

REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 243

SUBMITTED PURSUANT TO

EXECUTIVE ORDER DATED OCTOBER 6, 2011 ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE NATIONAL CARRIERS' CONFERENCE COMMITTEE OF THE NATIONAL RAILWAY LABOR CONFERENCE, REPRESENTING UNION PACIFIC RAILROAD COMPANY; BNSF RAILWAY COMPANY; CSX TRANSPORTATION, INC.; NORFOLK SOUTHERN RAILWAY COMPANY; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; ALTON & SOUTHERN RAILWAY COMPANY; THE BELT RAILWAY COMPANY OF CHICAGO; BROWNSVILLE AND MATAMOROS BRIDGE COMPANY; CENTRAL CALIFORNIA TRACTION COMPANY; COLUMBIA & COWLITZ RAILWAY COMPANY; CONSOLIDATED RAIL CORPORATION; GARY RAILWAY COMPANY; INDIANA HARBOR BELT RAILROAD COMPANY; KANSAS CITY TERMINAL RAILWAY COMPANY; LONGVIEW SWITCHING COMPANY; LOS ANGELES JUNCTION RAILWAY COMPANY; MANUFACTURERS RAILWAY COMPANY; NEW ORLEANS PUBLIC BELT RAILROAD; NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY; NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION; OAKLAND TERMINAL RAILWAY; PORT TERMINAL RAILROAD ASSOCIATION; PORTLAND TERMINAL RAILROAD COMPANY; SOO LINE RAILROAD COMPANY (CANADIAN PACIFIC); SOUTH CAROLINA PUBLIC RAILWAYS; TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS; TEXAS CITY TERMINAL RAILWAY COMPANY; UNION PACIFIC FRUIT EXPRESS; WESTERN FRUIT EXPRESS COMPANY; WICHITA TERMINAL ASSOCIATION; AND WINSTON-SALEM SOUTHBOUND RAILWAY COMPANY AND THE RAIL LABOR BARGAINING COALITION CONSISTING OF:

BROTHERHOOD OF RAILROAD SIGNALMEN; BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN; BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES; INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, BLACKSMITHS, IRON SHIP BUILDERS, FORGERS AND HELPERS; SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION; AND NATIONAL CONFERENCE OF FIREMEN & OILERS; AND A COALITION OF RAIL UNIONS CONSISTING OF: TRANSPORTATION-COMMUNICATIONS INTERNATIONAL UNION; AMERICAN TRAIN DISPATCHERS ASSOCIATION; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; AND TRANSPORT WORKERS UNION OF AMERICA

AND SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

(National Mediation Board Case Nos. A-13569, A-13570, A-13572,
A-13573, A-13574, A-13575, A-13592)

WASHINGTON, D.C.
November 5, 2011

Washington, D.C.
November 5, 2011

The Honorable Barack Obama
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

Pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order dated October 6, 2011, you established an Emergency Board, effective 12:01 a.m., Eastern Daylight Time, October 7, 2011, to investigate a dispute between the National Carriers' Conference Committee of the National Railway Labor Conference representing five Class I railroads: Union Pacific Railroad; BNSF Railway Company; CSX Transportation, Inc.; Norfolk Southern Railway Company; and The Kansas City Southern Railway Company; and the following railroads: Alton & Southern Railway Company; The Belt Railway Company of Chicago; Brownsville and Matamoros Bridge Company; Central California Traction Company; Columbia & Cowlitz Railway Company; Consolidated Rail Corporation; Gary Railway Company; Indiana Harbor Belt Railroad Company; Kansas City Terminal Railway Company; Longview Switching Company; Los Angeles Junction Railway Company; Manufacturers Railway Company; New Orleans Public Belt Railroad; Norfolk & Portsmouth Belt Line Railroad Company; Northeast Illinois Regional Commuter Railroad Corporation; Oakland Terminal Railway; Port Terminal Railroad Association; Port Terminal Railroad Company; Soo Line Railroad Company (Canadian Pacific); South Carolina Public Railways; Terminal Railroad Association of St. Louis; Texas City Terminal Railway Company; Union Pacific Fruit Express; Western Fruit Express Company; Wichita Terminal Association; and Winston-Salem Southbound Railway Company, and certain of its employees represented by certain labor organizations (collectively, the Organizations). Brotherhood of Railroad Signalmen; Brotherhood of Locomotive Engineers and Trainmen; Brotherhood of Maintenance of Way Employees; International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers; Sheet Metal Workers' International Association; and National Conference of Firemen & Oilers are bargaining together as the Rail Labor Bargaining Coalition. Transportation-Communications International Union; American Train Dispatchers Association; International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; and the Transport Workers Union of America are bargaining together as the Coalition of Rail Unions.

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 to you setting forth our recommendations for equitable resolution of the dispute between the parties.

The Board acknowledges with thanks the assistance of Norman L. Graber, Esq. and Susanna F. Parker, Esq. of the National Mediation Board, who rendered invaluable counsel and aid to the Board throughout the proceedings.

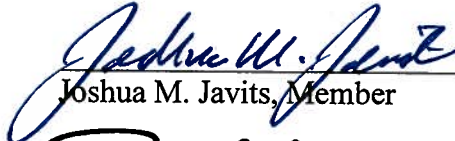
Respectfully submitted,



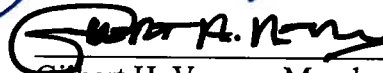
Ira F. Jaffe, Chairman



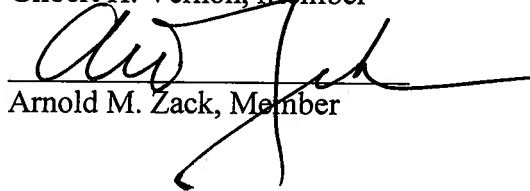
Roberta Golick, Member



Joshua M. Javits, Member



Gilbert H. Vernon, Member



Arnold M. Zack, Member

TABLE OF CONTENTS

I.	CREATION OF THE EMERGENCY BOARD.....	1
II.	PARTIES TO THE DISPUTE.....	1
III.	HISTORY OF THE DISPUTE.....	3
IV.	ACTIVITIES OF THE EMERGENCY BOARD.....	4
V.	DISCUSSION AND RECOMMENDATIONS.....	5
	Compensation – Wages	5
	Proposed Changes to the National Health and Welfare Plan	25
	Vacations	49
	Supplemental Sickness Plan	53
	Information	55
	Craft Specific Proposals	58
	American Train Dispatchers Association (ATDA)	59
	Brotherhood of Locomotive Engineers and Trainmen/IBT(BLET)	59
	Brotherhood of Maintenance of Way Employes Division/IBT (BMWED)	64
	Brotherhood of Railroad Signalmen (BRS)	71
	International Association of Machinists and Aerospace Workers (IAMAW)	73
	International Brotherhood of Boilermakers and Blacksmiths (IBB)	75
	National Conference of Firemen and Oilers (NCFO)	76
	Transportation Communications Union (TCU)	78
	Common Shopcraft Proposals	79
	Recommendations of the Board	82

VI. SUMMARY OF RECOMMENDATIONS	87
VII. CONCLUSION	91
APPENDIX A – EXECUTIVE ORDER	92

I. CREATION OF THE EMERGENCY BOARD

Presidential Emergency Board No. 243 (“PEB” or “Board”) was established by the President pursuant to Section 10 of the Railway Labor Act (“RLA”), as amended, 45 U.S.C. §151 *et seq.* including §160, and by Executive Order dated October 6, 2011. The Board was created to investigate and report its findings and recommendations regarding a dispute between the National Carriers’ Conference Committee (“NCCC”) of the National Railway Labor Conference representing five Class I railroads and certain other railroads, and certain of its employees represented by certain unions. A copy of the Executive Order is attached as Appendix A.

The President appointed Ira F. Jaffe, of Potomac, Maryland, as Chairman of the Board, and Roberta Golick, of Sudbury, Massachusetts, Joshua M. Javits, of Washington, District of Columbia, Gilbert H. Vernon, of Hudson, Wisconsin, and Arnold M. Zack, of Boston, Massachusetts, as Members. The National Mediation Board (“NMB”) appointed Norman L. Graber, Esq. and Susanna F. Parker, Esq., as Special Counsel to the Board.

II. PARTIES TO THE DISPUTE

NCCC

The NCCC represents all major Class I freight railroads in the United States as well as many smaller freight and passenger lines in national collective bargaining. The Carriers involved in this dispute include five Class I railroads: Union Pacific Railroad; BNSF Railway Company; CSX Transportation, Inc.; Norfolk Southern Railway Company; and The Kansas City Southern Railway Company; and the following railroads: Alton & Southern Railway Company; The Belt Railway Company of Chicago; Brownsville and Matamoros Bridge Company; Central

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

These carriers will collectively be referred to hereinafter as the “Carriers.”

The Labor Organizations

The Brotherhood of Railroad Signalmen (“BRS”) representing Signalmen; Brotherhood of Locomotive Engineers and Trainmen (“BLET”) representing Engineers; Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (“BMWED”) representing Maintenance of Way employees; International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers (“IBB”) representing Boilermakers; Sheet Metal Workers’ International Association (“SMWIA”) representing Sheet Metal Workers; and the National Conference of Firemen & Oilers (“NCFO”) representing Firemen and Oilers; are bargaining together as the Rail Labor Bargaining Coalition (“RLBC”).

The Transportation-Communications International Union (“TCU”) representing Clerks and Carmen; American Train Dispatchers Union (ATDA) representing Train Dispatchers; International Association of Machinists and Aerospace Workers (“IAMAW”) representing

Machinists; International Brotherhood of Electrical Workers (“IBEW”) representing Electrical Workers; and Transport Workers Union (“TWU”) representing Carmen; are bargaining collectively as the Coalition of Rail Unions (“CRU”).¹

Collectively, the organizations in the RLBC represent approximately 56,000 employees and the organizations in the CRU represent approximately 34,000 employees². All eleven Organizations will be referred to collectively hereinafter as the “Organizations.”

III. HISTORY OF THE DISPUTE

In November 2009, pursuant to Section 6 of the RLA, the NCCC served on the Organizations formal notices for changes in current rates of pay, rules, and working conditions. The parties were unable to resolve the issues in dispute in direct negotiations; and applications were filed with the NMB by the separate crafts or classes now bargaining as the CRU in July 2010, and by the RLBC in January 2011.

Following the applications for mediation, representatives of all parties worked with the NMB mediators and with Board Members of the NMB in an effort to reach agreements. Various proposals for settlement were discussed, considered, and rejected. On September 2, 2011, the NMB, in accordance with Section 5, First, of the RLA, urged the NCCC and the Organizations to enter into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA (“proffer of arbitration”). On September 2, 2011, the Organizations

¹ The United Transportation Union (“UTU”) is not involved in this proceeding as it reached and ratified new Agreements with the NCCC covering 38,000 conductors, yardmen, brakemen, engineers (where UTU represents engineers), firemen/hostlers and yardmasters in September 2011.

² The record contained varying numbers for the employees represented by the Coalitions and their constituent Organizations. The Coalitions’ Joint Pre-Hearing Submission, asserted membership of 34,609 for the CRU and 55,898 for the RLBC, for a total of 90,507. An Appendix to that same document represented approximate membership in the CRU Organizations at 34,100 and in the RLBC Organizations at 55,100, for a total of 89,200. The Carriers in their Submission state that the CRU represents a total of about 31,000 employees and the RLBC a total of about 61,000 employees, for a total of approximately 92,000 employees. The precise number is not material to our analysis of the issues or our recommendations in this matter.

individually declined the NMB's proffer of arbitration and the NCCC accepted the NMB's proffer of arbitration.

On September 6, 2011, the NMB served notices that its services had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., Eastern Daylight Time, on Friday, October 7, 2011.

Following the termination of mediation services, the NMB advised the President, in accordance with Section 10 of the RLA, that in its judgment the disputes threaten substantially to interrupt interstate commerce to a degree that would deprive sections of the country of essential transportation service. The President, in his discretion, issued an Executive Order on October 6, 2011. Effective 12:01 a.m., Eastern Daylight Time, on October 7, 2011, the Executive Order created this Board to investigate and report concerning the disputes and triggered a "cooling off" period under the provisions of the RLA.

IV. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an organizational meeting by conference call on October 7, 2011 and issued an organizational letter the same day, in which the ground rules for the Board's procedures were set forth. All parties were requested to provide the Board with pre-hearing submissions on October 10, 2011. Hearings on the issues in dispute were held on October 13, 14, 17, 18, 19, and 20, 2011, in Washington, District of Columbia. All parties were represented by counsel, and had a full and fair opportunity to present oral and documentary evidence and argument.

Thereafter, the Chair met informally with the parties, in Washington, District of Columbia, in an attempt to facilitate a settlement of the dispute.

The Board met in a series of telephonic Executive Sessions to reach consensus regarding our Recommendations and to finalize this Report.

V. DISCUSSION AND RECOMMENDATIONS

Compensation – Wages

1) The Carriers' Offer

The Carriers propose the following general wage increases (“GWIs”) during the term of the Agreement:

<u>Date</u>	<u>Increase</u>	<u>Increase (Compounded)</u>
7-1-10	2.0% GWI	1.0200
7-1-11	2.5% GWI	1.0455
7-1-12	3.0% GWI	1.0769
7-1-13	3.0% GWI	1.1092
7-1-14	3.5% GWI	1.1480
5 years	14.0% GWI	14.80% compounded
1-1-15	3.0% GWI	1.1824
6 years	17.0% GWI	18.24% compounded

The Carriers described this offer as patterned on the 2011 Agreements reached with the UTU³. The January 1, 2015 wage increase differs from the others in one respect. The Carriers’ proposal as well as the 2011 UTU Agreement contains a moratorium date of December 31, 2014. The January 1, 2015 wage increase, therefore, is in the nature of an interim adjustment under the next Agreement. The Organizations and the Carriers would remain free to bargain concerning the timing and amount of wage adjustments after December 31, 2014, including the January 1,

³ The Carriers reached two collective bargaining agreements with the UTU that were executed on September 16, 2011. One is referred to as the Trainmen Agreement. The other, which applies to a much smaller number of employees, is referred to as the Yardmaster Agreement. Reference herein to the “UTU Agreements” refers to both the Trainmen and Yardmaster Agreement. Reference herein to the “UTU Agreement” in the singular refers to only the Trainmen Agreement.

2015 increase. However, as stated in Side Letter No. 6 to the 2011 UTU Agreement (whose terms were incorporated as part of the Carriers' proposal), while the January 1, 2015 scheduled 3% GWI is subject to possible change in bargaining, if a dispute over the terms of a post-2014 Agreement is submitted to a neutral body (e.g., an interest arbitrator or a Presidential Emergency Board), then the Side Letter No. 6 would be introduced and the Organizations and the Carrier would effectively have agreed that the 3% wage increase "constitute[s] a complete resolution of the compensation adjustment issue for calendar year 2015⁴."

In addition to these GWIs, the Carriers offer to monetize two additional provisions found in the 2011 UTU Agreements. The Carriers and the UTU agreed to change the entry rate provisions of the UTU Agreement from a five-year progression to full rate to a four-year progression. Specifically, the change was from a five year entry rate progression of initial hire rate (75%) to year one rate (80%) to year two rate (85%) to year three rate (90%) to year four rate (95%) to year five rate (100% - full job rate) to a progression that is identical except for a change in the year four rate from 95% to the full (100%) job rate. The change applied prospectively – i.e., to new hires on or after September 2011. For those who were in the progression lines at the time, two different one-time cash payments were provided – \$3,000 to those who were in progression on National Entry Rates and \$1,200 to those who were employed on Local Entry Rates. The Carriers offered to extend both the change in entry rates and the lump sums to those who qualify among the members of the Organizations. No separate GWI equivalent was offered by the Carriers for the entry rate changes and lump sum benefits provided by the 2011 UTU Agreement.

⁴ The record in these proceedings did not indicate the agreed upon definition, if there is one, regarding the phrase "the compensation adjustment issue."

There is no dispute that far fewer employees in the units represented by the Organizations in this dispute are working in jobs that have a five-year entry rate. The Organizations assert that since a significant number of UTU represented employees were affected by this change (1,951 on Local Entry Rates and 7,726 on National Entry Rates – a total of 9,677 employees or approximately 27% of the UTU represented unit) and since a much smaller number of employees in this dispute are covered by entry rate systems that have a fifth year, a more appropriate method for applying or monetizing that component of the 2011 UTU Agreement would be to project its dollar cost, convert the dollars of lump sum monies and continuing wage costs into a percentage of general wage increase for the UTU, and then apply that lump sum (as a percentage of pay) and GWI to the Organizations. Since the changes take place beginning with new hires in September 2011 and thereafter, the ongoing wage benefits to UTU members will not begin to be reflected until September 2015 and thereafter and will vary based upon hiring patterns and turnover. Based upon the snapshot of the UTU workforce in September 2011, however, the ongoing long-term wage impact is equivalent to an approximate General Wage Increase of 0.3%.⁵

The next item of economic value identified in the 2011 UTU Agreement relates to certification pay. The 2011 UTU Agreement provides for certification pay of \$5.00 for each start on a position covered by the UTU Agreement that requires Federal Railroad Administration (“FRA”) certification (subject to the same application as national locomotive engineer certification pay). This payment will be effective on the later of July 1, 2012 or the effective date of the FRA Conductor Certification Rule. The Carriers indicate that they monetized the

⁵ This was derived from the \$96 million approximate cost of all of the entry rate related differences from the full job rate and the comparable UTU total wage figure provided by the Carriers. It also closely matches an estimate of cost prepared by the Organizations’ expert, Thomas R. Roth, The Labor Bureau, Inc.

value of the Conductor certification pay when they bargained with the Yardmasters (who also are represented by the UTU) by means of a wage adjustment of \$0.125 per hour (which the Carriers stated equated to a 0.5% GWI for that group). The Carriers urge that the 0.5% GWI monetization value be used in this dispute as well. They argue that monetizing those payments into less than their full GWI equivalent⁶ was appropriate since: a) the Yardmasters agreed to this valuation; b) the certification payments were not included in base wages and would not, therefore, automatically increase thereafter; c) the wage substitute was started earlier than the earliest date on which certification pay could begin; and d) part of the tradeoff was the implementation of health and welfare plan design changes which will not occur in this case until a date after the UTU Plan changes are implemented. The 0.5% GWI was not included in the 2010-15 GWIs that are noted above and which are based upon the GWIs granted to the UTU in its primary 2011 Agreement. The Yardmaster Agreement provides for the \$0.125 payment to be effective as of June 30, 2011.

