

**REPORT**  
**to**  
**THE PRESIDENT**  
**by**  
**EMERGENCY BOARD**  
**NO. 252**

SUBMITTED PURSUANT TO  
EXECUTIVE ORDER DATED NOVEMBER 21, 2024 ESTABLISHING AN EMERGENCY  
BOARD TO INVESTIGATE A DISPUTE BETWEEN NEW JERSEY TRANSIT RAIL  
OPERATIONS AND THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND  
TRAINMEN

AND SECTION 9a OF THE RAILWAY LABOR ACT, AS AMENDED

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(National Mediation Board Case No. A-13965)

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**WASHINGTON, D.C.**  
**JANUARY 20, 2025**

Washington, D.C.  
January 20, 2025

The Honorable Joseph R. Biden, Jr.  
President of the United States  
The White House  
Washington, D.C. 20500

Dear Mr. President:

Pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order dated November 21, 2024, you established an Emergency Board, effective 12:01 AM, Eastern Standard Time, November 22, 2024, to investigate a dispute between New Jersey Transit Rail Operations and its Locomotive Engineers represented by the Brotherhood of Locomotive Engineers and Trainmen.

Following its investigation of the issues in dispute, including both hearings and meetings with the parties, the Board now has the honor to submit its Report and selection of final offer for settlement of the dispute.

The Board acknowledges with thanks the assistance of Angela Heverling and Andres Yoder of the National Mediation Board, who rendered invaluable counsel and aid to the Board throughout the proceedings.

Respectfully submitted,



Ira F. Jaffe, Chairman



Sidney S. Moreland, IV, Member



Thomas A. Pontolillo, Member

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## I. CREATION OF THE EMERGENCY BOARD

Pursuant to Section 9a(e) of the Railway Labor Act (“RLA”), as amended, 45 U.S.C. §151 *et seq.* including §159a, and by Executive Order 14128, 89 Fed. Reg. 93145 (Nov. 26, 2024), Presidential Emergency Board No. 252 (“PEB” or “Board”) was established by President Joseph R. Biden, Jr., on November 21, 2024. The Board was created to investigate and report its findings and recommendations regarding a dispute between New Jersey Transit Rail Operations (“NJT” or “Carrier”) and its Locomotive Engineers represented by the Brotherhood of Locomotive Engineers and Trainmen (“BLET”) after the Parties failed to settle their dispute following an earlier-appointed Presidential Emergency Board (PEB 251). A copy of Executive Order 14128 is attached as Appendix A.

Section 9a(g) of the RLA requires that this Board “submit a report to the President setting forth its selection of the most reasonable offer.”

The President appointed Ira F. Jaffe, of Potomac, Maryland, as Chairman of the Board, and appointed Sidney S. Moreland, IV of Baton Rouge, Louisiana, and Thomas A. Pontolillo of Strongsville, Ohio, as Members. The National Mediation Board (“NMB”) appointed Angela Heverling, Esq., and Andres Yoder, Esq., to serve as Special Counsel to the Board.

## II. PARTIES TO THE DISPUTE

### NJT

NJT is a commuter rail system with principal offices in Newark, New Jersey. NJT is a subsidiary of the New Jersey Transit Corporation and an instrumentality of the State of New Jersey. NJT connects between points in New Jersey and also connects to points in New York State and Pennsylvania. Its operations include 12 commuter rail lines, over 160 stations, and

nearly 1,000 miles of track. Overall ridership between July 1, 2023 and June 30, 2024 exceeded 59 million passengers. NJT employs about 5,000 individuals in its rail operations, including approximately 485 Locomotive Engineers. It is the largest statewide public transportation provider in the United States and the third largest provider of bus, rail, and light rail transit service in the country.

### **BLET**

The BLET is a labor organization that is headquartered in Independence, Ohio. It has more than 51,500 members, and represents approximately 485 Locomotive Engineers who are employed by NJT. The vast majority of Locomotive Engineers at NJT are working as fully qualified Locomotive Engineers, with a relatively modest proportion working in the lower-compensated Locomotive Engineer Trainee or Assistant Engineer positions.

## **III. HISTORY OF THE DISPUTE**

NJT and the BLET (collectively “the Parties”) are parties to a collective bargaining agreement covering Locomotive Engineers that became amendable on January 1, 2020. The BLET served its notice under Section 6 of the RLA to initiate collective bargaining on October 1, 2019 – the first date that such notice could be served. NJT served a Section 6 notice on the BLET on November 27, 2019. After the amendable date, the Parties began negotiating, but were unable to come to an agreement.

Direct bargaining took place between the Parties. The Parties met twice in early 2020, following which, on October 22, 2020, the BLET filed an application with the NMB for mediation, and the Parties thereafter entered into mediation with the NMB, beginning on December 9, 2020. Despite over 20 mediation sessions being held, however, the Parties

remained unable to reach an agreement. Review of the Parties' proposals revealed that NJT proposed to the BLET an internal pattern settlement for both the 2020-24 period and later for the 2024-27 period. All of the rail labor organizations serving NJT other than the BLET agreed to the 2020-24 internal pattern settlement. A total of 11 of the 15 rail organizations at NJT have agreed to the second internal pattern which provides for wage and other improvements for the 2024-27 period.

The BLET was agreeable to the wage increases and other items contained in those proposed pattern settlements for those same periods with one significant exception – the BLET was demanding, in addition to the pattern wage increases, a 15.36% additional wage increase above and beyond the pattern settlements reached with other labor organizations on the property. The BLET referenced that additional wage increase as a “wage equity adjustment.” The stated rationale for the additional increase was to significantly narrow the gap between the wage rates paid to NJT Engineers and the wage rates being paid to Engineers who worked for other large commuter rail carriers, including particularly, those commuter rail carriers in the Northeast – i.e., Long Island Rail Road (“LIRR”); Metro-North Commuter Railway (“MNCR”); Port Authority Trans-Hudson (“PATH”); Southeastern Pennsylvania Transportation Authority (“SEPTA”); Massachusetts Bay Transportation Authority/Keolis (“MBTA/Keolis”); and AMTRAK/PENNDOT.

NJT remained firm in its position of offering the BLET only the internal pattern agreements that had been reached with other organizations. BLET similarly remained firm in seeking a significant wage increase above and beyond the internal pattern.

On June 21, 2024, the NMB, in accordance with Section 5, First of the RLA, urged that the Parties enter into an agreement to submit their controversy to arbitration as provided in

Section 8 of the RLA. The BLET declined the NMB's proffer of arbitration. NJT chose not to respond to the NMB's proffer of arbitration.

On June 24, 2024, the NMB, under Section 5, First of the RLA, served notice that its mediatory efforts had failed and that, accordingly, the Parties were required to maintain the status quo for 30 days, until July 25, 2024, at which time self-help would become available to the Parties absent appointment of a Presidential Emergency Board.

On July 2, 2024, during the 30-day status quo period, as authorized by Section 9a(b) of the RLA, NJT asked President Biden to establish an Emergency Board to investigate and issue a report regarding the dispute.

On July 24, 2024, the President granted NJT's request and created PEB 251, effective July 25, 2024. As a result of Section 9a(c)(1) of the RLA, the appointment of PEB 251 triggered a new status quo period for an additional 120 days, until November 21, 2024. On August 23, 2024, PEB 251 issued its Report and Recommendations.

#### An Overview of the Dispute Before PEB 251 and its Report and Recommendations

In PEB 251, the BLET sought a 7½ year agreement (January 1, 2020 through June 30, 2027) that combined both the 2020-24 pattern and the 2024-27 extension agreements. The BLET also sought an "equity adjustment" to wages in the amount of 15.36%, effective December 31, 2022.

NJT, by contrast, sought to have PEB 251 recommend only the 2020-24 pattern agreement, arguing that this was the only agreement that was at issue in the Parties' original Section 6 notices that led to the negotiations and ultimately mediations involving the NMB.

As noted, the stated basis for the equity adjustment was to allow the wage rates for Engineers to more closely approach the wage rates being paid to Engineers at other commuter rail properties across the United States, with particular emphasis on other commuter rail properties in the Northeast portion of the country. NJT opposed the requested equity adjustment on multiple grounds. First, it maintained that any wage equity adjustment was fundamentally inconsistent with internal pattern principles. It asserted that considerations of internal pattern outweighed any reliance on external patterns and maintained that since at least 1996 there was a consistent history of coalition and/or internal pattern bargaining between the Carrier and its labor organizations. Second, it denied that there was any showing of a sufficient factual basis for adoption of a wage equity adjustment. NJT acknowledged the differential between NJT Engineer wages and those paid at a number of other commuter rail properties, but argued that external wage differentials had never been used by the Parties in bargaining as a determinant of wage rates at NJT. NJT also maintained that while the differential in dollars may have increased in recent years, when viewed as a percentage of pay, the differential remained consistent with historical norms. The Parties also disputed which of the other commuter rail operations, if any, should be considered as comparators. Prior PEBs had addressed that question as well.

The BLET also argued to PEB 251 that application of the pattern settlements would result in a significant real wage loss based upon the fact that inflation was significantly higher than usual during the period of the pattern agreements. The BLET maintained that application of the pattern settlements would result in a loss of “real wages” after taking into account the effects of inflation. The BLET cited to the Consumer Price Index for Urban Wage Earners and Clerical Workers (“CPI-W”) to measure real wage loss. NJT argued that the loss of real wages was immaterial to application of the internal pattern since all of the other labor organizations agreed



to those terms based upon what was known about inflation at the time that those wage bargains were made. To the extent that PEB 251 considered the CPI-W, however, NJT argued in favor of the use of the Regional CPI-W for New York-Newark-Jersey City, NY-NJ-PA (“Regional CPI-W”) rather than the national CPI-W to gauge the impact of inflation and to determine “real wage” growth.

After consideration of the Parties’ positions and in light of the record before it, PEB 251 recommended the following:

1) Adoption of the 2020-24 pattern agreement and the 2024-27 extension agreement.

A 7½ year agreement was recommended with total wage increases of 21.0% (cumulative, but not compounded) and 23.027% (cumulative and compounded) from July 1, 2020 to June 30, 2027.

PEB 251 concluded that the pattern must be given “great, if not controlling weight,” noting that there was a consistent history of pattern bargaining dating back to 1996 – the 1996-2001, 2001-04, 2004-11, and 2011-19 agreements – each of which provided identical wage adjustments to all NJT rail employees. After reviewing a number of prior PEB Reports issued over the years, PEB 251 stated that:

Almost without exception, once finding a pattern, prior Boards have recommended the pattern’s general wage and benefit agreements, or at least the fully monetized value thereof, to the organization(s) contesting the applicability of the pattern settlement, sometimes (but not always) after an independent analysis of common wage determinants, sometimes (but not always) also making recommendations on or remanding for further negotiation unique craft-specific concerns.

