percent GWI on average across the coalition; with an S?

MR. ROTH: Yes. This is eliminating the top step. There's actually a whole methodology to this and I'd be happy to furnish it to you.

CHAIRMAN JAFFE: At some point. I don't want to interrupt your presentation.
MR. ROTH: Okay. What I have in my possession, Mr. Chairman, are service distributions for all buy organization for the 11 groups organizations, and the UTU for that matter and the Yard Masters. So I had them for all 13 organizations.

CHAIRMAN JAFFE: Okay.

MR. ROTH: From that you are able, or I was able to estimate the turnover or the hiring rate if you will. In the UTU craft, for example, if you look at the average number of heads within the five year progression is almost 2,000 employees. The average number of persons in the BLE five year progression was more in the nature of I can't recall now. I'll get you the numbers. But it's like 30 people. It's a fraction of what the UTU would be because they are not hiring from the street in the BLE craft as a rule. So using that the average number of employees within progression as a proxy for the affect of eliminating the fifth step that ultimately results in a five percent increase for those persons who would move from the fourth year to the fifth year. When they graduated
out of the fifth year into the sixth year, they
under status quo, they would go to 100 percent
anyway. So the incremental improvement by
eliminating the fifth step is to give those
persons who would move from year four to year five
an extra five percent. So when I modeled that out,
and give those folks that extra five percent, and
average it all together doing that for the
coalition members vanishes in terms of value. And,
again, that's not to say that it doesn't have
value for the BLE or the. But when you look at it
on an average coalition basis it washes away. It's
decimal dust.

CHAIRMAN JAFFE: Actually the question was a little
different, but I'll be happy to hold it. It's
fine.

MR. ROTH: I'll get you whatever. I've got the
analysis that I can provide.

CHAIRMAN JAFFE: There are a variety of cost
numbers throughout the presentation, both yours
and then some that are yet to come, and some that
we had already from the carriers, and I don't know
1. that anyone has at least pointed to a particular
dollar equivalent; X million dollars, whatever
that may be that corresponds to a one percent
general wage increase for the group of
organizations as a whole at least at the starting
point of the new agreement.

MR. ROTH: Oh, I understand.

CHAIRMAN JAFFE: And I apologize if my question was
poor.

MR. ROTH: No, I actually can do that. I mean based
upon. We're almost there but I've got a pressing
model that I've developed which again, this looks
at it from the employee perspective. It's straight
time only. The number you'd want would have to
include all of the payouts and other constructive
allowances that are subject to - that are variable
with general wage increases so it's a more
sophisticated compilation.

CHAIRMAN JAFFE: It is and I.

MR. ROTH: It's a bigger number than what I'm
showing.

CHAIRMAN JAFFE: It is and I didn't feel
comfortable taking the numbers and doing my own estimate. I'd rather get it from you. Thank you.

MR. ROTH: I'd rather you get it from me too. So we were looking at Table 40 on Page 144 of the chart book and comparing to the elements that you see in the central column of the table that is on Page 14. That's the - I'm putting numbers, if you will, on these eight elements of the management's proposal to the coalition that we are describing here. Again, by way of clarification I should also make it clear that these summary values that you see on Table 40, Page 14 of the text, include what I have regarded as kind of the wage and wage related. They are the elements that we identified, but I do not have vacation costs in here or values in here. I don't have any of the rule changes and their values that are associated with the individual crafts. And that's why you see in the left-hand column when I describe the coalition's proposal that it specifically excludes cert pay, for example, or special adjustments that are being sought by the individual organizations. I'm
looking at the bigger picture, if you will, and
the major ingredients in the respective proposals
of the parties. And I just want to make sure that
this is not comprehensive of all of the changes
that are being sought by the parties. To finish
this exercise let's go to Table 41. Table 41 is,
again, a look from the employees' perspective.
This one is the analysis of the UTU settlement.
While the carriers' proposals seems to track, in
their words, the UTU settlement certainly the
values that they have subscribed to the UTU deal
would not be applicable if applied to the
coalition principally because the certification
pay is worth a whole lot more to the UTU than it
is to coalition members number one. The cert pay
equivalent that they are proposing is a half a
percent. There is no doubt that it's of far more
valuable to the UTU. Now let me clarify and make
specific exactly what I'm talking about with this
cert pay calculation because you note that the
first pieces of the carriers' proposal do track
the UTU settlement. The duration of contract is
the same. That's line item number one on our table on Page 14. The GWI's 18.2 percent over six. It's actually 18.4 percent over six of the UTU deal and that has to deal with if you look at Table 41 it has to do with a $0.03 payment that was a health and welfare offset that they had retained so it's an extra $0.03. It was paid. They kept it. It's not a big deal but it does change the result only slightly. The bigger change, obviously, and the bigger values are on the GWI equivalent to cert pay. And I think that - I have calculated that that's worth 1.3 percent, but I think that's understated and I'm going to tell you why. The rail labor, and we in particular, are kind of a hostage to a representation made by the carriers as to what this value is. They have produced a letter from counsel, it's not an analysis, that doesn't give you anything except for their conclusion that the UTU will receive this $5.00 cert pay for an average of 140 starts per year per member when spread across the UTU population. That's the assumption that's embedded in my
1 calculation of the wage equivalent of value of
cert pay. Now I am advised, and again there is no
way that I can either confirm or challenge the 140
start assumption that the carriers' using. They
have not furnished us with any other information
concerning that. If ever it were to become
important in these negotiations, I would hope that
the board would require the carrier to produce the
basis for that assumption. But in any event at
this point I'm stuck with the 1.3 percent
calculation. But nevertheless it is nearly three
times as valuable for the UTU as it would be if we
accepted their special adjustment here. So, again,
I think it's obvious that they're not offering to
the coalition the values that the UTU realized in
its agreement notwithstanding that the language
that they propose may be comparable. This is true
for the reasons I've alluded to earlier with
regard to the wage progression and the entry rate
amounts. It disappears in value when applied to
the 11 organizations but does have greater value
for the UTU because they have a big portion of
their membership in a five year progression. And eventually those persons who are now at step three are going to go to step four and four to five and there's going to be a chunk of persons eligible for a five percent raise under their service curve that would otherwise not be present when you make the same analysis for the coalition members. I estimate that to be .3 percent for them. The plan design and using the same assumptions there it's $58.00 based upon - I'm assuming that the changes that are proposed to the coalition are the same changes in design that were a part in our part of the UTU agreement. So when you look at Line six of the table on Page 14 of our summary statement, the difference between the two positions, the UTU settlement which was 20 percent over six years net/net and this is including certification pay, special adjustments, and wage progression and that same number would be 18.8 percent of the carriers' proposal to us. Again, I think I'm underestimating the value of the UTU settlement to the UTU, but I'm constrained by the data sources that I
1 currently have. If you net out the total the
2 increase in the health care concessions, you end
3 up with 18.7 over six for them, the UTU, and 17.5
4 under the proposal to us. It is an annual rate of
5 increase of 2.9 percent per year versus 2.7. Now
6 let's look over to the far left-hand column. This
7 is the proposal of the organizations which you saw
8 the central ingredients of a moment ago. It's 20.5
9 percent over five years or 3.8 percent per year.
10 And we have no specific in the across the board
11 general increase area, we have no certification
12 pay or special adjustment. Those would be craft
13 specific. And so to know we have no proposal to
14 change the length of wage progressions or entry
15 rates except as those that might be in the
16 dispatchers and BLE local rule changes. We are, of
17 course, proposing status quo on health and welfare
18 design. So there is there no concession there and
19 no value to it. So that if you look at item six we
20 are proposing 3.8 percent per year over the
21 contract. Under the UTU deal it's about 3.1
22 percent. If you net out health insurance it's 2.9
percent per year for the UTU and about the same
3.8 percent for us. That's net. The terms of lump
sums I mean you've already heard me regarding the
value of lump sums to the UTU versus what it would
be worth to the coalitions given the fact that we
don't have a lot of five year progression. So the
total rep values from the employees' perspective
are those that are shown in line item nine. And
trying to get this to an apples to apples because
one is a six year calculation, which is obviously
higher, and one is a five year. So I've expressed
it in the last line as a per capita annual value,
$6,430.00 under our proposal $4,700.00 under
theirs. The organizations have taken a position
which I describe for you in the balance of my
summary statement. That the carriers' proposal is
deficient. And it is deficient in certain
respects. And first and foremost is of course that
as we have developed in detail and at length this
morning, the proposals, the proposed settlement
does not begin to compensate employees in a manner
that is consistent with the financial prosperity
of the industry. That is number one. Number two, we believe, and I believe in particular, that the proposal will not enable employees to keep pace with inflation let alone increase real pay which we think we are entitled to. Now the reasons for this is outlined in our Table 43 which is on Page 147 of the chart book. So let's look at a couple of numbers here, some of which I referred to earlier. We were comparing our proposal going forward. Now I'm looking at their proposal going forward in terms of the ability to maintain real pay. Table 42 by the way, on Page 146 of the chart book is simply a reproduction of the consumer price indexes that we have today. And this is the source of my comments regarding the trailing 12 months period, and the trailing 6 month period, and just recording of the reality that the inflation is heating up and it has been running at a rate that far exceeds what the carriers are assuming it to be. Table 43 is more instructive. These are the inflation rates necessary to break even, and the inflation rate necessary to match
the 2005 agreement under the Intra (ph) proposal to us. So let me take a minute to describe what we're talking about here. Looking at the first portion of the table on Page 147, this is Table 43. It is record page number 23-28 (ph) in the employees case. You see that I calculate what I call a breakeven target. The December '09 CPI is 211.703. That is known. The August 11 CPI, the last known CPI before the next one comes out Wednesday, was 223.3. So we have 20 months under the current agreement. Now over 20 months, the annual inflation rate has been going up at a pace of 3.3 percent a year. Now this is just a given. You can assume anything else you want as the carriers have. They are assuming that it wouldn't go up, but it actually did. So this is the real number, 3.3 percent. So if you take the increase over the term, including the special adjustment that they proposed to us, and you net out the health and welfare design change, you get 17.5 percent. That is the number that I have developed in the prior table that reflects the net increase.
or return to the employee. If the CPI on December 2015, which is the day before our amendable date under a proposed 6-year term, would be 248.751 in order to break even. In other words, if the CPI reaches that level, then we will have it will have risen 17.5 percent over the term and we will have broken even. So over the next 52 months of this 72 month period the annual inflation rate would have to be 2.5 percent or less in order for us to. Or 2.5 percent to break even. To gain real pay, it would have to be less 2.5 percent. To lose real pay, it would be more than 2.5 percent. So a couple of things are going on here that distinguish my calculations and my conclusions regarding this from that of the carrier. Number one I'm asking the board to take into account total cash compensation, including the concession on health and welfare. I mean we were lectured last week on how total compensation is the only way to measure this. And yet when they do their real wage analysis they are looking at changes in the wage rate only. It seems to me you have got to
net out the concession on health insurance, which is cash compensation to the employee. It is cost shifting. Now let's look at the non-op (ph) agreement under the last round of bargaining. And these are all hard numbers. These aren't all new numbers. The December '04 CPI which is the month before the amendable date under the last round of bargaining, the CPI is 186. It goes up 13.82 percent. The general wage increases net of health insurance concessions under that agreement were 18.5 percent. So real wage increases over the term were 2.4 percent. Now this goes to support what President Scardelletti was referring to when he said; this is not even as good, this offer of theirs is not even as good as the agreement that we made in the last round when their financial condition was not nearly as strong. He is absolutely correct about that because even after taking the health insurance concessions on health care contributions into account, we still made out on the last agreement with real wage improvement of 2.4 percent. If we were to replicate that
experience under these recommendations that you are making, inflation would have to be 1.96 percent or. I'm sorry. Yeah 1.96 percent for the balance of these three years. Now these are under circumstances where it is currently running at a 3.3 percent rate or greater. Again, it is my judgment that under their proposal, and given their insistence that we concede cash compensation in the form of healthcare cost shifting, that we can't even break even over the course of this agreement, let alone do as well as we did under the last contract. Clearly, there is no apology here for insisting on real wage advancement, particularly under circumstances where they are doing so well financially and where under the circumstances of before PEB 219 the same analysis produced the opposite result for real labor, which created this real wage lag that we now suffer under going into this next contract. Lastly Mr. Chairman, I want to talk about my development on the model which is an effort to price out our proposal. But more than that, it will evaluate the
impact of this proposal on the financial fundamentals of the railroads going forward. Now what I'm reporting to you on pages 44, 45 and the balance of the chart book regarding the costing, are kind of the report pages, if you will, for a pricing model that goes on in detail with a lot of ingredients in it. And I don't know how much time you want me to take at this point to explain the methodology. I think that at this late hour I will not. But obviously if any of the board members want to inquire as to the precise methodology here I'll be glad to respond. But let me tell you what's in here. For the years of our contract, the cost of our proposal is on Table 44. And as you can see, we are dealing here with 5 years. 2010, 2011, 12, 13, 14 and 15. 2010 being the . I'm sorry. I've modeled out six years because I wanted the model to be sufficiently flexible to deal with the carriers' proposal as well. Which predictably I also have valued. So the model goes out six years, but the analysis I'm presenting to you is confined to the impact that the organization's
1 proposal has to the P&L's of the carriers, not the
2 employers. Not at this point. So what we have here
3 is the cost of our proposal. And the principle
4 ingredients here as you can see are the general
5 wage increases, and the vacation change. Alright?
6 Those are the two across-the-board economic
7 proposals that will cost all the reorganization,
8 with the exceptions of supplemental sickness,
9 which is also on my radar as a general proposal I
10 could also value. But we regard that as being non-
11 cost in the sense that it is simply an updating of
12 an obligation that the carriers have committed to
13 before. But I'll get to that when we get to this
14 supplemental sickness case. So what you have
15 before you are the changes in the base case, which
16 is total labor cost under status quo going
17 forward. And the total labor cost as proposed
18 going forward. The difference between the base
19 case and the proposed line, obviously is the
20 incremental cost of our proposal. And these
21 numbers that you see, they are big numbers, they
22 are not in millions or anything they are the
actual numbers. So we are dealing with a payroll base for the coalition proposals of a labor cost base, I should say, of $311 million. And this is total.

I'm sorry. That is the cost of the GWI. That is the wage increase cost base which I think you were looking for before.

MALE PARTICIPANT: Percent. Got it.

SPEAKER: Exactly. So when you get to the bottom, I'm rolling up not only the payroll-based compensation, but also the rest of the labor cost structure, including all of the benefits. So that is how you get to the total labor cost line at the bottom there. So total in terms of total labor cost, our base is like $9.6 billion incremental to that would be the $311 million GWI that we proposed for the first year of the agreement. Okay now it is necessary for me because I'm looking at this from a carrier-wide aspect, a carrier-wide point of view, to include in the analysis the costs of the UTU agreement for the UTU. Because obviously that is going to apply to a certain
proportion of the railroad's workforce. So those pieces are on Table 45. The general wage increases. The plan design savings, which are valued at $79. The yardmaster half percent. The lump entry rate, which we are told by the carriers will be $711 per person. And the certification allowance, again predicated on 144 starts in the $700 per person that we received from the carrier. On page 46, moving forward, we put all these ingredients together. That is to say the UTU tentative agreement, and the proposal by the 11 organizations into the overall 2010 base case which includes total labor costs for all of the organizations on all Class 1 railroads. It is a number of about $13.9 billion. The first part of it is the base case, first three lines. And then the next three lines are the total labor costs under both the proposal of the coalition and of the UTU Yardmaster agreement. And then all added together would be total union. And so this would be the total incremental cost under our proposal to all the carriers, would be that $346.3 million
number. Now what I would want to do next is say;
okay what if you, if you absorb these increases in
your labor costs, what will be the impact on the
carriers fundamentals? By that I mean those
financial metrics that we've been exploring all
morning. And in particular the operating ratio,
the labor ratios and the revenue margin. Those are
the principle ones. All of which will help explain
whether or not there is a sustainable level of
profitability for the carriers under the proposal
of the coalition. So this is what is called the
static case. This means that there was no growth,
no change in freight revenue ton miles. No
increases in volume. Freight revenue per ton mile,
which is average prices they remain flat. There is
no non-labor expense inflation. There is no
employment change, so there is really, there is no
increase in productivity. And what is embedded in
here by way of changes in labor costs going
forward is simply the inflation and health and
welfare. Which is 7.5 percent beyond 2012. We
actually know what those rates are in 10 and 11.
So they are just embedded in there at their actual cost. The ARMA (ph) which is our health insurance for retired population, will go up by 8.9 percent under this assumption. Dental inflation will be 3 percent per year. The vision care inflation is at zero. And the supplemental sickness insurance benefits will also be zero, under this assumption.

So this is the status case. Now let us look at the yellow portion of the table, if you will. If nothing else happens to those drivers of productivity, of yield and of volumes, then the operating ratio in 2010 which is actual at 17.31 percent would have to climb. Because obviously my expenses are going up, my revenue is flat. So it would climb from 73.1 to 78 percent. The labor ratio which is let's look at the labor revenue ratio because that is what I've been focusing on in my earlier testimony. It is presently at 23.8 percent. That is a little different than the number you saw earlier. About the 25 cents on the revenue dollar. That is because this is just a coalition and it would exclude non-contract
people. Okay? This is simply the unionized portion of railroad employment. So it is going to be a smaller number. So it is 24 cents on a dollar and that will creep up to around 29 cents by 2014 with no growth under the static case. The revenue margin, which again is going to dictate what is left over for profit, is going to climb from. I'm sorry, shrink from the 93 cents down to 76 cents under this scenario. And that of course is because my revenue is flat-lined. My prices are flat. And there is no growth in traffic. No growth in productivity. This is what happens if the world stops, and our proposal is adopted. I haven't done this exercise yet, but if you look at 2011 under the absolute worst case scenario, the numbers are still better than they were in most of all of the railroad history. But that is not a realistic picture because it is not going to be flat-lined. Let's go to Scenario A. Scenario A is represented by Table 46. And this simply adopts our proposal as written for vacations and general wage increases. As well as the increases under the UTU
agreement for that portion of the population, and
this is what happens. By the way, Mr. Chairman, if
I haven't made this clear, on page 18 of the
summary statement which is record page number
2159, I have a summary of all of this. So it may
be actually easier to follow than what I'm tracing
through now. But if under Scenario A. Scenario A
incorporates the actual experience over the past
six years, which is over the course of our last
collective bargaining agreement. From 2004 through
2005. In other words it is the five years
commencing in 5, but year over year, 2004 is the
base. So what if freight revenue ton miles went up
at that same pace? That would be 3/10 of a
percent. Because remember we saw earlier that the
traffic was fairly constant over this period. That
wasn't really the source of their high rates of
profitability. They were living through the
recession. There was actually a constrained demand
over the last six years. However freight revenue
per ton mile, which is the average price, went up
at a rate of 6 percent per year. Now that is
pretty strong. Non-labor expense inflation was 4
percent, and that is actual. And they still had an
employment change of 0.6 percent. So if you were
to realize those actual changes going forward,
then what you would see in terms of the impact of
our proposal on the P&L's would be shown at the
bottom of Table 47. The operating ratio would
continue to fall. The labor revenue ratio would
be, would fall as well to 22 cents on the revenue
dollar. And the revenue margin would climb
significantly from 93 cents to $1.44. So what this
is telling you is if we adopted the unions
proposal and they experienced the rate of growth
and performance that we had over the past six
years, there is no doubt that the prosperity of
the railroads would continue at this terrific pace
that we've been seeing. It is argued and I think
reasonably so that there is no basis to assume
that we're going to do as well in the next three
years as we have done three or four years, as we
have done over the past six years. So let's back
off some of those better performances and look at
the last ten years. That last ten years of course included a big period of time where the competition was stiffer, where we had less of an increase in prices, traffic crepted along. It includes the great recession of course, as did the last six years. But let's see we only do as well as we did in the last ten years. Now I've got an increase in ton miles of 1.4 percent, my revenue is going up by, my prices are going up by 4 percent per year. My non-labor expense is going up by 4.8 percent and my employment is actually declining by 1 percent per year. So I have a bigger boost in productivity. Under those circumstances, again, the operating ratio falls, the revenue ratio is about the same area, 23 percent, 22 percent. And the revenue margins go up. Scenario C is projections made by at least one of the analysts. I can pick from a number of them, but as we learned, the outside analysts are predicting big and good things for the railroads. So I asked myself, well what if city projections are correct? City projections for pricing and
volume? They're projecting 4 percent in volume and pricing to go up by 3.1 percent per year. I've plugged in 5 percent inflation rate for non-labor expenses and also added an employment change of 2 percent per year. So we're going to grow. We're going to grow to meet this extra volume. And even under these circumstances, the operating ratio falls, the labor ratios are constant at 23 percent and the revenue margin climbs, fully indicative of ability to finance and to pay for our proposal in full under expectations of the outside analysts.

Now I've got two other scenarios in here, and of course this could go on forever. You can call for any scenario you'd like to see, but this is one for 2.5 percent growth, so I'm going to have a 2.5 percent growth in revenue ton miles. 2.5 percent increase in prices and 2.5 percent increase in non-labor expenses and no change in employment.

Okay, so I'm going to have a productivity increase of here of some slight amount. And again, as you can see, revenue margins up, operating ratio is down, labor revenue, as a ratio, flat lined at
23.8 in year one, 23.5 going out. And I back the
2.5 percent off and look at a 2 percent growth
rate. Same results. Operating ratio is improved,
the labor ratio to revenue is 24 percent in 2010,
it goes up to 24.5 percent, no big deal, the
revenue margin expands. The point of the exercise
is quite apparent. The board can recommend and the
parties can adopt the union's proposed general
wage increases without having any interruption in
the progress that the carriers have made over the
past several years. In fact we would predict that
under any reasonable, credible scenario that this
prosperity would continue. Any questions?
CHAIRMAN JAFFE: I think we're in good shape at the
moment. Obviously if we have something else,
you'll be on tomorrow as well, will you not? MALE
SPEAKER 1: I'll be back.
CHAIRMAN JAFFE: That's what I figured. MALE
SPEAKER 1: It's hard to get rid of me.
CHAIRMAN JAFFE: Sounds fine.
UNIDENTIFIED FEMALE SPEAKER: I think we need to
move on and take care of vacation today if we can.
I think our estimate is pretty good on the time of that, though we may run, obviously, a little over five at this point, if that's acceptable. But I think if we get through that piece we'll be in good shape for tomorrow.

CHAIRMAN JAFFE: Sounds fine. Off the record for a moment. At your convenience. Is Ms. Parcelli here? Oh, you're there, that's fine. I'm sorry.

BETH ROMA: She got delegated to the back.

CHAIRMAN JAFFE: That works.

BETH ROMA: Good afternoon, my name is Beth Roma and I am one of the attorneys for the coalition of rail unions. Speaking today in support of the union's proposal to increase outdated vacation benefits and to provide a more equitable prorata system of benefit allocations is William BohnH, a 37 year member of the International Brotherhood of Electrical Workers and current director of the IBEW's railroad department. Speaking with Mr. BohnH today is Dennis Pierce, a 31-year member of the International Brotherhood of Engineers and Trainmen and the BLET's current president. I also
note, although he won't be speaking, the union's economist, Tom Roth, will be available to answer any questions the board may have. Our first speaker is Bill BohnH. After serving in the navy as an electronic technician, Mr. BohnH, in 1974, at the age of 22, started working as an electrician for Penn Central Transportation Company. At that time he became a member of IBEW local 2270, based in Wilmington, Delaware. He spent the next 19 years working as an electrician, 17 of those with Amtrak. He was elected and served as the president of his local from 1980 until 1993. He then became the assistant general chairman of railroad system council 7 located in Philadelphia. He served in various capacities for the system council before being appointed in 2002 by IBEW International president Edwin D. Hill to serve as an international representative in the IBEW's railroad department. In 2004 he was appointed to director of personnel for the IBEW and in January 2006 he was appointed to his current position as director of the IBEW's
railroad department where he continues to serve in that capacity today. And with that I'll turn the floor over to Mr. BohnH.

CHAIRMAN JAFFE: Good afternoon. If I could ask the court reporter to please swear in Mr. BohnH.

WILLIAM BOHN): Thank you, thank you Mr. Chairman. Thank you for that break. I needed that before I got up here. As Beth said, thank you for the eloquent introduction, my name is Bill BohnH and I'm the director of the IBEW railroad department. The IBEW represents approximately 5300 highly skilled and hardworking electricians employed with the nations rail carriers. Our members work on all of the extensive electrical components associated with freight railroads, including but not limited to locomotives and associated electrical components, all other rail machinery, communication and signal equipment in the carriers' facilities and buildings. I would like to thank the board for this opportunity to speak to you today on behalf of the unions and in support of our proposal to make long due changes
to our national vacation agreements. I'm here with
Dennis Pierce as Ms. Roma has already alluded to,
president of the BLET, to speak to you today on
behalf of the more than 90,000 rail employees
represented by the 11 unions in our coalition. And
I must say when my boss asked me what I was going
to testify about, I told him vacations. He said,
well that's appropriate because that's your field
of expertise. But I don't think he was referring
to my knowledge of railroad vacation agreements.
The vacation benefits for these employees are
governed by one of three national agreements
signed decades ago. The first agreement is the
1941 National Vacation Agreement for Non-
operating Employees, which applies to all of the
unions before this board, with the exception of
the ATDA, the train dispatchers union and the
Brotherhood of Locomotive Engineers. The second
agreement is the 1965 Dispatchers National
Vacation Agreement, which applies only to the
ATDA. The third agreement is the 1949 National
Vacation Agreement for Operating Crafts, which
applies to BLET. I will leave the specifics of
that agreement to Dennis Pierce from BLET to
discuss after I am done speaking. With a few minor
exceptions, these agreements provide for
essentially the same amount of vacation benefits.
You know, after what I heard last Thursday and
Friday you would think I have a lot of nerve
standing before you asking for additional vacation
for the employees we represent and maybe I should
be offering to give some vacation back to the
carriers, but don't get your hopes up railroads.
The way the carriers made it sound we are overpaid
and already get too much paid time off. But
nothing could be further from the truth. And
before I address the specifics of the union's
vacation proposals, I would like to briefly
address something the carriers said last week
about the unions' alleged lack of intensive
bargaining over vacation. Contrary to the
carriers' assertions, the unions take their
vacation benefits and our proposed changes to
these benefits very seriously. All of the unions
before the board properly notified the carriers in
our section six notices of these proposed changes.
Moreover, during negotiations we repeatedly
attempted to discuss these proposals with the
carriers, but with little luck as the carriers
freely admitted last week during their
presentation. They unilaterally made the decision
that only their wage and health and welfare
changes would be discussed in bargaining and
adamantly refused to discuss our other proposals
including vacation. And once they reached
agreement with the UTU, they refused to discuss
anything but they are alleging is a pattern and as
you are well aware, the alleged pattern does not
include any additional paid time off. Although
they call it restraint, it was really just a
refusal to negotiate over legitimate subjects of
bargaining. Accordingly, I think it is quite
outrageous for the carriers to now claim that we
have somehow waived our right to submit to this
board the proposals they refused to talk to about
including vacation. Now let me briefly discuss our
vacations proposals. The unions propose two changes to the national agreements. First, we propose increasing outdated vacation benefits. Second, the unions propose doing away with the harsh all or nothing system that is currently in place where employees must work a minimum number of days in the preceding calendar year or lose all of their vacation for the following year. In its place, we propose adopting a prorated system of vacation benefits allotment. Quote, "when you spend time away from work, you come back refreshed and with renewed focus." Employees are eligible for two weeks vacation after one year of service, three weeks vacation after five years of service, four weeks vacation after ten years of employment and five weeks vacation after 20 years of service. Great vacation benefits right? Yeah, they are. Well the quote I just used happens to be from the UP website where they state what benefits are available to their management employees. The vacation allowances I just quoted, well they sure are generous, but they're not for the employees we
represent, they're for the carriers' management employees on BNSF and UP. These benefits can be found recited on our union exhibit #43 and Bates UH64. These benefits are for the people who sit in the carrier shop offices and the office buildings across the country, out of the elements, in very comfortable and safe environments, and make decisions on how to run the railroads. It's not that I'm trying to downplay the importance of what these employees do and their valuable contributions in making the carrier successful. Nor do we begrudge them their working environments. But these are not the vacation benefits of carrier employees who run the railroads 24 hours a day, seven days a week, 365 days a year, who work crazy hours, including holidays, and often in dangerous and extreme conditions, and who put their lives on the line on a daily basis, sometimes resulting in injury, and sometimes, tragically, in death. No, these employees I just mentioned, our members, we get the following vacation benefits: One week after
one year, if you are fortunate enough to have the requisite days during the preceding year, two weeks after two years, again, if you're lucky enough to have worked the prerequisite time during those first two years, three weeks after eight years, four weeks after 17 years, and finally, five weeks after 25 years. All contingent upon working a predetermined amount of time in the preceding years. Now all that being said, I'd to address the specifics of our proposal. First I'll address the increased vacation benefits request. The unions propose a long overdue increase in vacation benefits, both by increasing some of the benefits and lowering the qualifying times for vacation eligibility. For many employees, the unions proposed vacation schedule would mean a one-week increase in vacation benefits. A chart of our proposed changes can be found on page 75 of our prehearing submission. As a threshold matter, vacation benefits should be increased because the current benefits are woefully outdated. The last time rail employees covered by the 1941 agreement
had any benefit increase was in 1982, nearly 30 years ago. Other benefit entitlements are even older. For example, individuals with one year of service are entitled to only one week of vacation. When this benefit was established, my father was in the navy fighting in World War II. It has not been increased in 70 years. This is not to say that the mere passage of time alone warrants an increase. But rather these benefits are outdated because they are deficient, failing to keep pace with prevailing trends. According to the company's websites, UP, CSX, BNSF, and Etnas all provide more generous vacation benefits to their management employees than they do to their unionized employees. Benefits which increase at a much more accelerated rate than those for our unionized employees. As for unionized employees, under the 1941 and 1949 agreements, an employee is entitled to one week of vacation benefits after his first year. The national average for a similarly situated employee, however, is two weeks. Additionally, an employee with five years
of service is only entitled to two weeks of vacation on the railroad. While the national average for an employee with five years of service is three weeks. As is the case with railroad management employees. Simply put, while the carriers' vacation policies for the non-union employees are more in line with the prevailing trends in this country, the railroads vacation benefits for unionized employees are not consistent with national trends. This gap exists despite the fact that the railroads are dramatically outperforming other industries in the United States, not just economically, but also in productivity gains. This gap is even more troubling when you consider the unique nature of railroad work. I speak from personal experience when I say that railroad work is difficult and dangerous. The railroads run 24 hours a day, seven days a week, 365 days a year operations, working nights, weekends and holidays. Accordingly, our members' schedules can be unpredictable with mandatory overtime, night and weekend work, the
norm. Many employees work on an on-call basis which means they have to be available for work 24 hours a day. And some day work remotely, spending many nights away from their homes and families. Much of the work is physically demanding with many of our workers expected to do heavy lifting, climbing, bending, kneeling and sometimes even crawling. Much of the work is outside, whether there's subzero temperatures and driving snow or 110 degrees in the full sun, the work must get done. And even work done inside in the extreme heat of the summer or the bitter cold of the winter, is often done under difficult conditions in facilities lacking air conditioning and sparse on heat. Of course, all this work must be performed with the utmost attention to safety at all times. Under these demanding conditions it is not surprising that vacation time off is cherished by rail workers who rely on their vacation to take much needed breaks from work to rest and catch up with their families. But what is even more troubling is that railroad employees are working
harder than ever to make the carriers profitable, and railway productivity on class 1 railroads has risen at a dramatic rate, nearly double the national average annual rate, and I don't have to tell you what railroad profits have done. Despite this performance, vacation benefits have remained stagnant for 30 years. While our economist, Tom Roth, has covered the details, the bottom line is that while railroad workers are significantly outperforming their counterparts, in other industries vacation benefits are seriously lacking. At the same time, these highly profitable carriers can well afford to provide their hardworking employees with long overdue improvements on vacation benefits. The unions' proposal will bring the railroads' vacation benefits more in line not just with national trends, but also in line with what is going on on all the railroads in this country. As two examples, I cite Metro North Railroad in New York and the Port Authority Railroad of New York and New Jersey, two railroads that afford my members
significantly higher wages along with richer vacation benefits in line with national trends. And our proposal also continued to recognize and reward the most senior employees who have provided many years of valuable service to the carriers. To be sure, as the carriers point out, vacation is not the only form of paid leave, but the purpose of other types of leave is quite different. Now, don't let the carriers' exhibits in this area fool you for what they have provided you as to the holidays we get is, to say the least, quite misleading. And I'm referring to Carriers' Submission 6, page 41, or Bates C-796. Agreement employees are entitled to 11 paid holidays per year, such as Thanksgiving and Christmas, which is consistent with national averages and what the carriers provide to their management employees. As to personal leave days, agreement employees are entitled to one or two per year, depending on length of service. These personal leave days were established to provide employees some flexibility to attend to such matters as doctors' appointments.
or parent-teacher conferences. Now back to the
holidays for a minute. These holidays aren't
necessarily paid time off from work, as the
carriers would like you - would like you to
believe. As stated earlier, these railroads
operate 24 hours a day, 7 days a week, 365 days a
year and on holidays, and who the hell do they
think are running these railroads on these
holidays? Our agreement employees, our members;
that's who's running the railroads on the
holidays. So while they would like you to believe
that in addition to a vacation time off, the
employees we represent also get holidays off, when
nothing could be further from the truth, as many
employees, most likely a majority, are required to
work on the holidays. Two more points in this vein
and I'll move on. It is important to keep in mind
that vacation days for our members are allotted
differently than vacation days in most other
industries. Generally speaking, vacation must be
taken in a minimum of one-week blocks with a
vacation scheduled determined well in advanced
based on a complicated bidding system, and usually they start in September or October to ask you what vacation you want next year. Furthermore, vacation time off is granted consistent with the railroad's requirements of service. In other words, if their business needs dictate that they cannot release an employee from work during a requested time period, then the vacation is not granted. They decide you can't - they can't lay you off, you ain't getting that vacation. And some railroad facilities even shut down during certain times of the year, forcing employees to choose between using their vacation time during the shutdowns or taking unpaid leave, something our members generally cannot afford to do. And last but not least, I will address vacation as it relates to our members becoming ill. As opposed to a benefit afforded management employees, most of the employees in our coalition get no paid sick days. As such, when sick, our members have to take the few single day vacation days they're provided so that they do not lose pay, pay most important to our members that
our members cannot afford to lose. Now from a personal perspective; I'm 59 years old, quite a bit older probably than most of the people in this room. I worked on the railroad for only 20 years, and I say "only" because most of the members we represent have worked quite a bit more than that. This work took a toll on my body, working with miserable conditions inside and out, walking, crawling, and laying on concrete or dirt and ballast all day, climbing up and down equipment, kneeling, bending, lifting, banging, using screwdrivers and wrenches, and even a couple of times getting shocked. It took a toll on me to the point that I don't even know if I could go back there today and do the work that many railroad workers my age are presently doing. Vacation time is valuable to them, and they need improvements both for their mental and physical rest and restoration. In view of the foregoing, this Board should adopt the union's vacation schedule. Now I'll talk about pro rata vacation, or prorated, qualifying times. The unions' second vacation
1 proposal is to do away with the current arbitrary
2 all-or-nothing system, where all employees,
3 depending on their length of service, must work
4 five months or more in the preceding calendar year
5 in order to earn any vacation for the following
6 year. Under the agreements for non-operating
7 employees and ATDA, employees must work 120 days,
8 about six months, to qualify for a vacation. Over
9 the years, this requirement is eventually reduced
10 to 100 days or about five months. If an employee
11 has failed to work these minimum amounts before
12 December 31st of a given year, he or she is not
13 entitled to take any vacation the following year.
14 This applies no matter how long the employee's
15 length of service, or even if he or she falls
16 short of his requirements by only one day. The
17 result of this arbitrary rule is that employees
18 are denied their rightfully earned vacation. One
19 example of the unfairness of this rule is seen in
20 the case of a new employee hired midyear or later.
21 For example, the employer hires a shop craft
22 employee in late June and only works 119 days
before the end of the year. Under the current agreement, this employee is not entitled to take any vacation the following calendar year. The earliest he would be eligible for vacation would be the start of the year after that, a full year and a half after he was hired or the beginning of his third year of employment. Other employees who are also potentially hurt by this arbitrary all-or-nothing rule include furloughed employees, employees who are out on extended sick leave, or employees who retire prior to the end of the year and thus lose all their vacation earned during the previous year. The unions' proposal to adopt the prorated system remedies this problem. To be clear, we're not asking that employees earn vacation time for time not worked, not at all. To the contrary, the unions are proposing that vacation benefits be directly tied to the amount of time worked. If an employee works 90 percent of the required qualifying time, that employee should be entitled to 90 percent of the vacation benefits the following year. Prorating benefits is a fair
remedy - remedy to an unfair rule. Indeed, Union Pacific provides a prorated system of vacation benefits through their new nonunion employees based on the number of months remaining after the employee is hired. And according to CSX web site, their nonunion employees are eligible for vacation as of their date of hire. Let me finish up by offering you this one last example of unfairness to consider. A dedicated railroad employee with 45 years of service and an unblemished record unfortunately is involved in an automobile accident and sustains serious injuries. The accident happens to occur on April 2nd, well before he obtains his 100 qualifying days for a vacation for the following year. Due to the serious of his injuries, the employee is not able to work, is not able to return to work until January 1st of the following year. In accordance with the current rules in effect, this employee would not be entitled to any vacation in the year in which he returns to work following his accident. So this dedicated 35-year employee,
somewhere between his mid-50s and mid-60s, an employee who will undoubtedly spend his remaining working years dedicating his body and soul to the railroad he has known to - he has come to know and love over the past 35 years, he has to go an entire 365 days after returning to work before being entitled to any vacation. Can this be considered fair? Is this any way to treat an employee? We say not. In the interest of fairness, we hope you agree. Accordingly, the carriers cannot claim that this prorated system is not a fair request. In conclusion, I offer the following: Railroad employees are working harder than ever to make the carriers profitable; yet, their vacation benefits are outdated and lagging behind the benefits of carriers' managing employees and national averages. We strongly believe that our proposal is fair and appropriate under the circumstances, especially in light of the economic health of the industry and the contributions of our workforce. Our workers deserve these periodic breaks from work to rest.
and spend more time with their families so that
they can come back to work refreshed and ready to
make the carriers even more profitable. Remember
this quote from the UP web site: When you spend
time away from work, you come back refreshed and
with renewed focus. This applies to us just as
much - and our members - just as much as it
applies to them, although we need it more and we
deserve no less. This concludes my remarks. Thank
you for your time and indulge. I'll be happy to
answer any questions if you have any, and I'm
ready for a week's vacation.

CHAIRMAN JAFFE: We're in good shape. Thank you,
Mr. BohnI. MICHAEL S. WOLLY, ESQ.: Mr. Chairman,
members of the Board, my name is Michael Wolly.
I'm the General Counsel of the Brotherhood of
Locomotive Engineers and Trainmen. The reporter
asked me if I want to be sworn; if that's
necessary, I will, but I'm not going to tell you
any lies. It's my privilege today to introduce you
to BLET's National Division President and the
President of the Teamster's Rail Conference.
1 Dennis Pierce has been actively engaged as a
2 carrier employee and union officer for 34 years.
3 In his remarks he will describe for you operating
4 craft vacations and his particular unique
5 perspective on that as having been employed in
6 four crafts over that period. Dennis's union
7 service began when he was a locomotive engineer at
8 Burlington Northern Railroad and was elected to be
9 only a Local Chairman in 1991. He moved up to
10 full-time Vice-General Chairman in 1995 and
11 General Chairman in 2001. Dennis was elected a
12 BLET National Division Vice President in 2008 and
13 become National President in 2010. BLET National
14 President, Dennis Pierce.
15 CHAIRMAN JAFFE: Good afternoon. If I could ask the
16 reporter to please swear in Mr. Pierce.
17 COURT REPORTER: Raise your right hand, sir. Do you
18 swear the testimony you're about to give in this
19 case is the truth, the whole truth, and nothing
20 but the truth under penalty of law?
21 DENNIS R. PIERCE: I do.
22 COURT REPORTER: Thank you.
DENNIS R. PIERCE: Good afternoon, Mr. Chairman, Board members. I know that I'm the last person to speak today and I learned a long time ago that having that dubious honor means you really don't want to be the guy responsible for keeping people from their evening functions, so I'm going to try to be brief. As I understand it, you have my written remarks. If I leave anything out, please refer to them. I'll try to move through it and get to the pertinent pieces as quickly as I can. As Mike Wolly said, my name is Dennis Pierce. I am the National President of the BLET. I'm also the President of the Teamsters' Rail Conference, and that conference has two organizations represented here this week: The BMWED and BLET. The BLET represents approximately 36,000 highly-skilled locomotive engineers and trainmen employed on the nation's class 1 railroads. This is a bit of a unique PEB in that there is a combination of operating and non-operating employees present; that has not happened at the national level, as I understand it, since PEB 219. For that reason, we
thought it was important that you understand some of the differences between the non-op, as we call it, vacation rules, and how vacations are accumulated and the operating rules. Today I'll try to explain the application of those operating craft vacation rules. Before I do that, I want to give you a little bit of why I think I have a unique perspective on this. I started my railroad career, as Mr. Wolly said, in 1977 as a maintenance of way employee and was a member of the BMWE. Two years later, I transferred and became a material clerk under the old union BRAC; that's a predecessor union to the TCU. About a year and a half later I transferred again. These were the late '70s, early '80s, when trying to remain employed full time was my priority. I transferred to the Operating Department in 1980 as a locomotive fireman and promoted to an engineer in 1981, joining the BLE then. I think that the biggest take-away from that, in the first 36 months that I was employed, I was furloughed for 18 months. And the first eight years that I worked
1 as a locomotive engineer, I didn't spend more than
2 three months working at the location where my
3 family lived because of the railroad's ability to
4 right-size their operation, as we've discussed
5 some here this week. And with - and because of the
6 economy and layoffs and forced assignments, I got
7 to travel a very large swath of Burlington
8 Northern. The railroads would have you believe
9 that the employees do not experience the downside
10 of railroading, and I'm here to tell you that they
11 do. The lifestyle of a railroad employee is a
12 unique lifestyle. It is one that many people do
13 not understand, nor have they had the opportunity
14 to experience what it's like to go through what
15 railroad employees go through. Having worked in
16 both the non-operating crafts and the operating
17 craft, the differences are significant when you go
18 to the operating side. To this day, my extended
19 family does not really understand why I miss so
20 many birthdays, holidays, and was unable to even
21 schedule a doctor's appointment with an unassigned
22 job like I had with any assurance that I would
actually be there to make it. I don't share that
with you to complain; I share that with you to
explain. That is one of the reasons why vacation
time is as near and dear to railroad employees as
it is. It is the only opportunity that railroad
employees have to step away from their careers, as
Director BohnI said, to come back recharged. But
it's the only opportunity that they have to
actually get the time with their families that
they so sorely need. As Director BohnI explained,
the national agreements got their genesis in the
1940s. The National Operating Craft Agreement was
implemented in 1949. And what I'd like to do is
address in detail our craft-specific presentation
exactly - tomorrow I'll - let me start over there
- tomorrow I'll address in more detail which
carriers we're here to bargain for; I think that's
an important piece for the Board to understand,
especially in light of some of the comments that
were made last week. Today what I'll stick to is
just how the national agreements for operating
craft employees apply, how they've been modified,
and how things stand today. Incremental modifications have been made to the 49 BLET national agreement over the years, and as a result of these modifications, vacation in the operating crafts is accumulated as shown on the slide. Although you'll note that the years of service shown on the slide are the same as a non-operating crafts, that is where the similarities end. As Director BohnI said, non-operating craft employees have to work 100 days in a calendar year to earn their vacation in a following years. Engineers and trainmen in an operating service are required to work 225 basic days in yard service and 270 basic days in road service. It's important to understand that it's hard to correlate those days between the crafts, and that's one of the things that I had hoped to explain today. There are two bases of pay for operating employees as a general rule: Yard service and road service. The vast majority of our employees are in unscheduled and unassigned road service and their pay is very unique. Just to briefly explain how that works,
road assignment employees, as a general rule, the largest population of them are assigned a rotating list that work on a first in-first out basis. They get two hours' notice as a general rule of when they're going to go to work. There are line-ups they can refer to approaching that, that they're often unpredictable, unreliable. And operating craft employees have to be ready to go to work at two hours' notice and then be gone anywhere from 24 hours to 48 hours before they return home. In some cases, operating employees work - are gone from home more hours in a round trip than the average American works in their average work week. And I think that is noteworthy as to the experience operating employees go through. The pay structure is also very different. Yard employees are probably the closest to the non-operating crafts when it comes to their pay structure. However, engineers and yard service are still paid on a mileage basis. That mileage basis is converted to days and is part of how the accumulation begins to count days towards
vacation. The written brief here will spell out a little bit more detail how those are accumulated; I won't get into those details. I will move to road service, which is the most complicated. Road service employees are paid exclusively on a mileage basis. There is no 40-hour work week. There is no comparable amount of hours worked when it comes to accumulating vacation; rather, the mileage of the run that they make has to be calculated into - into days and converted into the prerequisite number of days required to earn a vacation. What I'd like to do is put up the next slide. It shows how this even gets more complicated. Changes in the operation over the last fifty or sixty years. Things like the change from the seven-day workweek and yard service to a five-day operation. Differences in pay between the basic day mileage and road service and the over miles. The parties have agreed to multipliers that have to be applied to the days once they're accumulated based on the mileage structure. Again, in yard service, a 100 miles is one day, in road
service, through freight road service, 130 miles is one day. Those days are then multiplied to come up with the number that you need to be able to have earned your vacation. The take-away from this chart is that in yard service, you can be expected to work almost six and a half months to earn a vacation in a calendar year. The worst-case scenario in road service: an employee would have to work over nine months to earn a vacation in the following calendar year. As Director BohnH said, the railroads have suggested that the other forms of paid leave that we have should more than suffice our needs for personal time. We beg to differ in that regard as well. The board needs to understand that prior to 1996, the only form of paid leave that operating craft employees had over and above their vacation, was the holiday pay. I won't go into the details of the holiday pay agreement because I think Director BohnH has covered those sufficiently, but I do want to make sure that everyone understands that we concur with his assessment. The railroad unilaterally decides
1 which jobs work holidays and which jobs do not.
2 That is not up to the employees. So in most cases,
3 the ability to take paid leave, which we're here
4 to talk about, is severely limited when it comes
5 to the application of holiday pay. In 1996, for
6 the first time road service employees, who as a
7 general rule have never qualified for holiday,
8 were given personal leave days. We obtained those
9 through the 1996 National Negotiation. But these
10 personal leave days are not in addition to holiday
11 pay. They are in lieu of holiday pay. So road
12 crews only get those days when they're in road
13 service. The yard employees get the holidays.
14 There is no combination of the two in the
15 aggregate. The slide that's up now shows how those
16 have to be earned. The take-away on this is that
17 no employee gets the full compliment of eleven
18 until they have 20 years of service. Beginning
19 employees start at three and work through the
20 progression to even get to the point that they
21 have access to the eleven personal leave days.
22 Perhaps the part of this that I think limits the
benefit of the personal leave days in our perception, they've not proven to provide the paid time off that the employees seek and here's why: personal leave days are not demand days off. Employees do not have the right to choose and pick when they will they take those days off because they cannot demand them. Rather they are only allowed to be taken when approved by the carrier and that's on a day-by-day basis. These requests are routinely denied for any number of reasons, the end result being much like holiday pay in that the employees do not have the right to have access to paid leave when they need it. They get paid leave if and when the carrier decides to give it to them. That, we think, is one of the shortcomings in the argument that we have sufficient paid leave and I think it's important for the board to understand how that applies in the operating department. In the end, and I'll repeat it again, the only true paid leave that employees can count on in the operating crafts, is generally their vacation time. There's one other
piece that has changed since the last vacation
changes were made by agreement, which was 1996.
Starting in 1999, the class I carriers started an
aggressive push to require operating employees to
work more, limiting almost all access to their
forms of unpaid leave. They have unilaterally
implemented what are called attendance policies,
absenteeism policies, availability guidelines, the
names go on and on. And these programs have
dramatically limited the operating crafts access
to time off for personal needs. I'm not really
here to pick on one railroad out of the bunch, but
I will discuss briefly the latest version of the
attendance policy on CSX. Under that policy if an
operating employee takes more than one unpaid day
off in a month, these are employees with no
scheduled rest days in many cases, the rotating
schedule that I described earlier, if they take
more than one unpaid day off per month, they are
subjected to discipline. I don't know that there
are many people in America that are confronted
with a situation like this when it comes to how
1. you're supposed to handle your personal needs.
2. We've actually had in one case, a divorced member
3. disciplined for excessive absenteeism for taking
4. court ordered visitation with his children because
5. he exceeded the one-day rule. Ironically there are
6. only two acceptable ways for an employee to avoid
7. discipline under this policy. One is to take paid
8. leave and that's why we're here talking about paid
9. leave. The other is in the case of illness and
10. it's a bit of a unique exception. The CSX, much
11. like other class I carriers reserve the right to
12. charge employees for taking unpaid leave when
13. they're ill and CSX has given an exception that
14. we're still, I guess, on the property arguing
15. about. That's on the screen now as well. The only
16. way a locomotive engineer can take time off when
17. he's ill, in an unpaid fashion, is if he's visited
18. an emergency room. We've tried to get this
19. understanding relaxed to include some of the
20. things the carrier shared with you last week. Bill
21. Hildebrand [ph] will touch a little bit more on
22. this tomorrow. Urgent care doesn't cut it, your
M.D. doesn't cut it, your dentist doesn't cut it. You have to go to an emergency room in order to avoid discipline if you are ill. Again, all of these things drive us back to the same common purpose, is that paid leave has become a precious commodity. For these reasons as well as those presented by Director BohnH, we ask that this board recommend adoption of the union's vacation benefits schedule. I would also like to comment on the organization's request for pro-rated vacations, just briefly. As I said before, the carrier would have you believe that labor never shares in the downside of railroading and we think the exact opposite is true. The operating crafts are usually the first to feel that impact. Contrary to the carriers' argument that rates of pay drive hiring practices, in the operating crafts it's train starts. Train starts drive hiring, they drive retention and they drive furloughs. And while our crafts are not the only crafts they experience furloughs, we are generally the first crafts that experience furloughs. When
the trains don't run, the crews don't go to work.

There's a direct correlation there. We saw this firsthand in the great recession that the carriers spoke of last week. Employees who had earned vacations for years, lost their vacations due to be furloughed before they had earned the prerequisite number of days. Remember that threshold is as high as nine months for road employees. The provision in place today that deprives an employee who has worked almost three quarters of a qualifying year of any vacation in the following year, is not only dated, we think it is horribly punitive in nature. And before I close, there is just one last thing that I think I need to touch on before the carriers bring it up and use as an excuse to try to talk you out of this. And that is the ebb and flow relationship between BLET and UTU. We heard some of that last week when it came to how the two agreements interact. We're here to make sure that you understand that there is absolutely no impediment to BLET represented operating crafts and UTU
represented operating crafts having differing vacation benefits. This is already the case on two of the class I's present here. The engineers on the CSX railroad have a sixth week of vacation, the engineers on the BNSF have a sixth week of vacation, the ground service employees do not. These agreements do interact and they interact without any complication, so there is no reason to think that would be any sort of an impediment to implementing the improvements that the coalitions have requested. For these reasons as well as those presented by Director BohnH, we ask that this board recommend adoption of the union's proposal for pro-rated vacations. Again I'd like to thank the board for this opportunity to speak. I'm sorry for keeping you here this late in the day, but hopefully we'll wrap this up in short order. I'm available for any questions that you might have.

CHAIRMAN JAFFE: I think we're in good shape as well, at least for the moment, but thank you very much Mr. Pierce.

MR. PIERCE: Thank you.
FEMALE SPEAKER: We do thank the board for staying a little longer so we at least got through the vacation piece today. Hopefully we will move in a spritely fashion tomorrow with health and welfare still first up. We'll slot supplemental sick and the information requests in after that. I think that makes the most sense and I won't delay anything in further tonight, so thank you again. See you tomorrow.

CHAIRMAN JAFFE: We'll stand in adjournment then until 9 o'clock tomorrow morning. Thank you all very much.
President Emergency Board No. 243

Between

National Railway Labor Conference

Representing:

Union Pacific Railroad Company
BNSF Railway Company
CSX Transportation, Inc.
Norfolk Southern Railway Company
The Kansas City Southern Railway Company
Alton & Southern Railway Company
The Belt Railway Company of Chicago
Brownsville and Matamoros Bridge Company
Central California Traction Company
Columbia & Cowlitz Railway Company
Consolidated Rail Corporation
Gary Railway Company
Indiana Harbor Belt Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
Los Angeles Junction Railway Company
Manufacturers Railway Company
New Orleans Public Belt Railroad
Norfolk & Portsmouth Belt Line Railroad Company
Northeast Illinois Regional Commuter Railroad Corporation
Oakland Terminal Railway
Portland Terminal Railroad Association
Portland Terminal Railroad Company
Soo Line Railroad Company (Canadian Pacific)
South Carolina Public Railways
Terminal Railroad Association of St. Louis
Texas City Terminal Railway Company
Union Pacific Fruit Express
Western Fruit Express Company
Wichita Terminal Association
Winston-Salem Southbound Railway Company

and their employees represented by:

Rail Labor Bargaining Coalition consisting of:
Brotherhood of Railroad Signalman
Brotherhood of Locomotive Engineers and Trainmen
Brotherhood of Maintenance of Way Employes
International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers
Sheet Metal Workers' International Association
National Conference of
Firemen & Oilers
and a coalition of Rail Unions,
consisting of:

Transportation-Communications International Union
American Train Dispatchers Association
International Association of Machinists and Aerospace Workers
International Brotherhood of Electrical Workers
Transport Workers Union of America

Panel Members:
Ira F. Jaffe, Chair
Roberta Golick, Member
Joshua M. Javits, Member
Gil Vernon, Member
Arnold M. Zack, Member
on behalf of the Railroad

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   Washington, DC 20036
   202-223-0723

14 10-18-11 (Background chatter)

15 MAIL SPEAKER: Testing Chairman's mic, test, test.

16 Testing mic two. Testing mic three. Testing
17 recording sound track. Testing Mr. Monroe's mic.

18 Testing mic (inaudible) test, test.

19 CHAIRMAN JAFFE: Good morning. At your convenience

20 Mr. Wilder.

21 MR. WILDER: Good morning Mr. Chairman, members of

22 the Board. It's our pleasure this morning to
present the Joint Coalition's case on health care.

We have assembled a panel that is uniquely able to assist the Board in reaching and considering this issue in reaching the decision that it has to.

First to my immediate left is William A. Hildenbrand. Bill is the Executive Assistant to the President of the Brotherhood of Maintenance of Way division, International Brotherhood of Teamsters. Bill has occupied that position since 1992. He's been with the BMWED for some years before that after completing his active employment as a track foreman. He is and has been a member of the Joint Plan Health Care Sub-Committee that considers the policy questions for the plan committee. Next to Bill is Gene Kalwarski. Mr. Kalwarski is the President and Chief Executive Officer of Cheiron, Inc., a nationwide actuarial firm. I will simply say he is superbly credentialed without going through all the letters and the various certifications. Next to him is Karen Mallett who heads up Cheiron's Healthcare Consulting practice. Karen is a consulting
actuary. She also is superbly credentialed by the various credentialing outfits. Next to Karen is Joel Parker. Joel is, I suspect, known to many of you as he is to me. But Joel is the Vice President and Special Assistant to the President of the Transportation Communications Union of the International Association of Machinists. Joel has been in the railroad industry since 1973. He has negotiated more contracts than I could possibly enumerate here. He has participated in a variety of presidential emergency boards of with which I've been associated with him and he's also a very fine public speaker. Next to Joel is Russell Outhout. Russ has been with the Joint Plan Committee, with the special subcommittee for some years. Russ is the Secretary-Treasurer of the Transportation Communications Unit and has been particularly active in health and welfare matters for that organization. Next to Russ is Ellen Conboy who is the Executive Director of the Social Services Department of the Transportation Communications Union and also the CRLO Director of
the National Health Plan, a position that Bill
first held when the subcommittee was formed.

Richard?

CHAIRMAN JAFFE: One question. Mr. Wilder will
people be testifying individually so I should have
the reporter swear them in one at a time or will
this be

MR. WILDER: (inaudible) would be to swear them in
all at once

CHAIRMAN JAFFE: That's why I asked you.

MR. WILDER: - and then they will testify one at a
time.

CHAIRMAN JAFFE: That's fine. If I could ask the
reporter please to swear in the witnesses
collectively.

REPORTER: Would you raise your right hand please?

Do you swear the testimony you're about to give in
this case is the truth, the whole truth and
nothing but the truth under penalty of (inaudible)

CHAIRMAN JAFFE: Thank you.

MR. HILDENBRAND: Good morning. UNIDENTIFIED MALE
VOICE. Good morning.

MR. HILDENBRAND: My name is William A. Hildenbrand. I'm the Executive Assistant to the President of the Brotherhood of Maintenance Way Employees division of the International Brotherhood of Teamsters. I've held that position since 1990 and I have 36 years' experience with the railroad, 27 as a fulltime union official.

Like all employees represented here, Maintenance of Way employees are covered by the National Health and Welfare Plan. The National Plan is jointly administered by a joint plan committee, the two members of which are the Chairman of the Cooperating Railway Labor Organizations, CRLO, and the National Railway Labor Conference, NRLC. Mr. Scardelletti represents the CRLO as Mr. Grady represents the carriers on a two-person joint plan committee. I served as CRLO Administrator for National Plan between October 1992 and December 1999. From 1991 to present, I have also served as Labor Representative on the Subcommittee for Health and Welfare. The National Plan today
provides health insurance for 73 percent of all employees working for the (inaudible) representing trade carriers and their families. The plan evolved over some 50 years of collective bargaining and is designed to meet the needs of employees working in arduous, dangerous jobs, often away from home in a unique industry that has no direct counterpart. Ninety percent of all workers are today involved in a managed medical care program for the MMCP with the remaining 10 percent covered by the CHCB. By design, the National Plan's MMCP benefits are generous because affordable health care has always been, at least in my lifetime with the railroad, a priority of the organizations. As I have experienced first-hand, rail employees are at great risk of injury and disease that employees, more so than employees in other industries. I can tell you from my old days in the Maintenance of Way department, working the rails, bridges and tunnels; I saw my share of sprains, breaks, blood and a lot of bruises; not to mention the wear-and-tear that occurs on the
body from continuous track maintenance. Today, of course, there are modern high-tech machines that have taken the place of shovels. But the wear and tear is still there. Not only is the wear and tear still happening, but other more hazardous health risks are lurking. The reality is railroading has long been accepted among rail workers as hard, hazardous work. If I could direct you to the Joint Coalition's Exhibit 38, Volume 2 which is a survey of many health studies conducted by Dr. Michael B. Tannen. Dr. Tannen's report reviews numerous studies of the health risks of exposure to diesel fumes, including 2005 health risks assessments by the California Air and Resources Board of 18 California rail yards, and a voluminous health risk assessment of the presence of toxic air in and around the BNSF railways Hobard Rail Yard located in Commence, California which is the largest rail yard in California. Dr. Tannen concludes that the studies, both individually and collectively, provide scientific evidence that supports the generally expected
thesis that because of exposure to diesel fumes, much railroad work is more hazardous and less healthy than most other occupations. Dr. Tannen also notes in his survey of medical evidence that OSHA has determined that diesel exhaust is a pervasive airborne toxin. In workplaces where diesel-powered equipment is used and workers, including railroad workers, are exposed to diesel exhaust face a higher risk of adverse health effects ranging from headaches and nausea to respiratory disease. I would urge the Board members to make a considerable effort to wade through the massive exhibits in these proceedings to read Dr. Tannen's report. You will also hear from our actuary who will explain more precisely than I can that rail workers are an expensive segment of the population to insure. I believe our submission characterizes likened to insuring a house in a flood zone. We need to maintain our health plan benefits without change because of these lurking health risks related to our employment. The current structure features a
1 wholly self-insured administrative services only
2 arrangement overseen by a joint plan committee.
3 The joint plan committee has, especially within
4 the past ten years, implemented many programs and
5 made necessary changes to the plan to contain
6 costs and improve health care for plan
7 participants and beneficiaries. Changes have been
8 made through consensus within the joint plan
9 committee as well as (inaudible) collective
10 bargaining. Prior to commencement of this round of
11 bargaining, the joint plan committee did not
12 hesitate to implement changes needed to improve
13 the plan or to administration and to reduce plan
14 costs so long as those changes were in the
15 interest of the participants and beneficiaries.
16 New programs like disease management, (inaudible),
17 rational med, and other changes have generated
18 plan savings in excess of $75 million since 2007
19 alone. In May of 2008, the chiropractic copay was
20 reduced from $35 to $20. This design change has
21 saved the plan about $3 million to date by
22 lowering the plan's costs for surgeries. These
medical and pharmaceutical programs and others
that have been implemented by the joint plan
committee mechanisms are described in detail on
pages 56 through 58 of the joint coalition's
submission. It is estimated by the plan
Administrator that changes made outside of
collective bargaining over the last decade have
reduced the cost of the plan by 5.8 percent. Yet,
after this round of bargaining began, labor
representatives of the joint plan committee
recommended cost-saving measures that their
management counterpart refused to adopt. Three
such measures are Medco's RX Advantage Program,
Medco's personalized medicine program and the
Centers for Excellence Program. Medco's RX
Advantage Program offers a one-time $0 copay for
any new generic prescription. It also provides a
one-time discount of up to $25 per prescription
for certain brand-name drugs that are scheduled to
become available as generic medications. The copay
waiver and one-time discount costs the plan
nothing while the anticipated voluntary movement
with approval by the patient's doctor from a brand-name drug to a generic substitute provides long-term savings to the plan and the individual.

If the no-cost Medco RX Advantage program had been implemented, we would have by now real factual data upon which the parties could have evaluated the organization's expert actuary's opinion that reduction of generic drug copay to $0 more effectively encourages generic drug utilization needed to lower plan costs. The carriers now advocate that these plan management programs be adopted in collective bargaining. These programs could have and should have been implemented more than a year ago. But the carriers chose bargaining strategy over potential savings to the National Plan. Prior to the commencement of bargaining in this round when there was disagreement within the committee, it usually involved skepticism over whether a proposed change would actually accomplish its intended purpose without adversely affecting other equally important plan objectives.

These are the kinds of policy questions over which
health care experts can and do disagree. The joint policy (inaudible) have wisely, in my view, awaited the development of better information and the emergence of consensus before making decisions that could damage the plan or hurt its participants and beneficiaries. Plan design issues rarely, if ever, present an emergency requiring immediate resolution and there is no emergency in sight in this case. This is one reason why the organizations agree with the carriers that the neutral arbitration procedure in the 1991 national agreement imposed by PEB 219 to break deadlocks when the joint plan committee has no application to plan design or other similar decisions. During the last two rounds of national bargaining, changes in the plan required employees to pay a larger portion of plan costs. Then in the 2000 bargaining round, employees did not make any monthly premium contributions. In the 2000-2004 round, the employees agreed to make monthly premium contributions and increase both the prescription drug copays and out-of-network MMCP.
deductibles to enable continuation of MMCP

benefits at then existing levels. By the time the
2005-2009 bargaining round began, employees were
contributing about $100 each month to maintain the
plan. All contracts were settled for the 2005-
2009 round in 2007. By that time, the level of
employee health care contributions had risen to
approximately $166.25 per month. The organizations
before this Board agreed to additional annual
increases in employee cost-sharing contributions
capped at $200 per month. The unions also agreed
to increase co-pays for office visits, urgent
care, and prescription drugs. But the retail
formulary program was also added. The definition
of eligible dependents was amended which reduced
the number of eligible dependents. These cost
containment features were designed to offset the
increase in plan costs caused by extending
coverage for MMCP into areas in which employees
did not then have access to these benefits. This
change in coverage represented a major plan
improvement long sought by the organizations. And
now the carriers want to add MMCP deductibles and
c co-insurance to degrade the level of benefits we
bargained the past decade to maintain and extend.
The Plan Administrator estimates that the benefit
changes contained in the 2005-2009 Collective
Bargaining Agreement not including increased
monthly employee contributions reduce the cost of
the plan an additional 5.2 percent, and that the
plan changes made in just two rounds of collective
bargaining raise the overall employee share of
plan costs to more than 20 percent. The
organizations oppose the design and management
changes made in the UTU agreement. Once again, a
little history is important. In 1998-99 the UTU
and the carriers agreed to form a separate health
and welfare benefit plan covering only the UTU
represented employees and their dependents. The
new plan was called the National Railroad Carriers
and United Transportation Union Health and Welfare
Plan or the UTU Plan for short. Like the National
Plan, it was a wholly self-insured administrative
services only arrangement overseen by joint policy
holders, the UTU and the NRLC which exercised exclusive control of health care decisions affecting UTU members. The CRLO has no authority or responsibility with respect to the establishment, the administration or continuation of the UTU plan which is operated separately from the National Plan. And the UTU has no authority or influence over how the National Plan is structured and administered. I listened to Mr. Boley last week say the UTU plan and the National Plan are joined at the hip. Mr. Boley, as entertaining and articulate as he is, cannot convince me that these two plans share any connection except the fact that railroad employees are covered by both of them. The UTU plan has its own contracts with their vendors. We, the CRLO are not invited to their meetings with management and we have zero say in how their plan is structured and administered. And honestly, that's just fine with us. Likewise, it's ridiculous to think that the UTU has any influence over the National Plan. Plan changes implemented by the UTU and the NRLC apply
to members of the UTU only. They do not apply to members covered by the National Plan. UTU and the carriers can agree to change the UTU plan at any time. The elder demographic mix of the UTU plan requires independent analysis of proposed plan changes. The UTU plan has had, in the past, the unique programs that the National Plan did not adopt. Some are described on page 63 of our joint submission. We are not one plan. We are two separate and independent plans. For more than 11 years, the carriers have acquiesced as the UTU fashioned independent policies and arrangements for its member's health care coverage completely independent of the National Plan in policy choices made by the organizations under the CRLO umbrella. Now the carriers maintain the opposite position. The two plans have to be identical. It is incomprehensible to the organizations before this board that an organization that elected not to be part of the National Plan, bargains as a lone wolf, would be granted the effective authority to impose its views of benefit levels, plan structure
and management upon 73 percent of rail labor that disagrees with the approach of that singular organization that rejected the CRLO. The carriers are simply exploiting the current furor over health care on a national scene by injecting unsubstantiated arguments in an effort to shift health care costs onto their most vulnerable employees and thereby offset anticipated wage gains. They say in one breath that they respect us, but in another we are a commodity by track ballast whose value is established only by some theoretical supply and demand labor market gibberish. Their economic gurus say we have contributed nothing to the railroad industry's most profitable period in history. And I would respectfully request the PEB to reject this cynical ploy. Thank you very much for listening to me.

CHAIRMAN JAFFE: Thank you Mr. Hildenbrand. Mr. Chairman we will now hear from Mr. Kalwarski and Ms. Mallett.

UNIDENTIFIED MALE VOICE: I'm just waiting until
they know that the presentations that are, I understand you all have copies of it?

CHAIRMAN JAFFE: As well as the initial report that you've prepared.

MR. GENE KALWARSKI: Thank you. I'm going to start first with good morning (inaudible) Gene Kalwarski and I'm going to start the presentation with the ending. We have done extensive analysis of the National Plan going as far back as 2004 and we've arrived at six principal conclusions which, in the course of this presentation, both Karen and I will go through in detail. The six conclusions are first the National Plan's health costs are in alignment with other U.S. employers; the future cost increases, because of a certain demographic, should remain lower than other employers; that members are not over utilizing in the way portrayed by the carriers; we also saw that the National Plan has the lowest net level of benefits in the rail industry and that the carrier's proposal largely just transfers costs to the membership; there is a better way to continue
improving efficient use of the health care system.