Finally, the UTU Agreement refers a number of items to local bargaining, including electronic bidding and bumping, alternative compensation, compensation enhancement, compensated leave, and provides for referral of other issues with 60 days notice after a request by either party. The UTU Agreement does not contain any provisions that would mandate resolution by a third party (i.e., arbitration) of any of these issues if the local discussions failed to result in agreement. The Carriers are agreeable to utilizing local handling in the same fashion with respect to a number of the Work Rules and other craft-specific compensation proposals of the Organizations.

⁶ We have estimated the full value of the \$1,200 and \$3,000 lump sums provided under the UTU Trainmen Agreement as equivalent approximately to 1% of straight time hourly earnings equivalent and the value of the ongoing increased wages due to the shrinkage of the progression from five years to four as equivalent to a 0.3% GWI. See pp. 22-24, infra.

2) The Organizations' Proposal

The Organizations propose the following general wage increases (“GWIs”) during the term of the agreement:

Date	Increase	Increase (Compounded)
1-1-10	4.0% GWI	1.0400
1-1-11	3.5% GWI	1.0764
1-1-12	4.0% GWI	1.1194
1-1-13	3.5% GWI	1.1586
1-1-14	4.0% GWI	1.2049
5 years	19.0 GWI	20.49% compounded

On September 16, 2011, the NCCC and the UTU executed two new collective bargaining agreements covering the period January 1, 2010 through December 31, 2014, one for Trainmen and another for Yardmasters. The 2010-14 UTU Agreements include several items that extend beyond the general moratorium date of December 31, 2014. Specifically, the 2010-14 UTU Agreements provide for a General Wage Increase, effective January 1, 2015, and further provide for a continuation of the \$200 per month maximum employee premium contributions to the health plan through July 1, 2016, at which time the maximum monthly employee premium contribution will increase to \$230.

3) Overview of the Positions of the Parties

Central to the positions advanced by both Parties is the significance to be accorded to the UTU Agreements reached between the UTU and the Carriers in 2011. The Carriers assert that it should be treated as a “pattern” by the Board and, therefore, be given controlling weight in the recommendation that the Board makes for a fair and appropriate successor Agreement. The Organizations assert, to the contrary, that an agreement reached with a single organization that

represents only a minority of employees has never been found to constitute a pattern and that the Board should not do so in this case.

In support of their differing positions on pattern, the parties rely on various statements contained in prior PEB Reports.

The Carriers reference the decisions of a number of earlier PEBs, including specifically PEB Reports Nos. 242, 231, 228, 221, 220, 211, 195, 194, 187, 186, 185, 181, 174, 169, 159, 157, 137, 116, and 114, in support of their contention that to permit competition in the area of compensation among fragmented unions would be destabilizing to a sensible bargaining process and, therefore, be damaging to the public interest. Additionally, the Carriers note that if pattern principles were not applied, then no organization would ever be willing to settle first since later bargaining organizations would always attempt to outdo those who settled earlier in the cycle. Further, according to the Carriers, a failure to utilize pattern principles would result in different groups being more or less favored, thereby disrupting internal equity among the various crafts. Finally, failure to utilize pattern principles would, in the Carriers' view, increase the likelihood of strikes, contrary to the public interest of avoiding disruptions to commerce, and destructive of the broader system of collective bargaining in the railroad industry.

The Organizations as well reference numerous prior PEB Reports, including PEB Reports Nos. 233, 230, 228, 225, 221, 204, 200, 187, 186, 185, 181, 179, 178, 174, 137, 116, 114, and 66. The Organizations assert that no prior PEB has held that an agreement reached by a single organization, representing only a minority of employees at the carrier, constitutes a pattern that can be presumptively applicable to other organizations. According to the Organizations, one must balance the right to independently bargain against the effects of application of the pattern principle. Further, the Organizations argue that the specific Agreements asserted to be a pattern

in this case – the UTU Agreements – are factually ill-suited to be a pattern. Not only are they Agreements with a single operating craft, covering only a small minority of the overall employees who can bargain (27%), but the overarching question as to whether the UTU even enjoyed the right to bargain independently in light of the agreement to merge with the Sheet Metal Workers International Association (“SMWIA”), cast a cloud over that agreement. This was asserted to be particularly true given the facts that: a) significant modifications to the Health and Welfare Plan are central to the dispute over compensation and the UTU employees participate in a separate plan, having withdrawn in 1998 from the National Plan and b) significant parts of the UTU Agreements involve changes in compensation that do not easily translate comparably to the Organizations. The Organizations also contend that treating the UTU Agreements as a pattern would undermine coordinated Coalition bargaining – a goal that had arguably been encouraged by prior PEBs. The UTU was the only organization to decide not to participate in coordinated Coalition bargaining. According to the Coalitions, if the Board applies pattern status to the UTU Agreement, it will be difficult, if not impossible, for coordinated bargaining on the railroads to survive in the future. In any event, the Organizations maintain that the Carriers’ offer in this case fails to provide the full value of the UTU Agreement to the Organizations.

In their presentations, both Parties devoted significant attention to issues of profitability and productivity. The Carriers asserted that those issues are not relevant since there is no claim of an inability to pay. They argue that productivity gains should provide no basis for an enhanced wage offer absent some evidence that the productivity gains are the result of greater employee skill or changes in work rules. The Organizations contend, to the contrary, that inasmuch as poor financial conditions historically have provided a basis for limiting awards of

wage and benefit increases that otherwise might have been appropriate, it follows that high profits and significant productivity improvements should provide grounds for thriving enterprises to share their success with the employees who helped to make those record profits and high productivity possible.

The record is clear that, by almost any relevant measure, the Carriers in recent years have experienced record or near record periods of profitability and record or near records of productivity growth. The Organizations rely heavily upon the excellent financial condition of the Carriers, stressing the ability of the Carriers to afford to provide increases in wages even beyond those negotiated in the 2005-09 Agreement (17% increases over 5 years) as well as to continue to maintain the National Health and Welfare Plan without change and without increase in employee premium contributions. Apart from the conflicting economic theories set forth by various expert witnesses (which, while considered by the Board in their entirety, need not be set forth or summarized herein), the Organizations emphasized the following in their presentation:

1) over the past five years, average profit margins at the four largest Class I railroads increased to record levels (10.8% in 2005, 12.7% in 2006, 12.4% in 2007, 13.2% in 2008, 12.8% in 2009, and 15.8% in 2010); average profit margins for the entire period were 13.4%; 2) the projections for the future are also excellent based upon analysts' estimates, good fundamentals, and as reflected in rising stock prices (shareholder value has increased 178% since 2004 and the annual rate of return for Norfolk Southern, CSXT and Union Pacific outperformed the S&P 500 by 1520 basis points a year, providing annual returns during the period of recession and economic turmoil of 17.9%) and in corporate stock buyback programs; the fact that railroads are buying back billions of dollars of their own stock (\$16 billion within the last 5 years and with additional stock repurchase programs of 3% per year announced for 2012 and 2013) is strong evidence both as to

the adequacy of cash generated by high profits and of a belief that investment in themselves will yield returns superior to the cost of borrowing funds for investment and returns superior to external investments; earnings per share for the Norfolk Southern, CSXT, and Union Pacific, have increased from \$2.09 in 2004 to \$6.80 in 2010 and huge increases in earnings per share are projected through 2013; 3) the return on equity has steadily increased from 2.5% in the 1970s to 7.4% in the 1980s to 8.4% in the 1990s to over 10% in each year after 2005 (other than a 9.79% return in 2009), culminating in an 11.2% return for 2010; the discretionary cash flow generated by the Big 4 Class I railroads was \$11.3 billion in 2010 alone, demonstrating that more than adequate cash is being generated to allow for capital investment, profits, taxes, dividends, and superior wages; 4) the debt to capital ratio has also fallen dramatically, moving from .396 in 1980 to .225 in 2004 to .146 in 2010; the Carriers also have large cash reserves; 5) the labor cost ratio (the relation of labor costs to freight revenues) has also declined significantly from 50.8% in 1979 to 31.8% in 2004 to 24.6% in 2010; the operating ratio has declined significantly and the downward trend continues; currently the Carriers produce \$1.00 in revenue from every \$0.73 in expense; productivity of the railroads has steadily improved and is expected to continue to improve in the future; from 1979 to 2010, freight revenue ton miles have increased 87% while man hours have declined by 68%, resulting in a 484% increase in freight revenue ton miles per man hour; 6) net profit per employee has risen from \$1,862 in 1979 to \$60,983 in 2010 (a record); and 7) executive compensation (as measured by CEO compensation and the compensation provided to the five highest executives at each Carrier) has also increased significantly and remains high; in 2010, executives at the Big Four Class I Railroads received average fixed cash compensation of \$1,200,000 and an additional \$1,500,000 on average in bonuses and stock options and incentive pay (excluding retirement benefits); the pay to top 5

executives in 2010 was 76% above similar pay in 2004 and that of the CEOs was 50% higher than similar pay in 2004.

The Organizations seek only their “fair share” of this unprecedented and prolonged period of prosperity. Shareholders have received record returns; shippers have benefitted from reduced rates, management has benefitted from bonuses and high compensation; and the public has benefitted from, among other things, decreases in fossil fuel usage associated with the huge increase in rail traffic. Labor should not be the lone group disenfranchised from these bounties.

The Carriers emphasized different economic indicators and facts in their presentations. The Carriers asserted that, comparing the wages and overall compensation provided to employees of the Carriers with the wages and overall compensation paid to others in the same or similar job titles: 1) employees in this dispute are well paid; average annual wages is \$53,263 and average total compensation is \$93,046, with certain crafts compensated well above these averages; viewed on an hourly basis, average straight time hourly wages in 2010 were \$26.66 and average total compensation \$46.58 per hour; 2) comparing these wage and compensation rates with Bureau of Labor Statistics and similar data, the employees in this dispute receive a “wage premium” of approximately 54% to 80% over the wages and compensation of workers in non-railroad jobs of a similar nature; 3) the wage premium is reflected in abnormally high numbers of applications for each vacancy; in 2010, there were 1,200,000 applicants for 7,455 positions; the extremely low quit rate (0.2 per 100 employees per month) eliminates any need to increase compensation disproportionately since there are neither recruitment nor retention issues that need to be addressed.

The Organizations deny that there is any “wage premium” in place, asserting that the jobs to which they were compared are not truly comparable. They also maintain that it is

inconceivable that the Carriers would overpay for their labor for decades if it were possible to employ qualified individuals for significantly less.

The Carriers challenge productivity as a reason to support improvements in wages in light of the assertion that the huge increases in productivity were the result of improvements to productivity over which the employees made little contribution. Cited were increases in traffic density, change in the tonnage and length of trains, the change in product mix which reflects large increases in intermodal shipments, technological changes (such as automated ballast distribution equipment, continuous action tampers, improved materials resulting in lower defect rates and improved operating lifespans, new pile driving equipment and methods, changes from separate gangs to track renewal gangs, implementation of ultrasonic detection equipment resulting in fewer derailments, changes in the repair process that drastically decreased cycle time for overhauls and repairs, computer diagnostics and billing systems, and changes in boxcar and train design), and reductions in the number of employees (which, to the extent they were a product of work rules changes, has previously been compensated through the bargaining process).

The Carriers also focus upon other recent collective bargaining settlements which they assert provided for wage increases far below those contained in both its offer and in the Organizations' demand. The Carriers assert that its proposal provides for growth in wages of over 3%. By contrast, the average annual general wage increase in large private industry collective bargaining settlements since January 1, 2010 averaged 2% per year (with the weighted average even lower, at 1.82%). Transportation settlements were similarly low, averaging 1.70% in annual wage increases (weighted average 2.01%). Even the Amtrak and commuter rail settlements, which are publicly funded in part, were less lucrative than the demands of the

Coalitions and were closer to the Carriers' offer in terms of their wage and benefit changes. Further, the Carriers estimate that the cost of the craft specific and vacation and supplemental sickness pay adjustments, when totaled, exceed \$870 million, a sum that, when added to the allegedly over-market wage increases, renders the package unreasonable. The Organizations focused upon the wage improvements negotiated recently at Amtrak (14.0% over 5 years plus a possible incentive program for 2012 based upon 2011 performance) and various commuter railroads as more relevant and as supportive of the reasonableness of their demands.

In terms of profitability, the Carriers replied that there are extremely high ongoing infrastructure and investment costs associated with operating railroads and that the Congressional mandate to implement positive train control ("PTC") systems by the end of 2015 will impose an additional \$5,000,000,000 in costs that must be funded. The Carriers noted that a record \$10,700,000,000 was invested in capital expenditures by the railroads in 2010 and that this figure is projected to grow further in 2012 to \$12,000,000,000, with capital spending for the years 2001 through 2011 already having cost approximately \$90,000,000,000.

The Parties also dispute whether and to what degree wages and compensation have historically exceeded the rate of inflation and whether their various proposals are likely to do so. The dates selected are key in terms of determining the extent of real wage growth. There is no dispute, however, that real wage growth did occur under the prior Agreement and the Agreement that preceded it. The Parties further disagree over the appropriate assumption to utilize with respect to inflation going forward and as to whether the CPI-W or CPI-U index is a better measure of inflation for purposes of measuring real wage growth.

Finally, the Parties expressed differing positions as to the appropriate monetization of several features of the Carriers' proposal and as to the proper costing of a number of features of

the Organizations' proposal (particularly with respect to craft-specific items). Additional discussion relative to those costing issues will be noted, as relevant and necessary, when discussing those items later in this Report.

4) The Wage Recommendations of the Board

The parties devoted considerable attention to debating whether the UTU settlement does or does not establish a "pattern" that the Board should follow. However, we need not and do not resolve that issue. Rather, we find it sufficient to consider the UTU Agreement for what it unquestionably is: relevant evidence of what the Carriers and one independent Organization agreed was a fair and equitable settlement.

Precisely how relevant the UTU settlement is as an internal comparator cannot be stated in absolute terms. It must be weighed as one component among many and assessed in the context of the unique combination of facts and circumstances that the Carriers and Organizations find themselves in at this point.

We believe that our recommendations, in totality, reflect an appropriate balance of all the factors that traditionally are relevant to the resolution of compensation issues in collective bargaining and in interest arbitrations.

Certainly, as can be seen in the discussion that follows, the UTU Agreement is important and provides some guidance for our assessments. But, as can also be gleaned from our recommendations, we do not find it appropriate to apply it in lockstep fashion in this case.

After careful consideration of the positions of the parties, including the evidence and arguments that they submitted in support of their proposals, the Board recommends the following wage adjustments for the 2010-14 Agreement:

Date	Increase	Increase (Compounded)
7-1-10	2.0% GWI	1.0200
7-1-11	2.5% GWI	1.0455
7-1-12	4.3% GWI	1.0905
7-1-13	3.0% GWI	1.1232
7-1-14	3.8% GWI	1.1659
5 years	15.6% GWI	16.59% compounded
1-1-15 (if elected)	3.0% GWI	1.2008
6 years	18.6% GWI	20.08% compounded

The Organizations urged a recommendation for only a five-year Agreement on wages – matching the term of the Agreement. The Carriers urged a six year Agreement on wages mirroring that of the 2011 UTU Agreements, but indicated that, if the Organizations only desired a five year wage term, then their offer was one that would omit the January 1, 2015 wage increase and leave 2015 wages and compensation open fully for future bargaining.

We recommend the above-referenced wage changes that take place within the term of the Agreement – i.e., prior to the December 31, 2014 moratorium date – with the additional feature of permitting the Organizations to elect or decline to accept the January 1, 2015 wage adjustment. We further recommend that the decision to elect only five years of wage increases and retain full rights to bargain thereafter, including the ability to advocate unencumbered before a neutral party, or to accept the January 1, 2015 wage adjustment and the restrictions that this may impose when bargaining regarding 2015 compensation, be elected on an Organization-by-Organization basis. Details regarding the election and the reason for including that recommendation in this case will be discussed later herein.

We also recommend a one-time, lump sum payment equivalent to 1% of straight time earnings paid to each employee for the 12 month period November 1, 2010 through October 31,

2011, after application of the July 1, 2010 and July 1, 2011 General Wage Increases⁷. The details regarding payment of the lump sum bonus and eligibility should be governed by the usual practice and custom of the parties regarding eligibility for and payment of similar lump sum bonuses.

A summary of the principal reasons, in no particular order, for these recommendations follows.

First, while we recognize that this proposed resolution is by no means the only reasonable resolution possible, we believe that it is fair and appropriate. It results in wage increases (even after taking into account the proposed Health and Welfare Plan changes discussed below) that exceed the settlements to date between Amtrak and various Organizations⁸, recent settlements with commuter rail carriers, and greatly exceed the vast majority of settlements reported to have been reached between unions and employers in other industries. The recommendation also continues the trend of recent Agreements negotiated between the Parties and provides for a measure of real wage growth over its life.

We are unpersuaded by the argument that the appropriate yardstick to measure fairness or appropriateness is whether, given the increased profitability of the Carriers and improvements in productivity, the 2010-14 Agreement provides for compensation increases greater than those negotiated in 2007 and reflected in the 2005-09 Agreements reached between the Carriers and the Organizations. There has been no showing that the 2005-09 Agreements, which were

⁷ We do not recommend that the retroactive pay to be provided for the July 1, 2010 and July 1, 2011 GWIs be treated as part of the base earnings since that would pyramid the effect of those wage increases.