(PEB 251 at 26-27). PEB 251 observed that prior PEBs had also recognized that new legal obligations or different economic distributions of the value of a pattern settlement might support a deviation from pattern, but found that such a showing was not made in that case. A 7½ year agreement (i.e., both the 2020-24 and 2024-27 pattern and extension agreements), rather than a more limited 4 year agreement (i.e., the 2020-24 pattern), was recommended based upon both practical considerations of avoiding a situation where “the Parties would be required to

immediately begin the negotiation process anew, with all of its attendant instabilities and tensions” – something that PEB 251 found would not have been “in the interest of labor peace” – and the fact that, during bargaining, on July 24, 2023, the Carrier made an offer based upon the full 7½ year pattern and the BLET accepted that offer with the exception of its requested equity wage adjustment.

2) Full retroactivity was recommended.

3) Two lump sum bonuses of \$1,500.00 each were recommended. One bonus was to be paid on July 1, 2024. The second bonus was to be paid on January 1, 2025. The stated reason for this recommendation (which had not been requested by the BLET) was:

In light of the length of time that has elapsed since the other organizations began to receive the general wage increases and the retroactivity payments and the corresponding period of time in which they, and NJTRO, have had use of the money, we recommend that BLET members receive an additional \$3000, payable in two lump sums. In making this recommendation, we have taken particular cognizance of the delays in the negotiation and mediation process and the number of times the Organization requested release from mediation, only to have the request objected to by the Carrier, even though the Carrier’s position on the main issue in dispute was unwavering. Thus, this recommendation is based on circumstances unique to this Organization and this round of bargaining.

(PEB 251 Report at 37).

4) A recommendation that:

As in PEBs 237 and 246, we also recommend that the engineers receive a cents per hour increase over and above the pattern settlement, retroactive to the effective date of this contract, if necessary to maintain the 10.4% differential between the conductor and the engineer rates that has been agreed to by the Parties for over 40 years pursuant to the Letter of Agreement dated December 29, 1982 and modified June 18, 2018.

(Id.). There was no mention of the 10.4% differential agreement at the hearings. The effect of this recommendation will be discussed in further detail later herein when addressing the Final Offers of the Parties in this proceeding.

5) A recommendation for a possible 6.0% wage increase, to take effect on July 1, 2027, with the following limitation:

Notwithstanding the 6% increase to take effect on July 1, 2027, wages for 2027 after the amendable date are an open subject for bargaining, but if wages for 2027 after July 1 are ultimately not resolved, then the Parties agree to provide a letter to the neutral body (including any interest arbitration or any subsequent PEB) to confirm the mutual understanding of the Parties that the 6% wage increase was intended to resolve completely the compensation adjustment issue for July 1, 2027 to June 30, 2028.

(PEB 251 Report at 39). The potential for an increase in FY28 (July 1, 2027 through June 30, 2028) was not addressed in the PEB 251 hearings and submissions. The stated rationale for making this recommendation was a perceived need for a wage increase significantly higher than the 3.0% wage adjustments in the extension period (2024-27) to address the real wage losses that had occurred, and were projected to occur, as a result of the application of the pattern wage increases for the period 2020-27 and the higher rates of inflation in effect for much of that period. According to the Board in PEB 251, the Carrier asserted that the real wage loss was only 2.3% by July 2024 and only 3.8% by July 2027 using the Regional CPI-W as the measure for the impact of inflation, whereas the BLET maintained that the pattern settlements resulted in a real wage loss of 6.8% over the 7½ year period (0.9% real wage loss per year).

With respect to the question of comparability to other regional rail carriers, PEB 251 held that “to the extent that any comparators outside of NJTRO are relevant, those in the Northeast close to New Jersey (PATH, LIRR, Metro-North, and SEPTA) are clearly the most relevant.” (PEB 251 Report at 31). With respect to those comparators, PEB 251 found it difficult to draw conclusions from the disparity in wage rates, given differences in the cost of living even within the New York metropolitan area between New Jersey and Long Island and given the lack of any evidence of total compensation. In the absence of evidence regarding pension benefits, health and welfare benefits, holidays, vacations and other paid time off, work rules, and the like, PEB 251 found it difficult to determine “how much a contract is worth to its covered employees” and difficult “to determine the extent to which NJTRO engineers may be undercompensated relative

to their counterparts.” (*Id.* at 32). The analysis of the data provided by the BLET by PEB 251 led that Board to conclude, after comparing the NJT wage rates to the average of rates of other rail carriers within the region, that “the disparity, while present, may not be as large nor increasing as quickly as the Organization contends.” (*Id.* at 33). PEB 251 also noted that the disparity between NJT Engineer rates of pay and those of other regional commuter railroads was “not new” and went back to at least 2003 and, since that period, wage increases for Engineers at NJT (determined on a percentage basis) were greater than increases in Engineer wage rates at PATH, LIRR, and MNCR. PEB 251 also found that there was no showing that the disparity between wage rates at NJT and wages for the same jobs at other regional commuter railroads was unique to Engineers such that it might justify a deviation from the internal pattern.

With respect to the appropriate measure of inflation for purposes of calculating real wage gain or loss, PEB 251 found that the Regional CPI-W was an imperfect measure of inflation, but more closely reflected the economic reality for NJT’s employees than the national CPI-W index. PEB 251 credited NJT’s analysis of real wage loss and reasoned that the appropriate time to address the effect of any real wage loss (calculated with the benefit of hindsight) was in the next successor agreement, rather than by way of deviating from a pattern that developed at a time when those inflation numbers were not known and could not have been considered. This led to PEB 251 recommending a 6% increase to be effective after the amendable date of the 7½ year agreement. PEB 251 reasoned that the proposed 6% increase was “designed to partly ameliorate the 3.8% loss in wages in the previous years in addition to providing an increase to respond to ongoing inflation.” (*Id.* at 36). The conditions on election of the recommended 6% GWI were patterned after a similar elective increase recommended by PEB 243. Despite the

recommendation for a July 1, 2027 wage increase, however, PEB 251's recommendations maintained an amendable date of July 1, 2027.

#### The Parties' Refusal to Accept the Report and Recommendations of PEB 251

When the Parties failed to reach agreement following PEB 251's Report and Recommendations, as provided for in Section 9a(d) of the RLA, the NMB conducted a public hearing on September 20, 2024, at which time the Parties explained why they each objected to certain of the recommendations of PEB 251. A review of the transcript of that public hearing disclosed multiple objections by each Party. The BLET stated that it rejected the Report and Recommendations because there was no recommended wage equity adjustment and because the recommended wages in the Report and Recommendations were inadequate in light of recent contracts negotiated at other commuter rail carriers. The BLET also maintained that PEB 251 understated the amount of real wage loss by relying on erroneous data provided by NJT in its presentation and then precluded the BLET from responding to that error. NJT accepted in part, and rejected in part, the recommendations of PEB 251. NJT accepted the recommendations to follow the NJT internal pattern for 2020-24 and the decision to reject the BLET's requested wage equity adjustment as unsupported, profoundly disruptive, and an adjustment that could have an unsustainable fiscal impact on the Carrier. NJT rejected the recommended lump sum payments as both unwarranted and unprecedented and as in conflict with the internal pattern. NJT also objected to the recommendation that the 2024-27 pattern be extended to the BLET, as well as the recommended July 1, 2027 wage increase, as recommendations that were both unwarranted and in excess of the scope of PEB 251's authority.

On November 18, 2024, shortly before the expiration of the 120-day status quo period that began on July 25, 2024, in accordance with Section 9a(e) of the RLA, NJT asked the

President to establish a second Presidential Emergency Board to investigate and issue a report concerning the dispute. Under Section 9a(h) of the RLA, the creation of a second emergency board would extend the status quo period to 60 days beyond the date of the emergency board's report.

On November 21, 2024, the President granted NJT's request and created this PEB – Presidential Emergency Board No. 252 – effective November 22, 2024.

#### **IV. ACTIVITIES OF THE EMERGENCY BOARD**

On November 26, 2024 and November 27, 2024, Chairman Jaffe met with the parties by videoconference to discuss organizational matters. On November 28, 2024, the entire record before PEB 251 was incorporated into the record in this matter. On November 29, 2024, the Board sent the Parties an organizational letter in which its procedures were set forth.

On December 18, 2024, Chairman Jaffe met with the Parties by videoconference for preliminary mediation discussions. On December 21, 2024, the Parties submitted Final Offers for settlement of the dispute (“Final Offers”), as required by Section 9a(f) of the RLA. The Parties then filed pre-hearing submissions on January 2 and 4, 2025. Hearings on the dispute were held on January 5 and 6, 2025 in East Brunswick, New Jersey. Both Parties were represented by Counsel and had a full and fair opportunity to present oral and documentary evidence and argument. On January 7, 2025, Chairman Jaffe met with the Parties in person in an attempt to resolve the matter. Unfortunately, those efforts were not successful.

During December 2024 and January 2025, the Board met by videoconference to discuss the dispute, reach consensus concerning its recommendations, and to prepare and finalize this Report.

## V. THE FINAL OFFERS

### The Parties' Final Offers

On December 21, 2024, the Parties filed their respective “final offers for settlement of the dispute” as required by Section 9a(f) of the RLA. As noted above, the dispute before the Parties in bargaining and before PEB 251 focused upon the BLET’s proposed wage equity adjustment in the midst of, and in addition to, the pattern wage increases that were negotiated and applicable to the Carrier’s other labor organizations. Secondly, the Parties had disputed whether this dispute would result in a four year agreement that would resolve only the 2020-24 time frame or would result in a 7½ year agreement that would also resolve the 2024-27 time frame.

The Parties’ Final Offers changed the framework of their dispute significantly. Both Parties asserted that the “only issue” remaining for the Board to address was wages. Both Parties included in their Final Offers the wage adjustments and other facets of the internal pattern settlements for both 2020-24 and 2024-27 that had been negotiated between the Carrier and the other rail labor organizations. Both Parties’ Final Offers included an additional wage adjustment for July 1, 2027. The difference between the July 1, 2027 wage adjustments in this case is huge. The BLET seeks a 14.0% wage adjustment on July 1, 2027. The BLET also seeks a \$3,275.00 per capita lump sum payment after ratification that is modeled after the recommendation of PEB 251 for two \$1,500.00 lump sum payments. The Carrier offers a 4.0% wage adjustment on July 1, 2027 and does not include any lump sum payment.

With the exception of the lump sum payments, the wage proposals during this 7½ year period mirrored the pattern settlement for the 2020-24 period and also the pattern settlement for the 2024-27 period. Both Parties also included a proposed wage increase on July 1, 2027. This represented a significant change from the positions of the Parties in PEB 251. In PEB 251, the

central issue of dispute related to the role of internal pattern and the BLET's request for a wage equity adjustment during the pattern period(s). In this case, the principal dispute relates to the amount of the July 1, 2027 wage increase and NJT has not reached any agreement with any of its other rail labor organizations with respect to wage increases for FY28.