I also want to point out up-front that we're not basing our analysis on anecdotal evidence. We went through extensive data specific to this plan. This is the type of information that we went through - over 74 million records pertaining to claims and eligibility from all the vendors for this particular plan and confirmed by the vendor reports and the published information. And both Karen and I have reached the highest level of professional accreditation in the actuarial profession per the Fellow of the Society of Actuaries. So with respect to the first conclusion that the national health costs are in alignment with other employers. A number of surveys get quoted and used in this case and other cases and surveys can be wonderful tools. But it's so critical that surveys be used effectively and not be used to distort information and I will walk you through how that could happen in a situation like this. You should be removing things in surveys that are intended for different purposes the plan
can't control. For example there could be a survey as to how different health care plans fund their plans as opposed to what the claim costs are. Well funding is different than what claim costs are. And I'll go very specifically into how industry and morbidity differences have to be adjusted in these surveys. Otherwise, you're going to have a distorted analysis. But you leave in things that you can control in trying to compare such as administrative fees, family mix, medical management and benefit design. So over the next few slides I'm going to show you an example. Often (inaudible) has, in their work have shown the standard industrial classification codes. They are rating factors for different industries. And if you look at it, there's a national average, where is it, four from the bottom there; the national average is set at 1.0, the number of industries are relative to the national average. You could see, I'm going to be using the example of miners so that's why it's coded in red there. Miners are 20 percent less healthy, food workers 5 percent
more healthy, and then I'm showing the railroad
passengers at 20 percent. So let me go through an
example. Suppose you had two identical plans.
Benefits were precisely the same in terms of
benefit coverage, co-payments, deductibles, co-
insurance, geographic areas with demographics.
Nothing is different about these plans other than
Plan A covered grocery workers if you recall had a
5 percent healthier rating and Plan B covers coal
miners. But suppose after some analysis Plan A,
the grocery plan show that their costs were equal
to the U.S. employer's average and Plan B showed
that the plan costs were 10 percent above the U.S.
average. Would you claim either Plan A or B's
benefits are richer? They're identical benefits.
And is Plan A managing health care costs better? I
mean it should have 5 percent better than the U.S.
average and Plan B should be 10 percent above. And
the answer to both is no, and that's why we find
the carrier's analysis showing higher relevant
costs is misleading. You need to adjust for
industry differences. There was also a few other
minor items that weren't adjusted. The National Plan's cost had element of reserves that aren't reflective of what (inaudible) other employer rates. We remove that. And there's a load in there to fund laid-off employees that are added to the active cost per employee and that's not in the other plans of the surveys. So we made these three adjustments and I focused on the industry, the morbidity primarily. That's the most major adjustment. You end up with an adjustment of 32.4 percent. That's called predictive modeling there. In the past, before the technology allowed us to look at and drill down to the very core of the data, we actuaries and industry experts simply used what industry averages, like the SIC codes and demographics. Now there's predictive modeling. It's a state-of-the-art technique to stay health status based on actual specific claim data of the group. (audio break) those predictive modeling techniques, oops, the 15,132, uh, per family unit, per year dropped to 14,808 for the, um, uh, reserve, dropped to 13,331 if we took off the laid
off employees, and then we did the industry
adjustment were at 10,069; that's where this plan
stands relative to its peer plans. What about
trends? How can costs be, uh, uh (ph), in
alignment if employers' claims of overutilization
by the members of excessive benefits are all true?
We're going to answer that question, but before I
do let's, let's look at the historical rates of
the National Plan and then look at it compared to
U.S. employers. I've heard comments about cost
 tripling, at one point I thought someone said
2015, but then we looked at the hard data here and
these are all National Plan's payment rates for
qualified employee per month. As I look at this
it's not inconsistent. It's showing, for example,
in 1999 a cost of 423 and, uh, by 2012 it's 1,311;
so [what we've got] (ph) during this period is a
tripling. And one could look at that and well
arrive at a conclusion that this plan has gotten
80 percent average annual increase per year and
that's quite high, but you need to drill (ph)
deeper. Look at the same chart, this very same
chart but broken into periods. We have during the first five years a 15.3 percent average annual increase, when the National Plan started taking action. That growth there was a-, was [arrested during] (ph) a second period, where from 2002 to 2007 the increase dropped to 6 percent, and now, in the most recent five-year period, it dropped to 4.4 percent. Very different stories when you look at this chart verses this chart; they're the same numbers but we're breaking it down to, into different periods. So just looking at dollars contributed, the Carriers actual annual cost increases that, by the way, the earlier charts I had were cost per member and now we're looking at actual dollars contributed, has been 3.2 percent since, uh, 2000. And the blue line here is the total, um, costs of the plan, including members, and the red line is just the Carriers' costs and that's the 3.2 percent increase. Compared to other employers, looking at Kaiser Family Foundation's, um, employer health benefits, in between 2011 and 2007, we see a 41.2 percent cumulative increase.
since 2007 for these plans. If we look at the, uh, National Plan, the blue line, over this period it's been 23.2 percent, and that's on that, uh, that's on a cost per, per qualifying employee or a qualifying member, but the blue dotted line is the actual dollars expended. So over this period of 2007 to 2012, on an accumulative increase it's 18.2 percent verses a National Plan of 41 percent. But that's looking at the past and the present; there's something going on with respect to future cost increases that will show further declines. Uh, you've, you all, we've all heard about the, uh, baby boomer generation. The National Plan's demographics are such that the Carriers can expect, expect these trends to continue below average if the, even if the Joint Plan Committee does nothing to continue to improve the efficiency. We took the assumptions used by the re-, Railroad Retirement Board's actuary regarding turnover, retirement and mortality, and we took the pre-, the current population of, of the National Plan, that's in the, the red line in
2010; you can see there's a large bubble here of members at the very expensive ages for health insurance. These are the Railroad Retirement Board's own assumptions, not our assumptions or anyone else's, and we project the, what's going to happen to this cohort, uh, this population over the next five, then ten years, and by 2015 the bubble's almost on its way out, and by 2020 they're gone, which means the average age of this group is getting younger. This is based solely on Railroad Retirement Board's actual assumptions, and they do quite a bit of extensive analysis of, of each of the assumptions. Now I'll move on to addressing how can costs be in alignment with the U.S. Carriers, uh, with you as employees, if Carriers' claims of overutilization of excessive benefits are true, and our thorough conclusion of that study was that members are not over utilizing, the way portrayed by the Carriers. And I will turn this over to Karen at this point.

MS. KAREN MALLET: Good morning. Is this working? Okay. Put it a little bit closer to me here so you
can hear me. Okay. This is a noisy slide (chuckles). But let me start by saying that the health status, what Gene's, his point was, is that our, the plan is in alignment with the U.S. average of employers, once you remove the health status on both the costs per employee and on a trend basis. And on the trend basis, I just wanted to point out two more, two more key items. You noted, you may have noticed that it dipped down in 2012, and that's just a result of over projection for, um, the Affordable [Care Acts] (ph), that it didn't cost as much as the United Healthcare and Aetna and the Blues thought, so it's, it's bringing it back into alignment, and that's part of the noise that goes on between the payment rate and the contract rate. The other really important item is that this plan, even though it's an active only plan, has some, um, people that would qualify for the early retiree reimbursement program. So this plan has already 6.75 million dollars that can be spent to benefit the employees only that's part of the whole federal reimbursement program.
And that's not anywhere in the trends, so if we incorporated that into the trends' factors the, the trends would be even lower than the other U.S. employers. So leading (ph) that with the other components, the benefit design, the, the claim of overutilization, the administrative fee, is, um, and the family status, the question becomes, is, are they all in alignment or are some of them offsetting; and that's what I'm going to try to answer for you. The first question is that they're saying that there's overutilization in the plan. Our analysis concludes the opposite; this plan is efficient, they're not over utilizing. That's what our data shows, that's what the comparison to the survey show. But for Cheiron the numbers, they're not enough, the comparative surveys, there's got to be a reason for it. What made this plan efficient? How did it get that way? Because numbers can be misleading, as Gene pointed out, so we looked at three key items, or we found three key items in our investigation, I should say. The first is that this plan is what's called a point...
of service plan. The vast majority of people are on point of service, and, and Mr. Boley said it was a PPO plan or a Preferred Provider Organization. And while in lingo in health it's very common to interchange them, so we're not trying to criticize him or correct him, we're just trying to make a point about medical management; and I'll get to that in detail. The second thing that we're going to get to in detail is the medical management that was put in place by the Joint Plan Committee for the high cost people, and to help the, all people make good decisions and not over utilize the plan, as was suggested by the Carriers. The third item that we're going to be talking about is value-based plan design that occurs in much of the MMCP. So I may get, start getting into the details, that was just a, a brief overview. On page 21, first on the plan, now I'm going to review what Mr. Boley told you. There's four basic plans: the Managed Medical Care Plan, the Comprehensive Healthcare Plan, the Mental Health and Substance Abuses, uh, Benefit Plan and
the Managed Pharmacy Service Benefits. So the Managed Pharmacy Service Plan is for everyone. Everyone's in that plan, it's the pharmacy; it goes with both the MMCP and the CHCB (ph). The Mental Health Substance Abuse, it's for everyone; it goes with both the MMCP and the CHCB. The MMCP, which is the primary talk about benefit design, is really a point of service plan. And the difference between a point of service plan and a preferred provider organization is how the plan is managed. Both of them get provider discounts and both of them have credentialed providers in their network they are trying to steer people to. It all comes down to whose responsible for the medical management, is it the patient or is it the provider? Now back in the early 2000s, a point of service plan was a gatekeeper. You had to go [audio blip?] to your primary care physician, they had to approve you to go to a specialist or another, uh, type of doctor or a hospital. That got a lot of backlash, by both the individual members and by the providers themselves. There was
a lot of noise (ph) in the news back in the early 2000s and that sort of got overturned. Organizations such as United Healthcare and Aetna, they came up with a better way, and I really like this way. What it says is, "If you're going to contract, contract with us on our point of service pro-, platform, not our PPO platform but our point of service platform, then you have to adhere to our standards, uh, not really our standards, the AMA standards of evidence-based medicine, but what we're going to do United and Aetna is monitor and make sure that you do that. And if you don't do that, then we're not going to pay you; and the patient never knows about it." So as a very overly simplified example, let's assume you have a backache and you go to the doctor, and the doctor thinks, well that this person needs surgery. And they just want to skip to all of the protocol, which says "that before you put someone in back surgery and endanger their life, you might want to try muscle relaxers or acupuncture or chiropractic" or something like that, so they're
gonna to [put an MN to have] (ph), recommend back surgery. Rather than telling the patient that, they have to communicate somehow with Aetna or United, and when they do that they say "no, no, no, no, first you gotta try these other steps and see if they work", that has proven to save funds a tremendous amount of money, and it's been very effective because it's a good way, it's a better way of managing care and preventing overutilization; and that's what we like to see here, as opposed to the member being caught in between. So that we saw in this plan, the vast majority of the people in the National Plan are in a point of service network, a great thing. The second thing that we saw was that the Joint Plan Committee decided not to focus in on whether people were going to a office visit, but really on the high cost. Now let me sort of put this in context for you for an office visit. Let's say you have a hypochondriac and they want to go to the doctor every single week. So doing simple math, the average office visit's like $80.00 but with
the discount it's only $60.00, and with the, with
the co-, co-pay the plan only has to pay $40.00.
So $40.00 times 50, when they go once a week for
50 weeks, so it's $2,000.00 a year; $2,000.00 a
year, even if you have three or four people in
your family, is not going to get you to the
average cost that they're suggesting of 215,000.
That office visits themself are not going, are not
the co-, drivers of cost; it's the people who are
truly sick that drive the cost, and we see that
over and over and over again. So this chart, on
page 22, shows that the top 1 percent of the
population, so that's only about, of the, of the
there's about three, 200, 285,000 people. And
here, again, I'm being like Mr. Boley, I'm
interchanging term, a member here isn't what I've
been saying all along of being a Union member,
this is actually a person. So, again, this is an
example of how it's easy to interchange terms. The
top 3,000 people, because there's about 300,000
people in this plan, they make up 28.2 percent for
this spin (ph) in calendar year 2009; they were
the big drivers of costs. The top 10 percent of
the people or the top 30,000 people, they made up
almost 70 percent of the costs. The top 20 percent
of the people made up over 80 percent of the cost.
So if you want to make an efficient healthcare
system, you really need to be able to drive those
costs. And the Joint Plan Committee did just that;
you'll see, on page 23, they implemented these
things. Items number 1, 2, 3 and 4; they already
sort of had this prior to 2007. Case Management,
that's where people focused in on the, the, that
top 1 percent of the group and make sure that they
navigate through the healthcare system properly.
Utilization Review for Hospitals, that's where you
make sure that people are actually getting the
care they need in the hospitals, and when that
once they get out they know where to go; whether
they go to stay in a nursing facility, whether
they go home healthcare, want physical therapy,
what they do once they get out of the hospital.
The Utilization Review, that's what I talked about
in the first bullet, where they have the point of
service networks; they have evidence-based
medicine. Center for Excellence, that's been in
the plan for a while; that's for transplants.
That's one of the things that had, was offered to
be expanded, and the Union side was ready to
expand the Centers of Excellence from get, the get
go; the Carriers blocked that one. Mental Health
and Substance Abuse, that was revamped in January
of 2007; the customized disease management chronic
care was put into it in January 2007, and it's
customized because, as you heard the Carriers
report, 50 percent of their people don't have
nine-to-five jobs. You've got to do something
unique and special for this membership to get, to
control the cost, and that's what this Joint Plan
Committee did; again, that was put in 1/1/2007.
Wellness and Smoking Cessation and, uh, Weight
Management was put in in July of 2008. The Nurse-
line Informed Decision Support were also put in in
2007. Now 1/1/2007 is a really important day. They
were still bargaining for the last contract on
1/1/2007. They did all this, this tremendous
amount to make the plan efficient. While they were
in bargaining, both sides, they got together and
(ph) regardless of the legalese or anything else
y they put this into effect; they made it work. The
Pharmacy, there are some prior limits, they exist,
and prior authorization exists on some selected
drugs, [culled down] (ph) by the Drug Plan
Committee. And all of those items help make this
plan efficient, helped the members not over
utilize. The third thing that I said we isolated
or zoned in on that may help some members not over
utilized if value-based plan design. Now I'm gonna
focus you in on, um, where it says "side effects,
cost sharing". Cost sharing is what's being
proposed right now, deductibles in coinsurance.
Value-based plan design is where you have co-
pays. For example, the co-pay was $25.00 to go to
the, a doctor. This changed it to $20.00 to go to
primary care and $35.00 to go to a specialist,
because that's better medicine; because you want
your primary care doctor to coordinate your care
and because primary care doctors are more cost
1 effective. The other thing they did, as Bill
2 reported, was in 2008 they put in a chiropractic
3 care. Now, this value-based plan design, let's
4 look at the side effects. The literature is
5 disagreeing on the good and the bad of cost
6 sharing. Specifically it says, "Consumers do not
7 discriminate well between high-value and low-value
8 care, reductions in useful therapies occur and
9 some vulnerable populations may be harmed." Dr.
10 Newhouse even said "some vulnerable populations
11 may be harmed by cost sharing". The side effects
12 for value-based pro-, uh, a value-based insurance
13 design or plan design; none is reported in the
14 illit-, literature. We all agree value-based plan
15 design works. The Carriers agreed last time that
16 value-based plan design was fine; there was no
17 problem with that. The results of value-based plan
18 design is shown on page 25. When we put this into
19 effect, basically effective 1/1/2008, 'cause they
20 were still bargaining on 1/1/2007, we saw that
21 there was underutilization of the primary care
22 doctors of 16 percent; that got reduced to 5
1 percent in 2008 and now it's above, uh, the
2 industry average or the U, a typically U.S.
3 employer of 4 percent. Now it's really important
4 to note that, for office visits, the best
5 practices is to have more office visits because
6 if, like I told you, offices visits are relatively
7 cheap. So if you can get people to go to the
8 doctor and see you, and keep them out of the
9 hospital, then you've done the, the trick, then
10 you've saved them money, you've used it, the
11 healthcare system, efficiently. So even though, at
12 primary care, they're over 4 percent of the U.S.
13 average, they're still under at best practice, so
14 they're still working that way. Specialists, in
15 2007, they were over utilizing, relative to the
16 U.S. average, by 22 percent, and now, in 2009,
17 it's below; so you can see it worked. Similarly,
18 just in one year, for, or the one year that we
19 looked at, in 2009, 'cause we didn't have the data
20 for 2010 or 2011, when they changed the
21 chiropractic to co-pays from $35.00 to $20.00, the
22 chiropractic office visits increased by 33
percent. And you say "oh my gosh, that's got to
increase, cost the plan more". If you look at just
that one benefit, you bet it costs the plan more;
they also cut the, the co-pays. But when you look
at the whole, big picture and you'll see that
surgeries, which cost so much more than any
chiropractic visit, got reduced by 4 percent; we
calculated a savings of 3 million dollars in one
year. That's value-based plan design that's
effective, and that steers the membership to the
right type of care that you want them to use. And
those are the reasons why we felt that the plan,
[up front] (ph) the plan could save money in
comparison. That's why we think that kept them in
line, because when I go to the next slide about
better business, this plan has to be so efficient
that it's gonna offset the better benefits.
Because we agree with the Carriers, the benefits
of this plan are better than the average U.S.
employer. We just want to show you how they're
better though. You start with the patient 4
percent figure right there, and they showed this
in their, in their report. So for MMCP, which includes the mental health component, the patient's only paying 4 percent of the cost, meaning their adequacy of benefit, a term that, that, um, the Carriers use, is 96 percent; our calculations matched that, we agree with that. But when you take a, a further look, you see that other insurance is at 4 percent and then so, therefore, the plan cost is 92 percent. Now let me just make a little note about this other insurance. Typically, for a U.S. employer that other insurance is less than 1 percent. But because we have a higher family, we have, like Dave said, about 80 percent, around 78 percent in this family, as opposed to the U.S. average of the family member, about 51 percent, and see you get a higher other insurance that's partially offset, but not completely, by having coordination of benefits with other insurance companies. The plan cost for the MMCP Plan is 92 percent; it's not the Carriers' cost, it's the plan cost. Remember that the employees, they pay $200.00 a month or about
50 (ph) percent, so the employers' cost for the
MMCP portion of the plan is only about 78 percent.
Now we go to a CHCB Plan, and we haven't talked
too much about the CHCB Plan. There's not a lot of
members, less than 15 percent of the membership is
in the CHCB Plan, but when you look at that you
see that the patient cost is at 17 percent, so
that adequacy of benefits would be 83 percent. If
we look at the RX, we can see that currently the
members are paying about 16 percent for the total
cost; the plan is paying about 84 percent. There's
not a lot of coordination of benefits in RX,
because you have a card and you'd either use one
card or the other and they don't coordinate very
much. There is a little, tiny bit of noise that
goes on there but not a lot. The point is, is the
benefits are better. And why are they better?
Because, as Gene told you, this group is 32
percent less healthy than the average U.S.
employer's group. Now if you look at our new way
with, in which, and which is what we did, and we
got it validated with health risk scores, then you
get the 32 percent. But if you want to go and look
at it the old way, which Gene also showed you,
where you have railroad is 120 percent of the
average employers, and then you have to add in the
demographics, which are about 9 percent, no matter
how you look at it, you find out that this
industry, this group is about 30 percent higher
than the average U.S. employer. So if you're 30
percent higher, you bet that your benefits are
important to you because you're going to have to
use them more whether you want to or not. So our
conclusion is, yes, they have better benefits and,
yes, they have higher than average family, um,
usage, pick up more family members; that's part of
the Union way. We assume that they have lower
administration fees. They are very good bargainers
both sides so they probably have very good
administration fees, but
four of those items are the things that Gene said
that they could control. We our analysis, and with
good reason, shows that this plan is not doing
overutilizing as the carriers suggested they were.
MR. GENE KALWARSKI: So we have covered our first three conclusions, and then our fourth conclusion was the National Plan has the lowest net-level benefits in the rail industry. As Karen has said, and I mentioned earlier, no one is arguing that this plan has excellent benefits, but this particular plan also has the highest member contributions in the industry. And so if you compare this plan's benefits versus other rail benefits, but you exclude what the member pays for, it actually has the lowest net-value benefits, and that is shown on the chart on Page 29. We compared the Railroad National Plan that is in the yellow. I am on the left-hand side of that colored chart with Amtrak, New Jersey Transit, Massachusetts Bay Commuter Rail, Southeast Pennsylvania, Long Island Railroad and, for this population, using the same demographic and geographic backgrounds (ph) everything the same but just very if they had the different benefit plans, the National Plan, in total, we established that at 100 percent, and only the
Massachusetts Bay Commuter Rail Plan was slightly better, at two percent. And then you see the Amtrak is one percent less, then Long Island Railroad - eight percent less, and then the proposed carrier changes would be four percent less. So if you just remove the member contribution component of that, because members are paying for the benefit, and just look at the employer-sponsored piece, the Rail National Plan is at the lowest second to lowest, lowest being the carrier-proposed changes to the very same plan. And our last two conclusions are that the carrier's proposal largely transfers costs to the membership. And we will show you that there is a better way to continue improving the efficient use of the healthcare system.

MS. KAREN MALLETT: The NCC's proposal is basically three components to it: add deductibles and co-insurance, add pharmacy change the pharmacy co-pays and rules, and change the emergency room co-pays; those are the three basic premises of them. They are adding deductibles and
co-insurance. The rationale for it is there is overutilization by the membership, that it is mainstream, and because of uniformity of benefits. We are going to address each one of these components. Overutilization I just went through my long speech explaining why do not think there is overutilization, but we would suggest that they provided no statistics; we saw no statistics in any of the information that we were given that would support overutilization for the services for which deductibles and co-insurance apply. The co-pay benefit they do not apply. They did provide one of the foremost experts to report on his study Dr. Newhouse and he is very well regarded, and it was great for me, as a personal issue, to hear him talk. But the issue is, is that the study that they are basing it on is over three decades old, and it is based on 2,000 families in six different locations, with the lowest co-insurance compared to 100-percent co-insurance at 25 percent. So it is not really directly applicable to what is being proposed. But more importantly, I explained how
medical management had evolved and how it is so important now. All of the point-of-service plan they did not exist in the 1970s. Did chronic care management? It did not exist like it does now. Nurse lines and informed-decision support? It did not exist. So, (Your Excellence) (ph), they were all in their infancies. Everything has change so, so much. In addition, there is literature, as I suggested before, all over the lot about whether cost-sharing is a good thing or a bad thing. And that is why, at Cheiron, we very much promote value-based plan design as opposed to (client-sharing) (ph), because there are people that argue it is great, and there is people that argue that it is bad, and no one is arguing that value-based plan design is bad. So we feel like, based on our information, that this $200 deductible, five-percent co-insurance with out-of-pocket max of $1,000 is pure cost shifting. It is like changing your wages. Our software that we use OptumInsight, which was formerly Ingenix is the largest database in the United States that is
available; that is why we lease it. It has the
most information, and it uses the most modern
techniques. It showed no cost shifting when we ran
these numbers. It showed it at pure price. If we
are wrong, and there is any utilization shifts, it
could be we think it could be adverse. The
average cost of a procedure, outpatient, is $25,
so you do not want to order a blood test or an
extra analysis on our blood test to save $25, that
could save someone's life or, you know, start the
treatment earlier? We are not sure that that is a
good thing, and we see no evidence of
overutilization. I showed you the statistics where
the members have the most control with the office
visits. So the office visits are not part of the
deductibles and co-insurance, so it would really
only be the tests that would be impacted here. Our
biggest problem with deductibles and co-insurance
is a lack of information. Now, let us just do a
little role-playing. Go to the doctor, and he is
going to draw a blood test. And you have been
having stomach problems, so he there is a blood
test you can take to see if you have a type of ulcer. So in addition to the normal blood test that he would do for a preventative, he says, "I am going to run this blood test." And what I am gathering from this side of the world that things that you are supposed to know to make a good, informed financial decision of whether or not you want that blood test, you would have to know how much that blood test costs. So you ask the doctor, "How much is that extra test going to cost?" Well, the doctor has to know, of the thousands of tests he orders, how much is this going to cost. So that is very unlikely. But let us say that he does. Say he knows it. The second thing he has to know is, "What plan are you on?" And you say, "I am in the Railroad Plan." Well, he says, "I do not mean that. I mean who do what plan are you in that I contracted with? Are you with United or Aetna, or Highmark?" And they say, "Oh, OK, I am with United." So he contracts with more than one provider. He is not just a United doctor. He contracts with Highmark, Aetna, Cigna, Humana,
National Care or PPO, a lot of providers, so he has to know the test and the provider. But it gets worse. Then he has to know what plan you are in, so you have to say he says, "What plan are you in?" You say, "Oh, I am in the Choice Plus Plan."

If you go to United's website, there are 25 different plans to pick from. It could be Choice. It could be Options PPO. So the doctor has contracted with United on multiple plan basis the typical doctor so he has got to sort through the test, the provider, and he has got to sort through what plan ops you are on. But let us just say that he has a lot of programs, and he could just plug it in, and he could tell you the cost difference. What he does not have programmed is your plan design and, in particular, a deductible for the co-insurance. He does not know where you are at.

Have you spent you deductible already or not? Have you spent your had your out-of-pocket max or not? He cannot tell you how much it is going to cost you with the deductible and co-insurance. It is next to impossible for any consumer to make an
informed decision based on deductibles and co-
insurance in this Country. It is very, very
difficult. And we have some quotes, both in our
report and here, that to go to that point. So we
think it is cost shifting. And the impact, we have
calculated, would be, on average, costing the
membership and the MMC Plan $410 a year. And what
this chart here shows is the portion of the
members that what they pay right now. We have
included (Rx) (ph) here, too, and we have assumed
in this calculation no utilization shifts, so we
are assuming no shifts because we would have to
know how they are going to shift, if they were
going to. Right now, you have got roughly 7,500
8,000 people that are not costing the plan
anything. Those are your young, invincible males
that the railroad industry hires. And they do not
have families. They do not cost much. In fact,
they do not cost anything. Then you have the
people about 20,000 that are currently spending
about $250 - in addition to the $200 a month that
they pay, about $250 a year on this plan. That is
going to go down. It is going to drop dramatically from 20,000 to 12,500 or so. When you get over to the tail so this part right here right now, you have already got in this plan people that are really, really sick, and they are spending about, on average, over $3,000. There are 2,500 of them. That is going to grow under the proposal to about 7,500, so about 5,000 more people are going to have to spend $3,000 or more as opposed to where they were in all of these other red the blue charts. So you are really shifting the cost to the membership, and that is what this chart is trying to show. Oops Our conclusion is, is it is cost shifting. The second argument was, "It is mainstream. We want to be in mainstream." They were mentioning almost all plans have a deductible. We looked at the Kaiser Family Foundation, and we say that 71 percent of HMO plans do not have deductibles. Thirty-one percent of the point-of-service plans do not have deductibles. Nineteen percent of the PPO plans do not have deductibles. Now, all of that has gotten
much worse since 2007, since the Great Recession.
And this plan this industry has been very immune
to the Great Recession, unlike the rest of the
world. But when you start comparing it to the
mainstream, a big thing happened between 2007 and
2011, so we would suggest that plans without
deductibles are not as uncommon as they are
portrayed to be. So another point that they made
was Obama wanted efficient care, and they tried to
act like deductibles and co-insurance were
efficient care. We do not think and we are fairly
convinced that Obama was not trying to promote
deductibles and co-insurance in his promotion of
efficient care in the United States. In fact, on
July 29 of 2009, he praised common Kaiser
Permanente, one of the largest HMO (insurers)
(ph), in this Country for their efficiency. And I
use them as a model way to do healthcare. The
second thing that they are trying to say is that
they use the Federal Employees' plans. But when I
went on the Federal Employees website and typed in
a zip code for 2004 (ph), which is where we are at
right now, 24 plan options came up. Four of those plan options were HMOs with no deductibles. So it is not as mainstream as you might think because my point is, is that a lot of large employers give multiple options, and one of those options is a plan with no deductible; that exists. It even gets more confusing when you try to figure out what "mainstream" is, is because some of those high-deductible plans that you see out there 20 percent of the employers not necessarily the high-deductible plans but 20 percent of employers in general have onsite clinics where primary care is practiced right there, so they are giving away the primary care component, and they are not doing the deductible and co-insurance until later. The point is, is that mainstream is all over the lot. And even more importantly, I am not sure that this Panel wants to be where mainstream is; they want to be better than mainstream and, right now, we believe they are better than mainstream. The last point was uniformity. And I am not an attorney, and I am not a labor policymaker, so I am only
going to report on what is uniformity in the industry from a benefits perspective. Again, federal employees right here in this zip code, they have 24 plans to choose from. So they are saying you cannot have two different plans for different sets of people. That seems inconsistent. Bringing it closer to home We talked about, in the National Plan itself, there is the MMCP and there is the CHCB. Now, currently, as reported, patients pay about four percent of the costs, besides for the $2200. But if you are not in an MMCP area so you live in a rural area there is no network there. You live in the middle of nowhere; you cannot be in it. And they recognize that. They, being the carriers, they, being the unions they have created this other plan called CHCB. And but if you are in that plan, you are 17 percent you have to pay 17 percent of the cost. So it seems inconsistent to us to worry about the UTU 96 versus 91 percent when you have already got a difference of 96 versus 83 percent. Just again, this is pure benefits perspective. The last point
is, we looked in the SPD, and we saw that the National Plan already has language in there, so it is not unheard of to have this difference between UTU. The ebb-and-flow worker, or the UTU flipper they have got it very clearly defined, and they have already got it set in place. So from a benefits perspective and from an administrative perspective, we did not understand the issue with uniformity. So, in conclusion, there are three reasons for having deductible and co-insurance we could not agree with. Going on to the pharmacy co-pays, the problem that they cited Generic utilizations at 68 percent, three percent below (inaudible) business. Their simple solution was to modify co-pays. And their rationale was to promote cost-effective use of prescription drugs. Now, I have got to say that this looks good on the surface, but you have got to dig a little bit deeper. And when you dig a little bit deeper, you see that, OK, if people do not actually shift o generic utilization, then 35 percent of the membership is going to have to pay more. And they
are going to have to pay more to a magnitude of $4 million. Now, that is just cost shifting for that component. Now, they might be able to shift to generic utilization, so we looked at the generic substitution rate, and a generic substitution rate is what Medco gives us in their reports, and they said that, for the FDA-equivalent generic substitution, that this group has already reached 98 percent, so only two percent can shift for the actual equivalent. So there is already a pretty good generic substitution rate in this plan for pure FDA-equivalent generic substitution. Our bigger concern was that if the carriers' goal is really to promote cost-effective use of prescription drugs, we do not understand why they blocked the "Try one on us," which was giving away one free generic prescription that would be paid for by Medco. Now, Medco has a reason. They probably I think they probably make more money on the generics than they do on the brands, so that is probably how they financed it. I mean, I am not trying to say that they do not have a financial
reason. They also blocked the personalized medicine, which is testing. At the time, it was for two specific types of prescriptions that are for really sick people, to see if they are the appropriate drug or dose. They blocked those things. And, from our perspective and Cheiron, we were really surprised because I told you last time, in bargaining, they did not block it; they put something much, much more major in place and much more efficient in terms of making the whole plan efficient. So we were surprised that, if their goal was to make the plan more efficient, why they would block these two items in particular. The better way What is proposed on the table is, in order to add or subtract drugs that are considered in medical banishment, you have to get Medco's approval and the consultant's approval in addition to the Joint Plan Committee. At Cheiron, we have a significant problem with that because Medco can have financial incentives that can sway them one way or another. And it is not Medco; it is any PPBM. We feel that the final
1 decision should be with the trustees of the plan,
2 the people who are responsible for the plan, and
3 that is the Joint Plan Committee. In our report,
4 we offered an example of and this is just to show
5 that something that the Joint Plan Committee could
6 come up with, but they may or may not like it.
7 This was just an example of a zero-dollar generic
8 co-pay as an alternative to be considered. Their
9 expert Mr. Piltch (ph) stated that a zero-
10 dollar generic co-pays are inappropriate, and the
11 membership would have lower would have a lower
12 perceived value, and, therefore, they may not use
13 it. And this is contrary to the literature, and it
14 is counterintuitive. The second thing he said was
15 that adherence so maintaining what drugs are we
16 are supposed to be on would be worse. And, again,
17 this is counterintuitive, and it is not
18 substantiated by the literature. His own source,
19 which is Footnote 14, showed that generic drugs
20 example of zero-dollar generics could favorably
21 impact the patient, the plan, as well as
22 compliance with adherence. And since you do not
have you know, it is just a footnote Gene is
going to read to you exactly what it says.

MR. GENE KALWARSKI: This comes from of the
source: The study was designed to evaluate the
results of plan design changes including
implementation of a zero-dollar co-pay for generic
medications. On the generic dispensing rate, plan
participant costs, and impact of plan participant
behavioral changes on health outcomes. During the
study period, participants were allowed to fill
prescriptions for a generic medication at a
preferred retail pharmacy network, at a zero-
dollar co-pay. The study included 15,000 plan
participants covered by a self-funded employer
group, who were continuously enrolled under the
benefit for the duration of the study period
December 1, 2007 through July 31, 2009. And the
findings of the study were as follows: In addition
to an improvement in the generic dispensing rate,
the average plan cost per 30 days of therapy
exhibited a slight decline, and despite the
reduction in generic co-payment rates. Also,
prevalence of use, or adherence here, in the three key preventative drug classes also increased significantly. So, in effect, it is the opposite of what is being claimed up there.

MS. KAREN MALLET: In conclusion, we at Cheiron feel that prescription drugs - particularly the management of prescription drugs, the rules that are being portrayed - needs to be monitored extremely closely and needs to be done not every three years but, at a very minimum, once a year. And we recommend that there are other ways that there is a lot of confusion out there that need to be considered by the smaller subcommittee that is part of this Joint Plan Committee, so that they can flesh out what the clinical experts and with their consultants what is really, truly best for the membership and for the plan. And that would be our recommendation on the Rx co-pay issue. Going on to the proposed emergency room They reported utilization is 65 percent above the carrier the vendors' book businesses. So their suggestion was to increase co-pays from $25 to $75, to reduce
unnecessary use of the emergency room. Sounds simple enough. I only said that there was that the use should be 30 percent above because it is only 32 or 32 percent above. So 65 sounds like there is some excess use in there. Sounds simple. We look a little bit closer. We found out that the average co-pay in 2009 was $24. And the reason why it is $24 instead of $25 is because, as Dr. Newhouse said, it is standard in the industry, if you are going to admitted to where the co-pay, if someone is having a heart attack, you want them to go to the emergency room, and there needs to be incentive to do that, so that is why it is done. The non-emergency use The plan's current provision is, is if you go in the emergency room, and it is not a true emergency, then regardless of whether you are in network or out of network, you are getting the out-of-network benefits. And what does that mean? That means that you have to pay a $300 deductible and 25 percent co-insurance. We looked at the data. The average cost to the membership in 2009 that went for had non-emergency use was
$350. That is how much they had to pay. That is what the current incentive is. Now, what are the our conclusions that we draw from this, is that deductibles and co-insurance they probably did not know that they were going to have to pay $350 when they went in. They were not making an informed decision. So that goes to support that empirical evidence within this plan that deductibles and co-insurance are very difficult to get any type of real utilization decision-making power. The other issues but there are more issues here. They already have something in, and there is lack of knowledge, then what can be done? Is it that simple? Can we still just implement it? On our next page, when we dug a little bit deeper, we found some other troubling issues. One was is that we were told that there are some work rules and attendance policies that actually require an ER note. A better way would to be would be to get rid of that requirement. And we know that that is not for all of the membership; we know that is just for an isolated group, but that is a way to
get rid of some of the ER use. Another concerning problem was that 15 percent of the membership in the MMCP Plan does not have access to an urgent care facility within 45 minutes or an hour of their home. So if you are really sick, and you have to drive over an hour to get to an urgent care facility, it is not very good. You do not want your people to be driving an hour when they are sick. So there are some issues with accessibility to urgent care and convenient care, which is what they offered up. Our third concern was they put the convenient care co-pay at $10 with a primary care co-pay as $20. Now, we would suggest you want everyone to go to the primary care, so more effective use would be to put the primary care co-pay at $10, to get the people to use the doctor as much as possible so they can monitor their care. So we have some concerns with the plan design in terms of if it is truly value-based or not. The fourth item that we considered is that the total decision support that was being offered up now by the carriers note
that we were willing to put it in is that that is
the Nurseline. But if the difference is between
the current informed decision support and
Nurseline is whether of a member having to call,
the people have outgoing calls. So the carriers
here United, Aetna, and Highmark they are very
cooperative. They are very willing to try new
things, to take direction from the Joint Plan
Committee. You could instruct them to do an
outreach program to the membership, to ask people
why they are using the ER, and to tell them about
an alternative. So there are other options, is the
point I am trying to make. We also talked to the
vendors about doing the targeted mailings. And, in
my career with other employers, targeted mailings
have been incredibly successful. I mean, I have
actually gotten a five-percent move in a generic
dispensing rate from targeted mailings with other
emp another employer. So you can be very, very
successful with targeted mailings. If you say,"OK, we noticed you had an emergency room visit,
and just wanted to let you know that there is an
urgent care, and this is where it is located."

Just something simple like that, and you do
follow-up mailings. And the vendors are very
capable of doing that. The point is there are all
kinds of options, and if it is the simple (certain
"how simple") (ph) issue is not so simple when you
realize there is already currently a penalty, that
they have some conflicting work rules, and that so
much of the membership does not have
accessibility. And it is for that reason and
there are probably some other issues that we at
Cheiron will recommend again putting it back to
the Joint Plan Committee because they know more of
the details, and they also can monitor stuff, if
it is not working and change it. So our
recommendation is that our overall assessment is
that the plan has become increasingly efficient,
that we and we provided some references in our
report recommend very close monitoring of and
this is very dynamic marketplace. And, to do that,
there is a structure in place; it is called the
Joint Plan Committee, and it has been working
successfully. And we do not know the legalese about it. We do not know the stuff that you are asking, Mr. Bowie. We are not attorneys. We do not know that part of it. But we do know what we have seen. We do know what they have been able to accomplish and what they have been able to do. And, frankly, we are impressed, and we think that that is a good option for making continuing to make the plan efficient. And I just listed the members on both the management side and the labor side. These are people who have a lot of expertise in the healthcare. And that concludes. MR. ROLAND WILDER (ph): Thank you. Mr. Chairman, the Joint Coalitions call Joel Parker.

CHAIRMAN JAFFE: That is fine. Mr. Wilder, we are happy to hear from Mr. Parker, as well. I suspect we have got some questions, as well, for the actuaries. We probably ought to hold them and then take care of it after the break. Everybody OK continuing? Well, fine. Thank you, Mr. Parker.

MR. JOEL PARKER: Good morning. Can you hear me OK?

CHAIRMAN JAFFE: Yes, sir.
MR. JOEL PARKER: OK, great. Good morning, and thank you for this opportunity to testify. It is really a privilege to testify to such a distinguished group. I am here to present the Unit's (ph) overall position on the health insurance issues before you. I do not purport to be a technical expert on health insurance, as are the consultants from Cheiron. We noticed when Mr. Wilder introduced me, he did not say "superb credentials," as what he left out from that, and I do not have that in healthcare. Rather, I hope to explain how the unions here view the critical health insurance issues before you, from a negotiating perspective, and to explain why we are advancing a status quo proposal and rejecting the carriers' proposed changes. Ultimately, it will be the negotiators on both sides, not the consultants, who will have to forge an agreement. And technical arguments, while they have their place, will not carry the day. I do bring to this testimony years of experience negotiating contracts for TCU and in union coalitions, not
just with the national carriers but also with
Amtrak and a host of commuter railroads. In each
of these negotiations, fortunately or
unfortunately, the issue of net health benefits
and Caulus (ph) has been the most contentious one,
certainly, for the last several rounds. What we
feel is different this time, in this round,
despite the carriers' attempt to portray the
National Health Plan as beset with runaway costs,
is that the hard evidence shows that the changes
we have collectively made to the plan have
dramatically succeeded in slowing the growth of
plan costs to reasonable and acceptable levels by
any standard. I will now explain the 11 unions'
common proposal on the National Health Plan and
why we so vigorously oppose the carriers'
proposals for significant cost shifting through
major plan design changes. Our proposal is simple
to maintain the status quo on health insurance for
the duration of this round. Under our proposal,
the employee monthly contribution will remain at
the current capped rate of $200. The 15-percent
formula will be eliminated. The current plan design, including all existing co-pays in managed care, drug co-pays, deductibles, and co-insurance in the comprehensive plan they will all remain at current levels. And there will be no change to the Early Retiree Medical Plan. We believe our status quo proposal is more than justified in the face of the carriers' record prosperity, which all experts predict will last not only through the end of this round but for the foreseeable future. We believe it is also justified by the successful efforts to contain plan costs that we have agreed to over the past several years, both through the negotiated changes that Mr. Hildenbrand described and the continual plan design modifications implemented by mutual agreement, by The Labor Management Joint Plan Committee. We believe those actions have succeeded in controlling plan costs. During the period affected by the last two rounds of bargaining, carrier health insurance costs have increased by a modest 3.2 percent, about half of the national average of healthcare plans and less
than the rate of medical inflation. We heard testimony from the carriers that we were that plan costs were increasing way beyond medical inflation rates. The data does not support that. We believe the plan that we have today has adequate benefits to address the real health insurance needs of a relatively older workforce, in an industry where the work environment can be harsh and not conducive to good health, as you have heard. The plan has undergone extensive negotiated changes in response to increasing healthcare costs, beginning with the introduction of managed care in 1991 to extensive cost shifting already from the carriers to employees that have marked the last two rounds of bargaining. Mr. Hildenbrand's testimony detailed how, over the last two contracts, we have agreed to major cost shifting. We agreed to increase monthly employee contributions from zero, where they were in 2003, to the current level of $200 a month. And I just wanted to comment for a second During Cheiron I think there is some confusion on how much we
actually pay because, when you when they have the AOB the adequacy of benefits discussions, we said we were only paying eight percent four percent, the carrier said; I think Cheiron said eight percent. But that AOB discussion does not include the $200 employee contributions. I just want to be clear that, when you factor that in, which is real money from the employee's pocket, that number the carriers, in bargaining, gave us a chart that, at least in 2010, said that that number was 22 percent when you factor in. And I think Mr. Jaffe asked a question to the carrier presenters on that what seems to be a major difference between four percent and 22 percent, or, in our if you add up the 15 percent and the eight percent that Cheiron talked about, you get to that 22, 23 range. And I just thought that that needed to be clarified. In addition to the employee contribution changes, which we have agreed to from zero to 200 every union here, over those last two rounds, has also agreed to increase co-pays, drug charges, and other user costs in those rounds like $35
specialist co-pay; that was an increase. We are now at a point, as Cheiron demonstrated, where employees working for the most profitable rail carriers pay more toward their health insurance than any other workers in the railroad industry. As we see it, the time for more concessions and cost shifting in our health plan is over. We are negotiating in an environment where the carriers have achieved record levels of prosperity, which we are very happy for, by every economic indicator. Even during the worst economic downturn since the Great Depression, they have not only outperformed every other sector of American industry, (but) they have achieved record profits in absolute terms. Every expert, including those who voted with their wallets like Warren Buffett, believe that that success is not just for today but for the long-term, and certainly past the duration of this contract. They have routed their economic competition trucks domestic competition, rather. They have no foreign competition by design. And unlike other American industries
I think this is critical they benefit rather than suffer from globalization. When we talked about intermodal, there was this discussion of truck-to-truck, but they also a very large part of the business is ship-to-truck. All of the ships that come in on the West Coast from China and other parts of Asia the railroads, thankfully, capture that traffic, put them on intermodal trains, and take them. And, also, we export business, like export gold (ph). So we think it is a fantastic record. We just want to share in that. So, in the face of that record, how do carriers come here with a straight face and demand concessions in healthcare? They cannot and they do not argue inability to pay. Instead, they seek to convince you that the health plan should be viewed. Even though they use words to the contrary, they really are trying to convince you that the health plan should be viewed outside the overall context of employee compensation and benefits, but, rather, as a unique and discrete element. And they say, when looked at as a standalone benefit, that our
health plan's benefit structure, absent the cost
and employee contribution share, is out of whack
with the rest of the world of health plans in the
United States. That, I really believe, is their
essential argument. But what world do they compare
us to? The world of other industries that are
struggling to survive the economic downturn and
globalization, and the world of federal and state
plans that, as you know, are under intense attacks
due to the fiscal crises of the state, affecting
every level of government. The on. (audio break)
I want you to look at is the world our members
are in, which is railroading, where our members
already pay more than any other railroad worker.
And then a world, the other world they don't want
you to look at is their world, a world where
railroad's bottom lines have soared, while the
rest of American industry to whom they would
compare us has struggled. Our view is that the
National Health Plan has already undergone a
wholesale series of significant modifications in
order to reduce costs, whether it be the
concessionary cost shifting I previously mentioned or the many voluntary changes mutually agreed to by the joint plan subcommittee. We believe those changes succeeded far beyond what might have been expected, that they've slowed plan costs increases to the levels I previously mentioned. In fact, next year plan costs are projected to actually decrease, payment rates. That's a remarkable accomplishment. Both sides should be proud of that, especially when the unique factors of railroad employment are considered. Factors that on their own drive up the cost of ensuring rail workers relative to other industries with the same benefits. Foremost among them is the fact that so many railroad workers work under very harsh conditions, outside, under weather extremes, performing intense physical labor with heavy, dangerous equipment, around the clock, and often changing work schedules and away from the regular routines of home. Then there's the factor, as Cheiron talked about, of railroad demographics. Our members are relatively older than the average
1 worker, covered by the health plans the carriers
tout. The cost of insuring railroad workers will
be higher on that account alone. But as Cheiron
tested, that's predicted to change in the near
future as the current work force approaches
retirement. The carriers attempt to portray the
cost of their health plan as a significant
impediment to their current and future economic
health, but that argument fails when viewed from
the context of the plan's overall impact on the
industry's bottom line. Mr. Roth testified that
the health and welfare cost per unit amounts to an
imperceptible and I have trouble with this number,
because it's so small, .14 of a penny, that's a
1400th of a penny, I guess you can't get that
small. Which is negligibly higher than it was in
1979. Another prism by which to assess the health
plan's overall impact on the industry's financial
well-being is to consider how much it claims from
each revenue dollar. Looking at it from that
measure, health and welfare costs have been
remarkably consistent in the four to four and a
half percent range since the early 1980s. 4.1 percent last year, that's all in Mr. Roth's' testimony and exhibits. That's four cents out of the total 25 cents on the dollar in labor costs, so four out of 25, and four out of 51 cents for non-labor costs. Put another way, leaving the numbers aside, if implemented. If implemented as they suggest, the carrier's health insurance proposals would have negligible impact on their overall cost structure, but they would have significant adverse impact on the individual lives of workers and their dependents. For all these reasons, we view the carrier's proposals for significant concessionary changes to our health plan during a contract period of unprecedented prosperity, to be as unwarranted as if it were a demand for wage rollbacks or cutbacks in any other benefit. It is no different. Turning to the bargaining history, where the carrier spent a lot of time in their presentation. The carriers decry what they portray as a refusal on our part, to bargain on their healthcare proposals. I do not
1 think it was refusing to bargain when we stated
2 that after two rounds of agreeing to major cost
3 shifting concessions, and in light of their
4 present and future prosperity, that we would not
5 agree to further cost shifting in this round. The
6 very substantial healthcare negotiations by the
7 coalition I was not in, the RLBC, they negotiated,
8 they had substantial negotiations over many
9 sessions, that failed to budget the carriers from
10 their adamant insistence on cost shifting. The
11 coalition is was in did offer to discuss those
12 with their health insurance proposals, which did
13 not involve direct cost shifting, providing they
14 withdraw the cost shifting proposals. Because we
15 said that it made no sense to discuss the non cost
16 shifting proposal design items, even if we can get
17 to agreement on them, which would probably be in a
18 modified form, I'm not suggesting we just say we
19 agree to them, as proposed but we were prepared to
20 agree in depth on them, but it made no sense to do
21 that, if at the end of the day, that would not
22 lead to an overall agreement, because we said, as
I said, earlier, we would not agree to cost shifting. And they responded, as I think you heard from them, even here that without cost shifting, there would not be a deal. So that negotiations did not go further. Trying to ascribe fault to either party for "intransigents" is pointless, I believe. The parties were and are far apart on whether healthcare concessions are justified and necessary during this round of bargaining. They say, they characterize our resolve to resist concessions as refusal to bargain, and in the very next breath, in fact in their testimony, they testify that the cost shifting and plan design changes they seek are the "lynchpin" of an agreement. Well, the definition of lynchpin is you have to have it. What they were is, in their view, there would not be a voluntary agreement without them. There's an impasse. It exists. That's why we're here. But I don't think it's fair to characterize, it doesn't get us anywhere to say either side was intransigent. We are fundamentally apart on whether cost shifting and other
healthcare concessions should be part of a settlement of this round. Where the carrier's argument truly strains credulity, however, is in their assertion that the board should recommend the UTU plan design changes for the sake of plan uniformity and I thought Mr. Hildebrand hit it out of the park so I'm almost tempted to take my remarks out but I won't because it's so just incredible to us that they're really seriously advancing this argument. The carriers argue that there must be "continued uniformity between the UTU plan and the national plan." Let's even leave aside for the moment the fact that it was the carriers and UTU who decided to sever the plans in the first place 11 years ago. We had nothing to do with that, they did so that they could pursue changes that they alone agreed to without asking anyone else. Let's leave that aside. Let's just look closely at what actually happened in this round. At the time bargaining began, there were two separate plans, one for UTU, and the other for the 11 other unions represented here before you.
Our plan covered 70 percent of the combined populations, the UTU plan, a distinct minority. The plans at that point had very similar benefit, design, and employee contribution structures. The carriers make a big deal of this and we had agreed to limit in order to limit annual rate volatility, we though that was a good thing and so did the carriers, the parties had agreed to use combined plan experience of the two plans when setting rates. That's where we were. On day one of bargaining, the carriers announced they sought significant plan design concessions, including cost shifting, as a condition of reaching an overall agreement. The 11 unions here refused. One union, the UTU, eventually agreed. That union's agreement was conditioned on it receiving compensation components and other considerations that were tailored to apply only to its membership. And then the design concessions that the UTU agreed to would have less adverse impact on their membership than any others because they had younger demographics. So, when you're moving
into user costs, by definition, if you use the plan less, it will impact you less. The most important thing in this whole narrative is that at the time, the very moment when the carriers reached this agreement with the UTU, they were fully aware that the plan design changes they were proposing were totally unacceptable to every other union here. That was not some mystery that got unraveled later, like, "Oh, maybe if we make this with UTU, they'll agree." They had been put on notice and it had been part of the bargaining, it could not have been more clear to them, that what they were trying to get from UTU as unacceptable and would never be voluntarily accepted by the people here. They proceeded in full knowledge, anyway. Now, they complain that the other unions must acquiesce for the sake of planned uniformity. And they cite PEB quotations lifted from a period before the plans even separated. But if the carriers truly believe that having different benefits between the two plans were, as they put it, "inimical to peaceful labor relations and
employee satisfaction," they wouldn't have gone
down that cynical strategy. They knowingly created
the disparity between the plans and they can't now
reasonably argue that this board should bail them
out of a situation created solely by their own
actions. The carrier's complaint in this regard is
tantamount to a person setting fire to their own
house, and then saying it's too hot inside and
complaining about it. Simply put, the party whose
actions created the disparity in benefits, can't
not credibly argue that the very disparity it
intentionally created by agreeing with the
minority, become the rationale from cramming
unacceptable concessions down the throat of the
majority. I've never. I just, the whole idea of it
strains credulity. Carriers also tried to wrap
their healthcare concession demands under the
blanket of President Obama's Healthcare
objectives. It's true that President Obama is on
record for "higher quality and lower cost. lower
cost health benefits." So are the unions here
assembled. But the President is not on record as
saying that the way to get there is by shifting
costs from employers to workers, as the carrier's
proposals on introducing deductibles and co-
insurance to managed care would do. Or that higher
quality means letting the drug company override
doctors' decisions on what drugs a patient should
take. We haven't seen that in any of President
Obama's proposals. To try to dress up cost
shifting healthcare proposals as somehow advancing
public policy is as absurd as their economics
expert's assertion that the board should reject
our wage demands in the name of "social welfare."
There is as much empirical support for that
dubious preposition as there was for the formulas
they concocted to show that the unemployment
crisis in this country, at a time with the largest
income inequality in our country's history, was
somehow being driven by paying workers too much,
we saw in one of their charts. I'll now discuss
the carrier's specific healthcare proposals one by
one. Our consultant, Mr. Roth, testified to this.
He estimates that the changes they propose would
reduce plant costs by $79 per member per month.

Much of that would be in the form of direct cost shifting to the employees. Under the carrier's plan design proposals, that cost would not be born equally. Employees with serious illnesses would pay much more than currently, with their suggested out of pocket maxes for a family with someone with a dependent, that would be up to $2,400 a year more on the medical side, $2,000 out of pocket match, $400 deductible. In addition to the higher co pays for name brand formulary and non-formulary drugs. The cornerstones of the carrier's proposal, deductibles, co-insurance, are inarguably cost shifting devices. They are nothing else. They are simply cost shifting. They are not behavior utilization proposals. The changes to the drug co-pays, in my view, are also, by and large, cost shifting. Our current plan design, and I don't think this has really come out strong enough yet, already encourages use of generics, and so-called preferred, I think the industry calls them preferred. We call them cheaper, but preferred
1 drugs, preferred medications, under the current
2 system with no changes, when a worker or dependent
3 presents their prescription to the pharmacist or
4 mail order house if they send it in, the
5 pharmacist or Medco mail order facility can, and
6 actually must, already substitute the exact
7 generic equivalent without getting doctor
8 approval. If it's the exact generic equivalent,
9 it's just done and no approval is sought or
10 needed. Now, if there's a cheaper medicine in the
11 same class of drugs, but it's not the exact
12 equivalent, the pharmacist or mail order house
13 will call the doctor under the current plan, with
14 a request to substitute, and in the vast majority
15 of cases, the doctor consent. The only reason
16 doctors refuse is if they believe there are
17 medical reasons to go with the higher cost drug.
18 Given that that's the current protocol, it's
19 likely that those now paying the current co-pays
20 for non-generics will wind up paying significantly
21 higher co-pays for formulary and brand drugs in
22 the carrier proposal. Our consultant argues that
if the aim of the carriers is truly just to incentivize patients to switch to generic drugs, a far simpler and less onerous approach would be to reduce the generic co-pay to zero and leave the brand name co-pays alone. We're not proposing that. And I'll tell you why. It sort of sounds, to use a word, counter-intuitive, why are we proposing zero? And it's very simple. We fear that any proposal we brought to you that looked like it was for an increase in any part of our health plan or an improvement would be used, could be used to justify a concession that was unacceptable to us somewhere else. We've got a long list of improvements as Mr. Scardelletti testified to. To many in the room. Not just zero generics coverage for autism. There was a whole range of stuff that people thought were very important collectively. Both coalitions decided that to come out of this with the status quo was a reasonable resolution of this round, we needed to get rid of all that and not have horse trading, and we feared that a proposal for a zero generic would be viewed as an
improvement and that is the only reason we don't have it before you. Even if the carrier proposal to combine reductions in generic co-payments with increases in brand name co-payments resulted in a net wash on an aggregate level in other words, the whole population now is paying about the same, or maybe even less, aggregately, it would still significantly shift costs within the population from those who can tolerate generics to those who can't, and I've kind of (inaudible) gave you a number on that, it was upwards of $3M, I believe. The latter, the ones who can't, tend to be individuals with more serious costly medical conditions. Nor, and I think this is very important, the carrier's proposal to increase the brand name co-pays, both formulary and not formulary, are not even supported by the data they gave by comparisons to other unionized plans. Their own data, which was cited in their submission, I think it was submission five, page 28, shows that our current schedule of required
1 drug co-pays is well within the norm of 
2 collectively bargained plans. Our members 
3 currently pay $20 for retail brand formulary 
4 drugs. The outside average is $18-20. We pay $30 
5 for retail brand non-formulary. The outside 
6 average for unionized plan is, according to the 
7 carriers, $25-36. We're at $30. The same goes for 
8 prescriptions by mail. Our members pay $30 for 
9 formulary brand name drugs; the outside average is 
10 $25-40. We're at $30. We pay $60 for brand name 
11 mail order. The outside average is $40-70. So, 
12 we're at the higher end there. There's just no 
13 evidence that our current co-pays are out of line 
14 with other unionized plans. And that, keep in 
15 mind, mostly includes comparisons to plans in 
16 industries that are far less profitable than the 
17 railroads. Okay, those are the three what I would 
18 call cost shifting proposals. The carrier's 
19 proposals for step therapy, prior drug 
20 authorization and quantity and duration limits, 
21 are an amalgam of behavior and cost shifting and 
22 the experts can differ as to how to characterize
them. But they can't differ as to the coercive aspect of these programs as proposed. As just as I tried to just explain, the so-called soft step therapy that we already have in place, we already have a situation where generics are routinely substituted for higher priced medications. The only difference under a carrier's proposal, as we understand it, will be that if now the doctor disagrees with the substitution, the patient will either have to submit to Medco's dictates or pay the entire cost of the drug. In the case of many of the so-called specialty drugs that are on the list, that would be covered by this, the prior authorization proposal amounts to ceding authority to make potentially life and death decisions to a profit-driven pharmacy benefit manager like Medco. Many of the drugs on the list of drugs targeted for prior authorization are for life threatening diseases like cancer, HIV-AIDS, Parkinson's and multiple sclerosis. I'm going to explore one example in depth because it's so important to understand the potential ramifications of what may
otherwise seem like benign, harmless reforms to get people to take less costly, equally effective drugs. Multiple myeloma is a cancer of blood plasma cells. There's been increasing success in treating it through two very different chemotherapy regimens. One consists of, it's actually a derivative of Thalidomide, Revlimid or Thalomid, either one. And the other is Velcade, they're totally different drugs. Doctors decide, oncologists decide, based on an extremely complicated mix of medical factors unique to each patient, which of the two drug regimens to use and how much of each and for how long. Revlimid and Thalomid, and not Velcade, are on the list of drugs that would require prior authorization and they would be subject under the proposal to quantity and duration limits. Under the carrier proposal, Medco could decide that the drug the doctor recommends is not approved or to limit how long or how much the patient takes. The doctor can appeal Medco's decision, but a panel appointed by Medco will ultimately have final decisional
authority. If the patient goes ahead with the
doctor's recommended treatment, he or she would
have to pay 100 percent of the cost, which for
Revlimid is upwards of $70,000 a year and
treatment can last for years. The carriers witness
in this said not to worry, just don't worry about
it because they're going to agree 99 percent of
the time. Only one percent of the time do they
talk to the doctor and why would the PBM not do
what's right for the patient, leaving aside that
they do have pecuniary considerations? They
are. the PBMs are non-profits. We k. (audio break)
...trust (ph) that 1 percent. There is too much at
stake. We believe that the ultimate authority has
to be with the doctor. It cannot be ceded to a
PBM. And we will not agree to that. The carrier's
witness also on this suggested that the vast
majority of insurance plans already have these
kinds of programs. And he had a chart with the big
numbers showing that all these plans have prior
authorization, quantity and duration limits, step
therapy. Well the way that chart was structured,
we would be in the part that says we already have it. Because in the past we have agreed to implement prior authorization for fertility drugs through the I don't know if it was through the plan committee or some other method, but we've agreed. We've also agreed to quantity and duration limits for erectile dysfunction and influenza agents. So it is not like we're saying we would never agree. We just need to be, the union side, needs to be shown which drugs, how it will work, and there has to be a protocol where ultimately the doctor will have final authority. What is different here from where we have agreed is the sweeping nature of their proposed programs. A vast array of drugs will be covered, you see in the attachment, without any prior discussion or review by the union and our experts. And we're not going to give, as I said any PBM. That kind of unchecked authority. Complex changes such as these; step therapy, prior authorization, quantity and duration limits, should and cannot be properly addressed in a form such as this constrained by
time and a multitude of other issues. They require painstaking study and discussion. They are exactly the kinds of issues that the joint plan committee has tackled successfully in the past, and can in the future. Drawbacks there to each program could be considered and perhaps resolved. But they can't be agreed to in their current form. Alright let's turn to emergency room. The carriers' proposals to increase the co-pays for emergency room visits if the person isn't admitted to the hospital. They combine that with a decrease in co-pays for urgent care clinics and the introduction of a lower convenient care clinic co-pay. They serve a hybrid of cost-shifting and attempts to steer usage away from emergency rooms. We're not opposed at all to the content of deterring unnecessary use of high cost emergency rooms for non-emergency situations. We agree 100 percent with that goal. As Karen testified, we already have in place a provision that non-emergency visits to the emergency room are subject to being treated as out-of-network. Which means they are subject to deductibles and
co-insurance. The only thing we point out here is
that many of our members have limited access to
urgent care or convenient care clinics, and that
many doctors routinely refer people to emergency
rooms for all kinds of legitimate emergency
conditions that don't necessarily result in
hospitalization. Such as broken arms and legs,
chest pains on weekends, they are worried about
appendicitis; go the emergency room and get a
test. It is an emergency, but you are not admitted
if you don't have appendicitis. The standard,
therefore, of having to be hospitalized in order
to pay the customary co-pay is too broad and
punitive. The rest of the care proposals, I'm not
going to go through each one in the healthcare
area. Generic Rx advantage, PBM's personalized
medicine. Radiology notification and centers of
excellence, we believe they should all be referred
to the joint plan subcommittee for handling. To
the degree they are voluntary in nature, they will
be implemented quickly. They do require further
understanding and discussion. As has been
I testified, ironically the unions have already proposed adoption of the generic Rx advantage program to the carriers in the subcommittee. The carriers said no. We've also proposed the personalized medicine program for the two drugs that we've studied. It is now up to 7. I'm not saying I know what we'll do with the other 5 because we've haven't looked at it yet. But the 2 that we've studied, we've already proposed. The carriers refused. They opted to push the issue here to negotiations, we don't know why. We don't know whether the programs they are proposing with the same name is different in any aspect from what we've already proposed. We don't know. But obviously if we proposed it, and they are the same, then we would agree to it. As to radiology notification, we support the idea that duplicative and unnecessary tests should be eliminated. We all understand from the details, we just don't understand the details of what is being proposed from a limited and vague language in the UTU agreement and carrier proposal. We don't know what
the protocols are. We think it should be referred to committee. So in conclusion, we believe the healthcare plan today is a fair one. Its benefits are not exorbitant by any standard. Its rate of cost increase trails average plans nationwide, and also medical inflation. Next year overall plan cost won't go up a dime. In fact it may be significantly less. Relative costs will come down as the current older population retires. We believe that railroad workers should not be penalized through higher cost shifting, especially when the higher rate of illness they endure is a direct result of the often harsh working conditions they face. The carriers say their proposals are not driven by cost-shifting goals, but rather they simply want to curb costs by reducing rampant, what they call rampant, unnecessary, overutilization. We heard that several times. I submit that the repeated characterization of the plan is one rife with overuse, suffers from the same degree of hyperbole as their economic experts assertion that the only
way employees contribute to productivity is when we leave the door, when we leave employment. They supply no empirical evidence to support their allegation that rail workers' overuse the plan by seeking medical attention when it is not needed. Supposedly because it is not expensive enough to deter them. They offer no evidence to support their much repeated claim that adding deductibles and coinsurance and higher drug co-pays will deter employees from seeking medical care, or lead to healthier lifestyles, which is one of the other things they said. And the only thing, the only evidence they submitted in that regard was the single 40 year old study that didn't even involve the rail worker population. They would replace the already effective step therapy now in place which gives the doctor ultimate authority, with one in which the drug company has supreme authority to override the doctor's informed choices. Yes, the plan costs money, however the carriers have conclusively shown they can absorb that cost without affecting their bottom line. The gradual
growth in plan costs has not dented carrier
profitability or executive compensation. Now the
carriers want to put a significant dent in
employee compensation by introducing additional
cost shifting. There is no justification for such
a concession. We therefore submit that our
proposal to maintain the current plan design,
eliminate the 15 percent contribution formula,
retain the current $200 monthly contribution, is a
fair and reasonable resolution for the health
insurance issue in this round. Thank you.
CHAIRMAN JAFFE: Thank you Mr. Parker. We'll stand
in recess for 15 minutes.
CHAIRMAN JAFFE: If I could ask people to resume
seating at their earliest convenience, we can then
get started again. Thank you. Did you wish to say
something Mr. Wilder, I.
MR. WILDER: No we are prepared to answer questions
of the panel.
CHAIRMAN JAFFE: Thank you very much. As yesterday
I guess I'll take the lead oar, or maybe the only
oar. The questions are primarily directed at the
actuaries, Mr. Kalwarski and Ms. Mallett. Can we start first with the presentation of this morning, and then perhaps some clarifiers from exhibit 37 which was the report you'd prepared earlier. On Page 12.

MR. KALWARSKI: The report or the slides?

CHAIRMAN JAFFE: Of the slides, I'm sorry. I'll start with the slides and then move from there if I can. The 4.4 percent annual increase for the years 2008 on, that looks like it is a point to point. Right? So it goes from the 1039 to the 1311?

MR. KALWARSKI: No. Let me tell you exactly how it goes. The 15.3 comes about from the 791 relative to the 448. Then the 6.0 comes from the 1057 relative to the 791. And the 1-3, the 4.4 comes from 1311 relative to the last part of the previous thing, 1057.

CHAIRMAN JAFFE: Got it. And the 1311 projection, is that something that you folks came up with or is that something that was provided to you?

MS. MALLETT: It was provided to us by United
Healthcare who normally does the projections at this time of year.

CHAIRMAN JAFFE: And that is based on, I assume, the existing plan provisions?

MS. MALLETT: Yes.

CHAIRMAN JAFFE: Have either you or they done any projections in the years beyond 2012 if the existing plan design simply remains as is?

MS. MALLETT: We've done projections in order to come up with the cost differences.

CHAIRMAN JAFFE: And are those in the materials on a year-by-year basis?

MS. MALLETT: No they are in an aggregate basis in the report.

CHAIRMAN JAFFE: And did you use a level percentage or something else?

MS. MALLETT: For the trend assumptions?

CHAIRMAN JAFFE: For projecting out the years beyond 2012, focusing in particular on those that would be covered by this agreement obviously.

MS. MALLETT: We used the trend projections provided by the individual vendors. So they
aggregated that, I don't remember the exact numbers in their report, it was close to under 8 percent. But there was a separate projection for the, that they could give us for trends they projected. And then United Healthcare took in their trend projections and (inaudible) and high marks. And they added in the middle health to consolidate a trend number that they, the vendors, based on their provider contracts and experience, recommended using. We used that.

CHAIRMAN JAFFE: Is there a way to determine what the employees contributions towards premiums would be if we assumed two things: one that the plan is not changed by way of design, and two the $200 cap is not imposed but a straight 15 percent is continued.

MS. MALLETT: There is a way to do that. We didn't do that because our understanding is that the $200 remains, so we didn't do that calculation.

CHAIRMAN JAFFE: And so I assume if you didn't do the calculation you don't know how that would compare with the additional costs under the
1 proposed changes from the employees point of view.
2 MS. MALLETT: No I do not.
3 CHAIRMAN JAFFE: I believe you indicated that the
4 data in the slides assumed no change in
5 utilization?
6 MS. MALLETT: In some of the slides. I think most
7 of the slides, depending on which one you are
8 looking at.
9 CHAIRMAN JAFFE: In the report, I think at least in
10 the report I had read that there was an assumption
11 that if the changes that are being proposed were
12 implemented it was reduce emergency room visits by
13 about 30 percent.
14 MS. MALLETT: Yeah. Calculation for that, for the
15 savings to the plan we did assume that. But in the
16 slide which is on page that I think you're
17 referring to
18 on page 35. That is actual data for 2009. So we
19 couldn't predict individual
20 people, so we actually did a re-pricing here. So
21 we actually couldn't predict who is going to go to
22 the emergency room and who is not on an individual
basis. What we could do though, in projecting our
calculations, is we could do an assumption.

CHAIRMAN JAFFE: Fair enough. And the 3000 plus on
the right hand end of the graph, do those include
individuals who are already in CHCB?

MS. MALLET: No. This chart is for MMCP only. And
these are 2009 dollars, so it would be different

CHAIRMAN JAFFE: Got it. Slide 40. The zero
deductible on generic discussion. Was there any
projection of what that would result in by way of
either cost to the plan and/or cost to the members
if it were implemented?

MS. MALLET: Yes we did do a projection on that.
We did not provide that information since it is
not on a table. We could get, I can look it up but
it would take a few minutes. Or we can get back to
you if you want that information.

CHAIRMAN JAFFE: Whatever is easier for you is
fine. The 400. Oh I'm sorry. Were you looking.?

MS. MALLET: Go ahead. You could ask the next
question while I'm looking.
CHAIRMAN JAFFE: That is fine. Multitask as well.

If you can provide it in a document later that would do the trick for counsel that would be fine.

MS. MALLETT: Okay.

CHAIRMAN JAFFE: Thank you. So $410 figure on slide 35 relative to increased cost of the carriers' proposal on average. That assumes no utilization shifts, or it assumes that there are utilization shifts?

MS. MALLETT: No utilization shifts. And it is in 2009 dollars. Again the purpose of this chart was to show the distribution how it changed, as opposed to show the financial impact.

CHAIRMAN JAFFE: Did you do any analysis at all of the UTU plan relative to this plan focusing on when the plan design issues were similar between the two plans whether there were meaningful differences in cost to either the carrier on the one hand or to employees in terms of any of the non-premium payments on the other?

MS. MALLETT: No. We were not given any UTU data.
All of our data that we reported was on the national plan only for the membership.

CHAIRMAN JAFFE: If the plan is significantly younger, would you expect a difference?

MS. MALLETT: In terms of the cost differential?

CHAIRMAN JAFFE: Yes ma'am.