⁸ The June 1, 2010 – May 31, 2015 Agreements between several Organizations and Amtrak provide for total wage increases of 14.0% and also for increases in the required level of employee premium contributions to the Amtrak Health and Welfare Plan. We recognize that, historically, Amtrak wages have followed the pattern wage adjustments reached between the freight Carriers and all of their Organizations, but the comparison as one gauge of the fairness and appropriateness of the recommended settlement is apt in our view.

negotiated in a different economic climate, provide the paramount benchmark against which to gauge the fairness or appropriateness of the 2010-14 Agreements. The proposed Agreements, which provide for solid improvements to wage rates that were already significantly higher than those negotiated in many other industries⁹, recognize the profitability and productivity trends identified in the presentations in this case, the skills and demands imposed on employees by the nature of the work, the critical nature of that contribution to the overall success of the railroads, and relevant external comparisons. Despite the generally poor economic climate (a fact reflected in many of the recent wage settlements negotiated by unions in many industries which have provided for modest gains or, in some cases, freezes or even pay cuts), the proposed agreement in this case will increase wage rates on a compound basis by over 16.5% (five year option) and provide an additional 1% bonus and full retroactivity, or provide wage increases of over 20% (six year option) and provide an additional 1% bonus and full retroactivity. Additionally, while some changes will be made to the National Health and Welfare Plan that will increase employee payments towards some health care services (and lower others), these payments will be balanced to a very significant degree by the considerable benefit of keeping employee premium contribution rates capped at \$200 per month for a six and a half year period while contribution rates elsewhere have been increasing and are expected to continue to increase sharply.

⁹ No point would be served by any extended discussion of the Carriers' assertions that employees represented by the Organizations in this case should receive lower wage increases due to the existence of a "wage premium." While wages in the rail industry in recent years have been higher than wages paid to many who work in the same named job title in other industries, we cannot ignore the facts that: 1) despite this claimed "premium," the Carriers are proposing to increase wages at rates beyond those being negotiated in other industries generally and at a time when the economy is still struggling; 2) the Carriers negotiated substantial wage increases with the UTU and the BLET whose employees are similarly asserted to be "overpaid" based upon the same type of economic comparison and analysis; and 3) this wage differential has continued for some years, suggesting that there are a variety of legitimate and compelling reasons for the continuation of those differentials, including but not limited to, differences in skill and responsibility and work environment and the impossibility as a practical matter of replacing large numbers of these highly trained (and in some cases certified) employees if they failed to report for work for whatever reason.

We also note that the BLET reached agreements with BNSF, Norfolk Southern, and CSXT, regarding wages and work rules, and is in the midst of bargaining with respect to Union Pacific. This is evidence, despite the claim of pattern, that multiple patterns of changes to wages, work rules, and moratorium, may be fair and appropriate products of arms length bargaining. In fact, those agreements (copies of which were introduced into evidence) contain terms that differ from one another (and from the proposals of both the Carriers and the Organizations in this matter) in a number of material respects¹⁰.

Our recommendations vary in a number of respects from the UTU Agreement. Yet, the UTU Agreement is plainly entitled to weight as a benchmark of what constitutes one fair and appropriate bargain. Although it is an agreement made with a single organization, the UTU is the largest organization in terms of numbers of employees, constituting approximately 27% to 30% of the overall organized workforce at the Carriers and covering a number of operating crafts. The agreement was the product of hard bargaining. While the dispute over the agreed upon merger with the Sheet Metal Workers' International Association was present, there was no showing that the dispute led to the UTU leadership accepting terms that it would not otherwise have accepted. Moreover, the resulting agreement was ratified solidly by the UTU membership despite campaigning against acceptance by many of the Organizations. The UTU Agreements were reached at the same point in time that the Organizations and the Carriers were bargaining, covered the same or similar periods of duration, and were reached in the context of many of the circumstances present in this case. The UTU was bargaining with the same Carriers. Thus, issues of profitability and productivity are the same in the two sets of negotiations. The terms of

¹⁰ Given the structure of those agreements, which is totally dissimilar in terms of wages to either the offer of the Carriers or the proposal of the Organizations, both the Carriers and the Organizations recognized that the BLET Agreements reached to date should not be utilized as a benchmark in the crafting of the recommendation of the Board in this case.

the prior Agreement were the same. Issues regarding real wage growth and inflation are the same. The weight accorded to settlements being reported from collective bargaining agreements bargained elsewhere in the industry and other relevant trends are also the same. The employees represented by the UTU are also much more closely related to the employees represented by the Organizations than employees who work at Amtrak, commuter rail carriers, or other employers in and outside the transportation industry.

As for the variance between the wages that we recommend and those provided by the UTU settlement, we find that the Carriers' proposal failed to appropriately adapt and fully monetize certain integral parts of the overall bargain reflected therein. The differences in the workforce and in the Agreements are such that certain changes negotiated by the Carriers with the UTU have greater costs to the Carriers and greater benefits to the UTU members than would be the case if those specific changes were simply applied, as written, to the Organizations. For the two bargains to be comparable as fair and appropriate resolutions, the costs to the Carriers and the benefits to the affected members as a group need not be exact, but should be roughly equivalent.

More specifically, the recommended wage adjustment to be made effective July 1, 2012, is 1.3% higher than the comparable figure contained in the UTU Agreement¹¹. The reason for this variation is to monetize – in a way more appropriate to the Organizations in this dispute – the certification pay provided for by the UTU Agreement. The Board recognizes that the Carriers and the UTU in the UTU Yardmasters Agreement chose to monetize this by means of a

¹¹ The Board recognizes that the Carriers valued this item at approximately 1.0% GWI in value and the Organizations valued this item at approximately 1.3% GWI in value or perhaps even more, asserting that certain starts for which payments may be required under the new provisions may not have been accurately credited. We find that the 1.3% GWI figure is closer to the likely "true" value of the change and, accordingly, have included that figure in our recommended wage settlement in this case.

smaller general wage increase (0.5%) a year earlier. The Organizations in this case, however, persuasively asserted that full monetization was approximately equal to a 1.3% GWI. While the precise date that the UTU certification payments will begin is not known, July 1, 2012 appears to be the most appropriate date to incorporate that element of value into the proposed Agreements between the Organizations and the Carriers. Rough equivalence, not precise parity, is the appropriate standard even if the Board were applying pattern principles.

The second major element of transformed economic value in the UTU Agreement stems from the agreed upon changes to entry rates and the elimination of the fifth year of pay at less than the full 100% rates. The dollar value of that change, when converted to a GWI equivalent for the UTU workforce, is approximately 0.3%. The Board recognizes that the additional value to affected UTU employees will not begin to be realized until September 2015¹² – a date beyond the moratorium period of the Agreements whose terms are at issue in this case. Given the optional nature of the January 1, 2015 wage adjustment, we deem it most appropriate to include this additional general wage increase equivalence in the July 1, 2014 wage adjustment – the last GWI provided for prior to the end of the moratorium period.

The UTU Agreement also contained lump sum payments to employees who were already at various points in the National Entry rates and in Local Entry rates. Those lump sums, however, are payable to significant numbers, although a minority of the employees covered by the UTU Agreement. The appropriate monetization of those payments, when averaged across the entire group of employees covered by the UTU Agreement, is approximately equivalent to a 1% lump sum payment. We recommend a one-time, lump sum payment (not to be included in

¹² The change in fifth year rate from 95% to 100% of full job rate will take effect for employees hired after September 2011. Thus, the first group of affected individuals will not realize the benefits of the change until September 2015. In 2015, the additional payments will occur for one-third of a year (i.e., from September 2015 through December 2015) and, thereafter, the full monetary significance of the change will be effective.

the underlying base wage rate) equivalent to 1% of straight time earnings paid to each employee for the 12 month period November 1, 2010 through October 31, 2011, after application of the July 1, 2010 and July 1, 2011 General Wage Increases. We intend that the retroactive pay to be provided for the July 1, 2010 and July 1, 2011 GWIs is not be part of the base for this lump sum bonus since to do so would distort the value and pyramid the effects of those GWIs. We further recommend that the eligibility for and timing of those bonus payments be determined by the parties in a fashion consistent with their prior custom and practice.

The final item of our recommended wage settlement in this case relates to the January 1, 2015 wage adjustment of 3%. The Organizations questioned the appropriateness of having an Agreement whose amendable date was January 1, 2015, but which purports to have a pre-negotiated wage increase for the first year of the successor Agreement. The UTU Agreements terms relative to the January 1, 2015 wage adjustment are atypical. Side Letter No. 6 provides that, notwithstanding the 3% increase to take effect on January 1, 2015, wages for 2015 are an open subject for bargaining, but that if wages for 2015 are ultimately not resolved, then the UTU and the Carrier agree to provide Side Letter No. 6 to the neutral body (including any interest arbitration or any subsequent PEB) to confirm the mutual understanding of the Parties that the 3% wage increase was intended to resolve completely the compensation adjustment issue for 2015.

It would not be appropriate to simply grant to the Organizations the January 1, 2015 increase without imposing the same terms as are included in Side Letter No. 6. Those terms are part and parcel of the tradeoffs surrounding the decision to include a sixth year wage increase in a collective bargaining agreement whose term is only five years. Some Organizations may wish to accept the 3.0% wage increase as of January 1, 2015 despite acceptance of the limitations

contained in Side Letter No. 6. Others may not. The Board recommends that each Organization be given the option of either a traditional five year Agreement which would leave completely open the question of compensation adjustments for 2015 or acceptance of the pre-negotiated wage adjustment for 2015 with its resulting limitations. We further recommend that the decision regarding five years versus six years of wage increases be determined on an Organization by Organization basis and that this election be included in the Tentative Agreements that are sent for ratification.

For all of these reasons, we believe that the recommended wage agreement should provide a fair and appropriate basis for the Carriers and the Organizations to resume negotiations and reach agreement on their 2010-14 Agreements.

Proposed Changes to the National Health and Welfare Plan

The Carriers' Proposal

The vast majority of the approximately 90,000 to 100,000 bargaining unit employees covered by this proceeding participate in the Railroad Employees National Health and Welfare Plan ("National Plan" or "Plan"). The employees represented by the UTU were previously participants in the National Plan. In 1998 and 1999, the NCCC and the UTU negotiated a new Health and Welfare Plan – the National Railway Carriers and United Transportation Union Health and Welfare Plan ("UTU Plan") and withdrew from the National Plan. The UTU Plan was virtually identical in terms of its plan design to the National Plan and the negotiated changes since 1999 have largely mirrored each other¹³.

¹³ In 2004, the UTU and the Carriers negotiated a four month waiting period before new hires would be eligible for coverage and a Basic Health Care Benefit Plan. The National Plan failed to adopt similar provisions. The UTU Plan abandoned the Basic Health Care Benefit Plan in 2008 and the four month waiting period in 2010. The testimony and a comparison of the Summary Plan Descriptions of each Plan make clear that, presently, the Plans have identical design components. While they have a number of common consultants, the Plans retain them separately and the Plans have separate independent Joint Plan Committees.

Benefits are provided by the National Plan to employees and their eligible dependents by means of four programs: 1) the Comprehensive Health Care Benefit Program (“CHCB”); 2) the Managed Medical Care Program (“MMCP”); 3) the Mental Health and Substance Abuse Care Benefit Program (“MHSA”); and 4) the Managed Pharmacy Services Benefit Program (“MPSB”).

Primary medical benefits under the National Plan are provided through a point of service (“POS”) program – the MMCP, and a more traditional non-network indemnity program – the CHCB. The CHCB provides medical benefits and is available only in areas where the MMCP program is not mandated. (There are certain areas of the country in which the MMCP program is not available due to the composition of the network.) The CHCB program provides for calendar year deductibles of \$200 (individual) and \$400 (family), for a 15% coinsurance feature, and for out-of-pocket maximums per year of \$2,000 (individual) and \$4,000 (family). After the out-of-pocket maximums are reached, the CHCB covers 100% of eligible expenses. The UTU Agreement made no changes to the CHCB program of the UTU Plan. The Carriers similarly propose no change to the CHCB program in the National Plan for the duration of the Agreement.

The MMCP, as currently designed, provides first dollar coverage, with no deductibles, for in-network benefits. For in-network benefits, the MMCP has no co-insurance, provides for office visit co-payments that vary in dollar amount (\$20 for network providers in general practice, pediatrics, obstetrics/gynecology, family practice, and internal medicine, nurse practitioners, physicians assistants, physical therapists, and chiropractors; \$25 for urgent care center and emergency room visits; and \$35 for all other specialist office visits). If an Emergency Room visit is for a reason that does not meet the definition of an emergency, the visit will be

treated as an out-of-network service. For out-of-network services, the MMCP presently provides for calendar year deductibles of \$300 (individual) and \$900 (family), coinsurance of 25% after the deductibles and co-payments are satisfied (i.e., the Plan pays 75% of the regular and customary charges and the member is responsible for the remainder), and out-of-pocket maximums (exclusive of deductibles) of \$2,000 (individual) and \$4,000 (family) annually.

The Carriers propose the following design changes to the MMCP program in the National Plan that are designed to mirror those agreed to in the 2011 UTU Agreement:

- 1) introduction of annual deductibles with respect to in-network benefits - \$200 (individuals) and \$400 (family);
- 2) changes in the following fixed-dollar co-payments:
 - a) Emergency Room co-payments increase from \$25 to \$75 (waived if admitted to the Hospital);
 - b) Urgent Care Center co-payments decrease from \$25 to \$20;
 - c) Convenient Care Clinic co-payments decrease from \$20 to \$10;
- 3) where there are no fixed dollar co-payments, a 5% coinsurance will apply; this 5% coinsurance will apply to both medical and hospital expenses; and
- 4) an annual out-of-pocket maximum of \$1,000 (individual)/\$2,000 (family) applies with respect to co-insurance payments.

Additional changes are proposed relative to expanded use of Centers of Excellence, precertification of certain radiology procedures, and adding an outgoing Nurse-line/Informed Decision Support to the existing incoming support.

The Organizations propose maintaining the status quo in the MMCP program.

The Mental Health and Substance Abuse Care Benefit (MHSA) provides for 100% regular and customary eligible expenses for inpatient in-network benefits, a \$15 office visit co-payment for outpatient in-network benefits, and for out-of-network benefits, annual deductibles of \$100 (individual) and \$300 (family), and out-of-pocket maximums per year of \$1,500 (individual) and \$3,000 (family). No changes to the MHSA benefit program were made in the 2011 UTU Agreement and no changes to that benefit were proposed by the Carriers or the Organizations.

The final component of the National Plan is the MPSB prescription drug program. The present MPSB provides for the following:

1) In-Network Pharmacy (Retail): Co-payments of \$10 for Tier I (Generic Drugs); \$20 for Tier II (Formulary Brand Name Drugs); and \$30 for Tier III (Non-Formulary Brand Name Drugs); retail is a 21 day supply or less;

additionally, if the prescription is for a Tier II or Tier III drug for which there is a generic drug and the physician does not specify “dispense as written,” the member is responsible for the difference in cost between the Tier II or Tier III drug and the cost of the generic drug in addition to the \$20 or \$30 copayment;

2) In-Network Mail Order: Co-payments of \$20 for Tier I (Generic Drugs); \$30 for Tier II (Formulary Brand Name Drugs); and \$60 for Tier III (Non-Formulary Brand Name Drugs); mail orders are supplies of 22 to 90 days; if there is a generic drug, it will be substituted unless the physician specifies “dispense as written” and a Tier II or Tier III drug has been prescribed; and

3) Out-of-Network Retail: 25% co-payment (Plan pays 75% of eligible expenses).

The 2011 UTU Agreement made a number of changes to the MPSB that the Carriers propose be adopted in this case. Specifically, the changes are as follows:

1) In-Network Retail Pharmacy: change co-payments to \$5.00 (Generic – a decrease of \$5.00); Tier II (\$25.00 – an increase of \$5.00); and Tier III (\$45.00 – an increase of \$15.00);

2) In-Network Mail Order: change co-payments to \$5.00 (Generic – a decrease of \$15.00); Tier II (\$50.00 – an increase of \$20.00); and Tier III (\$90.00 – an increase of \$30.00); and

3) implementation of a number of pharmacy benefit management rules, including Prior Authorization, Quantity Limits, and Step Therapy protocols.

Projected Cost Savings to the Plan

The primary savings to the Plan, when compared with the existing plan design, comes from changes in utilization that are associated with the introduction of changed co-payments and improved management. A significant, but secondary source of savings to the Plan comes from the introduction of the deductible and MMCP co-insurance.

For example, the increase in co-payment for Emergency Room visits, coupled with the reductions in co-payments for Urgent Care Center visits, is designed to encourage greater use of Urgent Care Centers and reduced use of Emergency Rooms (which are much more costly to the Plan per visit). Similarly, reductions in the co-payments for generic drugs, coupled with increases in the co-payments for Tier II and Tier III drugs, step therapies, and other pharmacy rules, are designed to encourage greater use of generic drugs. There was no showing that any of these changes are likely to produce a reduction in the level of employee health or care. To the contrary, the expert testimony provided at the hearings suggests that these proposed changes will

not harm employee or family member health or care and, in some situations, may actually improve that care.

The impact of the combination of projected utilization changes and increased employee co-payments, co-insurance, and deductibles together produce significant savings over the costs of continuing the Plan without design changes. The estimated savings are on the order of \$960 per year per qualified employee to the Plan (5.87% of total Plan cost) in the form of decreased contributions needed from the Carriers to fully fund the schedule of benefits. If no plan design changes are implemented, the 2012 cost per employee would be \$16,356 per year. With the proposed changes, this figure will decrease to \$15,396. The savings are projected to grow annually based upon the assumed rate of medical inflation of 7% per annum and other assumptions, to \$1,104 per year in 2016. For 2016, costs under the current plan (if not amended) are projected to increase to \$21,439 per qualified employee. Under the Plan, as proposed to be amended, the 2016 total cost per employee would still increase significantly over the 2012 cost to \$20,335 (an increase in four years of \$4,939 or 31.0%)¹⁴.

¹⁴ The calculations in this section and the following section are based upon an October 19, 2011 analysis prepared by Towers Watson, the actuarial firm engaged by the Carriers, and that was provided to the Board during the hearings.