The BLET Final Offer treated its requested July 1, 2027 wage adjustment as having no effect upon the July 1, 2027 amendable date. Its treatment of the July 1, 2027 wage adjustment in that regard mirrored the approach that had been recommended by PEB 251. The NJT Final Offer moved the amendable date to July 1, 2028, and treated the July 1, 2027 wage adjustment as final and firm.

There was some discussion as to whether the FY28 wage increase was an additional year of the prior pattern or was a free-standing collective bargaining agreement as to which there was no other pattern. Whether the "me too" letters entered into by NJT and some of the other labor organizations cover the July 1, 2027 wage adjustment need not be addressed at this juncture. It is sufficient to note the Board's assumption that, following the collective bargaining agreement between NJT and the BLET, other labor organizations are likely to follow suit and negotiate wage adjustments for FY28, either as one year agreements or perhaps as part of longer term collective bargaining agreements. Regardless of how those subsequent discussions with other labor organizations proceed, it is clear that there is no internal pattern in place at this time that would apply to the July 1, 2027 wage increase.

The verbiage included in the Parties' Final Offers concerning the non-wage items that were part of the pattern settlements matched precisely or near precisely on most non-wage items, but varied with respect to others. At the hearings in this matter, the Board sought clarity with respect to determining whether those language differences in the Final Offers were substantive.



The BLET objected to some of those differences as regressive in nature based upon its understanding that the language of NJT's Final Offer changed or failed to include certain items that were part of the pattern settlements and had been extended to NJT's other labor organizations who had signed off on those patterns.

After the completion of those discussions, it is apparent that substantive differences with respect to the non-wage items remained only with respect to the following items: 1) Moratorium date (which is related to the treatment of the July 1, 2027 wage increases); 2) the reference, if any, to the 10.4% Differential Letters of Agreement; 3) the effective date of the additional day of sick leave – i.e., whether that sixth day will be provided for 2024 and added to employees' sick leave banks; and 4) whether the Juneteenth and Veterans Day holidays are to be granted retroactively to 2024 (including premium pay for work performed on those holidays) or whether they are to become holidays only on a prospective basis following ratification. The remaining areas of dispute, after discussions, were essentially resolved, including particularly some differences concerning the health and welfare plans provisions of the pattern agreements and the "me too" letter which will be extended to the BLET notwithstanding the failure of the written Final Offers to seek that commitment. (With respect to the 2020-24 period, any "me too" status is a moot point since with the agreement of the BLET to those terms all of the labor organizations have agreed to the same pattern terms. With respect to the 2024-27 period, however, there is a theoretical possibility that a "me too" letter could be triggered if the BMWED, the ATDA, and/or the IBEW Local 1573 negotiate terms with NJT that vary from the pattern settlement.)

The Board's statutory mandate in this case is to "submit a report to the President setting forth its selection of the most reasonable offer." Prior to analyzing the Final Offers to determine

which of the two is the most reasonable, we set forth an overview of the reasons advanced by the Parties with respect to the disputed items contained in their Final Offers.

Wages

The Final Offers of both Parties included identical wage proposals with respect to the period from January 1, 2020 through June 30, 2027. The 2020-24 pattern agreements and the 2024-27 extension agreements, which are included in both of the Final Offers, call for the following general wage increases and top wage rates:

Date of Increase	Engineer – Top Hourly Rate	Increase	Increase – Cumulative	Increase- Cumulative and Compounded
1/1/2020 Rate	\$39.78			
7/1/2020	\$40.58	2.00%	2.00%	2.00%
7/1/2021	\$41.49	2.25%	4.25%	4.295%
1/1/2022	\$42.42	2.25%	6.50%	6.642%
7/1/2022	\$43.48	2.50%	9.00%	9.308%
7/1/2023	\$44.78	3.00%	12.00%	12.587%
7/1/2024	\$46.12	3.00%	15.00%	15.964%
7/1/2025	\$47.50	3.00%	18.00%	19.443%
7/1/2026	\$48.93	3.00%	21.00%	23.027%

The average rate of compounded annual increase for the first 7½ years of the agreement(s) is 2.802%.

The proposed July 1, 2027 wage increase would change the value of the 8½ year period from January 1, 2020 through June 30, 2028 as follows:

BLET 7/1/2027	\$55.79	14.00%	35.00%	40.251%
NJT 7/1/2027	\$50.89	4.00%	25.00%	27.970%
PEB 251 R&R	\$51.88	6.00%	27.00%	30.427%

The average rate of compounded annual increase for the 8½ years of the agreement(s) would be: 4.060% (BLET); 2.944% (NJT); and 3.175% (PEB 251 Report and Recommendations).

The BLET's Request for a 14.0% Wage Increase on July 1, 2027

The BLET argued that two factors supported its request for a 14% wage rate increase on July 1, 2027: 1) its claim that a wage equity adjustment was appropriate based on current and historical comparisons to external wage rates for Engineers at other commuter rail properties and based on comparisons to the negotiated rates of wage growth contained in a number of recent collective bargaining agreements at other rail properties; and 2) its claim that the 2020-27 NJT pattern increases had, for the first time in years, resulted in real wage loss due to higher than anticipated rates of inflation and its assertion that the unexpected loss in real pay should be remedied by way of a larger increase in wages at the first opportunity to bargain over pay after the end of those pattern settlements that led to the losses in real pay.

Initially, as explained by Thomas Haas, General Chairman, BLET General Committee of Adjustment at NJT, Engineers at NJT perform the same work, have the same certifications and skills, and work under conditions that are the same as engineers working at other commuter rail properties. In fact, engineers employed by NJT, MNCR, the LIRR, and AMTRAK all operate in and out of New York Penn Station (“NYP”). NJT Engineers hand off and exchange equipment with MNCR Engineers at NYP with respect to NJT trains that operate to the Meadowlands. NJT Engineers hand off and exchange equipment with AMTRAK Engineers who operate that equipment to and from various yards. NJT Engineers work at NYP on platforms that are opposite those on which LIRR Engineers are operating similar service. Three of those carriers – AMTRAK, LIRR, and MNCR – pay their engineers at rates that are within a few dollars an hour of one another. The fourth – NJT – pays its engineers \$10 per hour or more less than these other rail carriers. The BLET maintains that the disparity in wage rates violate the concept of equal pay for equal work.

Although NJT services Philadelphia, Mr. Haas disputed that Philadelphia (SEPTA) was a valid referent for wage rates at NJT. Mr. Haas noted that NJT serves Philadelphia on one line of the 12 operated by NJT (the other 11 all serve the New York market directly or indirectly) and the line servicing Philadelphia does so only because it provides service to Atlantic City. Mr. Haas thus asserted that while the New York market is a natural comparator, Philadelphia is not.

As he did in PEB 251, Thomas R. Roth, President, The Labor Bureau, Inc., testifying on behalf of the BLET, reviewed wage data for other commuter railroads and compared the NJT Final Offer and the BLET Final Offer with the known data from those other commuter rail operations. Mr. Roth compared the top hourly rates for Engineers at PENNDOT, MNCR, PATH, LIRR, MBTA/Keolis, and SEPTA, with the top Engineer rates at NJT under the pattern settlements for July 1, 2023; July 1, 2024; July 1, 2025; and July 1, 2026. For the LIRR, since the agreement was open, Mr. Roth used the rates of pay contained in that carrier's offer for 2023, 2024, and 2025. For the agreements that were open for 2026, he assumed a 2.5% wage increase over the July 1, 2025 rates of pay. Mr. Roth then calculated unweighted average wage rates for those other comparator rail carriers – \$49.27 (July 2023); \$51.28 (July 2024); \$53.24 (July 2025); and \$55.09 (July 2026) – and asserted that the wage rates for the NJT Engineers under the pattern settlements were 10.0%, 11.2%, 12.1%, and 12.6% lower respectively than those 2023, 2024, 2025, and 2026 comparator average rates. If one assumed a 3.0% wage increase for the open agreements in 2026, then the differential increased to 12.8% and use of a 4.0% wage increase assumption increased the 2026 differential further to 13.1%.

To highlight the effects of selecting the BLET offer, Mr. Roth also projected the average rate for July 2027 to be \$57.29 (2.5% annual wage increase assumption for open agreements) or \$57.56 (3.0% annual wage increase assumption for open agreements). The differential for July

2027 from these average wage calculations would be 2.7% (2.5% annual wage increase assumption for open agreements) or 3.2% (3.0% annual wage increase assumption for open agreements) if the BLET's 14% wage increase offer were implemented, and 12.6% (2.5% annual wage increase assumption for open agreements) or 13.1% (3.0% annual wage increase assumption for open agreements) if the NJT 4% wage increase offer were implemented.

Mr. Roth also performed historical comparisons with both average wage rates and individual comparisons between NJT and the comparator commuter railroads over the period 2003 to 2025.

Before PEB 251, Mr. Roth testified that the NJT Engineer wage rates were consistently lower than those of Engineers at MNCR. The hourly wage differential grew from \$6.21 per hour in January 2003 to \$10.57 per hour in July 2025. As a percentage of pay rates, however, the differential remained fairly constant. By July 2025, wages for NJT Engineers will be 84.6% higher than the January 2003 rates of pay. By comparison, MNCR Engineers will be paid 81.8% higher than their January 2003 rates of pay. There have been variations over the years, but those variations have been relatively modest. In some years the differential (as a percentage of pay) increases slightly and in other years it shrinks. The differential over the 22 year period has increased when measuring absolute rates of pay, but has shrunk slightly when normalized for overall wage movements and when measuring the differential as a percentage of pay.

Mr. Roth also compared Engineer wage rates from January 2003 to July 2025 at the LIRR with those at NJT. In January 2003, the wage rates for the LIRR were \$4.19 per hour higher than the wage rates being paid to NJT Engineers. The differential appears to have been approximately 15.7%. By 2020, the differential remained at 15.7%, but had grown to a \$6.20 per hour differential. The increases to pay at the LIRR and NJT have similarly tracked one another

somewhat over the years, with NJT pay having increased by 84.6% from January 2003 to July 2025, while LIRR pay for the same period was projected to have increased by 83.2%. The long term view, therefore, suggested that the gap between NJT and LIRR Engineer pay rates has increased in dollar terms, but has remained relatively constant in terms of the percentage differentials.

The differential in pay rates between MBTA/Keolis and NJT Engineers have increased from January 2003 to July 2025, increasing from \$1.51 (approximately 6%) to \$6.14 per hour (approximately 12.8%) in July 2025. Over that same period, the hourly pay rates for MBTA/Keolis Engineers increased 96.9% as compared with increases of 84.6% for NJT Engineers. That differential increased significantly since 2020. Thus, unlike MNCR and the LIRR, the differential between NJT Engineer pay and that of the MBTA/Keolis engineers has increased both in dollar terms and percentage terms.