MS. MALLETT: Yes because I would expect the starting base to be different. If you have a different starting base then you have a different change in your assumptions.

CHAIRMAN JAFFE: And the last area, at least from my end, there was a projection of decreased cost by $273 million. I believe this was in the report that you prepared for the years 2012, 13 and 14. And I wanted to get a little bit more clarity if we could. What is that comparing when you've got a delta of 273 million?

MS. MALLETT: That is, as I said we projected the underlying cost using the trend assumptions that were given by the carriers. And then we modified them as indicated in our report for the benefit design changes. So the projection for three years
to December 31st 2013 took this and subtracted the difference.

CHAIRMAN JAFFE: That is what I thought. And was the 273 in the aggregate for the three years, or something else?

MS. MALLETT: It is exactly, the aggregate for the three years.

CHAIRMAN JAFFE: That is what it appeared, but I don't like to assume much at least without asking.

And the last question. The $1270 projection with the 410 difference, you said that was as of 2009 dollars. Is that correct? MS. MALLETT: Yes.

CHAIRMAN JAFFE: Did you do any. Did you make any assumptions about the effect over time of that number? Would it go up? Would it go down? Would it stay constant? Is it unknown? I think that covers the waterfront, right?

MS. MALLETT: It would most likely go up. I'm sure it would go up actually. Because trend goes up and the differences get bigger.

CHAIRMAN JAFFE: Got it. I'm happy to leave it at that. Oh, I'm sorry.
MR. JAVITS: I have a short question on the joint plan committee.

CHAIRMAN JAFFE: I apologize.

MR. JAVITS: The dispute resolution mechanism. That goes, I take it only to applicants not any design change authorities on the neutral.

MS. MALLETT: I'm not qualified to answer about dispute resolution.

MR. KALWARSKI: Mr. Javits, the answer to that is no.

MR. JAVITS: Okay. There is a dispute to payments and such that committee.

MR. KALWARSKI: The authority of the neutral is confined to a (inaudible) authority. It does not go to secular functions such as plan design changes.

MR. JAVITS: Have there been any (inaudible) of that in the past that have broader authority to a neutral to make those types of determinations.

MR. KALWARSKI: (inaudible) the parties have not seen fit to clothe a neutral with that type of authority. My understanding is that both parties
oppose it. Certainly the organizations do.

MR. JAVITS: Have they been used in any ad hoc way in the past?

MR. KALWARSKI: Not to my knowledge.

CHAIRMAN JAFFE: Did you have.? Did you want to just pose it?

MALE SPEAKER: No. (whispering)

CHAIRMAN JAFFE: I understand. I think that covers us, thank you all very much.

MR. KALWARSKI: Thank you.

MS. PARCELLI: Mr. Chairman next we'd like to bring Mr. Roth back to discuss our supplemental sickness proposal. We think this will be a quick item to get through on our agenda. Then we'd like to just move directly to Mr. Wilder with the information request piece. And we may be getting overly ambitious, but we think we might be even able to slot in one of our shorter craft-specific items after Mr. Wilder finishes up. But let's play it by ear for now.

CHAIRMAN JAFFE: That sounds very sensible. That is fine. Okay. We don't need to swear you back in
again, but we will remind you, you are still under
oath Mr. Roth. Thank you.

MR. ROTH: Yes sir, I recall. Good morning. I have
furnished the board with a summary statement. It
is very brief. Some 5 pages in length. It is found
in union exhibit number 86 at record page 2161 in
the unions case. And it will just lay out for the
background to the supplemental sickness benefit
program to which the organizations seek an
improvement in. And normally Mr. Chairman, board
members, the matter of the supplemental sickness
benefit program can be a complicated subject.
There are in addition to the benefit formulas
themselves. There are a whole slew of
administrative rules and waiting periods, and
other such elements and terms of the plan that are
often the subject of negotiations between the
parties. But in this case the issue is far more
narrow. And so what I would propose at this point
rather than take you through the statement or the
exhibit materials, just go to the central points
of information that I think are required for the
board to understand the issue before it and make a sound recommendation. By the way, just again by way of for the reference to the record, the supporting exhibits and charts and tables are found to the supplemental sickness subject are found in union exhibit number 87. And those would involve pages 156 through 174 of what I've been calling the chart book. Essentially railroad workers are covered by the Railroad Unemployment Insurance Act which includes a benefit which is applicable on those occasions when the employees lose time from work due to an illness or an accident. And of course this was, is, applies to those that meet the qualifying requirements of the plan. The benefit level is currently 60 percent of your pay up to $66 a day. The operative provision given the full time wage earnings for the average person is clearly the $66 amount, the cap. That is translated into a monthly benefit in accordance with the RUIA rules to $1,330 a month. Now the RUIA benefit replaces approximately 30 percent of the average straight time hourly rate of the
1 average shop craft employee, for instance.
2 Obviously the replacement rate for RUIA, given the
3 fixed dollar nature of the benefit, is going to
4 vary with your earnings level or your straight
5 time rate. But it is in the neighborhood of the 30
6 percent. Now because the replacement rate under
7 RUIA alone is not adequate to protect your income
8 when you are absent because of illness and injury,
9 the parties have negotiated what is called the
10 supplemental sickness benefit insurance program.
11 That is actually supplement sickness benefit
12 program is the name of the plan. In short, the
13 supplemental sickness benefit program together
14 with RUIA will increase the replacement rates from
15 the 30 percent range up to 70 to 72 percent if you
16 are qualified for RUIA in receiving benefits. If
17 you have exhausted benefits under RUIA, the
18 supplemental sickness benefit program will pay for
19 extended benefit duration, and during that period
20 of time the benefits can range between 66 and 71
21 percent. Now this issue goes to the enhancement of
22 the supplemental benefit program which is
applicable to three groups of the coalitions. Only three organizations have this program. There are others, by the way who have attended to this question of wage maintenance during illness and injury by negotiating traditional payroll-based sick leave programs such as the TCU has. But the three programs and I think I misspoke. I said, "Three organizations are covered." What I meant to say was that there are three programs which cover the organizations that are in attendance here under and within the Coalition of Unions before you. The one is a shop craft plan, covering all the shop craft organizations; the BMWE has its own plan; and the Brotherhood of Railroad Signalmen have the third plan. So those are three separate plans. The shop craft plan, obviously, covers the breadth of the organizations working under that general umbrella. In any case, as is indicated, the provisions are complex. I mean, there are waiting periods. There are qualifying periods. There are numerous other rules on who is qualified and how long the
benefits can go on. These are normally and
customarily the stuff of negotiations. But the
issue before you is very narrow, and it has to do
with simply increasing that replacement rate by
increasing the fixed-dollar benefit levels to the
level which will match the replacement rate that existed after the last
adjustment was made on the last day, or the amendable date of disagreement. The way to look at
this and the central issue before you is this
Benefits are expressed as a fixed-dollar amount
under the Supplemental Sickness Benefit Programs.
So, by definition, as wages go up, the replacement
rates will fall as the Supplemental Sickness
Benefit dollars as well as RUIA benefit dollars
are fixed. So the parties have had, over the
course of the last couple of rounds of bargaining,
adopted the practice of increasing the
Supplemental Sickness Benefit Program benefit
levels to that which had prevailed at the outset
of the negotiated collective agreement - at the
outset of the collective bargaining agreement. And
then, during the course of the collective bargaining agreement, because the benefit levels would be maintained, those replacement rates would fall. At the end of the collective bargaining agreement, they would snap them up again to reflect the replacement rates that were in existence at the outset of the contract. Now so the issue before you, and the problem that we are bringing to your attention is really that which is found on and you can look at it is the last chart in the chart book, or it is on Page Five of the Summary. And I think this kind of crystallizes the problem that we are bringing to your attention, and the reason why the employees are seeking a remedy to this problem. And I will explain what we are proposing in a second. But if you look at that last chart and, again, it is the last page in either of the books that is on either page and you can see that this example here is for the Carmen. And Dewey (ph) and Fogel (ph) is an example that involves an employee who is receiving the RUI benefits. But it does not
matter; I mean, the replacement rates the point
we are making is the replacement rates at the
outset of the contract are fixed in the 70-
percent range. And then his wages went up over the
course of the this is the agreement before the
last one, which commenced in January of 2000. The
replacement rate automatically fell as general
wage increases went up. It is very simple. The
parties at the end of that contract snapped the
replacement rate back up to its 70.5-percent
level. So there were two adjustments one at the
end of the contract and one at the beginning of
the contract. That same process was put into place
under the last collective bargaining agreement so
that, while the replacement rate fell over the
course of the agreement as general wage increases
were applied, it fell from as you can see in this
illustration from 70 percent to the 60-percent
level by the end of the contract. The parties
then, by virtue of the terms of their of the
predecessor agreement, bought the Supplemental
Sickness benefits up so that, in exact amount,
that would restore the replacement rate that existed back at the outset of the agreement. So you have this kind of profile of replacement rates that go up and down over the course of the agreement because the parties have attended to the problem only at the beginning and at the end of the contract. Now, the carriers, in their proposal before you in this case, have agreed that the benefit should be brought up to the replacement rates that exist at the outset of the contract. I am not clear about what they propose going forward; that is not clear to me. But our proposal is very simple. We would suggest that we index the Supplement Sickness benefits to wages. And you do that very simply. Given the complexity of our classification system and the enormous number of different rates, we would do that simply by taking the current replacement rates that exist today and increase the benefits under that Supplement Sickness Insurance Plan commensurate with general wage increases, whatever they are, and that would
automatically preserve the replacement rates that exist today. So it is an indexing of the current benefit levels by tying them to the general wage increases. That, of course, is becoming that this approach is becoming more and more important as these contracts have gotten longer. I mean, if we were dealing with annual collective bargaining agreements, it would not be a problem; we would be able to adjust the replacement rate annually. But because we are going to these longer agreements, and there has been that tendency in the industry, we find it necessary now to kind of avoid this collapse of the replacement rates midterm. So that simply is the proposal. And I would note that, again, if there is the parties have recognized that you do have this kind of structural defect in the plan, those fixed-dollar amounts. They could be there are one of two remedies you can either express the benefit in terms of a percentage of your pay, and that would automatically take care of the problem, or you could do as the organizations are proposing.
now, and that is to simply increase the current benefit levels by the exact increase that is provided by way of increases in basic wages. One last thought: it is again, it is a simple I think simply understood proposal of the organizations. One last thought: These supplemental sickness plans are not unique to the national freight agreements, and we have them elsewhere, including on commuter railroads. During the last round of negotiations at the Massachusetts Bay Commuter Railroad, when I say "we," there was a coalition of 11 or 12 unions of the same mix that you have before you, with the same organizations with the exception of the BLE and that coalition was actually led by Joel Parker from the TCU and Dennis Boston from the BRS. I was their advisor. I made the same illustration to that company that we are making before you, and they had agreed across the board to the indexing approach. So we have ample precedent. This just happened in the last round of bargaining earlier this year, and so there is that illustration of
where this kind of remedy to the problem makes an enormous amount of sense. So, with that, I would just if you have any questions, I will answer them; otherwise, I am finished. Thank you.

CHAIRMAN JAFFE: Just one is there a cost estimate for this proposal that appears in the materials?

MR. WILLIAM R. ROTH: Well, this is not to my knowledge, not thus far. The curious thing about this plan is, when you negotiate at the outset of a contract a certain benefit level, alls because this plan is thoroughly integrated with RUIA, as the RUIA benefit goes up, the benefit that is supplied by the plan goes down because it because the combination of RUIA and the Supplement Sickness benefit is expressed in a cap on total benefit. So what happens under the what happens under the plan is, as RUI as legislative changes in RUI go up and they have gone up from 60 to, you know, 62, 66 per - $66 I have that chronology of change in the exhibit material as that goes up, the benefit levels of the plan that are integrated with RUI actually fall. Now, all things
being equal, like utilization and inflation, the cost of the plan actually falls over the course of the agreement. I do not think that has actually happened, in fact, because of health insurance companies are not going to they do not want to give the money back that they bargained for. But I do not think that that has actually happened. But, in theory, those rates have would actually fall. We do not our position is that whatever the small cost is, it should not be attributable or should not be considered incremental to this round of bargaining. This is something that the organizations have bargained for in the past, essentially paid for it in their minds in the past negotiations, and all we are asking for is a preservation of the replacement rates. Now, mind you, in prior rounds of bargaining, we sought, as I think logical, an improvement in that replacement rate. After all, at 70 percent, you are still losing a considerable amount of dollars when you even when you are eligible for the Supplement Sickness or RUI benefits. And I note in
my Summary that there was a four-day waiting period. So, actually, the replacement rates that I am talking about are at are the maximum amounts. When you include the fact that you are losing pay over the first part of every absence, your replacement rates are much smaller than over a two-week, three-week, four-week, five-week absence than what I - than what I am describing as the maximum. So this is a I would regard this as a very modest proposal on the part of the organizations. A more aggressive position would be to bring these benefit levels up to that which is natural for a paid sick leave program, for example, which is 100 percent. That is what the rest of the world is accustomed to. In the railroad industry, this is a very deficient part of total compensation. They just do not get any real wage maintenance for on occasions where they are absent from work due to illness and injury, which are beyond their control.

CHAIRMAN JAFFE: Anything further from.? MR.

WILLIAM R. ROTH (ph): Nope, we are in good shape.
Thanks.

UNIDENTIFIED MALE: Thanks.

UNIDENTIFIED FEMALE: So next, we will move to our Information Request Proposal. Roland gave me this lovely introduction to read. I think I will probably give the Reader's Digest: "Founding principle of Baptiste and Wilder, certainly a well-experienced and well-known advocate on the Labor side, representing employees also in employee benefits and trusts, extensive litigation experience." But that is not really the focus in where his testimony today comes from, but rather from his work extensive work counseling unions involved in the negotiation processes, both in terms of the national freights, has worked with the Rail Labor Bargaining Coalition, also in coalitions formed on the commuter rails. So he has been through it all in that respect and so brings a wealth of experience to our Information Request Proposal.

CHAIRMAN JAFFE: And since we are taking testimony from your rather than pure argument, we probably
ought to have the Reporter swear you in as a matter of could you do that, please?

REPORTER: Yes, sir. (inaudible at 12:33), do you swear testimony you are about to give in this case be the truth, the whole truth, and nothing but the truth (inaudible)? MR. ROLAND P. WILDER, JR.: I do.

REPORTER: Thank you. MR. ROLAND P. WILDER, JR.: And as the Chairman has noted, my presentation involves both law and thought. It is difficult to say which is which, but it will be a blend. In terms of the Organization's proposal for information sharing at the national level, information sharing became common in labor negotiations and grievance arbitration after the Acme Industrial case was handed down by the Supreme Court. The Supreme Court, in deciding that that was a right that employers must adhere to under the NLRB relied on the provisions of such in 174-A1, which use the party's duty to exert every reasonable effort to make and maintain agreements.

If that language sounds familiar, of course, it
is. It was taken from Section (Two, first) (ph) of the Railway Labor Act. So considering the Supreme Court is also held in Chicago and Northwest versus UTU, the Section (Two, first) (ph) is enforceable by the federal courts, then the motion would be that, just like the NLRB, the federal courts would enforce the Organization's request for information. Unfortunately, just because you have a right under federal law does not mean that you have a remedy in federal court. And, indeed, that was what happened. Each of the courts that have dealt with this subject have concluded that there was no evidence that Congress meant to enforce court-ordered discovery applicable to railway labor negotiations and grievance adjustment. And what the courts have said is that the parties should work this out themselves, that is to bargain the information sharing provisions in their contract. That is what we tried to do in that Section Six notice in our proposals made at the bargaining table, which, indeed, were discussed. Now, let me give you some idea of what
it is like to be a union advocate without any source of information. It is like floundering in a dark room. You do not even know where the walls are half the time. But, worse than that, you are unable to evaluate the employer's objections to your proposal, whether they are based on operational or on cost bases. You are unable to evaluate the employer's claim of how ridiculously high the cost your proposal has. And worse than that, because you usually have a committee of employees, they are skeptical of what the employer says at the bargaining table. And so when you are urging a deal, you are attempting to broker a deal, which is what counsel does in these situations, the committee's reaction is, "Well, how do you know?" And that extends negotiations. It makes it more difficult. And this is just the sort of thing that the Acme Industrial decision was directed at. Did it happen here? Yes, it happened in two respects. First, with respect to the maintenance of way craft-specific away-from-home expense issue. Naturally, there was...
discussion about how much of that counts. The
carriers' current evaluation is set forth in
Carrier Supplement Six, at Page Five. We learned
that the cost was $120 million. All I can say is
that that figure was wildly different than the
figure that surfaced at bargaining. Also, when the
UTU agreement was handed down, we wanted to know
what the value of it was. Give us the information
so it could be caustic (ph). That request, both by
the RLBC and the CRU was ignored by the carrier
until, in preparations for this proceeding, that
information was made available. I can tell you,
because I have negotiated a contract or two under
the Railway Act, in the Title Two area covering
the airlines, the information question is handled
much, much better in terms of both negotiations
but especially in the grievance adjustment area.
Their information sharing in the workings of the
Grievance Procedure and Adjustment Board has
become commonplace. We explored (ph) in the
exhibits - starting with Page 50, Exhibit One and
going through Exhibit 55 in the Coalition's joint
1 exhibit the kinds of provisions that are
2 commonplace in the railway in the airline
3 industry, that may include almost all of the large
4 carriers. I gave you an example from negotiations.
5 Let me give you an example in the Adjustment Board
6 area from this industry: We cite an Adjustment
7 Board award on Page 89 of the joint organizations'
8 initial submission. This is Award 25264 involving
9 the BLE and the Union Pacific Railroad. Too, you
10 can be as technical as you want when you are
11 talking about engineers; I will really simplify
12 this. The engineer was disciplined because he
13 operated his train over a so-called beep order
14 limit without permission. He and the conductor
15 contended that he had permission from the carrier
16 official. He asked for the tapes that covered
17 communications between the train and the dispatch.
18 The carrier declined on the ground that it was not
19 going to use the tapes in the hearing. Well, so
20 since it was not going to use the tapes, then they
21 lacked material for the hearing. Well, super. The
22 engineer wondered, "Why can't I have the tapes
that will exonerate me?" And the Adjustment Board
concluded that the carrier did not make out a
(prime effacing) (ph) case of just cause for
discipline because it did not turn over the tapes.
Now, look, this is a really convoluted way to get
around something that should be commonplace. If
the tapes were turned over, both sides would know
whether the engineer had been exonerated or not,
and the case would not have reached the Adjustment
Board level. And I submit to you, when the
Adjustment Board has the kind of backlog that we
convene special commissions to deal with,
something as routine as this, that would cut down
on the backlog and induce settlement is an
extraordinarily valuable tool, which we commend to
your consideration. Thank you.

CHAIRMAN JAFFE: Mr. Wilder.

UNIDENTIFIED FEMALE SPEAKER: Well, we would like
to go ahead and move on with starting our shop
craft presentation or - I am sorry - craft-
specific presentations. So we will invite they
might need a couple of minutes to get them set up,
but the Dispatchers Association, please. Thank you.

UNIDENTIFIED MALE SPEAKER: We are off. (audio break)

CHAIRMAN JAFFE: Give us just a moment.

MR. WOLLY: That's fine, we're arguing just so I know whether it is a matter of decorum. Mr. Wolly we need to have you sworn in.

MR. WOLLY: I'm not. I'm just going to introduce the president of the union to you.

CHAIRMAN JAFFE: Perfect.

MR. WOLLY: Yesterday as the General Counsel of the BLET, I introduced President Pierce. I'm also the General Counsel of the American Train Dispatchers Association, and it is my privilege to introduce to you its president, Leo McCann. President McCann has worked in the railroad industry for 37 years.

Besides train dispatching, his career has included work as a block operator, freight agent, intermodal supervisor, and labor relations officer. He comes from a family steeped in the railroad tradition. His father worked as a
locomotive engineer for 42 years. And his
grandfather as a conductor for 50 years. Both on
the Pennsylvania Railroad. Leo's union career
began when he was working as a train dispatcher in
Conrail's Pittsburgh office. He was elected local
chairman, vice general chairman, and then general
chairman for the Conrail dispatchers. After that
he became ATDA's secretary treasurer. And since
1996 he has been its president. President McCann.

MALE SPEAKER: Good morning. If I could ask the
reporter to please swear in Mr. McCann. (Mr.
McCann sworn)

MR. MCCANN: Good morning Mr. Chairman and members
of the board. Like Mr. Wolly said my name is Leo
McCann, and I am President of the American Train
Dispatchers Association. Let me begin by
apologizing to the board for not being here when
the hearings began last week. My organization was
holding its 31st quadrennial convention in Las
Vegas, and that is why I couldn't be with you. One
of the things we did there was hold elections for
national officers. I'm happy to report I was
reelected. If not, you might be talking or
listening to someone differently today. Hopefully
this board will address ATDA's craft-specific
proposal as seriously as our delegates addressed
our elections. And hopefully you will arrive an
equally satisfactory result. The ATDA is asking
you to recommend the adoption of a national
supplemental sickness plan for train dispatchers.
Just like the one we presently have on part of
CSXT. And just like the members of 9 other unions
have enjoyed for some time. Before I get into the
details, I want to address something I was told
the carriers said to you last week. They have
compared train dispatchers to truck or taxi
dispatchers. This is one of the most insulting
things I've ever heard. Maybe I shouldn't have
been surprised. Last week, at our national
convention, several delegates addressed the body
about exactly that kind of misunderstanding by the
general public. They were concerned that because
of our name containing the word 'dispatcher',
persons who aren't familiar with the railroad
industry don't equate our job with the skill level it requires. Or the safety sense of nature of what we do. They say that when people ask them what their job is, and they respond 'train dispatcher', they are faced with blank stares. But when they explain what train dispatchers actually do, people understand. The delegates thought we should undertake a major effort to educate the public. Now what we do for the railroad industry is just like what the air traffic controllers do for the air industry. Train dispatchers control the movement of every train on every rail line in this country using highly sophisticated computerized equipment. Some of our delegates thought we should consider changing our name to the American Rail Traffic Controllers Association. We didn't. But we did agree to change our constitution to better reflect what our jobs actually do. Train dispatchers have to be familiar with the terrain on every line of track. We have to know and respond to the weather conditions in which the train operates. We have to be aware of signal
breakdowns, bridge outages and track failures. We have to know where every train is at every minute of every day so that accidents don't happen, and the carriers can deliver time-sensitive products to their customers safely. We're held to the strictest hours of service restrictions of any employee in the industry. And we are the carrier's first contact with first responders; police, fire, ambulance, in the event of emergencies. In 2006, Steven Reinhardt of the Foster Miller Consulting firm presented a report to the 50th annual meeting of the Human Factors and Ergonomics Society called 'Toward the Development of a Performance Model of a Railroad Dispatcher.' His survey, his report surveyed prior research, public and private into train dispatchers and their responsibilities. Why was this study undertaken? He explains that in the first two sentences, and I quote: 'Railroad dispatchers shoulder more responsibilities today than ever before due to changes in technology, operating practices and the economy. In their capacity as rail traffic controllers,' the report
continues, 'dispatchers play an integral role in rail safety.' A copy of this report is on the flash drive we are providing the board, as are citations to every other report mentioned in my remarks today. The Federal Railroad Administration has conducted numerous studies of train dispatching, and how train dispatchers cope with the extraordinary stress associated with their work. It published a national train dispatching safety assessment in 1990 with a follow up review in 1995. In the last 10 years alone, FRA has published these other reports and studies about train dispatchers. A preliminary examination of railroad dispatchers' workload stress and fatigue, work schedules and sleep patterns of railroad dispatchers. Optimizing staffing levels and schedules for railroad dispatching centers. Railroad dispatcher communications training materials. Understanding how train dispatchers manage and control trains. Results of a cognitive task analysis, and selection of railroad dispatcher candidates. A bibliography of railroad
dispatcher research has also been provided to the board. Every one of these reports recognizes the essential role train dispatchers play for this industry. In 1948, an article in the journal Industrial Medicine said, 'The train dispatcher carries a greater minute-by-minute mental load than that for any known occupation, save a general in battle.' I submit to you that that remains true today. So please, don't be fooled by the ridiculous comparisons made by Dr.'s Popell (ph) and Evans and Fay, the carrier experts, between railroad train dispatchers and other workers who do little more than answer phones and send out taxis or shuttle buses. That is who earns the lower wage, the carriers would prefer you to look at. Let's get real. Train dispatching is very difficult, highly safety sensitive job that requires advanced education and training. The jobs the carriers would have you compare us to don't. That is why they don't get paid what we do either. And by the way, the BOS reports that demean hourly wage for air traffic controllers, the only job
that is really comparable to ours, is $53.02. That is $14.26 an hour more than the carriers say train dispatchers earn. That alone proves we hardly receive the huge premium that their experts say we do. When we are compared to our counterpart in the airline industry, we get no premium at all. Now let's get to the ATD cross-specific proposal. What we are asking you to consider is very easy to understand. A supplemental sickness benefit plan serves the objective of maintaining lost earnings caused by non-occupational illness and injury. It protects employees during periods of inability to work due to illness or injury. We have put in our written submission, agreements that the carriers have with 9 other rail unions that provide for supplemental sickness benefits. As you can see, the plans are essentially identical. They all provide for benefits starting on the 5th consecutive day of disability and continuing for a maximum of 12 months. They all require covered employees to apply and be approved for Railroad Unemployment Insurance Act sickness benefits by
the railroad retirement board. And they all
calculate the benefits the employees receive based
on the employees monthly rate of pay. Paid on a
daily basis. All of the plan descriptions are
posted on the NRLC website, and we've attached
relevant excerpts as exhibits A through D to our
submissions. Labor and management update the
dollar benefits regularly to maintain the same
percentage to the wages lost by an employee off
from work. The carriers did that with UTU for
yardmasters plan just last month. And the other
unions that have the plans are asking you to
recommend it for them too. Four years ago, ATDA
reached an agreement with CSXT to provide this
benefit for its train dispatchers on the non-
Conrail parts of its property. They adopted the
UTU yardmasters plan which provides benefits
amounting to 70 percent of the train dispatchers
daily rate for up to 1 year. That is what we are
asking you to recommend for all of the train
dispatchers covered by the national agreements
with the NCCC. Without it, other train dispatchers
must rely exclusively on RUIA benefits if they can't work due to illness or injury. A maximum basic benefit of $320 per week, $64 per day. This is less than 23 percent of the average sick or injured dispatchers lost earnings. Furthermore, while supplemental sickness benefit plans provide benefits for a year, the RUIA maximum duration for normal sickness benefits for railroad employees under 65 with less than 10 years service is only 26 weeks. Those with 10 or more years of railroad service can get extended benefits for up to 13 more weeks. Under the negotiated supplemental sickness benefit plans, all covered employees get 52 weeks, regardless of years service. Mr. Chairman and members of the board, ATDA respectfully submits that the time for extending this benefit for train dispatchers is now. Thank you for your time, and I'll entertain any questions.

CHAIRMAN JAFFE: Thank you Mr. McCann. One question. Has any costing been done with respect to the cost of this proposal?
LEO MCCANN: We haven't done any costing, Mr. Chairman.

CHAIRMAN JAFFE: Okay. Thank you very much.

MR. WOLLY: Mr. Chairman I'd just like to clarify one thing. Mr. McCann explained to you that the RUIA benefit is $320 a week, $64 a day. At page 4 in our submission, we indicate that that was what the rate was in 2009, I just want to clarify that that remains the rate today. Thank you.

CHAIRMAN JAFFE: Thank you Mr. Wolly.

MS. PARCELLI: And with that I think we're at a suitable point for our lunch break, and I think that might be the best thing rather than trying to get somebody else up right now.

CHAIRMAN JAFFE: That sounds fine. 1:15 work for everybody? We'll stand on adjournment. Off the record please. (audio break)

CHAIRMAN JAFFE: We're ready to resume at your convenience.

MS. PARCELLI: Mr. Chairman, board members, let me just give a little road map for this afternoon. I think it might be helpful. We had circulated a
schedule and we're pretty much, we're not changing
the order really. But just to reiterate. So we're
going to hear from the Brotherhood of Maintenance
of Way. Then we'll have a presentation from the
shop crafts (sp). Then we will have the
Brotherhood of Locomotive Engineers and Trainmen.
We've done the ATDA's presentation, so that is
taken care of. Then we'll hear from the
Brotherhood of Railroad Signalmen. Then we have
the NCFO after that. And then the International
Brotherhood of Boilermakers. And then I will speak
briefly on the TCU, clerical. And when I say
brief, it is true. Now just not to confuse
everyone, but we're going to have a variety of
different people doing introductions of these
pieces. So don't be surprised when you see Roland
will do some. Mike Wolly will do others. Beth Roma
from my office will do one. So don't be surprised
when different folks, many hands make lighter work
for me. So I appreciate them taking it on. And
then once we're done with the craft-specific items
we'd reserve time for a brief summation at the
end, bring our different witnesses together as the carriers had done at the end of their case in chief. So with that we'll get right underway.

CHAIRMAN JAFFE: Sounds fine. Thank you.

MR. WILDER: Mr. Chairman, the coalition organizations involved, Steve Powers.

CHAIRMAN JAFFE: That is fine. May I ask the reporter please to swear in Mr. Powers. (Powers sworn in)

CHAIRMAN JAFFE: Mr. Powers would you give your name and position with the BMWE.

STEVEN POWERS: My name is Steven Powers. I am BMWE's Director of Arbitration. I have 37 years of experience in the railroad industry. From 1974 to 1981 I worked in the engineering department of Chicago Northwestern Railroad. From 1981 to 1986, I was on the staff of BMWE's arbitration department. From 1986 to the present I've been the director of that department. I've been on the National Bargaining Committee since 1992, and I've participated directly or indirectly in five PEB's and the one congressional special board associated
with PEB 219. I've represented BMWE in all but two
of the PEB 219 implementing arbitrations
concerning consolidation of seniority districts
and the establishment of regional system gangs
that play such an important part in the testimony
I'll be giving today. I've been recognized as an
expert for the purposes of testifying on
Maintenance of Way work rules in federal district
courts including the district in which we're
sitting right now. I raise this last point only
because I know a work rule when I see one. And
while the carriers have lumped our expense away
from home proposal in with work rules, it is not a
work rule at all and it shouldn't be treated by
one by the board as they review our proposal. What
I'm going to be talking about is reimbursement of
out-of-pocket business expenses. It is a fairness
issue, but it is not a work rule issue.

MR. WILDER: Have you submitted a statement in this
matter?

MR. POWERS: I have. It is Craft-Specific
submission of BMEW at tab 2.
MR. WILDER: And there are some exhibits attached to that document, are there not?

MR. POWERS: Yes there are.

MR. WILDER: Is exhibit 1 your proposal?

MR. POWERS: Yes. Exhibit 1 is our proposal on this case.

MR. WILDER: Was a section 6 notice served on the BMWED away from home expense proposal.

MR. POWERS: Yes. We served a section 6 notice. And broadly stated the purpose was to modernize the structure for reimbursement of away from home expenses that was originally established by the award of arbitration board no. 298 some 44 years ago in 1967.

MR. WILDER: Were other crafts subject to arbitration of rule 298?

MR. POWERS: Yeah, there were five crafts originally involved in that proceeding. It was BRAC, TCU, the Brotherhood of Railroad Signalmen, the Hotel and Restaurant Workers, and BMWE.

MR. WILDER: Do those crafts have away from home expense proposals before this board?
MR. POWERS: I don't believe that they do.

MR. WILDER: And why is that?

MR. POWERS: Well they've all migrated away from award 298 and developed their own expense proposals that are independent of 298. As far as I know, BMWE is the only craft that is left under the control of award 298.

MR. WILDER: I'm trying to put before you BMWED exhibit 14.

MR. POWERS: I have it.

MR. WILDER: Would you identify it please?

MR. POWERS: What this is, is a side by side comparison of award 298 and BMWED's proposal. I simply went through and did a side by side comparison. And it was my hope that by the bold and underscore you'll see at various places, to help explain the differences. To show the board exactly what we're after. The bottom of each page I explain the change and the reason for the change.

MR. WILDER: And I take it from your answer that you personally prepared BMWED 14?
MR. POWERS: Well I directed its preparation, but I don't have the technical skill to do that. Someone on my staff did it under my direction.

MR. WILDER: Now do all BMD (ph) represented employees travel on the service to the carriers?

MR. POWERS: Well there is two basic classes of service. You have headquartered employees, and mobile service employees. Both classes are subject to travel. Traditionally only mobile employees travelled regularly away from home. They are the only ones who are away from home day after day, week after week, month after month, throughout the year. By our estimates we have approximately 25,000 Maintenance of Way employees covered by this proceeding. And about 11,500 would be mobile gang employees. That was a number the carriers seemed to agree on when we were bargaining. But today, that is an important difference, while mobile were the ones who travelled traditionally, today increasing numbers of headquarter employees are required to live away from home throughout their work week.
MR. WILDER: The carrier in its submissions has referred to 'production gangs' and 'headquartered employees'. Do you agree with those labels?

MR. POWERS: Yes. Generally. They are very broad general terms, but generally I agree with them.

MR. WILDER: Let me draw your attention to article 1 of BMWED 14. Would you explain what the organization is attempting to accomplish by its proposal to amend paragraph 1 of article 1?

MR. POWERS: Very simply, we want to make sure that employees assigned to fixed headquarters positions, more than 50 miles from home, receive reimbursement for their business expenses. If they have expenses, we want them to be reimbursed. It is that simple. That is what we're driving at.

MR. WILDER: Are there employees who are headquartered more than 50 miles from home who do not receive reimbursements?

MR. POWERS: Oh yes. Absolutely.

MR. WILDER: Could you explain please?

MR. POWERS: The truth is that there are employees who are assigned to headquarters hundreds of miles
from home who do not receive reimbursement for
business expenses. They fall into two broad
categories. Headquartered mobile. Headquartered
mobile is the oxymoronic name employees have given
to the first category. And what happens is the
railroad establishes a crew with all the
attributes of a mobile crew. It is large, it has
10 to 50 men. It is heavily mechanized. The kind
of equipment we saw Mr. Fritz and Mr. Manion
demonstrating. It draws employees from across a
multistate region, or from across the entire
railroad system. And these crews are customarily
the kinds of crews that would be mobile. The very
nature of their high production equipment is they
cover a lot of territory. But what the railroad
does is simply designate the crew as headquartered
and thereby escape expense reimbursements.
Sometimes the railroads will even abolish these
crews and then reestablish them with new
headquarters as the gangs move down the track.
They kind of leapfrog along. So even though these
employees are drawn from multistate regions or
even the whole system in some cases, and even though they are living away from home throughout their entire work week, they are denied lodging and meal reimbursement. And the net result is we end up with employees sleeping in tents. Sleeping in cars. And sleeping five or six to a hotel room in order to get by.

MR. WILDER: I think you indicated that arbitration award uhh. MR. POWERS: 298?

MR. WILDER: 298 was handed down in 1967?

MR. POWERS: Yes.

MR. WILDER: Now haven't there been developments in the industry since 1967 that have affected away from home expenses for your members?

MR. POWERS: There have, but I first need to describe the second class. I said there were two classes of employees who were denied expenses. And the second category of employees who were denied expense reimbursements, even though they are working away from home, are called headquartered away from home. That is the term the employees use, headquartered away from home. The railroad
establishes a legitimate headquarter position. We traditionally call them section gang positions or maintenance gang positions. These are positions that instead of roaming over the whole railroad, are responsible for maintaining a set area of track. Many years ago it might have been 10 miles of track. Today it might be 50 or 100 miles. But when they advertise these positions an employee ends up getting assigned instead of a local employee who would have traditionally filled one of these positions, you end up with an employee assigned who is maybe 200, 300 miles from home. So the net effect is that he's living away from home all week to work on this job, but he doesn't receive any lodging or meal allowance, or reimbursement of any type, because while he is working away from home he is not working away from his headquarters. And that is the problem with the language in award 298 today. Now as to Mr. Wilder's second question, have there been developments in the industry since '67 that have affected away from home expenses for employees?
Well yes there have been. That is exactly what the problem is. The industry has been radically restructured and award 298 has not been modernized to fit the new industry structure. And here is how it was restructured. You heard (inaudible) describe some of this. First there is the consolidation of the industry. You had dozens of railroads between 1967 and today consolidated to form the big four. BNSF, UP, CSXT and NS. Each of them now have massive operating systems that cover between 20 and 32. 20,000 and 32,000 miles of track and operate from 22 to 28 states. There is charts to demonstrate all this in the written papers. Now the second thing that happened was we had dramatic expansion of seniority districts enabled by PEB 219. BNSF is a typical example. This is true of all of them, but BNSF makes the cleanest, clearest example for you to understand. As a result of PEB 219, BNSF went from 47 small seniority districts to 9 massive districts that cover between 600 and 1100 miles each. And BNSF can operate regional and system gangs that range
all throughout this entire area. They cross all
the seniority district lines, can work over all of
the 23 states in the BNSF system. Now I had to
laugh when Mr. Munro said that PEB's don't make
recommendations for radical change. PEB 219 swept
away nearly 100 years of collectively bargained M
of W work rules. Just swept them right off the
table. This led to a radical restructuring of
geographic work territories. The problem is that
PEB 219 did not restructure the expense rules to
match. And that is what we are attempting to do
here today. Now I have one more comment while I'm
on the subject of PEB 219 and Mr. Munro's
argument. He commented that the carrier had
exercised restraint on work rules. That they were
really exercising great restrain in this round,
and it seems to me that it is something akin to
someone stealing 11 of 12 cookies and saying
they've exercised restraint because they left you
1. I don't know about the UTU, but after PEB 219
our travelling crews don't have much left to give
on work rules. Here's what the case is with the
219 regional or system production gang. The carrier can program them to work anywhere in these massive 20 to 23 state systems, and they do. You will hear evidence from Mr. Griffin about how they zigzag these employees back and forth across the country. They have flexible work weeks. They can work 4, 10's, they can work 5, 8's. They can have Saturday or Sunday as a regular workday, straight time hours. They have flexible starting times that essentially can be any time. And they can change the starting times. One day they work days or one week they work days, the next week they work nights. Back and forth like that unrestricted.

Then they have an intercraft rule where employees in one class can perform the work in another class. So we had a massive sweeping-aside of work rules, but no balance for BMWE when it came to the expenses that fit these new geographic territories and work systems.

CHAIRMAN JAFFE: Earlier Mr. Powers, you had indicated that BMWED headquartered employees do work more than 50 miles from home and without
reimbursement of away from home expenses. Can you
tell us whether these employees voluntarily bid
these positions more than 50 miles from where they
live?

MR. POWERS: No. Of course not. No employee would
do that. It wouldn't make any sense. Here's why
employees end up on headquartered positions far
from their homes. First they can be force-
assigned. Under some of the collective bargaining
agreements we have, if the railroad opens a job
and no one bids on it, they can force assign the
junior employee. And they do. They can force
assign them to one of these headquartered
positions far from their home. The choice is go or
lose your job. Second we have seniority rules that
require employees to bid or lose their seniority.

So for example if I have foreman seniority, I've
had 20 years of foreman seniority. I happen to
work as a track man because I can't hold a foreman
job. If a foreman job comes up 200 miles away in
one of these vast new seniority districts now
don't forget that when I established that
1 seniority my district was probably 100 miles. Now
2 it is 1000. And if a headquartered job comes up in
3 the foreman class, I have to bid or lose my
4 seniority. And then finally employees bid for
5 these jobs simply because they have no other place
6 to work. No one would voluntarily go if it wasn't
7 for one of these three conditions.
8 MR. WILDER: Now under the proposal that the BMWED
9 is made to the carriers in this proceeding, would
10 an employee who is headquartered but working more
11 than 50 miles from home voluntarily, and I
12 emphasize the word 'voluntarily' receive away from
13 home expenses?
14 MR. POWERS: Absolutely not. Under our proposal,
15 we've added a new paragraph C. That is the second
16 bold paragraph you see on the second page of the
17 side by side. And the very purpose of that
18 proposal is to say that employees must, if they
19 can, obtain a job, headquartered job, within 50
20 miles from home. Or a mobile job that actually
21 pays expenses. An employee could not, if they
22 voluntarily went to a job that was more than 50
miles from home, they would not get the expense reimbursements provided by the rule. We put that there. We can't imagine why anyone would do that, given that under our proposal you never get a reimbursement unless you have an expense. So we can't imagine why anyone would go to one of those jobs, unless they had to. But this is protection to make sure that no one can sharpshoot the rule from the employee side of the equation.

MR. WILDER: I'm going to turn your attention to page 2 of BMWED 14, and ask you to explain the portions of the proposal that are set forth on paragraph A on the right side of the page.

MR. POWERS: The first change, the bold you see in paragraph A1 simply provides if the change is that, if the carrier provides lodging. And under this proposal, under the current structure of 298 and under this proposal the carrier has a choice. Provide lodging, or pay a reimbursement for lodging. And in the original award 298 there were no lodging standards. And in paragraph 1 we've injected lodging standards. The idea is to provide
1 single occupancy motel lodging if the carrier provides that lodging.
2
3 MR. WILDER: Now are BMW employees under the current agreement entitled to single room occupancy?
4
5 MR. POWERS: No. One major carrier, CSXT provides single room occupancy as a matter of policy to system production gang employees. That is the employees who work on these big mechanized gangs.
6 They are the largest, most heavily mechanized gangs that travel over the whole CSXT system. The number of employees on the gangs can fluctuate, but it is generally 800 to 1000 employees. And CSXT has voluntarily provided single occupancy lodging because they thought it was the right thing to do. There is no rule or practice which demands it. No other railroads provide single occupancy lodging to BMWE travelling employees.
7 They don't have to under award 298, and they don't.
8
9 MR. WILDER: Are employees in other crafts entitled to single room occupancy when they travel in the
1 business of the Class 1 railroads?

2 MR. POWERS: Yes. Employees of all other crafts are

3 afforded single occupancy lodging. As far as I

4 have been able to determine, Maintenance of Way

5 employees are the only employees who are forced

6 into double occupancy. To us this is a simple

7 matter of fairness. If I heard Don Munro say

8 fairness once. I heard him say it 1000 times last

9 week. And that is what this is to us. Fairness. We

10 want what the employees of every other craft on

11 the railroad have had for decades.

12 MR. WILDER: Are there more travelling employees in

13 the aggregate in other crafts than the 11,500

14 travelers in the BMWED?

15 MR. POWERS: Absolutely. It is not even close. The

16 operating crafts alone have more travelling

17 employees than BMWED. When we looked at the STB

18 data, it shows that on the Class 1 railroads, and

19 this is all Class 1's, UTU and BLE combined have

20 approximately 60,000 members. And according to the

21 job categories as we analyzed them, about three

22 quarters, or 45,000 are in travelling
classifications. Now that is 50 percent more, nearly 50 percent more than we have in our entire union.

MR. WILDER: Drawing your attention again to paragraph A on page 2 of BMWED14, why have you added the word "private" to the first subparagraph?

MR. POWERS: To ensure that employees have single occupancy sleeping rooms with private bathrooms that you find in almost any traditional um, lodging situation, commercial lodging.

MR. WILDER: What affect if any would acceptance of this proposal have on the use of camp cars for lodging?

MR. POWERS: It would effectively eliminate the camp cars because they do not provide single occupancy sleeping room or private bathrooms.

MR. WILDER: How many representative employees are affected by this proposal?

MR. POWERS: If you questions is how many are affected in camp cars that would be about 600 employees on Norfolk Southern Railroad. They're
the only railroad that continues to use camp cars.

All others abandoned them starting in the '70's

and concluding by the '90's camp cars were gone

everywhere but Norfolk Southern Railroad.

MR. WILDER: Why is the Union proposing to
discontinue the use of camp cars?

MR. POWERS: There's three reasons in addition to
the lack of single occupancy lodging and private
bathrooms. First, it's the cramped living space.

Uh, they have child-width bunks. The bunks are
simply not fit for people to get a good night's
sleep. Second, they're noisy and dangerous. Cars
are by definition rail bound so they are parked in
rail yards or along rail sidings and they
constantly have the noise of trains rushing by
blowing whistles or switching all throughout the
night so that you can't get a decent night's
sleep. And third, they have jerry-built toilet
systems because of pressure from BMWE uh, through
state legislatures, the, the, NS applauds itself
because it went from housing eight men crammed
into these camp cars like cattle to four. But when
they rebuilt these camp cars, they didn't buy new
ones, of course, they just jerry-rigged the ones
they had they installed toilet systems. It's,
it's, so finally don't forget until 2007 employees
in camp cars were still using outhouses. In 2007,
United States of America, some of the richest
corporations in this country and their employees
were using outhouses. But they did jerry rig
toilets after that and so now they have these
chemical toilets that are installed with inside
the camp car. The problem is the human waste tanks
are inside the camp car as well so you have one of
two problems. Either you get chemical odors from
the tremendous amount of chemicals poured into the
waste or when they switch the cars the connections
frequently break and the camp cars are filled with
human waste. That's why we don't want camp cars, a
picture's worth a thousand words, we do have a
short five minute video. This video was shot um,
last month September in West Virginia, Mullins and
Bluefield, West Virginia. I have one apology, the
voices for some of the workers have been blurred
by BMWE. These workers, you'll hear voices that
were clear, those are union representatives. These
workers are terrified to talk about their
condition, absolutely terrified. They simply
refuse to testify unless we blurred their voices.
So Mr. Manyon talks about a big family. It's the
most dysfunctional family on that railroad that I
could imagine. So please. In 1967, when Board 298
rendered its award it recognized then living in
camp cars was not a good thing, was not a
favorable condition but they said, "That's the
best we can do right now. The interstate highway
system was just being completed and the wealth of
hotels that have grown up along the highway system
simply wasn't there. That's not true today.
There's no reason for this to continue. It should
be stopped and we hope your recommendations will
conclude an end to these camp car living
conditions.

MR. WILDER: Mr. Powers, I'm going to try to draw
your attention to paragraph 83 and ask how did you
arrive at the $77.00 a day lodging allowance.
MR. POWERS: The $77.00 figure is standard daily per diem the General Services Administration established for Federal Government employees traveling in the continental United States. It's based on a comprehensive survey of actual lodging costs across the continent of the United States and it's the objective dollar amount necessary to allow employees to obtain single occupancy lodging if the carrier doesn't furnish lodging. (coughing)

MR. WILDER: Did (indecipherable at 0:04:50) to mediate provide for full reimbursement for lodging?

MR. POWERS: No, it did not.

MR. WILDER: What, if anything uh, has changed to warrant the payment of full reimbursement to BMWED represented traveling employees.

MR. POWERS: Two things have changed. First, in 1967 Board 298 plainly stated that it took into account the fact that the railroads were in fragile economic condition. That's black and white in the award. As we all know, that is not true today. The railroads are now immensely profitable.
Second, employees in other crafts now receive single occupancy lodging and full reimbursement for expenses including employees of crafts that were originally in award 298. We are the only craft not receiving single occupancy lodging or reimbursement sufficient to cover single occupancy lodging. It's a fairness issue once again. We want what everyone else has.

MR. WILDER: I'm going to draw your attention to page 3 of Exhibit 10 and in particular to uh, paragraph B. How does your proposal for meal allowances differ from the system of meal allowances currently under effect under award 298?

MR. POWERS: It differs in two critical ways. Award 298 pays a partial meal reimbursement allowance of $25.00 per day. It pays it 7 days a week including rest days and holidays. Our proposal provides an allowance of $46.00 per day based on the standard GSA meal per diem paid only on days employees obtain meals away from home. It's important for the Board to understand just how unfair, in fact how irrational the current award 298 system is. It
provides no lodging and meal reimbursement for
some employees who are living hundreds of miles
from home throughout their work week. They are
living away from home and they get no
reimbursement at all. It pays a meal allowance and
one railroad it pays a meal allowance and a
lodging allowance to employees who are at home on
the rest days and have no expenses. So you have
expenses, you get nothing; you have no expenses
and you are actually getting paid an allowance.
And then finally when it does reimburse employees
who have actual lodging and meal expense it
provides only a partial reimbursement that doesn't
begin to cover full cost. Our proposal is this
crazy Rube Goldberg contraption with the simple
straight forward reimbursement structure, stripped
to its bare elements our proposal is that
maintenance of way employees who work away from
home in the service of the railroads should be
reimbursed for their lodging meal expenses just
like everyone else. What could be fairer than
that?
MR. WILDER: Let me direct your attention to page 4 of Exhibit uh, 14. And on the left side of the page uh, under paragraph C is travel from one work point to another and on the right side of the page you have the same title but it is paragraph D. Can you explain that?

MR. POWERS: The difference is we added the new paragraph C that uh, would stop any kind of sharpshooting so we numbered that new paragraph C, you saw it the first page. I put it on the first page because conceptually it fit there and C just gets renumbered D. So these are of the same paragraphs just relettered because of the added language.

MR. WILDER: All right. What changes in the automobile allowance for travel between work locations are you proposing?

MR. POWERS: Well, railroads have developed a scheme to avoid reimbursing employees for auto mileage when they travel from one work point to another. In order to understand our proposal, you need to understand the scheme so let me explain
employees travel. Historically employees on these mobile crews back when Award 298 was rendered some still were riding passenger trains when they went from home to these district work sites. And then they rode the trains or rode camp cars from work site to work site. Now that mode of travel ended when passenger service was abolished in 1971 and all railroads except Norfolk Southern began phasing out the use of camp cars. So currently mobile employees, they drive their personal vehicles home to a distant carrier site so normally these gangs are so far from their homes if they are working say Monday through Thursday for 10 hour days, Sunday afternoon they drive and arrive Sunday evening at the new lodging site, the carrier provided lodging site. In the morning when they go to work the company has a bus and they get on the bus and the first 30 minutes they get no compensation it is considered commuting time if it's more than 30 minutes they go on the clock. They work all day, back on the bus, the bus takes them back to the lodging site, the same 30 minutes
free time. That goes on each work day until it
comes time to move to a new work location. So say,
say they're, they're laying rail and they've got a
five mile stretch or ten mile stretch of rail and
then they're going to jump 200 miles away to lay
rail someplace else. And so the company says to
the employees, "Okay it's time to move work
locations um, the bus that takes you to work each
day is going to a new location. You can ride the
bus if you like." Well, it's a hollow offer
because everyone knows their automobile is there.
They've driven their automobile to the work site.
They used it to go back and forth home on the
weekends so they can't take their uh, they can't
take the carrier up on the bus transportation. At
one time when Award 298 was rendered there was an
alternative that was the trains the people rode or
the camp cars they rode back and forth. Today that
doesn't fit. The employees have to have their
automobiles and because they've been offered the
bus transportation they don't get paid when they
drive automobiles from one location to the next.
1 This is recognized as work and they get paid for
2 their time but because of this little scheme they
3 don't get paid for their auto mileage. And all we
4 suggest in this proposal is that they should get
5 paid for their auto mileage as well.
6 MR. WILDER: I'm going to draw your attention to
7 Carrier submission number 6, page 23, date number
8 7/7/8 where at the top of the page the Carrier
9 states and I quote, "The behavior of traveling
10 employees also demonstrates that this is really
11 about money not quality of life or similar
12 considerations." Do you agree with that?
13 MR. POWERS: That statement is patently false, 100
14 percent absolutely, categorically false. We would
15 be perfectly satisfied if this Board recommended
16 single occupancy motel lodging equal in quality to
17 that enjoyed by other crafts and did away with
18 lodging reimbursement. Now we've left the lodging
19 reimbursement aspect in our proposal because it's
20 there today. The companies have the flexibility to
21 choose. But if anyone thinks that we're making
22 this proposal to try and make money off the
expense system, they're simply wrong. Under our proposal, the way it is structured today that can't happen. You only get a lodging reimbursement if you obtain lodging in a motel. You only get a meal reimbursement if you're away from home obtaining your meals away from home. The Carriers know that today the system gets gamed by both sides. Uh, in fact they talk about people sleeping in their cars because the Carriers don't provide them with lodging, we'll at least one Carrier doesn't, Union Pacific. They do have employees sleeping in their cars. Under our proposal an employee would never have to sleep in their car again. They would have no incentive to do so because one they would be provided single occupancy lodging or two they would get reimbursement for lodging only if they obtain the lodging. The gaming system that goes on today by both sides would be gone under our proposal. This is clearly a quality of life issue. It is not about trying to turn expense money into income.

MR. WILDER: Let me draw your attention to uh, page
20, Bate number 775 of Carrier submission number six. There the Carriers contend and I quote, "Traveling employees and production gangs save significantly higher compensation and travel benefits than their peers at the same level of seniority." Would you comment on that?

MR. POWERS: The higher compensation that the employees in the traveling gangs receive has absolutely nothing to do with traveling. We're talking about compensation not reimbursement for expenses. Here's why they make more money than employees in headquarter jobs. First, there's a $1,000 productivity bonus. The Carriers came to the Unions and said, "Because the highly sophisticated, heavily mechanized production machines are run on these gangs, we don't want employees to bid and bump off the gang. The employee may get tired of being on the gang and might want to bid back." They originally convinced some arbitrators in the implementing arbitrations to lock employees on the gangs for a year. There was outrage. PEB 229 came along and said, "Now
we'll fix the problem." They suggested, they recommended employees who stay on these gangs on these highly sophisticated machines that take training and skill and you get better and better the more you work that they get paid a productivity bonus if they stayed for six months. One railroad liked the program so well they said, "For six months, they'd give a buck and hour and make it all year." So it's a productivity bonus it has nothing to do with traveling or reimbursement for traveling. Now the second reason they make more money on these gangs is because and it's related, they're higher rated positions. You have more foreman, or actually more machine operators and it's the most sophisticated, highly mechanized, complex machines in the industry. And because these machines are sophisticated and highly complex, they have higher rates of pay. So people on these gangs are generally the higher rated positions. And finally the third reason they make more money is overtime. When the Carrier invests in this complicated machinery they've got
to keep it working to get their return on investment. And it's not returning investment sitting on the side waiting for time to get out on the track. They want it out on the track working. So when you work on one of these gangs, you work 10, 12 hours a day all throughout the year. And so of course they're making more money. It's productivity. It's skill and it's overtime. So what the railroads are essentially saying is that employees should forfeit part of their wages to pay business expenses of the railroads because employees have become productive, more skilled and work more overtime. And that's patently absurd. No one else trades reimbursement of business expenses for wages and BMWE shouldn't be required to make that trade either.

MR. WILDER: Let me draw your attention to page 15 of Carrier submission six, Bate number 770. There the carrier maintains in relevant type that the value of expense payments to production gang employees is, "Augmented by the fact that traveling employees are able to and often choose
to live in lower cost areas unlike headquarters employees who are tied to a specific reporting location." True or false.

MR. POWERS: Um, it, it's completed false. Look, I've been in this business for 37 years and I have never heard of anyone that said, "Look," calls the wife and says, "I've just bid a traveling job. Put the house up for sale. Forget the mortgage. Pull the kids out of school and, oh, you have a job quit. We're going to move to a low cost area."

It's patently silly. It just doesn't happen. People interrupt or upset their lives, their communities, their family relationships because they bid a job that may last, that will not last for more than a year. These jobs each one have to be bid annually. And some employees stay on the gangs for many years, some don't. The idea that they move after they bid to one of these jobs to a low cost area is just silly. It's not true.

They've made it up.

MR. WILDER: Mr. Powers, what are the chances that uh, the BMWED's away from home expense issues will
be settled if they're deferred to local handling?

MR. POWERS: That's absolutely impossible. When I, when I read that comment um, I think it was at page 26 of the Carriers submission three thoughts came to my mind. The first one was that the Carriers, the Carriers sued BMWED to compel us to participate in National bargaining. And I remember sitting in that courtroom right here in this District and hearing them testify and present the argument in evidence that it was practically appropriate, that's the standards set by the courts, practically appropriate for expenses to be bargained Nationally. They argued they should be bargained Nationally and they won. And now for them to suggest that this should be handled locally is absurd and it flies in the face of exactly what they told the court. Now second, their local variations they're extolling, they talk about these local variations that have come up in the wake of Award 298, they're all variations of partial reimbursement. That's exactly what we are trying to overcome here. We
1 want to be provided with lodging or we want a full
2 reimbursement. We want full reimbursement for
3 meals. And we think the allowances that we have
4 selected, the GSA allowance is just that. And
5 finally, nothing in our proposal would prevent the
6 parties from local adaptations. If they think
7 local adaptations are really in the interest of
8 either the or actually it would have to be the
9 employer and the employee, they can do that. There
10 is all the time after National agreements are
11 reached. Just as they pointed out here, the local
12 adaptations of 298 sure, could there be local
13 adaptations to a new National agreement, sure. But
14 it's got to be done Nationally to start with or
15 it's not going to be done.
16 MR. WILDER: Mr. Chairman, that concludes uh, Mr.
17 Powers's testimony. The next witness for the BMWED
18 is Donald Griffin.
19 MALE SPEAKER: I have just one question if I may.
20 Did you do any costing of the proposal we just
21 discussed, Mr. Powers?
22 MR. POWERS: We were unable to cost the proposals
with the information we had. During bargaining we specifically asked the Carriers to cost. Now, in our view, costing isn't the issue because whatever the cost is, it is the difference between partial reimbursement or full reimbursement. And we're asking for fairness, we're asking for what everyone else has. And so whatever that difference is, it is something that everyone else is already receiving and we believe we should receive. And, in fact, we're asking for reparations. They've had their second lowest paid hourly group subsidizing their business operations since 1967. We're not asking to go back; we're asking for fairness going forward. But we did ask for those numbers and the Carriers came back and made a presentation that was not in writing, it was oral. And oral presentation was internally inconsistent. It didn't make sense, the numbers didn't add up. We asked for their methodology. We asked for their source data. We asked for anything to make sense out of the numbers and they couldn't provide it or they wouldn't provide it. The first time we saw
any costing was in their submissions and the numbers that were different than the ones they read across the table.

CHAIRMAN JAFFE: If I could ask the Court reporter to uh, swear in Mr. Griffin. (swearing in)

DONALD GRIFFIN: I'd like to introduce myself to the board. My name is Donald Griffin. I'm the Director of Strategic coordination and research for the Brotherhood of Maintenance of Way Division at the International Brotherhood of Teamsters. That position is responsible for the coordination of collective bargaining, both at the national level and on various carriers. I've held that position since 2002. I've been employed by the Brotherhood since 1996. Prior to that I was a partner at the law firm of Highsaw, Mahoney and Clark. I began my railroad career in May of 1973 as a clerk telegrapher with the former Southern Pacific Railroad. Today I'm going to give two hopefully very brief presentations on our submission as it relates to the travel allowance paid to travelling employees. And a submission
related to rate equity on Norfolk Southern. As regards travel allowance, my presentation today will concern our proposal to restore the value. My presentation today concerns the Maintenance of Way's proposal to restore the value of the travel allowance paid to employees in mobile gangs that has been lost to inflation since the allowance was first negotiated in 1996. Now you ask yourself, what is this travel allowance that I'm talking about? The travel allowance is the amount paid to employees assigned to traveling gangs to cover the cost of fuel, wear and tear on vehicles, and the value of time an employee spends travelling on his time off going from a distance worksite back to his home, and back again at the end of the rest day period. It is a liquidated amount that PEB 229 first recommended to the parties in 1996. But to put it in concrete terms, who gets this travel allowance and what sort of distances are we talking about, I think the perfect example of that is in carrier submission no. 6, page 25, where they give the itinerary so to speak, of Union
1. Pacific rail renewal crew 9001. For the
2. Maintenance of Way employee who lives in Los
3. Angeles, the travel allowance would cover rest day
4. travel from Los Angeles to the various places that
5. that gang worked during the year; Phoenix, AZ,
6. Portland, OR, Elko, NV even as far as Mankato, MN.
7. It is quite possible under existing rules, as Mr.
8. Powers laid out, that same employee who resides in
9. Los Angeles would be on a gang in Pocatello, in
10. Minnesota, or in Arizona. That is the nature of
11. the work that our guys perform. Now the travel
12. allowance is paid to an employee after the first
13. 100 miles traveled. So essentially the first two
14. hours each direction, or essentially on the
15. employee under the rule. And it is $25 for each
16. 100 mile increment travelled after that. As I said
17. our primary goal is to increase that figure to $36
18. which merely represents the 2011 value of the $25
19. first agreed to in 1996. I also want to make it
20. clear that we're talking about rest day travel.
21. This is not related to commuting as Mr. Powers
22. testified. There is a separate rule that governs
the amount of unpaid travel time employees are required to absorb on their work days. That is not at issue here. In fact that rule is not issue at all before this board. Now I want to briefly turn and make several comments regarding criticisms that the carriers made of our proposal in their submission. The first argument was there was no meaningful bargaining regarding our proposal. To that criticism all I can say is we presented a proposal in writing to the carriers. We answered questions about it. And then never heard another word from the carriers. It is my understanding that collective bargaining is a dialogue. It is not a monologue. If one party doesn't want to dance, it is very hard to dance by yourself. The second carrier argument is that no other employee group receives such an allowance. Now I'm only going to focus here on the non-operating crafts. Just to focus the issue. Now that is not, that statement is not true and it is not true in a number of ways. First, to my knowledge, the BOS (ph) represented employees on Union Pacific
receive a very similar allowance when they are
working in their own mobile gangs. But even more
important, the carriers argument either ignores or
evades the history of the travel allowance. In our
submission to PEB 229, which is set forth as
Appendix L in the separately bound volume of BMWED
appendixes you don't have to look at it now but
that is where our submission is. That submission
to 229 included an agreement on CSX that applied
to travelling roadway mechanics. Roadway mechanics
are the guys that maintain and repair the very
pieces of equipment that Mr. Fritz and Mr. Manion
showed you on Thursday or Friday. In other words,
these are the guys that work side by side with our
guys in these travelling gangs. That CSX
agreement, mind you we are going back to 1996,
that CSX agreement paid an allowance to roadway
mechanics for rest day travel to and from their
residence. Now as I believe that agreement paid a
liquidated amount of $30 for every 150 miles
travelled. But an interesting point of that
agreement was those roadway mechanics were
travelling in company vehicles from the work site
and back home on their rest days. Our members
don't do that. They drive in their own personal
vehicles. Final point I want to touch on travel
allowance is the carriers argument, and Mr. Powers
has touched on this some, but I want to address it
again because it is such a canard that they are
throwing out that our guys are. They are getting
paid anyway and that they just essentially have to
give up some of their hourly pay to cover the
expense of being away from home in the service of
the company. Now the carriers and I'm focusing
really, the figures they provide at pages 35 and
36 of their submission no. 6. Now the carriers are
using figures from Union Pacific. I would say that
a similar set of numbers could be brought up for
any one of the carriers that are currently before
the board. But the carriers have used Union
Pacific, we'll work with their numbers. The first
point they make is that our travelling employees
make 23.61 an hour as opposed to the 22.78 an hour
on average made by headquartered employees. Mr.
Powers addressed that a bit already. That difference is primarily due to the different mix of occupations. You saw Mr. Fritz' and Mr. Manion's presentations. The guys that run those pieces of equipment, that work in those gangs, are in higher-rated classifications. The mix of job classifications in the travelling gangs tends to be higher paid than the headquartered gangs. That is why you've got this less than $1 an hour difference in average earnings. So that really doesn't tell you anything. But then it gets more interesting as you go through their submission. The carriers then come up with an average hourly rate of $36.31 for travelling employee on Union Pacific. Now they don't say how they get to that figure, it is not really clear. Apparently what they have done, somehow, is assign an hourly equivalent based on per diem payments received, some sort of travel allowance received, an I'm assuming as Mr. Powers alluded to earlier, they are throwing in the productivity bonus that members of those gangs receive into that mix. But
1. what is this 36.31 really? What is the effective rate of pay that somebody in a travelling gang is really receiving because that number doesn't mean anything in isolation. Now we have to remember when you look at this, that a travelling employee can be a headquartered employee tomorrow. People constantly bid back and forth between headquartered gangs and travelling gangs. Or they get bumped from travelling gangs or headquartered gangs. So there always is a movement between the two. It is not one or the other. So an employee in a travelling gang as same as a headquartered employee will have certain expenses of life. They will have rent or mortgage on their residence. They will have utility bills. They'll have grocery bills. They'll have car payments, you name it. They usually have a spouse and dependants. They may be solely or at least partially financially responsible for those people as well. So now we sort of have this, the fixed expenses of life that are now common to both the headquartered and the travelling employee. So how does the travelling
1 employee get this supposed extra value, this  
2 36.31. How does that employee turn that into an  
3 effective rate. Well I guess one way would be to  
4 make your travelling costs go down to zero, but I  
5 can give you an example. I guess the employee  
6 would hitchhike from their residence to the work  
7 site. And when it got to the work site, they would  
8 have to keep their lodging expenses zero, so I  
9 guess they'll sleep in a park or under a bridge  
10 somewhere. But they still have to eat. So how are  
11 you going to eat for zero? I guess you go to the  
12 Salvation Army or a homeless shelter. And then  
13 hitchhike back home. Now I know that sounds silly,  
14 but that is really where we're going with this  
15 36.31 figure. So let's try to turn this into an  
16 effective hourly rate of pay that incorporates the  
17 expenses that travelling employee incurs in the  
18 service of that carrier while that employee is  
19 away from home. So what we did is we used a  
20 methodology similar to what we did before PEB 229.  
21 We assigned this employee as a full time employee  
22 with I believe it is 193 straight time equivalent
1 hours to account for overtime. What that amounts
to in straight time terms then is 2,273 hours over
the course of the year. Which is a little more
than 13 months at straight time. Now if you
multiply that 36.31 figure by 2273 you get a gross
figure of 82,532. Which is interestingly is very
close to the alleged $81,000 average earnings the
carriers say a travelling employee makes. That is
set forth at page 20 of their submission no. 6.
But you have to rule out of that gross figure the
cost of travelling and federal payroll taxes. Now
because this is a travelling employee we'll say
that the crew work in compressed schedules. So
that is 4,10's which comes out to 208 days,
workdays on the road. Now for meals and lodging
we've used the (inaudible) rate of 123 that we had
before this board. That comes out to a figure of
over $25,000 in meals and lodging for the year
while that employee is out on the road. Now before
PEB 229, we said traveling employees were on the
road travelling between the work site and the
residence on rest days an average of 242.3 hours a
1 years. As Mr. Powers has testified, those
districts have probably become bigger since 1996.

Certainly the territory that UP system gangs cover
has become bigger since 1996. But we'll use the
242.3 hours, times the 36.31 hourly rate the time
that this employee spends travelling is valued at
$8,798. Then you take out the payroll taxes of
tier 1 and tier 2, which is about 9491. You
subtract all of that then from 82,532, and divide
the remainder by 2273. You get an effective hourly
rate of $16.98. Now if you rule out the federal
payroll taxes from that same average headquartered
rate of 22.78 you get an effective rate of 20.16.
The point is that when our guys are travelling,
they are incurring out of pocket costs in the
service of the carrier. What we are seeking in
both travel allowance and in meals and lodging. It
is not a windfall of money. We're looking to make
our folks whole so they are not subsidizing the
carriers operations when they are travelling in
the service of the carrier, covering these great
distances, working in these very productive gangs.
The gangs that the carriers testified were so productive. We're simply asking our guys to be made whole when they are doing this, and not be paying out of pocket when they are on the road in the service of the carrier. Our proposal on travel allowances, I said, merely seeks to restore the allowance to the same value it had in 1996. If you have any questions I'm ready to answer those.

CHAIRMAN JAFFE: Thank you Mr. Griffin. Just the standard one I seem to be posing. Have you folks costed (sp) out what this might involve?

DONALD GRIFFIN: I would give you the same answer that Mr. Powers did.

CHAIRMAN JAFFE: That's fine. I got it. Thank you.

DONALD GRIFFIN: I want to shift very briefly, I have one more presentation to make here. And this is the rated equity issue on Norfolk Southern.

Last Thursday the carriers' representative Mr. Munro said that the theme of this proceeding was fairness. Now our proposal as it relates to rate equity at Norfolk Southern seeks fairness for those employees who are performing identical jobs,
yet receiving disparate hourly rates for that same work. We seek that employees holding identical jobs on Norfolk Southern controlled carriers should receive the same rate of pay. And what we have proposed is that rate of pay should be the highest currently negotiated rate of pay for that job on any Norfolk Southern controlled carrier. Now we've set forth in greater detail in our submission which is tab 3 in the BMWED craft specific submissions, the history and the effect of the differing wage rates on carriers under the control of Norfolk Southern. I won't repeat what I've written there, suffice it to say that the existence of at least 10 different rates of pay for the identical job of section foreman is a real example of the destabilizing effect of disparate treatment for employees in the same craft or class on the same railroad. We literally can have a situation where employees in a Norfolk and Western production gang that are working on Conrail territory will be working side by side with employees receiving a higher rate of pay for the
same work. That is destabilizing. That is unfair.

Now I want to address two of the criticisms the carriers made of our proposal. First, there was no meaningful bargaining. I want to say that our proposal was in every comprehensive proposal presented across the table. We do know that the shop craft members of the coalition raised a similar issue across the table, and received the same response we received to our travel allowance proposal. At some point if the other side doesn't want to talk, it is very hard to have a dialogue.