The actuary engaged by the Organizations, Cheiron, projected costs in its report (Organizations Exhibit 37) on a slightly different basis. Cheiron began with a different base figure for estimated 2012 Plan costs (which were approximately 4% lower than the figures used by Towers Watson) and used a number of assumptions regarding future cost trends that differed from those used by Towers Watson. For example, Cheiron used a slightly higher rate of projected increase for medical costs after 2012 (7.3% after adjustments versus 7.0% used by Towers Watson), had lower assumptions as to the magnitude of shifts to generic drugs associated with the proposed changes, assumed no utilization shifts based upon the imposition of deductibles and coinsurance, and used a blending factor of individual and family equal to that assumed for other plans and surveys of 49% individual and 51% family, even though the actual experience of the National Plan reflects an approximate mix of 80% family and 20% individual coverage among employees.

Notwithstanding these differences, Cheiron's projections of the cost savings associated with adoption of the proposed Plan design changes are very close to those of Towers Watson (\$80 per month per qualified employee by Towers Watson versus \$79 per month per qualified employee by Cheiron). The analysis reflected in the text regarding cost savings by the Carriers and for employees, if the proposed changes are adopted, therefore, will not be affected to any meaningful extent by the different 2012 starting point costs of the existing Plan, by the differences in health cost inflation rates, or by any differences in projected utilization. The mathematical extent of savings/cost

Projected Cost Savings to Employees of the Proposed Change

The Organizations have asserted that the proposed changes to the Plan are “concessionary” from the vantage point of the employees. This is true in one sense, but not in another.

The actuary engaged by the Organizations, Cheiron, estimated that the average increase in employee costs, after taking into account all of the changes at issue (including those associated with changes to the prescription drug plan which save employees money, on average, and the newly implemented MMCP deductibles and co-insurance) would be \$410 per year in the first full year under the amended Plan¹⁵. These are admittedly new costs. Some portion of those figures will increase during subsequent years as fees for office visits, hospitalization, and drugs rise. There is no increase provided for, however, in the annual deductible and, therefore, that significant item of employee cost sharing should not increase for the vast majority of employees. Nor is there an increase provided for in the out-of-pocket maximum so the co-insurance costs for the highest utilizing group of members similarly should not increase significantly over the remaining years of the Agreement after the Plan design changes have been implemented in full.

By contrast, however, the proposed amendments to the Agreement contain cost limiting provisions that equal or exceed the projected increased employee costs under the amended Plan.

(Footnote 14, continued)

shifting will be affected slightly, but the underlying approach and principles will remain the same. These differences also have no effect upon our recommendation. Thus, we need not credit as more accurate the 2012 cost figures used by Towers Watson or those used by Cheiron; our conclusions apply with equal vigor regardless of which of the data and projections proves to be more accurate.

¹⁵ The \$410 average figure for 2012 was stated to be in 2009 dollars, but based upon assumptions of no change in utilization of medical services and only a 3% shift to generic drugs (an assumption that was significantly lower than the assumption used by the Carriers’ experts). Interestingly, Towers Watson had a slightly higher annual figure in their analysis. We have chosen to utilize the \$410 figure for purposes of illustration of the average effects of the recommended changes on employees. As noted previously, use of a slightly different figure will affect the mathematics, but will not affect either our recommendation or our explanation of the underlying relevant trends and principles.

The contributions made by employees towards premiums under the prior Agreement was 15% of the Carriers' total payment rate (Medical, Life and Accidental Death and Dismemberment, Dental, and Vision), with maximums or caps negotiated on ad hoc bases over the years. The following tables compare: 1) changes in employee costs under the existing Plan if the proposed plan design changes are not made and if no new "caps" on those premium contributions are negotiated with 2) changes in employee costs under the Plan, as amended by the proposed changes, if the \$200 cap is maintained through June 30, 2016 as proposed. A final chart compares those two costs on a year by year basis through 2016.

Employee Cost Increases if Current Plan is Maintained without Change and Premiums Remain at 15% of the Carriers' Monthly Payment Rate

Year	Carrier Monthly Payment Rate	Employee Monthly Premium (15% of Carrier Monthly Payment Rate)
2011	\$1445.36	\$216.80 (capped at \$200.00)
2012	\$1,434.12	\$215.12
2013	\$1,531.95	\$229.79
2014	\$1,636.57	\$245.49
2015	\$1,748.47	\$262.27
2016	\$1,868.14	\$280.22

The Carrier Monthly Payment Rate was based in 2011 on actual rate information and, thereafter, was derived by using a slightly lower monthly plan cost for medical and dental for 2012 and applying the following trend assumptions – 7% annual increase in medical from 2013-16; 5% annual increase in Dental from 2013-16; no increase in Life Insurance and Accidental Death and Dismemberment; and no increase in Vision from 2013-16.

Changes in Employee Costs if Monthly Premiums Remain Capped at \$200 and the Proposed
Changes in Plan Design are Adopted

Year	Capped Monthly Premium	Additional Monthly Cost Associated with Plan Changes	Total Premium Equivalent
2011	\$200.00	N/A	\$200.00
2012	\$200.00	\$34.17	\$234.17
2013	\$200.00	\$36.56	\$236.56
2014	\$200.00	\$39.12	\$239.12
2015	\$200.00	\$41.86	\$241.86
2016 (1 st 6 months)	\$200.00	\$44.79	\$244.79

The cost associated with Plan changes was derived from the Cheiron estimate of \$410 per year (which is equivalent to \$34.17 per month). This figure was then increased by the same 7% per year growth assumption applied to the total cost of the health program.

Comparison of Effect on Employee Costs of Capped Contributions with Plan Design Changes
and Maintenance of Present Plan and 15% Contribution Relationship

Year	Total Premium Equivalent (Changed Plan; \$200 Cap on Actual Premiums)	Total Premiums – Current Plan and No Cap	Difference
2012	\$234.17	\$215.12	(\$19.05)
2013	\$236.56	\$229.79	(\$6.77)
2014	\$239.12	\$245.49	\$6.37
2015	\$241.86	\$262.27	\$20.41
2016 (1 st 6 months)	\$244.79	\$280.22	\$35.43

The issue of cost, from the vantage point of the employees, thus depends upon several factors including: 1) whether one focuses solely on the start up years of the design changes or focuses on the entire term of the Agreement; and 2) whether one believes that retention of the \$200 cap, without change, for what would be a six and one-half year period (January 1, 2010 to July 1, 2016) and increasing that contribution amount only \$30 per month in mid-2016 is attainable if there are no significant Plan design changes.

Recent Bargaining over Health Care Changes

The Parties in the bargaining for the 2000-04 Agreement and in the bargaining for the 2005-09 Agreement agreed to make substantial changes to the National Plan.

The 2000-04 Agreement made a number of significant changes to the National Plan including: 1) providing for employee premium contributions, effective as of July 1, 2001; those contributions increased annually pursuant to a complex formula contained in the Agreement based upon the increase in Carriers' costs, changes in the cost of living allowance, and average straight times earnings hours worked; 2) changes were made to the out of network deductibles for the MMCP; 3) changes were made to the ability to elect and the costs of electing CHCB program benefits; 4) co-payments under the MPSB were changed; and 5) a variety of other changes were also made, including creation of an Opt-Out Option that compensated employees who were qualified to and chose to opt out of National Plan benefits.

The 2005-09 Agreement made a number of additional significant changes to the National Plan including: 1) increasing the employee contribution rate to 15% of the Carriers' Monthly Payment Rate for 2007, 2008, and 2009 (without caps) and 2010 (with a cap of the greater of the 2009 employee contribution rate or \$200); 2) increasing co-payments for office visits and Emergency Room visits and increasing the deductible and out-of-pocket maximums for out of network services under the MMCP; 3) introducing a three tier benefit design under the MPSB; 4) changing the definition of eligible dependents; 5) limiting employee ability to choose the CHCB to areas where the MMCP is not offered; and 6) making selections of Blue Cross Blue Shield programs under the MMCP and under the CHCB more available. Retroactive premium increases were to be offset against retroactive wage payments. The Organizations assert that the

net effect of the changes in Plan design negotiated in the 2005-09 Agreement, exclusive of the effects of changed employee premium contributions, was to lower the costs of the Plan by 5.2%.

Even with the substantial Plan design changes made in the bargaining for the 2005-09 Agreement, the cost of health care has increased in recent years significantly faster than the rate of inflation generally and faster than improvements in hourly wages. Although the Plan – through a combination of good management and Plan design changes and increases in employee contributions – has managed to limit its annual cost increases to ones that were lower than the national averages, the Carriers have experienced significant increases in cost even during the life of the last Agreement. According to Towers Watson, the Carriers' annual cost per qualified employee to the National Plan increased as follows during the period 2004-10:

<u>Year</u>	<u>Carriers' Annual Cost Per Qualified Employee</u>
2004	\$9,608 (6.0% increase over 2003)
2005	\$9,640 (0.3% increase over 2004)
2006	\$9,961 (3.3% increase over 2005)
2007	\$10,693 (7.3% increase over 2006)
2008	\$10,476 (2.0% decrease over 2007)
2009	\$10,686 (2.0% increase over 2008)
2010	\$12,733 (19.2% increase over 2009)

Thus, by 2010, the cost to the Carriers of providing health insurance coverage to the Organizations, on a per employee basis, was 32% greater than the cost to the Carriers of providing health coverage in the first year of the 2005-09 Agreement. If the bargaining parties and the Joint Plan Committee had not agreed to a variety of cost saving measures and if the bargaining parties had not negotiated significant increases in employee premium contributions, these numbers would have been significantly higher.

Comparison with Other Plans

This section will compare certain aspects of the National Plan, as it presently exists, as well as the Plan design changes being proposed, with other large employer-provided POS plans providing health coverage.

The Kaiser Family Foundation and Health Research and Education Trust (“KFF”) publishes an annual survey of Employer Health Plans. The 2011 KFF Study revealed the following:

1) Percentage of Premiums Paid by Employees

KFF 2011 Survey:

POS Plans with 200+ workers: average percentage of premiums paid by covered workers:

Individuals 17% Family 32%

National Plan:

15% with \$200 cap, resulting in slightly less than 15% rate at present; proposed Plan would have this number decrease to the 12% range by 2016

2) Deductibles

KFF 2011 Survey:

Percentage of workers enrolled in POS Plans with 5000+ workers who have to meet a deductible: 76%

Average size of the deductible in POS Plans with 200+ employees:

Individual: \$746 Family: \$1536

National Plan (proposed):

Individual: \$200 (2014 and later; less before) Family: \$400 (2014 and later; less before)

The CHCB and MHSA components of the National Plan and the out of network portions of the MMCP all contain deductibles, co-insurance, and out-of-pocket maximum provisions.

3) Co-Insurance

KFF 2011 Study:

55% of large POS plans have coinsurance; 17% have copayments for hospitalization expenses

Average coinsurance rate: 17%

Average copayment for hospitalization: \$246 per admission

Average per diem for hospitalization: \$246

Average separate deductible for hospitalization: \$627 per admission

National Plan (proposed):

5% coinsurance rate

No co-payments, per diem, or separate deductibles proposed for hospitalization

4) Total Cost and Employee Cost Sharing

KFF 2011 Study:

Average Annual Firm/Worker Premiums (POS):

Individual	\$784 (employee) and \$5057 (employer) =	\$5,841 total
Family	\$5333 (employee) and \$9927 (employer)=	\$15260 total

If one blends these two figures so that, like the National Plan, it consists of a mix of 80% families and 20% individuals, the result is:

KFF Blend \$4423 (employee) (33%) and \$8953 (67%) (employer) = \$13376 total

National Plan (current) (2011):

\$2400 (employee) (14.6%) and \$13965 (employer) (85.4%) = \$16365 total

Thus, compared to the average Plan in the KFF 2011 study, employees were paying significantly less in the National Plan, both in dollar and in percentage terms, while the Carriers were paying significantly more, both in dollar and in percentage terms.

Comparisons with a variety of other studies and databases and plans yield similar conclusions. Even with the recommended Plan design changes, the National Plan will be far more generous to employees in terms of deductibles, coinsurance, out-of-pocket maximums, and rate of contribution towards premiums, than most other plans. The Segal Company, whose database includes most large collectively bargained multiemployer health funds, showed average deductibles of \$251 (individuals) and \$604 (families), coinsurance of 10% (median), and average out-of-pocket maximums of \$2,690 (individuals) and \$4,308 (families). Comparisons with the Federal Employee Health Benefit Program (“FEHBP”) similarly shows the National Plan, even after the proposed design changes are adopted, will provide significantly richer benefits at significantly lower employee cost.

The proposed changes to the MPSB program shows that, even with the changed copayments for Tier I, II, and III drugs, the benefits provided to National Plan employees are far better than those present in most large and collectively bargained plans. Again, using the KFF 2011 study as a comparator, the average copays for Tier I, II, and III drugs in the KFF studied plans were Tier I (\$10); Tier II (\$29); Tier III (\$49); and Tier IV (Specialty Drugs - \$91).

Overview of the Positions of the Parties

The Carriers urged that the Board recommend changes to the National Plan that mirrored those agreed to by the UTU in its 2011 Agreements with the Carriers. The proposed changes would incorporate into the National Plan MMCP benefit program features present in the vast majority of large POS plans, including those plans that are the product of collective bargaining. These changes are claimed to be modest in their design and in their impact on employees. Some of the changes are designed to reduce alleged overuse of certain services (e.g., Emergency Room visits for non-emergency situations), thereby improving the overall quality of health care, while

saving costs to both the Plan and in some instances directly to the employees as well (as, for example, in the case of the reduced copayments for generic drugs). The net result will be one in which the Carriers cost increases will be moderated somewhat over the life of the Agreement and beyond.

The Carriers characterize the proposed changes as moderate, balanced, and modest in content compared to the majority of other comparable plans, and consistent with the trends regarding cost sharing and management of health programs generally. The Carriers further argue that the changes are in accord with public policy, as evidenced in the Patient Protection and Affordable Care Act of 2010 (“PPACA”) by, among other things, reducing the likelihood that the National Plan will become subject to the excise tax provisions of PPACA that apply to “Cadillac” plans.

The National Plan provides for high benefits when compared to other similar programs and will continue to do so, albeit by a slightly less rich mix of benefits, if the proposed changes are adopted. Balancing those changes, the Carriers offered to continue the existing \$200 cap through July 1, 2016 and to put into place a \$230 cap at that time (which, according to estimates of medical cost inflation, will likely be more than \$50 per month below a full 15% share of total medical plan costs).

Additionally, by mirroring the changes negotiated to the UTU Plan, the Carriers note that the principle of benefits uniformity recognized by prior PEBs and by the Parties themselves in bargaining will be served. Further, potential problems with employees who move back and forth between UTU represented and BLET represented jobs (i.e., the 2000-3500 “ebb and flow” employees) will have continuing uniform benefits.

In sum, the Carriers assert that the proposed changes to the existing very generous benefit program are measured, modest, and more than balanced by limitations on increases to employee premium contributions.

The Organizations oppose the proposed changes to the National Plan for a number of reasons. They maintain that parity with the UTU Plan is not significant since the UTU and the Carriers voluntarily agreed in 1998 that the UTU would no longer participate in the National Plan. According to the Organizations, the same arguments they raised with respect to pattern and wages apply equally with respect to health care matters. The Organizations also argue that they have been cooperative in adopting legitimate cost containment measures having agreed in collective bargaining for the 2000-04 and the 2005-09 Agreements to changes to the National Plan and changes in employee contribution rates. They also agreed in the Joint Plan Committee (“JPC”) process to implement a number of programs designed to both improve the quality of care and save the Plan significant amounts of money. The Organizations urge that these matters be reviewed in detail by the JPC and that recommendations issue thereafter. The Organizations view the proposed changes as “radical” in nature to shift onto the sickest and neediest individuals and families disproportionate costs. They argue that the need for such a shift is particularly suspect in light of the overall robust financial health of the Carriers. The Organizations implore that the Board stop the Carriers from exploiting the current furor over health care by shifting costs onto the backs of the most vulnerable employees at a time when profits are at record highs.

The Organizations also disputed a central premise of the Carriers – i.e., that the existing National Plan has excessive costs. When adjustments to costs are made for various factors, including the morbidity associated with the higher health risk nature of work in the railroad industry, the costs associated with providing benefits to furloughed employees, and the effects of

contributions that went to the creation of reserves, the costs of the National Plan are within range of the average cost of large employer-provided plans generally. The Organizations assert that the “yield” to employees (derived from analyzing the adequacy of benefits ratio and considering employee contribution requirements) is among the lowest in the railroad industry (which are considered to be Amtrak and the larger commuter railroads). The Organizations note that the National Plan is not in financial distress and that it can afford to continue to provide benefits without drastic changes to the present plan design.

The Organizations voiced opposition to a number of components of the proposed Plan design. The provisions granting decisional authority to Pharmacy Benefit Managers (“PBMs”) are objectionable based upon the alleged conflict of interest that PBMs have in such situations and based upon the delegation of discretionary authority to the PBMs. (The Carriers replied that the PBMs have internal appeals committees consisting of individuals with medical expertise and that dissatisfied participants enjoyed rights to appeal under ERISA and the Plan.) The Organizations note that the changes may result in assumptions of additional average medical costs in the order of magnitude of \$400 to \$600 annually, but that those averages mask the fact that a number of participants will incur significantly increased costs perhaps amounting to thousands of dollars in a given year. The top 1% of members used 28.2% of all medical and pharmacy benefits in 2009. The top 10% used 68.6% of all medical and pharmacy benefits. The top 20% used 83.1% of all medical and pharmacy benefits. The top 30% used 90.6% of all medical and pharmacy benefits. The top 40% used 94.9% of all medical and pharmacy benefits. It is projected that the number of family units whose out-of-pocket costs under the MMCP is in excess of \$3,000 annually will increase from approximately 3,000 families to approximately

8,000 families¹⁶. The increase in Emergency Room co-payment is said to be unnecessary because under the existing Plan provisions a member who uses the Emergency Room already incurs significant costs above and beyond the co-payment if not admitted (since it is treated as an out-of-network treatment) and, if admitted, the additional co-payment is by its own terms inapplicable. The imposition of co-insurance is asserted to be a pure cost shifting device since nobody will be hospitalized without adequate reason. The reliance upon projected future significant cost increases is claimed to be misplaced. The National Plan has been successful in recent years in keeping its rate of cost increases significantly below the average for plans generally and it is contended that there is no reason to believe that this trend will not continue indefinitely in the future. Additionally, costs would be expected to decrease as the “baby boomers” in the workforce retire and are replaced by younger, healthier individuals. Finally, the potential for excise taxes being levied should not drive any changes in Plan design, according to the Organizations. Since large numbers of plans will be subject to the excise tax in 2018 and thereafter unless changes are made, the tax might more appropriately be referred to as more of a “Chevy” tax than a “Cadillac” tax, the Organizations respond.