Mr. Roth also compared the wage histories of NJT Engineers and SEPTA Engineers from January 2003 to July 2025. Unlike the other comparators, NJT Engineers are paid significantly more than SEPTA Engineers, although the percentage differential has decreased while the dollar differential has remained relatively constant over the years. In 2003, NJT wage rates were \$3.21 per hour higher than SEPTA Engineers (approximately 15% higher). By 2020, the differential was \$3.94 (NJT rates approximately 11% higher). With the most recent SEPTA Agreement, that differential has declined further both in absolute and in percentage terms.

A comparison between the wage rates for PATH Engineers and NJT Engineers showed a differential of \$3.56 per hour (approximately 14.9%) (2000) and a differential of \$4.01 (approximately 8.4%) (July 2025). Over the 22½ year period, NJT wage rates increased 84.6% compared to 75.9% for PATH.

The BLET also calculated the difference in hourly wage rates between NJT and the average of all of the nation's commuter rail pay rates. That data is significantly impacted by a number of carriers who have very large differentials in wage rates and who have not typically been treated by PEBs as comparators (MARC Penn Line, Caltrain, Metrolink) each of which had current hourly wage rates approximately \$10 per hour to \$15 per hour above that paid by NJT.

Before examining the comparison of recent wage settlements to the NJT pattern settlements, PEB 251 had cautioned against making comparisons based upon wage rates alone, noting that there are other aspects of compensation that are often significant in addition to wages, including health and welfare plan coverages and employee contributions and other costs, paid time off work, work rules, and the like. The BLET attempted to address those items in this case, but only did so with respect to adjusting the costing of the recent contract settlements to take newly negotiated changes in those non-wage compensation items into account. There was no baseline comparison that attempted to value, for example, the different approaches towards health care contributions between NJT Engineers and many of their counterparts at other commuter railroads (who pay much more by way of premium costs and whose premium costs automatically increase from year to year given their structure as a percentage of pay for the first 40 hours each week). Nor did the record reflect whether NJT Engineers and engineers at other comparator carriers work similar amounts of overtime, a factor that can significantly affect total compensation and quality of life.

PEB 251 also raised a question concerning the effect of differences in the cost of living between NJT Engineers and those working for other commuter rail carriers. In the instant case, Mr. Roth disputed the assertion that differences in the cost of living for where Engineers resided explained the large differences in pay between that of NJT Engineers and the pay of, for

example, Engineers working for LIRR or PATH. He went further, however, and examined the county of residence for the engineers at NJT, LIRR, and PATH, and then calculated the average annual cost of living for each of those groups, using the Economic Policy Institute (“EPI”) Family Budget Calculator in January 2024 and assuming a family of four consisting of two adults and two children. The result is that the weighted annual average EPI cost of living was \$131,506 for LIRR Engineers, \$126,634 for PATH Engineers, and \$120,797 for NJT Engineers. If that is indexed, with the cost of living for NJT Engineers set at 100, then the relative cost of living for PATH engineers is 104.83 and the relative cost of living for LIRR engineers is 108.89.

In PEB 251, Mr. Roth compared the key classifications of various labor organizations and compared the 2022 wage rates to the average rate of pay for those same classifications for LIRR, MNCR, MBTA/Keolis, SEPTA, Metrolink (southern California – Los Angeles and environs), Caltrain (San Francisco peninsula), and MARC (Maryland Area Rail Commuter). Mr. Roth testified that the NJT deficit for these other crafts ranged from 3.5% (TCU) to 9.6% (SMART-TD), 10.3% (BMWED) and 10.4% (ATDA). The differential rate for the BLET for those same comparator commuter railroads was calculated to be 13.9%. There was no attempt to provide any historical analysis of this data or indicate whether the smaller deficits for many of the other crafts was longstanding and constant or of more recent origin or whether the disparity between BLET “deficits” and those of other labor organizations would have been similar if the rates paid by NJT were compared only to LIRR, MNCR, PATH, SEPTA, and MBTA/Keolis.

The BLET also relied upon what it asserted was wage trend information regarding negotiated pay increases for Engineers at other rail properties. In support of its assertion that recent settlements at other properties were more generous than the pattern settlements at NJT and that, therefore, the July 1, 2027 wage increase should include some “catch up” to avoid



additional differentials between wages at NJT and at the other commuter and non-commuter rail carriers, the BLET referenced the following agreements: 1) the National Freight Agreement-BLET (January 1, 2020 – December 31, 2024); 2) the AMTRAK-BLET Agreement (July 1, 2022 – January 1, 2029); 3) the MBTA/Keolis-BLET Agreement (July 1, 2023 – June 30, 2028); 4) the SEPTA-BLET Agreement (March 3, 2023 – March 2, 2026); 5) the MNCR-ACRE Agreement (July 1, 2021 – October 31, 2026); and 6) the Virginia Railway Express/Keolis-BLET Agreement (January 1, 2021 – June 30, 2025). PEB 251 noted that information was provided regarding wage rate changes, but no information was introduced from which compensation comparisons could be made. Mr. Roth testified concerning each of these agreements, including references to changes negotiated with respect to non-wage compensation matters. He acknowledged that he did not attempt to compare the value of the health and welfare benefits provided and, with respect to NJT, did not attempt to assess the value of the frozen health plan contributions as contrasted with the “true up” cost since the contribution rates were frozen before 2020 and, therefore, Mr. Roth determined that there was no change to be recognized in valuing recent settlements. Nor did the record reveal whether the types of runs worked by Engineers, staffing levels at each of the carriers, or other considerations affected both the number of hours that Engineers were required to work, on average, or their total compensation after one factors in overtime and different provisions with respect to payment for time related to split run situations. [Split runs consist of trains operating during the morning and evening rush hours, separated by lengthy off-duty periods in the middle of the day. Different railroads use different terms to describe the break during the split in service (e.g., “release time” on PENNDOT, “swing time” on MNCR, etc.).]

What follows regarding the recent agreements is based upon Mr. Roth's testimony at the hearings in this matter.

The National Freight Agreements provided wage increases of 24.0% over a 5 year term plus \$5,000 in lump sum payments; even after netting out increased health insurance premiums, those agreements provided 4.3% wage increases annually on a compounded basis. The Engineer wage rate under the National Freight Agreements was \$41.69 per hour as of January 1, 2020 and increased to \$51.68 per hour as of January 1, 2025. A paid personal day was also added and many of the agreements reached after PEB 250 added three to five days of sick leave per year, sometimes with quid pro quos.

The AMTRAK Agreement increased Engineer Wage Rates by 35% over the 7 year term, increasing hourly pay rates from \$49.68 in 2021 to \$67.04 effective July 1, 2028. The PENNDOT Agreement provides the same wages as the AMTRAK Agreement. Martin Luther King Day and Juneteenth were added as paid holidays, bereavement leave was enhanced, and 10 weeks of parental leave were negotiated. Release time for commuters was also negotiated. Vacations were converted to a PTO program that resulted in significant additional paid time off. The meal allowance was increased from \$9 to 30% of the hourly rate. Student rates also were increased. No concessions were made to fund any of those negotiated improvements.

The MBTA/Keolis Agreement, which was entered into after the hearings were held in PEB 251, provided for 5.7% increases on a compounded basis (5.6% net of health insurance contribution increases) over a five year period. The starting hourly rate of pay was \$47.23 and increases to \$62.27 as of July 1, 2027. The differential thus increases from 5.5% in 2023 to 17.3% in 2026.

Although the wage rates for the NJT Engineers remained greater than those for SEPTA Engineers, that differential has shrunk in recent years. The rate of annual wage increase is 4.4% over the 3 year period from 2023-2026 and, after taking into account additional time allowances of 45 minutes per week granted to the SEPTA Engineers, the rate of compounded wage increase is 5%. In addition, the SEPTA Engineers received a new, improved wage progression schedule, that afforded many of those Engineers significantly greater wage increases.

The MNCR-ACRE Agreement provided for increases of 18.03% compounded over 5 years, 4 months, with a compounded annual wage increase of 3.2%, after offsetting for an increase in the health and welfare contribution rate from 2% of straight time pay up to 40 hours to 3% of straight time pay up to 40 hours, and taking into account a \$500 annual safety stipend payment beginning in 2025 and an increase in the swing time rate (i.e., the time between AM and PM peak runs on a two-piece assignment) from 75% to 90% of pay. Over the term, the MNCR Engineer hourly rate increases from \$50.21 to \$59.26, increasing the gap from NJT Engineers from \$9.98 per hour (21.0%) (July 2021) to \$11.76 per hour (24.7%) (March 2026).

The Virginia Railway Express/Keolis Agreement increased engineer rates from \$47.08 (\$6.50 per hour, or 16.0% higher than NJT rates) to \$57.54 (\$10.04, or 21.2% higher than NJT rates), with overall increases over term of 22.2% (4.6% compounded per year). Even after adjusting for increases in health insurance contribution rates, the compounded rate of annual wage increase was 4.3%, or 20.8% in total.

Most of those agreements provided for compounded wage increases that were slightly higher than the increases provided to NJT employees. The compounded wage increases, including consideration of relevant benefits changes, was 4.3% for the freight railroads (plus \$5,000 in service recognition bonuses) (2020-25 Agreement); 4.4% for AMTRAK (2022-29

Agreement); 5.6% for MBTA/Keolis (2023-28 Agreement); 5.0% for SEPTA (2023-26 Agreement); 3.2% for MNCR (2021-26 Agreement); 4.3% for Virginia Railway Express/Keolis (2021-25 Agreement); and 2.8% for NJT (2020-27 Agreement)/2.944% for NJT (with Carrier's July 1, 2027 4.0% increase)/3.175% for NJT (if a 6% increase was granted July 1, 2027)/4.060% for NJT (if the BLET's July 1, 2027 14.0% increase was implemented).

The historical data, however, failed to reveal any tandem pay type of relationship over the years with respect to NJT Engineer wage rates and the wage rates negotiated at some or all of these other carriers. In some years, NJT settlements appeared to be higher than many of these comparators, in other years appeared to be lower, and in still other years appeared to be comparable.