Second point I want to raise in response to the carriers' argument is, and Mr. Powers has touched on this already to some extent. This proposal should be dealt with in local handling. As Mr. Powers laid out very eloquently, we're here today because the carriers sued us and put us in national handling. So it is disingenuous for them to now say that we can engage in section 6 bargaining on a local basis to resolve this issue. When we tried to do that in 1994, we got dragged into court, and the next thing you know we were
told by the judge we had to deal with these issues in national handling. But I do want to make one point as it relates to local handling. Our proposal does not ask the board to set specific rates for jobs. We are simply asking you to send this dispute back to the parties with instructions. The instructions are very simple. For identical jobs, the highest rate currently negotiated on the property will apply. If there is a dispute as to whether jobs are identical, that dispute goes to final and binding arbitration. So we're not asking you to say what the rate of pay for section foreman in Ashtabula, OH should be, we simply are asking for a recommendation that sends this dispute back with instructions so it can indeed be resolved at the local level. Thank you.

CHAIRMAN JAFFE: Thank you again Mr. Griffin. Does anybody need a break? We are happy to continue if the parties are. If either of you needs time please let us know.

MS. ROMA: Good afternoon. It is my pleasure to introduce to you today Joe Duncan, the Railroad
Coordinator for the International Association of Machinists & Aerospace Workers. And Mr. Duncan will be speaking on behalf of the shop craft proposals. While Mr. Duncan has held numerous leadership positions in both the union and his home town community of Knoxville, TN, I will give you his long and distinguished IAM career in two sentences. Mr. Duncan began his railroad career as a machinist with the Southern Railroad, now a part of Norfolk Southern, in September of 1971. I note that last month Mr. Duncan celebrated his 40th anniversary in the union. He first sought elective office within the IAM in 1973, winning election as chairman of his local. He was then elected to various positions at the district level of his union, culminating in being elected to the current position of President and Directing General Chair of District Lodge 19 in 2005. In 2007 he was also named the IAM's Railroad Coordinator.

CHAIRMAN JAFFE: If I could ask the court reporter to swear in Mr. Duncan. (Duncan sworn)

JOE DUNCAN: Mr. Chairman, distinguished members of
the board, as Beth stated I'm Joe Duncan, the President, Directing General Chairman of District Lodge 19, and Railroad Coordinator. And to just give you a little brief, District 19 is the only district within the machinist union. So therefore my office and my staff is responsible for all the handling of railroad matters within the machinist union. During these proceedings, we represent approximately 7,000 highly skilled machinists employed by the nations Class 1 and the nations smaller carriers connected to this also. Today I have the honor and privilege of giving testimony to this PEB in support of IAM issue, IBEW issues, as well as skill differential, wage equalization improvements impacting all 7 shop craft unions. The other shop craft unions include the IBEW, TCU, TWU, IBB, NCFO, and SMWIA. A brief description of each of the shop craft unions and the technical and critical work they perform for the carriers is attached to my written statement as identified as exhibit 1. Which is page number shop craft 8. We certainly appreciate the opportunity to state our
case to this board for what we believe are long overdue and necessary improvements in our wages and benefits. Again as she stated, I started as a machinist for the old Southern Railway in Knoxville, TN in 1971. I've held many different positions within the machinist union. And so it gives me 40 years of experience in this industry.

(audio break) Briefly address the carriers' suggestion, that the shop craft unions somehow waived the right to discuss our proposals (inaudible) to a so-called lack of intensive (sp?) bargaining (sp?). I find this claim to be totally bogus. These issues were raised in our section 6 notices. And we frequently tried to raise them with the carriers. But the carriers basically refused to discuss these matters because they decided they were unimportant. While the carriers claimed that we only talked in passing about the shop craft issues, they failed to mention the numerous discussions with the mediator that was signed to us who was acting as a go-between over these issues. And we addressed and,
and uh, cut our, uh, issues and everything with him but it did not do any good. They still did not want to discuss 'em and never did come back with anything, uh, in a positive manner. Also, prior to addressing our proposals, I would also like to request that you keep in mind a couple of words the carriers continuously used last week, which were equality and fairness. They stated time and time again, fairness, fairness and all must be equal. And I'm sure that we disagree on what is fair and equal in some cases, and I think the different presentations from all the parties will reveal that. However, their comments and fairness and equality do apply to the shop craft issues, and I'll point the out as we go along. Also I would be disappointed in myself if I did not point out the impression I received from the carriers' testimony I received about their employees and our members. I received the impression that our members were non- or low-educated, they're low skilled, they're overpaid, and of little value to the carriers. Also it is clear that they feel that
the employees contribute nothing or very little to production, and that all productivity gains a result of modern machines and equipment, not as dedicated employees, which I again will address as we move forward. Now I want to turn to the shop craft proposals. There are several issues I would like to discuss with this board today. First I would be discussing issues relating to the IAM (sp?) and IBW, and then I will return to the common, what we call shop craft issues. The first one is pertaining to the IEM traveling mechanics, and this is the first issue to address. The machinist represents several traveling roadway mechanics that does work hand in hand with the maintenance of way employees in track, uh, maintenance and repair etc. These roadway mechanics are specialized employees performing mach- uh, maintenance and repair work to the track maintenance equipment and machines. Now 1992, in recognition of the high-level skills and experiences required of traveling roadway mechanics, arbitrator Richard Mittenthal (sp)
awarded these workers a 25-cents-per-hour skill differential which was increased to 50 cent an hour in 1994. The rate, this rate however has remained unchanged since that time and due to inflation alone the real value of this differential has decreased considerably. Moreover, over the past 18 years, the level of skills and experience now required to maintain and repair this highly complex equipment and machines has increased at an unbelievable rate. In fact, the carriers have shown you last week several slides and videos of many of the new complex and technologically advanced machines that the traveling roadway mechanics are required to maintain and repair every day so production can continue at a rapid pace. We believe the differential should be increase to reflect the increased complexity and difficulty of this work. As I said, traveling roadway mechanics are specialized employees who are often required to travel great distances and work in extreme conditions. This was recognized in Norfolk
Southern's magazine called BizNS in volume 3 issue 2 of 2011 which contained an article "BizNS Super Gang Known for Super Work". It stated that winter freeze hit North Carolina early December the super tie gang was working there to replace cross ties and resurface 43 miles of track. They started to work at pre-dawn, and it was 8 degrees. Now supervisor Tim Lord stated that this gang travels with two box cars of spare parts, and a team of seven mechanics which are machinists to keep the machines running and then he further stated, most of the time we can fix anything out here that breaks. Another BizNS article in volume 3 issue 5 of October 2011 titled, In One Week in July, Train Crews Kept the Trains Running for the Year. It was stated, the gangs, and that's speaking of the maintenance of way gangs, traveled, uh delivered starting at day break on Sunday July 3, they finished before dark on Sunday the 10th. They poured sweat; on 90 degree days it felt more like 100-plus under unrelenting seat - heat, unrelenting sun hat beat down on the granite
ballast and the steel rails. They went on to say they rose before dawn and labored past dark. This is an example of what we do. The equipment and machines are used on railroads to perform multiple functions including land rail and replacing ties and ballast resurfacing, and they have machines to pull spikes, drive spikes, you've got the gamut of last week. But our mechanics, the machinists, are the ones that maintain and repair these machines capable of performing virtually any task of rail and roadbed construction you can imagine. The very important job of these mechanics requires extensive knowledge of the operation of the equipment and the machines as well as extensive knowledge of hydraulics, electrical systems, welding, blueprint reading scales, uh, skills, and that's including the reading the schematics for the electrical and hydraulics etc. While the carriers would have you believe that our work has gotten easier over time with advancements in technology, I assure you that is not the case. You remember all of the state of the art computerized
systems and machinery that the carriers showed
pictures of last week. Well our guys are
responsible for understanding every nut and bolt
of that complicated machine, and is responsible
for maintaining this equipment and fixing it when
it breaks down. I can promise you this is not an
easy task. Also, the carriers forgot to mention
that actually what happens if one of these pieces
of equipment fails, breaks down or totally
malfunctions. Guess what? Production that we have
nothing to do with, production totally stops. And
it cannot resume until a mechanic repairs and
places that machine back into service. If it fails
only for 15 minutes or two hours or for the whole
day, production is lost, and that is why the
machinists are so important during the day of
operation to keep the machines producing, to make
dou (ph) productivity, and if it is a major
failure, it is also very important for our
machinists to work as many hours as required to
repair the machines for the next day of operation.
Therefore the traveling roadway machinists are a
very important part of productivity on a daily
basis, regardless of the modern and complex and
the, of machines and the failure to recognize this
is a disservice to our highly skilled machinists.
Traveling roadway mechanics' days are long and
hard. The d- the mechanics' days start very early
by checking out all the equipment and the machines
to make sure they're ready to start the long day
of operation. The mechanics are required to stay
with that particular game (ph) to ensure that the
equipment and the machines continue to remain in
operational mode throughout the day by making
necessary repairs to make sure the day's operation
and productivity is completed. However the roadway
mechanics or machinists' day is not done with the
equipment and machines are turned off for the day.
While during the day they make the repairs as
necessary changing a hose, or welding something
it breaks or whatever, to make, during the day
they make those necessary repairs. At night
they're required to make more permanent repairs
and to service the equipment for the next day's
operation. In reality a lot of times as a result, these mechanics and machinists may have to work as many as 16 to 18 hours in a day, often in extreme weather conditions, but generally are not paid overtime. And the reason that they're not under most instances, not all, they're all services rendered and they don't consider the overtime for working over. Because of the highly skilled and difficult nature of the road, traveling roadway mechanics' work, often requiring very long hours, we believe a differential (inaudible) for them is clearly warranted. We're requesting an additional $2 per hour differential. This is intended to be an addition to the 50 cent per hour skill differential currently that all traveling mechanics receive and provide to lead mechanics who perform service and work on production gangs such as the rail and CNS (ph) and resurfacing gangs. Now (inaudible) request that this board consider an additional $1 an hour differential be added to the 50 cent skill differential received by all traveling mechanics and lead mechanics.
performing nonproduction, and nonproduction work I will explain it a little bit better; it's different than the production. That there (ph) such as shop, district, normal maintenance and roust-about-type employees. And I'm sure that you're wondering, you know and the question arises why $2 for one group and $1 for another. The difference is that the $2 per for production gang mechanics and the $1 for those performing non-production mechanics' work is simple, the reason is simple. Production gang mechanics are assigned to a production gang and are required to stay with the gang wherever it goes. Often requiring them to be hundreds of miles away from home. They work extremely long hours, the work is physically demanding, moreover the work is done outside. No matter what the weather. And you can just imagine, working on a hundred thousand pound piece of metal equipment in freezing rain or ice in Buffalo, New York. Or doing that same thing in 110-degree sun, full sun in Phoenix, Arizona with no cover. So that is one of the things that the production
1 people have to do and the travel is extensive and
2 it's several hundreds miles away from home at
3 times. However by contrast, the nonproduction
4 mechanics, even though they are highly skilled and
5 experienced and are normally not required to
6 follow a gang wherever it travels, they usually
7 work in a district or a region or a dispatch from
8 a shop area where parts and tools are more readily
9 available. Even though they may work long hours,
10 their work does not normally require the extremely
11 long hours of the production gang mechanics. They
12 also are assign to perform work in a more
13 controlled environment due to the fact that the
14 track time and etc. that's out with these
15 production gangs is not critical to their work.
16 Thus, although both positions require a very high
17 level of skill, the production mechanics must work
18 longer hours under difficult conditions which in
19 our view warrants a higher differential. I want to
20 conclude this issue by stating that these
21 employees may not be educated like the carriers
22 claim, or to the level that they would want. But
in their own right, they are highly educated in
their field of work, and are highly skilled and
should be recognized by this board and the
carriers. In fact, I know that many of the carrier
officials are highly educated. But I would
challenge of the well-educated carriers'
officials, the next time that one of these highly
complex machines fails, and their production comes
to a screeching halt, that they come out of their
office in that 110 degree sun, or that below zero,
and repair that machine so it can resume its
production. There's a big difference, with that
their education is different than our people's
education, and you know, I'm proud of the work
that our people do, I'm and, I'm proud of
everything that to do and I'm proud of the
carriers officers for what they do. But they need
to realize that there's two different, uh, classes
of people here and our people are just as good and
as highly skilled in what they do as they are. The
next issue I would like to address is a travel pay
issue that applies both to the IEM's traveling
roadway mechanics and the IBEW traveling electrical workers. Our request is simple, and that is to have a uniform travel pay for all roadway mechanics and traveling electrical workers. Now (inaudible) the IEM, as I previously discussed, roadway mechanics frequently travel to remote worksites, sometimes hundreds of miles from their home or headquarters. They work long hours on condensed schedules and stay at carrier provided lodging. Currently the carriers have different travel policies related to these roadway mechanics. Now CSX, the UP, and BNSL will pay straight time for most of this travel, for the roadway mechanics. Norfolk Southern does not pay for travel time except on rare occasions as deemed appropriate for their supervisors. And I want to cite a little example, and this is a personal example (inaudible) experienced with 'cause um, I have um, a son that works for Norfolk Southern, and when he started he was a traveling roadway mechanic. Now he lived in Knoxville, Tennessee and he worked headquarters out of Charlotte, North
Carolina. Now, a lot of times supervisors will not be so ridiculous and they will pay him, but here's what happened to him. He was working in Chicago, Illinois with a gang. Thursday evening come and luckily he got to leave on Thursday instead of Friday. He drove from Chicago to Knoxville, 10 hours. Within five miles of his home but he couldn't stop because his supervisor required that truck to come back to Charlotte, North Carolina. So he drove another 4 hours to Charlotte, got in his car and drove 4 hours back to Knoxville, and then early Sunday morning had to get up and drive 4 hours again back to Charlotte to get in a truck to drive it 4 hours back to Knoxville. And then start his trip to Chicago. So that was about 18 hours of extra driving without any pay because it was left up to a supervisor. And these are the types of abuses that we're wanting to stabilize where that everyone is treated the same, OK? Now the Soo Line employees, they pay travel time one way for trips home on weekends, and straight time pay does not pay the roadway mechanics for their
return. So the IEM believes that these workers should be compensated in a uniform manner for this travel time associated with working in these remote locations. (inaudible) IBW. The IBD also represents workers who are also being compensated for their travel time, including road electricians, communication and signal workers. These workers construct, maintain all the carriers' power distribution equipment, their floodlights, their towers, power poles, movable bridges, generators, turntables, radios, telephone and other communication devices, wires, cables, conduits, antennas, towers, signal and network equipment. Like traveling roadway machinists, these workers also travel significant distances from home, sometimes as far as 500 miles away want me to, one minute.

CHAIRMAN JAFFE: (inaudible) appreciate the offer.

W: OK, ah, to prepare electrical work and repairs.

For example at the UP, some of these workers are provided some travel pay, but only two and from the lodging facilities worksites, more than 35
miles apart. Otherwise, the IBEW representative workers are generally provided, not provided any compensation for travel. And this is simply not right. To make these travel policies more uniform and to assure that workers are being paid for the travel time to and from these remote worksites, the IEM and IBEW propose that these workers be paid at the appropriate rate of pay. That either (ph) be straight time or overtime, what is appropriate for all hours expended traveling between their homes or headquarters to and from these remote worksites and lodging facilities. And again, they cannot on (ph) the lodging facilities. They cannot just stay where they want to stay. The companies tells the where to stay, what hotels, under most instances or the ones that's approved, and sometimes they can be 40 or 50 or 60 miles from their worksite to where these, these um, uh lodging facilities is at (ph). (audio break) To save money on time spent traveling to and from the remote work sites, the carriers should also pay to fly these employees if they so desire. It's an
option of them. Now next I want to address general shop craft proposals and there are four of them and they are applicable to all the shop craft employees. The first one is the movement of locomotives differential. All the shop craft unions propose $1.00 per hour minimum differential to employees of any shop craft union required to move locomotives. Currently only the firemen and oilers receive differential pay ranging from $0.25 to $1.00 per hour depending on the carrier for moving locomotives. Although the other shop craft unions are also required to move locomotives during the course of performing their work. As a matter of fairness, the other shop craft union employees should also receive a differential for performing this additional work. While the carriers state in their submission at Bates #C846, that the movement of locomotives is a basic job which is incidental to the shop craft employee's regular work. They fail to discuss the many legal implications in performing this extra task. First, by moving locomotives, many of the shop craft
employees, not all, but many, are now subject to
FRA hours of service requirements. These rules
provide for a maximum on duty and a minimum off
duty period for employees in accordance with
complex scheduling requirements. These rules
rigidly control an employee's work schedule, and
as a result of these rules, many of these
employees are legally prohibited from working over
time. Additionally the hours of service rules also
expose these employees to civil and criminal
penalties. An employee in violating these rules
can be sent to prison for up to two years and
fined $100,000. Again, these are personal
liabilities that employees would not normally be
exposed too by simply performing their normal shop
craft work. Additionally these employees now are
required to submit to the additional inconvenience
of random drug testing. Again this is a
requirement that would not be normally applied to
these shop craft employees but for the fact that
they were assigned the additional task of moving a
locomotive by their employer. And I want to touch
back on the over time. Under the hours of service, if you've moved a locomotive, you can only work four hours additional. Twelve hours total. Most carriers will not allow you to work the four. So you're losing four to start with, but if they call for over time, and your under hours of service, most likely they're going to say we need someone for eight, so therefore you've lost eight hours of over time. The four and the other four. Now this is an issue that I would again like to remind this board and the carriers about the words they used so many times last week. Equity and fairness and more fairness. All shop craft employees move locomotives. All are or could be subject to the hours of service requirements and the penalties connected with it. However only one craft receives a differential and no other does. So it is clear that if the carriers are so determined to be equal and fair, they should have no problem paying the employees moving locomotives their requested $1.00 per hour differential. The next issue I want to address is the shop craft union's proposal of
increase in the current existing skill
differential rates by $0.75 per hour. As you all
know, a skill differential is simply the premium
paid to railroad workers in recognition of the
level and skill and training required to perform
certain work. The differentials currently in
effect were largely the result of joint skill
adjustment committees that were established in the
early 90s following the recommendations of PEB 219
and PEB 220. To study and reach a determination on
the need to adjust wages based upon skill and pay
for similar work in other occupations. They were
developed on craft specific basis and all the
resulting agreements varied by union and generally
provided differentials ranging from $0.25 per hour
to $0.50 per hour for working. For example, a lead
performing welding work, or having an FCC license
among other specialized skills. With a few minor
exceptions, these skills and amounts have remained
unchanged since the early 1990s. I know that this
list is not exhaustive, but it is merely intended
to give this board an idea of the differentials in
effect. To some extent however, differentials have evolved at a local level as the unions and the carriers agreed to recognize additional skill differentials deserving premium pay. Accordingly, the amounts of skill differentials vary greatly depending on the carrier and the union. Now attached to my testimony is exhibit 5, which is Bates # shop craft 45, is a sample list of the current differentials by carrier and by union. Now as I discussed, the differential rates vary, but they generally range from $0.25 to $1.30 per hour. The shop craft unions are requesting an additional $0.75 per hour to be added to the additional existing differential amounts. For a long time has passed since the differentials were first established. Since the early 90s, inflation has largely eaten away the value of the differentials. For example, $1.30 in 1992 is the equivalent today of $2.10 in terms of real dollars and the value, according to the Bureau of Labor Statistics Inflation Calculator. Moreover, over the past 18 years, numerous wage increases, general wage
increases have taken effect without any simultaneous adjustments to the differential rate resulting in many differentials losing their premium pay status. These increases are warranted because as I previously discussed, shop craft work has become increasingly complex, technologically advanced, and since the differentials were first put into effect. Employees must now have additional training and certification in order to perform the same work. For example, welders are now required by carriers to be certified in welding to weld on to locomotives. And you're going to see that a lot with the positive train control systems on the UP. Additionally, as locomotives themselves have become more complicated, the work of the federal inspector has as well. The federal law has also changed during the times and federal inspectors are now exposed personally to civil liabilities that did not exist when these differentials when into effect. The differential increase is long overdue and warranted due to the increase complexity of the
work involved. The next issue is the shop crafts
all believe there is an inequity that certain
railroads pay skill differential for certain skill
tasks while others do not and believe that a
differential equalization effort should be
undertaken. In the shop crafts original section 6
notice, the unions initially asked for
differential pay for employees responsible or
signatory for the following FRA required tests and
inspections, work requiring EPA certifications,
positions requiring CDLs, positions subject to the
hours of service rules, positions that require any
other federal, state, municipal government
certification or license and for employees
performing lead work. Apparently some of these
unions, on some of the carriers, receive these
differentials. We believe however, that if one
craft is receiving a differential, say for having
an EPA certification to work with ozone depleting
chemicals, then the other shop crafts also should
be receiving a premium for performing the same
type of work. These differentials currently in
effect are all over the board. One shop craft may receive a differential payment for certain work on one carrier, but not on the other carriers. In other cases, a shop craft might receive a differential for performing certain skills, while other crafts performing the same work for the same carrier do not. For example, an electrician working for the Indiana Harbor Belt is paid $0.65 per hour differential for having a commercial driver's license or the CDL. While their counterpart working for CSX is only paid $0.30 per hour differential, and still others receive no pay at all for having this license. After examining this patchwork of differentials currently in place, the shop crafts now believe that this issue is best suited for resolution at the local level. Accordingly we propose that upon 30 days notice from either party, serious discussion shall commence on equalizing these differentials. Such discussion shall be conducted and continued in such a manner as may be mutually agreed by the parties, and if the parties do not reach an
agreement within twelve months, we further propose that the matter be submitted to binding arbitration. Now the last issue that I want to discuss is the wage equalization for Soo Line and other carriers. The shop craft unions also propose wage equalization to correct wage discrepancies between the national rates and the rates of Soo Line and some of the other carriers involved in national handling. Currently the Soo Line and some other carriers' wages are inferior to wages provided under the national agreements. For the sake of uniformity, these wages should be equal to national rates prior to the implementation of proposed general wage increases. The wage disparity is the most acute on the Soo Line, which left national handling for a period of time, but returned during this last round of negotiations. During their absence from national handling, the Soo Line wages did not increase at the same paces as the other carriers involved in national handling. For a period of time this discrepancy was made up by voluntary profit sharing plan. It
made up most of it, sometimes not all, but it did.

But then the Soo Line decided to terminate that profit sharing plan and return to national bargaining. As a result, shop craft employees are earning lower wages on the Soo Line than their counterparts on other carriers involved in national handling. For example, traveling mechanics on the Soo Line are paid $24.73 per hour, while the national rate is averaged at $25.43 per hour. A difference of $0.70.

Additionally a locomotives technician on the Soo Line is paid $24.72 per hour, while the national rate is $25.10. A difference of $0.38. And there's another thing that has occurred by them being out and their wages being low, and you've heard the presentations on the supplemental sickness which is known as the R5000 plan. There are classes. Class 1, Class 2 and Class 3 of the benefits. The machinists and the other shop crafts normally enjoy Class 1 benefits. But because of the wage disparity, now the shop craft employees on the Soo Line have to accept Class 2 benefits. They perform
the same work, every day on the same type of equipment and locomotives. Not only are they making $0.38 to $0.70 per hour less, they also, when they get sick and disabled, they have to draw a lesser pay and that is not fair. Because the Soo Line made the decision to return to national handling, their rates should be uniform with the national rates. In addition to the Soo Line, other railroads also have lower wages than provided for under national agreements. Usually as the result of mergers. And I'll give you a couple or three examples. CSX has got a shop in Corbin, Kentucky. Norfolk Southern has got a shop in Knoxville, Tennessee. You can have a machinist change a pair assembly in Corbin and a machinist changing a pair assembly in Knoxville, they make $0.03 to $0.04 an hour less in Knoxville than they do in Corbin. And to bring it closer to home. They both have facilities in Atlanta, Georgia. The same city. CSX machinists performing, say changing a traction motor and Norfolk Southern machinist changing a traction motor, there's $0.03 to $0.04 per hour
difference in rates of pay. Even within Norfolk
Southern, - Norfolk Southern is made up of several
different carriers through the mergers and so
forth. The Wabash shop craft people make $0.03 to
$0.04 per hour more than say, the Norfolk, Western
or the Southern people do. So those things are not
fair. Accordingly, for the sake of uniformity, and
in the interest of equal pay for equal work, the
unions propose that prior to the implementation of
the general wage increases, the hourly, weekly,
monthly base rates of pay shall be adjusted to
equalize the rates to the highest national base
rate. This is another issue that fits into the
carriers' theme of equality and fairness. The shop
craft employees perform the same type of work on
the same type of equipment and locomotives. It
doesn't matter if they're on the UP or the CSX,
the Soo Line, or Norfolk Southern, or the KCS.
It's the same work. Therefore, in all fairness,
again, that word "fairness". This board should
recommend that the pay be equal for all shop craft
employees and in the interest of fairness, the
carriers should not object. In conclusion, I appreciate the opportunity to raise these issues with this board. I strongly urge the board to recommend both the proposals, the IAM, IBEW, and those proposals related to all shop craft employees. I'm happy to answer any questions you may have on the proposals at this time.

MR. CHAIRMAN JAFFE: Thank you Mr. Duncan. Just the one I keep posing.

JOSEPH DUNCAN: Okay.

MR. CHAIRMAN JAFFE: Have you done any cost estimates in connection with either the IAM specific or the other proposals?

JOSEPH DUNCAN: We have not. It could be done, but to do so would take cooperation with the carriers because, for example, the skill differentials, they're the ones that determine which jobs are going to be skill differentials, how many hours that they're going to be. They're the ones that make the determination on who is going to move locomotives. And again, a machinist for example, can move a locomotive and be under hours of
service and cost of the $1.00 per hour. But in another instance, a machinist could move a one and not cost him the $1.00 because it's within the shop. So it could be done, but it would take a lot of cooperation with the carrier because they're the ones that do the schedules, they're the ones that assign the people and even in the traveling roadway mechanics, they're the ones that choose the hotels and assign the gangs and etcetera.

MR. CHAIRMAN JAFFE: Fair enough. Thank you very much.

JOSEPH DUNCAN: Thank you.

MR. CHAIRMAN JAFFE: Looks like an appropriate time, I think, for a break. Why don't we shoot for 3:25 and it will probably roll to 3:30? (audio break)

MR. CHAIRMAN JAFFE: I think we're ready to resume.

At your convenience Mr. Wolly.

MICHAEL WOLLY: Thank you Mr. Chairman. As I will be referring to some factual materials in addition to making argument to you today, I would just like to reaffirm to you that I will tell the truth to
the best of my ability under the law. I am Michael
Wolly, general counsel of the Brotherhood of
Locomotive Engineers and Trainmen. I'm going to
make part of BLET's presentation and then turn the
rest of time over to President Pierce. First, we
have provided you with the document that
inadvertently was left out of the original set of
exhibits the coalitions filed with the prehearing
submissions. You may have noticed that no BLET
section 6 notices or counter-notices from the
carriers to BLET presently are in the coalitions'
record. That's because BLET's section 6 notices
were served on the carriers directly by our
general chairman and BLET initially was part of
the rail labor bargaining coalition for health and
welfare only. What we've given to the board is
BLET's section 6 notice served on Kansas City
Southern, setting forth the union's national craft
specific issues then being put on the table. The
same notice was served on all of the carriers
here. Those carriers designated the NCCC has their
bargaining agent for the handling of those wage
and rules notices. So BLET did meet with NCCC chairman Grady to discuss them, when that effort went nowhere, BLET decided to join the RLBC for all issues. The union refined and reduced its craft specific issues at that point, and in February 2011, those issues were presented to the carriers by the RLBC. President Pierce made two presentations to the carriers flushing out in detail the rationale for each proposal. Now as you know, we join in the presentation of the coalition unions. But we're also here to present to you four proposals. Much fewer than BLET originally put on the table. Proposals that are specific to the locomotive engineers and trainmen the union represents. Last week you heard the carriers suggest that you shouldn't even consider any union's craft specific proposal and to support that proposition, they went so far as to put parts of the report of PEB 242 on the screen and told you that PEB 242 warned you against recognizing these proposals. Now as two of you know, from having been members of that board, the situation
there was somewhat unusual. The parties before PEB 242 were Amtrak and eleven of the non-operating unions. The dispute went to the PEB after eight long years of frustrated bargaining. So we're not concerned to have you look at that PEB report. It's coalition exhibit 83. Because when you do, you'll see that the rationale the board followed in rejecting Amtrak's work rule proposals outright, if applied to the BLET's and the other unions' craft specific proposals warrant exactly the opposite result. In that case, after the direct bargaining, after the mediation, and after the cooling off period. Amtrak presented the board with proposals that were far beyond anything that had even been raised in its initial section 6 notice or in negotiations. In the board's words, Amtrak presented potentially sweeping work rule changes in a number of significant areas, including contracting out of work, assignment of work out of class or craft, and work scheduling. And Amtrak proposed to the board major changes in scores of work rules. However, according to the
board, no greater detail concerning Amtrak's needs or desires was provided during the formal bargaining. No additional written proposal regarding these items was provided prior to the cooling off period and the PEB proceeding. The same was true for every one of Amtrak's work rule proposals. So it's no surprise that the PEB rejected them all. And the board sited a variety of reasons it refused to recommend adoption of any of them. Let's look at those reasons here. First, none of Amtrak's proposals were shown to be consistent with the freight pattern in that round. Now that's not an issue here because as has been explained by, in detail, by others on our side, there's plainly no freight pattern to be followed. Second, the board chastised Amtrak's ability to show that it had even tried to discuss the proposals with the unions. Proposals that the board found to be far to complex in it's words for major changes to be implemented without first being subject to the crucible of good faith bargaining, which often yields a workable balanced
framework for addressing proven problems in a proportionate measured fashion. Moreover, the board said Amtrak's proposals were not even the subject of specific detailed proposals until the cooling off period, almost eight years after the expiration of the last agreement and the provision of section 6 notices. Now here, by contrast, BLET was upfront with everything it proposed. Offering to explain it and bargain over it many times, only to be delayed and then ultimately totally rebuffed. Not only that, BLET's original proposals in it's section 6 notice were far more expansive then what's now on the table. Over time, the union reduced the issues and gave the carriers a very concise, detailed oral presentation well before the parties were released from mediation. The carriers say you shouldn't consider the union's craft specific proposals because the carriers could have presented their own, but they didn't. Well, that wasn't our decision. That was their decision. They now have the audacity to argue to you that because they decided that specific craft
issues would interfere with their ability to get
the agreement that they wanted, we should drop all
of ours too. So, unlike the carriers, we're not
creating straw men here. We're not telling you
what we considered proposing but didn't. Or what
we could have proposed but didn't. We're telling
you what we did propose. What actually happened.
We're telling you what we proposed initially, how
we cut that back and what we believe is necessary
to achieve a ratifiable agreement today. Third,
Amtrak was criticized because it made it made no
showing that abruptly changing core craft and
class rules would be proper. The PEB observed, and
I quote, "the result of any abrupt abandonment of
these work assignments and job security principles
would likely include significant instability and
at least in the short run, would create far more
productivity problems than would be solved.
Nothing like that is present here. BLET's
proposals do not seek to change work assignment
rules or job security principles. Instead, they
will promote job satisfaction. They will promote
safety and consequently, they will promote productivity, which according to the carriers, is what they're trying to achieve here today. The only instability the carriers allege is with UTU. And as the coalitions have already demonstrated, if you buy into that argument, you're letting the proverbial tail wag the dog. Fourth, PEB 242 criticized Amtrak for failing to provide proof of compelling operational need for any of these proposed work rule changes. In a few minutes President Pierce will explain to you, as others have before him and will after him for their unions, there is in fact compelling proof for every craft specific change the BLET is proposing. Finally, PEB 242 rejected Amtrak's work rule changes because they did not "mirror results that would be achieved through good faith arms length collective bargaining and that none of Amtrak's proposed changes standing alone and in their present form appear to be something that would likely be agreed to or could be ratified." BLET will show you today that not only are the changes
it is proposing ones that would have been achieved
had the carriers deigned (ph) to bargain over
them, they are changes that already have a
foundation in agreements on some of the properties
at this table. And they will enhance the chances
of a tentative settlement being ratified by our
members. So in so far as the carriers strongly
suggest that you come on board with their
position, that PEB 242's report applied here means
that you should not consider any craft specific
proposals, we urge you to respond just as strongly
that that train is not leaving the yard. It is now
my privilege to turn the podium over to BLET
national president Pierce to share his
observations on some of the other things the
carriers have told you. And to discuss why BLET's
four craft specific proposals are worthy of your
recommendation.

MR. CHAIRMAN JAFFE: Can we go off the record for
just a moment? I simply want to note that one of
our board members, obviously Mr. Zack has been
having some health issues. He indicated that he
had no problem with us continuing and that he
would diligently review the transcript in addition
to everything else that took place in his absence.
I chatted with counsel and they all indicated that
they had no problems with that as well. I think
that's probably enough on that subject at the
moment. At your convenience, and as I recall,
you've been sworn in before as well in this
proceeding, so I just need to remind you that you
are still under oath. Thank you very much.

DENNIS R. PIERCE: Thank you. Good afternoon Mr.
Chairman and all members of the board. Since we
met yesterday, I'm not going to burden the record
by repeating my background. However, before I
discuss our four craft specific issues, I need to
make sure the record is clear on several issues.
First is this, and I really don't know why they've
chosen to do it, but the carriers have to chosen
to minimize BLET's participation in this
proceeding. Perhaps it's because in their haste to
misrepresent the UTU agreement as a pattern, they
hope you will overlook the fact that the vast
majority of operating craft employees, the 40 percent of the UTU that voted no, and the entire BLET membership, reject this as fair pattern. Let me clarify which carriers are in national handling for BLET wages and work rules so that there is no doubt. For the record, BLET is directly bargaining in national handling on wages and work rules for BLET represented employees on the following railroads there on the slide. Now it's true that BLET wage rule settlements have been reached on three of the Class 1 carriers, called the Big Four. However, the CSX, TNSS agreements have a caveat which this board needs to be aware of. These agreements contain a blend of general wage increases and profit sharing compensation. As a key of each of those agreements, a key part, the parties must meet at the end of the moratorium to renegotiate the terms and conditions of the profit sharing plans. Absent both parties agreeing to continue the bonus plans, the BLET will snap back to national pay rates, national agreements and in certain cases, national work rule provisions. Thus
while alternative arrangements may exist on these carriers regarding the wage and work rule issues before you, let me be clear that our members who work for either or both of these railroads may be subject to all of the wage and work rule issues being discussed before this board. The carriers have also tried to minimize our participation by pointing out that the BLET wage and work rule bargaining on Union Pacific, is happening on property in this round. While that may be true, I think it's noteworthy that it is also true that the parties have not yet reached a voluntary settlement as of today. And we're not sure exactly where those negotiations will end. More importantly, your report will touch on more than wages and work rules. Indeed in my view, the most significant philosophical difference between the parties is on the question of health and welfare and what our benefit package should be. In this regard, every single railroad that the carriers have crossed off of the BLET's list or are at the table in national handling with BLET on health and
welfare issues, and they're now on the screen. The BLET members on these carriers and the other involved properties will be directly impacted by your findings because the outcome of this process will define benefits and costs for everyone who participates in the railroad employees national health and welfare plan. This includes Norfolk Southern, CSX and BNSF where property agreements are in place for wages and work rules. And I bring that up because there is a noteworthy point that I think the board needs to understand. In many people's view, the UTU settlement that the carriers would ask you to impose traded special allowances for concessions on health and welfare. Even though those special allowances have never been offered to the coalitions in their full capacity, it was a compensation trade for concessions on healthcare nonetheless in my opinion. I think you can understand that this organization is not in the position to even remotely think that such an arrangement would work on NS CSXT or BNSF, where the operating employees
under the BLET contract would never get the value
of any compensation traded for concessions. They
cannot get to the compensation side of the
national agreement. They'll only get the
concessions. And I think that's noteworthy because
from what I get from my members, there is
literally no chance that a recommendation that
requires a trade for compensation that cannot be
applied equally to everyone, has a chance of
ratifying. I'd also like to speak to the carriers
belittling our wage proposal on the basis that we
are unwilling to take any risk or share in the
downside of railroading. I spoke to this a bit
yesterday, and I'll tell you again today. Our
membership has faced significant downside risks
during the recession. The carriers' witnesses
would have you believe that employment levels are
bi-product of pay rates, but as we discussed
yesterday, it's train starts that drive hiring and
it's train starts that drive furloughs. The chart
that is up on the screen now shows the
unemployment rate for operating employees using
May 2008 as a base line. The data used to drive this chart is from the class 1 carriers own M350 reports filed with the STB. For all Class 1 carriers, the employment rate was in double-digit territory for 22 consecutive months from February 2009 through November of 2010. It hovered between 16.8 percent and almost 19.5 percent for a ten-month period beginning in May of 2009. The numbers were even worse for the Big Four. On those properties the unemployment rate was in double digits for 26 consecutive months. And these are just operating employee unemployment rates. (audio break) August of this year the Big Four still employ eight percent fewer operating craft employees than they did of May of 2008. As Tom Roth has shown, the worst downside the carriers face during this same time was a brief interruption in the number of consecutive years of record profits. At no time did their balance sheets operate in the red; they showed a profit every year. Further operating ratios continued to be reduced at a significant pace. In other words,
the carriers' profits were protected and enhanced by kicking BLET members to the curb, to put it bluntly. I don't dispute that the carriers had the right to do that, but I strongly resent any claim that it was only the carriers and not my membership that suffered the downside of railroad risk and reward. There's also another kind of risk BLET members face every day that isn't really measured by these types of analysis, it's difficult to put a value on, and that is human life. Tragically, 13 operating employees have lost their lives in the line of duty so far this year. That's one fatality every three weeks since New Year's Day, and this is not even an easy one for me to discuss because it is very, very troubling. For the carriers to minimize the contribution that operating employees make to their bottom line and to dismiss out of hand the risk that our members take every day when they report to work is nothing less than shameful to me. I also have to talk about the huge compensation premium that the carriers tried to paint to you that the engineers
under our contracts receive. I think there's been
lengthy discussion by both Tom Roth and President
McCann about the dispatchers and the all-but-
bogus comparison that was made to try to show that
we're overpaid. I don't have their expertise or
eloquence, but I can tell you that we looked at
the comparisons that the carriers use for
engineers. The ironic part is the codes that they
used from the BLS list of SOC occupations. We're
basically locomotive engineers in general. Now,
there are two codes: One is in general, and that
covers commuter locomotive engineers, passenger,
as well as locomotive engineers in freight
railroad service. The other code covers rail yard
ingineers, dinky operators, and hostlers. The
Department of Labor defines that code as those who
operate switching or locomotive or dinky engines
within railroad yard, industrial plant quarry,
construction project, or similar location. In
other words, the carriers urge you to reject our
wage proposal because the locomotive engineers on
the nation's largest, wealthiest, and more
1 profitable freight railroads make more than their
counterparts, working on the smallest carriers,
publically funded passenger rail carriers,
hostlers, and people who drive a dinky in a plant
or at a quarry. This analysis, besides stating the
obvious, is wholly irrelevant because it fails to
provide an apples-to-apples comparison even within
the industry. Mainline freight operations are
different than passenger and commuter operations,
which are obviously different from short line
operations. Moreover, using data from nonunion
mom-and-pop railroads, industrial plant railroads,
which are not even subject to FRA regulations, is
hardly a way to hold down our earnings. We think
their comparison is completely baseless. Fourth,
and probably the most disturbing of what I had to
sit through last week was the demonstrably false
claim, and I'm going to quote here from the
carriers' expert. He said that there was no
evidence that rail labor jobs are more difficult,
require more skill or effort, or that rail labor
has in any other way become inherently more
productive than labor in general. He also stated that the increases in productivity have not been to - and I quote - been due to additional labor skill or effort. One of the prime factors in the carriers' ability to continually lower operating ratios and crank up productivity is something called distributive power. The carriers' own witnesses recently touched on it last week and we'd like to talk a little bit more about it. Now, I'm going to try to explain just briefly, because I know we're short for time, on how the technology works. The quote is at the top of the screen and we'd like to run a video in the background while I explain distributive power. (Video)

DENNIS R. PIERCE: It's important that, if you've got the time, you watch the video, because it sends a very compelling message. Distributive power is a technology that allows the engineer on the lead locomotive, which just passed, to control other locomotives throughout the train via remote control; it's a radio signal operation. To understand how DP functions, you have to have a
minimal understanding of in-train forces and the slack that an engineer is obligated to control when he's operating a train. To put it simplest, when a train is under power, the slack is stretched, or its draft forces it's called. When a train is bunched, it's buff forces. The combination of those two is what either keeps a train together or tears it apart; it's not a simple thing to do. The maximum number of freight cars that any given locomotive can move is basically a function of the train's weight and of its length. And when the train is being operated, the locomotive engineer must be keenly aware of any undulation in the terrain, as well as anything that could cause a change in draft and buff forces. Add that, for reasons of fuel economy, engineers are no longer permitted to power brake trains by stretching and setting the train air. You'll see a set of power just went by in the middle. Instead, they're obligated to use the dynamic braking, which is a bunched method of breaking using the locomotive consist to brake the
train along with the brakes. The engineer is
responsible for managing all these forces in real
time and has to adjust his operation as conditions
change, and for decades that was accomplished with
power on the head-end only. Distributive power
technology permits railroads to bypass the normal
train-size limitations imposed by tonnage and
draft buff forces. Two trains, each of which may
be their near maximum size, can simply be coupled
and the engineer controlling both sets of
locomotives from his or her position on the head-
in. In fact, in January of last year, Union
Pacific set a record by operating the train that
you're watching, from Dallas, Texas to Long Beach,
California. This train consisted of 9 locomotives,
294 cars, measuring 18,000 feet in length; we're
talking over three miles, and the video you're
watching again is of that train. The makeup of the
train was as follows: Three locomotives, followed
by 98 cars - there's another set of power -
followed by two more locomotives, followed by a
third group of 98 cars, and two additional
1 locomotives bringing up the rear. This is the key part that I think the Board needs to understand.

2 All four sets of locomotive power on a three-mile long train were operated by a single locomotive engineer. There's nothing else to call this thing but a behemoth. As difficult as it is to operate a train that has all its locomotives on the head-in, the complexities that arise from putting two trains together, or three, as Union Pacific did, are exponential. Not only does the engineer have to make separate calculations for each set of locomotives, he also has to consider the fact that the - that operating the mid-set of locomotives in the train could, by design, create buff forces behind it and draft forces ahead of it that would compete with the forces being created by the other sets of locomotive power. I think the biggest takeaway from this - and perhaps it's noteworthy that this technology is not that old, I am not distributed power qualified. For that reason, I would not be as productive as the members that I represent today. This doesn't happen overnight,
and as you'll see, there's the final set of power on the rear-end of the train. Every one of these locomotive's consists can be run as a split screen individually as its own form of power. Any suggestion from the carrier that the increases in productivity as a result of the deployment of distributive power are in no way due to, again, in the carriers' words, additional labor skill or effort on the part of the locomotive engineer is patently - excuse me - patently false. These gains in productivity didn't just happen because the railroad bought technology. Engineers do more at the control stand today than ever before, and they do most of it with no additional compensation. Running longer trains means running fewer trains, and in turn, fewer engineers doing more. Any suggestion that labor has had no part in increased productivity is clearly a falsehood. The carriers have also failed to share with you the programs that they've implemented to encourage locomotive engineers to be more fuel efficient. With fuel costs soaring like - like every other
operating cost, profit margins are directly
affected by the manner in which locomotive
engineers operate their trains. Engineers are
currently challenged to alter the methods of
operation with an eye towards reducing fuel
consumption. And to the argument that the carriers
have presented, productivity should never be
associated with compensation, I would offer to you
that the carriers sitting in this room, some of
them have negotiated agreements with our union to
reward those who conserve the most fuel with
additional compensation, creating a direct
relationship between productivity and compensation
on an individual basis. When Mr. Gradia had
started his remarks last week, he made the
statement - see if I can find it here - that the
carriers were not here to insult any of what Mark
Manion called "agreement people." Not only is the
term "agreement people" condescending, the
carriers' actions in misrepresenting to you our
productivity is an insult to the members that I
represent. Lastly, before turning to the issues
themselves, it's necessary to address a couple of things concerning the UTU settlement, and I'll try to be brief here. The carriers have argued that one reason our proposed - our proposal concerning health and welfare issues is unreasonable is because it would create two different benefit levels for people who ebb and flow between BLET-represented crafts and UTU-represented crafts. This contention is a red herring. The fact of the matter is that the carriers themselves created two - two different benefit levels nearly ten years ago when they agreed to allow the UTU to vote from the national plan. To prove that fact, I'm supplementing the record. And it will go up on the slide, to include a July 1, 2004 agreement - we'll give you a printed copy that will be more legible - setting forth how ebb and flow operating employees are placed within one of the two - and I key this - one of the two different health and welfare plans. This arrangement has worked well to the best of my knowledge, so any of the carriers' contentions that our proposal would create a new
1 problem is utter nonsense. Next it's necessary to
2 address BLET's relationship with the UTU. This
3 relationship goes back nearly a century and a
4 half, including predecessor organizations, and the
5 history of that unique relationship creates a
6 context you need to understand when considering
7 the carriers' pattern argument. Unlike every other
8 union and every other employee those unions
9 represent, the locomotive engineer is the only one
10 who shares his workplace with the members of the
11 UTU. Engineers run the trains, they operate the
12 trains. The trainmen perform various ground
13 duties, manage the paperwork, and provide an extra
14 set of eyes and ears. Now, when we pull that train
15 out of the yard onto the road, typically no one
16 else is in the locomotive cab with the operating
17 crew. As a result, engineers and train service
18 personnel have many similar collective bargaining
19 agreement provisions, but there are also
20 significant differences. There has historically
21 been a differential in pay between engineers and
22 trainmen. That's because engineers are more highly
trained and they are where the buck ultimately stops if anything goes wrong during the course of a trip. Add the locomotive engineers have been federally certified since 1991 and they are required to pass complex tests and to comply with rigorous federal standards applicable to engineers and to engineers alone. One of the key parts of this is the contractual term; it's called "promotion." Since 1985, every - excuse me - every trainman hired by every one of the carriers represented here is obligated to take promotion and to become a locomotive engineer. Despite this established system of promotion, the UTU has tried and tried to supplant engineers as the highest paid crew member. When they haven't been able to get it done using the pay rates, they've tried to do it by various allowances that only they can receive, and that is relevant to the discussion we're having here. Recently the UTU convinced the federal government that they, too, should be certified. As a result, they were able to convince the railroads to pay them a $5 daily allowance,
and history is repeating itself. The carriers now come to you and maintain that only conductors can get the full value of this financial gain, which, by the way, as Tom Roth stated, based on the data shared with us on a limited basis, the estimated value that the economists can show to certification pay I believe was 1.3 percent as a comparable general wage increase. I would offer to you that the average yard conductor works over 220 starts per year. And on a comparison, directly comparing the value of the cert pay to his daily rate, indicates that to the average yard member it's worth closer to two and a half percent. Those numbers are in our brief if you want to refer to them. The key part here is although we work together and we share a lot, the responsibilities are not identical and that's why there's always been a wage differential. The carriers want you to take what they've agreed to with UTU and ignore those differences. The value of the UTU agreement to the employees it represents, in this case the yardmasters, which is the offer we received,
should be identical to the value of what engineers get and what every other employee in the industry should get. They want you to blindly accept the settlement of UTU's bargaining demands, which were drawn by UTU and UTU alone, and accept them as an appropriate settlement for everyone else regardless of the fact settlement does not address anyone else's needs. The fact that UTU may have found something acceptable for its members is not a basis for rejecting the reasonable and well-supported proposals of other unions that have no hand in crafting the UTU settlement. Mike Wolly has spoken I think extensively about whether or not the issues that we now need to discuss with you about craft-specific issues are properly before you. The carrier used the words that they were not properly ventilated. They were ventilated. I think Mike explained that. I made two presentations and shared every bit of everything that is before this Board and was flatly rebuked. The idea that the carriers can refuse to bargain and then say there was no
bargaining; I don't think this Board should reward them for that form of behavior. That said, the four issues, the craft-specific proposals for the locomotive engineers, are as follows: We're asking you, as item number one, to increase the certification allowance from $5 to $10 because of the erosion of its value over time and the new and greater responsibility and consequences attached to being certified. Item number two, we are asking to eliminate entry rates in the two-tiered pay system because they're no longer economically justified or rationally related to the environment of the employees that we represent. Third, we're asking to bring the away-from-home terminal meal allowance into the 21st century. And finally our fourth objective is to make locomotive cab safety an attainable and enforceable objective. On the first issue, certification allowance; as I mentioned earlier, beginning next year, UTU conductors will have to hold a federal license. For this, the carriers have agreed to pay them a $5 certification pay. It could be assumed that the
figure was chosen because that's what a locomotive engineer receives in certification pay. But we are of the opinion that the engineer should be getting a higher allowance, and our written submission explains in detail why. Besides the longstanding overall compensation difference, the Board should be aware that the $5 that engineers receive was set in 1997 and has not been improved for 14 years. It is not subject to general wage increases; it is a flat amount. And if you follow the slide, because of its inflation of inflation, its value has eroded over time to $3.52, roughly 70 percent of what it would be in real terms. Conversely, had the allowance been subject to general wage increases as it is on BNSF, it would be $6.92 today. The amount of certification allowance should be increased for other reasons, too. Once the FRA's conductor certification regulations become effective, an engineer's risk of losing the ability to work will go up considerably. In today's world, if an engineer is decertified and there is no on-property
discipline, in most cases he's allowed to demote and work a ground service job. Under the new rules the FRA is establishing, the loss of the engineer certification will also disqualify him from working as a conductor. And this loss of safe harbor, while being held out of engineer service, will cause engineers considerable financial harm. (audio break) Back to the original certification allowance, when it was created, one of the considerations underlying it was the risk of economic loss that accompanied a certification revocation. Everyone then understood that the engineer would still be able to work, but it would be at a lower rate of pay on a subordinate job; now he'll face unemployment. When the FRA confirms the engineer certification rule or conforms with the new conductor rule, six additional circumstances in which revocation can occur for engineers will be added to the engineers' cardinal - or list of cardinal sins. This will enable the carriers to decertify an engineer for not making sure that the conductor didn't commit an act that
would subject the conductor to revocation. We submit to you that these are ample justifications for increasing the certification allowance from five to ten dollars, making it subject to future general wage increases, and we ask that you make this increase part of your recommendation. The next issue is the entry rates in the two-tiered pay system. On most railroads, rules created during the railroad financial crisis of the '70s and '80s provided employees that were newly hired after arbitrarily set dates to be paid less than current employees. They did not attain full pay status for five years. The economic consequences of being on one side of the line or the other are set out in detail in our submission. Briefly, for example, so-called post-'85 engineers have to work longer than pre-'85 engineers on runs of the same length before they are in overtime. We're talking about similarly situated employees with equal levels of responsibility making different amounts of money. Also they didn't get any of the arbitraries or special allowances that pre-'85
1 engineers get for performing the same work. In
2 2003, the parties set out to rectify some of those
3 disparities with the trip rate pay simplification,
4 it was called. There are still outstanding issues
5 that have never been resolved and we think the
6 time has long - long past to where these
7 inequities need to be repaired. With the advent of
8 certification, all engineers are held to the same
9 level of accountability and suffer the same job
10 consequences and economic losses for mistakes. We
11 are of the opinion, as I've said, that the time to
12 improve this allowance is long overdue. The
13 overtime is probably of the most particular
14 interest. With the advent of the Rail Safety
15 Improvement Act, in theory, the most that a - on a
16 long run, that any employee can be on overtime
17 after his 12 hours expires is 30 hours per month.
18 Feature that for that 40 hours, a pre-'85 employee
19 would earn overtime and a post-'85 engineer would
20 earn absolutely nothing. We think that is horribly
21 inequitable - inequitable and we ask that you make
22 this correction part of your recommendation. The
third issue is our held away-from-home terminal meal allowance, and you've heard a lot this week about expenses. Now, these are the things that allow people to do their jobs, to compensate them fairly for what their expenses are to be able to do those jobs. The meal allowance for the engineers at the away-from-home terminal under the national agreement currently is $6. That is paid once an engineer has been there for four hours, and a second payment after an additional 12. The allowance - excuse me, an additional eight. The allowance has been that - at that level for 17 years. Ironically, the rate came from the recommendation of PEB 219. Today, that $6 is only worth $3.96 when it's inflation-adjusted, and that's what the slide shows you. I don't have to tell you what has happened to the cost of food in that time. In fact, PEB 242 found that it had increased 20 percent between 1997 and 2007 alone. In 2007, CSXT agreed to pay its engineers an initial meal allowance of $20 after four hours, and an additional meal allowance of $10 after
being held an additional ten hour - excuse me - an additional 20 hours. After that, an additional $10 is paid every eight-hour period or fraction thereof. That agreement also makes the payment subject to COLAs and general wage increases so that the issue does not need to be revisited. The slide on the screen now shows the amplification of current national agreement: $6 at four hours, another $6 at 12 hours. Next to it is the application of the CSXT rule. The next two columns show the on-property improvements that have been made on BNSF and Norfolk Southern. Now, the BNSF rule went to $8 in 2007, is subject to general wage increases; the Norfolk Southern rule went to $12. There's one more column on this slide, and in light of what we were told by the carriers last week, the Board should find it of particular interest. That column shows the comparable UTU allowance that is currently in place. The carrier argued ferociously last week that pattern agreements had to be applied to those who settled later for many reasons. While we are not conceding
so much as an inch towards the carriers' position, it is important for the Board to understand the hypocrisy in that position. I was not BLET's National President during the last bargaining round, but I was on the National Wage Team. In the craft-specific negotiations that all RLBC unions conducted, BLET argued long and hard for an increase to the $6 meal allowance. In the end, the carriers flatly refused our demand and the RLBC agreement was finalized with no improvements to the meal allowance. As you all know, the RLBC settled first in the last round, and our agreement was ratified by a very strong majority. Conversely, UTU dragged the bargaining round out with legal actions and outright refusals to bargain. That changed in 2008 with the new President at the UTU, and guess what happened? The carriers rewarded the union that went last, the union that resisted a settlement for the longest and the lone holdout union, with an increase in their UTU meal allowance to $8, effective January 1, 2010. As a result, UTU, and I will say it
again, the union that went last, got more for
going last and gave up nothing to get it. For
almost two years now, their meal allowance has
been 33 percent greater than the BLET national
meal allowance. Ironically, we pointed this out in
our negotiations in this round. And as I said
before, we did that when this issue was thoroughly
ventilated. The carriers took no exception to the
union going last getting more in those
negotiations. Indeed, they were complicit in
providing a benefit to UTU that they had expressly
denied to us. I would hope that this Board sees
the hypocrisy between the carriers' position then
and the one they're trying to foist upon us now.
Simply put, the carriers are asking you to let
them have it both ways and I hope you see through
their charade. We ask this Board to recommend that
the CSX meal allowance agreement become the
national standard. Finally, issue number four is
locomotive cab safety. We propose to do something
about locomotive cab safety, a subject that has
languished at the table for a quarter of a
century. Even in this digital electronic age,
being a locomotive engineer continues to be
portrayed as one of the last romantic jobs in the
world. What kid never dreamed of sitting atop a
speeding locomotive, crisscrossing the country,
running through canyons, across rivers. They see
pictures of flat - fabulous cloud formations and
starry skies. They paint romantic pictures. I'm
here to tell you in real life it's not quite what
the dreamers and the rail buffs imagine it to be.
The average cab size is about eight feet by nine
feet, 72 square foot of space for two people,
three people occasionally, up to four people. It's
essentially a metal box with windows, seats, and a
control stand on the engineer's side of the cab.
When it's hot outside, it's even hotter in the
cab. When it's cold outside, the icy wind blows
through the cracks in the door and the window
seals. And loud? The cabs were designed to be
quiet and meet federal requirements when they roll
off the assembly line, but after years of use,
need to open windows, all of the manufacturer's standards in design is gone. As we explained in our submission, we're not asking you to undertake a cab-by-cab examination of the difficulties we face or to recommend a prescriptive set of standards. Rather, what we want you to do is recommend changes in our existing agreement process that these issues can be addressed in an enforceable way. We want you to require that contractual and regulatory standards are honored, and to require labor management consultations that do more than just pay lip service to the agreement. We want you to require that the carriers join with us to take meaningful steps to ensure our members' safety, including their personal security. As our submission explains, operating crews faced with overly hot cabs have to open windows and doors to create a manageable climate. That also opens the cab to intruders, and we have seen robberies and assaults all too frequently in yards. Many of you are aware that I think last year it was we had a fatality in New
Orleans when an intruder came through the cab with
a - the door of a locomotive cab and shot the
conductor. If the cab cannot be kept secure, our
employees cannot be kept secure, and there are
ramifications on security that go throughout this.
Part of our proposal addresses specific concerns;
another addresses process. No locomotive engineer
should be required to accept a locomotive with an
unsafe cab or a locomotive that violates governing
FRA regulations when a reasonable alternative
exists. Our proposal adds important protection for
engineers confronted with such locomotives,
including documentation and appeal processes.
We've seen no change in this rule in 25 years. Now
is the time to rectify that, and we ask this Board
to make this long overdue correction part of your
recommendation. In conclusion, BLET is before you
as part of a coalition of many unions. Though we
represent over 36,000 active employees in this
industry, and the recommendations of this Board
will have far-reaching effects in the operating
departments of many railroads. We're looking for
you to recommend a settlement that every
locomotive engineer will have no hesitation to
ratify. Considering the strong financial position
in which these carriers find themselves, none of
BLET's proposals are too expensive or otherwise
unreasonable. And you can rest assured that when
we winnowed our list down just to these four
issues, we didn't try to pick the most costly ones
or the ones that would be the hardest for the
carriers to accept. We seriously considered which
of our proposals were the most important to the
locomotive engineers that we represent and which
stood the best chance, when recommended as part of
the settlement by this Board, of resolving the
bargaining round with neither - neither side
feeling unsatisfied and thus forced to push the
dispute into self-help. We hope that you will
agree that we've chosen wisely, and we also hope
that you will make these important issues part of
your recommendation, and I thank you for your
time.

CHAIRMAN JAFFE: Thank you, Mr. Pierce.
MR. PIERCE: Any questions?

CHAIRMAN JAFFE: Yeah. It's sort of the same answer to the same general question, or is there some specific costing that you've done in terms of the proposals? I didn't want to abuse the privilege, by the same token.

MR. PIERCE: I understand. On the $5 certification pay, it would double the value if it's paid today. In some cases, that's anywhere from a two percent to three percent value, depending on the job being worked. The meal allowance is a 33 percent increase over today's value, but is a controllable cost, but that the $8 would be significantly more in the CSX model. These are controllable costs, depending on how crews - how long crews are allowed to lay at the away-from-home terminal. The pre-post issue, we had some discussion yesterday with the economist about the impact of entry rates to BLET. If there is a year that BLET members are affected by entry rates, it would be year five. It's not uncommon for trainmen in their third to fourth year of seniority to take promotion to
1 engineer. So we've seen engineers affected by
2 entry rates, but I can't give you the exact
3 number. The cab standards, we're not actually
4 looking for money, as amazing as that sounds;
5 we're looking for a safe and secure, clean cab.
6 CHAIRMAN JAFFE: Got it. Thank you very much.
7 MR. PIERCE: Thank you.
8 MR. WILDER: Yes, Mr. Chairman, the next
9 presentation in order will be made by the
10 Brotherhood of Railguard Signalmen of its craft-
11 specific issues. The presentation will be made by
12 the panel of witnesses. Mr. Pickett has already
13 been sworn in and I will name the other
14 participants. To my immediate left is Floyd Mason,
15 Vice President of BRS, and to his immediate left
16 is the - what's Bill Burton here. Bill? Okay. Bill
17 is the CSX Signal Trainer. And then we have John
18 Bragg, the Director of Research, and we have David
19 Snyder, who is the BNSF Signal Maintainer on the
20 panel. I leave to you whether you swear them in
21 together or.
22 UNIDENTIFIED MALE VOICE: We have a line for names.
What's your name?

MR. FLOYD MASON: Floyd Mason.

MALE VOICE: Mason?

MR. JOHN BRAGG: John Bragg.

MALE VOICE: Bragg.

MR. WILLIAM BURTON: Bill Burton.

MR. DAVID SNYDER: David Snyder.

MALE VOICE: Snyder.

MR. DANIEL PICKETT: Good afternoon, Chairman.

CHAIRMAN JAFFE: Good afternoon.

MR. PICKETT: Members. As pointed out, I've been

before you before. Dan Pickett. I'm the President

of Brotherhood of Railroad Signal. In this next

segment we will present craft specific issues for

the signalmen contained in your document titled

Craft Specific Submission of the Brotherhood of

Railroad Signal. [We do] (ph) the testimony of

using different ones as Roland (ph) pointed out so

I won't rename those individuals. The BRS proposed

wages adjustments for signal maintenance employees

can be found on Page 2 of the submission. We

propose that for the increased skill effort and
responsibility of signal maintenance employees, who are responsible for and signatory to all FRA regulated testing of signals as well as inspections and repairs of safety critical signal systems, that the Board recommend the following. Effective January 1, 2010, all maintenance employees base rates of pay will be increased by $1.50 an hour. Effective with the date of this agreement all maintenance employees who are assigned to or move into maintenance positions and have or obtained eight years of service will receive an $1.25 per hour. This increase is provided in this section, it's 2A, it's in addition to Section 1. Have or obtained 15 years of service shall receive an additional $1.25 per hour. This increase provided in this Section 2B is in addition to Section 1 and Section 2A. We make this proposal to address the requirements that every member possess advance technical abilities and to address the grave responsibilities that these member bear. I do like to introduce to you Floyd Mason who will give an outline of our
position and support of our proposal. Floyd's background includes 36 years in the rail industry. Starting as a lineman, working in signal maintenance and as a licensed electronic technician on signal systems throughout what is now the Norfolk Southern and CSX on the shared part. He has testified before the Presidential Emergency Board 219, later working with all of us to implement those favorable recommendations. He now attends graduate school at Harvard University. Floyd was reelected as Vice President in the East in 2010, a position that he's held since 1992. Floyd represented signalmen for many, many years. Floyd.

MR. FLOYD MASON: Thank you President Pickett. Can you hear me all right?

MALE VOICE: Absolutely.

MR. MASON: Mr. Chairman, honorable Board, signalmen are the employees responsible for the safe movement of the trains through the installation, testing and maintenance of the nation's signal and train control systems. We're
focused in this proposal on approximately half of our membership. These members are signal maintenance employees. I'm going to cover three sections that's in our printed material and then we're going to hear from some experts from the field and John Bragg's going to help with the questioning of those experts. In the first section, signalmen have contributed greatly to the productivity of the railroads. This is coming from Section 4, and they've done this by learning and taking responsibility for advanced signal technology. We've learned and taken responsibility for high tech advancements in grade crossing technology, the reduced false warning activations. We've learned and taken responsibility for technical improvements in yard classification systems that enabled the railroads to move freight more efficiently and classify cars and make up trains. And we've learned and taken responsibility for advanced signal technology that detects hot bearings and passing rolling stocks before damage occurs. We've also learned and taken
responsibilities for advanced signal systems.

Unlike those that tell you about how these systems have added to productivity and our members have not contributed, it's our members that understand how this advanced technology works. And it's our members that make sure these systems function properly on a daily basis. This requires additional training and involves great responsibility. These technological advancements save the industry money. They provide for safer operation and they allow the railroad to operate more efficiently. Contrary to what you may have heard in carriers' arguments, advance signal technology does not repair itself. It does not test itself. It's the signal maintenance employees that bear the responsibility for proper operation, testing and maintenance. And they are the ones that are responsible for the systems if they don't do their intended job. The investment the carriers have made in advanced signal technology does not reduce the responsibility of signal maintenance employees; it increases it. And it increases the
need for more highly trained and more responsible signal maintenance employees. It promotes productivity by, for example, eliminating the need for employees to perform labor-intensive and time-consuming poleline work, work which is part of work of our craft. It's interestingly difficult to get signal maintenance jobs filled. The hiring process is highly selective and experienced signal maintenance employees are migrating away from maintenance positions into equally paid signal construction positions that don't require the same level of technical expertise or the severe level of responsibility. We have positions that remain in some circumstances unfilled for over two years. We know there's a lot of applicants but within the craft members use seniority to exercise to positions that they desire within the craft. The first section that I want to go over starts on page 7 and it's titled Technical Proficiency. Support for our position that signalmen increase the industry's productivity by their acquired knowledge is found in literature prepared by a UP
manager. That literature's titled Quantifying Signalmen's Training Effect on Productivity. It's discussed on Page 8 of the text and it's identified as Exhibit 1. This paper concludes that knowledgeable, trained signalmen improves safety and the bottom line because they're more productive. And they're more productive because of their increased technical skills. The paper reports that increased training of signalmen reduce false proceed signals by 45 percent in the period that that manager studied. Signalmen have been and continue to be willing participants in new technology and the advanced training that these new systems demand. The advance training program for signal maintenance employees was the result of PEB 219 and it was developed with BRS. We described BRS' role in developing advanced training program on Pages 10 through 13 of our submission. The effort by BRS signal maintenance employees in the industries paid off. On page 13 we include Table 1 from the Congressional Research Service. Their calculations using FRA data verify
that in decade following BRS' advanced training program, the collisions, fatalities, and injuries as a result of grade crossing accidents were all reduced. Our position on this point is supported by the literature and it's supported or at least inferred by the data. The next section that I want to cover, Section 5, discusses the advancements in technology and how that has increased the responsibility for those employees. We demonstrate this by discussing four types of systems that signalmen are responsible for. Crossing Warning Systems, Yard Classification Systems, Defect Detector Systems, and Signal Systems. This narrative can be found beginning on Page 14. Each of these areas has grown enormously in complexity. Signal maintenance employees must learn new and advanced technological skills in order to make repairs on these systems and in order to maintain their fail-safe capability. Periodic testing of advanced signal systems also requires new skills; skills that go well beyond the talents possessed by signal maintenance employees before the
introduction of these new technological advancements. A new category of systems that's being installed presently, it's all the talk in our department, is Positive Train Control, PTC. This system imposes new and enormous responsibility upon signal maintenance employees. Positive Train Control has as its core function to avoid train-to-train collisions, to prevent over speed derailments, to prevent incursions in the roadway worker protective work zones, and to prevent movement through improperly lined switches. PTC is the largest implementation of advanced technology in many decades. PTC will not only require signal maintenance employees to learn an entirely new technologically developed set of parameter designed by a variety of different manufacturers, it will add to the responsibility - it will add the responsibility of safe train operation to the existing responsibilities of signal maintenance employees. Signal employees will, for example, now be held responsible if a train passes a stop signal because a PTC system
failed. The last section in our printed material focuses on the increased responsibility of our signal maintenance employees. It does that by focusing on the federal regulations that apply to signalmen. Beginning on Page 51 we review the evolution of safety legislation and regulation that's placed increased responsibilities on signal maintenance employees. This section, like the previous section, is supported by many exhibits numbering in the thousands of pages; there's 500 pages alone on the specific regulatory requirements that affect signalmen. Because of their volume, those exhibits have been reproduced and made part of a CD that's attached to that report. So at this time I'd like to introduce our Director of Research or former Director of Research, now our Vice President, John Bragg. And he will question the witness Bill Burton, and we begin with our next statement from Bill Burton.

MR. WILLIAM BURTON: My name is Bill Burton. I've worked with CSX Transportation for 32 years. For 27 of those years, I worked as a signal maintainer
responsible for maintaining, repairing, and testing signal and train control equipment. The last three years I've been working as Northern Region field trainer. My job is to travel throughout the northern region to CSX field locations to train signal employees on all aspects of signaling including old as well as new technologies. My travels gives me the unique opportunities to meet face to face with many signal maintainer personnel that are working on the northern region of CSX. It's important for both new and veteran employees to receive continuing training on older equipment as well as new technologies and equipment. For my railroad, new signal employees are required to attend four periodic training sessions which typically take two years. Upon completion each employee is tested and must receive a passing grade before being qualified as a signal maintainer. Failure to receive a passing grade following each session results in termination. Veteran employees also must continue to demonstrate their ability to
learn new rules and procedures that apply to new technologies as they are introduced. To obtain my training and knowledge I had two years of vocational training that was required by the railroad when I was hired. In addition to numerous classes provided by the railroads and vendors, I completed an advanced electronics program that was also provided by the railroad. It's important to note that the consequences of a signal system failure can be disastrous. To avoid any possible disaster, employees must possess extensive knowledge of both FRA regulations and company rules. The consequences of not complying with these federal regulations and company rules cannot be overlooked. A violation could result in an employee being disciplined, being assessed a personal fine, or permanent disqualification from performing safety critical service industry wide. MR. BRAGG: Mr. Burton, as a signal maintenance employee, would you describe recent advances in signal and train control technology on your property?
MR. BURTON: Early on, the signal system consisted of (inaudible) Base Signaling Circuits. And those circuits were drawn onto blue prints. The blue prints were used for such things as installations and troubleshooting the signal circuits. As time ran on our signaling system became microprocessor-based. And our microprocessor-based systems - now the manufacturers supplies manual for the microprocessor based systems. The manuals contain several hundred pages and the information in the manuals are useful for troubleshooting, for installation, for setups.