For all of these reasons, the Organizations urge that the present Plan design be maintained, that the JPC process be used to examine acceptable means of containing costs, and that employee premium rates be held constant through 2016.

Recommendation of the Board

After careful analysis of the evidence and arguments advanced by the parties,

¹⁶ One would normally assume that the bulk of those families added to this category were already in the group that was paying \$2,500 or \$3,000 under the existing Plan design. Moreover, there was no explanation for how much of the increase was a product of the introduction of deductibles and how much was the product of the co-insurance and changes to co-payments under the medical and prescription drug programs or increases in the cost of medical and prescription drug services.

we recommend the adoption of the Carriers' proposed Plan design changes, including the maintenance of the \$200 cap on employee premium contributions through June 30, 2016.

We also recommend that employee monthly premium contributions as of July 1, 2016, equal the lesser of 15% of Carriers' Monthly Payment Rate for 2016 or \$230, unless mutually agreed otherwise in negotiations for a successor Agreement. We further recommend, however, that the effective date for adoption of the Plan design changes be July 1, 2012, and that limited aspects of the Plan design changes (i.e., deductibles and out-of-pocket maximums) be phased-in during the second half of 2012 and 2013. A summary of the principal reasons for this recommendation follows.

We are unpersuaded by the Organizations' contention that the proposal of the Carriers is radical, highly concessionary, and a change that has the effect of shifting significantly the primary responsibility for the provision of medical care and prescription drugs from the Plan onto the shoulders of employees.

Focusing first upon the radical versus measured nature of the changes being proposed, the changes to the medical plan involve the introduction of features that are typically found in large POS employer sponsored health programs in the United States. The KFF 2011 Study makes clear that most plans have deductibles and coinsurance, typically in amounts that are much greater than those being proposed by the Carriers or recommended by this Board. It should also be noted that deductibles, out-of-pocket maximums, and coinsurance are already a part of the CHCB, MHSA, and out of network MMCP programs. Similarly, most of the prescription drug programs have three or four tiers with features comparable or calling for greater employee co-payments and with management tools of the type proposed by the Carriers here.

Second, the type and magnitude of the changes – focusing upon the impact on Plan cost – is not materially different from the changes that were negotiated as part of the 2005-09 Agreement. Both this proposal and the 2005-09 Agreement involve negotiated changes equivalent to between 5% and 6% of the overall Plan costs attributable to a combination of Plan design changes designed to curtail costs and a direct shifting of certain costs to employees. The changes proposed to the Plan are comparable to those reached in collective bargaining in 2007.

Third, the proposal of the Carriers balances to a significant degree the increased out-of-pocket costs associated with the Plan design changes with some changes that *reduce* employee out-of-pocket costs and with changes that *lessen* the amount of employee direct premiums that otherwise would be paid. Some of the design changes involve savings to employees, such as reductions in certain co-payments including significantly the reductions in the co-payments for generic drugs. The most significant quid pro quo for the Plan design changes set forth in the proposal, however, is the commitment to maintain the pre-existing \$200 monthly premium after January 1, 2010, and through June 30, 2016 – a total period of six and one-half years without any dollar increase in employee premium contribution. We do not believe it reasonable to presume that, in light of increases in Plan costs and the cost of medical care generally, the appropriate comparison is one that examines the cost-shifting of the Plan design changes in a vacuum. As reflected in many other recent collective bargaining settlements, as plan costs rise, employee contributions also rise. Although the precise language of the 2005-09 Agreement is ambiguous relative to the premiums to be paid after 2010, there is no basis to presume that the Parties intended for the \$200 cap on the 15% employee premium contribution to remain frozen indefinitely in the face of regular and significant increases in the costs of providing medical

benefits and in the face of other collective bargaining parties negotiating increases in employee contribution rates both inside and outside the industry. As shown in the comparison tables set forth earlier and the table below, the combined effect of the freeze on employee contributions and the additional cost shifting associated with the Plan design changes is mixed. In the period immediately following the implementation of the design changes, the impact is negative in terms of average employee costs. As the years of no contribution increase continue, however, the net effect on employee cost becomes positive as compared with the status quo of increasing contributions annually to maintain the 15% of Carriers Monthly Rate relationship.

Comparison of Effect on Employee Costs of Capped Contributions with Plan Design Changes
Recommended by the Board and Maintenance of Present Plan and 15% Contribution
Relationship

Year	Total Premium Equivalent (Changed Plan; \$200 Cap on Actual Premiums)	Total Premiums – Current Plan and No Cap	Difference
2012 (1 st 6 months)	\$200.00 (status quo)	\$215.12 (full 15%)	\$15.12
2012 (2 nd 6 months)	\$217.09 (estimate due to 50% of deductibles and out-of-pocket maximums and only 6 months of experience)	\$215.12 (full 15%)	(\$1.97)
2013	\$236.56 (overstates cost due to phase-in at 75% of deductibles and out-of- pocket maximums	\$229.79	(\$6.77) (overstated but the exact amount cannot be determined)
2014	\$239.12	\$245.49	\$6.37
2015	\$241.86	\$262.27	\$20.41
2016 (1 st 6 months)	\$244.79	\$280.22	\$35.43

Even if one were to compare the situation to a hypothetical set of ad hoc negotiated caps on the premium contributions (increasing \$10 per year to reflect increases in Plan costs), rather than a full 15% uncapped contribution rate, the basic balance would not significantly change.

Comparison of Effect on Employee Costs of Capped Contributions with Plan Design Changes
and Maintenance of Present Plan with Fixed Increases in Premiums

Year	Total Premium Equivalent (Changed Plan; \$200 Cap on Actual Premiums)	Presumed Premium Increases if no Change in Plan Terms	Difference
2012 (1 st 6 months)	\$200.00	\$215.00	\$15.00
2012 (2 nd 6 months)	\$217.09 (estimate due to 50% of deductibles and out-of-pocket maximums and only 6 months of experience)	\$215.00	(\$2.09)
2013	\$236.56 (overstated due to phase-in of deductibles and maximum out-of-pockets	\$225.00	(\$11.56)
2014	\$239.12	\$235.00	(\$4.12)
2015	\$241.86	\$245.00	\$3.14
2016 (1 st 6 months)	\$244.79	\$255.00	\$11.79

Fourth, the effect of the Plan design changes should lead to changes in utilization that can be effected without adverse effect on the quality of medical care and that will save significant monies for the Plan and, indirectly, for the Carriers.

Fifth, the proposal of the Carriers would maintain the parity between the UTU Plan and the National Plan.

Sixth, the changes in Plan design may well be significant in avoiding application of the excise taxes contained in PPACA.

Seventh, the costs to the Carriers of maintaining the National Plan are far in excess of the costs of health care to most employers. The effect of the changes will be to slow the rate of increase of those costs.

Eighth, the recommended wage package – which is an integral part of the recommendations in this Report – include significant wage gains and increases far in excess of

most negotiated settlements, both inside and outside the industry. It is in this overall compensation context that the Board makes its recommendation to adopt the Carriers' proposal.

Note, though, that the Board's recommendation in this case departs in two relatively modest respects from the Carriers' proposal. First, it sets an implementation date of July 1, 2012, instead of January 1, 2012. The principal reason for this delay is to enable the bargaining and ratification processes to be completed and to allow for appropriate notice and education about the changes to employees, to other Plan participants, and to providers. To avoid a distortion in 2012, implementation of the changes mid-year will perforce require an adjustment of the deductibles and out-of-pocket maximums. Given the mid-year implementation, the deductibles and annual out-of-pocket maximums should be halved, resulting in deductibles for the second half of 2012 of \$100 for individuals and \$200 for families and out-of-pocket maximums of \$500 for individuals and \$1,000 for families. All of the other Plan design changes should be implemented in full as of July 1, 2012.

Second, we believe that it is fair and appropriate to phase-in the deductibles and out-of-pocket maximums in 2013 so that they are 75% of the proposed levels in that year with 100% of the proposed levels applied in 2014. The primary impetus for this recommendation is to mitigate the adverse effects of the changes on employees, particularly with respect to those employees and family members who are the sickest and the heaviest consumers of medical care. The deductibles for 2013 would be, therefore, \$150 for individuals and \$300 for families and the out-of-pocket maximums would be \$750 for individuals and \$1,500 for families. In 2014, the full deductibles (\$200/\$400) and out-of-pocket maximums (\$1,000/\$2,000) would take effect. The recommendation to phase-in these features also appears appropriate given the differences in demographics between the National Plan and the UTU Plan. Inasmuch as the members of the

National Plan are older, on average, than the members of the UTU Plan, the National Plan members who are represented by the Organizations in this dispute will likely end up paying slightly more, on average, out-of-pocket than the average UTU member despite the implementation of identical Plan design changes. While the parties did not, and the Board cannot, put a precise dollar figure on that differential, the decision to phase-in these new Plan features appears an appropriate equivalence that should not significantly affect the total savings to the Plan (and indirectly to the Carriers) that will flow from adoption of the proposed Plan design changes.

None of the reasons cited by the Organizations are sufficient, either singly or together, to recommend against adoption of the proposed Plan design changes. As noted, we find the proposed changes to be moderate, balanced, consistent with health care trends generally, and changes that will continue the Plan a generous one. The concerns about providing undue authority to PBMs are unpersuasive. The PBMs have internal professional review committees to hear member appeals of denials and there are rights under ERISA to prompt third party review of denials. Additionally, if the PBM acts inappropriately, one would expect the sponsors, acting through the JPC, to consider that behavior when determining whether to renew the contractual relationship with the PBM. The shifting of limited costs in the case of those who use greater medical care and pharmaceutical services does not appear inappropriate and there was no showing that the cost shifting associated with the particular change at issue in this case is inordinate.

For all of these reasons, we recommend in favor of the Carriers' proposal regarding health care, as modified slightly herein.

Vacations

The Organizations' Proposals

The Organizations proposed two across-the-board changes with respect to vacations:

- 1) an improvement in the vacation schedule to provide for additional weeks of vacation, including the addition of a sixth week for employees with 25 years or more of service; and
- 2) a proposal to pay pro-rated vacation to employees who do not satisfy the minimum eligibility requirements to receive paid vacations.

In terms of vacation accruals, the Organizations propose to improve the vacation schedule as follows:

Years of Service	Weeks of Paid Vacation
------------------	------------------------

Existing

1 years	1 week
2 -7 years	2 weeks
8-16 years	3 weeks
17-24 years	4 weeks
25+ years	5 weeks

Proposed

1-4 years	2 weeks
5-7 years	3 weeks
8-14 years	4 weeks
15-19 years	5 weeks
20+ years	6 weeks

This proposal thus increases every eligible employee's vacation by at least one week and for certain employees increases vacations by two weeks a year.

The present Agreements provide a bright line test for eligibility to receive vacation paid time off based upon days worked (and in some situations including days not worked, but days paid) in the preceding calendar year. For non-operating employees, the qualifying amount of

days needed to qualify for vacation is 100-120 days. An employee who works only 99 qualifying days receives no vacation in the following calendar year whereas an employee who works 100 qualifying days receives full vacation.

The standards for operating employees to qualify for a full vacation benefit are more complex and are based upon basic days of service. For yard service, the qualifying number is 225 basic days which equates to 6.82 months worked. For road service, the qualifying number is 270 days which equates to 8.41 months worked.

The Organizations propose to maintain the existing eligibility standards for qualifying for full vacation benefits, but propose that individuals who work fewer days be granted pro-rated vacation benefits based upon the percentage of vacation-qualifying days worked in the previous year. With respect to non-operating employees, that would mean that an employee who works or is paid 50 qualifying days in a calendar year would receive 50% of a full year's vacation in the following calendar year. Similar pro-ration is proposed based upon countable basic days for operating employees.

The Carriers opposed both of the changes and made no affirmative proposals to change the existing vacation provisions and practices.

Overview of the Positions of the Parties

The Organizations stress the physically demanding nature of the work and the often onerous travel that is a part of many railroad jobs in support of the request for additional paid scheduled time off. They note that the National Vacation Agreement for Non-Operating Crafts dates back to 1941, the National Vacation Agreement for Operating Crafts dates back to 1949, and the National Vacation Agreement for the ATDA dates back to 1965. The last time that vacations were increased was in 1982. Change, according to the Organizations, is long overdue.

The amount of vacation provided by the schedule is asserted to lag private industry averages according to the Bureau of Labor Statistics National Compensation Survey and to lag even further state and local government leave programs. The web sites of each of the “Big 4” Class I Carriers all indicate that they provide more generous vacation to their non-union employees. Copies of excerpts from the 2009 Agreement between the Port Authority and the IBEW and from the 1995 Agreement between MetroNorth and the IBEW were introduced in support of an assertion that some other Carriers provide greater numbers of vacation days. Some Carriers have even negotiated individual agreements with some Organizations to provide increased vacation benefits.

The Organizations argue that use of a bright line eligibility test is unfair and operates to deprive employees who perform significant service from qualifying to receive earned vacation benefits. They maintain that this result is particularly unfair in the case of employees whose hire dates are sufficiently late in the calendar year that they are unable to qualify for vacation pay in the following year despite having worked a significant piece of their initial year of employment.

The Carriers object to the proposed pro-ration formula, based upon its departure from decades of accepted industry practice, and based upon the fact that an individual with as little as 4 days worked and 30 days of sick leave could conceivably qualify for 2 weeks of vacation if the Union’s proposal to create a 6 week vacation category were also accepted.

The Carriers contend that the National Vacation Agreement must be viewed in the context of the very large number of paid holidays (11) provided to most employees together with the personal days that many employees also receive. The Carriers also emphasize the significant price of granting this request (approximately \$190 million in 2012, 2013, and 2014 alone) and urge that the Board recommend that the proposal be withdrawn.

Recommendation of the Board

A careful review of the National Compensation Survey results (March 2010) published by the Bureau of Labor Statistics (“BLS”) reveals that while the Vacation Agreement often produces marginally fewer days of vacation than the mean number of days of vacation reported for the surveyed service intervals (which report vacations at the following groupings: After 1 year, After 5 years, After 10 years, and After 20 years), when the number of vacation days is combined with the mean number of paid holidays is 8 (9 for unionized workers) versus 11 for railroad employees, there is no disparity at all. Additionally, while the data suggest that the National Vacation Agreement may produce fewer vacation days than the average at some, but not all, of the BLS reporting categories, those data fail to establish that the benefits provided have already fallen behind comparable norms in industry as a whole. For example, the “After 5 Years” category appears to include those individuals who have more than 5 years of service, but 10 or fewer years of service. The mean number of days for that category is 13 days for unionized employees. Under the National Vacation Agreement provisions, however, this category would include those with 5 years (10 days), 6 years (10 days), 7 years (10 days), 8 years (15 days) and 9 years (15 days) – a group whose average number of vacation days is 12. Moreover, the single largest group of employees for the category “After 5 years” among unionized employees (46% of the total) is a group that receives 10 to 14 days. Similar evaluation of the other categories yields similar conclusions.

In sum, the BLS National Compensation Survey suggests that the National Vacation Agreement, despite its age, is providing vacation benefits that are common and comparable to those enjoyed by most unionized private industry employees. We cannot conclude based upon the record in this case that paid time off for railroad workers has fallen behind, particularly when

one also considers the larger than usual number of paid holidays they receive. The very significant price associated with granting the Organizations' proposals (over \$190 million) relative to the National Vacation Agreement further suggests that changes be made in the context of give and take bargaining so that their cost can appropriately be distributed in the overall package. The Board has determined in this case to recommend the largest appropriate wage increases at the expense perhaps of other proposed changes.

We are also unpersuaded that a change to the long-standing approach towards pro-ration of vacation benefits should be changed. If the pro-ration concept is to be embraced at all, based upon the view that vacation benefits are earned ratably for each hour of work, pro-ration would occur on the basis of a full year's employment or equivalent, not on the basis of the current eligibility triggers (which grew out of the 60% eligibility criteria discussed in PEB No. 11). No persuasive basis has been shown, however, to abandon an approach towards vacation eligibility that has been in place and consistently followed in the industry for over 70 years.

For all of these reasons, we recommend that the proposal regarding changes to the National Vacation Agreement be withdrawn.

Supplemental Sickness Pay

A number of the Organizations have negotiated with the Carriers to provide Supplemental Sickness Benefit Plan ("SSBP") payments to augment the benefits provided to employees under the Railroad Unemployment Insurance Act ("RUIA"). These benefits have historically been funded by employer contributions on a per capita basis. In recent years, the replacement rate for the combination of RUIA and SSBP benefits has changed during the course of each Agreement as a result of the fixed dollar nature of the benefit and the fact that wages have increased during the term of those Agreements. The Parties have agreed to increase the

Supplemental Sickness Benefit Plan benefits at the beginning and/or at the end of each Agreement to restore the appropriate replacement ratio.

The Carriers propose no change to this ad hoc method of adjusting the SSBP benefits and, thus, effectively propose the continuation of that method in this case.

The Organizations propose to index the SSBP to automatically readjust SSBP benefit levels (both for those receiving RUIA benefits and those who are not) to the ratios that existed on December 31, 2009 and to thereafter automatically readjust benefit levels on the effective dates of any general wage increases to maintain the same ratios of benefits to rates of pay as existed on December 31, 2009.

The Board is persuaded that this proposal has merit and recommends its adoption. The underlying purpose of SSBP benefits is well served by automatic adjustments that maintain a level income replacement ratio to eligible employees. The Parties recognized this by the series of ad hoc adjustments in bargaining to accomplish that objective. The amount of money needed to fund this is relatively modest (equivalent to less than a 0.03% GWI) and seems appropriate in light of the prospective nature of the change and the fact that the life spans of agreements appear to have increased. Additionally, the recent Massachusetts Bay Commuter Railroad settlement included an annual automatic readjustment feature.