Jerrold A. Glass, President, FH Solutions Group, testified on behalf of NJT. Mr. Glass asserted that, in commuter rail, external comparators are not typically viewed by the bargaining parties as significant with respect to their negotiation of wage rates. Mr. Roth disagreed with that assertion, based upon his own experience over the years negotiating on behalf of various labor organizations in both rail and transit settings and suggested that, perhaps, the significance of external comparators depended on whose views were being considered. Mr. Glass also opined that, to the extent that external comparators are viewed as material market considerations in setting wage rates, so long as NJT is able to recruit and retain adequate numbers of Engineers, the lowest wage comparator and not the highest is the most significant economic referent. The Carrier maintained that, while it had Engineer shortages in prior years due to state-imposed hiring freezes, it currently had large numbers of candidates applying for each vacancy and further maintained that attrition was not excessive. It denied that compensation levels hampered its efforts to recruit and retain sufficient qualified Engineers.

Mr. Glass introduced a table that set forth the general wage increases and absolute wage rates by calendar year, from 1996 through 2028, for AMTRAK, MBTA/Keolis, LIRR, METRA, MNCR, NJT, Northern Indiana Commuter Transportation District (“NICTD”) (which operates between South Bend, IN and downtown Chicago, IL), PATH, and SEPTA. It is sufficient to note that, upon scrutinizing the data in that exhibit, the Board is unable to discern any clear pattern between wage adjustments negotiated at NJT and those negotiated at any of the other listed carriers. The wage adjustments are frequently in the same general range for most, if not all of these carriers (including NJT), but no tandem pay or similar relationships were apparent from that data.

A comparison of the wage data for LIRR and NJT for 1995 revealed that the LIRR wage rates were 21.5% more than the NJT rates; by 2022, the differential had decreased to 14.8%. A comparison of the wage data for PATH and NJT for 1996 revealed that the wage rate at PATH was 11.8% more than at NJT; by 2024, the differential had declined to 11.2%. The wage data for MNCR for 2007 showed that the wage rate was 25.3% over that at NJT; by 2024, the differential was 25.5%. With respect to SEPTA, in 2000, the NJT rate was 11.37% higher than the rate at SEPTA; by 2024, the NJT rate was 9.37% higher than the SEPTA rate.

Mr. Glass also provided comparisons of the non-compounded increases in wage rates from 2019 through 2024. That comparison showed increases for NJT of 19%; for LIRR of 15.5%; for MNCR of 17.5%; for SEPTA of 23.5%; and for MBTA/Keolis of 20.75%. During that same time period, Mr. Glass calculated the CPI-W as having increased by 23.5%.

Mr. Glass concluded that the relative relationship of Engineer pay at NJT, when compared to the rates in effect at other Northeast carriers, when measured as a percentage of pay,

has remained fairly constant with some variations over the approximately 30 year period that he examined.

In response to a question from the Board, Mr. Roth addressed the genesis of the wage disparities between NJT and MNCR and SEPTA. Mr. Roth noted that, prior to 1983, all of those operations were part of Conrail and wages were identical for all three groups of Engineers (and the other crafts as well). As provided for in the Northeast Rail Service Act of 1981 (“NERSA”), a series of PEBs were held – one for SEPTA (PEB 196), one for NJT (PEB 197), and one for the New York Metropolitan Transportation Authority (“MTA”) and Connecticut Department of Transportation (“CDOT”) operations that later became MNCR (PEB 198). Mr. Roth noted that each of those PEBs took significantly different approaches to the issues of wages. PEB 196 recommended adoption of a wage scale based on that in effect for SEPTA’s transit employees, with existing engineers grandfathered, thus creating a two-tier wage system. PEB 196 noted that the financial plight of SEPTA was so severe that, unless it obtained additional funding, it would not be able to fund commuter rail service past February 1983 and stated that “[t]his Board strongly believes that SEPTA should be viewed as a transit operation and not as a railroad. Thus, the terms and conditions of work for individuals employed by Conrail and transferred to SEPTA should not be passed down to SEPTA.” (PEB 196 at 13). PEB 197 remanded the wage dispute for further negotiations between the parties with findings that neither a pure railroad model nor a pure commuter model was applicable to the NJT operations. PEB 197 further recommended that “no significant changes should be made either upwards or downwards in employees’ present rates of compensation” and also referred the parties to the then-recent agreement on AMTRAK addressing significant changes in the historic method of compensating operating craft employees. (PEB 197 at 13). PEB 198 recommended that, for non-operating

employees, the then-existing Conrail wage rates be increased by 7% to be comparable to settlements by some of the LIRR organizations and by the bus and subway employees at MTA.

With respect to operating employees, PEB 198 recommended the elimination of the dual basis of pay, adopting the carrier’s initial proposed rates and recommended that MNCR offer the Brotherhood of Locomotive Engineers increases thereafter at the same percentages as were provided for the non-operating employees. (PEB 198 at 9).

In addition to the claim for a wage equity adjustment based upon disparities between wage rates for NJT Engineers and those wage rates for engineers at other carriers, the BLET has also asserted that a larger than customary wage increase for July 1, 2027 is supported by the real wage loss during the 2020-27 Agreement. There was discussion in PEB 251 concerning the appropriate measure of inflation, regional or national, and in addition the BLET has challenged some of the numbers that were used by PEB 251 when analyzing the issue of real wage loss.

If one uses the Regional CPI-W as a measure of real wage change, as was used by PEB 251, then the impact of inflation on the 2020-27 wage adjustments reflected in the pattern agreements and the wage proposals of both Parties in this matter are as follows:

Date	Regional CPI-W	Indexed (12/19=100)	GWI	Real Wage (12/19 = 100)
12/19	274.027	100.0	100.0	100.0
07/20	277.944	101.4	102.0	100.6
07/21	288.323	105.2	104.3	99.1
01/22	296.213	108.1	106.6	98.6
07/22	308.491	112.6	109.3	97.1
07/23	316.405	115.5	112.6	97.5
07/24	330.340	120.6	116.0	96.2
07/25	341.902E	124.8	119.4	95.7
07/26	350.449E	127.9	123.0	96.2

The last actual datapoint for the Regional CPI-W is for November 2024. The estimates of future Regional CPI-W indices set forth in the foregoing table (so designated by the “E” after

the numbers) are projections based upon assumed increases of 3.5% for the period July 2024 to July 2025 and of 2.5% thereafter, July over July. Those estimates were provided by Mr. Roth and not questioned at the hearing by NJT and which, over the two years from July 2024 to July 2026 total 6.0% prior to compounding, the same amount by which the pattern 2024-27 Agreements increase wages prior to compounding.

If one continued that analysis with respect to the July 1, 2027 proposed wage increases, then the results would be as follows:

07/27	359.210E	131.1	140.3	107.0 [BLET Offer of 14%]
07/27	359.210E	131.1	128.0	97.6 [NJT Offer of 4%]
07/27	359.210E	131.1	130.4	99.5 [PEB 251 – 6%]

Mr. Roth calculated that a 9.1% wage increase would be needed on July 1, 2027 to fully make up for the real wage loss that occurred during the 2020-27 pattern agreements in this case and also provide for no real wage loss for FY28. [The 6.0% increase recommended by PEB 251 plus the 2.5% growth assumption in the Regional CPI-W that was being used by Mr. Roth plus the 0.5% remaining real wage loss that would not have been addressed by the 6.0% increase on July 1, 2027, with rounding, totals 9.1%.]

Mr. Glass disagreed with the premise that real wage losses needed to be recouped during the subsequent round of bargaining. Mr. Glass noted that Cost-of-Living escalators were common provisions in many labor agreements decades ago, but had been abandoned in favor of systems that addressed inflation in an ad hoc fashion as one factor when negotiating wage and benefit levels.

The NJT Offer of a 4.0% Wage Increase on July 1, 2027

The Carrier offered little specific explanation for why its offered wage increase for



July 1, 2027 was 4.0%. NJT did provide testimony as to why it believed that the 14.0% sought by the BLET was excessive and unreasonable. Some of the opposition focused upon the appropriateness of the claimed wage equity adjustment. Some of the opposition focused upon the claimed lack of any need to fully address real wage loss during the 2020-27 Agreement when selecting the appropriate general wage increase for FY28. Those areas have been addressed above in connection with discussion of the BLET proposed wage increase for FY28 and, therefore, need not be addressed again in this section of the Report.

NJT did, however, provide testimony and evidence regarding its budget and its position that a 4.0% general wage increase was reasonable and affordable, whereas a 14.0% general wage increase was not.

Patrick Hartmann, Senior Director, Operating Budgets, NJT, testified at length concerning the budget process, the various sources of revenue for NJT, and the cost of the BLET's proposed 14.0% wage increase as of July 1, 2027. Mr. Hartmann explained that a 3% assumed wage increase has been included in the Carrier's budgets in recent years. Assuming that the 14.0% increase in pay is extended to all of NJT's rail employees, the cost for FY28 would be \$184.3 million, requiring an increase to NJT's total budget of 5.2%. The cost of a 4% increase, by comparison would be \$52.7 million. Mr. Hartmann testified that, if one extended the 14.0% increase in wage rates beyond the Carrier's rail operations to the entirety of New Jersey Transit Corporation, then the incremental cost over FY28, FY29, FY30, and FY31 of adopting the BLET proposed 14.0% increase instead of the Carrier's proposed 4.0% increase would be approximately \$550 million – a figure that represents approximately 3.5% of the Corporation's total estimated budget for those years. The Carrier has been running an approximately 2% structural deficit in recent years. Absent significant increases in funding,

Mr. Hartmann opined that the BLET's FY28 wage proposal is simply not financially attainable. This situation is exacerbated by reductions in the budget being directed by the State of New Jersey to address current significant budget shortfalls on a statewide basis – a change from surpluses that had been the situation in a number of recent years. A 4.0% increase in pay for FY28 would cause an incremental addition of 0.4% annually to the Carrier's budget deficit, absent additional funding to make up for the difference between a 4% increase in pay and the traditionally budgeted 3% annual increase in wages.

Mr. Hartmann reviewed the various funding sources for NJT and stated that it was highly unlikely that the needed additional revenues to fund a 14.0% increase in wages could be obtained. Currently, the major sources of revenue include farebox revenues (fares were recently increased 15% in FY25 and are projected to be increased thereafter by 3% annually), commercial revenues, funding from the State (through a combination of a direct operating subsidy, revenues from the corporate transit fee, revenues from turnpike funding, and monies from the Clean Energy Fund, the amounts of which vary year to year and some of which are scheduled to sunset), and federal monies (including significant COVID-19 relief monies which are scheduled to end in FY25 and which were lessened significantly in FY23, FY24, and FY25). Mr. Hartmann noted that ridership has not yet returned to pre-COVID-19 levels and speculated that it may never do so in light of the practice of many businesses that still allow employees to work from home.

NJT asserted that its proposed 4.0% is in line with historic wage adjustments in recent decades and asserted that the BLET has failed to establish that there are any general trend lines suggesting greater wage hikes more generally. NJT acknowledged that PEB 251 recommended a

6% wage hike on July 1, 2027, but maintained that the reasons for that recommendation were flawed and that the recommendation was fiscally unattainable.