MR. JOHN BRAGG: How have these advancements in signal technologies affected how a signal maintainer performs his duties?

MR. BURTON: A signal maintainer now has to have vast more knowledge than I did when I became a signal maintainer. He has to know how to use the equipment that sometimes is specific to the equipment, manufacturer's equipment. He must know how to use it. He must be proficient in the use of a computer also, a laptop computer, to access and
troubleshoot the microprocessor-based signaling equipment.

MR. BRAGG: Okay. What advancements in signal technologies are you working with today?

MR. BURTON: PTC is on the horizon. That's on everybody's mind - the Positive Train Control. And with the Positive Train Control will come new regulations and more training.

MR. BRAGG: Okay. Would you describe how signal maintenance employees are required to be knowledgeable of federally mandated signal and train control regulations.

MR. BURTON: Federal regulations are the minimal rules that are prescribed for the signal maintainer in order to do his test. They tell us when to do our test and what test to do. We do our test, as an example, on 30-day, 60-day, 90-day, 100-day, or I mean yearly basis.

MR. BRAGG: Okay. What is the importance - why is it important to perform the federally required test on signal systems?

MR. BURTON: If a maintainer didn't do the required
test properly, or if he didn't do the required
test in a timely manner, there is a possibility of
a false proceed signal.

MR. BRAGG: What is a false proceed signal?

MR. BURTON: A false proceed signal is a signal
indication, a signal indication that - excuse me.
It's been a long day for me. A false proceed is a
signal indication that gives a more permissive
aspect to a train on the track conditions ahead.

MR. BRAGG: Okay.

MR. BURTON: That didn't make sense.

MR. BRAGG: Okay, how would that compare to, for
instance say traffic signal? Is there any
comparison?

MR. BURTON: An engineer would want to trust our
signal systems just like we would trust a traffic
control system as a pedestrian. We want to be
assured as we go through the intersection that it
is safe to do so. An engineer would also want to
be assured that the signal that he takes is safe
to go through, that the track ahead is safe for
him to travel over.
MR. BRAGG: Okay. Would you describe some of the consequences of a false proceed signal?

MR. BURTON: The consequences of a false proceed signal is a head-on collision, a derailment. With the derailment you got the possibility of hazardous release from tank car partial, possibility of death.

MR. BRAGG: Okay. All right, Mr. Chairman, I'll now introduce Mr. Dave Snyder.

MR. SNYDER: Thank you. My name is David Snyder. I work for the BNSF Railway for 37 years. I'm currently assigned as the signal maintainer in Mora (sp) Minnesota. My permanent responsibilities as signal maintainer is testing, maintaining and repairing signals in train control signals and equipment. I, like many signal employees, was hired with prior military technical training.

After starting with the railroad, I completed four years of apprentice school, a home study course through the Cleveland Institute of Electronic that ultimately transformed my knowledge into the digital age. I completed (inaudible) BNSF
Journeyman Training courses and then went on to study railroad electronics at Johnson County Community College in Overland Park, Kansas. I've seen many changes in highway grade crossing technologies throughout my career. Crossings that once utilized shelf multi mechanical relays and were retested by using meters and visual inspections are now microprocessor systems that are tested using control panels on the equipment chassis and a laptop computer. With these new advances the test and maintenance of these crossings have become more complex than ever before. The crossings have become smarter. Which in turn has required signal maintainers to become smarter too. In 1995 the FRA added grade crossing regulations to the already existing train control regulations. Federal regulations and company rules required me to test crossings monthly, quarterly and annually to ensure safe and proper operation. In addition, I am required to take calls at all hours of the night in all kinds of weather, including weekends and holidays, to repair signal
systems that have malfunctioned. The extensive
knowledge I have gained through the training
experience has helped me to become more productive
and meet the ever-increasing responsibilities of
maintaining these safety critical systems.

MR. BRAGG: Mr. Snyder, would you describe recent
advances in grade crossing technology on your
property?

MR. SNYDER: Crossings that are controlled by
poleline, wires and glass-encased relays are now
controlled by microprocessor-based equipment and
communicated using radios and antennas. In
addition, DC-style circuits on the tracks were
replaced by more advanced audio frequency overlay
circuits consisting of microprocessor-based
equipment that could predict the approach of a
train and how long it would take to get to the
crossing, as well as the speed of the approaching
train.

MR. BRAGG: How do signal maintenance employees
adapt to the continually advancing grade crossing
technologies?
MR. SYNDER: Training has been a constant requirement for both regulations and technical advances with the equipment being used in today's crossing.

MR. BRAGG: What is the importance of performing federally required tests on highway grade crossing?

MR. SNYDER: It's to ensure the crossing is functioning as intended and identify any possible equipment problems.

MR. BRAGG: Okay. What is an activation failure?

MR. SNYDER: An activation failure is when the crossing warning system fails to warn or fails to provide sufficient warning of an approaching train.

MR. BRAGG: Okay. What could potentially happen as a result of an activation failure?

MR. SNYDER: A train could strike a pedestrian, a motorists, a truck hauling hazardous material or even a school bus full of children.

MR. BRAGG: Mr. Chairman that concludes my line of questioning.
CHAIRMAN JAFFE: Thank you, Mr. Snyder.

MR. MASON: Mr. Chairman, members of the Board, one of the points that I want you to go away with is that well qualified signal maintenance employees today have to have six or more years of high level training; in many instances many years of experience beyond that. I'd like to - we have provided the materials, some of the examples of the training materials, that employees learn from and some of the examples of the manuals that are involved with the equipment. And they're located on Page 57 of our submission. I'd like to, if I could, just make two last points. We provided testimony today from two well qualified signal maintenance employees. They provide some insight into the ability and responsibility involved with signal maintenance employees. You should note that in both witnesses' cases both individuals took the initiative to learn on their own. That was coupled with training on the job and with their professional desire to provide for safe train operation. Both contribute to helping their peers
in signal maintenance; a lot of our learning goes on through mentors and peer training. Some of it's formal; some of it's on the job. (audio break)

...contribute to helping with their peers, we provide further example of how the work has changed generally on Pages 18 which describes the difference in working on a defect detector between older systems and new, on Page 30 where we compare working on grade crossing systems between older systems and new and on Page 39 which makes a similar comparison with signal systems.

...Unfortunately in this round of bargaining, there was no effort on the part of the National Carriers Conference Committee to negotiate or to even address our proposal for signal maintenance employees. That's not because we weren't willing or able or because we weren't available. We submitted two different proposals and attempted to gauge the issue since our initial Section 6 in 2009. We submitted written proposals in February and April. We raised the issue in mediation. But the carriers were unwilling to engage. The best
measure of a fair settlement is a settlement reached between the parties engaged in meaningful negotiations. We don't have an agreement that's identical to the proposal contained on Page 2 of our submission. However there is a real world example that addresses our concern in part. We structured our proposal that's contained on Page 2 on part of an agreement that we previously made. And aspects of that agreement address our concern that signal maintenance employees have earned a wage differential. There was agreement in this example that a wage adjustment should be applied to all signal maintenance employees. The example of that adjustment could be found on Page 7, a BRS Exhibit 36. That's Bates Numbering BRS 4690. The other aspect of our proposal was an element of longevity. That and that same - well there's an example that's contained in our - in that same exhibit at Page 13 of Exhibit 36. That whole exhibit starts at BRS 4684 in the Bates Numbering. To be clear, this agreement addresses many issues.
beyond our desire to fairly and compensate signal maintenance employees for the services they provide the industry. But the form of these elements of this agreement can provide guidance to your board in determining an appropriate recommendation to address this most important issue. We submit that we've supported our proposal with an abundance of evidence through a narrative that explains that evidence and through witnesses that we've provided to give you a first hand account. Therefore Mr. Chairman, we ask your board to recommend our proposal as submitted on Page 2. And if you have any questions of the panel, we'd be happy to address those at this time.

CHAIRMAN JAFFE: Same one Mr. Mason, have you done any costing in connection with - and if Mr. Pickett which is the respondent's fine.

MR. MASON: I'm going to defer to President Pickett.

MR. PICKETT: Sure. We have and our figures are not completely out of line with what the carrier reported. They said 140. And I think ours comes in
over a five year period at 125.

MALE SPEAKER: Yeah.

CHAIRMAN JAFFE: Thank you very much.

MR. PICKETT: Okay. Thank you.

CHAIRMAN JAFFE: At your convenience, Mr. Wally.

MR. WALLY: Mr. Chairman, members of the board, I'm going to start out by telling you that the order of presentations by the coalition unions is random. So please don't attribute any significance to the fact that the NCFO is next to last. Its issue and it is only one issue is extraordinarily important to the employees it represents. As I'm sure the issue of our sister union, the boiler makers, who go after us is also. We understand you'll give the same attention to what we have to say as what you gave to all of the other organizations and we thank you for that. I'm introducing the President of the National Conference of Firemen and Oilers, John Thacker, because I am the General Council of that union as well. John Thacker also comes from a railroad family. His father was a CSX maintenance of way
employee. And his brother is actually one of the
people he's here representing today, a shop
laborer at CSXT. John began himself working as a
shop laborer in his native Kentucky on what later
became part of CSX in 1979. He was elected Union
Local Chairman in 1986 and became a Vice General
Chairman five years later. In recognition of the
skills he attained in that job, he was appointed
the Director of Organizing of the National
Conference in 2000. Two years later, he became a
National Vice President then NXCFO Secretary
Treasurer in 2006. And he's the President today.
He also serves as a Vice President of SEIU Local
32BJ with which the National Conference is
(inaudible). In that capacity, he participates in
setting policy for 32BJs over 125,000 members.
It's my pleasure to introduce to you, Johnny
Thacker.
CHAIRMAN JAFFE: If I could ask the court reporter
to swear in Mr. Thacker please.
COURT REPORTER: Do you swear the testimony you're
about to give in this case will be the truth, the
whole truth and nothing but the truth (inaudible)?

MR. THACKER: I do.

COURT REPORTER: Thank you.

MR. THACKER: Good afternoon Mr. Chairman. Members
of the board, I am John Thacker, President of the
National Conference of Fireman and Oilers. The
NCFO represents the shop laborers, stationary
engineers and some locomotive hesslers (sp?) on
the freight passenger rail carriers throughout the
United States including all carriers represented
by the NCCC. Our members are shop laborers. In his
opening statement and I know you've heard it over
and over for the carriers last Thursday, Mr.
Monroe used one word with noticeable frequency.
And that was - I know you know the word -
fairness. And it's an important word as we move
forward. Fairness is exactly what I want to speak
to you about this afternoon. It's really the only
thing that I want to talk to you about. ' We're
nearing the end of the fourth day in which you've
been expected to do a great deal of listening.
This has to be extremely challenging I know. I
1 know that. Let me assure you that if this pay
2 situation for my members had not grown so
3 profoundly unfair over the years, I would not be
4 up here adding to your listening burden. Mr.
5 Monroe also told you, in essence, that I really
6 should not be up here at all. Because according to
7 him, the (inaudible) specific proposal I'm about
8 to describe was not presented during negotiations.
9 Yes, we have lowered the cost of our proposal. But
10 to say we didn't present our demand for an
11 adjustment is just not true. Not only did I
12 present a written proposal during bargaining, I
13 explained it in detail. The carriers had no
14 questions and never chose to address the proposal
15 or the concerns that underlie it. They offered no
16 counter. The only reason there was no bargaining
17 is that they chose the course not us. One more
18 thing before I address our individual issue. I
19 want to make it clear that we support the
20 locomotive moving differential that Joe Dunkin
21 talked about earlier that was proposed for the six
22 shop craft unions. And clear up what might be some
confusion about the NCFO members who move locomotives. While we do have some people that get a dollar for moving locomotives, most get 30 to 45 cents an hour differential. Many others get no differential at all because they hold jobs where payment for the responsibility is built into their basic rates. And by the way, the NCFO does the vast majority of the training of all these employees who move locomotives around the shops. But none - but none of our members, whether they get a differential or not, earn anywhere near the same prior as the craft mechanics and that will continue to be the case whether this board recommends adoption of the locomotive moving differential or not. The NCFO is requesting individually that the emergency board recommend adoption by the parties of an adjustment between the wages of the shop laborers and the craft mechanics. What I'm going to explain in this presentation is how the differences between the work done by our members and the work done by the mechanics have shrunk since 1991. Yet a
significant disparity between the wages of the NCFO members and that of the mechanics has grown over time. I'm not saying that the laborers are trained to do everything that the mechanics do. And we're not seeking an adjustment that would give us parity. All of this has happened because of changes that the carriers obtained in 1991 when Congress imposed the recommendations of PEB219. From that point on, the carriers have had the ability to assign our members what was once exclusively mechanics' work. And that, the carriers have taken advantage of that ability requiring us to do that work at a much cheaper rate. Meanwhile with each across the board percentage wage increase since 1991, a disparity that was only $2.76 in 1991 is now $4.52. Absent some remedial action, this gap will continue to grow wider. This is why we are proposing that the gap be reduced to account for the proportion of time that our members can and do perform mechanics' work. We ask that retroactive to the start of this agreement the base wage rate of the
NCFO representative employees be increased by a dollar and 13 cents. I'll explain how we arrived at that figure in a few minutes. First you need to know the context. There's what happened. Before 1991, there was an incidental work rule in the carriers' mechanical department but it imply - it didn't apply to the laborers. It only applied to the mechanics. This rule allowed the railroads to have a mechanic from one craft perform work that otherwise belonged exclusively to a mechanic of another craft if the work was incidental to the primary task being performed. Well because the NCFO - back then we were called the IBFO and you'll see that in our submission International Brotherhood of Firemen and Oilers before our merger - didn't have such a rule. The carriers couldn't require us to perform the mechanics' work. Nor could they require the mechanics to do our work. By the same token, our wages were always less because we were considered less skilled than the mechanics. In the 1988 bargaining round, the carriers proposed that all craft jurisdictional
lines be dropped. That management be allowed to
assign craft work to whatever shop craft employee
the carrier believed was qualified to do it. Not
surprisingly, the unions resisted and when no
settlement could be reached, the issues was
presented to PEB219. The PEB gave the carriers
some but not all of what they wanted. The PEB
relaxed the craft jurisdiction rules by expanding
the amount of work that could be assigned across
craft lines and for the first time, they bought
the shop laborers within a scope. What this meant
was that from that point on, shop laborers could
be required to perform craft work that previously
had been performed at a higher rate of pay by the
employees in the other crafts. It also meant that
the craft workers would be required to perform
work that was previously ours and ours alone and
do it at a higher rate of pay than we get. PEB219
believed that all workers in the shop possessed a
level of skill necessary to perform all of the
incidental work without regard to whose rule or
classification of work rule it fell under. The PEB
defined this work to include simple tasks that required neither special training nor special tools and said any shop employee could be assigned to do it for two hours every day. These are the kind of things that fall within that definition and that we do now. Connecting and disconnecting hoses, power cables and chains, changing locomotive headlights and ditch lights, internal bulbs, cab seats and bell motors, changing brake shoes, jump starting locomotives and checking engine oil. The change rule allows them to assign even more than what they used to. Our submission includes statements from several employees demonstrating this. The details of how this all came about our set out in our submission, I know you've got it. We weren't happy about it. We weren't happy when this happened but it happened. And we've been living with it now for 20 years - for 20 years. But the effect of the change on our membership has never been addressed. In that 20 years, it's never been addressed. Our submission describes for you how the mechanics' pay was
adjusted in 1967 based on the skills they brought to the job. They got three five cent per hour increases above the general wage increase that we got. But shop laborers, we got only the general wage increase. Then in 1986, the shop laborers were denied even the general wage increase as the mechanics again gained a ground on the skill level. Now that we have been performing some of the same work as the mechanics for 20 years, it's time to revisit the issue. Let's be clear. We're not asking to eliminate the disparity and rates altogether. Rather we're asking that this disparity be reduced by 25 percent because we are called up on to spend up to 25 percent of our time doing the same work that mechanics do at the higher rate. Moreover - moreover now, mechanics can be called up on to perform our work up to 25 percent of their time working side by side with our people and they get paid at their higher rate to do it. It's not fair. The current situation, it's just not fair to the laborers who comprise the vast majority of our membership. The ever
increasing disparity has been exacerbated by employee cost sharing on health insurance. All crafts - all crafts regardless of the pay rate - are required to pay the same $200 amount towards the coverage. All of us are. As explained in our submission, shop laborers now pay a full 1 percent more of their wages than mechanics do for the same health insurance. But in 1991, the difference was only one fifth of a point. So that's a five fold increase in the difference. What our proposal would do is shrink the existing hourly rate difference so that the resulting disparity more accurately reflects the differences in the skill and the responsibility. With the $1.13 per hour wage rate adjustment, the current disparity of $4.52 - $4.52 an hour would go down to $3.39 at existing rates. That's still 63 cents more than it was in 1991. We'd still - we'd still earn less just not as much less. And of course if you don't recommend the equitable adjustment we seek, the gap will continue to grow with the ever percent wage increase. Given the reduced differences in
the skill between job classifications and the greater responsibilities we have been assigned to bear, such an outcome would be profoundly unfair and unjustified and a violation of any principle of sound wage administration. We submit to you that our wage equity proposal is fair and should be recommended by the board. Thank you.

CHAIRMAN JAFFE: Thank you Mr. Thacker.

MR. THACKER: Do you have any questions?

CHAIRMAN JAFFE: The same one I've been posing, have you done any costing on this?

MR. THACKER: We have. Approx - we've - the way we have it figured, the carriers are getting approximately $5 million per year that they should be paying us on our proposal.

CHAIRMAN JAFFE: Fair enough.

MALE SPEAKER: In a single check.

CHAIRMAN JAFFE: Thank you. (Group comments)
Presidential Emergency Board No. 243

between

National Railway Labor Conference

representing:

Union Pacific Railroad Company
BNSF Railway Company
CSX Transportation, Inc.
Norfolk Southern Railway Company
The Kansas City Southern Railway Company
Alton & Southern Railway Company
The Belt Railway Company of Chicago
Brownsville and Matamoros Bridge Company
Central California Traction Company
Columbia & Cowlitz Railway Company
Consolidated Rail Corporation
Gary Railway Company
Indiana Harbor Belt Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
Los Angeles Junction Railway Company
Manufacturers Railway Company
New Orleans Public Belt Railroad
Norfolk & Portsmouth Belt Line Railroad Company
Northeast Illinois Regional Commuter Railroad Corporation
Oakland Terminal Railway
Portland Terminal Railroad Association
Portland Terminal Railroad Company
Soo Line Railroad Company (Canadian Pacific)
South Carolina Public Railways
Terminal Railroad Association of St. Louis
Texas City Terminal Railway Company
Union Pacific Fruit Express
Western Fruit Express Company
Wichita Terminal Association
Winston-Salem Southbound Railway Company

and their employees represented by:

Rail Labor Bargaining Coalition consisting of:
Brotherhood of Railroad Signalman
Brotherhood of Locomotive Engineers and Trainmen
Brotherhood of Maintenance of Way Employes
International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers
Sheet Metal Workers' International Association
National Conference of
Firemen & Oilers
and a coalition of Rail Unions,
consisting of:

Transportation-Communications International Union
American Train Dispatchers Association
International Association of Machinists and Aerospace Workers
International Brotherhood of Electrical Workers
Transport Workers Union of America

Panel Members:
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27 CHAIRMAN JAFFE: I think we're ready to go on the
28 record. And we are now up to the carrier's
29 rebuttal case. At your convenience, Mr. Munro.
30 MR. WILDER: My (inaudible), Mr. Chairman. CHAIRMAN
31 JAFFE: Oh.
32 MR. WILDER: Yesterday, the Court asked Ms. Mallett
33 for a figure and I'm prepared to give that figure
34 to you. Cheiron has calculated that the zero
generic co-pay would save the national plan $4.76
per qualified employee per month or $16.4M from
January 1, 2012, to December 31, 2014. This was
based on some of the year 2009 data, and assumed
that a targeted mailing would be included in
rolling out the zero dollar generic co-pay. Now,
this information is submitted as a courtesy to the
board and of course, it is without prejudice to
the organization's position that the health plan
should be carried forward on a status quo basis,
and of course, it would be subject to what I say
in my concluding remarks tomorrow.

CHAIRMAN JAFFE: Thank you, Mr. Munro, just want to
clarify so I understand. The cost figures that you
provided us, were they a comparison with the
existing plan, a comparison with the carrier's
proposal or a comparison with something else? I
think that covers the waterfront.

MR. WILDER: All right, my understanding subject to
correction is that it is based on the, carrying
the existing plan forward.

CHAIRMAN JAFFE: Fair enough. So we don't have the
1 comparison of the. I got it. I'm fine.
2 MR. WILDER: You asked for a comparative data with
3 respect to the employee contribution. That would
4 call for a different model, I guess is the right
5 term, than currently exists, and we're having some
6 difficulty with that blanket.
7 CHAIRMAN JAFFE: Thank you for the response.
8 MR. WILDER: You're welcome.
9 CHAIRMAN JAFFE: I think we're now ready to turn
10 back to Mr. Munro.
11 DONALD MUNRO: Thank you, Mr. Chairman, members of
12 the board. We're ready to proceed with the
13 carrier's rebuttal case. I would like to provide
14 you with just a brief road map of what we hope to
15 accomplish this morning. First we'll have a brief
16 presentation on costing, including our costing of
17 the extra compensation elements of the carrier's
18 proposal, as well as the union's extra
19 compensation proposals. Our purpose in doing so is
20 two-fold. One is to respond to the board's
21 questions regarding costs. The second is, I've
22 made the point at the outset that our case is
really about numbers, about data and we want to
demonstrate that there is a reasonable methodology
behind those numbers, so we want to show you to
the extent possible, the basis and assumptions and
math behind our calculations. Next we will have a
brief panel on compensation issues. This is
intended as largely a response to the testimony of
Mr. Roth. First Dr. Evans will return to discuss
why he believes that Mr. Roth is not accurate with
respect to his dismissal of wage premiums, or his
comments about the CPI and real wage growth, both
in the past and in the future. Second, Dr. Topel
will show that the impact of the existing premiums
is not theory, as Mr. Roth says, but has
measurable real-world consequences. Third, Mr.
Gray from AAR, who is the author of our Exhibit 8
will respond briefly. I promise briefly, to Mr.
Roth's comments on the degree in relevance of
current industry prosperity. We will then move to
the health and welfare rebuttal, where again, we
will address issues of costing, including
comparisons of capped versus uncapped options, as
well as comparisons under the carriers proposed change versus unchanged, projected forward. We will be providing some Excel data back up to that as soon as we can generate it. Our healthcare panel will also respond to the Cheiron analysis as well as the testimony by Mr. Parker and Mr. Hildenbrand. I promised that we would address work rules on rebuttal. We will now plan to do so in substantially abbreviated form, including a presentation on expenses away from home by Scott Weather from Norfolk Southern and Greg Koontz from BNSF, followed by a presentation on vacations by John Hennecke from the NRLC, and Bill Roe from Union Pacific, as well as a short comment by Mr. Crable from CSX on Mr. Pierce's comments regarding the CSX agreement. Finally, again, a very brief comment on cab conditions and information requests that will be presented by Rob Karov from BNSF. Finally, we will bring Mr. Gradia back to respond to a sampling of some of the other assertions that were made in the union's case in chief. It's not an attempt to be comprehensive but rather to give
the board and opportunity to see the range of
issue son which we disagree. And my plan,
actually, I hope to accomplish is to do all of
this in four hours or less, including a break. So,
we will be moving quickly. I hope that will not
preempt you from asking any questions.

CHAIRMAN JAFFE: Thank you very much.

DONALD MUNRO: I should have mentioned, our panel
on costing. Mr. Gradia will be joined by Jeff
Rodgers, who is the Vice-Chairman of the National
Railway Labor Conference, and a member of the
carrier's bargaining committee.

CHAIRMAN JAFFE: Okay. If I could, I'll just remind
Mr. Gradia, he's still under oath for the
proceeding. I believe Mr. Rodgers hasn't been
sworn in yet. If we could ask the recorder to
please do so?

RECORDER: Raise your right hand. Do you swear the
testimony you are about to give in this case will
be the truth, the whole truth, and nothing but the
truth, under penalty of law?

KEN GRADIA: I do.
1 RECORDER: Take a seat.
2 MR. GRADIA: Good morning, Mr. Chairman, members of
3 the board. It seems like a long time between
4 innings before we got back up to bat but it's our
5 pleasure to address the board once again. As Don
6 mentioned, this presentation has two purposes.
7 First, to provide the board with greater detail on
8 the derivation and calculation of the two special
9 compensation elements that are contained in the
10 UTU agreement and are part of our proposal here.
11 Namely, cert pay and the entry rate bonus. This is
12 intended not only to assist the board in its
13 understanding of those proposals but also to
14 respond to some of the comments from the union
15 side, with respect the provision of equivalent
16 fair value as to those elements of compensation to
17 these coalitions within our proposal. Secondly, in
18 light of the board's keen interest in
19 understanding, to a greater degree, the likely
20 financial consequences of the many proposals
21 advanced by the coalitions here, we want to share
22 with you what we've been able to come up with
within the limited amount of time available to us, frankly. To assess the impact of those proposals, and we will share details and methodology and assumptions with respect to each and every one of those compensation. each and every one, excuse me, of those proposals. And with that, let me turn to the first part of our presentation, which deals with the two special compensation elements. First is certification pay. Here are the assumptions with respect to methodology. First, no volume growth, by which we mean is a static measure. We're not assuming change with regard to any of the metrics that I'm about to cover. We're using a base year of 2010. The base year involves the NCCC railroads, which are the five railroads previously identified, plus Soo Line, so it's the six Class Ones. We are using 2010 wages, source, through the AAR. And as you know, the foundation of this piece of compensation, special compensation, is tied to STARTS. STARTS by qualified individuals with respect to certification. Now, how do we derive the STARTS that we would use to estimate the
impact? We started out with, okay, what is the best measure available to us, with respect to measuring STARTS that should attract the certification pay allowance, the $5 per START. And we went back and extracted STARTS on engineers from the engineer population within these railroads. Now, we needed to do an adjustment and that adjustment is in the parenthetical, in B. A portion of CSXT is not before you with respect to wages and rules, as a result of a local agreement. So, we had to take out that number of employees, and it's 3950 as you'll see in the parenthetical. We had to take them out from the start calculation, also from the wage calculation as you will see later. Secondly, we had to add to that mix of job starts that would attract the certification pay, RCO, remote control assignments, which will also be eligible for the $5 per START cert pay. So, the sum of those two will equal, ultimately, the number of STARTS that will generate this additional item of value. And as we say in C, we are using 2010 UTU employee
data, sourced from the NRLC. Item three, I've already covered. That information came from the CSXT financial folks. Item four, the effective date, the effective date of the certification pay allowance is no sooner than July 1, 2012. It could be later because if the FRA regulations dealing with certification become effective at a later date, that will be the effective date, so no sooner than July 1. It may be later. Lastly, because it is a flat allowance, a $5 allowance, it is not subject to enlargement through the application of general wage increases. Next slide, please. So, here are the calculations from a couple of different perspectives, and please note that the subject matter is covered in Carrier's Submission Number 3, Total Compensation, pages 23 through 26 in text. This is a snapshot of that information. In item number 1, I mention using the engineer STARTS as the 2010 as a surrogate for STARTS by conductors that will attract the certification pay allowance. That number is reflected in the first box. Added to
that are RCO starts, which will also be eligible for the certification pay allowance. Total STARTS the $4 million plus number. We've got a count of UTU employees of some 30,000. We do the math and you come up with STARTS per employee of approximately 138. If you do that math, taking the number of STARTS times the payment, you come up with $21.2 million. If you take the $21.2 million in item number two, divide by the UTU head count, on a per employee per year basis, you come up with just about 708 dollars. That's those are numbers that were previously provided to you. In line number three, we do a separate calculation. We convert that number into an equivalent GWI for purposes of comparison. That calculation starts with the total wage number for the UTU population, 2010 numbers. This is straight time, overtime, time off with pay, remember, that's what was captured in that $2 billion dollar figure, $2 billion plus. We subtract from that the CSXT exclusion that I just described to you, the wage component of that, do the math and you come up
with the divisor, which is the $2 billion number. You're dividing that into the $21 million figure that we derived in item number one and you come up with approximately .97 GWI equivalent.

Now, as you know, in our proposal, for this element of compensation we have proposed a one-half percent special wage adjustment. Why? First off, as previously explained, the cert pay component that is applicable to the UTU comes out of very unique circumstances. Other than the engineers, there is no other organization subject to FRA certification, so we would be perfectly justified in saying those are unique circumstances that should not drive any compensation to any other organization not similarly situated. But that is not what we have done. What we have done instead is proposed a one-half percent special wage adjustment. Now, what are the reasons behind that? Why do we believe that that is a fair approximation of value under all of the circumstances? First off, we would make that special adjustment effective June 30, 2011, a full
1 year, at least prior to the effective date of cert pay allowance. Unlike the flat $5 cert pay allowance, that increase would be subject to enlargement through GWIs forever, so it will continue to grow in value, compared to the flat $5 provided to the UTU trainmen. Third, we mentioned to you our expectation, that quite frankly, we would be unlikely, unlike the case with the UTU, unlikely to be able to realize healthcare savings within the same timeframe. That is, we have the expectation that the UTU plan design changes will be put into effect January 1 of next year. We don't think, as a practical matter that is likely to happen here. If you do the math, just looking at a calendar, following the normal processes of PEB reporting, subsequent negotiation and assuming voluntary agreement time necessary for pre-ratification, ratification votes and the like, we are likely moving well into the first quarter of 2012. So, we are losing value that cannot be recouped, unlike a GWI being paid on a retroactive basis, there is no counterpart to realizing or
recapturing those lost savings from plan design
change that is implemented later than otherwise
would be the case. Finally, as we explained to
you, there is an equivalent and it is right on the
mark with respect to our special wage adjustment
proposal, and that is the disposition of the same
demands by the yard master component of the UTU.
They, like the organizations here, said, "We ought
to get something and we ought to get the same
thing as the trainmen, with respect to cert pay."
We ultimately agreed that they would be given a
12.5 cent per hour increase as a special wage
adjustment. If you do the math on a weighted,
average basis, that 12.5 cents is the equivalent
of the one-half percent special wage adjustment.
The dates are identical insofar as effective date.
So, in our minds and for those reasons, we think
this is a more than fair disposition or allocation
of fair value from cert pay translated to these
organizations. Next area, let me pause before I
move to this next area. Any questions on cert pay?
CHAIRMAN JAFFE: I think we're fine, thank you.
JEFFERY ROGERS: Thank you, Mr. Chairman. The second item of special compensation is the entry rate lump sum. Here is the methodology and calculation that we went through to come up with first evaluation, and then secondly, I'll move back into our thinking, as far as translation of this, of this element into our proposal for these organizations. As noted, it's a lump sum payment. We are using to value head count, project the value of the entry rate lump sums that UTU will derive. We're using headcount projected as of September 2011 by each of the effective carriers. As we described for you there are two basic models of entry rate arrangements that are existent in the railroads that we represent. First is what we'll call national or five-year entry rate, moves in 5 percentage point steps, there were five years to full rates. That is one group of employees that will get a lump sum. That group we number at 7726. They, under the UTU agreement, will be will receive a $3,000 lump sum. Portions of UP and of the BNSF have locally derived arrangements that
are variations on the five-year national entry rate. They are lesser in term and duration, and therefore more favorable to the employees, less favorable from the standpoint of the railroads insofar as value. Those employees, numbering 1951 will get a lesser, a smaller lump sum of $1,200. In item number 5, we estimate total headcount for 2011 UTU, at the 35,000 number. And as a placeholder, we note that the value current entry rate savings on an annual basis, about $96 million from retention of under the status quo, rather, of the entry rate system. So, here's the calculation below the red bar. The 1951, we multiply that out and you see the result there. That's the $2.341 million. The larger group, cohort 7726 times the $3,000, now that number, actually, the $23.3 million is really closer to $23.2. There is some rounding in large numbers so the math doesn't work exactly, but you get the idea. It is roughly $25.5 million. If we monetize that on a per capita basis, that is, take that $25 million one-time payment and divide it by the total population of
the 35,000 plus, you get a number of $711.87,
about $712 per individual. So, that's the value.
Now, before you we had proposed a different, a
different approach, your alternative approaches.
First approach is, identical to this disposition,
we had proposed that we would provide the exact
same terms to these organizations. That is if you
have individuals on the five-year entry rates,
they would get this bonus arrangement as specified
here. Individuals under the lesser, more favorable
entry rate arrangements, then we got the smaller
bonus, whatever the math produced, that's what
they would get, so identical disposition. Now, the
unions say, "Well, that's not fair because we have
a lot fewer employees under entry rates." Now,
obviously, that's a two-way street. Fewer
employees on entry rates means lesser savings to
the railroads. And after all, what this
arrangement at bottom was all about was returning
to employees some portion of the value that the
railroads derived from entry rates being in place
with respect to this population. So, fewer
employees on entry rate should mean lesser return
on that value provided to the railroads. But we
have an alternative and the alternative is simply
this. We would provide a $300 lump sum to everyone
in the craft, basically. That $300, now we can
compare that to the $700 plus figure there. Why
should they get something less than that? As I
said, certainly the valuation proposition, insofar
as these organizations and the value of lump, of
entry rates versus the UTU is a factor that ought
to be reflected, and quite frankly, since they
generate something less, by our calculation, than
half of the value of their entry rate arrangement
to us, they should get some thing less than half
the value of the value derived by the UTU. Mr.
Chairman that is our explanation of derivation and
calculation of this piece of the special
compensation elements in the UTU package and in
our proposal. If there are any questions I'd be
glad to address them.
CHAIRMAN JAFFE: I think we're in fine shape here
as well. Thank you.
MR. GRADIA: Okay. Thank you Mr. Chairman. I will now turn over to my colleague, Mr. Rodgers, the second part of our presentation.

JEFFREY RODGERS: Thank you. Good morning.

CHAIRMAN JAFFE: Good morning.

MR. RODGERS: A pleasure to be here. What we want to talk a little bit about is the proposals that were provided to us by the union and the methodology that we used to cost that out. Some of these will be somewhat understated and that's primarily because of a couple reasons but we used typically the five major carriers in this group as well as Soo Line so KCS, NS, BNSF, UP, and CSX and we used Soo Line as an approximate value since they're roughly half KCS. When we did our evaluation in any of these of things we added them in as a half value. The other carriers that are a part of this negotiation are not in any of this evaluation. So that said, moving on looking at vacation methodology what we did was we had looked at 2012 through 2014 only so nothing looking back. As far as the headcount we did this
throughout all our methodology we used 2010 as the primary base line for our headcount. And the big thing with that is we don't have any volume growth. So basically as this point this will be severely understated because we don't have any backfill associated with additional headcount that's needed when you have people taking vacation as well as the proration. We didn't even cost out the proration that's part of the union's proposal. 

So what we did was we took a look at the employees and grouped them by service years which will then give you each one of those folks a number of eligible vacation hours in each of those areas. We took that and multiplied and came up with a total vacation hours. We had to weight that because the CRU and ROBC, obviously, based on their population gave us a weighted average for the average proposal hours. We then took a look and we did the same calculation on what our current population and current value of the vacation hours are which gave us our status quo. And so we subtracted that from the average
proposal hours and that gave us the delta that we used to multiply that with our average hourly wage rate for '12, '13, and '14 which is increased by the GWI that the union proposed. [0:03:25] Now we originally in our original slide gave an estimate of about $250 million, and we revised that last night to $190 million and that's based on the fact that we originally had BLET included from the four major carriers in the number. So we needed to back them out about approximately 22,000 employees out of that calculation which left approximately 1,000 employees in this calculation. So that's the difference for the 60 million, however as I said, this is somewhat understated because of the fact that you have additional headcount. And I'm not sure what that number would be but it'd be more than the $60 million that we have pulled out of here. [0:04:12] As I said, I also would note that this is found in our carrier submission number six, pages 38 through 43. Are there any questions on vacation methodology sir?

CHAIRMAN JAFFE: Just two by clarification. Is
there a GWI equivalent for the $190 million?

MR. RODGERS: There is and I'll actually get to that in a few slides ahead.

CHAIRMAN JAFFE: I'm sorry. I didn't mean to jump ahead.

MR. RODGERS: Fair enough.

CHAIRMAN JAFFE: Okay. I'll leave it at that. Thank you.

MR. RODGERS: So moving into the other area which we did that we feel cuts across many of the different crafts is supplemental sickness. Now we realize that not everybody gets supplemental sickness, but we were looking more for to try to get a total calculation just to base it on a ratio. So essentially what we did is we took a look at the essential group as a whole, the 84,267 which again is the 2010 force level, and we divided that by the total carriers - excuse me. We divided the total carriers' contribution for supplemental sickness by that headcount. That gave us $181.00 and we kept that flat as we do with today's current practice throughout the entire
agreement through 2014. And based on the union's proposal we increased it in '12, '13, and '14 based on their compounded GWI's. So that gave us a final number of $992.28 which we subtracted from our number which is the $905.00 giving us a difference of $87.28. And if you multiply it by the total headcount, that gives you a difference of $7.4 million. Are there any questions on supplemental sickness? [0:06:01]

CHAIRMAN JAFFE: Nope. We're fine. Thank you.

MR. RODGERS: So moving into each of the craft specific materials typically what we will do as an organization is we will rely on the carriers' financial committees to help us value a lot of these dollars. Now as we have noted before we spent very little time asking them to cost out any of these specific issues because of the fact that we did not spend much time on the bargaining. So we did feel that there was an issue that was something of value to the union so we basically did not cost them out. So based on that once we received the union's proposal we quickly asked the
carriers to give us costing so that we could then approximate the value for their demands. We understand that these are going to be very rough estimates. But based on the time constraints that we had it's the best that we have. And I think you'll find these values on Page 25 of submission seven, and the one I've already covered is supplemental sickness. But in here what we have done on this slide will cover for the BLET the entry rates in the two tier pay, the meal allowance, and the certification for BLET, for the wage adjustment by BRS, and for the firemen and oilers, and for the shop crafts it's going to cover the wage adjustments, the differentials, and the roadway mechanic's differential. We'll separately cover the unified pay rates for BMWE and for the shop crafts. [0:07:44] So I did say I was going to get to the one percent of GWI. What we have here is this only includes straight time, over time, and time off with pay. So for the CRU it's approximately $17.8 million and for RBOC it's $21.1 million. Of course that excludes BLET for
the carriers that are not represented for wages and work rules. And to just give you some kind of frame of reference for UTU and the Yardmasters that one percent is $26 million. [0:08:19] So as I said, this is found on Page 25. What we did was we received these proposals on October 4th from the coalitions, and we put that out the NCCC finance committee. As I spoke - that group that's covered before and asked them to provide data as quickly as possible. What we got back if there was any type of - we provided them the actual written proposal and we gave them some direction on assumptions essentially saying things such as no volume growth, flat headcount in 2010. So we just kind of gave them the same ones that we used throughout the entire costing that we've had done through the bargaining round. And if the union's proposal contained any type of retroactive pay, then we also had them put that into their costing. And also if there's any indexing such as GWI's for the coalition. As I said before, Soo Line we're going to use as an approximate value of half of
What we have here is those are the values that we have is just the sum of the values that we have in the back of Page 25. So you're not going to see any real detailed calculations other than we have that information we can provide to you that was provided to us by the carriers that just shows you that we just kind of summation of all those different dollars. Are there any questions on those particular areas?

CHAIRMAN JAFFE: Nope. We're fine.

MR. RODGERS: Now when we did spend quite a bit of time with the union is the away from home expenses, and we started early on costing this one out. But as we went and progressed through the round we gained a greater understanding of what the proposal was from the union as well as trying to refine the different types of changes that were given to us throughout the proposal and what we thought was realistic to be able to cost out.

So, again, we used a base of 2010 expenses for the NCCC. And then we used the costing in the actual book here for 2012 through
2014. This, again, this cost is going to be understated because we're only using a GSA rate of $116.00 and it excludes the mileage that they're requesting for reimbursement for driving from worksite to worksite. The one area we could not cost due to the complexity of the request is trying to figure out how to see headquartered employees that lived greater than 50 miles away from their worksite how to actually value that. So that is actually valued here as zero but we know that there's quite a bit of cost associated with that. The other thing that we looked at as an assumption is that there is no change in the carriers' practice. So if you provide a hotel room today we are going to assume that you continue to do that through your corporate lodging. And if you provide allowances then we're also going to do that for - assume that you continue to provide allowances. The carriers provided to us the number of work days and the number of paid days, and that was how we were able to value if the individual got paid on those work days. We took that to put
the concept that the BMWE provided to us, and we just assumed that if you received a room that everybody received a single occupancy on those work days. We also assumed that you would get a room for the travel day coming into your work week as well as getting one meal. So for the meal allowance we added the travel day in on the front end and also in the back end if you left home.

[0:12:19] One thing that's also not included in this $120 million is the elimination of camp cars was just going to be approximately $10 million so that totaled out to $120 million based on all the assumptions that are listed up on this chart. Are there any questions on away from expenses? Yes sir.

ARNOLD ZACK: When you say elimination of camp cars, is that an asset or a liability? Is it going to cost you 10 million to get rid of them so you'll save 10 million by getting rid of them?

MR. RODGERS: Oh no. It's my understanding that it would cost Norfolk Southern $10 million based on the depreciation of the cars that they would have
to write off. [0:13:06] So the last two slides
that we're going to cover is for the unified rate
of pay with the BMWE and then the next one would
cover the shop craft but they build on top of each
other. We used - this is actually very difficult
to do, but we used Doctor Evans CPS average wage
rate of the $61,000.00. We know Norfolk Southern
may be varied from that, but we feel that that
across the carriers that's going to be the wage
rate that we use to kind of make this assumption
of just at NS. Now approximately 88 percent of the
employees are below that top rate so that makes
3,872 of the 4,400 employees that are in that
group that's below that top rate that the union's
asking them to move to. [0:14:03] That means on
average they earn approximately three to five
percent below the top rate so we used the middle
four percent. So we just multiplied that out and
it came out to $9.5 million on an annual basis.
But with compounding over the five years it gives
you approximately $60 million. Now again this is
going to be understated because there's no payroll
tax included or any benefits associated with it.

Any questions on this one?

CHAIRMAN JAFFE: Okay. I think we're fine. Thank you.

MR. RODGERS: And then the final area that we costed out was the shop craft wage equalization. Now, again, we know that there's 24,500 shop craft. The issue we have here is based on the time constraints again that we had to build this model out. There are probably hundreds of pay rates that have to be considered. And so what we needed to do was just essentially make a decision on how we wanted to do this so we actually just built it off of the BMWE Norfolk Southern model which is the $60 million. [0:15:15] Now we know that's extremely rough estimate, and we footnoted that in our carriers' exhibit number seven on Page 22. And essentially what we did on this is we made a ratio. So we took the 24,500 divided it by the 4,400 which gives you a roughly six to one ratio. And if you multiply that times the $60 million, which we calculated on the previous slide, it
gives you about $360 million. Now in order to give
us a conservative estimate we divided that by two
and came up with the $167 million. And so
essentially what we have is a rough estimate but
we do believe that this is severely under valued
and it's the best that we can do in the short
notice that we had. I'm happy to take any
questions. That covers all of the different shop
crafts and their unions' proposals that we're
aware of. [0:16:18]

CHAIRMAN JAFFE: Thank you very much.

MR. RODGERS: Okay.

BRIAN EASLEY: Mr. Chairman, members of the board,
good morning.

CHAIRMAN JAFFE: Good morning.

MR. EASLEY: For the next few minutes we want to
review a few points in rebuttal as it relates to
the total compensation in wage case made by the
carriers. And I begin this discussion by reminding
the board that the coalitions have characterized
the difference between the parties in this case as
the difference between the theoretical and
realities. And to be sure the carriers have presented a cohesive economic theory for their case on total compensation; however, this theory is not a mere abstraction. Instead the carriers' theory is grounded in empirical fact and actual experience. In other words, the carriers' theory is premised upon the present economic realities both in the freight industry and in the U.S. labor market. [0:17:18] The carriers are presenting three brief witnesses on rebuttal in support of their case on total compensation and wages. Each of these witnesses will explain how current realities in the railroad industry and the broader economy support the carriers' proposal for measured and prudent increases in total compensation. These three witnesses will be presented in panel format and each will speak for approximately ten minutes. Two of these witnesses previously testified before the board last week. The first, Doctor David Evans, the Chairman of the Global Economics Group, will respond to criticisms regarding the total compensation and wage
comparisons that demonstrate significant wage premiums enjoyed by coalition employees. Secondly, Doctor Evans will also address the effects of inflation on total compensation and real wage growth. [0:18:03] Following Doctor Evans will be Doctor Robert Topel, the distinguished professor of Economics from the University of Chicago. Doctor Topel will address the impact of the substance wage premiums paid to coalition employees on employment levels in the freight industry. Also he will address the social cost of these wage premiums on the carriers, their employees, their customers, and the broader economy. Finally, the carriers will offer testimony from a witness from whom you have not heard before and that's Mr. John Gray, the Vice President of Economics at the Association of American Railroads. Mr. Gray's worked in the railroad industry for approximately 29 years previously holding positions with the Union Pacific, Southern Pacific, Burlington Northern, and Alaska Railroads, and he is the co-author of
carriers' exhibit number seven with Doctor Robert Gallamore on financial condition of the railroad industry. Mr. Gray's remarks will discuss financial metrics in the railroad industry with a focus on capital investment and revenue adequacy. With that we're ready for our panel. [0:19:06]

DR. DAVID EVANS: Good morning. Mr. Roth claimed that we're comparing the railroad jobs to Wal-Mart jobs. That's simply not true and I'd like to bring you back to the total compensation comparisons we did. This is based on the EEC data where we found that in comparing the railroad workers to transportation and material moving there was a 79.2 percent total compensation premium. I thought it might be useful to show the actual jobs that went into that basket of occupations for transportation and material moving. What we did with that comparison is we compared basically the basket of railroad jobs to the basket of jobs in transportation and material moving. In both cases there was quite a diversity of jobs. In fact, we made a number of different
comparisons in the analysis, many different data
sources. None of them really compared the railroad
jobs to what you would characterize as Wal-Mart
jobs. Every single one of the comparisons whether
it's the direct compensation comparisons or the
comparisons based on comparing the railroad
industry to other industries establishes quite a
significant premium. [0:20:24] Now one of the
things we did is we used the current population
survey data for comparisons. That's the basis for
the annual salary wages and also the hourly wages
in the top two rows up there. That's the current
population survey data. That analysis was based,
as I think I mentioned the other day, on that
being 60 ICC codes into about 600 SOC codes that's
just occupation codes. Now would it be possible to
find one of those many comparisons that isn't
perfect; absolutely. Is there any reason to think
that the overall comparison, building this up to
the overall average, is biased in any way against
the railroad employees? I don't think so and Mr.
Roth really hasn't presented any evidence on that.
I guess I'd also point out that Mr. Roth really hasn't presented any wage comparisons at all. His analysis has been taking a look at the growth of wages. So I'd like to turn to wage growth just for a few minutes. And if you have a convenient, I'd like to refer to Chart 61 in his statistical supplement. It's on Page 108.

CHAIRMAN JAFFE: It's in the Supplement page 108, right?

DR. EVANS: It's in the Supplement and it's on page 108, uh, Chart 61.

CHAIRMAN JAFFE: Give me a second [inaudible]

DR. EVANS: And if it's inconvenient for you to find it I can probably just hold it up to get the basic point across.

FEMALE SPEAKER: [Just roll it through] (ph).

CHAIRMAN JAFFE: Be there in just a moment.

DR. EVANS: Okay.

CHAIRMAN JAFFE: I've got it electronically but it takes a few moments to get to the right spot.

DR. EVANS: That's true, hmm.
CHAIRMAN JAFFE: Okay, we are there.

DR. EVANS: Thank you very much. So Mr. Roth's wage growth comparisons are always based on a, on a base year. Uh, he uses sometimes 1977, sometimes 1979, uh, sometimes 1985, and those base years are all, uh, in effect, designed to capture, um, a period of time where there was a decrease in the, uh, real, real wages of the, uh, of the Coalition employees. So if you take a look at Chart 61, uh, what you see is the decline was basically from 1983, where it's 106.6, um, to, uh, 87.2, which was in 1994. So if you choose any base year that's prior to 1994, that's going to tend to lead towards a decrease in real, uh, wage growth. You can see that from 1994 to, uh, the end of the current, uh, contract, there was a growth from 87.2, uh, to 95.6, which is about a 20, 10 percent increase in real wages. And just to, uh, be clear on this, I'm looking at the red line down at the, uh, down at the bottom. So with that, um, let me talk a little bit about, about inflation, because we had the discussion about that, um, on Monday.
So, um, inflation jumps around from month to month and it has been doing so for, uh, for some time. Uh, Mr. Roth's, um, uh, claims concerning the inflation rate in 2011, uh, is based really on what's happened in the first part of the year. Uh, inflation was, was jumping around in 2010, but on a month-to-month basis, and these are monthly inflation rates, uh, was pretty low, sometimes high, sometimes low but sometimes negative. Um, in the first part of the year, basically from January to May, the inflation rate was relatively high, uh, and then it came down, um, uh, uh, quite a bit. The CPO number of the, the Congressional Budget Office number that I used, uh, was based on their projection for 2011 but it came out, their projection came out in August 2011. So basically what they were doing is using the actual rates up through about the middle part of 2011, and then making a forecast that for the rest of 2011, uh, inflation would be low. Uh, as Mr. Roth accurately forecast, um, the, uh, BLS came out at 8:30 this morning, um, with the inflation estimate for, uh,
September, and it, in fact, declined from August. August was .4, September was point, uh, .3. And, um, uh, uh, so basically, um, what we see is that in the recent period of time, uh, inflation is, has come down. So in the month of August it was point, it was .3. Now that's consistent with what the Federal Reserve and other commentators are basically saying. Uh, the projection is that, going forward in time, uh, the inflation rate is projected to be, uh, relatively low. Here's a selection of, of statements. The first two are from the, uh, Federal Reserve Board's Open Market Committee that was held just about four weeks ago, uh, from today. Uh, their forecast, their sales (ph) forecast is a moderate decline, uh, in inflation. The, uh, headline on Bloomberg, um, today the headline on Bloomberg today, which came out right after the announcement, was "consumer prices in the U.S. [rise, its slowest paced] (ph) in, uh, three months", and the article basically goes on to, uh, mention that that's consistent with the consensus view, uh, that inflation is
going to decline. Now why is inflation going to decline? Well I think we all know, um, the economy isn't doing too well. I think the supposition that many of us have is that Europe is tanking, uh, China is slowing, the U.S. is slowing, uh, unemployment is still, um, is still quite high. So, um, whether you buy the Congressional Budget Office projections of inflation, which is 2.9 percent for, um, 2011 in total, and then a decline, uh, below 2 percent for, uh, the next several years or not, I think the, the general consensus is that inflation is going to be relatively, uh, low. Now let me turn to, uh, oh, I'm sorry, I need to, uh, go forward. Let me turn to Mr. Roth's analysis, uh, concerning, um, the impact of the Carrier and the Coalition proposal on real wage growth from, um, uh, over the term of the, of the new agreement. Uh, this is Chart, um, I'm sorry this is Chart, um, 67. So if you flip forward to page 120, uh, and this is a reproduction of, of that chart, um, what you see, if you look at the left-hand side and bend your
head, is that, um, Mr. Roth is using, again, an
index that is based on December of 1977. So when
he does his analysis of what, um, inflation would
have to be in order for the, uh, Carriers, for,
for the, for the Coalition proposal, uh, to lead,
to break even by the end of 2014, he's basing that
on a base year of 1977. If you look at the left-
hand side what you'll see is that the, um, red
line starts at 325, so that's the Union proposal;
and the blue line, which is, uh, inflation, uh,
starts at, it looks to me like about 100, about
340. So he's building in about a 15 point gap at
the, at the start of this, which is basically, um,
designed so that when he does the break-even
analysis, he's breaking even in the sense that he
is enabling the, um, Unions to recover the wage
losses that they had between, uh, 1983 and 1993,
and 1984, uh, and 1993. So when we talked about
break even, it's not break even over the existing
contract; it's breaking even in the sense of
recovering that previous loss back in the, uh,
back in the 1980s. Uh, what I've done in this
slide here is basically done the same analysis, uh, but I've benchmarked everything to 100 as of January 1, 2010. And what that shows is that if I take his break-even inflation rate of 2.8 percent that he used, if I assume that is actually the rate of inflation going forward, under the Union proposal there would be real wage growth of 5.2 percent, uh, over the course, uh, of the contract. Now I thought it might be useful just to summarize, uh, some of this and this final chart, uh, does that. So let me go through this, um, just a little bit slowly, but this will be the last chart. So the, the first two rows there, under proposed compensation increases, shows the nominal increase over the course of the two proposals; um, in the case of the Coalition proposal through the end of 2014, and then I've shown the Carrier proposal, both through the end of 2014 and through the end of 2015. Then in the so you see that in the case of the Coalition proposal, total compensation increases by 21.9 percent; under the Carrier proposal, 20.8 percent. The next segment,
um, repeats, more or less, the analysis that Mr. Roth has suggested, which is he's asking the question, um, um, what would inflation have to be, over this period of time, in order for the Coalition employees to break even? So those entries, 4.1 percent, 4.5 percent, are the, uh, analogs to his 2.8 percent. And basically what they show is, if inflation is, uh, 4.1 percent or lower, then there would be real wage growth over the terms of, uh, the, the proposals. So in the case of the Carrier proposal for total compensation, uh, so long as inflation is below 4.5 percent, annually, over this period of time, there'll be real wage growth; in the case of the Carrier proposal, if it's below 3.2 percent, there'll be real wage growth. Um, and finally, what I've done is I've shown you the projected inflation for CBO (ph), and one could argue that it could be a little bit higher, uh, than that. And then finally, in the last two rows, I've reported the real compensation growth over the terms of the two proposals under the CPO, um,
projections. So for the Coalition proposal, that's projecting total compensation increase in real terms, after adjusting for, uh, projected inflation of 2.5 percent; and 9.4 percent in the case of the Carrier proposal. But, uh, uh, under any reasonable forecast of inflation over the next few years, uh, the Carrier proposal will provide, uh, for real, uh, wage growth. Um, and I think with that I'll, I'll end the presentation. I'll be happy to take any, uh, questions, if you have any.

CHAIRMAN JAFFE: I think we're in good shape. Thank you Dr. Evans.

DR. EVANS: Thank you.

DR. ROBERT TOPEL: Good morning. It's nice to be back.

CHAIRMAN JAFFE: [Well do you remember] (ph) you're still under oath Dr. Topel?

DR. TOPEL: I do.

CHAIRMAN JAFFE: Thank you.

DR. TOPEL: Thank you. Um, it's nice to be back.

The, uh, the, the, topics I want to talk about, um, we've got up here, are up here on the board.
Um, I'm aware that Mr. Roth has, has characterized his, uh, as was mentioned in our introduction that, um, much of our analysis was sort of theory; whereas, the Coalition's proposals or analysis was [based, and has given you] (ph) some sort of reality. And, uh, as an economist, I want to just point out that the things that I'm going to talk to you about today really are not just idle theory from sitting around on their blackboards, uh, rather that there's, uh, uh, a, there are decades, even a century, of empirical support for the types of things that I want to talk about to, for you today. Now to put things in context, uh, Dr. Evans has just talked a bit about the compensation premium that he estimates relative to other transportation workers to be on the order of 79 percent, and the Rail Unions have estimated it, in their promotional materials about their success in bargaining, to be on the order of about 74 percent. So let's put it in that, that range, and so the key question is then: given such a large
1 compensation premium, what are the implications of
2 making it larger? The difference, as I understand
3 it, between costing out the UTU proposal, um, as
4 advocated by the Carriers and the Coalition
5 proposal, is on, on the order of six or seven
6 percentage points in total compensation growth.
7 Now the share of labor and cost in the rail
8 industry is of, is on the order of about a third,
9 which is lower than most sectors of the economy
10 because this is just an industry that's very
11 capital intensive, but let's just, let's say it's
12 a third. Then about a third of that ga-, of that
13 increase in the difference in compensation amounts
14 to about a 2 percent difference in the higher
15 (ph), in the cost per rail mile. That translates
16 into a 2 percent increase in prices that people
17 will pay for transportation services, and that has
18 a lot to do with what I'm going to talk about here
19 today. So that's going to be paid mainly by
20 consumers, because under competition the pass-
21 through rate of cost is generally found to be
22 more. Now I want to talk a little bit about my
first topic up here, productivity and profitability. Uh, Professor Murphy, this is a slide from Professor Murphy's show, and the point was to make a key point about productivity that also applies to profitability. That is that in industries that are, where productivity is growing very rapidly, compensation doesn't have to grow more rapidly because we're re-, you're recruiting people, you're, you're finding ways to recruit and retain workers in a labor market. So that the relationship of productivity to come, productivity growth to compensation growth is not what one might intuitively, or at first blush, think, where more productive pa-, places share that productivity increase in some way. That's not what happens in labor markets when people recruit and retain by paying the market price. So an example that Professor Murphy gave you was barbers. The way that we cut hair hasn't changed much over the last 50 years but we have to pay barbers more. So if productivity hasn't increased, why do we pay them more? Because they have other things they can
do in sectors where productivity has grown, and compete for these people has driven up prices in the aggregate. So it's aggregate productivity, not industry or firm-specific productivity that matters to compensation growth; and the same thing applies to profitability. Now I want to talk, and I'm, I'm going to borrow a few slides from, from Mr. Fritz, and if you re-, if you recall, um, one of his examples was of ballast distribution; he showed three ways of doing this. And this specific example is not, the details of it are not important, what is the important is to see is the thing that Mr. Fritz showed in every one of his examples, which is you start off with a technology that used that type of capital right there. And when I say, by that type of capital right there, I mean the human capital, of those are people doing the stuff. And you end up later on with this kind of capital over here, where there's no people in the picture; and that happened in picture after picture after picture with Mr. Fritz. And in order to understand why that's going on, come back to
the compensation premium we were talking about.

We've heard a lot here, and I've read a lot over the time that I've been working on this matter, about the amount of capital labor substitution that's gone over time and the attendant increase in productivity per-person-hour worked in the railroads, and that's the source of it up there that you see. Now why is it occurring? Well part of the reason is exactly the compensation premium we're talking about here today; that 74 percent, whether you take the Union's number, or the 79 percent, if you take Dr. Evans' number; that's the premium that we're talking about. Now think about how you, we got from the left-hand side to the right-hand side. Somebody, probably sitting on this side of the room, did the cost benefit analysis, the comparison of the flow of costs, now and in the future, from alternative technologies. And if you're paying a 74 percent premium for the people on the left-hand side, it's not hard to see why the calculation gets pushed towards the right-hand side; so the industry isn't, is becoming more
capital intensive. And a large part of the reason it's becoming more capital intensive, both here and in other examples provided by Mr. Fritz, is that, is the compensation premium itself. And if the premium is increased, that incentive, that balance, to push towards ever more capital intensive methods of doing things, which means less employment, is pushed farther and father in the direction of being a capital intensive industry. Now let me talk about some further implications of the compensation premium because, as I understand it, the, the Coalition has claimed that, well maybe that the premium isn't 74 percent, maybe it's not even anything. Well if it's not anything, then you wouldn't expect the kinds of things that we observe in this market, in people striving to get these jobs. So, as I pointed out before, roughly 1.2, there are muf-, ruf-, there were roughly 1.2 million applications for jobs in the rail industry in 2010, for 7,455 openings; that's a ratio of about 170 to 1. So 170 people were, were trying to get
each opening that came up in the industry, and that's been increasing over time, as labor mark-, as I showed you before, as labor market conditions have worsened in the U.S. So we're now at an all-time high of people wanting to have these jobs, measured by the number of people who are applying for them. Also consistent with the size of that compensation premium, is, are the quit rates that we see over here on the right-hand panel, where, let me remind you, the quit rates of the Carrier employees, the unionized Carrier employees, are down here in the bottom panel, and they're all down there at about, all over .002 per month, which is about one-tenth of the turnover rate of people in comparable industries. So not only are people striving to get these, and they're cuing up to get the jobs, but once they have the jobs they're very, very unlikely to leave them, much less likely; they're much more attached than people in the comparable jobs elsewhere in the U.S. economy. Now the other aspect of that attachment to jobs that I mentioned
was the furlough rates. That when people are laid off from jobs in this industry, and this, uh, happens mainly among the least, the least senior workers, who are looking at the ability to have that premium, now and in the future, so they're looking at that present value of the asset that I talked about in my last, in my last discussion; that came out to be something over, uh, $500,000.00 per, per career, if you will. Well with that kind of premium, if you're laid off and you have the prospects of recall, you're likely to wait. You're not going to off and find a job in some other part of the transportation industry or in some completely different occupation; it's worthwhile waiting to come back. And what you find is that people do wait to come back. At six months the recall rate, the probability of coming back, the average frequency of coming back, when the phone rings and you're asked to come back, is over 90 percent (clearing throat). And even af-, after a year-and-a-half excuse me (clearing throat) that the, uh, return rate is on, on the order of
1 80 percent; you won't find that in other industries at all. Now let me come to the, the
2 last point, which is, which is pretty crucial in un-, understanding the social costs of the, uh,
3 uh, of the, of the proposals before us. So there is, as I said, about a 6 percent gap in the growth
4 of total compensation between the Carrier and Coalition proposals. Now Professor Murphy told you
5 that the social costs are extremely high, or can be extremely high, precisely because of the size
6 of that premium, that 74 percent. And where does that come from? It isn't just idle theory; it's
7 actually the foundation for the way governments think about the incidents of taxes, fiscal policy,
8 and so on. And the idea is this; when, when we increase that premium, it's like increasing a tax.
9 There is a tax in this industry on employment of individuals, relative to what they co-, could earn
10 elsewhere for what they could be hired, around the order of 70 percent. Well that, when you, when we
11 talk about increasing that compensation by a substantial amount, we're talking about increasing
the tax rate, in effect, and what, in the, the, the defining (ph) of economics in the foundation for fiscal policy is, that the cost of increasing a tax rate, of extracting another dollar, is higher when the tax rate itself is already high. So if you start from a low tax rate and you, and you extract another dollar in tax revenue, it doesn't have that big of a social cost because it's just a transfer from the people paying the tax to the people receiving it. On the other hand, when you have a very high tax rate, the distortion to economic activity is very large already and so you're wiping out trade that has a big difference between value and cost; and that's where people, when people talk about the tax wedge, that's what they're talking about. Well when you hear about the government today talking about tax reform, they're always talking about expanding the base and reducing the rate. Well why do they want to do that? Well you want to do that because when you've got a small tax base you have to collect the government's tax revenue from a more limited
number of activities and you have to have a high
tax rate on each one, so that causes greater
distortions. So you'd rather collect the same
amount of money by taxing more activities and
having lower tax rates on each one. The cost, the
marginal cost, as they call it, of public funds is
higher when the tax rates you're applying, you're
using, you're starting from is already high. Now
how is that implying, what, what does that imply
here? Let's come back to that 74 cents, 74
percent. The, uh, the, the, the estimates of
people studying this industry have found that the
long-run responsiveness of employment to a change
in compensation, the elasticity of demand for
labor, if I can use the technical terms to my
business, is on the order of one. Well that
implies, we won't, don't need to go through the
formulas, that every dollar that's extracted,
that's transferred to labor in this industry has a
social cost of on the order of $1.74. When I teach
this to my students I tell them, how can, well
what does that mean? It means that if I want to
take, if I want to get a dollar from this part
over to this part of society, I have to get it
from somewhere. So I reach into this pocket, I
have to take out $1.74, and 74 cents of it
evaporates over on the way to this pocket; that's
and where does it go? It just vanishes because
it's trade, it's economactive-, economic activity
that doesn't take place because of the magnitude
of the premium we're talking about. Now let me put
exactly that point in another context. The 74
percent is like a payroll tax, if you will, on
hiring individuals in this industry; it's a
premium over and above what they would have to pay
if they were paying simple market rates. In the
current economic environment, the foundation for
President Obama's economic policy for job growth
is a reduction in the payroll tax. Well the
payroll tax, in most, in, in the industries, or
the, the, the national payroll tax is on the order
of 12.5 percent, and so they've been forgiving
half of that, because the effect it will have, and
has been found to have, is that when you reduce
that payroll tax, people pay more. Well they're reducing the payroll tax from 12.5 to 6 percent, or something on that order, we're talking about a payroll tax that's on the order of 74 percent, and they, the, the, the, that the request, or the demand of the Coalition is to raise that premium relative to the UTU premium, by about six percentage points. So in the current labor market you're, in effect, asking for an increase in the payroll tax precisely when other economic policy trying to promote job growth is, is, is, is reducing payroll tax and trying to get people to hire more. The implication is that when you raise labor costs, they're going to hire fewer people; that's been found over and over and over again. As perhaps-, as Professor Murphy put it, does that mean that employment in the industry's going to be lower than it is now? No; it means it's going to be lower than it otherwise would be. And who pays those costs? On whom does, do those costs fall? Some of it falls on consumers, a lot of it falls on consumers, who will pay higher costs for
transpor-, (clearing throat) for transportation services and for the goods that they get through those transportation services; so the cost of the televisions will be higher, the cost of the refrigerators, the cost of the fructose in your drink will be a little bit higher; on the order of 2 percent increase in transportation costs, as I mentioned earlier. Well who, who else bears those costs? Well it's the people who would not be hired; and if we go back here, it's these folks over here on the left who are cuing up for these jobs. A lot of these people are hoping to find these jobs that pay a substantial premium. And many of those people will not be hired, simply because the, of the increase in compensation and the response by the Carriers, or by any employer, to an increase in their costs of employing the individuals. Those people aren't at, aren't at the table today. We have the Carriers on this side, the Coalition on that side, but the people who is, are, are going to be impacted are the people who are not in the room. That's the loss of economic
activity, that's the loss of job growth, and that's the consequence, what economists would call the social costs, of raising the premium substantially above what it is today. Thank you.

CHAIRMAN JAFFE: Oh, did you.? Go right ahead.

ARNOLD ZACK: In your grant fund the implications on the furlough, I think the furlough, you talked about the impact of the present economy. But I can't tell from your Chart Number 7 what the baseline is for those data. Are you then - you're sixth month from when? Would that - it would seem to me there would be a cut.

ROBERT TOPEL: Oh, six months.six months from the date you were furloughed. So.

MR. ZACK: How did you gather that data? What.?

MR. TOPEL: I asked the carriers for every furlough that had taken place, the date on which it occurred and the date on which recall the person was contacted and asked if they wanted to come back to work.

MR. ZACK: For what period?

MR. TOPEL: From 2006 to 2010. So I didn't do it -
what you have before you doesn't have it by year. But I can tell you that as time - as the labor market weakened the recall rate went up, okay? So that - it was always really high but it went up slightly during this rec - just as in the previous slide I mentioned. If you look at the quit rates of the rail employees, they're extraordinarily low. And if you put a magnifying glass on it, you'll see that their quit rates went down in 2009 and '10 because outside labor market opportunities were not as good as they were.

MR. ZACK: All right, if you did this to 2010, then your data does not cover - I mean it's not - you cannot have data for the 18-month period.

MR. TOPEL: No, no, you have to go back to - you have to go back.

MR. ZACK: Well, that's why I asked.

MR. TOPEL: .to the furlough rates in 2009. You have to have them - they could end by now.

MR. ZACK: You just said that the data you collected was for the period up through 2010. MR.

TOPEL: Yes.
MR. ZACK: So my question is if you collected data from 2010, how can you tell about the recall or end of furlough for a period that the end, as [put on] (ph) this Chart, hasn't yet happened?

MR. TOPEL: Because when you collect data from 2010, we had furloughs that occur in 2010. And then you can see for the people who are offered recall within 2010, say a January of 2010 furlough, and you see somebody recalled in March you know the frequency with which those people came back.

MR. ZACK: I understand that.

MR. TOPEL: Okay? What you can't have is a year and a half, a December 2010 furlough where you observe the end of the spell. So it is always the case when you have these kinds of spell data, that you have what's called right-sensor data.

MR. ZACK: I understand that. I understand that.

But my reading of this is that this does not, this chart cannot reflect the impact of the recent recession in terms of return from furlough for those who had been laid off more recently. It may
be accurate for people.

MR. TOPEL: Most recently.

MR. ZACK: who were laid off a year and a half before the recession but not necessarily accurate for those.

MR. TOPEL: Now, let's be careful.

MR. ZACK: laid off after.

MR. TOPEL: Let's be careful. You can see people who were - the recession started in October of 2008. Okay, so I can see people who were laid off in 2008, 2009 and a good part of 2010 and see their recall activities, okay? The point of the chart, however, is just to show you how extraordinarily high those recall rates are from furlough. So I can't tell you what the recall rate is in 2011 because I don't have those data.

MR. ZACK: Yes, thank you.

MR. TOPEL: Thank you again.