For these reasons, we recommend adoption of the Organizations' proposals, to commence with the July 1, 2012 GWI – the first increase that will take effect after the 2010-14 Agreements become effective.

Information

Background

The Organizations seek a new contract provisions that would require the Carriers to provide them with all information “reasonably necessary to administer and negotiate collective bargaining agreements.” The Organizations explain that this information is needed in order to enable them to perform their representational functions for employees and to meet their statutory obligation to “exert every reasonable effort to make and maintain agreements.” RLA, 45 U.S.C. §152, First.

Under the National Labor Relations Act (“NLRA”), the parties have an obligation to share information in both the context of contract negotiations and grievance handling. This is grounded in the obligation to bargain in good faith contained in the NLRA. While this NLRA duty has not been engrafted into the RLA, the Section 152, First obligation noted above is cited by the courts in RLA cases to suggest that the parties should at least bargain over the issue of information disclosure. There are also certain obligations – under the general umbrella of Section 3 arbitration proceedings of the RLA – to share evidence and arguments on the property prior to an appeal to arbitration (if a party intends to rely on such matters at arbitration).

Overview of the Positions of the Parties

The Organizations contend that, in grievance handling, the provision of relevant documents and other information would enable them to better evaluate and possibly resolve grievances prior to arbitration. In collective bargaining, the provision of basic information would enable the Organizations to better prepare proposals and evaluate Carrier proposals, based on data and information held only by the Carriers. This could result in improved communications between the parties and lead to more rational decision-making and settlements.

Such information might also bring clarity on certain subjects to skeptics within the Organizations' own ranks.

The Organizations point to the existence of numerous provisions for information exchange in collective bargaining agreements in the airline industry, which is also subject to the RLA.

The Carriers oppose the Organizations' proposal to provide them with information. The Carriers argue that the RLA, unlike the NLRA, contains no legal requirement for the provision of information between the parties. The history and nature of grievance handling and collective bargaining under the two acts are quite different. The Carriers assert that there has been no showing of any deficiency in the current system of voluntary provision of information. The Carriers note that the proposal is "one sided" in that it does not require the Organizations to provide the Carriers with information. The Carriers also assert that similar proposals have been made by several railroad unions several times in the past, but have been withdrawn. The Carriers maintain that such a provision would be costly and would require the creation of a new and burdensome administrative structure to process and respond to information requests. The Carriers also point to concerns about the confidentiality of materials. Finally, the Carriers note concerns over how disputes regarding information requests would be decided and insist that such a provision would slow down the processing of grievances.

Recommendation of the Board

At the outset, the Board notes that the absence of information exchange is a somewhat unusual aspect of railroad grievance handling and collective bargaining as compared to other private and public sector statutory obligations. It is a feature of the NLRA and of many state and local bargaining laws. In addition, many airline collective bargaining agreements contain such

provisions. Necessary information relating to grievances and collective bargaining facilitates the efficient handling of such disputes through common understanding of essential facts and data.

However, the Board also recognizes the unique features of railroad grievance handling and collective bargaining and the fact that for many decades there has been no generally recognized right to receive relevant information. Rather, information requests have been handled on an ad hoc basis. There was no showing that Carrier refusals to provide truly relevant information is widespread or has created problems.

There are three grievance tribunals in the railroad industry: the National Railroad Adjustment Board (“NRAB”), Public Law Boards (“PLBs”) and Special Boards of Adjustment (“SBAs”). Each of the three tribunals is composed of an equal number of labor and management members. The NRAB has an extensive set of rules, which it applies to its proceedings. The PLBs and SBAs are created by Organizations and Carriers nationally or locally and they jointly establish rules governing their operations. These tribunals are appellate in nature and do not hold de novo hearings. They may and sometimes do establish formal or informal information sharing mechanisms. Moreover, extensive written records are exchanged by the parties and submitted to the tribunals.

Below the tribunals, Hearing Officers in discipline matters on the individual properties must abide by contractual requirements that require (expressed in different ways) a “fair” hearing or investigation. Thus, evidence presented adverse to an employee must be disclosed and is subject to cross-examination. If a Hearing Officer declines a request for information he or she does so at the risk of undermining the merits or denying a fair hearing. Each Carrier and Organization has different procedures for the grievance steps including charges, replies, hearings

and findings. Yet, the core requirements for a fair hearing are universal and subject to review in arbitration.

In light of these unique and specialized practices, the Board is reluctant to impose generic rules for the provision of information, particularly given the many decades of experience under the present system and no showing of widespread or systemic problems that would require a proposal similar to that advanced by the Organizations in this case. The proposal of the Organizations warrants serious discussion and focus by the parties, recognizing the different types of tribunals, as well as the different experience and procedures on local properties with their different organizations and crafts or classes, for grievance handling. In light of the enormous number and variety of national and local tribunals as well as on-property grievance handling systems, some deference must be given to these differences as well as local conditions.

In the collective bargaining setting, local versus national issues also suggest the need for the parties to seriously address a system of information sharing on their own. While the Board recognizes the virtues of transparency and information sharing, it also respects the parties' experience in the system of dispute resolution that it has adopted. The fact that the Organizations' proposal only calls for the Carriers to provide information to them and not a mutual exchange of information is also troubling.

For all of these reasons, the Board recommends that the Organizations withdraw their proposal on information.

Craft Specific Proposals

The Organizations presented a significant number of proposals to the Board that were craft specific in the sense that they applied to one or more, but not all, of the Organizations. In some cases, the proposals were wall-to-wall in nature regarding a specific Organization and its

membership, encompassing all Carriers and all jobs. In other cases, the proposals were more focused and job and/or Carrier specific. The format for this section of the Report varies from earlier sections. Each of the Organizations' proposals and positions on each issue will first be outlined. The Board's comprehensive discussion and recommendations will follow, with detailed comment where appropriate.

American Train Dispatchers Association (ATDA) – Supplemental Sickness Plan

The ATDA proposes that a Supplemental Sickness Plan be established where one presently is not in effect.

Overview of the Positions of the Parties

The ATDA asserts that a Supplemental Sickness Plan is already in effect at the non-Conrail parts of CSXT for Dispatchers and seeks a similar plan for Dispatchers at other Carriers. The present structure of RUIA benefits only provides for income replacement of approximately 22.5% of the sick or injured Dispatcher's earnings. Further, RUIA benefits are available only for 26 weeks, with extended benefits of an additional 13 weeks.

The Carriers note that the proposal was not in the Section 6 Notice and that no discussion took place in bargaining regarding this proposal. They oppose granting the proposal on its merits, asserting that employees generally receive either sick leave or a supplemental sickness benefit and that the ATDA is seeking in this case to be awarded a supplemental sickness benefit atop their sick leave system.

Brotherhood of Locomotive Engineers and Trainmen/IBT (BLET) – Locomotive Cab Conditions

The BLET proposes to "implement improved and enforceable minimum locomotive cab standards." Specifically, the BLET asks the Board to amend Article XVII of the Agreement to:

- (a) Reinstitute the National Committee and expand its scope to include issues related to the operation of locomotives on foreign lines of road;
- (b) Recodify the locomotive cab sanitation conditions to reflect Federal Railroad Administration (“FRA”) regulated conditions and add cab security and climate control to the list of covered conditions;
- (c) Clarify the meaning of “unreasonable” delay in replacing a noncomplying locomotive;
- (d) Provide for an improved enforcement mechanism.

There is extensive FRA regulatory activity in the area of locomotive cab conditions.

In addition, Congress has encouraged the parties to address locomotive cab conditions jointly.

Section 2 of Article XVII of the parties’ Agreement allows an engineer to refuse to operate a locomotive if certain FRA conditions are not met. However, the carrier retains considerable discretion to require the engineer to take the locomotive based on its assessment of the “seriousness of the deficiency” concern for “unreasonable delay” and other criteria.

Overview of the Positions of the Parties

The BLET contends that the Carriers should adopt more stringent safety standards than the expressly described “minimum federal safety standards” for locomotive cabs.

The BLET notes that while it is generally satisfied with the functioning of the Rail Safety Improvement Act’s labor-management consultation process, it is dissatisfied with the functioning of Section 2, which, it contends, gives management too much discretion over the decision of an Engineer to not take a locomotive out. In particular, the BLET notes that the terms “unreasonable delay to the train” and “unreasonable train delay,” as used in Section 2, should be revised to read “unreasonable delay to the train in excess of 30 minutes” and “unreasonable train delay in excess of 30 minutes,” respectively. The BLET also seeks procedural changes to Section 2 of Article XVII to provide an objecting engineer and his replacement with certain protections, information and appeal rights.

The BLET further proposes that the Carriers' cab sanitation conditions and locomotive cab security be amended to reflect the list of enumerated FRA-regulated conditions, including climate control, glazing and cab door locking mechanisms.

The Carriers oppose BLET's proposal on four grounds. First, the UTU agreement has no such language, since the UTU dropped its own proposed locomotive cab standards in reaching an overall agreement. Second, BLET has already reached voluntary agreements with BNSF, CSXT and NS (and is currently in local negotiations with the UP). None of the agreements contain the BLET proposed locomotive cab conditions proposal, and those parties are barred by a moratorium clause from raising such proposals further. It would be unreasonable to adopt new and different cab conditions for the KCSR and Soo Line. Third, the FRA has promulgated numerous regulations addressing the locomotive cab environment, including noise standards and sanitation. The Rail Safety Improvement Act of 2008 authorized the FRA to study the cab environment and issue regulations to "improve elements of the cab environment to protect an employee's health and safety." The Organization and Carriers recently submitted comments in response to the FRA's Notice of Proposed Rulemaking on Locomotive Safety Standards on January 11, 2011. The FRA is thus addressing the issue and is better equipped than this Board to ascertain what constitutes "minimum" locomotive standards. Fourth, issues of standards and enforcement, especially in light of FRA jurisdiction, are far too complicated and interrelated involving technical, practical and other considerations, to be addressed by this Board on the record before it.

BLET – Entry Rates and Two-Tiered Pay System

The BLET seeks the elimination of entry rates and the two-tiered pay system. Under these provisions, new employees hired after 1985 ("post-85" employees) are generally paid at

lesser rates than other engineers during their first five years of service. The pay gap has narrowed since 1985 as a result of Emergency Board Reports, a 1983 Study Commission, National Agreements and various local agreements with the Class I railroads.

Overview of the Positions of the Parties

The BLET argues that “post-85” employees do not provide “less value” or “less productivity” to the railroads than their “pre-85” peers. It argues that especially in light of the uniform and comprehensive FRA engineer requirements and penalties, the entry rate schedule and two-tiered pay system is unjustified and unfair. The BLET notes that the railroad industry has become stable and wealthy compared with the early days of deregulation.

The Carriers posit that the BLET’s proposal is an additional wage proposal for some of its members. The Carriers contend that the BLET-represented employees already receive a total compensation premium over other similarly situated employees outside and inside the railroad industry.

The Carriers also contend that the elimination of entry rates and the two-tiered system for KCSR and Soo Line would result in a labor-cost increase of approximately \$2.4 million for those smaller Class I Carriers and would be in addition to the 18.24 % compounded GWIs offered by the Carriers.

BLET – Certification Allowance

The BLET seeks an increase in the certification allowance for Engineers from \$5 per tour to \$10 per tour of duty. The current \$5.00 per tour certification allowance was established in 1997, when the FRA established requirements for Engineer to be certified.

Overview of the Positions of the Parties

The BLET justifies its proposal by pointing to the perils and penalties to which an Engineer is subject if he/she violates an FRA rule. These include “cardinal sins,” in areas such as testing, operations and off-duty conduct, which can lead to decertification and loss of employment.

Moreover, Conductor certification will subject the Engineer to added vulnerability because of the Engineer’s interrelated work relationship with the Conductor. Further, if an Engineer is also certified as a Conductor, such multiple certifications could subject the Engineer to greater discipline especially since the FRA intends to eliminate its “safe harbor” provision for employees with multiple certifications.

The BLET also points to the fact that the Engineer’s \$5 certification allowance has lost considerable value in the fourteen years since 1997 as a result of inflation.

The Carriers oppose the BLET request for increases to the certification pay on the KCSR and Soo Line for the same reasons it provided with respect to meal allowances: the BLET’s three local agreements with the CSXT, the BNSF and NS, included quid pro quos in exchange for an increase in the certification pay. BLET is currently in negotiations with the UP outside of National Handling as well. No such exchanges are present here.

BLET – Meal Allowance

The BLET seeks the adoption of its proposal that the “away-from-home-terminal meal allowance” be increased to reflect the meal allowance provision contained in the BLET/CSXT Agreement. The National Agreement provides for lower meal allowances than do the BLET’s agreements with the CSXT, BNSF, NS agreements as well as the UTU Agreement.

Overview of the Positions of the Parties

The BLET argues that the value of its meal allowance has declined significantly due to inflation and has also declined as a percentage of wage rates. It is below what is provided in several Class I agreements including the UTU agreement and does not provide adequate payment for away-from-home-terminal meals.

The Carriers urge the Board to reject the BLET's away-from-terminal meal allowance proposal. The Carriers note that the CSXT Agreement involved an array of pay rates, rules and working conditions, including a new pay system partially based on performance bonus (i.e. incentive pay), "a very limited guaranteed wage increase," certification pay, established a new electronic bidding system, equalized certain pay rates, adjusted personal leave and vacation rules, addressed extra boards, etc. These were in addition to a new schedule for meal allowances. The Carriers argue that the BLET is thus cherry-picking one of the benefits that it received from the CSXT Agreement and ignoring the other provisions.

The Carriers argue that imposing the CSXT's meal-allowance schedule on the KCSR and Soo Line would cost those carriers \$1.2 million without any corresponding benefit to those railroads and ignore the tradeoff in the CSXT Agreement.

Brotherhood of Maintenance of Way Employees Division/IBT (BMWED) – Rest Day Travel Allowances

Currently, unless modified by Carrier-by-Carrier agreements, travel allowances on rest days (between a work site and the employee's residence) are controlled by Article XIV of the September 26, 1996 National Agreement (as subsequently modified). Carrier-by-Carrier modifications are authorized by Section 3 of that Agreement.

The Organization's proposal modifies the September 26, 1996 National Agreement in three ways. First, without any change in the language that provides the allowances in Section 1(a) and (b) they propose increases in the allowance amounts as follows:

Amend Article XIV, Section 1(a) of the September 26, 1996 National Agreement to read:

101 – 200 miles \$36.00
201 – 300 miles \$72.00
301 – 400 miles \$107.00
401 – 500 miles \$142.00
Additional \$36.00 payments for each 100 mile increments.

Amend Article XIV, Section 1(b) of the September 26, 1996 National Agreement to substitute the amount of "\$18.00" for the current "\$12.50."

The second change is to:

Amend Article XIV, Section 2 of the September 26, 1996 National Agreement to provide the following:

Employees may choose a different type of travel than Highway Travel (e.g. air, rail or bus) for each weekend trip home. Employees selecting a different type of travel other than Highway Travel will receive an allowance as though they used Highway Travel for the weekend trip home.

The third change is to add language that provides for future adjustments in the Section 1 (a) and (b) allowances. The proposed language states:

Effective January 1, 2013 and each January 1 thereafter, adjust the allowance set forth in Paragraph 1, by the percentage change in the Consumer Price Index Urban Wage Earners and Clerical Workers (CPI-W (1967 = 100)) in the previous 12 month period (October to October). Effective January 1, 2013, amend the amount set forth in Paragraph 2 to equal one half of the amount paid for traveling 101 to 200 miles.

Overview of the Positions of the Parties

The Organization states that its proposal restores and maintains the value of the 1996 allowances that have eroded over 15 years and allows employees to fly (or take a train or bus) home each weekend rather than every three weeks subject to the proviso that the employee will

receive no greater allowance than if he or she traveled by automobile. BMWED traces the need for mileage reimbursement to PEB 219, which in 1991 vastly enlarged work territories. The Organization made proposals to address the need for these travel allowances before PEB 229 whose recommendations were adopted verbatim in Article XIV of the September 26, 1996 Agreement.

The parties also agreed in 2001 to define the home station of employees to prevent an employee from maintaining a permanent residence where the employer did not operate so as to enhance the weekend travel allowances. The need for this allowance is greater now than in 1996 because seniority districts have gotten even larger, increasing the area covered by traveling gangs.

Last, compressed work weeks and longer consecutive rests are more prevalent, in effect changing the work week. BMWED states that, in practice, most gangs on such compressed schedules work ten or more hours per day, working eight days in a row followed by seven consecutive rest days. Under the current Article XIV, an employee would be required to wait three weeks or work cycles, or a month and half to obtain a Carrier-paid airline ticket home while working in a compressed half gang.

The Carriers make the same arguments opposing this proposal as they do for all other craft-specific issues: (1) the pattern doesn't include work rule changes, (2) PEB precedent supports the dismissal of these demands as there are no quid pro quos or corresponding changes; and (3) in the absence of a quid pro quo a compelling need must be demonstrated and that is missing in this record.

As to the specific issues, they note there is currently some variance in rest day travel allowances, i.e. the Union Pacific, Northern Southern, BNSF, and KCSR follow the 1996

national rule and pay employees \$25 per 100 miles traveled. The CSXT, however, chose to negotiate the issue locally, and pays its System Production Gang employees a weekly travel allowance of \$177.63, regardless of how far or whether they travel at all. Some Carriers provide occasional air fare for traveling employees, or provide bus service. These provisions combined with other expense provisions result in very healthy allowances over the course of a year.