#### Moratorium Date

The BLET Final Offer provides that, notwithstanding the requested 14.0% general wage increase, effective July 1, 2027, the amendable date remains July 1, 2027. The BLET's final offer would allow for the negotiation of changes to wages and other terms and conditions of employment for FY28 (and beyond) as well as for the submission of new Section 6 proposals beginning April 1, 2027.

The BLET's proposal regarding moratorium was specifically designed to ensure that there would not be a period during which other labor organizations could negotiate with NJT, but that the BLET could not. The BLET feared that the result of a delayed amendable date applicable solely to the BLET would be that a new 2028 pattern would be developed before the BLET could even engage in bargaining with NJT, thus perpetuating (from the BLET's perspective) the situation that took place with respect to the 2020-24 and 2024-27 pattern agreements. The BLET's Final Offer thus treated the 14% wage proposal as follows:

Notwithstanding the 14% increase to take effect on July 1, 2027, wages for 2027 after the amendable date are an open subject for bargaining, but if wages for 2027 after July 1 are ultimately not resolved, then the Parties agree to provide a letter to the neutral body (including any interest arbitration or any subsequent PEB) to confirm the mutual understanding of the Parties that the 14% wage increase was intended to resolve completely the compensation adjustment issue for July 1, 2027 to June 30, 2028.

NJT's Final Offer extends the Moratorium date to July 1, 2028 (with the first day to tender Section 6 notices set at April 1, 2028). The NJT Final Offer proposed an 8½ year agreement, with its July 1, 2027 pay increase firm. The practical effect would be that for FY28 there would be no further negotiations with the BLET over wages or changes in benefits or work rules, including health insurance premiums which would continue to be frozen during FY28.

Thus, under NJT’s Final Offer, there would be another year in which the 5% “true up” of premium rates would not be applied.

### Retroactivity

Both the BLET and NJT Final Offers provided for retroactivity. Most of the language was identical and mirrored that contained in the pattern agreements, but the language in the NJT Final Offer provided that payment would be made “as soon as practical” following ratification by both the BLET and NJT, whereas the language in the BLET Final Offer provided that payment would be made “as soon as practical, but in no event later than 90 days after full ratification and approval by the NJT Board.”

The BLET accused NJT’s offer of being “regressive” since the 90 days language was included in both the pattern settlements and also in the July 2023 offer made by NJT to the BLET. NJT replied that its Final Offer was intended to be descriptive and not precise in terms of the language used. NJT stated that “we will live by everything that was agreed to in those [July 24, 2023] drafts that were exchanged, which I think the sole exceptions were wages which we’ve talked about.” (January 6, 2025 Tr. 82) NJT admitted that it was in agreement to provide full retroactive pay and, as was previously offered to the BLET and other labor organizations, to make the payments for retroactive pay no later than 90 days after ratification. Inasmuch as historically the BLET has ratified first and NJT ratifies only after the BLET has done so, the difference in language concerning ratification is a distinction without any practical significance.

Accordingly, the Final Offers of both Parties, as clarified at the hearings, with respect to retroactivity are identical.

### The BLET's Requested Lump Sum Payment

The BLET's Final Offer includes a provision that would require the Carrier to pay on the "[d]ate of ratification, \$3,275.00 lump sum payment to each active employee." The BLET explained that the request for this lump sum payment was based upon the recommendation of PEB 251 for two \$1,500.00 lump sum payments (total of \$3,000.00) to compensate employees for the delay in receiving their back pay.

While the BLET maintains that this does not come close in many cases to making employees whole for their actual harm, such as increased credit card debt due to flat earnings and associated interest payments, the \$3,275.00 request was based upon the recommendation of PEB 251 for a two \$1,500 lump sum payments (\$3,000 in all), adjusted upwards slightly due to the additional time that has passed since the issuance of PEB 251's Report and Recommendations without any agreement having been reached or retroactive pay actually being provided.

NJT opposed the requested lump sum payment for multiple reasons. First, it appears to NJT from the explanation provided by PEB 251 that this payment is punitive in nature based upon the determination of PEB 251 that the length of time that the dispute has remained unresolved was the fault of the Carrier. The NMB, not the Carrier, determines when mediation ends and a release takes place. In other rail negotiations, the NMB has declined to release the parties for much longer periods. In the case of AMTRAK, negotiations took place over an eight year period without release. In the case of PATH, the NMB declined to release the parties despite the passage of almost 11 years. The Carrier's opposition to release is standard in these cases and is consistent with the goal of avoiding a work stoppage, which is a primary purpose of the RLA. Despite those delays, there has been no prior case in which employees have been awarded money in addition to full back pay to address the time value of money or the delay in

receiving those payments. The history of negotiations with the other labor organizations, including agreeing to reasonable increases during the early days of the COVID pandemic, speaks loudly to the good faith of NJT. The Carrier's insistence on pattern settlements was consistent with both policy and practice under the RLA as recognized by numerous PEB decisions, including PEB 251. The BLET also opted not to materially change its position in this case.

To the extent that the lump sum payments are based upon punishing NJT, that view by PEB 251 was alleged to have been in error. Second, the Carrier noted that there was no showing that any such additional payments had been made (or requested) in the past either at NJT or at other properties. Third, NJT argued that it was bad policy to provide additional payments in these circumstances. According to NJT, the process should encourage prompt agreement to pattern settlements, not reward delay. Fourth, the Carrier expressed concern that, as presently sought, such payments could trigger claims under the "me too" agreements (or otherwise) for similar payments to all represented Rail employees at NJT – something that would create significant additional prohibitively high budgetary costs. Fifth, the delay in this case in reaching agreement resulted in NJT being unable to implement the change in health plan design for the BLET-represented employees that had been implemented for NJT's other employees. According to an analysis by NJT's actuary, this delay in implementation was estimated to have cost the Carrier approximately \$600,000 per year through the end of 2024. Those costs were a combination of both higher utilization of plan benefits and differences in the plan benefits themselves and the more favorable benefits that were applicable to the Engineers (even after taking into account the factors of age, sex, family size, and health risk). If one calculates the per capita impact of those lost savings/additional health benefits utilized by the BLET group, then the result is similar to the value of the lump sum payment recommended by PEB 251 and sought herein by the BLET

[\$1,500,000 divided by 485 employees = \$3,093 per employee]. This sum is increasing by over \$100 per Engineer per month so long as the BLET unit is not transitioned to the redesigned health plans. Viewed differently, these sums represent additional health benefits that the Engineers, as a group, have been receiving since July 2022 and continue to receive to date that none of the other rail employees at NJT are receiving, and provide another reason for not awarding additional payments to the BLET Engineers as a result of their not having earlier received the additional pay resulting from pattern agreement wage rates. NJT could have requested an offset from the retroactive pay as a result of the delay in implementing these health plan cost savings, but in good faith opted not to do so.

At the hearings in this matter, it was noted that NJT took monies from its then-current operating budgets that was anticipated to be spent on retroactive pay for the Engineers and placed those monies into a cash reserves account pending agreement on the collective bargaining agreement and payment of retroactive pay. While the precise interest rate earned on the cash reserves in each of the years in question was not noted in the record, the cash reserves account is invested in safe investments with rates of return similar to those typically earned by money market funds. Mr. Roth estimated the amount of retroactive pay due to each employee, on average, was \$40,994 for back pay for straight time hours. (It appears that this sum does not include the additional back pay resulting from the substantial overtime worked by many Engineers.) The BLET opined that the amount of earnings on the cash reserves attributable to pattern pay rates that were accrued, but not paid out by NJT, likely exceeds the \$3,275.00 per employee payment sought by the BLET. The BLET thus asserts that it is particularly appropriate to award its requested lump sum in this case. In response, NJT observed, however, that no claim was made that historically NJT has ever distributed to employees the earnings on the portion of

cash reserves that represented accrued wages that were awaiting distribution following entry into the successor collective bargaining agreement by the BLET or any other labor organization. NJT further noted that the BLET did not even request such a lump sum payment prior to it being recommended by PEB 251.

#### The 10.4% Differential Agreement

The Parties agreed to the following Letter of Agreement (“LOA”), dated December 29, 1982, that was included as an Appendix to the Parties’ General Agreement:

This is to confirm the understanding reached during negotiations of the Agreement between New Jersey Transit Rail Operations, Inc. and the Brotherhood of Locomotive Engineers signed this date that the effective hourly rate of pay of the Engineer shall be no less than 10.4% greater than the effective hourly rate of pay of the Conductor for identical time on duty. The effective hourly rate of pay shall be determined by taking the total daily compensation, including payments for arbitraries and allowance, and dividing it by the actual daily hours on duty or held for duty less any hours not on duty including layovers.

By letter dated June 18, 2018, the Parties clarified the 10.4% Differential LOA as follows:

This refers to our recent understanding to amend Appendix 5 by abrogating the existing language and replacing it with the following:

“This will reflect the parties' understanding to interpret Appendix 5 to the Agreement ("10.4% Differential") as follows, effective July 1, 2016.

The parties agree that the calculation of the 10.4% differential shall be limited to 1) Engineer and Conductor straight time wages, 2) Engineer and Conductor certification allowances (20 minutes straight time each), and 3) the (i) newly created BLET 15 minutes straight time safety/speed control seal payments and ii) the Conductors' 15 minutes straight time report writing payments only. In the future, should the UTU (SMART-TD) negotiate with Carrier for additional or increased arbitrary or allowance payments, or payments in lieu of those payments listed above, the BLET and Carrier will likewise confer to assure that the 10.4% differential is maintained. The 10.4% payments-will be allowed on the same basis as the certification payments as outlined in Rule 56 (FRA Certification) the June 22, 2016 letter pertaining to FRA Certification payment.”

Both Parties acknowledge that their dispute concerning the 10.4% Differential LOA is not presented to this PEB for decision or even for any analysis of the merits. Rather, the BLET grieved what it asserted was the violation of the 10.4% Differential LOA by the Carrier when, as a result of the implementation of the pattern agreement – which increased pay being provided to



SMART-TD-represented Conductors during the status quo period at a time when no pay increases were granted to BLET-represented Engineers – the pay to Engineers no longer maintained or exceeded the 10.4% differential. The Carrier denied that there was a violation of the 10.4% Differential LOA or the status quo under the circumstances.