CHAIRMAN JAFFE: And if I could ask the court reporter to swear in Mr. Gray. I believe it's the first time you're testifying.

COURT REPORTER: Do you swear the testimony you're
about to state is the truth, the whole truth, and
nothing but the truth under penalty of law?

JOHN GRAY: Yes. I'd like to thank the Board for a
chance to address one of the cornerstone issues
that was brought up in the coalition presentation.
That being the issue of the perceived prosperity
of the carriers and their apparent ability to have
swarbled (ph) a increases in labor costs in
settlements whether those settlements are market
based or not. Reality is, as we have seen, that
quite frankly the record profits that we have been
discussed are best no better than average out
there. That they have gotten us up to returns on
capital for the carriers that are about the
average for all businesses. They have not produced
sterling results; they've produced average
results. Now when you've been in the cellar that
we have been in, average looks pretty good for a
while. But the fact is that in - we have to
compete for capital among not just other railroads
but all business entities that can have a return
on capital. And so if you're going to be
competitive long term, you have to try to improve above average. Now why is it just average when we are indeed getting record profits? Well the fact is that this average comes from the fact that we have to have a huge asset base compared to most businesses to operate our business. Done a quick comparison here between UPS and the railroads. UPS, United Parcel Service, has about the same revenue as the largest four railroads. Has much smaller net income than the largest four railroads do but has only about 20 to 25 percent of the asset base that the railroads require to operate their business. So they have a much lower profit margin than the railroads do but a much, much higher return on assets. And in fact, the investment communities rewards UPS for this much higher return on asset; they carry a double A rating on their credit bills, whereas the railroad industry carries Triple B, Triple B plus rating. Quite frankly this does make a difference because the cost of capital does really matter. What it cost you in the market to get capital does really
matter. Not what we have heard earlier, that the
market is pretty indifferent to your cost of
capital. Reality is that the railroad industry has
not yet achieved a cost of capital that is
equivalent to what its earnings are. Its earnings
have not gotten up to the level cost of capital
that's needed. We've heard that - we've heard
things such as the structure of capital, which is
a part of the cost of capital process, has much
improved for the railroads. It has. We heard that
debt ratios have improved dramatically. What we
didn't hear, of course, was that a lot of this
debt was replaced by leasing, was replaced by
leasing over the years to the effect that it just
about - the amount of this debt and the cost of
these leases just about are equivalent to the
payment you would be making on debt if you had
doubled the debt that the carriers do today. So
the reality is that the cost hasn't changed; it's
just gone elsewhere in the balance sheet. It's
just moved around in balance sheet, it's moved
around in the income statement. Let's talk just a
little bit about what this says, the economics of this leasing say about what has happened financially in the railroad industry and what the situation is. What you have to do if you're going to lease - because you lease because things, yes you get a little bit of extra flexibility but the real thing you get is reduced cost - is you have to pay another party's cost of capital, you have to pay a risk premium for the lease, you have to pay the lease administrative costs, and if this is going to be successful for you, it all has to come in cheaper than your own cost of capital. So what I would submit is that if these economics are working for the industry - but the reality is that a firm, that the earnings of a cost of capital that is competitive with the other businesses that are out in the industrial world, it is still a work in progress quite frankly. We heard that the expected earnings growth are going to be spectacular for the railroad industry. Reality is that the earnings growth are not really sufficient to earn the cost of capital. These are the numbers
that you were shown a couple of days ago and what
the earnings projections are by analysts' consensus for the railroad industry. They look spectacular; they look great; they look wonderful.
Reality is that they will not cover the cost of - that earnings growth at this rate does not cover the cost of capital as we go forward. My organization is required to compute the cost of capital for submittal to the STB on an annual basis. We use two methods to compute cost of equity at the instruction of the STB. On is based upon a somewhat backward looking method and the other is based upon these same analysts' projections that you see here. The one that comes out that says we need a much higher cost of capital, in fact a full point higher, is the one that is based upon these analysts' projections. It says that, you know, if these projections are the case, then indeed our cost of capital is actually higher than what the regulatory cost of capital is submitted to be. So we are either - if these are the projections, if these are played out, we
actually fall behind on earning our cost of capital; we don't catch up. So, if you're an industry in this situation, what are your strategies to get to a lower cost of capital?

First of all, you've got to continue to hold your dividends up. There's been submittals that our dividends have increased. This is true. But they've increased in lock step with the cost of the shares of the industry, the cost that is paid in the market. We're about 1.1 percent a few years ago; they're about 1.6 percent now. They've increased strikingly (ph) in terms of returns but not dramatically. Secondly and most importantly, you buy back shares. Because that, first of all, improves the earnings per share for your shareholders; it reduces the amount of cash you need for dividends; and most importantly it substitutes for that growth that you're not going to be able to get through the regular market process. You try to grow the top line, and you try to control costs and improve productivity. You do all four, but all four are a necessary part of the
strategy if you're in the situation the railroad industry is and you're trying to get the cost of capital under control. We've heard that the operating costs are pretty much where they need to be, but the reality is that the operating costs are continuing to climb. We were shown this cost of yield graph in which the, after the 2003 year it was re-based towards a lower number in 2004. The reality is that the cost yield graph, if you plot it out correctly, hasn't really changed a lot since 2004. We haven't fallen backwards any, but we haven't made a lot of progress. I would concede that we've made a couple of points of progress. That's great; that only leaves 300 more to achieve. It's better than nothing, but the reality is that the only thing in the cost yield graph that's there is that it hasn't gotten any worse than it was. Cost of things such as fuel continue to be both high and volatile. Used to be that fuel was about 9 percent of the carrier cost; today it's about 15 to 20 percent. That's after a spike of 25 percent during the 2008 period. Reality is
because of the volatility it becomes very
difficult to manage these costs. We heard that
there's been record capital spending and that's
true. But when you put that capital spending in
terms of what the inflation adjustment is, it
doesn't look quite so impressive. We heard that if
you adjusted it for the number of miles it had to
be invested in, it was - it looked great. Well
this has been adjusted both for the inflation and
the number of miles. And yes, it has improved
some. But the spectacular results that were
indicated in the coalition presentation simply
aren't there. And why aren't they there? It's
because the factor costs underlying this capital
have dramatically increased over this 1980 to 2010
time period. Labor, which for capital expenditures
is a very high proportion of the expenditures, has
gone up almost three times during this period.
Materials and supplies, 2-1/2 times and all other
mostly purchase services has gone up almost - is
over 2-1/2 times. In addition to that, we've been
required by statute to install a very expensive
Positive Train Control System. The reality is that given the statutory deadlines it's unlikely that there's going to be much benefit to the carriers from this system because we're going to have to install basically a bare-bones system. The cost for installing the system which would provide benefits is even higher than what we have here now. The 5 to $8 billion that we think it's going to cost to install and 6 to $800 million annually that it's going to cost to operate. Bottom line is that it's going to be very expensive going forward. It's going to be an additional item that has not been part of the industry's cost structure in the past. And finally we heard that it's time to share the wealth. I would submit that sharing the wealth works both ways. You were shown two days ago the bottom line on this chart, the improvement in net income per employee. And it has improved, particularly in the last 4 to 6 years. The fact is, though, that over time, it compares to the wage and the wage and benefit improvement employees, it suffers somewhat in comparison. The
1 reality is that it is time to share the wealth a
2 little bit and it is time that some of the long-
3 suffering stockholders and owners, particularly
4 the funds that are meant - most of which are funds
5 managing IRAs, pensions, 401k plans, things like
6 this - had a chance to share as part of the rail
7 renaissance. With that, if there are any questions
8 I'd be glad to address them.
9 CHAIRMAN JAFFE: Thank you, Mr. Gray. One question,
10 if I may. Can we turn to Slide 18? You've got a
11 percent of cost as a cost component, for capital
12 costs. And it allocates 54 percent to labor 16
13 percent to materials and supplies, 30 percent to
14 others. MR. GRAY: Yes.
15 CHAIRMAN JAFFE: Is that a static number that.? MR.
16 GRAY: No.
17 CHAIRMAN JAFFE: .or is it - does it change over
18 time?
19 MR. GRAY: It - that number certainly changes over
20 time. If you - now keep in mind it is only
21 applicable to capital expenditures, not the
22 operating expenditures of the company. The
operating expenditures is where you will see labor costs down in the 25 to 30 percent range. Capital expenditures, even though it sounds like you're buying heavy goods, you're in fact buying mostly labor to install those goods, particularly for the network.

CHAIRMAN JAFFE: And what time frame does that represent? The fact that you've got comparisons in 1980 and 2010?

MR. GRAY: That's the - well it is 1980 to 2010. We did the allocation on it for the 2010 costs.

CHAIRMAN JAFFE: That's what I was trying to figure out. Okay, does anybody have anything else? I think we're in good shape. Thank you, sir.

MR. GRAY: Okay, thank you.

DONALD MUNRO: Mr. Chairman, I think we're ready to move to the health and welfare case rebuttal.

CHAIRMAN JAFFE: Why don't we take five, just for - show off the record - just for comfort reasons for the room?

CHAIRMAN JAFFE: At your convenience.

MR. BOLEY: Mr. Chairman, Members of the Board, I
am happy, happy to be back here, not ecstatic but
happy.

MALE SPEAKER: That's fine. I need to remind you
that you are still under oath and that's fine.

Thank you.

MR. BOLEY: Okay um, I have with me as you see uh,
Dave Scofield to prop me up when need be. Um,
before we start I wanted to note for the record
that uh, the Carriers have submitted to the Board
and to the Labor organizations copies of the
current summary plan descriptions for both the uh,
Railroad Employees National Health and Welfare
Plan and the uh, NRCUTU Plan as well as uh, the
collective bargaining reached in the last two
rounds between the Carriers on the one hand and
the Brotherhood Railway Carmine of TCU on the
other and between the Carriers of the BMWED. Also,
we submitted to and have given copies of the uh,
to the other side of the current collective
bargaining agreement between Amtrak and the Labor
organizations. Without further ado um, I'd like to
uh, ask Dave Scofield to uh, go through uh, with
The answers that we have prepared to the questions that the Chairman asked during the last round, the last time we were here.

MR. SCOFIELD: Thank you. The slide you see on the screen shows two different plan designs, both projected to 2016. Each plan design shows the annual employer cost in green and the annual employee cost in yellow. The current plan is shown in the darker green on the left. The proposed plan is shown in the lighter green on the right. Only one bar is shown for 2011 which is the current design. The two different designs are shown for 2012 and later. The light green bar represents the Carriers proposal. At the bottom of the table is shown the employee contribution cost sharing percentages that arise in each of the years throughout over time. The immediate observations to be noted are as follows: For both plans current and proposed, the employee contribution in yellow remains $2,400 for all years. The employer cost generally increases year over year in either design. The total plan cost which is the sum of
the height of the bars of the yellow and the green
is reduced by about 6 percent, a little less than
$1,000 a year per employee in 2012 when the plan
design change is soon to take place. After the
initial reduction due to the changes that occur in
2012 the proposed design uh, total cost escalation
is similar to that of the current design. It just
starts out at a lower position. The employee cost
sharing percentages at the bottom of the page
decline over time in either the current or the
proposed design because the $2,400 contribution
annually is fixed in the total cost increases; so
$2,400 as a percentage of the total cost declines.
Since this page is a little numbery and uh, maybe
complicated, I guess I would ask if anyone has any
questions now. We can always come back to it. Um,
not sure if this answers the question you had.
CHAIRMAN JAFFE: (indecipherable at 0:04:37
MR. SCOFIELD: Okay. Should, should I go forward?
CHAIRMAN JAFFE: That's fine.
MR. SCOFIELD: Thank you. Okay, so um, now we're
looking at a slide much like the slide that we saw
on the previous page. Uh, last week you requested
of us and I believe you requested yesterday of the
Labor side the same question which is to compare
the Carriers proposed plan design to the current
plan uncapped. So again, this slide is identical
to the slide we just saw except under the current
design we've moved the $200 per month or $2,400
per year cap. The immediate observations here are
that employee contribution under the current
design grows with trend because it is now
uncapped. Similarly, the cost sharing percentage
for the current plan design shown at the bottom of
the page doesn't decline again because the
contribution is uncapped. The cost sharing
percentage for the current plan uncapped is not
exactly 15 percent of medical cost, it's slightly
higher, 15.8 or 15.7. Uh, that is because the
contribution formula that currently exists
combines medical, dental, vision and life
insurance costs. It takes 15 percent of that and
that is the medical plan contribution. So when
expressed as a percentage of just the medical plan
cost that, that number is slightly higher than 15 percent. Are there any questions with respect to uh, this uh, this projection? The numbers are slightly different from the prior page and again if you'd like to come back, of course, we can.

CHAIRMAN JAFFE: You say the numbers are different but the totals are the same, it's the breakdown that differs, right?

MR. SCOFIELD: Yes, sir. The total bar is the same. Right the allocation between the employer and the employee on the current design is, is different because of uncapping, yes.

CHAIRMAN JAFFE: That's what I thought. Thank you.

MR. SCOFIELD: Uh, the, the last question you had for us was that we couldn't answer last week because we didn't have everything in hand was, "What was the adequacy of benefits for the pharmacy portion of uh, of the coverage?"

Currently, as of today, as it is proposed under the Carriers proposal and then for various benchmarks that we have and this uh, this slide uh, shows that uh, both currently and proposed the
1 adequacy of benefits and again that, that is the
2 portion of the total covered costs that the plan
3 pays. The compliment or the difference between 100
4 percent is what the employee pays through, through
5 co-pays. The benefit currently and as proposed is
6 86 percent. That means the employee out-of-pocket
7 for co-pays is about 14 percent of the total cost.
8 Uh, when compared, comparing those 86 percents to
9 benchmarks, these were the benchmarks that uh, we
10 have available to us. First we spoke with Medco
11 which is the, the vendor that the Plan uses to
12 administer the pharmacy program. Medco gave us two
13 figures, one for their general uh, book of
14 business and one for their collectively bargain
15 plans. For the general book of business, the
16 pharmacy adequacy benefit is 82 percent; for
17 collectively bargain plans they reported to us it
18 was 86 percent. Um, and we also have information
19 from the Segal Company that they provided to us in
20 a study uh, and among their collectively bargained
21 uh, plans that they have information on which is
22 considerable uh, the adequacy benefits for their
uh, database is 83 percent. And then lastly since we have been showing the Federal um, Plan, Blue Cross Blue Shield Standard Option as a benchmark, that plan has adequacy benefits for pharmacy of 77 percent.

CHAIRMAN JAFFE: So is the AOB remain static between the colored plan design and the proposed. That means that in terms of gross dollars the increase in co-payment on Tier 2 and 3 will be balanced roughly by the reduction on Tier 1?

MR. SCOFIELD: Yes, that is correct. So we have uh, the majority of drugs currently delivered at generic uh, with the changes in co-pays we expect to improve on that statistic. So more drugs will be delivered at generic. The, the reduction in the co-pays for generic and in particular, it's the mail order reduction, currently it's 20; it's going down to 5. That balances out the, the co-pay increases at the brand formulary and the brand non-formulary, sir.

CHAIRMAN JAFFE: Okay.

MR. SCOFIELD: Sure.
MR. BOLEY: Let me address several of the points that were made by the Unions in their presentation. Uh, first uh, the changes in employee co-payments for prescription drugs and additions to the drug programs, clinical management rules all as we have proposed them and has been agreed to by the UTU through collective bargaining. Those proposed changes are better left in so far as the Coalition Unions are concerned to the plans, Join Plan Committee. Uh, this Committee the Unions say can more appropriately than collective bargainers investigate and if warranted implement the changes that the Carriers seek. Further, it can quickly make changes to alleviate anticipated consequences. This uh, contention is at best ingenuous and at worst a very, very red herring. To amend the Plan with the changes proposed by the Carriers both for Labor and Railroad Joint Planning Committee members would have to agree the jurisdiction of the mutual to break deadlocks between the Parties does not extend to plan amendments. And the Labor Committee
members are exactly the same folks that the bargaining table flatly rejected the Carriers proposals. The RABC Coalition following the lead of the TCU Coalition refused even to consider any change at all in the Plan's benefit structure. Had the ghost of Confederate General Bernard Bee of Manassas fame been on the Labor side of the room, that ghost might well have said, "There sits Carter Scardelletti like a stone wall. Let's go rally behind him." In short, it is beyond belief that the organization's implacable rigidity would somehow melt when the Union chief switch from representing this as they should in collective bargaining to representing members as they should while acting as part of the Labor half of the Joint Plan Committee. To leave any aspect of the Plan design changes proposed by the Carriers to the Joint Plan Committee is exactly the same as saying, "Forget about them." So the Union argument, that the JPC is the best body suited to deal with the pharmacy benefit changes proposed by the carriers is no surprise. If the Board chose to
punt the proposed changes to the JPC the cake would achieve an unsurpassable record for time in the air because the ball would never come down and Dan Snyder would be on the phone to you quickly thereafter. In any event, the Carriers proposals are a package. They can't be broken into pieces with some being addressed by this Board and some in another forum. If the idea were to have a neutral other than this Board address and render a binding decision on the merits of the entire package, please bear in mind Carriers accepted the NMB's office of our offer of arbitration, the Unions did not. Of course, if the managed pharmacy services benefit changes proposed by the Carriers are ultimately agreed to by the Coalitions Unions, the Joint Plan Committee certainly, if warranted, investigate the changed plan terms and then if warranted, change them back to where they were or modify them in some other fashion.

CHAIRMAN JAFFE: If we could try and keep it up a little by way of the volume, we're competing with next door. Thank you.
MR. BOLEY: I'll try and speak as loudly as I can.

CHAIRMAN JAFFE: That or the mike closer might help as well.

MR. BOLEY: (chuckle) No, I'm fine.

CHAIRMAN JAFFE: Thank you.

MR. BOLEY: The next topic uh, I want to turn to is the argument that you make that the excessive cost to maintain the Plan don't reflect the overly generous design of its benefits but rather are attributable to the high rate of sickness caused by the arduous and dangerous work the employees perform when compared to the work that employees do in other industries. Arduous, yes; railroad employees work hard and diligently. They are a significant partner in the success of the railroads and I in no way mean to suggest that their work is anything but difficult; some more difficult than others. Arduous work uh, is something simply in the eyes of the beholder. What you people are doing now, you the members of the Board, is extraordinarily arduous work. Dangerous?

No, we'll get to that in a minute. First, let's
look at the relationship between the alleged excessive sickness of the employees and Plan costs. Sixty-eight percent of the claims made under the Plan 2010, 61 percent of the dollars paid in benefits during that year were made and paid for care provided to the husbands, wives and children of the employees. We can't fathom how the work that Coalitions members do can contaminate their family members causing them to be sicker than the families of workers in other industries.

This, of course, assumes at least for purposes of argument that there's something about work that rail employees do that makes them, let alone their families sicker than others. The slide that we put on the board show a comparison for claims per 1,000 members for three categories: Chronic obstructed pulmonary disease; musculoskeletal problems and the easy one for me, sprains and strains. As you can see, the middle bar, the purple bar are spouses and the blue bar are children, the red bar are employees. The claims for those three particular categories for spouses
under this Plan for 1,000 members are higher than the claims of the employees. The Unions have also asserted that on-the-job injuries to railroad employees add to the Plan's excessive costs as compared to other plans covering employees with lower on-the-job injury rates. On-the-job injuries obviously have no bearing at all with respect to claims made by family members. Moreover, as the Carriers, I believe, have well established, railroads have excellent safety records. Their employees have lower injury rates than most other major industries. Most importantly, all of the cost analyses regarding the Plan's costs, the Carriers costs and the employees costs that we have presented to you deal only with Plan coverage other than on-duty injury. They don't concern on-duty injury at all. What the Plan pays in benefits for on-duty injuries are not included in any of the figures that we have given you and none of the employee contributions are applied to Fund coverage for on-duty injuries. Indeed, the changes proposed by the Carriers will have little or no
impact upon employees in cases of on-duty injury. In those cases, the Carriers almost always end up paying 100 percent regardless of the Plan's terms. One hundred percent of the medical expenses of the injured employee. That is because of the obligations that the Carriers have under the FELA. Indeed, in many situations, the Plan's benefits are paid to reimburse the Carriers for what the Carriers paid to the employees as a result of a FELA claim. TRACK 6

MR. BENJAMIN BOLEY: The unions haven't explained why the work of clerks, electricians, machinists, and other crafts people employed by the carriers would make those employees sicker than clerks, electricians, machinists and others who work outside the rail industry. Also to the extent that employees covered by the plan are in fact sicker than other American working men or women and their families, nothing, nothing supports the view that it's because of the nature of railroad work rather than, among other causes, choice of a lifestyle leading to obesity, smoking-related conditions and
other consequences that severely imperil health and well-being. COPD clearly is something that is related to smoking. Finally, why next to finally, and here we get to the perilous nature or the alleged perilous nature of working on the railroad. The draftsmen (photosynthesis) of President Obama's health reform legislation, the Affordable Care Act of 2010, didn't consider railroad work to fall into the category of high-risk occupations, sufficiently dangerous to employee health to warrant an increase in the otherwise applicable cost threshold that a plan must reach before the Cadillac tax will be imposed on overly generous plans beginning in 2018. Those occupations that have that higher threshold because they are considered dangerous: law enforcement, fire protection, out-of-hospital emergency health care, long shore work, construction, mining, agriculture not including food processing, forestry and fishing. Railroad work is not among them. We put on the board a list that came (laughing) something I didn't realize
was there called "The Daily Beast". I don't know
if you've heard of the "The Daily Beast". I hadn't
but apparently it's an Internet facility that
collects news from all over. And they listed in
2010 the 20 most dangerous jobs in America.
Railroad work is not among them. Finally, Mr.
Hildenbrand in his presentation, which I thought
by the way was articulate and engaging, suggested
that you read the Tannen report which was
submitted by the labor organizations in support of
their proposition. We asked Dr. Green from
Cambridgeshe's a Senior Scientist and President of
Cambridge Environmental, Inc., and a lecturer in
the Department of Biological Engineering at MIT we
asked her to look at Dr. Tannen's report. It turns
out that this question of whether or not diesel
exhaust creates hazardous working conditions and
causes people who breathe in that exhaust to get
sick, especially with respect to railroad
employees, and her conclusion and I believe we
have provided you with her complete report if we
haven't we will, her conclusion is up on the board
there now. The bottom line is it's a murky area.
There are disputes all over the place. Dr. Tannen is on one side of those disputes. Many other people are on the other side. It is not clear, it has not been established that diesel exhaust is a condition to the health of railroad workers. The labor organizations through Cheiron, at page one of Exhibit 37 made the point that the cost of the National Plan is slightly less than the average United States employer-sponsored plan. Now to do this, they made a bunch of adjustments. Indeed, if you look in the Cheiron report carefully and put a circle around every time you see the word "adjustment", you'll find a lot of them. And to paraphrase a lesson that we may have learned from the Trojan War, beware of actuaries making adjustments. And it's even more appropriate here because Cheiron, as you know, is half a horse and you know what part of the horse was involved. In any event, you will see those adjustments. I want to turn to the one that puzzles me the most and then Dave Scofield will
deal with a couple of other problems with that particular comparison and that is in trying to determine the relationship between our costs, our plan costs and those of a body of other plans which they will get to. Cheiron applied what's called a morbidity factor and as I see it, as I understand and perhaps I don't understand it very well and you look at it yourself. But it would seem to say to me is that when you compare costs and one plan, ours, has to provide benefits to members who are sicker than the members covered by the other plan. When you compare the costs you forget about the cost of providing benefits to those sick people. So naturally, the costs become (inaudible) [0:07:00]. The reason that you have costs that are greater than the comparison costs, in part at least, is because a plan that covers a greater number of sick people, of people who are sicker than others has a greater cost. I don't understand how you can make the adjustment, the so-called morbidity adjustment that Cheiron has suggested. There are other problems with it and
because they deal with actuarial situations, Dave is going to cover them now.

MR. DAVID SCOFIELD: So first to say, to reiterate what Ben said, we don't think it's appropriate to adjust for the morbidity. That's one of the factors that is different about two different groups; the morbidity, the plan design, other factors, that's what drives cost differences. So that is, in part, why our plan has a higher cost than other plans. It certainly is legitimate to make adjustments and compare those adjusted costs and to try to derive some conclusions from them.

But on the topic of making a morbidity adjustment, we have some comments about the way it was done. The best way to derive the morbidity factor, which is again the statement of the illness burden that the population has is to incorporate medical plan data and pharmacy data. He announced that it was done and the Cheiron report uses only pharmacy data. It's no fault of theirs that they don't have the medical data I don't suppose, but they derive a factor that comes up to be 1.32, I think meaning
that their analysis shows that the costs of the illness burden of the railroad population is 1.32 x some benchmark level of 1.0. If you do incorporate the medical data which we have had one of the vendors that the plan works with do just that, they have incorporated the medical data with the pharmacy data, they get a morbidity factor of 1.20, 12 percent less than the 1.32. Not to say that either one is appropriate for the adjustment that they made but just to point out that the factor can be much different if you incorporate the medical data. And the last point on this is that if you are to compare the costs of a plan, and in this case they compared our plan to other costs, in order to do a morbidity analysis correctly, you need to adjust the morbidity in the population you're looking at which is our plan in the other groups. The other groups, if you will recall, they compared to Kaiser Family Foundation costs, Towers Perrin survey costs, Mercer costs, maybe some others, various benchmark costs. So inherently (ph) what they did was to assume that
all of those other surveys have a morbidity factor of 1.0 which although it's possible, it's extremely unlikely that every one of those surveys would be exactly identical to the morbidity level of the database that Cheiron used to draw the data from. They're all different databases so I am virtually certain they would all have different morbidity factors.

MR. BOLEY: Another contention that the labor organizations make is that our plan actually has the lowest med value of health benefits in the rail industry. They base this contention upon the plan provisions of a set of five commuter rail, four commuter railroads and Amtrak. You can consider whether or not a comparison with that small number of entities has any (inaudible) [0:11:29] weight of the comparisons that we put before you dealing with extremely large databases of both collectively bargained and non-collectively bargained plans. But to call this set of five passenger railroads the rail industry is beyond the pail. There are 20 commuter railroads,
at least 20 other than the ones that make up the rail industry as the labor organizations would characterize it, and over 500 regional and short-line railroads that carry freight in this country. So to call this selection of such a limited number of commuter rails and Amtrak the rail industry just doesn't hold any water. I wanted to clarify something that may have led to some misunderstanding when we were here the other day. The(laughing) on the left side is a quote from labor's submission and it may have been confusing to you. It seems to say something that the payment rate formula does not provide for it seems to say that you look to the greater of perhaps three different things, 15 percent of the monthly payment rate, $200 for the January 1, 2009 contribution amount. If that confused you at all, it would certainly be understandable. The appropriate formula is on the right-hand side. It's the lesser of 15 percent of the payment rate or the greater of $200 or the payment rate of the year before. So if that somehow or the other led
you into a different view of exactly what the payment rate, how the payment rate is calculated, I hope that what you're looking at there is helpful to you. I wanted to say just something about the repetition of the word concessionary from the organization's witnesses with respect to the health care plan design changes proposed by the carriers. We do not think that there's any concession involved here. What these design changes would do would be to lessen the increase in what the employees are getting under the health care plan. For every dollar that the plan's cost increases and if you equate that dollar in cost to value, for every dollar the employee gets a dollar just as if he got the dollar in wages except with respect to the health care plan it's tax deductible. So there's not a concession here. They're not giving anything back. They're taking less on a going forward basis. That is not a concessionary proposal. Moreover if you look at the way their total compensation will grow over the period of time covered by this contract,
they're not giving up anything there. They're just getting, by reason of the proposals on health care plan design, a little less than they would otherwise have gotten if their proposal were to be adopted. And of course, anytime you look at costs regarding health care, bear in mind that what we do here stays in place without change until the next round. And then so far as the employee contributions are concerned, it stays in place until July 1, 2016. That makes a big difference because as our costs under the proposal by the unions increase, the costs outside of the industry will increase by more because they will have plan designs that will be far more generous, far less generous than ours. We wanted to put a few slides on the board to show you what is happening in other plans with respect to the increasing use of point-of-service cost sharing, as well as other efforts to increase cost sharing by plan participants, giving them essentially more skin in the game. This one shows, over time, starting in 2000 and moving up to 2011, the way in which
changes have occurred under the federal plan BCBS Standard Option. As you can see, the deductible started at 200; they are now at 350. Of course, our deductible back in 2000 was not even a gleam in its daddy's eye gone up on the federal plan, as you see, ours has remained at zero. They are saying that the co-insurance rate the medical co-
insurance rate you can see it went from five percent to 15 percent. Ours way back then was zero. And we are only now proposing the implementation of a five-percent co-insurance rate. Interestingly, the federal plan that we are showing on the board here shows, for retail prescriptions, a percentage cost and, for mail-order, a fixed-dollar co-pay. The co-pays, you see, are there; they are self-explanatory. The annual out-of-pocket maximum has grown from 2,000 in 2000 to 5,000 now. Now, this slide Dave is going to get into and explain what we are trying to show here - again, for the purpose of demonstrating how costs are increasing over time - so that you can weigh that when you are
considering that our costs our plan benefits will be frozen, and no increase in employee contributions would be available to us for at least four or five years.

MR. DAVE SCOFIELD: So I think as we talk through this, I guess, keep asking whether the design changes that the carriers propose are radical given what is out there in the marketplace, or are they something, as we would suggest, far less than radical. So the yellow bars here show some information that we have drawn from a Hewitt survey. We drew from the Hewitt survey from much of the for some of the material we presented to you last week. The reason we are using this Hewitt survey is it is the only survey that I am aware of that does this one interesting thing, which is that it places a dollar amount on the employee contributions and a dollar amount on the employee out-of-pocket costs averaged across their large employee clients. So you can see a couple of observations. The employee cost share as a percentage, and that the dollar amount goes up
every year. And that is not a surprise, but it is
an observation I that we want you to have and
keep in mind. The employee share of the costs, in
total, on average, across these bars goes up a
little over $300 a year, and the employee out-of-
pocket plus contribution combined goes up nearly
11 percent per year. We have put off to the right
a couple of little notes about where our plan is
or where it will be for 2012, with or without the
changes. So relative to the survey benchmark,
employee cost sharing of 36 percent for employee
ccontributions and employee out-of-pocket costs for
large employers currently, the Railroad Plan
would be at 22 percent. And we get that, roughly
speaking, by roughly 15 percent employee
contribution cost sharing plus roughly seven
percent out-of-pocket cost sharing through
deductibles and co-pays. If the carrier proposals
are accepted, that 22 percent would go up to 26
percent. But keep in mind what will happen as we
project out to 2012 and into the future the
marketplace, as is demonstrated from this page,
increases the cost-share dollar amount and the
cost-share percentage for employees every single
year. So you can look at it and say it is about a
one-percent cost sharing increase in the
marketplace and about a $300-a-year dollar amount
increase. What will happen to the National Plan
under either the current or the proposed
arrangements is that the employee contribution
will stay fixed at $2,400. And the employee out-
of-pocket costs - although some small piece, some
small portion of those costs may increase to the
extent that the carrier proposal is accepted, and
a five-percent very small co-insurance is applied
besides that, the plan has co-pays and
deductibles. Those dollar amounts are fixed dollar
amounts. They do increase, so the employee share
and dollar amount do not increase under either the
current plan or under the proposed plan. So as the
marketplace moves from 36 percent, 37 percent, 38
percent, and so forth, our plan, under the current
design, will be 22 percent in 2012. And as we
spoke about on the first slide, if the current
plan design stays in place, and the contributions stay fixed, the cost share for the Railroad Plan declines over time, so the 22 will go down to 21, 20, 19, going in absolutely the opposite direction. Now the same dynamic happens if you if the carrier-proposed design changes are accepted, except they start out from a slightly higher 26-percent point.

MR. BENJAMIN BOLEY: And there are just a couple of more things I wanted to touch touch on. First is the question of the Uniformity of Benefits Principle. We showed in our case, in chief, that prior PEBs have articulated the need for uniform benefits for agreement employees of the rail carriers. Joel Parker found that that argument was intolerable. He really had a real problem with it, and I did not really understand why he had that problem. What the carriers did here what Mr. Parker characterized what the carriers did was to purposely foist, purposely knowing that the coalition mediums were steadfastly opposed to any change in the plan,
that the carriers then went and negotiated an agreement that provided for such a change. He rather colorfully analogized that situation to somebody who sets first to his house and then complains that it is too hot inside. What really happened was that the carriers were running into a roadblock. There was no give on the other side on these issues, and so the carriers went to see if they could cut a deal with another union. Well, the other unions were the big unions. They did reach a voluntary agreement with that union. So what the carriers did was exactly what the Railroad Labor Act says they should do seek a voluntary agreement. They did seek it. They achieved it. And now what they are saying is exactly what has happened in the past, what PEBs have noted if you have a voluntary agreement providing a certain set of health benefits healthcare benefits that it is important for subsequent agreements not to create disparity between what a voluntary agreement reached in the healthcare area and what subsequent agreements
would contain. What the PEB said applies equally here as it did in the Board proceedings that it was considering. Indeed, we missed one particular statement by a PEB, but the labor organizations caught it. It comes from PEB 221, in 1992, in which, as clear as a bell, the PEB said, "We believe that political competition between and among unions for supremacy of benefits, with its ineluctably destabilizing consequences, is damaging to the public interest." We do not know why that is not completely true and applicable in this case. We did not set fire to anything. MR. SCOFIELD (ph): There is a question. UNIDENTIFIED MALE: Which PEB (inaudible at 11:35)? MR. BOLEY: What? UNIDENTIFIED MALE 2: Which PEB? MR. BOLEY: PEB 221, 1992.
UNIDENTIFIED MALE: (Stand up) (ph).
MR. SCOFIELD: (Did you use that) (ph) (inaudible at 11:44)? MR. BOLEY: Hmm?
MR. SCOFIELD: (Did you use that) (ph) (inaudible at 11:47)?
MR. BOLEY: The other thing I want to touch on is
the question of whether or not what we are proposing advances President Obama's policy goal of containing medical costs, containing healthcare costs so clearly articulated in the Health Reform Legislation. The last section, I believe, of our submission Section Six, I think is a section in which we explore what was said about the need to eliminate wasteful healthcare expenses, to cut back on overly generous healthcare plans, and I will let that stand. But perhaps the most significant evidence of that proposal, that what we are asking for serves the public policy announced by that statute is the so-called Cadillac Tax. It applies to the generosity of benefits, not to the value that triggers the tax because of employee contributions. It will take away from that value to the extent that point-of-service cost sharing is increased. That is exactly what we are doing here. So when you look at it from a public policy standpoint, the public policy of sound labor relations articulated
by prior PEBs under the Uniformity of Benefits
Principle, and the public policy to cut back on
overly generous healthcare plans articulated by
the Health Reform Act those two aspects of public
policy should be foremost in your consideration.

Thank you.

CHAIRMAN JAFFE: Thank you, Mr. Boley. A couple of
questions, if I may, by way of clarification Mr.
Scofield, could we take a look at Slide 13,
please?

MR. SCOFIELD: Yes, sir.

CHAIRMAN JAFFE: I would like to clarify at least
the little box numbers on the right, if I may.

MR. SCOFIELD: Yes.

CHAIRMAN JAFFE: The red box that says "Railroad
Current".

MR. SCOFIELD: Yes.

CHAIRMAN JAFFE: Is that 3,400 the sum of the
2,400 and $1,000 that would represent employee
payments for co-pays and other fees under the
existing plan?

MR. SCOFIELD: Yes, sir.
CHAIRMAN JAFFE: And then the 4,000 in the "Proposed" box - -is that a projection of what would be the sum of 2,400 and employee out-of-pocket, in total?

MR. SCOFIELD: Yes, exactly.

CHAIRMAN JAFFE: The prescription drug, I think you indicated, was designed to be cost-neutral, in the earlier slide, based on the AOB equivalents? Or is that not correct?

MR. SCOFIELD: No, that it is it is cost-neutral on the AOB for the employees.

CHAIRMAN JAFFE: Right.

MR. SCOFIELD: It will bring down total costs because of the shift to generics.

CHAIRMAN JAFFE: OK. So the difference between those is roughly $600 a year? That is the per-employee increase in dollar responsibility for the same package of healthcare benefits? Or is that assuming a change in utilization? It is really what I am trying to nail down, if I can.

MR. SCOFIELD: Yes. It is the $600 increase incorporated into that, as you were rightly
observing, on the pharmacy, we have assumed that
the adequacy of benefits stays level, and that
reflects a shift in utilization from more
expensive brands to generics. With respect to
medical coverage, we have not reflected into this
number any estimate for utilization change on the
medical side.

CHAIRMAN JAFFE: So at least this projection
assumes the same visits to the same doctors, the
same hospitalization, the same everything else, no
change?

MR. SCOFIELD: The same number of emergency visits
yes sir.

CHAIRMAN JAFFE: And the 600 is per employee, but
that would represent - if it were a person with
family coverage, for example, that is an average,
so that covers the per-employee cost of providing
benefits to the family unit, whether they are
single or family across the plan?

MR. SCOFIELD: Yes, that is correct. It is a it is
my estimate of what the average is per employee.

When you think of it, there will be some single
employees; some employees who have no claims whatsoever, so they have no increase; some employees who have large families, who have considerable utilization that it may have out-of-pocket costs more than 600. So, yes, it is an average of all those factors.

CHAIRMAN JAFFE: And so this would be the comparison number to the Cheiron estimate of 410 we heard yesterday or not? That is really where I was going.

MR. SCOFIELD: I do believe that that is the case. Cheiron, as I understand it, was reflecting based on 2009 data, and I am of course, uncertain exactly what they had. I do believe that they said it was reflective of the deductible and co-insurance. Was not necessarily sure whether it reflected the emergency room co-pays or not. So, in that light, those estimates do not seem that far apart to me.

CHAIRMAN JAFFE: Fair enough. And the last cost question I had have you looked at what a change to a zero-dollar co-pay for generics would do to
MR. SCOFIELD: Months ago, when that question came up, we did inquire of Medco, who is the pharmacy benefit manager for the plan, and made use of their the information they provided to us in order to judge any of the different plan designs that were suggested. And we did look we did ask Medco to price out the zero-dollar the just change the generics to zero and do not change anything else. And it was their estimate that they provided to us that that would not reduce cost, that it would increase cost to the plan. I do not recall the dollar amount.

CHAIRMAN JAFFE: Fair enough. Any of panelists have anything they wanted to clarify?

UNIDENTIFIED MALE: Yes (ph), I have a.

CHAIRMAN JAFFE: Sure, go ahead?

UNIDENTIFIED MALE: I have a question on Slide Number Five. I am not sure I was underseeing (ph) something, but the is there an issue here about changes in family coverage? I mean, you know, they claim showing that spouses have more
musculoskeletal injuries than males, or their husbands when or their spouses when you have acknowledged that on-the-job injuries would not appear in this. I am not sure what the purpose of this slide is.

MR. BOLEY: The purpose of this slide was to counter the argument that the dangerous the alleged dangerous jobs done by the workers caused them to be sicker, and therefore to cause the plan costs to go up.

UNIDENTIFIED MALE: How does this??

MR. BOLEY: These these are not on-duty injury claims. These are other-than-on-duty injury claims. The injury (ph) claims has not appeared in any of our analyses, so what this is designed to show is, it is not the difficulties the sicker the sicknesses and injuries suffered by the employee that are any as important as those incurred by the spouse.

UNIDENTIFIED MALE: Or given the fact the spouse the working spouse a good chunk of their time is spent on duty and, therefore, otherwise
1 compensated or reimbursed if there are injuries.
2 It does not just it is not inconsistent with
3 this chart.
4 MR.BOLEY: The on-duty injury argument that we made
5 applies to employees.
6 UNIDENTIFIED MALE: Yeah.
7 MR.BOLEY: A spouse who gets injured on duty.
8 UNIDENTIFIED MALE: Currently (ph).
9 MR.BOLEY: .effective (ph).
10 UNIDENTIFIED MALE: .Loses more time OK, there is
11 more time this is not this covers the time
12 spouses, 24/7 non-working spouses 24/7; it covers
13 working employees 18/5.
14 MR.BOLEY: When they are not on the job, the
15 working employee's coverage is other-than-on-
16 duty.
17 UNIDENTIFIED MALE: Yeah. OK, thank you. MR.BOLEY:
18 OK? UNIDENTIFIED MALE 2: Just a little follow-up
19 there is there a a gender aspect to this, that
20 is that it is railroad employees are
21 overwhelmingly male? I do not know the statistics.
22 Where would the spouses', for instance, birth or
pregnancy show up in this?

MR. BOLEY: Pregnancy would show up, not on on-duty anywhere. Pregnancy would be covered other than on-duty. Unless you know something I do not.

[Chuckle] UNIDENTIFIED MALE 2: Yeah, where would where would yeah, in the chart, would it show increased usage by spouses? UNIDENTIFIED MALE 3:

These were only three types of injuries.

UNIDENTIFIED MALE 2: This is not this has nothing to do with that.

MR. BOLEY: May I hear the question again?

UNIDENTIFIED MALE 2: So it is not it is not related to any of this COPD, musculoskeletal sprains.? MR. SCOFIELD (ph): These are very particular conditions. These have nothing to do with birth. UNIDENTIFIED MALE 2: OK.

UNIDENTIFIED MALE 4: Go ahead and just ask one category that is not covered here. CHAIRMAN JAFFE (ph): Oh. If we look at the slide, what category I assume these were essentially cherry-picked for purposes of argument and illustration out of the entire category of illnesses that people make
claims for under the plan, right?

MR. BOLEY: No, these were picked because these were
the ones that were emphasized by the labor
organizations as the kinds of injuries and
diseases that are most likely to be incurred by
railroad employees, as a result of the dangers
that lurk in the work that they do. UNIDENTIFIED
MALE 2: (inaudible at 23:31) there. See, it shows
they are excluded from this chart. They are on-
the-job injuries, I assume.

MR. BOLEY: No, these are not on-the-job injuries.
These are (inaudible at 23:42) injuries that were
suffered by the employee not on the job.

UNIDENTIFIED MALE 2: And the question is, why did
how does this answer the Union's claim that there
are more injuries on the job (in place) (ph)?

MR. BOLEY: It does not. The answer to that claim is
that the injuries on the job are not considered in
anything we have done, and they will be paid at
100 percent by the railroad regardless of the
changes that are made in the claim. UNIDENTIFIED
MALE 2: And how does this chart show how does
1 this chart rebut the claim that there is an
2 increase in the work that is more strenuous for
3 spouses who are working? (In a never mind) (ph).
4 MR.BOLEY: Well, what Dave tells me is that there
5 are virtually no COPD on-duty claims none.
6 CHAIRMAN JAFFE: OK, I think we are in good shape.
7 Thank you very much.
8 MR.BOLEY: Thank you for your patience.
9 CHAIRMAN JAFFE: Does anybody want to break before
10 we tackle workloads? We will take about an hour
11 and a half. Give us two seconds. I know our files
12 (ph) have been running a little longer, but it
13 looks like we are headed to a section that you are
14 projecting to take about an hour and a half? And.
15 MR. SCOFIELD: Mr. Chairman, if I may, I.
16 CHAIRMAN JAFFE: Sure.
17 MR. MUNRO: I think we are we are still willing
18 to attempt to make my 1 p.m. deadline. I realize I
19 am my reputation for timeliness is suffering, but
20 I think I can still do it if we could keep the
21 break very, very short.
22 CHAIRMAN JAFFE: I would love to keep it very, very
short. I just did not want people totally
fidgeting between now and one o'clock. We will
take five, literally off the record. I think we
are there, right? Is Mr. Wilder still here? OK,
here is in the room or he just left.

UNIDENTIFIED MALE: He is right behind you.

CHAIRMAN JAFFE: He is right oh, there he is.

UNIDENTIFIED FEMALE: (inaudible at 00:50).

CHAIRMAN JAFFE: No, you were fine. If I could ask
everyone to get seated, and we can then resume.

Thank you.

MR. MUNRO: Mr. Chairman and members of the Board,
as we discussed last week, the carriers urged the
Board to reject the recommendations of the
coalitions of the individual crafts work rule
proposals for the reasons for pattern (ph)
precedent, carrier restraint, and a lack of
intensive bargaining on at least a majority of
those proposals. Having said that, we also
promised you last week that we would address
directly at least a significant portion of the
work rules case presented by the coalitions and
some of their crafts, and we will do just that very, very quickly. Scott Weaver, Assistant Vice President for Labor Relations in Norfolk Southern, and Greg Koontz, Director of Engineering at BNSF, will present the carriers' views on the advisability of BMWED's away-from-home and travel expense proposals. They will be followed by John Hennecke of the National Railway Labor Conference, and Bill Rowe, Assistant Chief Engineer Workforce Optimization at Union Pacific, who will address the impact of the coalitions' vacation proposal. Steve Crable, CSXT's Vice President of Labor Relations, will then provide some context for the BLET's vacation and meal allowance proposals in the context of the local agreement struck with CSX. Finally, Rob Karov, Assistant Vice President of Labor Relations at BNSF, will address two of the unions' less-emphasized proposals, the coalitions' information request proposal, and BLET's proposal on locomotive cab conditions. Hopefully, these industry experts will be able to guide the Board through the cost context and
1 complexity of the work rule proposals, which
2 further supports our view that they not be
3 recommended.
4 CHAIRMAN JAFFE: Thank you very much. If I could
5 ask the Reporter to swear in Mr. Weaver and Mr.
6 Koontz, since I think they are first up.
7 REPORTER: (Raise your arm) (ph). Do you swear the
8 testimony you are about to give today be the
9 truth, the whole truth, and nothing but the truth
10 (under penalty of law) (ph)?
11 MR. SCOTT WEAVER: I do.
12 MR. GREGORY KOONTZ: I do.
13 UNIDENTIFIED MALE: [Whispering] Go ahead and
14 (inaudible at 02:58) person there (ph).
15 UNIDENTIFIED MALE 2: [Whispering] (inaudible at
16 03:00).
17 MR. WEAVER: Good morning, still. My name is Scott
18 Weaver. I am Assistant Vice President of Labor
19 Relations for Norfolk Southern. I have been in the
20 transportation industry for 25 years. The first 22
21 the first three of those, excuse me, in the
22 trucking industry, and the last 22 years with
Norfolk Southern. My time at Norfolk Southern has been almost entirely in Labor Relations, but I did recently spend a year in Operations. I have been in my current position for three years. I will do my best to do my part to restore Don's reputation for timeliness. To that extent, I ask for your indulgence if I go very quickly through a few slides. I want to talk a little about the BMWE's away-from-home and travel expense proposals, which add costs to meals, lodging, and travel.

Arbitration Board 298 you heard a lot about this yesterday. I am not going to go into any further detail about given the constraints of time, but I will point out that this arbitration award was the unions had the option of either accepting particular provisions within the award or electing to retain more desirable local provisions. So, from the outset, 298 was intended not to be a uniform approach. It had (variance property to property) (ph) built into its very structure from the very beginning. What do the meal allowances and lodging allowances provide, according to 298?
Well, the original amount was three for meals. In 2011 dollars, that would be $18.98. So, as you can see, it is growing significantly more quickly than simply the rate of inflation since the original amount. Likewise, with the combined lodging and meals number, that was $7. In 2011 dollars, that would now be $44.29. But the actual amount for the meal and lodging is $57. What this equates to, given that these are seven day-a-week allowances for meals, is $175. That is $25 times seven days. And down there at the bottom of the screen, you see a $44 net amount. That is for situations where the applicable to our employees in camp cars, where the meals are provided for them, they get a $56-per-week per diem, but the cost of food is subtracted out from that so it nets out the $44. What you have before you here is a typical four 10-hour day workweek for a traveling BMWE gang. And all this does is extrapolate out from the $175 a week. And the long and the short of it is that, for a typical month, a BMWE traveling employee is going to work 16 10-hour days, and his meal
allowance for that period of time, under
Arbitration Board Number 298, is going to be $700.
I do want to point out that the this issue has
been addressed by both PEB Number 219 and PEB 229,
and both of those boards elected to keep the 298
structure in place. Now, the amounts were raised,
and that is why why this is now so much
significantly higher than what it would have been
with inflation. The unions the BMWE, specifically
has also referenced the fact that the so much
inconsistency has developed within the industry as
a reason that 298 should be scrapped, because it
has morphed from the national structure of the
various rules. Well, keep in mind a couple of
things. First, as I already mentioned, part of
that is because they had the opportunity. [Distant
applause] at the time of 298 to keep more
desirable rules. The only other reason that would
have happened is if the parties, in consideration
of all the local operating and employee issues
involving travel on a particular property, chose
to change it. In a second, I will talk to you
about a couple of ways that it has changed on NS
through on property negotiation. I do not believe
and I that this is something to point to as some
sort of
failure of the system. This is the natural course
of collective bargaining. It is what you would
expect to happen, and it is simply the parties'
effort to confirm a national structure to
something that works, given their particular
situation on their property. And those do vary
from property to property. And, frankly, the same
variations would occur again rather quickly if, in
fact, this structure was scrapped and a new one
were put into effect. Mr. Powers recognized this
yesterday when he said that the same thing would
happen. But what would also happen is the quid pro
quos that were inherent when the structure was
adapted to local situations would also unfairly
and unnecessarily be thrown out. Let me now talk
about a couple of examples from Norfolk Southern.
These were on-property situations where, either
through a single agreement or a series of
agreements, we found a way to make the employees
(in the K) (ph) found a way to make 298 work
better for them. The first is with the BMWE. And
on a significant portion of our property, the
employees would gain the right during the workweek
to commute home, reimbursed by the carrier as
opposed to having to stay in a hotel for the
entire week. They had the right to commute home,
compensated or reimbursed, or they had the right
to stay in a hotel. The quid pro quo for that was
the meal allowance was not a seven day-a-week
allowance anymore; it became a workday allowance.
So, essentially, it was $25 or is $25 four days a
week. Now, I should point out that, if you recall
Mr. Pierce's slide from yesterday, where he was
talking about the train and engine meal allowances
and seeking to have those increased, even at a
workday level, BMWE travel allowance is superior
to the 24-hour reimbursement numbers that Mr.
Pierce put on the slide yesterday for train and
engine employees. And that is after the adjustment
to the UTU agreement. The second agreement that I
would like to talk to you about on Norfolk Southern is with the BRS, who you may recall from Mr. Powers' testimony, was also party to 298. BRS, over a series of agreements, has ended with the following arrangement on Norfolk Southern: "We have gained significant additional flexibility in using employees across seniority (ph) district lines. They have gained single-occupancy lodging for their members, and they have a $32.50 meal allowance." That is a workday meal allowance, and it is indexed to inflation. Now, that mean allowance, taken on a weekly basis, is $130. That compares to the 298 allowance of $175. So both these examples are quid pro quos, at least at the time they work for both the carrier and the unions. And if we were to scrap the structure, those are exactly the types of things that would go out the window. Before I move on to lodging, let me address one other thing that Mr. Powers mentioned yesterday. This is very briefly because the short story is it does not really apply on Norfolk Southern. He essentially talked about
1 situations where headquarter gangs were treated
2 like traveling gangs except for the fact that they
3 did not get the per diems. So basically two
4 situations where that occurs are where employees
5 were forced a long distance away from their home
6 location to a headquarters job. On Norfolk
7 Southern, we do not have the ability to force
8 people to headquarter jobs, so it does not occur.
9 Another situation he described was mechanized (ph)
10 gangs that we would typically think of as
11 production gangs or traveling production gangs,
12 that are bulletin as headquarter gangs, but
13 every periodically, whatever period of time that
14 may be, they are abolished and re-bulletined at a
15 different location. Again, we do not do that. We
16 do not have any gangs that are do that type of
17 work, that we bulletin as headquarter gangs and
18 then abolish and move them down down the line or
19 road. OK, let us go to lodging for just a second.
20 That is one of those slides that we are going to
21 skip right over. This is the map of the R3 Rail
22 Gang 79 workers. The red dots you see that is
where it actually worked in 2010. I will talk more
specifically about it in a second but, first, just
let me say, as you have heard, various lodging
arrangements have developed in the industry. They
take run the gamut from paying on a per diem for
lodging to double-occupancy, to single-occupancy,
and to camp cars. The uniqueness of the work, the
geography involved, the size of involved
workforce, and, yes, management philosophies are
all factors that have contributed to the various
arrangements that have developed. And there are
also significant differences between the BMWE and
the other crafts that travel routinely as part of
their jobs. Let me give you just a few: BRS works
in five-to seven-men gangs. Train and engine
employees work in two-men crews and stay, at the
end of each tour of duty, at the same location, at
the same hotel. This has two impacts for the
carriers. First, it is obviously easier to find
hotels because the infrastructure can build up
because it people know that is where the railroad
is going to have business, that is where the
1 railroad is going to have to lodge people. But the
2 other thing is it also gives the carriers
3 significantly more bargaining power with those
4 hotels because we block the rooms, essentially,
5 for 365 days a year. We can guarantee that
6 establishment a certain level of occupancy every
7 night during the year. In contrast and, first of
8 all, the BMWE gangs average, probably, about 40
9 people many are much larger and they work in
10 remote locations that are far removed from the
11 terminals where train and engine crews go off
12 duty. The end result is - maybe once a year, maybe
13 less well, even a hotel in that location has the
14 opportunity to house our folks. Now, I am not
15 saying in all of these locations on the map that
16 there is there was not a hotel available. This
17 gang, if I did not mention it, by the way, stays
18 in camp cars. I am not saying that in none of
19 these locations were there hotels, double-
20 occupancy that would have would have
21 accommodated. What I am saying is there were a
22 number of locations where that is very unlikely.
And keep in mind that means a hotel that is adequately priced, adequately maintained, and has access to restaurant facilities, as well. One of the big advantages of the camp cars, as we have mentioned, is that we feed our employees, for which, of course, they do get the $45 weekly allowance. But anyway, there are places on this map Oconee, Georgia; Grand Junction, Tennessee; Dayton, Tennessee where it would have been very unlikely to find adequate lodging double-occupancy, let alone single-occupancy. This next series of slides is the best-laid plans of mice and men. This is our T&N Gang 31. This is a schedule that was arranged for them at the start of the end, I guess, of 2009, for 2010. It looks pretty succinct and straightforward, but let me just very quickly click through and show you what happened. Now, there are lots of reasons that these things happen - it can be weather; it can be equipment malfunctions; it could be changing priorities. But the long and the short of it is, by the end of the year, this gang did very little
of the work they were planned to do, when they planned to do it. The impact for that is significant. We do not have significant lodging options and, often, we have very little lead-time to adjust those options when situations change. Camp cars Only NS routinely uses camp cars, but all of the railroads have the right to use them. Mr. Powers obviously objected strongly to their use, and one of the main reasons that he cited for that was that the employees' safety was put at risk by staying in camp cars. I think I can best address that comment by going back to what Mr. Manion said last week: "Employees in camp cars are production gang employees, along with our double-occupancy hotel folks." Those production gang employees did not have a single injury in nearly two million hours worked last year. That is an incredible record, and they should all be very, very proud of it, as we are. This year, there has been one injury on a production gang. I cannot even tell you whether that was a hotel employee or a camp car employee. The bottom line is there is
1 absolutely no evidence that housing employees in
2 camp cars is either inherently unsafe or
3 jeopardizes their safety on the job. They have
4 proven the exact opposite. While I previously
5 mentioned that only 27 percent of our traveling
6 employees are in camp cars, we consider that a
7 crucial link. And that 27 percent is not a static
8 number. Recently, we took several of our larger
9 gangs, who had been previously in camp cars and,
10 because hotels and motels did become more viable
11 in the area where they predominantly work, we
12 moved them. Some of our smaller surfacing well,
13 let me back up all of our smaller surfacing gangs
14 except one the S3 has also been placed in
15 motels. The reason the S3 has not is because they
16 specifically requested to stay in camp cars. And
17 while we heard a lot about the shortcomings and
18 the supposed shortcomings of camp cars yesterday,
19 camp cars have significant advantages, too, and I
20 am talking about for the employees. First,
21 employees can leave their belongings in the camp
22 cars as opposed to having to lug them back and
forth from the worksite to their home each week on their off days. I have already mentioned that we provide the meals for the employees, and they receive a $44 allowance for that. The camp cars are essentially theirs for the production season. They can personalize them with equipment, with books, with TVs, with DVD to their liking and to make them more hospitable for them. They also are for a shorter commute, generally speaking, to the worksite because they can be placed closer to the line road where they are working. Now, without question, this is an advantage to the employees, but it is also an available advantage to the company because, as you have heard, we have this expensive equipment, track time is precious, and making the most productive use of our employees on duty time is very, very important. For all these reasons, really, we have had very, very few complaints about camp cars from our employees, especially since we did the $10-milion renovation on them here in the last few years. Let me show you a picture of what the old
camp cars looked like. That was the camp car
configuration when PEB 229 was asked to ban
their use, and PEB 229 refused to do so. Let me
show you what they look like. A short video clip
very short that shows what they are like today.
Okay, I'm still being told to pick it up a bit, so
I will try and move you more quickly
through this. Before we leave lodging, let me just
say that not only have two PEBs previously
rejected the ban on camp car, but Congress was
recently lobbied by the BMWE for the same result,
and likewise, Congress declined to so. Instead,
the Federal Rail Safety Act tasked the FRA with
writing new regulations for a long time and
regulations on camp cars to address such things as
space, where the cars can be located, and the
safety requirements of the car. The final rule
isn't out yet, but we continue to work with the
FRA and we intend to fully comply with it when it
is. Last topic: Travel allowances. This is PEB
219. Mr. Powers said yesterday the world hasn't
changed since 1967, and I'm paraphrasing. This was
a big change. This was a big change and it was in response to the things that were mentioned yesterday regarding the greater distances employees had to travel with the recommendations, and what it provides is $25 essentially per 100 miles. Just a couple of things to mention here that I think are important. That $25 per 100 miles does not require the employee to drive. Employees can and do drive together, carpool, and each of the employees receives the travel allowance, and this is probably one of the rules that we would have asked to modify if we had not focused down to the core issues in this round, because we do believe it's overly lucrative and so it's ripe for abuse. Let me give you a quick example of how the - how this rule has changed employee behavior and why, to me at least, this indicates that the rule adequately compensates employees. Before 296, before this travel allowance rule, we routinely offered a - a bus service from home locations to employees, traveling employees' work sites. Employees
routinely used this service. Once the travel
allowance came into being, fewer and fewer
employees, in fact, virtually no employees,
accepted this offer anyway - this offer any more.
The reason to me is pretty clear; is because if
they took the bus, they would not get the travel
allowance, and eventually the travel - or
eventually the bus service was discontinued. Now,
it was entirely the employees' right to take the
bus, don't get me wrong. My point is that if they
didn't feel adequately compensated by the travel
allowance, I don't believe they would have chosen
to drive their vehicles or carpool as opposed to
taking the bus as they have done in the past. I'd
also like to point out the average commute in the
United States is a little over 30 miles according
- one way, according to the DOT. If you do that
five days a week, that's 153 miles roundtrip.
Under national agreement, the travel allowance
kicks in at some 60 percent of that average
commute. One more item of compensation available
to traveling employees, and you heard about this
yesterday; that is the $1,000 stay bonus for
remaining on a system production gang for six
months. I'd like to draw your attention to the
bottom of the slide first. This is the difference
shown in percentage there of traveling employee
versus headquarter employees' annual pay. Mr.
Powers yesterday, in response to UP's similar
data, indicated that it was, in all likelihood, a
reaction to the fact that there's more higher
classification jobs in traveling; we adjusted for
that in this. This is a sampling of 20 laborers
headquartered and 20 laborers traveling.
Difference over the course of the year is over
nine percent, almost ten percent. Top part of the
slide I think shows you the impact of that. You
know, 27 percent of our traveling employees have
ten or more years of service, 17 percent have 25
years of service on the job. These are employees
that can - could hold headquarter jobs if they
want to; they've chosen not to. To be sure,
traveling maintenance work is unique work, and
it's a unique lifestyle. I suspect that some
people gravitate to it because that's a lifestyle that they're comfortable with. I suspect others adapt to the lifestyle because it's a work opportunity that they want. What is clear is you can see from the seniority or the people on this slide that there is - that it is work that people enjoy, that people desire, that it's work that people go to voluntarily, and it's work that they're well compensated for. Thank you for your time.

CHAIRMAN JAFFE: Thank you, Mr. Weaver. Three quick clarifiers, if I can, focused. SCOTT WEAVER: Yes.

CHAIRMAN JAFFE: The last slide that indicated average annual pay; does that include or exclude the various allowances?

MR. WEAVER: That includes everything. It would include travel allowance, per diem amounts on the various territory; whatever they are. Likewise, over time, which, you know, for both headquartered and -

CHAIRMAN JAFFE: Second question is I think you'd indicated that currently only Norfolk Southern is
using camp cars? MR. WEAVER: Yes.

CHAIRMAN JAFFE: Is there something unique about the operation of the maintenance of way crews on Norfolk Southern in terms of location of the rest or that's not shared by the other class 1's, or is this a question of, as you described, corporate philosophy, in part?

MR. WEAVER: Before I answer that, let me back up on one other thing.

CHAIRMAN JAFFE: Sure.

MR. WEAVER: Because we provide lodging for all our employees, there's no lodging per diem in the difference of numbers on those -

CHAIRMAN JAFFE: Fair enough, thank you.

MR. WEAVER: Okay. When it comes to camp cars, one of the things that we would have had in this presentation if we had more time was all the roads, explanation as to how they handle - handle lodging and why. Yes, I believe there are portions of our territory that are less hotel accessible than perhaps some other places. Some of the other railroads and situations adapt to this by simply
paying the per diem. But you heard from Mark Manion last week that we do believe that keeping our people in cohesive units, either in hotels or in camp cars, has a significant value to it. We think our safety and our production record bears this out in that it breeds the type of team atmosphere and the cohesiveness that this highly mechanized ballet, if you would, requires.

CHAIRMAN JAFFE: Thanks. I'll leave it at that. My panel members okay? Thank you very much.

GREGORY KOONTZ: Good afternoon, Mr. Chairman, members of the Board. I, too, will move much more quickly. My name is Greg Koontz. I'm Director of Engineering at BNSF. I have a degree in civil engineering and have been with the railroad for 22 years. I began my career in the field, managing production gangs and holding various positions at the division level. I've held roles in both transportation scheduling and maintenance scheduling. And for the last 11 years I've held responsibility over many administrative functions, including corporate project estimating,
technology, and applications development, vehicle services and DOT compliance. And regarding the focus of this Board, I also manage the administration of the CBAs for the engineering department through a manpower planning office, encompassing the track structures, signal, roadway equipment, and telecom departments. I'd like to walk you through a few slides quickly to illustrate some of the scheduling complexities and provide some insight on their impacts to lodging. Our production gangs, of course, are dedicated to the strategic replacement of rail ties, the renewal of ballast and surfacing. Similar to other roads, you'll know we also run typical gang sizes of 30 to 50 employees, traveling long distances in very remote locations through the desert, through mountain ranges, across the open prairie. One primary goal of our scheduling process is to develop schedules which minimize interruption to any given train as it moves cross-country. This, of course, requires heavy coordination between engineering and transportation. As such, daily
monitoring of gang production is required and plan modifications are made where and when necessary. Revised plans are communicated and published each week. The following few slides will help exemplify our annual planning cycle. You'll note the colored months here indicate the core of our work season, which runs between April and October. Although this reflects our core maintenance period, some production gangs typically start along the west coast and in our southernmost states of our network in January. Given the geographic diversity of our system, weather is certainly one of the most predominant planning considerations that we face. Effectively, the frost must be out of the ground for all engineering departments across the country to be most productive with their maintenance activities. Near the end of the year, if weather permits and funding can be advanced, we may be able to extend the work season well into November. We maintain a strategic capital maintenance plan with projects to fund generally two to three years in advance. For an upcoming
work season, you will note the planning cycle is well under way by June of the prior year. Based upon funding targets and unit forecasts, production gang schedules are developed around the consolidated seniority districts through logical grouping of common activity and proximity of the work. To arrive at an effective executable schedule, various constraints are evaluated, such as avoiding grain harvest movements to the Pacific Northwest, rationalizing expected work window durations on double versus single track territories - these can vary widely throughout the year depending upon the seasonality of the transportation network - and determining when and where to double up on gangs which are designed to minimize project durations on a particular subdivision. Generally our job bulletins for region system gangs are developed, reviewed, and published by Thanksgiving of each year. The awards are subsequently announced in mid-December, allowing the first production gangs to start in early January. Of course, newer vacated positions
are also published on schedules each month throughout the year, consistent with the agreement. We typically see between 30 and 50,000 individual bid choices entered by employees throughout the year and we attempt to accommodate those job references in the awarding process. So you can see, given the lengthy planning process, we're often forecasting projects anywhere from 6 to 18 months in advance of their activity, leading to many changes throughout the work season as we execute. All maintenance activities are competing for limited capital funds, so we attempt to optimize on our best opportunities to get the biggest bang for the buck. Our annual work program encompasses nearly eight to ten thousand projects each year. Complexities of scheduling the work windows do require a significant orchestration of several key activities. We have to understand the implications on the transportation logistics, where we will be staging trains, where to store the rail-bound maintenance equipment each night, determining if and when to reroute or detour.
trains, evaluating the slow order, the temporary speed restrictions that are created behind the production gangs. We must also coordinate material distribution and unloading activities generally requiring specialty trains. We also must understand the availability of employees and equipment and resolve any conflicts when there's too much activity that may exist, affecting train traffic. There are daily tactical decisions also negotiated through our network operations center, reacting to service interruptions and making adjustments to the plan. So given the interdependencies, it has now become an absolute imperative to successfully execute and adjust the plan each day. Catastrophic events, which we call casualties, are simply a fact in the railroad industry; on our railroad they can total well in excess of $100 million annually. Oftentimes, these significant and certainly unanticipated events require periodic rescheduling of activities that can profoundly impact the previously committed plans. As I'm sure you've heard and read in the
press, we experienced extraordinary circumstances this year with unprecedented flooding throughout the Central and Upper Midwest, through the Dakotas and Montana, as well as in Louisiana as the water moved towards the Gulf. In addition to capital track maintenance, we are also integrating bridge reconstruction and tracking facility expansion activities as well as coordinating the most significant signal construction activities ever undertaken with our PTC program. In order to drive high efficiency and utilization, our goal is to consolidate work into the fewest number of work windows possible, having the least impact to service that we provide our customer, so frequently coordinating otherwise disparate activities with production activity is now the norm. In order to minimize the overall durations on a subdivision, we often work gangs in tandem, having a direct impact on our lodging requirements. Lodging for our employees is coordinated by a third-party corporate lodging provider with negotiated rates and assurances that
they are meeting our standards. Hotels also limit their exposure to our constantly changing schedule that may move from day to day. Given the Unions' demands for single occupancy as presented in their submissions and testimony, it is simply not as easy a problem to solve as one might believe. In fact, on many parts of our network, one might say would even be impossible, given the lack of sufficient rooms to house our large production crews. As the number of room requirements go up, the number of hotels required also is rising, and given the remote nature of most of our railroad, the travel distances accordingly increase. Work windows are typically five to seven hours in duration for our production activities, and we can ill afford to lose valuable time on the track in exchange for longer commute times by mobilizing crews from locations further from the jobsite. I will offer a few real-world examples to demonstrate that lodging costs can significantly increase under the Unions' proposal. This is an example extracted from our 2012 work program for
rail replacement. This happens to be on the Kootenai River subdivision, where we intend to work four gangs simultaneously on that subdivision for a period of six consecutive weeks. And analyzing the two options, you'll note here through our lodging provider they have shown us that the single occupancy scenario as offered by the Union will spread the gangs over eight hotels based upon the reasonable capabilities of each of these lodging facilities, and this is in and around the Libby, Montana area. When contrasted with double occupancy, the cost is roughly 34 percent higher. As for a second example, this one is in Thayer, Missouri. Single occupancy will spread the crews over six hotels. And again, contrasting with double occupancy, the average rate per guest night is approximately 53 percent higher. If the Board were to recommend single occupancy, it will assuredly drive additional expense at least up by one-third and is simply not feasible in every circumstance across our diverse geography. This illustration summarizes the
primary benefits afforded our employees on mobile
 gangs with the exception of the final column which
 represents the stay bonus or, in our terms, the
 region system gang bonus for traveling production
 gangs, all designed to defray any incurred
 expenses. I would also like to take a moment to
 address the headquartered employees' lack of
 expense provision. You will recall the Unions'
 assertion yesterday that headquartered employees
 are required to accept jobs very far from home,
 even as much as 1100 miles away without expense.
 Employees have the flexibility to bid any job that
 their seniority may afford. So rather than speak
 anecdotally, we've developed the following data
 from the current BNSF assignments, which clearly
 showed a vast majority, well over three-fourths of
 all headquartered BMWE employees are working
 within a reasonable commuting distance from their
 home station and able to return home each night.
 So given the nature of the agreement, we also have
 what we will call truly force-assigned employees:
 Those that tend to be junior-most; that have very
little or no opportunity. Recognizing this situation, BNSF acknowledged and created a remedy for those employees that are truly forced more than 75 miles from home by providing a meal per diem and double occupancy lodging through a provision we titled M3. This resolves the situation when mobile opportunity paying expenses exist and no other headquarter opportunities available within 75 miles of the employee's home or his home station. On any given day, only about 50 to 70 employees are claiming the M3 payment over the past 90 days. From this date it is very clear that employees have ample opportunity to remain close to home and are doing just that. In closing, the current practices that are in place today are working and are working well. Each railroad has negotiated its way to reasonable resolutions to align their respective needs and those of their respective employees. Through these illustrations, I trust we've demonstrated that one size simply does not fit all. Thank you. I'd be happy to answer any questions you may have.
1 CHAIRMAN JAFFE: I think we're in good shape. Thank you, Mr. Koontz.
2
3 MR. KOONTZ: Thank you.
4
5 MR. MUNRO: Mr. Chairman, I guess I'd like to offer an alternative at this point to the Board and to my colleagues on the other side. My partner, Mr. DeLorme, assures me that we can wrap up by 1:15. I am more dubious about that. The two options as I see it are we could - we can press on and attempt to conclude as rapidly as we can. I am concerned about shortcutting my witnesses and their testimony. The other possibility is that we could break for lunch, come back, and take one hour after the lunch break to wrap up the Carriers' case, devote the remainder of the day to the Unions' rebuttal presentation. If they can finish today, that we're willing to stay late. If that's not possible, then obviously we'd have to carry over to tomorrow morning.
6
7 CHAIRMAN JAFFE: What's your preference first? We may as well find out from -
8
9 MS. PARCELLI: Well, a couple of things. The only
1 problem - one of the problems I see potentially
2 with this is I haven't even had a chance to talk
3 to folks and know what areas need to be addressed.
4 I would hope that - and I'm just throwing this out
5 as me - like two hours we could do it. But I think
6 the more time I have to sit and talk with the many
7 different people I do need to talk with, the more
8 we can streamline the presentation. So if I only
9 have over an hour-long lunch break to do that, you
10 know, we'd rather have something that makes some
11 sense and is not disjointed.
12 CHAIRMAN JAFFE: I think our preference, all other
13 things being equal, would be to proceed. That way
14 we can wrap up with your rebuttal case. We can
15 then take an extended lunch if it's needed in
16 order to focus, streamline, or simply get
17 everybody's ducks in a row before we then proceed
18 with the Unions' rebuttal. And if there is anyone
19 who obviously has health or other needs, feel free
20 to accommodate those; they have our blessing in
21 advance.
22 MR. MUNRO: Thank you. We'll proceed accordingly.
CHAIRMAN JAFFE: Thanks. I don't believe Mr. Hennecke has been sworn in, so if we could ask the court reporter to do so, please.