BMWED -Wage Rate Equalization and Uniformity – Norfolk Southern

The Norfolk Southern System, similar to the other “big three” (UP, CSXT and BNSF), is a consolidation of several former railroads which themselves are consolidations of other carriers. While operations were sometimes consolidated, collective bargaining agreements didn’t necessarily follow suit, leaving a carrier with several contracts covering identical crafts. Many of these prior collective bargaining agreements had different rates of pay for similar if not identical jobs and many of these rate differences survive to this day. For example, BMWED states that there are eleven different rates of pay for track foremen ranging from a low of \$23.36 per hour to \$24.20. The Organization proposal seeks to implement a system to standardize these rates. The Organization proposes:

- a. Within thirty (30) days of the effective date of the agreement, BMWED and NS shall meet and attempt to agree voluntarily on those positions which are identical and assign the highest negotiated rate to those positions regardless of which CBA the position works under.
- b. If the parties cannot agree on a disposition of all the positions currently listed under each CBA within thirty (30) days of commencing negotiations under Paragraph (1) above, the BMWED may invoke binding arbitration to determine the rate of the remaining positions in dispute.
- c. Arbitration will be conducted before an arbitration panel convened under Section 3 Second of the Railway Labor Act consisting of a Union member, a Carrier member and a third, Neutral member selected by alternate strike from a list provided by the National Mediation Board.
- d. The arbitration panel will operate under the following rules:

(i) The panel shall hold hearings within thirty (30) days after its establishment.

(ii) Parties may be represented by counsel and may present argument and evidence in written form through pre-hearing submissions to the panel.

(iii) In determining whether or not a position is identical to another, the panel shall adopt the presumption that similarly titled positions are identical and entitled to the highest negotiated rate of pay for that position. This presumption is rebuttable by a showing of material differences between the positions established by a preponderance of the evidence.

(iv) The panel's awards shall be in writing and shall be issued within thirty (30) days of the date of the hearing.

e. All wage adjustments made under this process shall be retroactive to the first general wage increase provided in the current agreement.

Positions of the Parties

BMWED contends this proposal is justified on grounds of fairness. It is unfair that employees doing the same work only miles apart and sometimes side-by-side get different rates of pay. The proposal is also reasonable because it would put NS employees on equal footing with similar employees at CSXT and BNSF who have single rates of pay for the same position system-wide. Having employees doing the same work at different rates creates a "sense of grievance" as a result of the disparate treatment.

The Carrier notes that this not uncommon problem has traditionally been resolved in local handling where the parties have agreed to different wage levels based on relevant market factors. On Carriers with equalized rates, it was accomplished through bargaining with quid pro quos.

The Carrier believes there is a fair solution that could have been addressed by the Parties on a cost neutral basis, by adjusting some rates up and others down or through other tradeoffs. However, the Organization wants the rates of many raised to the rate of a few. Moreover, there

is no reason to have the higher rate prevail when total compensation is already at a wage premium compared to similarly situated employers in similar industries. There is no justification for the \$10 million yearly cost (which compounded over the life of the contract is on the order of \$60 million).

BMWED - Away From Home Expenses

In broad terms, the Organization's proposal makes structural changes and changes in allowance amounts in the away-from-home provisions of the award of Arbitration Board No. 298, dated September 30, 1967. Arbitration Board No. 298 was an interest arbitration board established by the Carriers and five coordinating non-op rail Organizations to legislate expense provisions for employees who by the nature of their service were regularly required to live away from home during their work week. It flowed from Section 6 negotiations and it was the only issue not voluntarily resolved in negotiations. BMWED was one of the organizations involved along with the BRS, TCU, BRAC and Hotel and Restaurant workers. These five Organizations comprised 40% of all unionized employees. BMWED states that the other organizations have "migrated away" from Award No. 298 and have developed their own independent expense provisions, leaving the BMWED the only organization effectively controlled by it. It should also be noted that while no changes have been made in the structure of Award No. 298 since 1967, the lodging and meal amounts have been increased in six different national rounds of bargaining including the 2005-09 National Agreement.

Under BMWED's proposal, the lodging and meal allowances are increased from the last levels of \$32 and \$25 per day respectively to \$77 and \$46 per day, which is consistent with the standard daily CONUS lodging and meal rates established by the General Services

Administration (“GSA”) for Federal employees for 2011. The proposal also indexes these amounts based on the same GSA rate.

The lodging allowance only applies in the event the Carrier doesn’t furnish lodging. In this regard, one of the structural changes from Award No. 298 is the elimination of camp cars as an option for Carrier furnished lodging. This impacts one Carrier, the NS, which still houses about 800 to 1000 system gang employees in camp cars.

Another change relates to Carrier furnished lodging. If provided, it must be in a single room occupancy hotel or motel room with private facilities. Another structural proposal is designed to eliminate the eligibility “loopholes” that allow railroads to deny lodging and meal benefits to employees who are truly working and living away from home in the service of the railroads.

Overview of the Positions of the Parties

BMWED submits that these proposals should be adopted not only because they are fair and equitable, but because they are consistent with standard rules and practices in effect for employees in all other crafts across the railroad industry. They assert there is a compelling need when the history of expenses is reviewed. There is an abundance of hotel facilities now that the national highway system is fully developed. The industry is in good condition and there is little variance in lodging practices. Given the distances involved, eligibility fairness is needed more than ever. As for the amounts of the allowances (established in 2005), they are simply inadequate. Moreover, the single occupancy proposal is a matter of disparate treatment; other crafts have negotiated single occupancy as has the CSXT, which manages to provide single occupancy for its Maintenance of Way employees. BMWED also discusses the portion of their proposal related to travel from one work point to another. It seeks to eliminate the scheme

allegedly used by Carriers to avoid paying employees for using their personal automobiles to travel to the next work site. The proposal provides that if employees elect to use their personal automobiles rather than crew buses to travel from one work site to another, those employees will be reimbursed at the standard IRS mileage rate currently at 55.5 cents per mile.

The Organization is of the strong opinion that it is impossible to resolve this issue through local handling. The Carriers' suggestion in this regard flies in the face of the fact that some time ago the Carriers sued the BMWED to force them to bargain nationally.

The Carrier notes that there is great variability in meal and lodging arrangement on different Carriers for per diems. These arrangements were bargained locally based on a variety of factors, including location, distance of travel, scheduling and individualized carrier needs. The adequacy of travel arrangements for production gangs is demonstrated by its relative popularity of this work to headquarterd gang work. Notably, the Carriers continue, they have no difficulty filling traveling gang jobs. The Carrier contends further that the overall cost of BMWED's proposal is excessive (\$120 million per year) for which there is no quid pro quo. Single rooms for other crafts are easier to manage because employees work alone or in groups of 4 to 6. BMWED employees can travel in groups as large as 180 people and they do so in remote areas.

Brotherhood of Railroad Signalmen (BRS) – Maintenance Employee Differential

The Brotherhood of Railroad Signalmen proposes:

Effective January 1, 2010, the base rates of pay of all maintenance employees be increased by \$1.50 per hour.

Effective on the date of this Agreement, all maintenance employees assigned to, or who move into, a maintenance position, who

- a. have or attain eight years of service, receive an additional payment of \$1.25 per hour in addition to the aforementioned \$1.50 per hour;

- b. have or attain 15 years of service, receive an additional payment of \$1.25 per hour, in addition to the aforementioned \$1.50 and \$1.25 per hour.

Alternatively, the Organization proposes that the BRS and NCCC submit the foregoing proposal to a neutral fact finding proceeding to facilitate final resolution.

Overview of the Positions of the Parties

The Organization argues that the technical proficiency of signal maintenance employees has advanced exponentially and continues to advance at an increasing rate, and that the signalmen have contributed greatly to the productivity of the railroads by learning and taking responsibility for advanced signal technology. This includes positive train control requirements that will increase that responsibility. Signalmen training has contributed significantly to that productivity increase. The active role of the BRS in establishing successful training programs has further improved the technical proficiency of maintenance employees and has led to much safer operations and a marked decrease in collisions, injuries and fatalities at rail highway grade crossings. At the same time there has been a marked reduction in train delays and in false warning activations.

Signal maintenance personnel must have high levels of technical proficiency to properly and safely maintain the complex systems' operating parameters as well as to repair them.

The Brotherhood notes that the technology used to reduce railroad employment, including labor intensive areas of railroad signaling, have added to the responsibility of signal maintenance employees now working with less than one third of the 1968 roster of 5,000 employees. Automation of railroad labor-intensive tasks has migrated to the use of sophisticated technology justifying added investment in such technology, as well as additional compensation for signal maintenance employees who attain and maintain the advanced levels of technical

proficiency necessary to maintain these complex systems according to detailed regulatory and engineering standards.

The Carriers contend that the current economic climate and the substantial premiums that BRS-represented employees already receive, compared to other similarly situated employees make their proposals out of touch with reality. They note that the retroactive wage adjustment for 2010 alone would cost the carriers over \$27 million in additional straight time wages and would raise the average BRS maintenance employee by 10.6%. The compounding effect of the general wage increase with the proposal would add an unjustified roughly \$140 million in wage costs to the carriers.

The Carriers further contend that the proposed seniority based wage adjustments constitute a substantial philosophical departure from longstanding compensation schemes in the railroad industry where BRS-represented mechanics are promoted to journeymen status receiving the full wage rate for this craft without any tradition or expectation of any seniority component or practice of different employees receiving different pay based on tenure.

International Association of Machinists and Aerospace Workers (IAMAW) – Roadway Equipment, Traveling and Lead Mechanic Differential

The IAMAW seeks a \$2.00 per hour increase above the current \$0.50 differential for its Roadway Equipment Mechanics who perform service with and are assigned to production gangs. The Organization seeks a \$1.00 per hour increase above the current \$0.50 differential for Traveling Mechanics and Lead Mechanics when performing non-production gang work (shop, district, normal maintenance, roustabout, etc.).

Overview of the Positions of the Parties

The \$2.00 per hour increase is justified for Mechanics assigned to production gangs, IAMAW argues, because the current rate has remained unchanged since 1994. Due to inflation

alone, the value of the differential has decreased considerably. Further, the specialized work of Roadway Equipment Mechanics assigned to production gangs has become highly complex as the equipment and machines have advanced technologically. These mechanics must have extensive knowledge of the operation of the equipment and machines, as well as knowledge of hydraulics, electrical systems, welding and blueprint reading. The skill level and experience required of today's Traveling Roadway Mechanics is no longer reflected in their differential.

Another important consideration supporting the increase, IAMAW maintains, is that Traveling Roadway Mechanics on production gangs are often required to travel great distances to stay with the gang wherever it goes, work long days and nights to keep the equipment and machines in repair and running, meet tight production schedules and track time requirements, and endure extreme weather conditions.

Similarly, IAMAW continues, the \$1.00 per hour increase for Mechanics serving on non-production gangs is warranted in light of the advanced skills, experience and technological expertise required. The lower differential demand for these non-production mechanics is due solely to the recognition that their work does not normally require the extremely long hours of the production gang mechanics; they are not normally required to follow a gang wherever it travels; and they perform work in a more controlled environment because track time is not as critical an issue as it is for the production mechanics.

The Carriers respond that IAM's \$2.00 and \$1.00 differential proposals would cost roughly \$8.9 million over the term of the new agreements, with no countervailing quid pro quo. Given that Roadway Equipment Mechanics already earn substantial wage and total compensation premiums relative to other similarly situated employees, there is no justification for adding these enhancements on top of generous GWIs during the next term. Since the

Organization offers no quid pro quo for its proposals, the Carriers urge the Board to deny the Organization's proposals. At most, the issues should be referred back to the parties for continued local discussions on a mutually agreeable basis.

IAMAW Roadway Mechanics and International Brotherhood of Electrical Workers (IBEW) Traveling Electrical Workers - Travel Pay

For both IAM Roadway Equipment Mechanics and IBEW Electrical Workers (Electricians, Communication and Signal workers) who travel from home or headquarters to a work location or lodging and then return home or to headquarters, the two Organizations propose payment at the appropriate rate (straight time, overtime, etc.) for all hours spent traveling.¹⁷

Overview of the Positions of the Parties

The Organizations point out that currently, Carriers have inconsistent travel policies relative to IAM Roadway Mechanics and IBEW traveling electrical workers. IAMAW's and IBEW's travel proposal is justified not only to bring uniformity to the diverse policies but also to ensure that workers traveling from remote worksites are duly compensated for the hardships they endure.

The Carriers object to this proposal on the same grounds as they do to the Organizations' other wage enhancement proposals: it is costly, and the Organizations offer no quid pro quo.

International Brotherhood of Boilermakers and Blacksmiths (IBB) -- Subcontracting

The International Brotherhood of Boilermakers requests a provision concerning the use of subcontracting.

Overview of the Positions of the Parties

The IBB proposes that this issue be returned to the property for local disposition.

The Carriers are opposed.

¹⁷ Under this proposal, the Company would be authorized to elect to provide air transportation at its cost in addition to payment for traveling hours.

IBB – Personal and Travel Expenses

The IBB proposes a revision to the current language of Article III (Personal Expense and Travel Allowance) providing for Away from Home Expenses for On Line positions which would include single occupancy lodging or if not furnished by the Carrier, reimbursement of reasonable expenses up to \$70 per day, a meal allowance of \$45 per day, and travel outside the regularly assigned hours or on a rest day or holiday being paid at 1.5 times the employee's regular rate of pay. The Organization also seeks reimbursement of the cost of transportation, lodging and meals in the event that they are unable to return to their headquarters points on any day.

Overview of the Positions of the Parties

The Union argues that the Board should recommend for the Boilermakers the same Away from Home lodging, meals, and transportation expenses proposed by the BMWED alongside whom they regularly work.

The Carriers expressed their opposition to such proposed changes as costly and unjustified.

National Conference of Firemen and Oilers (NCFO) – Wage Equity

The National Conference of Firemen and Oilers propose an increase in the base wage rate of \$1.13 per hour effective January 1, 2010.

Overview of the Positions of the Parties

The Organization contends that the increase is justified to ameliorate the increasing disparity between the employees and their co-workers in the shops.

The Organization argues that since 1991, NCFO-represented employees have been covered by a rule that allows a mechanic's work to be assigned to a shop laborer if the work

a) is incidental to the mechanic's main work and does not comprise the preponderant work of the mechanic's assignment, or b) is incidental to a mechanic's main work but involves a simple task requiring neither special training nor special tools without regard to the preponderant part of the assignment. This has resulted in innumerable occasions where shop laborers have been required to perform, at a laborer's pay rate, work that when performed by any one of the other five Shopcraft Organizations, would be compensated at the higher increased rate, \$4.52 per hour higher.

The Organization argues that the greater work assignment flexibility that Carriers have enjoyed has hit the NCFO-represented workforce particularly hard. Carriers are now able to have lower rated employees perform higher rated work while requiring those same employees to bear a disproportionately higher share of health insurance premium costs. It urges an equity adjustment of \$1.13 in the laborers basic rate of pay to permit the laborers pay to more accurately reflect the work they are being called on to perform. It argues that that figure reflects the actual dollar relationship between the shop laborer and mechanic for the two hours involved, i.e., two hours at a \$4.52 per hour higher rate or \$9.04 per day, divided by the eight compensated hours in the day.

The Carriers contend that the claim is little more than another attempt to augment an already excessive wage demand. They assert that the NCFO-represented employees spend most of their time performing tasks akin to janitorial work such as refueling trains, sweeping, cleaning windows, sanding, and performing other tasks at comparable skill levels for which no increase is warranted. They argue that the proposal would result in a 5.4% pay increase for all NCFO-represented employees, a significant expenditure that would cost the Carriers \$4.3 million in extra straight time wages in 2010 alone, or over \$20 million for a five-year period.

Transportation Communications Union (TCU) (Clerical) – Equality of Pay

The TCU represents approximately 100 Communications Technicians who work on a portion of CSXT's property. Employees of two other organizations on CSXT property also perform communications work: Brotherhood of Railway Signalmen and International Brotherhood of Electrical Workers. At present, TCU points out, its Technicians' rate of pay is \$27.07, while the pay of BRS-represented technicians is \$33.44. TCU-represented Communications Technicians seek equality in pay rates with their counterparts performing the same work on CSXT, as well as parity in per diem allowances and meal period benefits currently enjoyed by communications employees in the other two organizations.

Overview of the Positions of the Parties

TCU contends that the job descriptions and bulletins for TCU Communications Technicians and BRS Communications Technicians are virtually identical with like titles, responsibilities and duties. TCU-represented Communications Technicians work side-by-side with BRS technicians who earn more for performing the same work. TCU posits that, in light of the magnitude and number of overall issues facing the Board, it is not possible for the Organization or CSXT to provide the detailed evidence and analysis necessary for the Board to reach an informed decision on TCU's wage and work rule proposals. Accordingly, TCU requests that the Board recommend resolution through binding interest arbitration.

In addition to the Carriers' arguments applicable to all work rule and additional expense proposals, the Carriers urge rejection of the TCU's proposal for three discrete reasons. First, the Carriers state that TCU's proposal was never mentioned in bargaining. Second, the TCU issues are better suited to local resolution and apply to a very small number of employees on a portion of CSXT and no other carrier. Inasmuch as the issues have no broader implications, they should

be referred to voluntary local discussions on mutually agreeable terms. Third, adoption of TCU's proposal would risk undermining the complex evolution of locally developed rules between CSXT and multiple organizations. The wage and rule provisions TCU seeks to change are consistent with those governing the majority of CSXT's communications employees represented by IBEW and BRS.

Common Shopcraft Wage Responsibility Proposals (Brotherhood of Railway Carmen, a division of TCU (BRC), IAMAW, IBB, IBEW, NCFO, SMWIA, TWU)

Seven Organizations represent the Carriers' "Shopcraft" employees. They are the International Association of Machinists and Aerospace Workers (IAMAW), the International Brotherhood of Electrical Workers (IBEW), the Brotherhood of Railway Carmen (BRC, a division of the TCU), the Transport Workers Union (TWU), the International Brotherhood of Boilermakers and Blacksmiths (IBB), the National Conference of Firemen and Oilers (NCFO), and the Sheet Metal Workers International Association (SMWIA).

Shopcraft employees receive skill differentials, familiarly known as "wage responsibility adjustments," in recognition of the training and skills required to do their jobs. Through negotiations with the carriers and in one instance binding arbitration, national differentials ranging from \$.25 to \$.50 per hour for specialized skills were implemented in the early 1990's. Since then, individual organizations and several carriers have agreed to recognize additional differentials and in some instances to increase the premium pay. Today, differential amounts vary from organization to organization and from carrier to carrier. Some have changed; some have not. They generally range from \$0.25 to \$1.30.