The minor dispute between the Parties regarding the application of the 10.4% Differential LOA was pending arbitration as of the hearings before the PEB. The BLET’s Final Offer made no mention of the 10.4% Differential LOA. It maintained that the 10.4% Differential LOA was not raised as an issue before PEB 251, but that PEB 251 nonetheless mentioned it in its Report following discussion of the pending minor dispute in mediation in that matter. There was no evidence that the 10.4% Differential LOA or its application to the period in which term negotiations are proceeding, was ever discussed at any of the Parties’ Section 6 bargaining or mediation sessions. Nor was there evidence of a written proposal on the subject in bargaining prior to the inclusion in NJT’s Final Offer (which stated that it was being offered on a “package basis”) of the following language:

B. Implication of Wages for Differential<sup>1</sup>

The successor MOU shall reflect that the 10.4% differential that Engineers are entitled to over and above the hourly wage rates paid to SMART-TD Conductors shall be maintained during the term of these amendments, as necessary. The parties acknowledge the current practice that upon serving Section 6 notices for a successor MOU, Engineers’ wage rates shall not be increased pursuant to the 10.4% differential unless and until a successor MOU between the Carrier and the BLET is agreed upon and ratified preserving that differential. Upon full and final ratification of the successor MOU by the BLET, the Carrier shall provide wage increases both retroactively and prospectively (as appropriate) to the Engineers in accordance with the agreed upon terms of the successor MOU.

<sup>1</sup> This incorporates, by reference, PEB 251’s recommendation that resolution of the amendments(s) will result in an adjustment necessary to maintain the “differential between the conductor and the engineer rates that has been agreed to by the Parties for over 40 years...”

The Dispute Regarding Retroactivity of the Juneteenth and Veterans Day Holidays

The Final Offer of NJT provided that: “Effective the first occurrence after full and final ratification, add two additional holidays: Juneteenth and Veterans Day.

The Final Offer of the BLET provided that: “Effective for calendar year 2024, add Juneteenth and Veterans Day as holidays.”

The verbiage contained in the BLET’s Final Offer was included in both the Carrier’s draft Tentative Agreement (“TA”) and that of the BLET, dated July 24, 2023 (Union Exhibits 15 and 16 from PEB 251).

The Carrier denied that its Final Offer was regressive, but asserted that it never intended or promised to provide either or both of the newly added holidays retroactively.

The BLET intends that the addition of the holidays effective in calendar year 2024 meant that all affected members who worked those holidays would receive appropriate premium pay for having done so and would also receive holiday pay for those two days. Unlike a number of other holidays, the Carrier operates a normal schedule on both Juneteenth and Veterans Day.

#### The Dispute Regarding Retroactivity of Sick Leave

The pattern agreements provide with respect to Sick Days that “Effective July 1, 2024, increase the annual allowance of sick days to six (6) days per year.” That provision was agreed to by the BLET and NJT in July 2023. There is no dispute that, prior to this negotiated improvement, the annual allowance of sick days was five (5) days per year.

BLET argues that, although the additional one day was not credited and could not be used in 2024 since the current dispute over the successor agreement remained open and unresolved, the additional sick day should be credited, similar to retroactive pay, and added to each Engineer’s bank for use in a future period or potential cash out at retirement.

NJT argued that it intended to have the additional grant of sick leave be prospective in nature and that, when the letters were exchanged in July 2023 leaving wages as the only open item, it was not anticipated that the dispute would remain unresolved past 2024.

### The Agreement Regarding Health and Welfare Benefits and Premiums

As part of the 2020-24 pattern settlements, NJT and its labor organizations agreed to a number of significant plan design changes in the health and welfare, dental, and prescription drug benefits programs. The plan design changes were implemented, effective July 1, 2022, for all of the labor organizations other than the BLET, which continued to remain covered by the prior plan terms. The actuary for NJT estimated that the Carrier incurred additional ongoing costs associated with the BLET bargaining unit of approximately \$600,000 annually as a result of the inability to have implemented those changes for the Engineers.

In 2016, the Carrier and all of the labor organizations, including the BLET, agreed to a premium structure for health and welfare benefits, that resulted in monthly premiums of approximately \$155 for the lower cost option (“EPO”) plan and \$186 for the higher cost option (“DA10”) plan. Those dollar amounts were due to be adjusted annually by 5% (referred to by the Parties as a “true up” to the premium rates), but the Parties agreed to freeze them so that they will not increase. The premiums were first frozen in 2019 and that freeze was continued as part of the 2020-24 pattern agreements and the 2024-27 extension agreements. The frozen premium rates were extended to the Engineers by virtue of the maintenance of the status quo during the period of bargaining in this matter. If the premium freeze had not been in effect and the “true up” agreement had resulted in annual 5.0% increases to premiums, by July 2027 health premiums would have been 47.7% higher (or approximately \$229 [EPO Plan]/\$275 monthly [DA10 Plan]), a difference of \$74 per month [EPO Plan]/\$89 per month [DA10 Plan] from the premiums that employees actually pay. Viewed differently, a contribution of 1% of pay for 40 hours of straight time earnings per week, based upon 2026 pattern wage rates (\$48.93 per hour)

is equivalent to \$84 a month in premium contribution. Thus, the effect of the freeze in contributions from 2019 through 2027 equates to approximately 1% of straight time wages (40 hours a week) in 2027. The effect in prior years would be somewhat comparable since the calculation for each of those prior years would reduce the saved contribution premiums by 5% (the “true up” contribution increases amount), but at the same time the dollar equivalence of a 1% of pay calculation would be decreased each year by the amount of the general wage increases (3% in most of those years).

In contrast to the premium method in place at NJT, a number of other commuter rail carriers have arrangements where Engineers and others pay a percentage of their pay (for the first 40 hours) as their monthly premium amount (typically 2% or 3% with the trend to increase the prior rates to 2.5% or 3%). A 3% contribution rate (such as is in effect at MNCR) with a straight-time hourly wage rate of \$55.00 (the top rate as of July 2024) produces weekly premium contributions of \$66.00 or monthly equivalent premium contributions of \$286.00.

The pattern settlement included a number of other significant changes, including the following: 1) changing the out-of-network reimbursement methodology from 80% of Fair Health to 180% of the Centers of Medicare and Medicaid Services (“CMS”) standard; 2) adding “dispense as written” cost containment provisions to the prescription drug plan; 3) providing that all prescription drugs be filled using a National Preferred Formulary (“NPF”) standard; 4) providing that specialty drugs are to be filled by mail order only, with provisions allowing the filling of a prescription at a retail pharmacy only once following the initial prescribing of a medication whose use must be started immediately; 5) converting to a different dental plan (the BLET was provided with sufficient information that it agreed on September 22, 2023, that the existing new dental plan meets the requirement that it provide employees with equal or better

provisions than the pre-existing triple option plans and that no additional consultation was needed prior to transitioning to the new existing plan); 6) as noted, there will be no health premium increases and no “true up” of health contribution increases during the terms of the pattern and extension agreements; 7) providing for the discontinuation of the HMO plan and the transition of those employees into the EPO Plan, with premiums for the EPO Plan set at \$155 per month; there are provisions for allowing certain eligible employees to transfer to DA10 Plan, upon request, if the employees have five years or more of service; and 8) employees with 30 years or more of service and who are at least 60 will continue to be provided retiree “gap” insurance coverage for themselves and their spouses under the DA10 Plan without premium; employees hired prior to full and final ratification may combine service with other employer(s) subject to the Railroad Retirement Act to meet the 30 years of service requirement.

#### Miscellaneous Additional Agreements

The Parties also agreed to the adoption of language regarding Electronic Communication; to eliminate paper paychecks and pay advices and provide that direct deposit electronically will be used for all payroll, including shortage adjustments and expense payments; to add step-parent to the list of covered individuals for bereavement leave and to allow employees to attend the funerals of any of the persons covered by the rule on any of the three bereavement days which can be used from the day of death until one day after the funeral; and to amend the language of Rule 14(1), Bulletins and Assignments, to provide that displacements related to semi-annual selection of assignments must occur within 24 hours modifying the present rule which is 48 hours.

## VI. DISCUSSION

Section 9a(f) of the RLA requires that the Board “submit a report to the President setting forth its selection of the most reasonable offer.” After careful consideration of the record and presentations of the Parties, the Board is persuaded that the Final Offer of NJT is the “most reasonable offer.” A summary of the principal reasons for this decision follows.

The starting point must be with the Final Offers themselves. We have set forth in great detail the areas where those Final Offers agree and those where they diverge. While we may not rewrite those Final Offers, the Board is persuaded that the Final Offers should be construed in accordance with their stated intent, particularly given the fact that this process is not one that is binding upon the Parties and that ultimately is best served by issuance of a Report and Recommendations that may assist the Parties in resolving their underlying dispute.

Despite concluding that NJT’s Final Offer is the “most reasonable offer” of the two presented to us for selection, we must candidly acknowledge that there are certain portions of the Carrier’s Final Offer that we do not believe provide a reasonable basis for the voluntary resolution of the Parties’ dispute.

The inclusion in the Final Offer of the proposed language addressing the meaning and application of the 10.4% Differential Agreements – an issue that was never the subject of a Section 6 notice and never the subject of bargaining – is particularly troubling. We understand how the observation in PEB 251’s Report and Recommendations regarding those agreements could have led NJT to include a provision in its Final Offer addressing that disagreement between the Parties, particularly when the Parties filed their Final Offers simultaneously and the Carrier could not have known if the BLET’s Final Offer would address the 10.4% situation. The Parties both agreed at the hearings that this Board was not being asked to address those issues

substantively. The record developed at the hearing on the matter was superficial and woefully incomplete to the point where, even if we wanted to comment on the situation, we lack sufficient information to do so in an informed fashion. While we disapprove of the inclusion of that request as part of NJT's Final Offer, we lack the authority to strike it. Instead, we simply note our reservations and emphasize that while we have selected the Carrier's Final Offer as the "most reasonable" we are not in any way endorsing the Carrier's 10.4% differential proposal. Absent some resolution, that matter will be decided in the upcoming arbitration.

The Carrier's proposal with respect to Moratorium Date is also troubling and is not one that this Board has concluded is reasonable or likely to provide a path forward to a voluntary resolution of the underlying dispute. The fact that a wage increase is provided for July 1, 2027 does not provide a basis for disadvantaging the BLET such that it will be precluded from negotiating further until a date one year after the date that other labor organizations may bargain with the Carrier. The proposed July 1, 2028 Moratorium Date would be far less problematic if it was limited to wages and if it were conditioned on being applicable only if no other labor organization had a different, earlier amendable date. The importance of having the same amendable date is underscored by the fact that the "me too" letters mention Moratorium Date as one of the areas where, if another organization is granted superior provisions, then equal treatment with respect to that matter must be offered as well to the labor organization that has received the "me too" protection.

We are persuaded that NJT's Final Offer with respect to the proposed lump sum payment is the most reasonable of the two Final Offers. While we understand why PEB 251 recommended those payments, the record in that matter did not appear to include the evidence adduced in this case that the effect of delaying the implementation of the health care design

changes to the BLET bargaining unit essentially resulted in the BLET bargaining unit, as a whole, receiving significant additional health benefits that the other rail employees of NJT did not receive after July 1, 2022. The record evidence suggests that these additional benefits are roughly commensurate in value with the time value of the delay in providing the Engineers the retroactive pay that they otherwise will receive pursuant to both Parties' Final Offers. We also note that the evidence of prior delayed settlements, both at NJT and at other carriers under the RLA, have not been shown to include any additional adjustment beyond traditional retroactivity to account for the time value of money or the hardships in having receipt of that additional pay delayed, whether or not the monies were held in cash reserves accounts and whether or not the Carrier is found to have been bargaining in good faith.