COURT REPORTER: Do you swear the testimony you're about to give in this case is the truth, the whole truth, and nothing but the truth under penalty of law?

JOHN HENNECKE: I do.

COURT REPORTER: Thank you.

MR. HENNECKE: First, let me introduce myself. John Hennecke, Director of Labor Relations with the NRLC. In a capsule, over 39 years in the industry; 20 working on the railroad, two as a railroad arbitrator, and 17 years now with the NRLC. I'm here to talk a little bit today about the vacation benefits that are afforded to all the organizations that are before us this week. The 1941 National Vacation Agreement that covered the non-operating crafts, which includes all the organizations here except for the BLET and the ATDA, was a product of Presidential Emergency Board number 11. And it's interesting to note that...
The Unions before PEB 11 sought a prorated vacation system that would have provided employees with one day of vacation for each month in which they earn compensation. However, PEB 11 rejected the Carriers' or the organizations' proposal and concluded that vacation should be allowed to employees who work substantially throughout the year. And further, that any employee who works, sickness and injury excepted, not less than 60 percent of the total work hours per year should be entitled to a vacation. So we can see from that that there was an intention that full-time benefits would be afforded to full-time employees. Under our current system, employees get a week of vacation after one year of service, they get two weeks from the second to the seventh year of service, three weeks from the eighth through the sixteenth, four from the seventeenth through the twenty-fourth, and they get five weeks of vacation following 25 years of service. And in addition to that generous vacation package, most railroad employees also receive 11 paid holidays. The ATDA
folks get additional compensation added into their paycheck rather than to holidays themselves, and this exceeds the average of eight holidays that's enjoyed by most U.S. workers. On top of that, the coalition union employees also are entitled to paid personal leave days. Most of these employees qualify for one or two days based upon their years of service, and that clerical employees can get up to three personal leave days. BLET represented employees in road service can receive up to 11 paid personal leave days in lieu of holidays. Based upon the above, there's simply nothing to indicate that railroad employees receive inadequate paid time off. In fact, when we compare their vacation and personal leave days to those of other unionized private sector workers, we can see that on average our employees receive equal or superior levels of paid time off at every stage of their current - stage of their careers. For example, the 16 days of paid time off that our employees receive after the first year of service is equal to or better than 50 percent of unionized
employees. That goes up to 89 percent in years two through four and 88 percent in years eight and nine. It climbed as high as 91 percent in years 17 through 19 and stays well above 50 percent throughout. When we look at paid time off as a part of the total employee compensation package, railroad employees far surpass employees in the transportation industry of which they are a part, and for that matter, all unionized employees in private industry. Paid time off equals over $4 an hour of additional compensation and it translates into almost 15 percent of their wages. But the cost of the Unions' proposal for enhanced vacation benefits goes beyond the additional cost of providing vacation to those employees. The Carriers also pay a price for the employees' absence. They pay for either diminished - in the way of either diminished production or the added cost to replace the vacationing employee. Where the job must be filled, the Carrier must hire, train, and maintain a force of qualified vacation relief employees. And in some cases where
employees worked in tandem with one another, when one employee is on vacation, the other employee has to be reassigned to other activities. In some cases we have to pull employees off of other duties to fill in for vacationing employees, and in the worst-case scenario we have to pay the overtime or penalty rate to replace that vacationing employee. (audio break) The cost associated with having employees absent on vacation for a longer period of time. The coalition unions have proposed three material changes in the vacation agreements. First they want to add a 6 week of vacation for employees with 20 or more years of service. That is up from what - 20 year service employees now only receive 4 weeks, so we're talking about a 2-week jump for some of these people. And they also wish to accelerate the rate at which employees become available for additional weeks of vacation, and they wish to relax the current eligibility requirements, requirements that are already more than reasonable. The UTU national agreement made
no changes in paid time off, even though it was a
subject matter that was discussed thoroughly
during those negotiations. Instead the parties
agreed that compensated leave fell into the
category various (ph) that were suited for
constructive and creative attention at the
individual carrier level. And unlike other types
of things like wages, the value of paid time off
does not diminish or depreciate over time. In
fact, it actually increases in value as time
passes. As wages increase, so does the value of
vacations, holidays and personal leave days. There
is simply no rational basis that contend that
there is any need for any type of catch-up or that
more paid time off should be forthcoming simply
because of the passage of time. For example right
now a clerical employee with 25 years of service
gets 5 weeks of vacation, 11 holidays, 3 personal
leave days, and if they're a clerical employee
they will get 10 or more days of sick leave and
that totals up to 49 days of paid time off. That's
almost 10 weeks of paid time off during the year
or almost 1/5 of the year. Even more importantly
the coalition union's proposals regarding pro-
ration are either misguided or misleading in many
respects. Fulltime employees should receive
fulltime benefits. But our current eligibility
requirement to work 120 days to qualify for 1 week
of vacation translates into less than 50 percent
of available work days in the year in order to
qualify for a full vacation. Eligibility
requirements also provide a needed incentive for
employees to work on a regular basis. Moreover the
coalition union's pro-ration proposal is not a
true pro-ration, even as they requested before PEB
11. The examples they cited pointed to situations
where the employee who works half a year may
qualify for half the vacation allotment for that
first year of service. Currently employees get 100
percent of their vacation for only working 48
percent of the work opportunities in that year.
Unions want to pro-rate this already reduced
qualification requirement. Under their proposal
someone who works only 24 percent of the time
would actually earn 50 percent of their vacation in a year. And in a worst case scenario, under their proposal for 6 weeks after 20 years of service, with their pro-rataion proposal, an employee can actually qualify for 2 weeks of vacation by only working 4 days during the course of the year if they happen to be off sick for 30 days during that year as well. The 30 days of sick leave combined with 4 working days would give them 1/3 of the 100 qualifying days it would take to qualify for a vacation. So 1/3 of 6 weeks would equate to 2 weeks vacations for 4 weeks of work, or 4 days of work, which would lead to a rather absurd type of situation. And in fact many of the hypothetical examples that were given by the unions to justify the expansion of the vacation simply are already addressed or they're not the type that call for wholesale changes in the system. Non-option train dispatchers off work, as I indicated, due to sickness or personal injury with 15 years of service can already count 30 days of that time towards qualifying for their 100 days
needed to get a vacation qualifying (inaudible). And while the coalition union's complain that the employee doesn't receive a pro-rated vacation in his first year of employment, they don't mention the fact that a retiring employee who works only 100 days in the year in which he retires not only qualifies for the 5 weeks of vacation that year that he earned previously, but five weeks of vacation for the following year, which falls in year which he won't even have an employment relationship with the carrier. So that retiring employee walks out the door with 10 weeks of paid vacation. Any perceived shortcomings in the initial stage are certainly made up for in the later part of our railroad employees' career. The unions have acknowledged that paid time off is simply an alternative form of compensation. And increasing paid time off is equivalent to increasing an employee's rate of pay. In 2009 the carriers' total camp compensation costs attributed to all paid leave amounted to 13 percent of the total compensation paid out by the railroads. This
is a very substantial amount. Now this number
we've already indicated has been reduced because
the fact that we backed out of the BLET. But right
now this translates into $190 million that this
would add to the railroad costs just over the
course of the last three years of this agreement.
And finally, just two quick comments with regards
to the BLET's presentation. First there's only 3.9
percent of the BLET's membership that's included
under this proposal regarding vacations. And
that's only the KCS, the CP Soo Line and the small
carriers. And certainly that does not add up to a
large national group. And then finally there were
a couple of references made both in the BLET
submission and in their oral presentation with
regards to qualifying for vacations. And the 1996
revisions that were made required only that an
employee have 150 qualifying - equivalent of a 150
qualifying days in a calendar year in yard
service, and 180 qualifying days in a calendar
year in road service, as opposed to the 225 and
the 270 days that were alluded to by the BLET. So,
that's what I have. Does anyone have any
questions?

CHAIRMAN JAFFE: I think we're in good shape. Thank
you Mr. Hennecke.

MR. HENNECKE: Thank you.

WILLIAM ROE: Morning.

CHAIRMAN JAFFE: Morning. I don't believe - you're
Mr. Roe, right?

MR. ROE: I am.

CHAIRMAN JAFFE: I don't believe you've been sworn
in yet. If the court reporter could swear you in.

COURT REPORTER: You swear the testimony you're
about to commit is the truth, the whole truth and
nothing but the truth under penalty of the law?

MR. ROE: I do. Good morning. I would like to thank
the Chairman and Members of the Board for allowing
me this morning to speak about labor's proposal
for additional vacation. I am Bill Roe, Assistant
Chief Engineer at Union Pacific. I started working
as a track laborer while working summers for the
former Missouri Pacific Railroad. And for the last
30 years I've held a variety of positions both in
engineering and in our technical training group. Currently I have primary responsibility for engineering safety and training efforts, workforce planning, administration, and project planning.

Labor's proposal for addition weeks would, if adopted by this board, have a significant negative impact on UP engineering department in terms of lost productivity. The labor coalition's party to this proceeding represent about 11,000 of the engineering employees at UP. However, the two largest unions, BMWED and BRS, make up nearly 90 percent of our engineering workforce. I will therefore focus most of my comments towards these two groups of employees. In terms of financial impact, if labor's proposal is adopted by this Board, UP will spend about $11 million in additional lost productivity versus the status quo. While everyone including me likes more time off, UP believes that additional weeks of vacation simply cannot be justified for the reasons I'll set forth. As we step through our rationale, keep in mind that labor's proposal will add on average
a little more than one week of vacation per employee. The additional weeks of vacation you see in the third column are calculated based on the years of service for each of the 11,000 employees represented here today. The cost is calculated from the average wages from each of these crafts. Health and welfare benefits associated with these wages have not been included. Keep in mind that this $11 million is just the engineering portion of the lost productivity. Engineering's workforce is comprised of many types of gangs doing many different types of work. However, for our discussion today, I want to highlight the differences the impact that additional vacation would have on both the large system gangs and the smaller maintenance gangs. System production gangs consist primarily of our tie gangs, rail gangs, curve gangs, as well as their support gangs. These primary gangs are gangs normally consisting of 30 or more employees and are similar to a mobile assembly line. On the other end of the scale are the smaller maintenance personnel who inspect and
1. perform the day-to-day maintenance required to
2. maintain our infrastructure between capital
3. project cycles. Labor's proposal will have a
4. significant and measurable impact on these large
5. production gangs that replace rail ties and
6. ballast. We measure productivity in terms of units
7. produced per man-hour paid. Examples are number of
8. ties per man-hour paid, linear feet of rail per
9. man-hour paid, linear feet of bridges constructed
10. per man-hour paid, et cetera. This kind of
11. analysis helps us to right size the gang based on
12. available track time and equipment. It also allows
13. us to identify those gangs that are meeting or
14. exceeding production standards, as well as those
15. who need help. This is just one example of the
16. scale of productivity we expect to lose if labor's
17. proposal is adopted by this Board. Tie Gang 9063
18. works on the northern and western part of UP
19. system. It has 51 core employees who utilize on-
20. track machines to remove worn out ties and replace
21. them with new ties. Under labor's proposal this
22. tie gang's production would fall by 107 ties for
each additional week of vacation per employee based on our current ties per man-hour rates. Over the course of this gang's annual work schedule, this amounts to a loss of about 5,700 ties equivalent to about 5 track miles. On a broader scale, UP would suffer the loss of over 100 miles of replacement rail, ties and ballast that are important to maintaining our infrastructure. This work is key to our efforts to prevent derailments and slow orders and to improve the service we give our customers. In the short term, we would have two choices. Either spend additional money for overtime or hiring additional employees to make up for the lost productivity, or we would have to defer these ties and rails until next year which then has a compound negative impact on maintaining our tie and rail replacement cycles. But more difficult to measure, the impact of labor's proposal may even be more pronounced on the smaller maintenance type gangs. While we may be able to add a few more employees to each large production gang to cover additional vacations, we
1. I don't have that luxury on most of our smaller maintenance gangs. This slide will give you some sense of the number of employees assigned to different sized gangs. As you can see on the chart, the majority of UP's engineering employees work on gangs that have six or fewer employees. These are our track inspectors, our signal maintainers, section gangs, division welders, work equipment mechanics, surfacing gangs, bridge gangs and signal gangs. These gangs suffer the loss of productivity when even one worker goes on vacation. As we become more efficient additional vacation results in an even greater loss of productivity. These gangs have been sized for the amount and type of work they're expected to perform. Many of these jobs require job-specific training, licensing, or qualifications. To compound the complexity, most of these gangs are spread out over such a large geographic area that similar gangs, like welders, surfacing gangs, or mechanics may be hundreds of miles apart. Managers and supervisors of these smaller gangs try to
1. manage vacations schedules to avoid having more
2. than one employee off at a time to minimize the
3. negative impact on productivity. A couple of
4. examples for you to consider. First, a two-man
5. division welding gang. If the welder goes on
6. vacation and the helper's not qualified to weld,
7. the manager may put the helper to work with the
8. section gang for that week. If the helper can
9. weld, an employee off the section gang may be put
10. with the helper so that the welding work for that
11. week can be performed. The next example is a
12. three-person surfacing gang that consists of an
13. automatic tamper and ballast regulator, two
14. machines that operate on track. When the tamper
15. operator goes on vacation, the manager will
16. utilize another qualified tamper operator that may
17. be working a different position to run the tamper.
18. That may be the foreman, or the regulator
19. operator, or another person from a different gang
20. but somehow the manger has to fill this vacation
21. vacancy with a qualified operator to be able to
22. continue to surface track. This situation cannot
be solved by an extra board of relief workers that
is currently utilized for engineers and
conductors. The jobs are too diverse, sometimes
requiring specialized training, and too spread out
for that concept to be utilized effectively. If
I'm a manager of track maintenance, I would have
to have relief employees that were qualified
foremen, welders, machine operators of various
types of machines and track inspectors, all
familiar with specific territories in which they
would be subject to call. The only exception on UP
is that we normally have one or two relief signal
maintainers on each manager's territory to cover
FRA required inspections and tests of signals. In
short, if a worker goes on vacation, the gang
operates short-handed and productivity suffers as
a result. Labor's proposal would make this problem
even worse. We'll either get less work done in the
same amount of time, or burn more resources, most
notably overtime and track time, to get the same
amount of work completed. Keep in mind that
engineering competes for trains - with trains for
time on the track. The additional time that it
takes to complete the necessary repairs may well
result in train delays that leads to a degradation
in our service to our customers. As we move more
and more to standardized work processes we realize
the value of continuity amongst employees. Working
short-handed a larger percentage of the time
disrupts this continuity. Despite some of the
rhetoric I heard yesterday, we do recognize that
our employees work hard and provide unquestioned
value to UP. They're integral to our past success
and to our future growth. However, to labor's
claim that employees are working harder than ever,
the facts just don't bear that out. If working
harder means the jobs are more physically
demanding I can say at least on UP the jobs of our
main sway (ph) signal employees are not nearly as
strenuous as they were in the years past.
Technological improvements in tools, automated
equipment and the prevalence of cranes and other
material handling equipment over the last 30 years
have had a huge impact on our employees' ability
to work safely. To a large degree, railroads have either automated, mechanized, or engineered out the most physically demanding work in engineering. If working harder means working longer, our time keeping statistics say otherwise. While many engineering employees are called upon to work some long days and nights, particularly during weather emergencies or service interruptions, we continue to see overtime being reduced over the last five or six years, primarily due to better, more reliable infrastructure. This chart shows the amount of weekly overtime that BMWED and BRS employees claimed in 2010. Nearly 2/3 of the BMWED employees average less than 5 hours overtime per week last year. Nearly half of the BRS employees averaged less than five hours per week. Taken as a whole, the average BMWED employee worked four hours overtime per week in 2010; the average BRS employee worked 6 hours overtime per week in 2010.

As we continue to take variability out our system things like broken rails, signal delays and the like, we will continue to see a reduction in
unplanned overtime. As far as the number of days worked, UP engineering employees work a variety of work schedules depending upon the type of work and the business needs. While 43 percent of our employees work a traditional 5 day a week, 8 hour day schedule, the other 57 percent work either 4 tens or a compressed half schedule that provides more days off. By way of explanation, the eight in seven work schedule allows employees to work eight straight days, followed by seven consecutive days off. The eight and six schedule, worked by many signalmen, allows employees to work eight straight days followed by six consecutive days off. In essence we are compressing the hours in a half or in two-week period into eight straight days of work to provide more consecutive days off for the employees, and more efficient use of track time for the bigger gangs. As you can see on the graph to the right, those employees working 4 tens or the 8 and 6 compressed half will work only 57 percent of the days in a calendar year. And that's not counting vacation, personal leave days or
holidays. Those working an 8 and 7 schedule will work only 53 percent of the days in a year, again not counting vacation, personal leave days or holidays. Those senior employees with 5 weeks vacation, 2 personal leave days and 11 holidays may work only 159 days in a year. Said another way, these employees may work less than 44 percent of the days in a year, equivalent to less than 14 days per month. We recognize that those employees working on online gangs will have to travel to and from the worksite, but using any measure those working compressed half schedules have more days off than most workers in private industry. Those working a compressed half schedule, either the 8 and 6 or 8 and 7, effectively get 6 or 7 straight days off twice a month. Some system gang employees actually request payment in lieu of taking their vacation. Others volunteer to donate their vacation or simply ask to not take their allotted vacation presumably to keep from losing their per diem allowance and in recognition of the number of days that they already receive. In summary,
labor's proposal just chips away even further at labor productivity. If adopted by this Board, railroads would have the three choices. Accept this loss of productivity and allow our service to deteriorate little by little, which isn't a good choice; employ more resources, primarily people, and track time to make up for this lost productivity; or accelerate the development of new ways to increase productivity, absent labor efficiencies, to offset this loss of productivity. We believe that labor's proposal for additional weeks of vacation is not warranted and would have a negative impact on our ability to build and maintain our infrastructure at the levels that are required to grow the business. One other comment I'd like to make and this goes to the comparison that labor made between our vacations as far as a pro-rata vacation that non-agreement employees have and the union's vacation. And that is I think the Board has to take into account the whole package of benefits and requirements. Things like all services rendered for non-agreement employees,
they don't get overtime; the differences in health and medical benefits that each has, some have high deductible health and medical packages. So, I think you have to take it in the whole context of what the company provides and what they expect.

That concludes my remarks on the vacation issue but I do want to address something that I've heard several times over the past couple of days. And that is the idea that increased skill is required to work on or operate sophisticated technology. I can only address this issue from the perspective of the UP engineering department and not speaking for all crafts. It's certainly true that equipment of all kind have become more advanced and more computerized. This is a natural progression in technology that we've seen forever and will continue to see in the future. The equipment of the 80s was more advanced than the equipment in existence when I first started in the 1970s. I have no doubt that in another five years we'll look back and say the equipment is more advanced than it is now. This is the same for industry in
general and in a broader sense, society in

general. To address this UP provides high-quality
paid training for those operators, mechanics and
signalmen. We also have to recognize that many of
the people we hire now are more computer savvy
than some of the folks in this room, including
myself. Computer skills are not a specialized
skill for many of the folks we are hiring now.
Again, we believe this is just a natural
progression of technology. And thank you for your
time.

CHAIRMAN JAFFE: Thank you, Mr. Roe. I think we're
in good shape. Thank you, sir.

MR. ROE: Thank you.

CHAIRMAN JAFFE: If I can ask a reporter to swear
in Mr. Crable please.

COURT REPORTER: You swear the testimony you're
about to submit is the truth, the whole truth and
nothing but the truth under penalty of the law?

STEVEN CRABLE: I do, thank you. Hi, my name is
Steven Crable, I'm Vice President of Labor
Relations at CSXT. I've been at CSXT since 2006. I
started my career as a labor lawyer of Jacobs
Burns Sugarman & Orlov in Chicago in 1974, and
between then and now I think it's fair to say that
I've been an avid student of the collective
bargaining and labor relations process. I'd like
to begin by thanking you all for serving. The
parties are disappointed that we haven't been able
to reach a voluntary agreement but having not
reached an agreement, it becomes critical to have
the talent and experience of folks like you to
help the parties gently or not so gently find
their way to an agreement. By my estimation, we're
looking at, and without insulting anyone, I think
we're looking at something like 200 years of labor
relations experience sitting up on the dais and
that really is an impressive amount of skilled
experience and we're very lucky and look forward
to your guidance. So thanks. It's hard work; I
know it's not financially rewarding; it's required
you to rearrange your schedules; and we appreciate
the assistance. So I'd like to thank Special
Counsel in the wings. They have the privilege of
working 12 - 10- and 12-hour days for 30 days at
the same salary, but you're working with great
people and it'll be worth it. Let me turn quickly
to the reason I wanted to speak to you very
briefly. In various presentations by the, on the
craft-specific proposals, there've been some
references to CSX agreements and proposals that
say we want this level of benefits or compensation
because CSX has got this and so I thought it
important to put in context why it is we got some
of those provisions. With respect to the BLET's
craft-specific proposals, I think there was a
reference to CSX's meal-away-from-home allowance
to certification allowance, and also on the
Outcraft's specific proposal's reference to CSX's
6 week of vacation after 30 years. We stand guilty
as charged; there's no doubt that we provide those
benefits and that those are out ahead of the
industry. The important question for you is, why
did you do it? Did you just give it to people for
nothing? And the answer is no. Those were the
result of give-and-take, voluntary, quid pro quo
negotiations with BLET first and subsequently with UTU, and they really came on the heels of several rounds of negotiations with - at BNSF with the engineers and with NS and the engineers. You know, they really started, broke ground in terms of putting in place a productivity improving agreement that also put in place general wage increases supplemented by bonus opportunities that really are unheard of in the collective bargaining context. CSX in 2005, 6, 7, simultaneous with national bargaining, was negotiating with its engineers to put together a signal system agreement that brought several contracts together under one contract, rewarded the unions in some ways that they preferred to be rewarded, got CSX involved in a bonus opportunity program, and actually resulted in an agreement simultaneous to the national agreement in 2007. Let me find my glasses. Being prompted as to what we agreed to. Just to look back quickly, the national agreement - it was effective in 2005 but reached in 2007 - was essentially a pay agreement. Seventeen percent
pay increase over the five years, some minor
adjustments in health and welfare, and no
significant changes in work rules. I contrast that
to the agreement reached simultaneously and
ratified, the CSXT local agreement, that provided
a one-time 3 percent GWI for the 5 years of the
agreement; a $2500 signing bonus; bonus
opportunities in the 3rd, 4th, 5th years of the
agreement; lump-sum bonus opportunities of 6, 8
and 10 percent; and also the kinds of benefits
that were referred to - 6 weeks of vacation,
increased meal allowance, and some additional
improvements. So that obviously compares very
starkly to the compensation package for the
national agreement. I should add that the 6, 8 and
10 bonus opportunities were triggered by exactly
the same criteria as the management bonus plan, so
there's no fooling around, no playing games. And
these bonus opportunities paid well even in
difficult times. In addition, there were some work
rule changes. On the CSX side, you know, we
received and negotiated for something called EBS,
Electronic Bidding System. This was a huge improvement for us because it allowed us to essentially have engineers bid their schedule once every seven days. And when they were displaced they could immediately move to the next preferred job that they had bid upon. This replaced a system in which employees that were engineers and were displaced sometimes had up to 72 hours before they had to displaced to another job. Yeah, that's a huge impact on body count. In exchange for the (inaudible) [0:00:07] failing to get the six-weeks of vacation, they got more non-compensated personal business days off, demand days off, increased paid personal leave days, six weeks of vacation. It's not my intent to bore you with all the details. My only purpose is saying, you know, these items that are cited stick out, they stick out but they were negotiated in the context of quid pro quo negotiations, and it would be misleading for the Board to take those improvements and simply pass them along to the general population without that same kind of quid
pro quo negotiations. Last but not least there were some references, and again this is some misimpressions created about CSX' availability policy. If I heard the testimony right there was a suggestion that if an employee was absent once in 30 days he was going to be disciplined or she was going to be disciplined. That's a misreading of the policy. The policy, in effect, provides more than two times an employee gets a letter, a non-disciplinary letter, you know, reminding him of the policy or her of the policy. Second time two days, a 30-day period a second letter, non-disciplinary letter. Only if the third occurrence happens, you know, is the employee subject to some paper discipline. So that's the way the system works and they're also various safeguards that soften the impact. For example, if an employee talks with his supervisor on any of these steps and has a legitimate explanation that the supervisor forgives, then the letter is withdrawn and all of the discipline withdrawn. Additionally there's a clearing period so that every six months
if an employee has six months of a clean record
then they can wipe out one previous step of the
progression. Last and not least there's another
mitigating factor which escapes me but I'm going
to quit and sit down and turn it over to my boss.

CHAIRMAN JAFFE: Anything for Mr. Crable? I think
we're in good shape. Thank you.

UNIDENTIFIED MALE: I don't think he's been sworn
in yet.

CHAIRMAN JAFFE: If we can have the witness sworn
in please.

UNIDENTIFIED MALE: Please swear the testimony
you're about to give in this case is the truth,
the whole truth and (inaudible) [0:02:25].

MR. ROB KAROV: Yes I do.

UNIDENTIFIED MALE: Thank you.

MR. KAROV: Good afternoon. It's an honor to be
here to serve at the pleasure of the Board. I
stand last here, I guess that standing cleanup,
but they did not save the best for last so you
just have to put up with me here for just a few
minutes. Just a couple of remaining miscellaneous
items to hit and rebuttal. So I'd like to talk about information requests first. And the union's proposal on this frankly is ill-defined and it's inevitably going to end up being burdensome and destabilizing to the railroads so, and really to the parties involved. I mean the parties here in this room have been bargaining obviously for a very long time. And I personally bargained with quite a few folks in this room making labor agreements and we're successful at it at a national level, particularly the local level. We're able to get the deals done and I cannot think of an example where we weren't able to reach a labor agreement because of lack of information. The parties exchange a lot of information. It's probably more than the Board could, we can have you comprehend in a short period of time. But if we just look at the PEB as evidence of this. The items before you here don't hinge upon lack of information sharing. Now you've heard from labor that there's a number of items they haven't been able to providing costing to you but it's not
because they haven't asked us for information.

They have. There's been one item Mr. Wilder referred to that they did ask information on and we provided that. And so if this is any evidence of it, really for collective bargaining purposes it would really be more of an impediment and we make solid good-faith agreements on a regular basis. So let me just turn to grievance handling.

Okay first let's look at discipline grievances. Who has the burden of proof there? Of course it's the railroads. And so we have to prove up the case. We have to provide the information or we lose. And so that's the construct that we have today. It works. Now oftentimes we have five or ten days to conduct a formal investigation so our frontline supervisors are, in addition to trying to run the railroad, you know has to make a bit of a scramble to kick off a formal investigation, see what facts need to be investigated. To be able to share information in advance of that is frankly very, very difficult to achieve. However there's a remedy right? And that's the formal investigation
itself. Both parties get to examine the
information. If somebody needs to call a recess,
ask for more time to review the information, they
have somebody that can speak to the information in
a manner that may require technical or
professional expertise then that burden rests upon
the party to do that. And so with again,
discipline cases, it's our burden as a railroad to
prove that. Mr. Wilder also here referenced the
CSX Award where the railroads didn't provide the
tapes. The railroad lost. And so there's
reconciliation there in Section 3 process for
information disclosure and we think that's the
right place for that. So then let's turn to rules
cases. And so of course there the burden rests
with the moving party to file grievances. It's
often with labor. You know frankly I've seen some
ill constructed grievances where they are really,
maybe for lack of time for fishing expeditions and
the burden of proof isn't met. And so this would,
information sharing here could really serve to
shift in a harmful way, the burden of proof. And
so and what would that perpetuate? So if there was additional information sharing under the auspices to create a grievance format then we perpetuate more grievances because there's information that's being paying to get more information back and you can see how that would continue. And so that too doesn't really serve the parties well. I can think of an example here we had recently also with, I have a gnarly rules case with Article 15 of the '96 National Agreement with Maintenance of Way and we were willing to share some additional information but required a confidentiality agreement and the union was unwilling to protect us with the confidentiality agreement that we proposed. So you could see where that could cause certain problems. Mr. Wilder referred to the (inaudible) [0:06:37] industry where perhaps these are more common but as the Board understands, that's a party pay environment. They have many less grievances there than we do. We're back stopped by federal dollars and there really are two different environments. So that's on
information sharing. We really don't think it's required. We're able to make deals. We're able to handle grievances without any new construct. Let me turn then briefly to the last topic if we could just fight off our hunger pangs just a short while longer and I think we're off to lunch. But you know with the cab conditions, you know you think back to a car that you may have had 25 years ago versus the one you drive today. It has superior ergonomics, it's more reliable, it's more comfortable, it vibrates less. And so you know locomotives have been the same way. We have OEMs that are competing to build better and better locomotives and so the locomotive cabs have benefited from that right? This is not the steam era where folks are strapped to a boiler and it's a messy environment and certainly the cities are not first generation diesels and it's sort of the grimy environment there. These are pretty shiny, clean modern cabs for the locomotives. We recently had the National Mediation Board on a train trip. They spent a lot of time on the front end of the
1 locomotives. They had no complaints about the
2 conditions on our locomotive fleet. At BNSF, we
3 have a very new locomotive fleet. It's a massive
4 capital investment that we're made. I think the
5 other class ones are in the same boat. Let me just
6 remind the Board that really there are three back
7 stops to assuring good locomotive cab standards
8 and they all exist today. The first is the
9 (inaudible) [0:08:04] regulates the cab
10 environment and so there's penalties associated
11 with that and an enforcement mechanism there. The
12 second is Arbitration Award 458 with the BLE (ph)
13 it settled the early 80s round 1986 provided for
14 defined cab requirements clean sanitary toilets,
15 drinking water, exhaust ventilation, cab noise
16 abatement, etcetera and those are all resolvable
17 through the Section 3 process. I know I personally
18 settled claims in that regard and those could have
19 gone to arbitration if we hadn't settled them. And
20 then the third back stop is per the '86 agreement
21 local and national cab committees were
22 established. And so at BNSF 25 years later we
still have a very active local cab committee as do most of the railroads. So these three overlapping areas really then, you know, the intervention certainly don't speak to you any necessary creation of cab standards that don't exist today. So anyway that's the nexus of the conclusion. I mean we have a long history, we've worked through many of these items without, you know with the existing constructs and practices that we have today both on cab conditions and information requirements. We don't think anything needs to be added in that and we'll leave that for the Board and be happy to take any questions.

CHAIRMAN JAFFE: Anything for Mr. Karov? I think we're in good shape. Thank you Mr. Karov.

UNIDENTIFIED MALE SPEAKER: Mr. Chairman, rather than take any more time, I'm going to put aside my planned remarks and instead invite from you any questions as to clarification or illumination as to any aspect of our proposal or our position. I do want to take one moment, however, to address an issue or a matter raised during the presentations
you have heard on the furlough question. And this is more a matter of tidying the record. If you'll take a look at the screen, the question is what's happened with respect to furloughs growing out of the recession. Before you are the statistics for each of the major railroads and if you read across left to right you will see, first off, the bulk of the furloughed employees have returned to work. Let me call your particular attention to the BNSF numbers while the number for return to work shows 92.2 percent. I would note that 100 percent of those employees were invited back to work. These are the numbers that actually accepted the return to work. I would also note by way of completeness that the vast majority of these furloughs fell upon UTU, fell upon the trainmen. They are the only union not before you. The unions here who have used and cited to furloughs as a reason to support their proposals simply have no stake with respect to this matter; certainly not now with these employees all returned to work, or largely returned to work. With that I would stop and
1 invite any questions, Mr. Chairman, you or the
2 Board may have. Otherwise, I think that completes
3 our presentation.
4 CHAIRMAN JAFFE: (inaudible) [0:11:27]
5 MR. ZACK: I want to get a copy or that (inaudible)
6 [0:11:30].
7 CHAIRMAN JAFFE: Anything further? I think we're in
8 good shape. Thank you again Mr. Gradia.
9 MR. GRADIA: Thank you Mr. Chairman.
10 MR. MUNRO: Mr. Chairman, three quick housekeeping
11 points. The slide that you just saw was just
12 created in a hurry, I might add, and will be
13 provided to the Board and opposing counsel
14 briefly. Second I wanted to note that the BOAT
15 local agreements Mr. Crable mentioned have been
16 provided to the Board and opposing counsel this
17 morning; the CSX agreement as well as the other
18 two. And finally I just wanted to note that the
19 carriers would like to take the Board up on the
20 offer that was made off the record regarding the
21 provision of the carrier's dependencies (ph). The
22 materials noted in the footnotes will provide
those to the Board for its convenience should it
care to review them. I've provided an index to
opposing counsel and will provide them a copy of
the materials as well upon request. With that,
that concludes the carrier's rebuttal case. I
apologize for the additional time. Unless there
are any questions, we're done.

CHAIRMAN JAFFE: We're in good shape. Why don't we
go off the record and (audio break) Right. At
your convenience.

MS. PARCELLI: Thank you, Mr. Chairman, and board
members. Just to give you a roadmap of what we're
going to do on rebuttal and everybody is on strict
orders to obey time limits. We'll see how that
works out. We're going to turn first to Mr. Roth.
Then we will bring.well, then, actually, Roland
and I will speak briefly on an issue, then we're
going to bring Ms. Mallett from Cheiron back. Then
we will hear from the Brotherhood of Locomotive
Engineers and Trainmen and the Brotherhood of
Maintenance Way Employees at the end, and that
will wrap up. So, we've got to give you Mr. Roth
THOMAS ROTH: Thank you.
CHAIRMAN JAFFE: And I'll just remind you you're
still under oath. We don't have to swear you back
in again.
MR. ROTH: Yes, sir, I understand.
CHAIRMAN JAFFE: Thank you.
MR. ROTH: Thank you. I have distributed, Mr.
Chairman and board members what I asked to be
marked Employees' Exhibit Number 89 for
identification purposes. It says on its face that
it's Exhibit 88, but I understand that there was
an additional employee's exhibit or union exhibit
that was introduced after the last volume, so
please make that correction. This is a document
that essentially contains the materials that
supports comments that I made earlier in my
affirmative presentation, so don't be alarmed, I
don't have any intention of walking you through it
or citing these materials. They're basically, as I
said, supportive of statements I had made earlier
and materials that I had promised to furnish the
board. You may or may not need to refer to them later. I would just like to make a couple of comments regarding this morning's rebuttal case by the carriers. And this is certainly not going to be a compressive response or a tit for tat on points of disagreement, but just a basic outline of the some of the areas where we still have some concern with the carrier's position so that the board at least has on record our opposition to some of the points or arguments that their experts have made. The first subject matter was the pricing that Mr. Gradia had walked you through this morning. I just want to note that the presentation under costing numbers was at a high level. What I mean by that, a general level, and they have reported to some kind of basic information that the numbers that they had been supplied by their participating railroads and walked us through some of the math involved in arriving at the numbers that they did. But we have not been given access to the data upon which the carrier's costing has been performed. They, again,
you know, some of it, because specific requests were not made. Others because they were very stubborn in turning the information over. I need not get into that matter with you, but I did want to advise the Board that if, and to the extent that this pricing material becomes important in your own deliberations, I want to be. I want you to understand that it's not. They're not costing, it's not a pricing exercise that have participated in and nor can I confirm those calculations. And one (inaudible) work is to refer to something Mr. Wilder said this morning, one of (inaudible) at work, there is full disclosure on the information necessary to go through the pricing exercise of various proposals that are made at the bargaining table. And I don't regard that as an adversarial exercise. It's normally a matter of simple accounting, once you know what the inputs are and once you know what the basic information is, the payroll data, the headcounts and such. We have not had that opportunity to explore that kind of data and so I'm in no position to verify that the
costing that the carriers had offered on the rules or on any of the matter, of the pricing that they had performed. There is one specific, however, calculation, that I want to raise with you and that is the certification pay calculation, because as you recall, in my direct case, I had made an estimate of what we thought that was, in terms of the wage increase equivalent and obviously, it differs from what the carriers had put in evidence this morning. I had two or three concerns with the information they furnished this morning. The first is that it is my understanding that they, each RCO, radio control operation, involves a two payments of the certification pay and not a single one. It is certainly not clear and others in the room on our side that the RCO total number of payments that are represented on their, page three of their charts this morning, I don't know if that was marked as an exhibit or not, but it was page 3 of, I think, Mr. Gradia's presentation. It's certainly not clear to us that that number is half of what it should be, or reflects the full number.
Secondly, we understand that the hostlers were also furnished this cert pay under the UTU agreement and we don't see that there is any accounting for the number of payments that they might receive as well. So, those were two concerns we have over the representations that have been made, with respect to its value, and again, if that is ultimately, we don't think it's relevant. I don't think it's relevant, but to the extent that the board ultimately believes that it is, we may. It would be prudent to get more information on the manner in which those calculations were made.

A third problem that I detected when I looked at the pricing of the certification pay was the kind of the general, the conversion, if you will, to what was represented as a, approximately 1 percent, it's actually .97 percent, a general wage increase. I guess it was represented as a general wage increase equivalent of that magnitude. And what happened here is that they calculated total value of the. That is to say, the total expense of the certification pay and then divided that by the
UTU's total payroll, and then that resulting would be called the general wage increase equivalent. But the fact of the matter is in an operating craft there are a lot of collateral payments, there are a lot of constructive allowances that are not variable with general wage increases, so that denominator, as I understood, the presentation included total compensation, cash compensation, including these payments that are not variable with general wage increases, so I think it's an understatement of the value of cert pay as a percent, as a equivalent to a general increase. But again, these are, it's less of a criticism on my part than it is a question. Because, again, we had no opportunity to sit down with the carriers off-line or otherwise to determine how these numbers should be calculated. Finally, on the question of the pricing, and the that the parties have engaged in, I would like to direct your attention to the volume 89 that I just distributed, and I particular, the this would be record page 2543 in
that deck. What I have here is a set of revised
tables, revisions from tables that I had prepared
and presented earlier in my chart book. I had
detected during the break that there was a glitch
in my workup of the UTU agreement, as
compared with the workup of the.
and cost of the
proposed wage increases for the 11 organizations.
It's a detail, but it has to do with the
difference between a 2009 payroll and more recent
information I obtained from the NLRC, reflecting
2010 payroll. So, I didn't sync those up. I
actually understated the kind of, the cost of the
coalition proposals by a bit, so I wanted to,
again, I don't know if any of this material is
controversial or will be relied upon by the board,
but to the extent that it does, I would request
that you substitute these pages, which involve
table 44 through I think it looks like 51 of the
original chart book, and just ignore the others. I
should note, however, that after the recalculation
and the check of the numbers, you'll note by the
point of the exercise, which was to demonstrate
that even if our proposals were adopted and were
made applicable to all class one railroad
employees who are organized, with the exception of
UTU, but including UTU's deal for it, that that
would not have an expense that would cause any interruption in the continued
financial progress of the carriers under any
reasonable assumption or projection for increases in prices and increases in traffic. So, nothing changes by way of conclusion or substance, but I did want you to have those amendments. Secondly, on the wage question, and related subject matter, I just have a couple of comments, which I think regards Dr. Evans' response of my materials presented this morning. First of all, just by way of clarity, during the, in my, or in Dr. Evans' presentation, there was really two parts to the development of the alleged premium that rail workers are paid. One was exclusive to salaries and wages and the other one was benefits, and of course, the two are added together to arrive at the conclusion on total compensation. During my
testimony, I made some quip about they're comparing us to the service sector in (inaudible)mark. That comment, just for clarification, is applicable to their work up of the benefits side of total compensation and not to the salary rate side, which, as Dr. Evans pointed out this morning, was involving a lot of different diverse classifications of work. Well, that diversity, by occupation and by industry is not available for the EC employment, the employment cost, or employer's cost of employee compensation series in the BLS. So the analyst is stuck with these broad measures of the industry, which include not only the industries which are not comparable to ours in terms of occupational mix, but include the lowest paid of American workers and those most likely not to have fringe benefits. So, just to again, to kind of avoid any confusion on what I was saying and what Dr. Evans was responding to. Secondly, in had a lot of material inside Exhibit No. 89 that goes into some question of whether or not these job matches are
appropriate. I, during my earlier comments, had referenced in particular the train dispatcher, and I observed that the jobs to which the train dispatcher was being compared were not appropriate and seemed to indicate that the analyst didn't have any idea what a train dispatcher and freight railroad did by way of performance because they were comparing them to lesser paid and less responsible jobs, such as taxi cab dispatchers, which are large, and those calculations. Inside Exhibit No. 89, and you'll see this in the table of contents, there's a series of photographic reproductions of BLS material that kind of give you the next layer of materials upon which the evidence comparative analysis is based, and that will give the board some indication of what job titles were actually compared and where the dominant, where the dominant classifications lie and such. I don't want to belabor this point. It's obvious that we disagree that the job matches are appropriate and you should not leave this room under the impression that the carriers were
1 engaged in some rigorous, sophisticated job
evaluation when they made these job title ma.
2 these job matches, they were based upon strictly these
3 broad job. these occupational categories, based
4 upon a matching of job titles. It's not very
5 sophisticated at all. And I don't know that
6 there's any quarrel about that and I'm not being
7 overly critical. I mean, sometimes you are simply
8 limited to the data that you have, and you do your
9 best with it, but don't get the impression that
10 this is some kind of sophisticated analysis. It's
11 not. I pointed out. There are several examples in
12 here that we think the job matching is way off
13 base. But again, that's. that a second problem,
14 however, within the job analysis that Dr. Evans
15 performed has to do with a what I regard as a
16 mistake on the calculation of the proper
17 comparative rate of pay for the locomotive
18 engineer. There is, and again, you know, this is,
19 given our time, this doesn't make any sense to
20 drill down on this issue particularly, but let me
21 give you the basic outline. The rate that is
being that was calculated and represented as an average straight time hourly rate for the locomotive engineer under class one railroads appearing before you, would have included all of the constructive allowances and other collateral pay that a engineer receives. And of course, that calculation and that of average straight time rate, including those numbers, is appropriate for some purposes. The problem is, is that's not how the BLS does it. The BLS, when it looks at locomotive engineers, it's calculating it by comparing straight time hours, straight time earnings, straight time pay divided by straight time earnings. When you do that for a locomotive engineer under a freight railroad contract, class one freight railroad contract, you get a much, much smaller rate, one more comparable to that which the BLS publishes. So, I mean, again, without needing to understand exactly the mechanics of how these calculations are made, understand that we take issue, I take issue of that particular comparison, and as you recall from
the bar graphs, that's one of the occupations where the carrier, say, has the greatest premium over the alleged appropriate labor market rate. All of what I've said thus far is a matter of detail, the principal point that I conveyed in the course of my direct remarks remains. We believe that the party's behavior at the bargaining table and that presidential merging boards, really invalidates the comparisons to begin with. And I have material inside of Exhibit 89 which calls upon a lot of the PEB literature, in terms of exhibits that were made by the carriers in the past. I'm going back 47 years and in each and every case, we can find the same material, which demonstrates that the railroad worker was paid 80 percent over all other industries, and all of the same kind of analysis. I mean, I'm tempted to point you to them and go through the numbers. Invariably, railroad workers are paid more than 97 percent of American workers. Well, you know, that's been true for 50 years. At least, that's proven by my exhibits, the cites that I make in
Exhibit 89, but it's probably been true years before that. But I think that, in the end, you'll find that this fact is really a function of the occupations which are in the mix of those occupations and the skills involved in those occupations that are required to run a freight railroad and not some other enterprise. And so, naturally, we would expect this group to have a wages and benefits to exceed that which you might find in other industry. I even include in this look here, test some exhibits and some analysis that were performed by Dr. Evans himself 15, 20 years ago, where he has proven the same means, that the railroad worker was paid 70, 80 percent above the BLS standard. I don't think that meant anything. I think that the record following those cases have proved that. Those numbers have failed to motivate the parties to do anything except for to expand that alleged premium as PEBs have done. But that's the result of collective bargaining and clearly, there's something wrong with the statistic, it's not a
standard for wage determination in this industry, and the history simply validates that point. And on this subject I guess we can conclude by referring back to PEB242 42 Page 24 where the board said and concluded the jobs are unique to the railroad industry and have not meaningful - there are no meaningful comparisons with the - with occupations outside the industry. One final point that Dr. Evans made some comments about or differences on the Consumer Price Index and on the real wage change over time, I have (inaudible at 00:00:38) with his making it clear to you that what I was talking about when we were doing our historical wage - real wage change analysis that we were - that I was including that period of time where we had wage freezes under 219. And that I was calculating in my projections over the course of this agreement the amount necessary not only to maintain real pay over this contract but to recover that lack. That's - I - if I didn't make that clear or - in my affirmative remarks or if that's not clear from my summary statement, I want
to make that clear now because that was certainly
my intention. We don't apologize for asking for a
wage increase over the course of this agreement
that can correct for a period of time in which the
carriers were obviously in a wholly different
position and had least ability to meet the - meet
a demand for maintenance of real pay. Also you
know as I - I think both Dr. Evans and myself made
reference to the Consumer Price Index that just
came out this morning. He said it - he - you know
he said that it's been volatile and changes from
month to month. That's certainly the case. But I
would note that when the CPI came out today that
it - it came out at annualized rate of 4.4
percent. So again supporting the proposition that
I advanced that we are currently running at an
annual rate of inflation that exceeds - it
certainly exceeds 3 percent and exceeds the 1.5
CBO projections that the carriers had used in
their analysis of real pay. As to what's going to
happen from this point forward, that's a judgment
for the board to make based on all the voluble
evidence. And good luck with that because no one really can - has very much success in predicting the costs of living. I would simply caution that there's no - there's little need to guess over the first 21 months of the agreement. We know what the CPI has done. And it has risen at a pace that exceeds 3.3 percent per year. That brings me to the next topic. There were - and again I'll make this brief as well. Maybe not as brief as Carmen would prefer so if I get - if I wince it's because she's kicking me under the table. This - I'm going - I'm just I guess confused about this whole notion that there is a social cost to raising wages for railroad workers. It's - the proposition is that if you have an increase in labor costs for the railroad worker that would be passed along to the public in the form of higher prices. I think the analogy was, you know, you put it in one pocket; it's got to come out of the other pocket. And the other pocket is the public interest in this case. And there's some public costs to increases of wages for railroad workers. I would
suggest that there might be a third pocket. And
that is that pocket of those who provide capitol
to the railroads. What's left out of that equation
is what happens to the interests of Wall Street
and the - and profits. We are not apologizing for
wanting to take what they have in terms of these
escalating cash pool that has been passed along to
shareholders at this point. So again, I mean we're
not going to solve in this form and you're not
going to engage in any kind of deliberation
regarding the difference between, you know, it's
supply side and demand side economics for the cure
of our current economic problems nationally. But
that kind of comes to mind when I hear this
testimony about the social costs of wage
increases. I don't know that it has any place at
the bargaining table or has any real application
when you look at railroad history. The face of the
matter is over the past 20 years, labor costs have
gone up. Prices for the consumer have actually
fallen and investments in the physical plan for
railroads have steadily risen. So what happened to
the social cost? Well productivity took care of that. And so you know I don't know that it - that the whole economic theory has any real application here. One thing that's - one last thought on this however, it has to do with employment. Again I don't get - now maybe it's because I didn't go to the University of Chicago. Maybe I've - there's something diminished in my education but I don't get the ap - I don't get the connection between wage increases for railroad workers and effects on employment. Every carrier that I know of and I've talked to several of them. And carriers in the airline industry as well run staffing models. Manpower planners have staffing models. And what drives employment in the railroad industry for train and engine workers, for example, is volume. It's traffic. You hire - you have more traffic, you hire more T and E employees. What the staffing models for the rolling stock or for the shop employees is driven by the age of the fleet and the size of the fleet. You have older cars and older end - older locomotives and it takes more
people to repair them. If you have more of them, it takes more people to repair them. In the maintenance of way, what drives employment levels is not the level of compensation. It's what - it's the miles of track that you have to maintain. And the track and the density that runs over those trains which causes - which bears on the age and the cycles that - the maintenance cycles that the - that engineering departments have to contend with in which drives their maintenance requirements and their ultimate employment levels. None of this has anything to do with the level of pay. I mean an engineer can - you know the BLE can decide to cut their wages by 20 percent. Now that's not going to mean that the carriers are going to hire more engineers and have one sit on the lap of another in the cab. They're instead going to take that 20 percent discount. They're going to use it to cut operating expenses and it's going to increase the - improve the operating ratios and profitability. And that's going to go to the executives and to the shareholders. It's
not going to go to employees by way of more employment. But I'm - I must have been listening to something when this argument was made but I - it doesn't have anything to do with the reality that I know of in this industry. You take one of those high tech machine operators and maintenance away with the pictures that we have seen. There's - you know if you cut the maintenance of way compensation in half, they're not going to hire a bunch of trackmen and give them a pick and shovel and park that piece of machinery. That's not the way it works. So again, you know, this is for you to muse over and maybe at best over a Martini some time. But it doesn't seem particularly relevant here. Let's see. One last - I keep saying one last thing from Mr. - from the good doctor but another thing I want you to understand that there's a difference between us on what this roll of quits as in your analysis of the proper level of compensation. We are told on the screen here this morning that there are 1.2 million applicants but only 7,455 persons were hired. But what you don't
have in front of you and what you don't know and
what you need to know is how many of those 1.2
million applicants met the qualifications demanded
by the carriers for the high level and high
skilled jobs that they're recruiting for. Why is
it I would ask do we have vacancies in jobs? Why
are they unfilled when you have 1.2 million
persons standing at your door waiting for a job?
Why is it that if you go online to - on CSX or any
other big carriers and you - when you find - you
can - you find in their - on their general Web
sites applications to apply for jobs? Why are they
advertizing for workers when I've got this horde
outside my door waiting for employment because
we're paid so excessively? There's again no
connection between the theory and the reality
here. But there is - there are reasons why - by
railroad workers did not quit their jobs which
have nothing to do - they're total extraneous to
their perception of the level of compensation. The
first is that railroad retirement benefits are not
portable. (inaudible at 00:09:13) worked for the
railroad 20 years, I can think I'm making - I'm not making enough money but I'm not going to quit because I don't want to sacrifice benefits for - that railroad retirement benefits that I've worked for all my life. And that the employer has financed for all the - all of my work life as well. Or how about the seniority system? A seniority system is an investment that a worker has in his job. It defines not compensation as much as it - in our business as it does the quality of your life. The quality to pick your assignments, the quality of pick a day off for a holiday when the less - when the more junior person has to work. This is an investment that the employee has in his work life. It - seniority is not compensation but it drives the quality of life. And if I have a big investment in my seniority, I'm less likely to quit. Where do you get seniority? Collect the bargaining agreement. So too are grievance procedures; exit - the studies indicate, the literature says that the - you quit your job most frequently when - not
because to look for something that's more higher paid but because you're disgruntled in your job.

It has no - you have no satisfaction. You don't - you're mad at your supervisor. Your supervisor mistreats you. What does a railroad worker collect a bargaining agreement due before he quits under those circumstances? He files a grievance. And he gets satisfaction through a grievance procedure.

Now I suppose the economists would say well, that's value. You know we - you should take less compensation if you have a grievance procedure. We say it has nothing to do with the quit rates. But the biggest reason, of course, is that there is no occupational ability in railroad jobs because they're peculiar to this industry. Someone who has invested his entire career into the training and education to be a locomotive engineer or a high tech machine operator is not - can not transfer those skills because his employer is the only one in town and the only one in the country in some instances. So obviously railroad workers don't have occupational mobility of the kind you see in
the service industry or elsewhere. So it doesn't surprise me that you have low quit rates. But the question for the board is what the devil does that have to do with a - with excess contri - compensation? Okay. Ability to pay; there's really not much to say here. So I'm almost done. I'm alright?

MS. PARCELLI: You're great.

MR. ROTH: Okay. Alright. I'm talking fast enough. The ability to pay; on this subject, we heard from a witness this - from the AAR this morning. And I don't detect that there's a whole lot of differences actually between the party regarding where we are today and how far we have come. I mean this is something this really can't be challenged. All the numbers that we put in evidence regarding the current strength of the financial position of the carrier are just irrefutable. What I heard this morning however was that we still have strong Cap X programs that have to be funded. And so we're - and we're not meeting our cost of capital. On this point, I can only
refer you, Mr. Chairman and board members, to
Union Exhibit No. 86 and Appendix B I believe it is. It's at Record - Page No. 2130 in the Union's case. And we're not going to read this at you or go through it but you understand that we have a big difference with the carriers regarding the - what the use of the STB's revenue adequacy determinations in measuring the carriers' extent of access, if you will, to the capital markets. Know - there are all sorts of reasons for that and they're recorded for you in that appendix. I would also direct you specifically to STB X Party No. 664 which is their decision in 2008 which records the role that the AAR on behalf of the carriers played in the determination of how costs of capital is measured. And in that decision the board itself states that the carriers had an interest and in fighting any effort that STB made on behalf of petition by shippers to redefine the methodology of measuring costs of capital in a manner which would lower that threshold and thereby making more railroads revenue adequate
because of the regulator concerns that the carriers have had. But again, don't rely on my reading of those decisions. They are there for your review. One - there was - I don't know but there's - again this is - this seems like a minor point but time was spent this morning not only for reasons that escape me. But there has been a growth in leasing. Apparently and that's part of the explanation for why there's been a diminution in the amount of debt or the use of that out - that - you know it would - debt in financing equipment. That's certainly the case. But I would remind the board that when a carrier increases the costs of leasing that that shows up on the income statement as an operating expense. That comes out of profits. If they weren't leasing and they were borrowing more, they'd have greater profits than what otherwise would show up. But their balance sheet wouldn't be as clean because they would have more debt. So this is a business decision. We've got so much cash we might as well lease is the decision. We don't have to borrow. Clean up our
balance sheets, we look better to - we were - we have more liquidity because we have more ability to absorb long term debt. But in the meantime, we have so much cash why not lease. That comes out of the income statement. So not withstanding the fact that the leasing arrangements have gone up in number and in values as a means for financing equipment; that does not bear in my mind or my view on their financial condition. It's not a problem. It's just a business decision to pay to - out of one pocket or the other. And finally with regard to future expectations, I'd made reference in my affirmative remarks about the momentum that the - that we have going forward and how the analysts on the outside are expecting good things and profitable things from the carriers. Just last night for instance, before the close of business, CSX reported its third quarter earnings. This is not in evidence here so let me report on that. The - at the close of business yesterday, CSX reported their third quarter earnings. And the headline of the piece that came from the railroad age was "CSX
posts record third quarter earnings". Net earnings of $464 million or 43 cents per share, up 19 percent from the third quarter of 2010. And this is another quote from the press release. "CSX operating ratio was 70.4 percent and the company said it remained on target for operating ratio no later than 2015 of 65 percent". Again, got the momentum on this - in the same - and the same with this morning I read from the Railroad Age that a third quarter rail shipper's survey which was a survey of shippers - participating shippers that with the hundred - with the $10 billion in combined transportation purchasing power or greater indicate and I quote "railroad shippers anticipate an average base rate increase of 4.3 percent overly the next 6 to 12 months". Again, unquote, that doesn't sound like an industry that is going to struggle in producing record income once again, record revenue and income in the next 12 months of this collective bargaining agreement. I have no - nothing further Mr. Chairman. Thanks for your patience and attention. And unless there
1 are questions of me, I'm - have concluded.
2 CHAIRMAN JAFFE: I think we're all in good shape.
3 Thank you again Mr. Roth.
4 MR. ROTH: You're welcome.
5 MS. PARCELLI: Just before we bring Ms. Mallett, I
6 wanted to briefly address some of the points made
7 by Mr. Boley in his rebuttal this morning
8 regarding the negotiations with regard to health
9 and welfare. Really as far as our coalition, the
10 CRU Coalition is concerned; we'd just refer you
11 back to the testimony of Mr. Parker yesterday. In
12 terms of his written testimony that's been
13 submitted, you can find this discussion on Pages 6
14 through 7. In a nutshell that this - that CRU
15 Unions attempted to bargain about what they viewed
16 as non-cost shifting aspects of the carriers'
17 proposal. But as you heard Mr. Boley himself say
18 after talking about the negotiations, it was a
19 package. So that's what they were told at the
20 table. It was a package. So they attempted to
21 bargain on what they could. And then I think Mr.
22 Wilder just wants to speak to the ROBC experience
in this regard.

MR. WILDER: Yes. The RRBC and the carriers engaged
(inaudible at 00:01:09) substantial period of
months on healthcare in an effort to find a key or
a common ground to resolve this problem. Much as
those two parities did in the 2005 to 2009 round
but at the end of the day, we could not do so
(inaudible at 00:01:32) on that last day as the
CIU Coalition was at the same time. That led to
the request for a proffer of arbitration. Thank
you.

CHAIRMAN JAFFE: Thank you.

UNIDENTIFIED MALE SPEAKER: Okay. You all set.

UNIDENTIFIED MALE SPEAKER: I'll go.

MS. PARCELLI: Karen, where do you want to be?

MS. MALLETT: I'm going to come over there then.

Should I (inaudible at 00:01:59)?

UNIDENTIFIED FEMALE SPEAKER: Would you - ?

MALE SPEAKER: Do you mind?

UNIDENTIFIED FEMALE SPEAKER: I can slide down.

UNIDENTIFIED MALE SPEAKER: Okay. (Background
conversations)
UNIDENTIFIED FEMALE SPEAKER: One moment for technical issues.

UNIDENTIFIED MALE SPEAKER: We're fine. (Background conversation)

UNIDENTIFIED FEMALE SPEAKER: Chairman, while we're waiting for Ms. Mallett to get up, Mr. Roth had informed me that there was one piece in his latest submission that he forgot to mention to the board and bring to your attention. So if he could do that now that would be helpful.

CHAIRMAN JAFFE: May as well take advantage of the (inaudible at 00:02:46) in the proceedings so that's fine.

MR. ROTH: Thank you Mr. Chairman. I apologize but I did promise the other day that I would furnish you with a - there was that list of PEB citations that the carriers have made adding to your - adding to the record here a calculation of the percent of workers covered by a pattern application. That's (inaudible at 00:03:14). You can't necessarily glean this from a PEB report. So I wanted to just identify where that was so it
wouldn't get lost. Okay. That said, it's on Record Page 2552 in the Union's case in Exhibit No. 89.

Okay. So just by way of construction, it identifies the reports cited by the carriers in this record. And I believe there are 19 as I first testified. In the far right hand column, I indicate whether the pattern was identified and applied. And I think in all instances they - it was by my readings so again the carriers correct in its sightings of these cases. But in its second to the last column, I calculate the percent of the - of workers before the board - in other words, involved in the case to which this pattern applied. And as you can see, it's in, except for one case, it's well below 70 percent that we have.

Thank you.

CHAIRMAN JAFFE: Thank you again.

MS. MALLETT: Just talk from up here?

CHAIRMAN JAFFE: (inaudible at 00:04:29) that's fine.

UNIDENTIFIED FEMALE SPEAKER: Okay. Sure.

MS. MALLETT: Let me see if this works.
UNIDENTIFIED MALE SPEAKER: That's fine. The - MS.

MALLETT: Yep.

UNIDENTIFIED MALE SPEAKER: - organization's call - we call Karen Mallett.

UNIDENTIFIED MALE SPEAKER: Ms. Mallett welcome again and we need to remind you you're still under oath.

MS. MALLETT: Thank you. Wait, does this microphone - can you hear me? UNIDENTIFIED MALE SPEAKER: Yes.

UNIDENTIFIED FEMALE SPEAKER: Yeah.

MS. MALLETT: Okay. Well thank you and thanks for your patience and thanks for the opportunity to address the issues brought up. On the morbidity or health status issue - oh, I had to put these together in the little break so there could be typos. But we'll - they'll help us get through it I think. On the morbidity or health status issue, there are two points that were addressed. One was is an adjustment needed at all. And the second one is the number right. And I'd like to go over both of those issues. On the adjustment needed, the
using the studies that were being in question
here: the Kaiser Family Foundation, the Hewitt
Study, the Watts - the Towers Watson Studies and
we were trying to figure out what the difference
was in industry then we would want to make
adjustments for items like benefits and medical
management and vendors and stuff like that. But
those items, we're not trying to figure out what
the industry factor is. We're not trying to figure
out what the morbidity is. We're trying to figure
out the things that can be controlled by this
group of people. And those things are the plan
design and the medical management. And those are
the two issues that are sort of on the table. And
so that's what we're trying to normalize or get
rid of the noise for the morbidity or the health
status. And here's another example of that. And
we're saying is if you have a group that has only
11 people in it and one person in one of the
groups, Plan A. It has one person that's 35 and 10
people that are 55 so a total of 11 people. Then
their total costs would be $205,000. And this is a
very simple example. But if you had Plan B and you
had 10 people that were 35 and one that was 55,
again 11 people, their costs would be $70,000. And
you could easily misconstrue the fact that Plan
A's benefits were so much better, so much richer.
Their medical management was so much worse than
Plan B's. And we're saying that's not a fair
comparison. The comparison and the issues on the
table here is the benefits and medical management.
And that's why we feel it's so important to
normalize the data in order to get a comparison.
As for the next question, the factor, the 1.32 -
well before I go to that, the surveys. We agree
with Dave. They're not all 1.0 but they're
supposed to be representative of the U.S. employer
sponsored plans. So they should be really close to
1.0. There's going to be some variance absolutely.
One's - because some's going to 0.995, 1.01 but in
that ballpark, they should be or they shouldn't be
- we shouldn't be using them. And in our report,
you'll notice that even within the surveys, there
was a variance of like 20 percent. So there is
some variance that's going on there. As for the
point of whether it should be 1.2 or 1.32, several
points we'd like to point out. One, we broke down
the risk scores or the morbidity factors or health
status-there's all different ways you can term it
- by vendor. We found United Healthcare at 1.291,
Aetna at 1.52 and Highmark at 1.248. We're not
sure which vendor Dave was referring to that you
said 1.2. We're not sure what year he used. If he
used a latter year then maybe indeed it's a
slightly lower number because as we pointed out,
we're expecting the risk scores to go down as
people get younger. So we're expecting it to get
slightly better as time goes on. The other - the
second point we want to make in terms of the
number being valid. We hired Ingenix to
independently verify our figures to make sure we
didn't screw up our calculations to make sure that
the 1.32 number was representative of what the
pharmacy risk group rebuttal would produce. And
that's sort of what we did. The question is; is
our pharmacy risk group models good examples of
1 what should be used. Now my understanding in the
2 industry of talking to Kaiser and their
3 underwriters and United Healthcare is that it's
4 common for underwriters to use pharmacy risk
5 groupers more so than in combination of medical
6 and RX. Because RX data is readily available and
7 more similar between one plan verses another. So
8 that's the most common use. But it still doesn't
9 answer the question of how the - different they're
10 supposed to be. Going to the site of actuaries
11 report done in 2007 which was meant for actuaries
12 like Dave and myself to be able to know which
13 modeler to use. We use this one right here,
14 Ingenix PRG Model. And it's just RX. And, the
15 other one that he talked about which would be a
16 comparable one would be Medical Plus RX. What this
17 is showing is how accurate the models are to the -
18 what's actually going to happen. And you can see
19 that the difference when you look at - is - it's
20 really hard to read this - 83.4 verses 84.1. So
21 the actual number verses what was the - coming
22 out, the difference is very small. It's like 0.7
1 percent difference. That's why people are using pharmacy risk groupers as opposed to using a more complicated model with medical and RX. So we feel like this is a valid use of a tool. The point on this morbidity health status issue is, is that what is the purpose here again. Are we - they're claiming that the members are over utilizing healthcare. And we give examples of muscular skeleton and COPD. And we give those examples of how they were higher than the average book of business. And that average book of business was to show that people had bad conditions in this plan. They came up and they showed us the difference between employee, spouse and child. And we didn't really quite understand those charts because it showed that spouses cost more than employees. And that's typical in almost all groups. Spouses cost more than employees. So, that's fine. We're okay with that. That doesn't say that this group is healthier than the - a regular group. It doesn't say that we shouldn't take out the morbidity differences and compare it in this plan's benefits
to another plan's benefits. So we could have missed that point there. The other issue is, is that in looking at whether or not they have a higher utilization. They only gave us two examples. They say the members are over utilizing but they haven't actually given us real numbers that show that the members are over utilizing except for on two items: emergency room which we showed has other factors going on. There's some work attendance rules that - issues to deal with. There is no urgent care access. So those were some alternative issues for emergency room that we talked about. And there's some ways to deal with that. And there's also brand drugs they said were over utilized. And there's some ways to deal with that. But for the other items, the stuff that they were talking about: deductibles and co-insurance, they never showed us any quantified over utilization or lack of management in this plan. So that was our concern there. On the zero dollar generic co-pays; again I like to remind the panel that this is not something that's on the table by
the unions. We give this as an example of an alternative way to deal with RX. I feel it's important to explain our numbers though. It wasn't in our report so therefore it's not something you can read. And it goes to the credibility of our figures. We saw what Dave said. Metco did say that there would be a cost. But in their analysis, they used only a 4 percent generic utilization shift. We're using a 6 percent generic utilization shift. So we're saying that there are - at 65 percent, they're going to go to 71 percent. I'm just trying to use simple numbers of what a 6 percent shift means. And they're saying if they're at 65 percent, they're only going to go to 69 percent. Why do we feel that we're comfortable with 6 percent verses 4 percent? And what difference does it make? Five percent we figure is a breakeven. And we can pretty much match Metco's numbers at the 4 percent shift. So we'd feel comfortable with the methodology. So it's all about the assumption and what you believe. We asked Metco. We said and we put it in writing over and over again tell us
what your book of business is compared to your plans with zero dollar generic co-pay. They couldn't tell us. We asked two other PBMs which unfortunately I did not request permission to use their names so I can't at this moment tell you who they were, what their books of business were on generic verses their books - zero dollar generic drugs verses their book of business. Both of those said five percentage point difference. And I went to the example I just did. So I said if you're at 65, it goes to 70. They said yes. So we felt very comfortable with a 5 percent. The reason why we bumped it up the extra 1 percent because this group is below the book of business and that's why it's being questioned. So if you're below the book of business, it's easier to go a larger percentage shift. It's easier because you - people can make up the difference. That's one point. The second point is in our experience with targeted mailings which we would recommend would go along with this limitation; they've been very successful at getting movement on the GDR. So it was that
experience and the other information we got from other PBMs that led us to use a 6 percentage point in difference in our assumption base. The other last point I have on there is one of the things that makes a difference is - and this is what Metco bases it - their stuff on a little bit - is that you - the difference between the brand co-pay and the generic co-pay. And if you put it at zero, for mail order, it would be a $30 difference. And we always at Kiron, we look for a $20 difference. And at retail while it looks like it's only a $20 difference, it's really a $28 difference because most plans do a 30 day supply and they only do a 21 day supply. So effectively for the members if they're getting a 30 day supply, they have to pay $28 on average. So we were, again, comfortable with our assumptions. But that goes to the point of our numbers. In terms of our numbers matching with their other numbers, I - the only other number that I saw that was a little bit off was on the adequacy of benefits. Our prescription drug figure is slightly different
than their prescription drug figure. And I'm guessing because I looked back at what would happen; it's because of rebates. We threw rebates in saying that the plan's going to get those rebates therefore the total cost would be different. And they may not have. I don't know. I haven't talked to Dave. I'm not sure how they did the calculation. But I just wanted to bring up those points again for the ad - to point to the validity of our figures. The next question (inaudible at 00:16:13) question was whether the survey of the five or six rails were representative of the industry. And we believe they are. We got the information from Mr. Roth. And to - he told us this and we believe him. And you could talk to him about it. But he says that the freight class 1 makes up 90 percent of the rail industry. That the Amtrak makes up 100 percent of the intercity rail passage or industry. Makes sense to us. The five commuter rails that we put in there, the employ - the number of employees make up 86 percent of the employment. So we
1 thought that the combination of the groups that we put in there was representative of the industry. And we felt good about it. We just wanted to share those statistics with you. As for the Cadillac Tax, we do not believe it's been measured. Watson Wyatt put out a paper that explain - on December 9, 2009 that said there's several issues with Cadillac Tax. They talked about area, industry and age which is - makes up morbidity. But essentially they said if you have an older plan then people are going to be discriminated against. And if you're in a high cost area, the plan's going to be discriminated against. So there's all kinds of items out there complaining about the Cadillac Tax. But it's far off in the future so no one's really focusing in on whether the exact adjustments are correct or not at this point in time. But the biggest concern that we had with the Cadillac Tax and with what's out there and with many, many people is that it's not really a Cadillac Tax. It's a Chevy Tax. And this is a slide that was shown by the Lewin Group in their
presentation of healthcare reform. It shows that -
well it starts out that in 2018, 26.7 percent of
the employer sponsored plans would be in this
Cadillac Tax. That quickly it grows to over 80
percent so there's a lot of problems and issues
with the Cadillac Tax. And we don't think it's
representative to say that that amount that the
Obama Administration was in favor of cutting
benefits. We don't see that argument. Finally on
the point of the Joint Planning Committee, again
I'm not an attorney and I'm not a policy maker. I
just know what the results are that I saw. And
looking at what they've done over the time period
and what they've been able to accomplish. And
maybe they were just - they did it be - despite
all these problems that have been brought up. But
just in the last bargaining, during bargaining,
they were able to implement chronic care. And I
believe that the people in this room can work
together to make an efficient healthcare plan that
- plan that's already efficient even more
efficient and deal with the issues. And I think
that's all I have for now. Thank you for your
time.