The Shopcraft Organizations seek a \$0.75 per hour increase in all current differential rates. They also seek to extend to all Shopcraft Organizations one particular differential

currently enjoyed by NCFO alone¹⁸: \$1.00 per hour minimum differential to employees of any Shopcraft Organization required to move locomotives subject to the FRA Hours of Service, with a minimum payment of four hours per each eight-hour shift. Finally, they propose that alleged inequalities in differentials be addressed at the local level. In that regard, they seek an arrangement where upon written notice, discussions focused on equalizing differentials will commence within thirty days and continue in a manner as mutually agreed. Absent agreement on equalizing differentials within 12 months, the Shopcraft Organizations propose that the matter be submitted to binding arbitration.

Overview of the Positions of the Parties

The Organizations contend that the across-the-board differential increases are justified since generally, these rates have not increased in more than fifteen years. In that time, inflation has largely eaten away the value of the differentials. In addition, the differential rates have not kept pace with GWIs, resulting in the rates losing much of their status as premiums for highly skilled work. Importantly, the Organizations stress, Shopcraft work has become increasingly complex and technologically advanced over the past fifteen years. In many cases, employees now must undergo additional training and secure certifications to perform their work.

The \$1.00 movement of locomotives differential is justified as a matter of equity, the Shopcraft Organizations argue, given that NCFO employees performing the same work receive this differential pay. Importantly, many Shopcraft employees who are required to move locomotives are subject to FRA requirements, which arguably limit employees' ability to work

¹⁸ Currently, NCFO employees receive differential pay, ranging from \$0.25 to \$1.00 per hour, depending on the carrier, for moving locomotives. NCFO concurs with the other Shopcraft Organizations that the minimum \$1.00 premium per hour should be uniformly applied to it and all shopcraft employees moving locomotives, except at locations where local agreements or practices provide for a higher movement of locomotives differential.

overtime, expose them to civil and criminal liability for violation of certain FRA rules, and subject them to random drug testing.

The Carriers respond that the \$0.75 increase for all Shopcraft differentials and the \$1.00 per hour minimum differentials sought by the Organizations for employees who move locomotives would add at least \$72.9 million in additional labor costs over a five-year period and would further inflate the total compensation premiums earned by Shopcraft employees compared to other similarly situated workers. By any objective measure, the Carriers contend, Shopcraft employees are already – and will remain – extremely well paid. Absent any quid pro quo, the differential increases sought are simply unwarranted additional wage increases. Cost aside, the Carriers continue, the proposal for new and/or increased differentials for moving locomotives is misplaced. Moving a locomotive is a basic job for which Shopcraft employees are already well-compensated. Moreover, the Shopcraft Organizations have demonstrated no justification for a minimum payment of four hours differential pay, when much of the movement of locomotives by Shopcraft employees is incidental and often takes just a few minutes.

Common Shopcraft Wage Equalization Adjustment Proposals (BRC, IAM, IBB, IBEW, NCFO, SMIA, TWU)

The Organizations seek to address the variation in rates among Carriers, particularly the Soo Line. Specifically, they propose that prior to implementation of the General Wage Increases proposed, the hourly, weekly and monthly base rates of pay shall be adjusted to equalize the rates to the highest National Base Rate.

Overview of the Positions of the Parties

The Organizations assert that there are inequitable wage discrepancies between national rates and the rates of the Soo Line and some of the other carriers involved in national handling. They contend that the wage disparity is most acute on the Soo Line, which left national

bargaining for a period, but returned to national handling during the last round of negotiations. Shopcraft wage discrepancies among other Carriers have come about as the result of various mergers.

The Carriers respond that much like the proposal for a unified rate of pay for BMWED employees, this proposal is nothing more than a demand for an additional wage increase, beyond the above-market GWIs incorporated into the Coalition's proposal, and in violation of the pattern established in the UTU Agreement. Absent some quid pro quo, the Carriers continue, such equalization should be performed on a cost-neutral basis, such that some salaries would go up and others would go down. Since Shopcraft employees, on average, already earn a significant wage premium relative to employees with equivalent jobs, equalization on a cost-neutral basis would still maintain their preferred status. In any event, because there are significant differences between the rate variations at different Carriers, such equalization should be achieved, if at all, through local handling.

Recommendations of the Board

The Board has carefully reviewed and considered the lengthy written submissions provided to us in support of these proposals. Many of the proposals involve claimed inequities that have existed for years and in some cases decades. Some involve modest cost. Some involve solutions that would come at very significant cost. None of the proposals contain any concessions that purport to pay, in whole or in part, for the proposals themselves.

We note several additional complicating facts: First, some of these issues are clearly matters of national concern; some of these issues appear to be matters of more individualized concern potentially resolvable at the property or local level; and others are unclear as to where they should appropriately be addressed. Second, the evidence of record reveals that the

bargaining that occurred with respect to these matters varied from no meaningful discussion at all on their merits (and in some cases the proposals were even absent from the Section 6 notices) and in other cases limited discussion took place. In no instances, however, does it appear that protracted, detailed discussion regarding the issues took place or that a process of give and take bargaining actually had begun¹⁹. Third, with respect to the proposals that involve more significant money, the money must come from somewhere. There was no discussion or proposal to fund these requests, in whole or in part, from the GWIs being recommended by this Board. Nor was there any discussion about other quid pro quos that could be discussed and which would ameliorate the tremendous monetary cost of many of the proposals even if one assumes arguendo that the proposals were shown otherwise to have merit (in whole or in part). Fourth, some of the proposals are measured responses to a specific perceived wrong or problem and others are more broadly crafted.

Viewing all of these considerations together, the Board is not in a position to fairly and fully assess the many factors that must be weighed before informed recommendations can be made. We do recognize, however, based upon the presentations at the hearings, that a number of issues appear to be well-suited for referral back to various non-RLA processes for the purpose of: a) leading to meaningful discussion under circumstances and situations where the parties may be better able to discuss solutions that may or may not also involve elements of value exchanged for those solutions; and b) failing that, with respect to issues that do involve appropriate national issues, generate a sufficiently detailed factual record to permit the matter to be more

¹⁹ We understand from the presentations at the hearings that the inability of either party to get past the other's position on both wages and health and welfare plan changes led to an early stalemate that left both sides reluctant to engage on many of these issues. We place no blame on either party regarding the reasons why more meaningful bargaining over these craft-specific proposals did not occur. But that does not change the fact that we are being asked to issue recommendations about matters over which the usual predicate of intensive bargaining has not taken place.

appropriately addressed in the next round of national handling. We believe that it is the appropriate approach in light of the combination of facts noted earlier regarding the lack of bargaining, the significance (monetarily and otherwise) of many of these issues, their age, and a lack of sufficient record evidence for us to make informed, more detailed recommendations on many of these items.

The decision to simply set forth our recommendations with respect to those craft specific items that we believe are appropriate at this time for further discussions via non-RLA processes at the local or carrier level and to recommend withdrawal of all other proposals is not a sign of disrespect for the seriousness of the underlying problems. Rather, it is simply a judgment that given all of the foregoing facts, we are required to select those that we believe are most appropriate and might benefit from such discussions and defer the others to some later time.

The following reflects our recommendations with additional comments as deemed appropriate.

American Train Dispatchers Association (ATDA) - Craft Specific Proposal

We recommend that this proposal be withdrawn.

Brotherhood of Locomotive Engineers and Trainmen/IBT (BLET) – Locomotive Cab Conditions

We recommend that this proposal be withdrawn.

BLET – Entry and Two-Tiered Pay System

We recommend that this proposal be withdrawn.

BLET – Certification Allowance

We recommend that the proposal to increase the certification allowance for Engineers be withdrawn.

We recommend that the proposal by the BLET to grant Conductors that they represent a certification allowance equal to the certification allowance to be paid to UTU Conductors under the 2011 UTU Agreement, be sent to local discussions between the BLET and those Carriers who employ Conductors represented by the BLET.

BLET – Meal Allowance

We recommend that this proposal be withdrawn.

Brotherhood of Maintenance of Way Employees Division/IBT (BMWED) – Rest Day Travel Allowances

We recommend that this proposal be withdrawn with the exception of the proposal to increase the mileage allowance amounts in Section 1(a), which are to be subject to further discussions as mutually agreeable on a national or system-wide basis.

BMWED - Wage Rate Equalization and Uniformity – Norfolk Southern

We recommend that this be referred for local handling as may be mutually agreeable.

BMWED – Away From Home Expenses

We recommend that this be referred to system-wide handling as may be mutually agreeable.

Brotherhood of Railroad Signalmen (BRS) – Maintenance Employee Differential

We recommend that this be sent back to the parties for a single non-binding study and fact-finding designed to focus upon the job responsibilities of a Signal Maintenance employee and a Signal Installer. We anticipate that a single study or fact-finding hearing will occur at which representatives and/or witnesses from all relevant Carriers will participate. The results may serve as a basis for a mutually agreeable solution during the moratorium or barring that will be available to inform the parties on this issue for the next set of Section 6 negotiations.

International Association of Machinists and Aerospace Workers (IAMAW) – Roadway Equipment, Traveling and Lead Mechanic Differential

We recommend that this proposal be withdrawn.

IAMAW Roadway Mechanics and International Brotherhood of Electrical Workers (IBEW) Traveling Electrical Workers – Travel Pay

We recommend that this proposal be withdrawn.

International Brotherhood of Boilermakers (IBB) – Subcontracting

We recommend that this proposal be withdrawn.

IBB – Personal and Travel Expenses

We recommend that this proposal be withdrawn.

National Conference of Firemen and Oilers (NCFO) – Wage Equity

We recommend that this proposal be withdrawn.

Transportation Communications Union (TCU) (Clerical) – Equality of Pay

We recommend that this matter be returned to the property for further handling as mutually agreeable.

Common Shopcraft Wage Responsibility Proposals (BRC, IAMAW, IBB, IBEW, NCFO, SMWIA, TWU)

We recommend that this proposal be withdrawn.

Common Shopcraft Wage Equalization Adjustment Proposals (BRC, IAMAW, IBB, IBEW, NCFO, SMWIA, TWU)

We recommend that this proposal be withdrawn.

VI. SUMMARY OF RECOMMENDATIONS

In summary, we recommend the following as a fair and appropriate resolution of the dispute. We hope that the parties will be able to utilize these recommendations as a basis to resume discussions that will hopefully lead to agreements on all disputed issues.

1) Compensation - Wages

We recommend the following General Wage Increases:

Effective Date	Increase	Increase (Compounded)
7-1-10	2.0% GWI	1.0200
7-1-11	2.5% GWI	1.0455
7-1-12	4.3% GWI	1.0905
7-1-13	3.0% GWI	1.1232
7-1-14	3.8% GWI	1.1659
1-1-15	3.0% GWI	1.2008

The January 1, 2015 GWI of 3.0% of this recommendation is optional in the sense that it may be elected by each Organization or not. If the January 1, 2015 GWI is elected, then we recommend that the Agreement contain the following additional language in a Side Letter:

This will confirm our understanding that if disposition of the 2015 Bargaining Notices is referred to any third party (including but not limited to a Presidential Emergency Board or arbitration board), this Letter may be provided to such body to confirm the parties' mutual understanding that acceptance of the January 1, 2015 3.0% general wage increase was intended to constitute a complete resolution of the compensation adjustment issue for calendar year 2015.

We also recommend a one-time, lump sum payment equivalent to 1% of straight time earnings paid to each employee for the 12 month period November 1, 2010 through October 31, 2011, after application of the July 1, 2010 and July 1, 2011 General Wage Increases.

2) Changes to the Railroad Employees National Health and Welfare Plan

We recommend acceptance of the Carriers' proposal regarding changes to the Railroad Employees National Health and Welfare Plan¹, with the following changes:

a) The changes are recommended to be implemented, effective July 1, 2012, at which time the applicable new deductibles for the MMCP will be one-half of the proposed annual deductibles since the amended provisions will only be in effect for half a calendar year. Accordingly, the deductibles applicable for 2012 are \$100 for individuals and \$200 for families. The out-of-pocket maximums for 2012 are similarly one-half of those proposed for a full year and are \$500 for individuals and \$1000 for families.

b) For calendar year 2013, we recommend use of annual deductibles of \$150 for individuals and \$300 for families (75% of the amounts proposed) with out-of-pocket maximums set at \$750 for individuals and \$1500 for families (75% of the amounts proposed).

c) For calendar year 2014 and beyond, we recommend full implementation of the proposed changes, including use of annual deductibles of \$200 for individuals and \$400 for families and out-of-pocket maximums of \$1000 for individuals and \$2000 for families.

We recommend that each employee covered by this Agreement continue to contribute to the National Plan a monthly cost-sharing contribution in an amount equal to the lesser of 15% of the Carriers' Monthly Payment Rate or \$200.00.

We further recommend that, the employee monthly cost-sharing contributions amount be adjusted, effective July 1, 2016, so as to equal the lesser of 15% of the Carriers' Monthly Payment Rate for 2016 or \$230.00, unless otherwise mutually agreed by the parties during negotiations commencing after the 2010-14 Agreement becomes amendable.

¹ The Carriers' proposal was to make changes to the National Plan that mirrored the changes bargained with the UTU to the UTU Plan. Our recommendations adopt that approach, including and incorporating by reference all the relevant detailed language contained in the September 16, 2011 Agreement between the Carriers and the UTU.

3) Moratorium

We recommend that the moratorium date be December 31, 2014, and the amendable date, January 1, 2015.

We further recommend that Section 6 notices may be served any time on or after November 1, 2014 (not to become effective prior to January 1, 2015).

This moratorium date remains the same whether or not the Organization elects the January 1, 2015 wage increase and associated Side Letter.

4) All Craft Proposals

We recommend granting the Organizations' proposal regarding indexing of the Supplemental Sickness Benefit Plan. The indexing would be to maintain the December 31, 2009 ratios, would be triggered whenever a GWI becomes effective, but would be prospective and would commence with the July 1, 2012 GWI.

We recommend withdrawal of the Vacation and Information proposals.

5) Shopcrafts Proposals

We recommend that the proposal regarding common wage rate equalization involving Soo Line and other carriers be addressed through voluntary on-property discussions outside of the formal RLA bargaining procedures. We do not recommend binding interest arbitration.

We recommend withdrawal of the remaining Proposals that apply to multiple Shopcraft Organizations.

6) Individual Organization Proposals

We recommend that the Individual Organization Proposals be addressed as follows:

a) We recommend that the proposal by the TCU (Clerical) regarding wage equalization at CSXT be returned to the property for further handling as mutually agreeable.

b) We recommend that the proposal by the BLET to grant Conductors that they represent a certification allowance equal to the certification allowance to be paid to UTU Conductors under the 2011 UTU Agreement, be sent to local discussions between the BLET and those Carriers who employ Conductors represented by the BLET.

c) We recommend that the proposal by the BMWED to update the mileage rate for Rest Day Travel Allowances (all other aspects of the Rest Day Travel proposal are recommended to be withdrawn) be referred to further discussions as mutually agreeable on a national or system-wide basis.

d) We recommend that the proposal by the BMWED regarding expenses away from home be referred to system-wide handling as may be mutually agreeable.

We do not recommend binding interest arbitration of this issue and recommend that these discussions occur outside of the formal RLA procedures for negotiations.

We recommend that the BRS proposal be sent back to the parties for a single non-binding study and fact-finding designed to focus upon the job responsibilities of a Signal Maintenance employee and a Signal Installer. We anticipate that a single study or fact-finding hearing will occur at which representatives and/or witnesses from all relevant Carriers will participate. The results may serve as a basis for a mutually agreeable solution during the moratorium or barring that will be available to inform the parties on this issue for the next set of Section 6 negotiations.

We recommend withdrawal of all of the remaining Individual Organization Proposals.


VII. CONCLUSION

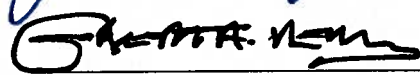
This report is submitted by the Emergency Board in the hope that it will be viewed by the parties as a fair and reasonable basis for resolution of all issues remaining in dispute.

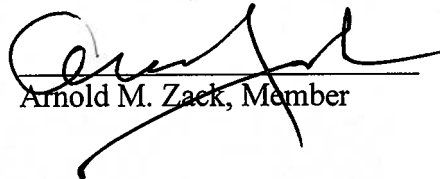
Respectfully submitted,


Ira F. Jaffe, Chairman


Roberta Golick, Member


Joshua M. Javits, Member


Gilbert H. Vernon, Member


Arnold M. Zack, Member

APPENDIX A

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

October 6, 2011

EXECUTIVE ORDER

- - - - -

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES
BETWEEN CERTAIN RAILROADS REPRESENTED BY THE NATIONAL CARRIERS'
CONFERENCE COMMITTEE OF THE NATIONAL RAILWAY LABOR CONFERENCE
AND THEIR EMPLOYEES REPRESENTED BY CERTAIN LABOR ORGANIZATIONS

Disputes exist between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by certain labor organizations. The railroads and labor organizations involved in these disputes are designated on the attached list, which is made part of this order.

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

I have been notified by the National Mediation Board that in its judgment these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive a section of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the RLA (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. Establishment of Emergency Board (Board). There is established, effective 12:01 a.m. eastern daylight time on October 7, 2011, a Board composed of a chair and four other members, all five of whom shall be appointed by the President to investigate and report on these disputes. 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. The Board shall report to the President with respect to the disputes within 30 days of its creation.

Sec. 3. Maintaining Conditions. As provided by section 10 of the RLA, from the date of the creation of the Board and for 30 days after the Board has submitted its report to the President, no change in the conditions out of which the disputes arose shall be made by the parties to the controversy, 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 provided for in section 2 of this order.

BARACK OBAMA

THE WHITE HOUSE,
October 6, 2011.

RAILROADS

Union Pacific Railroad Company
 BNSF Railway Company
 CSX Transportation, Inc.
 Norfolk Southern Railway Company
 The Kansas City Southern Railway Company

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

LABOR ORGANIZATIONS

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

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

#