The record suggests that it is most reasonable to apply the pattern settlements to provide the BLET with the Juneteenth and Veterans Day holidays and the sixth day of sick leave for 2024. Although it is not clear that the Carrier intended to make those benefit improvements retroactive when it reached agreement with the BLET in July 2023, there was no evidence that it ever shared that intention at the time with the BLET. The plain wording of the July 24, 2023 TAs support treating both Juneteenth and Veterans Day as holidays in 2024 and NJT acknowledged that its Final Offer was to be construed consistently with the language of the TAs. It is also appropriate to treat these new benefits for the BLET Engineers in the same way as the other labor organizations. Those improvements were agreed upon and were simply awaiting resolution of the remaining dispute over the requested wage equity adjustment to be put in effect. In that regard, it is somewhat analogous to retroactive pay for the previously tentatively agreed upon wage improvements.



Having addressed the less significant, but nonetheless important, wage-related areas of divergence, we now discuss the most significant of the Parties' differences – the request of the BLET for a 14% general wage increase on July 1, 2027. The Board agrees that the appropriate time to address such “make up” and “equity” adjustments is in the round of bargaining after the end of the pattern settlements. The problem with the BLET's position in this case is that neither of the two stated reasons for its requested 14% general wage increase support either that general wage increase or an increase close to that amount.

The first claim of the BLET is that it is entitled to receive a “wage equity adjustment” due to the differences between the wage rates at NJT and the wage rates at other carriers, including particularly LIRR, MNCR, PATH, MBTA/Keolis, and AMTRAK/PENNDOT. The significant disparity between wage rates for NJT Engineers and many of these comparator commuter rail properties is longstanding, dating back to 1983 in some cases. The disparity in wage rates has been largely continued in many rounds of bargaining since that time. The data provided by both Mr. Roth and Mr. Glass make clear that, when measured as a proportion of pay, the differential and relationship between NJT wage rates and the wage rates at many of these carriers has remained remarkably consistent over the decades. Similar percentage increases to the wage rate have been made in the long-term with some variation from year to year and agreement to agreement. There was no showing, however, that the rates reflected in the 2020-27 Agreements in this case have resulted in any significant diminution of the pay to NJT Engineers when compared with their counterparts at other comparable Northeast carriers. Rather, they simply have perpetuated long-standing differences in rates of pay. The percentage differential, rather than the absolute dollar differential, is the significant gauge when one

attempts to examine wage rate comparisons over long periods of time. A dollar in 2025 has a very different value than a dollar in 1983.

The BLET's premise that because the jobs are the same in many respects that an Engineer at NJT is entitled to equal pay to Engineers at LIRR, MNCR, AMTRAK/PENNDOT, PATH, and other railroads is appealing in some respects, but cannot be credited. While the differentials have been traced back to the aftermath of the Conrail breakup, the reasons for why those differences continued for more than four decades are less clear. Although some non-wage compensation information was provided for purposes of valuing recent agreements, the record contains no meaningful information regarding overall compensation at NJT and at other rail properties. No information was provided concerning the hours and overall earnings, for example, after one takes into account the staffing levels and the types of runs. The information regarding health plans contains little regarding the underlying nature of the plans themselves, but makes clear that NJT Engineers pay significantly lower premiums for health coverage than most other rail carriers. The record contained no information regarding differences in the overall financial health of the various rail operations, including their ability to pay. The record contained no information regarding vacations, holidays, other paid days off, work rules, or the like and no information regarding any supplemental retirement programs. Differences in the local cost of living, while insufficient to serve as an explanation for the entire differential, may explain some of the difference in rates. The EPI data compiled by Mr. Roth showed a close to 9% difference in living costs between the areas where NJT Engineers live and those areas where the LIRR Engineers live. Nor was information provided regarding local wage rates generally in the areas served by the comparator commuter rail carriers. While it is clear beyond debate that there are significant differentials between the hourly rates of pay for NJT Engineers and most of

their counterparts in the commuter rail industry, the combination of reasons that have led the bargaining parties to jointly continue that differential for decades, spanning many contracts, are less clear. The record has failed to establish, however, that the consistent, decades-long differential in the top Engineer hourly wage rate should be eliminated or even significantly reduced, particularly without any quid pro quo for such wage realignment, no showing of changed material circumstances, and no showing that the existing differential has led to significant recruitment or retention issues.

Nor did the BLET establish that the trend of more recent settlements at other rail carriers in the Northeast supports an award of a 14.0% wage increase for FY28. A number of those settlements were modestly higher than the pattern settlement at NJT, but the NJT pattern numbers would be slightly higher if the frozen and lower cost health plan premium rates were taken into consideration. The net differences in average compounded rates of wage increase were not so substantial that they support an award of a significantly higher general wage increase for FY28, much less the 14.0% sought by the BLET.

The second reason asserted for the large 14.0% requested general wage increase for FY28 is the claim that this is necessary to make up for real wage loss during the 2020-27 Agreements that resulted from higher than anticipated inflation. The BLET is correct that inflation during the term of the 2020-24 Agreement was higher than the negotiators likely anticipated when they reached their agreement to its terms in late 2021 and early 2022 and higher than in recent years. The BLET is also correct that maintaining real wages is a traditional goal and expectation of most labor organizations and, frankly, most interest neutrals as well. That does not mean, however, that it was shown to be customary for all real wage losses suffered during the term of a given collective bargaining agreement to be routinely recouped in full in the next round of

bargaining, much less in the first year following the expiration of that collective bargaining agreement. Moreover, it is somewhat speculative to cite to future projected inflation numbers to support a claim of real wage loss. The only non-speculative period of real wage loss is that which relates to wage increases and levels prior to November 2024 – the last published Regional CPI-W number. Further, the Regional CPI-W has fluctuated in recent years in terms of whether it outpaces changes in the national CPI-W or vice-versa. We are persuaded that, after consideration of the impact of inflation on real pay during the 2020-24 Agreement and the projected impact of inflation on real pay during the 2024-27 Agreement, some greater than normal wage increase would typically be agreed upon in the following bargaining cycle. In this regard, the Carrier's proposed 4.0% wage increase as of July 1, 2027 seems too low for a reasonable voluntary resolution of this matter. That being said, the right combination of real wage catch up and pay adjustment for FY28 is much closer to NJT's offered 4.0% increase than it is to the BLET's requested 14.0% increase. We have not been asked, and decline to offer our views, as to whether a reasonable adjustment would be the 6.0% recommended by PEB 251 or a different number (or numbers if the FY28 general wage increase ultimately is split into multiple portions implemented at different times in the fiscal year).

It is not necessary for the Board to address further the financial circumstances facing NJT with respect to both the overall availability of budgeted funds or the priorities with respect to the expenditure of available funds. It is clear beyond dispute that a 14.0% wage increase effective July 1, 2027 is not only unwarranted and unreasonable, but also unaffordable under the present structure.

What is clear to us is that: 1) there should be one or more approaches to FY28 wage increases that the Parties should be able to agree upon in good faith bargaining, particularly in combination with the Parties' resolution of the other wage-related matters discussed above; and 2) the reasonable wage increase(s) for FY28 are much closer to 4.0% than to 14.0%.

For all of these reasons, we are persuaded that the NJT's Final Offer must be viewed as the "most reasonable" of the two Final Offers that were presented to the Board.

## VII. CONCLUSION

The Board selects the Final Offer of New Jersey Transit Rail Operations as the "most reasonable" Final Offer and hopes that the Report of the Emergency Board will be of assistance to the Parties in reaching a voluntary resolution of all issues remaining in dispute.

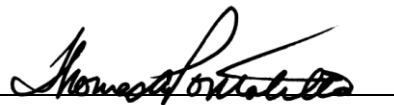
Respectfully submitted,



Ira F. Jaffe, Chairman



Sidney S. Moreland, IV, Member



Thomas A. Pontolillo, Member

## Presidential Documents

Executive Order 14128 of November 21, 2024

### Establishing a Second Emergency Board To Investigate a Dispute Between New Jersey Transit Rail Operations and Its Locomotive Engineers Represented by the Brotherhood of Locomotive Engineers and Trainmen

A dispute exists between the New Jersey Transit Rail Operations and its Locomotive Engineers represented by the Brotherhood of Locomotive Engineers and Trainmen.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended, 45 U.S.C. 151–188 (RLA).

An emergency board to investigate and report on the dispute was established on July 25, 2024, by Executive Order 14125 of July 24, 2024 (Establishing an Emergency Board to Investigate a Dispute Between New Jersey Transit Rail Operations and Its Locomotive Engineers Represented by the Brotherhood of Locomotive Engineers and Trainmen). That emergency board terminated upon submission of its report to the President. Subsequently, its recommendations were not accepted by the parties.

A party empowered by the RLA has requested that the President establish a second emergency board pursuant to section 9A of the RLA (45 U.S.C. 159a).

Section 9A(e) of the RLA provides that the President, upon such request, shall appoint a second emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 9A of the RLA, it is hereby ordered as follows:

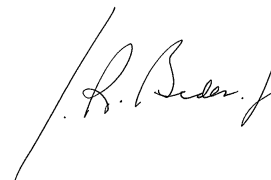
**Section 1. *Establishment of a Second Emergency Board (Board).*** There is established, effective 12:01 a.m. eastern standard time on November 22, 2024, a Board composed of a chair and two other members, all of whom shall be appointed by the President to investigate and report on the dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

**Sec. 2. *Report.*** As provided by section 9A(f) of the RLA, within 30 days after the creation of the Board, the parties to the dispute shall submit to the Board final offers for settlement of the dispute. As provided by section 9A(g) of the RLA, within 30 days after the submission of final offers for settlement of the dispute, the Board shall submit a report to the President setting forth the Board's selection of the most reasonable offer.

**Sec. 3. *Maintaining Conditions.*** As provided by section 9A(h) of the RLA, from the time the request to establish the Board is made until 60 days after the Board submits its report to the President, the parties to the controversy shall make no change in the conditions out of which the dispute arose except by agreement of the parties.

**Sec. 4. *Records Maintenance.*** The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

**Sec. 5. *Expiration.*** The Board shall terminate upon the submission of the report to the President provided for in section 2 of this order.



THE WHITE HOUSE,  
*November 21, 2024.*

[FR Doc. 2024-27850  
Filed 11-25-24; 8:45 am]  
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