CHAIRMAN JAFFE: Before you leave Ms. Mallett, just
one question if I may.

MS. MALLETT: Of course (inaudible at 00:19:17).

CHAIRMAN JAFFE: And my colleagues may or may not.

With respect to the zero dollar generic feature, a
two part question. One is do you know how common
it is? That's question -

MS. MALLETT: Zero dollar generic?

CHAIRMAN JAFFE: Yes ma'am.

MS. MALLETT: I don't. I know it's getting more and
more common but I don't have a statistic for you.

CHAIRMAN JAFFE: That's fine. And the second
question is a cost question. If one compares that
to a $5 generic, do you know what the cost impact
is either look through A, the lens of the plan or
B, the lens of the participants who would be
utilizing the benefits?

MS. MALLETT: I don't but I will tell you that the
assumptions that we're talking about of what you
really believe the shifted GDR is -
CHAIRMAN JAFFE: Right.

MS. MALLETT: - that's going to make or break whether you believe that $5 co-pay is more cost effective or less cost effective than zero dollars. So if you believe the $5 co-pay is going to get you a 5 percent shift or a 6 percent shift - just as much a shift - than clearly a $5 co-pay would be - cost less. But if you don't believe that as many people are going to shift with $5 then it would cost - it could cost more to the plan. So it's all in that assumption.

CHAIRMAN JAFFE: Fair enough. My colleagues okay?

Great. Thank you very much.

MS. MALLETT: Thank you. ROLAND WILDER, JR., ESQ.: The Joint Coalitions call - recall Dennis Pierce.

CHAIRMAN JAFFE: Fine. And I need to remind you you're still under oath, Mr. Pierce. Thank you.

DENNIS PIERCE: Thank you. Good afternoon. I just want to make a couple of clarifications for the record. I'll try to be very brief. The first is that, again, we saw the Carriers portray BLET's participation I think at 3.9 percent of our
membership. I just want to make it clear for the record that we're here 100 percent on healthcare, and that is obviously the issue that seems to be getting the most attention here, and we are very, very involved in it and we're very, very involved in its outcome. I also want to speak briefly to Mr. Hennecke's comments about the vacation calculation. After his comments, we went and reviewed the agreement and we got that one wrong; I'll be the first to admit it. We are preparing another document for the Board. At the same time, Mr. Hennecke's comments weren't completely accurate either. The way the process works, it would be - the prerequisite time was added or increased by 50 percent in 1996. The yard starts went from 100 to 150; the road starts went from 120 to 180. With the multipliers that you use to add the two together, the total that you have to hit in a year's time is actually 240 all told, when they're added together. Our error occurred when we thought it was 225 and 270; it's actually 240 for both classes of service. If you take the
150 times the 1.6 multiplier, you've got your 240, and the same is true of the 180 using the 1.3 multiplier; it's actually 185-ish is what the number is that it's required. With the Board's permission, we'd like to prepare a replacement document for the slide that we use to try to make sure that you understand the calculation. In the end, we were actually low on what it takes in the yard. We said 6.2; it's actually 6.8 months. We were high on the road. We thought it was 9; it's actually 8.4 would be the actual calculation. So we weren't off by much, but we were slightly off on that. The second issue I'd like to speak to is certification pay. Now, the Carriers went to considerable length to convert the UTU certification pay to a percentage value. To compare it to general wage increases, they rated at one-half of one percentage point. If you studied the way the calculation was put together today, you noticed, like me, that it was based on engineer starts. We submit to you that the value of the UTU certification pay, insofar as
locomotive engineers is concerned, is $5; it is
not one-half of one percentage point. The basis of
the calculation to get to the general wage
increase started with locomotive engineer starts
and added to that with train starts, RCO, and from
what we could see, should have included hostlers.
So to say that that value is not transferrable to
anyone in this room as a $5 value to us we think
is very disingenuous. We're not advocating for the
UTU pattern, but we do think the Board needs to
understand that its value is $5 per start, not a
half of a percentage point in our book. The other
issue I want to speak to is cab conditions. I can
appreciate, as Mr. Karov said, that BNSF's
locomotives are shiny at least at one point in
their history and that's usually when they roll
off of the assembly line. We didn't go to trouble
to produce a video, but I think from the videos we
watched today you could tell from the Carriers'
video and the maintenance of way video that even
camp cars don't look the same when they're brand
new as they do when they've been used, and that is
our takeaway here. It's the same for locomotive
cabs. If the current contractual and regulatory
provisions were addressing our concerns we would
not have burdened this Board with our request for
more meaningful standards. Ironically, when we try
to seek resolution in the regulatory standards,
we're told to go do it in the contract. And when
we come to try to do it in the contract, we're
told to go do it in the regulatory environment,
where obviously the railroads try to avoid any new
regulation. Finally, while I appreciate that BNSF
pays claims when today's cab standards are
violated, I think the fact that they pay the
claims verifies and validates our argument that
standards need a better way to be enforced because
they're being violated. So we would renew our
request that you consider our proposal for
recommendation. And finally I need to comment on
Mr. Crable's comments on the CSX meal allowance. A
BLET has never argued that the CSXT-BLET agreement
was anything but a voluntary agreement that
included give and take from both sides. I was
1 actually assigned to the CSX property in 2009 when
2 that agreement was renewed and renegotiated, so I
3 don't disagree with them that that agreement has
4 give and take. Much like the BNSF and NS
5 agreements though, there is no comparable quid for
6 a pro, or a quid pro quo for that individual item,
7 that anybody could refer to, because there are
8 items of both tangible and untangible value in
9 both of those agreements, all of those agreements.
10 I think the important message that we wanted you
11 to see from that is that all of those agreements
12 are evidence that the $6 meal allowance that we
13 have been stuck with since 1994, which was last -
14 it required a PEB to adjust it last time, to go
15 from what it was to the $6 that it is now, in
16 1994. We think that these agreements show that the
17 $6 national standard last addressed in PEB 219 is
18 in need of an adjustment. And we would reinforce
19 the point that even the competitors' rule, the UTU
20 rule, was adjusted almost two years ago and we're
21 still sitting here without an adjustment. So
22 that's all I have and I thank you for your time,
1  unless you have any questions.
2  CHAIRMAN JAFFE: I think we're in good shape. Thank
3  you again, Mr. Pierce.
4  MR. PIERCE: Thank you.
5  MR. WILDER: The Joint Coalitions recall Steve
6  Powers.
7  CHAIRMAN JAFFE: And I need to remind you that
8  you're still under oath, Mr. Powers.
9  STEVEN POWERS: I understand. Eight points, less
10  than 15 minutes. I promise. We start off I want to
11  talk about the $120 million cost that the Carriers
12  have attributed to our expense-away-from-home
13  proposal. And after seeing their presentation this
14  morning, we still believe that we're lacking key
15  data sources. We still believe we lack
16  methodology. We still believe they don't report,
17  for instance, what kind of a cost they attribute
18  to obtaining hotel rooms. So we don't think the
19  figure is necessarily one that we trust or saying
20  "trust us" but we don't, but that isn't the key
21  point. The key point is this: Award 298 allowances
22  have been increased a total of twelve times in six
national agreements since 1967, and there is a
table at appendix K in the separately bound volume
of BMWE exhibits that shows those increases.
Never, not once in those six national agreements,
have the Award 298 increases been considered a
wage issue. Each and every single time, BMWED
received the same national wage increases as every
other union involved in those national rounds,
plus increases to Award 298 expenses. So the
reason, of course, is that Award 298 concerns
reimbursement for business expenses. They're
returning to employees money that came out of
their pocket. Whatever the cost is, whatever the
cost of our proposal, it's the difference between
a seven-year-old partial reimbursement and actual
cost. That's the cost that the Carrier should be
required to bear. You shouldn't continue to allow
the second lowest paid hourly wage group in the
railroad industry to reimburse the Carriers'
business expenses. That's not fair. Second, same
subject; expenses away from home, single occupancy
and the Carriers' complaints today that it was
difficult to obtain single occupancy rooms; they just couldn't find them. Two key points: First, CSX does it. It's done it for two years with its very largest gangs. They have precisely the same production planning issues described by Mr. Koontz. All the railroads have exactly the same problems. And two, they - CSX operates in precisely the same geographic territories, Norfolk Southern. They parallel each other all throughout the eastern half of the United States. So CSX does it; that is a matter of fact. And as Mr. Roth just reported, that they've been able to do it and still report record profits in the third quarter. It certainly hasn't undermined their bottom line to provide single occupancy rooms to BMWE members like all other crafts receive. Second, we have on Norfolk Southern a study that we did with the commercial lodging corporation. You can find that discussed at page 20 and 21 of our craft-specific submission, and the entire report is reproduced at Exhibit B. And that corporate lodging company studied all of the camp sites and reported back in
the words of their Vice President that they had  
every camp site covered like a wet blanket.  
There's hard data in that report to show that  
there's hotels available at a reasonable cost at a  
reasonable distance from every single Norfolk  
Southern camp site. The real problem is how wide  
the Carriers cast their corporate lodging nets. If  
they're just feeding on the bottom like a lot of  
them are doing, at the cheapest, cheapest,  
cheapest hotels they can find, then they have a  
hard time finding enough rooms. But if they cast  
their net just a little bit wider, I think they  
can produce enough rooms, and that's shown by the  
fact that today we have - where Carriers do  
provide corporate lodging, albeit double  
occupancy, our members drive by hotels to get to  
cheaper hotels. And I'm not talking about driving  
by the Ritz or the Four Seasons; you don't find  
those out in these parts of the country. I'm  
talking about the Holiday Inns and the Holiday Inn  
Express. That's all we're looking for, and the  
rooms are there if they just cast their net a bit
wider. It's not an unreasonable request. Number three; the Carriers point out that PEB 219 and 229 didn't recommend the changes we were seeking relative to expenses away from home. Two critical differences: PEB 219 occurred in 1991, when the industry was in terrible financial straits. In fact, that's why 219 did all the things to the unions that it did. PEB 229 was 1996; recovering, but hardly the strength we see today, so they were very different economic times. They were crawling out of the pit they were in in 1967 when the 298 rendered their decision, but they weren't in the condition they're in today. Number four; Mr. Weaver said today that the Unions - me - complained about the variations from property to property; that somehow we thought local variations were something horrible. They missed our case entirely. We weren't complaining about the variations, we were complaining that all of the variants were less than full reimbursement. No matter how they were cutting it, we weren't getting fully reimbursed and we believe we should
as a matter of fairness. Number four,
headed away from home; you saw a slide, it
was slide number 12, presented by Mr. Koontz from
BNSF, and that slide we believed clearly made our
case on the headquartered-away-from-home problem.
That slide, slide 12, shows that 18 percent of
their employees were 50 miles or more from home;
11 percent, 75 miles; 8 percent, 100 miles. And
while it was a small percentage, 12 employees were
500 miles from home. Now, Mr. Koontz went on to
say that BNSF recognized that that wasn't quite
right, and so they do provide a partial allowance
to people more than 75 miles from home, and the
agreement where they did that is Exhibit number 5
to BMW craft-specific submission. It's a
recognition by BNSF that it's a problem; all the
others have the same problem. BNSF has given a
partial solution; we want a full solution. And by
the way, Norfolk Southern said they don't have the
problem. They do. They don't force assign, but on
their former Norfolk and Western territory they've
gone down to three massive seniority districts.
They used to be whole railroads. The old NW is a whole rail. The Wabash is a whole railroad. Conrail is a whole railroads that were now - they're now seniority districts, and people have to work more than 50 miles, far more, to hold jobs when they make cutbacks. Point number six; the $10 million cost to discontinue camp cars. We never saw any good costing that; we have no idea on what they're basing it. But we do know that in state legislature after state legislation after state legislature, Norfolk Southern's vice president showed up in an effort to avoid regulation of camp cars, which it did in some cases and not in others. They testified over and over again that it wasn't about money; that it was cheaper to put people in hotels, but they used the camp cars. It was a corporate philosophy issue. That's the answer to your question; it's not cost, it's corporate philosophy. And everything else you saw from them on the camp cars was nothing but theater. None of our employees have ever been in a camp car like the ones they showed you on the
screen. They live in the ones like we showed you, that - the video that was taken in September of actual conditions. The BLE meal allowance, the fact that BLE has a lower allowance than we do; quite frankly, it's apples-to-oranges. BLE folks qualify in a different way, travel in a different way, and the only evidence is that the BLE should probably be raised. But it's not a comparison issue, it's apples and oranges. They're earned differently and it's different kinds of travel. Last point; I think I'm under my 15 minutes. And this concerns not expenses away from home, but travel allowance, and that's the issue that was addressed by Mr. Griffin, not by myself. That's the allowance that partially compensates people from traveling from home to these different work locations. And Mr. Weaver recounted that NS employees stopped riding the bus, the bus they used to provide when travel allowance was negotiated in 1996. Now, the bus was certainly a better option than absolutely unreimbursed travel that occurred before that. PEB 219 swept us into
these massive traveling areas, did nothing about expenses, so when it began, employees got nothing, zero reimbursement. Now, it wasn't a good way to travel because it's just a trunk line. It keeps employees away from home hours longer than taking their personal vehicle. So when a partial reimbursement came along in the form of the article 14 travel allowance, did employees take it? Well, you bet they did, so they could be home hours sooner in the short period of time they had to be home. But not - it is certainly not some kind of a windfall, as Mr. Weaver tried to portray it. Think about it; the first 100 miles, you get nothing. The second hundred miles - however, it's - after that it's 25 per hundred. So depending where you fall on the chart, that's 12 to $0.25 per mile, so it's not even paying what the IRS would consider a true business expense to travel. Twelve and a half to $0.25, depending on where you are on the chart. So if you get two guys in the car, if you can carpool with two people, if you can arrange that, you're now just breaking even on
1 automobile costs. You're getting nothing for all
2 the time you spend. If you can get three guys in
3 the car you can begin to be compensated a little
4 bit for your time. That's it; that's not a
5 windfall. It wasn't a windfall when it was created
6 in 1996. It's not a windfall today. And to restore
7 its value to the 1996 value is not a windfall;
8 it's a simple matter of fairness. I think that's
9 under 15 minutes. Thank you again.
10 CHAIRMAN JAFFE: Okay. I think we are all in good
11 shape. Thank you again, Mr. Powers.
12 MR. POWERS: Thank you.
13 MR. WILDER: That concludes the Organizations'
14 surrebuttal, Mr. Chairman.
15 CHAIRMAN JAFFE: Thank you, Mr. Wilder.
16 UNIDENTIFIED MALE SPEAKER: Should we ask about
17 this, where this came from?
18 CHAIRMAN JAFFE: Sure.
19 UNIDENTIFIED MALE SPEAKER: Do you know?
20 CHAIRMAN JAFFE: I don't. There was a sheet of
21 paper that was passed up here that I don't think
22 was identified. It says "prepared by Towers
Watson"?

MR. MUNRO: Mr. Chairman, this is the document I referenced earlier. It is the Excel spreadsheet backup for the two slides that Mr. Scofield presented earlier today.

CHAIRMAN JAFFE: Thank you, Mr. Mur - I didn't want to assume much of anything, notwithstanding.

MR. MUNRO: Thank you.

CHAIRMAN JAFFE: Thank you. I guess we can go off the record shortly to deal with a few minor housekeeping items with counsel. But in terms of tomorrow, it's my understanding that we have closings planned; is that correct?

MR. MUNRO: Well, actually, Mr. Chairman, I was going to suggest to my counterparts that it might be a better use of everyone's time if we close the record today and left closing arguments aside. I must be a bad lawyer because I'm giving up an opportunity to show off in front of my clients, but I do think it might be more efficient if we wrapped up today. I have not discussed this with opposing counsel.
CHAIRMAN JAFFE: I tell you what? Why don't we deal with it off the record? And then we'll place whatever the arrangements are on before we stand either in adjournment today or close today or however it is. We'll go off. I simply wanted to confirm on the record arrangements that had been made with counsel off the record. It's my understanding that closings will be made and that we will retain the 9:00 a.m. start schedule for tomorrow, and counsel has indicated that they believe that the allotted one hour (inaudible) [0:00:27] timeframe should probably be more than sufficient in terms of what they need to cover the ground that they're going to cover. Have I misstated anything or failed to note anything before we stand in adjournment for today?

MR. MUNRO: That's fine with the carriers Mr. Chairman.

UNIDENTIFIED SPEAKER: Nothing further.

CHAIRMAN JAFFE: Okay. Thank you all very much. END TRANSCRIPT
Presidential Emergency Board No. 243

between

National Railway Labor Conference

representing:

Union Pacific Railroad Company
BNSF Railway Company
CSX Transportation, Inc.
Norfolk Southern Railway Company
The Kansas City Southern Railway Company
Alton & Southern Railway Company
The Belt Railway Company of Chicago
Brownsville and Matamoros Bridge Company
Central California Traction Company
Columbia & Cowlitz Railway Company
Consolidated Rail Corporation
Gary Railway Company
Indiana Harbor Belt Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
Los Angeles Junction Railway Company
Manufacturers Railway Company
New Orleans Public Belt Railroad
Norfolk & Portsmouth Belt Line Railroad Company
Northeast Illinois Regional Commuter Railroad Corporation
Oakland Terminal Railway
Portland Terminal Railroad Association
Portland Terminal Railroad Company
Soo Line Railroad Company (Canadian Pacific)
South Carolina Public Railways
Terminal Railroad Association of St. Louis
Texas City Terminal Railway Company
Union Pacific Fruit Express
Western Fruit Express Company
Wichita Terminal Association
Winston-Salem Southbound Railway Company

and their employees represented by:

Rail Labor Bargaining Coalition consisting of:
1. Brotherhood of Railroad Signalman
   Brotherhood of Locomotive Engineers and Trainmen
2. Brotherhood of Maintenance of Way Employes
   International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders,
3. Forgers and Helpers
   Sheet Metal Workers' International Association
4. National Conference of
   Firemen & Oilers
5. and a coalition of Rail Unions,
6. consisting of:
7. Transportation-Communications International Union
   American Train Dispatchers Association
8. International Association of Machinists and Aerospace Workers
9. International Brotherhood of Electrical Workers
10. Transport Workers Union of America
11. Panel Members:
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    Roberta Golick, Member
    Joshua M. Javits, Member
    Gil Vernon, Member
    Arnold M. Zack, Member
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10-20-11

CHAIRMAN JAFFE: Good morning. I don't think it's on. Is it? Good morning everyone. If I could ask everyone to be seated and we'll be ready to get to closings. At your convenience.

ROLAND WILDER: Good morning, Mr. Chairman, Members of the Board. It's been a pleasure to present the closing arguments and the summation for the joint coalitions in this matter. Despite the avalanche
of evidence (inaudible) in this record, the issues before this court are relatively straightforward. The ultimate question is whether the NCC's offer of settlement modeled after its earlier agreement with the United Transportation Union, will be recommended by the Board to settle all outstanding disputes between all of the carriers represented by the NCCC and all of the organizations before you. Those organization represent 73 percent of all of the carriers employees. That's an important figure in judging the efficacy or the efficiency of the offer the carriers made to settle this dispute. Most of the evidence in this records admits of only one answer. And that answer is a resounding no. There is no pattern in this case. The UTU agreement furnishes no evidence whatever of a pattern that warrants serious consideration by this Board. Now, the testimony of Robert Scardelletti and Dave Pickett and Tom Roth all point in this direction. An agreement with a single organization representing a strong minority, that is a minority of industry
employees, cannot constitute a viable pattern.

That's not what the pattern principle is according even to traditional concepts in this industry.

Their testimony is supported by the great weight of authority. As you go back in time, you read the reports given by prior Presidential Emergency Boards. You recall Mr. Roth's testimony that in all these archives in all his research he's located only one Presidential Emergency Board Report that indicates the minority agreement can constitute a pattern and that was under extraordinary circumstances. While it is true that the NCCC also sites Presidential Emergency Board reports, but they are so clearly distinguishable from the current situation. So clearly inapplicable that I don't believe it worth the Board's time to take up its time to discuss them here. They're cited in the papers, they're distinguished in the papers and I think that should be adequate. Now an equally important reason for rejecting the NCCC's pattern argument was testified to by Dan Pickett. He stated that
the carriers' position, if sustained, would harm the movement towards coordinated bargaining that characterized this round of national handling that resulted in a voluntary agreement for the entire industry during the last round. Now this is important, I submit, because for many years people like yourselves, experienced labor relations professionals, have urged the parties to move towards coordinated bargaining to get some of the chaos and indeterminacy out of this process. And I'll point out it was that chaos and indeterminacy that gave rise to the so-called pattern principle in the first place. So all of the reasons the carriers are arguing for application of the pattern principle here, regardless of its applicability, would be swept aside if they had bargained with one or both of the coalitions in this round as they did in the 2005, 2009 round. The point is that the agreement with the regiment that the UTU agreement constitutes a pattern will confound and set back the movement towards coordinated bargaining that we hope perhaps in the
next round will result in true multi-union, multi-employer collective bargaining but would end all of the indeterminacy and chaos that has occurred at the national level over the last 25 to 35 years. This is an important policy consideration for the Board. But there's another reason why this is not a pattern and not to be considered one. The Sheet Metal Workers International Association is a member of the Rail Labor Bargaining Coalition. And as you learned just after opening statements in this proceeding, the sheet metal workers is taking the position that the UTU's entry into this agreement with the carriers is part of a continuous violation of the UTU's internal obligations under the merger agreement with the sheet metal workers and the SMART constitution. So what will we call this pattern, if indeed the carriers are successful in convincing you that it is? I submit we should call the pattern the Ultra Vires Pattern and that will distinguish it from the true patterns that had been held in the past. Now, I'm going to start off with the two major
1 issues in this case that are applicable to both
2 coalitions and all the organizations they
3 represent. First of all let me take up the wage
4 issue. And let me start with facts that cannot be
5 disputed. The carriers do not claim an inability
6 to pay the organizations waged amount. That was
7 stated on the record in this proceeding; it was
8 not in dispute. It is equally indisputable that
9 the railroads are more profitable today than they
10 ever have been. I realized that is a strong
11 statement but that is backed up by all of the
12 financial data that was brought to the Boards
13 attention by Mr. Roth in this proceeding. You will
14 recall that his testimony demonstrated the
15 industry's extraordinary profitability by every
16 possible economic in business metric. I'm not
17 going to go through that. I will mention only two.
18 The operating ratios today are extraordinarily
19 strong. From 2001 to 2010 the (unintelligible)
20 carriers' operating ratio has plunged from 82.7
21 percent to 71.8 percent. And for every 1 percent
22 reduction, that amounts to $530 million. Think
about that. I don't know of another industry or
even company that shows that much improvement in
the operating ratio over such a short period of
time. It is true that the carriers are not United
Parcel Service. Nobody is United Parcel Service.
If that's the bar, we might as well accept what
they offer us. But it isn't. I'll point out from
very recent experience, United Parcel Service also
is difficult when it comes to improvements in
rates of pay rules and working conditions. So the
other metric is the return on equity. Since 2006
the carriers' return on equity has been in the
double digits. That too is extraordinary, as Mr.
Roth testified, particularly in light of the
history of this industry. Now the carriers did not
dispute these data because they cannot. Instead,
the carriers have put forward expert testimony
asserting that wages are not carloaded (ph) with
profits or profitability at the employing
enterprise. That's what they're saying. Don't pay
any attention to the carriers' profitability and
don't pay any attention to the carriers'
productivity. I express some sense of personal
shock after spending 35 years having carriers tell
me that I have to come up with concessions, work
rule concessions to increase their profitability
in order to afford the wage and benefit practice.
Uniformly this is done in our industry. In this
hearing I learned that that is beside the point.
Everybody's wrong if they live outside the city
limits of The University of Chicago, it appears.
I'm suggesting that the Board should give no
credence to this testimony at all. The reasons are
perhaps more legal than they are economic. The
point is that these theories are not helpful to
the Board in making its important decision. Most
importantly, Dr. Murphy's theory is contrary to
the undisputed facts of this case. I am going ask
you to recall, if you will, what Dr. Murphy's
report said. You recall his report was to the
effect that excessive wage gains or excessive
compensation which takes away accounting profits
that otherwise would be invested or contrary to
the public good that wages are correlated not with
profits at the employee enterprise but it profits in the economy at large. And then on page 21 of his report, Dr. Murphy said that as a result of excessive compensation, "the implication is that capital will go elsewhere as forward-looking investors seek competitive returns." That is a direct quote from Dr. Murphy's paper. Now we now from Ken Gradia's testimony, transcript at 26 on the first day, that the 2007 National Agreement provided for excessive compensation; we also know that because he stated even more bluntly in the carriers' opening submission. So there is no question that the carriers regard the last National Agreement is providing for, quote, excessive compensation. Well, who then are the forward-looking investors? I suppose the first forward-looking investor is Wall Street as a whole. Has Wall Street fled the role? Has it gone away? Is it starting the railroads for investments to use for capital improvements? No, not within ROE of 11.2 in the double digits so, Wall Street has answered that question. It didn't flee. I
1 suppose the second um, forward-looking investor
2 might be Matt Roe, the CEO who testified before
3 you. You will recall that uh, Mr. Roe and others
4 such as AAR pointed out that the railroads are
5 investing in themselves. They're buying back stock
6 that this is essential for the process that the
7 railroads are going through. It seems to me that
8 Mr. Roe is a forward-looking investor and he
9 didn't flee. He's investing in his company and the
10 company's investing in itself. May I suggest that
11 the last forward-looking investor a man who is
12 known to have some acumen in the investment
13 community, Warren Buffet, also did not flee the
14 railroads instead he bought BNSF, lock, stock and
15 barrel. The point is that Dr. Murphy's theory
16 doesn't fit the facts of this case. It's
17 superimposed on the facts of this case to distract
18 the Board from the carriers' extraordinary
19 profitability and the productivity of its
20 employees. Why do I tell you this? Because Dr.
21 Murphy's testimony particularly in the sense that
22 it seeks to put forward a theory as fact does not
meet the so-called Daubert criteria for expert testimony. The point is Dr. Murphy did not apply the principles of his theory reliably to the facts of this case as I have just demonstrated. There was no sharing of his theory that it has been tested in a highly organized industry such as the railroad industry. And it is contrary to half a century of examples in this industry that come from the reports of public-Presidential Emergency Boards in countless agreements in this industry. And it's contrary to one other fact. It is our job, that is, the job of organized labor to monopolize the source of labor. Now this may be a quaint idea elsewhere in the general economy but in this industry it remains 90 percent organized. This industry is not responsive to the kinds of economic theory that Dr. Murphy put forward. He did not even mention the fact that this industry is almost totally organized. Did not even mention that, didn't enter into his head or his theory at least. So all I'm saying is, this testimony would not meet the Daubert criteria. If you were a jury...
you would never hear it because it would be screened out in advance and I ask you to believe that you were that fortunate that you never heard it because it doesn't help you do what you have to do. Moving forward on the wage side, the dispute between Mr. Ross and Dr. Evans over their respective inflation rate projections just should not detain us very long. Now, I happen to think that Mr. Ross got the best of that debate but I don't think it's important. The employees of one of the most successful industries in the United States should not have to wonder whether their compensation will keep pace with the cost of living over the next five years. The debate between Dr. Evans and Mr. Ross cuts way too close to the quick. It is borderline. We are not interested and will not enter into absent the most serious kinds of compulsion that the contract in which is open to a flip of a coin or economic opinion whether or not we will make real wage gains as we did last time or whether we will fall behind the cost of living as we did so many times
in the past. That debate doesn't advance the ball in this case either. Our proposal is for 19 percent over five years which assures some real wage gains and that is not an unreasonable position to take even at 2010 which is as you heard the best year in history for the railroads. Now there's one point that I will mention simply in passing that had to do to the, with the so-called return on investment uh, as compared to the cost of capital. Now, Mr. Roth testified at some length that this is not a business metric as much as it is a regulatory metric. This is a metric that the carriers strive not to meet because it triggers certain adverse consequences in favor of shippers before the Surface Transportation Board. It's not useful in determining what kind of a contract these employees should have moving into the future. So the upshot on rail issues is there has been none shown by the Carrier that our wage proposal is not reasonable. After all, and I emphasize that this, after all the carriers have never been better than they have under a contract
providing for in the carriers' own words, “excessive compensation”. They've never done better. The other major issue has to do with health and welfare. The logical point to start is with Mr. Roth's observation that the National Health Plan covering all of the employees represented by the organizations in the two Coalitions before you is not an employee welfare benefit plan that is in trouble. In fact, healthcare costs that the rail carriers have been remarkably stable over a decade or more. They vary in the low 4 percent range and as Mr. Roth indicated the healthcare costs have been more than offset by the productivity increases that have occurred over the past ten years. Indeed, according to the analysis made by Cherion, the Plan has become increasingly efficient. It simply does not have a cost problem that warrants this Board's attention. These facts, granted general facts, support the organization's belief that the appropriate position to take with respect to the National Health Plan is a status quo position.
There are things that can be done. There are improvements that can be made but the Plan is not a dinosaur that has spun out of control through inattention like some elderly collective bargaining plans. Instead the Plan is actively administered on an on-going basis by the parties themselves through medium of the Joint Plan Committee. It is active. It works and the evidence that Mr. Hildenbrand has brought before you demonstrates that it works. Not just with small matters but with large matters of, that might be considered settlor activity. Now what did you hear in this proceeding with respect to the Plan's cost? The trend rate 4.4 percent since the last contract was entered into in 2007. You, you remember the contract that called for excessive compensation? Well, as part of that excessive compensation we managed to cut the trend rate to just about 50 percent of those of comparable large employer plans in the marketplace, just about 50 percent. Another metric uh, was brought to your attention by Cherion that deals with the carriers'
cumulative cost increases. Those too have been just about half of what other large employers are paying. If I recall correctly, the cumulative rate was 3.2 percent over a decade on average. There's another point too and this is important because it deals with the unique characteristics of the National Health Plan. Due to the demographics of that Plan there is no question that health and welfare costs will be lower at the end of the contract we are bargaining over now. That's because there is presently a large bulge in the late 50 to 60 year bracket that is heading for retirement. When they retire between 2016 and 2020 they will be replaced by younger employees and consequently the Plan's costs will plummet. Now it is this group that we are particularly concerned about. This group was created by the productivity gangs, frankly the furloughs and the seniority principle and it's there. It's a very large bulge of employees and it is on that group of employees that the carriers' plan design proposal is targeted, directly at that group. The point is all
of the savings that the carriers hope to achieve by its plan design, some $79.00 per employee per month, a very large portion will be borne by this vulnerable group, the sickest, oldest group subject to this Plan. Now the organizations before you don't think that's right. They think that's contrary to the principles of organized labor in which the pain is spread throughout the bargaining unit. They don't that Plan costs should be shifted from wealthy employers to their most vulnerable employees. This is the group that is especially at risk from the employer's proposed increase in co-pays, the 5 percent co-insurance and the raised pharmaceutical co-pays. Now, now what's the problem with this from an actuarial or a technical standpoint? I've given you the human reason why we don't want it. People who have given their lives to the railroads in their service should not be subjected to this kind of treatment at the end of their careers. And this is especially so when within five to ten years, they will disappear from the scene. But there are technical reasons too.
Without going into all of the evidence, the technical evidence with respect to cost shifting and its desirability and its ability to influence behavior. If you're dealing with the sickest group, the most vulnerable group, you're dealing with that top 20 percent that generate 83 percent of the claims in a Plan of this sort. These are the people who are not going to be motivated to do something different. They're not going to be motivated even not to seek medical treatment. They're going to do it. In terms of their behaviors and hopefully the medical outcomes there will be no change. So the only effect of what the employer seeks to achieve is to lower its costs and increase the cost of that vulnerable group. In other words, testimony during the carriers' rebuttal yesterday that the difference is really only about $600 per employee and the Chairman asked, now is that an average? And it was readily acknowledged that it had to be, "Yes, we're talking about an average." So spread across the entire group we're looking at $600, Cherion
projects a higher figure uh, but in the $600 to
$800 range per employee on average. And that
includes they young guy who indestructible and has
yet to see his first doctor or have his first
headache. But the people at the other end of the
spectrum will bear the full brunt of the carriers'
plan design change. This is why it is
objectionable. Remember the testimony of Karen
Mallett and Gene Kalwarski from Cheiron. The out-
of-pocket cost for this group that I'm speaking of
will rise dramatically, far more than the cost for
the average employee. We submit, this radical
change is unwarranted. This plan is a product of
50 years of collective bargaining activity. It was
designed for the railroad world, of which its
participants are an important part. It has
excellent benefits, designed for railroad workers
whose work is arduous, sometimes dangerous, and
often exhausting. And that was the testimony of
Bill Hildenbrand, who ought to know from his years
in the maintenance of way department, and all his
years representing employees and serving as a
fiduciary, or a fiduciary assistant, more accurately, on the Joint Plan Committee. The carriers' rebuttal yesterday made a serious effort to obscure the obvious. They claim that railroad work is no longer dangerous, it's not in the top firms that are cited for dangerous employment, and things aren't like they used to be. The problem is the carrier is talking about something different than Mr. Hildenbrand. The carriers are talking about occupational injury; that is, a reportable injury. And so if you use that criterion, there have been remarkable improvements in safety, because you should remember the maintenance of way vehicles that they ties - they fix track, how that is done automatically. If you don't get out on the right-of-way, then you're in considerably less danger than you were if you were wielding the shovel. That's true, that's true. But the operator is subject to occupation-oriented illnesses and dangers, as Mr. Hildenbrand pointed out, that are new and lurking. The point is that outdoor work on a 24 hours - 24/7 basis leads to more illness, the
fatigue-related events, than other types of work, and this is true. Everybody in the railroad industry knows that. We're not talking about occupational entry here; we're talking about the things that occur in the real world on the right-of-way and elsewhere on the railroad. And along that line, Dr. Tannen's survey indicates advances in epidemiology that demonstrate for the first time a true associational link between diesel fuel fumes and pulmonary disease affecting railroad workers. Now, notice I said "associational link." That's because the link is statistical. We have not yet gotten to the point where we can say that a particular cancer or a particular case of heart disease or pulmonary event is caused or related to diesel fumes; we can't do that, and Dr. Tannen didn't suggest that. He said that advances in the quantitative analysis of data have enabled the epidemiology profession to say that there is a link between diesel fuel and railroad employment. And it is statistically significant, and that's why Dr. Tannen reviewed this literature that is
heavily quantitative. And unless you are very quantitatively minded, it would be difficult to read, but for him it was easy. That's what we're talking about. Those kinds of events are not proven to be occupational injury. They're not going to be the subject of an FELA case, but they're going to be paid out of the National Health and Welfare plan. They are illnesses for which planned benefits are necessary; that's the point. So the carriers are talking about something different than we were; I did want to clear that up. There's one other point, too, that I would like to make because it's, frankly, misleading. There is scarcely a health and welfare plan anywhere that does not have a higher spousal claim rate than an employee claim rate. This is standard stuff. And if you think about it, it's quite easy. In this industry, there is no sick leave. The first seven days are uncompensated. If you don't feel well, you go to work; that's the idea. You don't go to the doctor, you go to work. If you can't go to work, that's when you go to the
doctor. But there are no such inhibitions on the
spouse, who may have caught the same cold, who may
have caught the same flu from her husband; she can
go. This is standard type of stuff. The complaint
about the carriers paying entirely were - ah -
injuries, that's true. There is a 15 percent fund
within they find that the carriers alone
contribute to. And the purpose of that is so the
carriers can avoid the danger of punitive damages
in FEIA cases. In other words, the FELA claimant
cannot put before the Chair his medical expenses,
which are entirely paid for by the plan, out of
this fund, and consequently he can't use the
medical damages that argue for a higher punitive
damage from the jury. So that works for the
carriers; that's not what we're talking about
here. We're talking about so-called filing to
occupation claims that are paid out of the general
fund and even which we contribute. I'll point out
that there is no evidence in this record of so-
called overutilization. And I'd like to qualify
that because we're talking about overutilization
that can be dealt with or compensated for by increased copays in coinsurance. Utilization that we have is with the group that needs the medicine, that needs to go to the doctor, that needs the surgeries, and needs the protection of the plan. That's not going to change. The only question is: Who pays for it? Wealthy employers, or vulnerable employees? Cheiron has suggested for this plan that we pursue a so-called value-based plan design. This is the type of approach that has been pursued by the Joint Plan Committee and has been extraordinarily successful; they have reached agreement. We're not talking about a group that we've had loggerheads all the time. Now, the advantage of the value-based approach over the changes that the carrier puts forward is really this: Remarkably, the national health plan has the lowest net benefits in the railroad industry. You remember the analysis that Cheiron did of the rest of the industry? Now, that was criticized because it included only six of the commuter carriers, which make up the passenger industry, plus Amtrak.
But Cheiron's analysis picked up 86 percent of the commuter - of the 20 commuters. That is 86 percent of the employees of the 20 commuters, plus Amtrak, plus the freight industry. That's a pretty good sample. We're way, way, way into the 90 percent range on that. And we're determined that the net benefit with the national plan is lowest, because although the benefits are excellent, the plan - the employee premium contribution is the highest of any other. So when you net that out, employees in this plan are paying more for their healthcare than other railroad employees. Now, I can't understand, since we're dealing with the so-called world-within-a-world that Justice Frankfurter referred to, why what happens elsewhere in the railroad industry is irrelevant, but what happens at Walmart and at the grocery chains is more pertinent; I don't understand that. But I know this: According to Cheiron's testimony, when suitable adjustments are made, the national plan compares quite favorably to those plans that were in effect or are in effect elsewhere in the
economy through agreements and otherwise by major
employers. The comparison on an apples-to-apples
basis is very, very close. Indeed, the national
plan by a few cents comes out on the plus side
with that cost comparison. One last point in
healthcare that has to do with the uniformity
argument. The carrier says there must be
uniformity as between the national health plan and
the UTU plan. Well, and it cites three
Presidential Emergency Board decisions. Now,
there's something about those decisions that I
want to remind you of, other than the fact the
facts are entirely different. They all occurred
before the carriers agreed to create with United
Transportation Union - to create a separate plan.
So we have three Presidential Emergency Boards
saying uniformity of benefits is important. The
carriers' response to that was to create a
separate plan with the United Transportation
Union; a plan that has operated entirely
separately, a plan that's operated by separate
fiduciaries, and a plan over which the national
health plan fiduciaries have no control. And then the carriers in this round entered into an agreement with United Transportation Union, calling for planned design changes. Now, having killed both parents, they ask you to take pity on them because they're orphans, and that that doesn't make any sense at all. There is nothing to this uniformity argument. Ms. Mallett testified that in the federal sector we're looking at 24 different plans governing the same employee groups. The uniformity is something that was made up of whole cloth. The Joint Plan Committee has been doing a good job of administrating this plan. It's been innovative with new programs, including plan design changes, and they should continue to do so according to Cheiron's analysis. It is true that not every idea is accepted by the Joint Plan Committee. There are ideas that the union representatives have made that have been rejected by management. There have been ideas that management have put forward that have been rejected by the employee representatives, but this
is in the nature of healthcare. The point is that
the area is highly discretionary, and it is often
the subject, as you have heard in this proceeding,
of conflicting expert opinion. The fiduciaries
have chosen not to try to resolve these kinds of
disputes, so-called settlor disputes, by impartial
arbitration. They prefer to wait until consensus
emerges, perhaps based on better data, perhaps on
agreement, between the groups of experts. Now, I
have hinted at what I'm about to say and I don't
know how else to say it so I'm going to say it
directly. We are no more interested in having this
Presidential Board resolve technical disputes over
plan design that are the subject of considerable
disagreement by experts than we are in having Mr.
Kasher do the same thing at the decision maker
level on the plan. Now, I don't think my hints
have been direct enough, but I'm saying I'll point
out this was the direct testimony of Joel Parker
at 12 of his statement, page 12 of his statement.
He said it much better than I did, certainly more
directly, but that's the idea. Let the Joint Plan
Committee do its work. Let consensus emerge. This is not a plan in trouble. It does not need your intervention, but supports the notion of the status quo approach. I'm going to move fairly quickly into the vacation area in the limited time that I have. It has been, since 1982, that the national vacation agreement has been visited by the parties. The years have taken their toll on the benefits. As Bill Bohne testified, what was once a model for other employee groups has fallen behind. We now lag most other vacation plans, and that supports the organizations' request for improvements in the amount of vacation. But what really cries out for adjustment, both on the non-op side and on the op side as testified to by Dennis Pierce, are the rules that relate to qualification for vacation. They were first developed in 1942 and they've changed very little since then. Put simply, if you don't satisfy the standard of days of work in the preceding year, you don't get a vacation. Very often that the testimony was an employee will wait a year and a
half before having a vacation because he or she cannot meet the qualification criteria. In the operating crafts, the criteria are probably even more stringent, if possible; they need to be modernized. The organizations have suggested allocation so that the amount of vacation an employee is entitled to will be based on the amount of work that he or she accomplishes in the preceding year. We don't propose any change in the work requirement; we merely want the credit for the work that we do. Let me point out that in that calculation there is no soft time counted. If you're sick, it doesn't count. If you're on vacation, it doesn't count. If you're on an authorized leave, it doesn't count. If you're in the service, it doesn't count. That's the point; you have to be actually at work on a full day basis in order to qualify. That's how it gets so draconian. Some real change and reform is necessary on that point. Supplemental sickness was explained so well by Mr. Roth; I won't go into that. Suffice it to say that we update that at the
end in the beginning of every contract. The organizations' proposal is to index the increases to wages annually. It's a modernization that should be noncontroversial. On the information, you can say we are starved for information. We can't answer your constant questions. I testified to the stifling of negotiations based on the failure of information, and the carriers' response to this is twofold. In the papers they say it would cost money, because they have to come up with something, some kind of a structure. And I was waiting for Mr. Karov to elaborate on that so I know what they're talking about. But you remember Mr. Karov's argument? He said we don't need an enforceable right to information, because if they want to give it to us, they will. Well, that's the point. That's what we're complaining about. That's not the answer; that's the question. This is something that belongs in the national agreement. The craft-specific items were strongly presented by the organizations themselves. Those presentations occurred the day before yesterday.
The rebuttal occurred yesterday from the BLET and from the BMWED. You know what those issues are; they could not be clearer. So I don't see a reason to try your patience by extending my time for argument by going into them. I'd like to reserve the five minutes that I have for rebuttal.

CHAIRMAN JAFFE: Thank you, Mr. Wilder.

MR. MUNRO: Good morning.

CHAIRMAN JAFFE: Good morning.

MR. MUNRO: Mr. Chairman, members of the Board. I'd like to end where I began, with fairness. If nothing else, I think we agree on both sides that this case is about fairness. Where we diverge is how to quantify fairness which, like duty, is often in the eye of the beholder. I think that PEB 242 was on the right track when it mentioned objective indicators of fairness; something more than just the subjective opinions of one side or the other. What are those objective indicators here? They really fall into two categories: other agreements peer settlements; and numbers data, benchmarks, rates of growth, so on. Those are hard
facts. Those are objective indicators, they provide solid ground on which to work. And in this case you have both. As I said at the outset, here we have a comparable agreement as well as a wealth of data about these employee's current position relative to their peers both in terms of wages and in terms of health benefits. Let me touch on both. First the UTU Agreement. At the outset I don't want this legal debate over the label, pattern or its impact to obscure the most important point which is that there is an existing deal with 30 percent of rail labor; a deal that is founded on a quid pro quo exchange health care reform for above market compensation. The union's primary argument to this (inaudible), Mr. Wilder made it again this morning, is that you should discount it; you should ignore it entirely because it is not a majority. Let me make a side note here. There have been repeated references by the unions Mr. Wilder said it again this morning that they represent 73 percent of the industry. I think that's revealing with respect to the union's overall approach to
their numbers because they are wrong. The total UTU membership, this is from the December mid-month count in the base year of 2010, the year both sides have been using, was 39,880. The total for all other groups, the groups before you was 92,240. That is 30 percent, not 27 percent, not a quarter of the industry 30 percent. Why does this matter? Why am I making a big deal about 3 percent? The point is this is not an insignificant union. It is the biggest union by far and that makes a difference. Mr. Roth says a single union can't set the pattern although he concedes that it has happened in the past. But he never grapples with, neither Mr. Roth nor Mr. Wilder grapple with the scenario that we have here the largest union reaching agreement first. Flip this around. Suppose instead of the scenario you have before you, Union Pacific, the largest single railroad dropped out of national handling and accepted the coalition's terms. Is there any doubt that if the other railroads resisted the unions would claim pattern? In fact, in 1996 they went so far as to
cite an agreement with the Illinois Central, a tiny railroad, as pattern. One railroad. When you have a player this big make a deal it makes a difference. All of the traditional pattern considerations cited by Board after Board apply concerns about craft parity, about leap frogging, about incenting early deal-making; they are all directly applicable here. The unions also argue that our pattern position is not supported by PEB precedent although again they acknowledge that at least one Board, PEB 114 is precedent in our favor. We've also cited PEB 159 in our summary of page 9 which is also stands for the proposition that a single agreement can eventually lead to a pattern. But the flaw in their argument is that they have cited no decision which says that a single union cannot set the pattern. No Board has ever said so, so far as I'm aware. The closest they get is PEB 178 which Ms. Parcelli mentioned in her opening. But that case was before coordinated bargaining. And the shop craft unions in that case were on a different cycle than the
others. They were in the second year of their deal when the matter came before PEB 178. And the Board relied on that fact and the fact that the shop craft agreements involved unique considerations when it said we do not find a pattern here. And I suggest it was those considerations, not the percentage of the employees involved that led the Board to its conclusion in that case, especially in light of the counter-examples that you have in PEB 114 and 159. But the more important point beyond Board precedent is that the unions ignored the many, many situations where a single union, a single agreement sets a pattern. Voluntary agreements. Historically it has always been, or virtually always been the case that the first agreement sets a pattern for those who follow. It's been true in the last several rounds of voluntarily bargaining. In fact, in the last round it was the ROBC that set the pattern. It was a minority of the industry. That's where the pattern principal lives. And it's not in PEB reports; it's in the real world of bargaining, the usual course
under the Railway Labor Act. Let me make another
side note here while I'm on the subject that the
unions made the argument that last time in the
last round it was the carriers that blew the
pattern because they reached agreement with the
UTU last. And the UTU got a meal allowance
(inaudible) [0:06:43] pattern. Well that's not
ture. There was a quid pro quo for that and
(inaudible) [0:06:49] value. There was electronic
interchange, there were direct deposits. The
carriers got something for that. And so that is
not an example of exceeding the pattern. But let's
forget the label. Let's assume I'm wrong about all
of that. There's not a pattern in any legal sense
of the term. Even then, it cannot be denied that
the UTU Agreement is an objective indicator of
what is fair. Even agreements that don't set a
pattern are influential, to use the words of PEB
228, because they provide a benchmark, a measure
of what is fair. That leads me to my next point
regarding the benchmarks, the numbers, if you
will. But before I do that, let me just make one
other detour into something that Mr. Wilder
repeated again this morning regarding the SMART
merger. I frankly don't follow that argument at
all, but let's assume that the coalitions are
correct, that the UTU was desperate, it's under
attack by outside influences, it's scared for its
existence. How does it help them in that
circumstance to reach a weak deal with the
railroads? How does UTU leadership benefit from
that? It doesn't make any sense. In any event, on
to benchmarks. We've submitted a large body of
comparison data. We've showed, in particular, that
railroad employees currently enjoy a large
premium; not just in wages, but in benefits as
well over their peers. That premium was most
frequently referred to in the record as 80
percent, but it exists regardless of how you
measure it. It's 24 percent over other union
workers, 46 percent over private industry, 79
percent over the transportation sector. They have
no rebuttal to that; they don't have any contrary
data. At one point Mr. Roth said well it's too
good to be true. Either you're wrong, or your bargainers are incompetent. Well actually there is a historical explanation for the premium and it dates back to when the railroads were regulated. They could pass through increases to shippers and this is what happened. It didn't matter so much if there was a wage premium. Someone else was going to pay for it. That's no longer the case. We're not living in 1977 anymore. This is a competitive marketplace and we have to behave accordingly. The union's other argument in response to the comparisons we've drawn is that they're invalid because railroad workers can't be compared to anyone. They're so generous. Well that's a convenient conclusion given that none of the comparisons help them. But they're factually wrong in any event. We've shown by multiple methodologies that railroad workers are more highly paid than their peers with the same skills, the same job titles by occupational code, regardless of what methodology you want to use. They've made a complaint about one category in
particular, the train dispatchers, saying that we
mischaracterized and degrade their, that
particular job category through our job
comparisons. It's not our comparison. That's the
Bureau of Labor Standards. That's the federal
government that sets that comparison. And in any
event, the dispatcher's group before you, in this
proceeding, is smaller than the yard masters which
is a group that they've derided as insignificant.

In any event, yesterday Mr. Roth, I thought,
changed course and conceded there is a wage
premium. In fact he said there's been a premium
for 50 years. It should persist for another 50
years. And so maybe we are in agreement on that.
The unions also have no response, none at all, to
our benchmark data on other recent union
settlements. There is complete silence on that
issue. Why? Well because the settlements that
we've cited, recent settlements with other major
unions in the last two years are virtually half
the average increase that the carriers are
proposing here. In the transportation sector the
The average increase is 1.7 percent. I'm talking in GWY terms now. It's 2 percent in industry overall. And this includes a lot of notable settlements:

- Caterpillar, 0 percent;
- General Electric, 2 percent;
- Allied Industries, 1.22 percent.

These are all cited by the way in the Summary Statement of the attachments. These are major companies. Some, like Caterpillar, which have been very profitable lately, but are nevertheless providing increases substantially below what the carriers are offering here. With respect to the rebate over inflation and real wage growth that Mr. Wilder referenced, we showed using Congressional Budget Office numbers, not ours, that there is real total compensation growth under the carrier's proposal; as much as 10 percent when you include the growth and the value of benefits. Now Mr. Roth disputed that by saying inflation has been higher than CBO figures in the last 20 months. But again, he's selecting a measurement period that's skewed to fit his argument. As Dr. Evans pointed out, inflation increases during the summer and then...
1. declines over the course of the year. And so by
2. eliminating the fourth quarter of this year from
3. his analysis, Mr. Roth is effectively inflating
4. inflation. He also ignores the fact that by any
5. broader perspective, inflation has been
6. historically low in recent years. And as Dr. Evans
7. pointed out, the consensus among economists is
8. that inflation will remain low over the course of
9. this deal. So railroad employees don't have to
10. worry about this. If Mr. Wilder were correct, then
11. even under the union's proposal it would be
12. possible that there would not be real wage growth.
13. Inflation could skyrocket. But under any objective
14. measurement that you have right now, the evidence
15. is to the contrary. Mr. Roth also says, "Well I'm
16. not offering a projection. I'm just saying if it
17. is higher there wouldn't be real compensation
18. growth." But he offers no reason to believe that
19. will happen. There is every reason to believe that
20. the premium we discussed will only grow. We've
21. also heard that railroad employee's wage growth
22. has not kept up with inflation over time. Dr.
Evans showed that's just not true. It is based on using 1977 as the base year, and by virtually any other measurement period, railroad employees have done very well indeed including 7 percent real growth over the last ten years. This reference to 1977 Mr. Roth's use of that as a base year reminds me of another sub theme in the presentations that you've heard, and that relates to the use of history. At one point, Mr. Roth took us as far back as 1916. He talked about a wage cut in 1936. He makes these repeated references to the 1970s. But the most prominent, not just in his testimony but in others as well, is the repeated references to PEB 219. We've heard from multiple witnesses about what a damaging event that was. Well I'd like to make the point, perhaps it's an obvious one, that PEB 219 was 20 years ago. I had just graduated from high school. In the intervening years, there have been multiple voluntary agreements, as well as an intervening set of PEBs. It's time to stop living in the past. Let's focus on what's happening now. Old grievances about
Boards 20 years ago do not help to resolve current disputes. The unions do want to focus on the present in one respect and that's industry profits. We've heard repeated references to this idea. You can afford this, we're told. The industry has the ability to pay. Well as a threshold matter, that's not how the analysis works. Let me be clear about this. Inability, inability to pay is a management defense (ph) if an ability to pay is raised, it's a big deal. Then industry profits are highly relevant. You have to overcome that as an initial hurdle to obtain the package that you're seeking. But if it's not raised, and here it is not, then profitability is not the issue. It's benchmarks, inflation, other measures of whether either side's proposal is fair. In any event, we've shown that profitability is certainly not important as a matter of economics. We showed you that compensation and profitability are not correlated in any way. We also showed that setting compensation to bear some relationship to the labor market, what Dr. Murphy
referred to as the ability to attract and retain talent is important. There are consequences to paying more. Mr. Roth says and Mr. Wilder repeated today, that's just theory. It has no real world impact. You should ignore it. They apparently do not believe in the concept of substitution of capital for labor. This is just University of Chicago nonsense. I won't dwell on this (inaudible) [0:17:49], but recall the charts that both sides have put up, both sides about the declining labor force in the railroad industry as well as the increasing rate of capital investment. One is going down, the other is going up. That is substitution of capital for labor. It is real. This industry is a case study in that dynamic. And the point is it affects jobs. This industry is growing. We want it to grow. Everybody wants it to grow because it means more employment, something that is critical to this country right now. And the last thing we should want to do is put a damper on hiring, especially in this day and age. Another side note, while it's not an important
point, I do want to note that the union's
depiction of profits is, at the very least,
overstated. There is no doubt the industry is
doing well. We do not deny it. But as Mr. Gray
explained, even the record profits that we're
seeing now are no better than average when
compared to the rest of the world. So it's not
like there is some infinite amount of money here
that simply has no end and can be spread around to
everyone, no matter how high their demand. We
showed you, in addition, that there is a fair way
to share profits. It's called profit-sharing. Well
they don't want that. What the coalitions want is
a guarantee. They don't want to share in any
downsise risk. We heard one comment about that,
the reason why we don't want profit-sharing is
there is too much risk. It's tantamount to
investing in just one company. Now I have two
answers to that. First they've already done it.
The BLET, one of the largest groups in the
ccoalitions, already has profit-sharing bonus deals
with three of the major four railroads. Second,
the union's argument misunderstands the point of profit-sharing. It's to protect jobs. When times turn bad a company that has variable compensation is able to retain a larger percentage of its workforce than would otherwise be the case. But the carriers say, okay. You don't want profit-sharing? Fine. We will still share the wealth. And as I said before, 18 percent compounded wages, 20 percent, almost 21 percent in total compensation is sharing the wealth by any reasonable measure. It's also critical, I think, to remember that the significant increase in compensation that the carriers are proposing is a quid pro quo for something that the railroads want. And that's health care reform. The fact of the matter is with respect to health care, we actually agree on quite a bit. We agree that the current plan provides excellent benefits. We agree that benefits currently exceed the vast majority of other plans. We agree that benefit costs will continue to go up. Both sides, Cheiron as well as the carrier's experts assume a more than 7 percent rate of
increase. And both sides agree that prescription
drug plan costs, excuse me, the proposed changes
in the prescription drug plan will decrease costs
for both the plan and for beneficiaries. Where we
part company is on the significance of the changes
proposed by the carriers. The coalitions use terms
like catastrophic, gutting the plan. Mr. Wilder
today you used the word radical. Whereas our
position is that the changes are modest. Now Mr.
Boley put on a numbing series of slides on this
topic, survey after survey showing that even with
the carriers' proposed changes, benefits will
remain far better than most. Against that
evidence, their answer is Amtrak and five commuter
railroads. And we've made the point and I won't
belabor it that those are not good comparers. That
is not the railroad industry. For one, those are
governmental entities. They're not privately owned
companies. They are not subject to market
discipline. They are dwarfed by the size of the
companies before you in this proceeding. And
there's no historical basis for this. This is -
this has never been a significant source of comparison to the freight railroad industry. If anything it's worked the other way around. In any event, Mr. Wilder made the representation that the carriers' employee contributions far exceed everything else. Anything else out there. Well, again, I think that while that may be true today, it does not reflect the recent Amtrak deal. One of their comparators. The Amtrak deal cost for cost sharing at 15 percent. And there's a cap but the cap goes up every year. And eventually I think it's by 2013, the cap reaches $230 which is obviously more than carrier employees pay under our proposal. But this also raises a further point, one that Mr. Scofield made yesterday. And that is the rest of the world is not standing still. We've proposed a freeze on employee contributions. Meaning that relative to the rest of the world, we will continue to look worse and worse. So if you think that the plan is rich now, wait until 2016. Apparently more people want to get in. (Laughter) Another comparison, if you're
looking for comparisons of railroad management plans, Mr. Roe made the remark yesterday that many management employees are moving to high deductible, high employee cost plans. And that's one reason why as Lisa Mancini pointed out that many union employees promoted to management want to go back. The benefits are better. I don't think I need to belabor this point either. It's clear to anyone with experience in this area that these changes are modest. It will merely edge the plan back toward the middle. But we also disagree on whether change is necessary. And this is a disagreement over cost shifting verses controlling utilization. I did not hear any evidence from the other side that the proposed changes do not or could not effect utilization. Rather they've just tried to poke holes in our evidence that utilization rates will change. For example, we cited the - Dr. Newhouse's Study to you. And the response is well that's 30 years old. That's ancient history. You can't rely on that. There's some irony there. But that's their answer, it's
too old. And they ignore that in the recent legislative debates over healthcare reform that Rand Study that Dr. Newhouse did was repeatedly referred to as the Gold Standard still today. It's also common sense. If you charge people for something that was free, they will use less of it. And that should not be an area of significant debate. We've also heard conflicting testimony about the morbidity adjustment. I have to admit I didn't know what a morbidity adjustment was before I started this proceeding but I know now. And Cheiron defends their use of a morbidity adjustment to show - in an attempt to show that the plan is not as rich as we say it is by saying it's just normalizing for demographics. Nothing controversial about it. Well it's no different than saying that two people who eat different amounts really have the same food bill when you control for appetite. Cost is cost. If you use more, it costs more. And if the plan was uncapped and an employee share of increasing expense was shared along with the railroads, I doubt we would
be hearing this argument that cost doesn't really matter because they would be exposed to the same risk that the railroads are. Now the unions also make the argument that they need better benefits because their jobs make them sick. We disagree with that as an empirical matter. The statistical evidence that we've put before you indicates that if anything railroad jobs are increasingly safer. But even if it were true, the on duty component of sickness or injury is not relevant to plan design. Why? Because those conditions are covered elsewhere. That's exactly the argument that Mr. Wilder made today. I think we agree on this point. Their example, with respect to COPD - I didn't know what that was either - regardless of how you believe - whether you believe or disbelieve the relevance of comparative rates of railroad employee claims under COPD verses spousal or dependent claims, the other piece of that chart that Mr. Boley used you is that the number of claims is tiny - tiny - under the plan. I can't fathom why the COPD example helps them. It's
dominious (sp?). Moreover the related argument that - the other argument that they've offered against the proposed healthcare changes is that it should go to the JPC - to the Joint Planning Committee. And their argument is that the Joint Planning Committee has made changes before and that's the appropriate forum for this. Well as long as you get what you want in the Joint Planning Committee, I'm sure that's fine. And the examples they sight are things that the unions wanted. Now I'm - I can't be as colorful about this as Mr. Boley but when the railroads go and ask for these changes, I don't think there's any confusion or uncertainty about what the answer's going to be. It's the same people sitting on the other side of this room. So the Joint Planning Committee is a dead end. It - that is not a useful suggestion for dealing with this problem. And finally with respect to healthcare, I want to touch on the notion that the changes proposed by the carriers with respect to healthcare make this proposal concessionary. That is not correct. The
value of benefits to employees which is part of compensation will continue to go up. It's just not as much as it would otherwise. And the total value increases I said previously is substantial - 21 percent under the carriers' offer. Now one thing that Mr. Grady had touched on was the - with respect to value - was the value proposition. And by that he meant the total value of the UTU deal. It was the value proposition total value that made the extra compensation demands by these unions particularly problematic. We've shown you that there is a significant cost element to those proposals. In the aggregate, they represent a demand for roughly a billion dollars in additional labor costs over five years. If you want to convert it to an equivalent GWI, it's about 5 percent. That's on top of their GWI demand. And that's probably understated because it doesn't include payroll tax or a lot of other factors that would probably inflate that number even beyond 5 percent. But Mr. Grady explained that we will - are willing to accommodate their special interests
so long as they fit within the value. In other words, we will shift value from the components of our offer to other things that you want so long as they stay within the (inaudible at 00:10:12). And, Mr. Grady and Mr. Rogers showed you what the values are and how we've monetized them. Entry rates one for one or if they wish a $300 per person lump sum. Certification pay; we showed how we translate the 0.97 percent GWI value to UTU to 0.5 percent. Now they question the assumptions with that calculation but they never grapple with the reasons why we're making that reduction. There's no mention of the difference between a wage increase and a flat allowance. There's no mention of the fact that the proposal - the proposed special wage increase would take effect at least a year before the certification allowance kicks in. And there's no mention of the differential in the cost savings from healthcare. The fact that the carriers proposed changes will almost certainly be delayed as a result of the course of bargaining to date. Another detour side
note here, Mr. Wilder mentioned with respect to the carriers' calculations that their information request and the - cited as a reason for their demand on this - in this regard. The reason why there was no costing information provided is they didn't ask. On the items they did ask about, we did as Mr. Wilder conceded to provide the information. So in any event, these amounts that I've referenced, the cert pay and entry rate amounts as well as the GWIs in the carriers' proposal are available to fund other priorities. But we need to remember to stay within the value provided to UTU. That's the pattern. If you don't do that then next time it will be the UTU before a board like this claiming unfairness. It's the value that defines the contours of the pattern. And the other critical characteristic of a pattern, one that I want to emphasis, is that this was a quid pro quo. I said this at the outset and I'll repeat it here at the end. It's a package deal. Healthcare reform above market wage increases; they go together. And both components
of that offer are relevant to the broader policy debates that are going on in this country right now. There is a healthcare crisis. There's no doubt about that. There is an economic crisis. There is no doubt about that. And in the face of both of those crises, the railroads are acting responsibly in a measured prudent fashion. And that's what their offer reflects. I'd like to thank the board for its attention. I would especially like to thank union counsel for the professionalism and courtesy that they've shown me and my colleagues throughout this proceeding.

Thank you.

CHAIRMAN IRA JAFFE: Thank you Mr. Munro.

MR. ROLAND WILDER: I will be very brief. I am going to overlook the crack about being out of high school in 219 it was decided. (Laughter) And I'm not going to disclose when I get out of high school. The point of 219 and its relevance despite the fact it was a long time ago is that it illustrates when the industry was not doing well. And, the fact that the rest of our economy was
1 doing well is utterly irrelevant. What happened
2 elsewhere just could not be considered. And so
3 there is a very strong whose ox is being
4 (inaudible at 00:14:38) when it comes to
5 comparisons with the non-railroad world. But that
6 should not obscure the point that it's just as
7 Frankfurter was right that this indeed is a world
8 within a world and to look everywhere else for
9 guidance in resolving this case just has to be a
10 flawed reasoning. That's the point. The notion of
11 variable compensation, as Mr. Munro mentioned,
12 there's not, in this so-called patterned
13 settlement, it was not offered by the carriers,
14 and it's therefore not before this board. When we
15 speak in terms of the comparisons for health and
16 welfare purposes that we made with the rest of the
17 railroad industry, Mr. Munro responds that 90 plus
18 percent of the freight industry, and 86 percent of
19 the passenger industry is not good enough because
20 the Mom and Pop operations are not here. Well,
21 some of those short line operations, have as few
22 of two or three employees, they are literally
very, very small businesses. They have healthcare plans that the (inaudible) were talking about, obviously not. But they are they a fair comparator that ought to be considered? We should take the time as Cheiron did, to deal with this analysis, obviously not. They deal with a very small fraction of the industry, what I call Mom and Pop aspects. In terms of total compensation, that is the 21 percent of wages and benefits that Mr. Munro attributes to the UTU deal, but let me make it clear that the value is not high enough, given the circumstances, that these carriers and these employees find themselves today. We're not talking about rearranging the deck chairs, as Dan Pickett pointed out in his testimony. We're talking about more value, that's what's called for. Not attempting to resolve what value the UTU deal has.

Now, I point out even that issue is disputed on this record. We really don't know the value of the UTU deal. All we know is that it's not the value of the UTU deal that counts so much, it's the value of the UTU deal when it's applied to these
organizations that counts. And what you've heard, from Dennis Pierce and others, is those two values do not correlate, the UTU deal means more on that side than the carrier's application to that deal here. Now, why do I say that the value is not enough? That sounds greedy. But it really is not. In 2005, 2009 round we settled this very same agreement with these very same carriers, covering these very same employees voluntarily. Now, it's true that the agreement was made between the NCCC and the RLBC, but the RLBC represented a majority with the industry. More importantly, all the special interests of the unions making up the RLBC had been dealt with internally before they came to the bargaining table. So, the agreement that was reached was a amalgamation of all those special interests that had been worked out ahead of time. That has value from a negotiating sense. My point is that the agreement that emerged from those multi-union, multi-party negotiations was a fair representation of what would be satisfactory to the rest of the industry and it was, the
ratifications by one union after the next were truly overwhelming. That's never happened before. What we did, we settled for 17 percent over five years, 18.2 percent compounded, when the industry was doing half as well. In the health and welfare side, we agreed to extend the benefits of the MMCP Program to every part of the country. This was a project of the highest order for the organizations. In other words, employees who worked in Montana, Wyoming and other so-called white areas were given full access to the full benefits with The National Health Plan. And we made adjustments to pay for that. This time, we didn't even get off the starting block. That's where we are, lying on the cinders, and that's why we came to you. And the reason for that was that the carriers had buyer's remorse. They went off, they made a deal with UTU for whatever particular objectives the UTU had to accomplish and they entered into an arrangement which is for health and welfare that is unsustainable to the rest of the industry. That's the story in this case. Thank
CHAIRMAN JAFFE: Thank you again, Mr. Wilder. On behalf of the board, we'd like to thank counsel and all the witnesses for their courtesy, for their insights and for the assistance they provided to the board in terms of our role in the process. We'd also like to thank very much, publicly, the assistants of our two special counsel, Norman Graber and Susanna Parker, who, as counsel knows, at least from having dealt with them, have been laboring and will continue to do so on everyone's behalf. With that, we will stand in adjournment. Thank you all very much.