

In The Matter Of:
*IN THE MATTER OF AMTRAK AND
PRLBC*

ARBITRATION HEARING
Vol. 7
January 17, 2014



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BEFORE THE AMTRAK/PRLBC ARBITRATION BOARD

IN THE MATTER OF)
)
 NATIONAL RAILROAD PASSENGER)
 CORPORATION (AMTRAK))
)
 and)
)
 BROTHERHOOD OF MAINTENANCE OF)
 WAY EMPLOYEES (BMWED), affiliated)
 with TEAMSTERS RAIL CONFERENCE,)
 INTERNATIONAL BROTHERHOOD OF)
 TEAMSTERS)
)
 and) NMB NO. A-13638
)
 BROTHERHOOD OF RAILROAD SIGNALMEN,)
 AFL-CIO(BRS))
)
 and their representative)
)
 PASSENGER RAIL LABOR)
 BARGAINING COALITION (PRLBC))

VOLUME 7

The hearing in the above-entitled matter recommenced on the 17th day of January, 2014, at 10:03 a.m., at the offices of Morgan Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, NW, Washington, DC.

BEFORE: IRA JAFFE, ESQ. CHAIRMAN
 HERBERT FISHGOLD, ESQ.
 SHYAM DAS, ESQ.

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1 P R O C E E D I N G S

2 MR. WILDER: Good morning, Mr. Chairman,
3 Member Das and Member Fishgold.

4 The evidentiary phase of this proceeding
5 is now complete. The Board has heard the testimony
6 of the parties' witnesses, three of whom, Thomas
7 Roth, Jed Dodd, and Dennis Boston, have firsthand
8 knowledge of Amtrak's entire or almost entire
9 25-year bargaining history with the engineering
10 crafts.

11 Thousands of pages of exhibits have been
12 introduced into the record. So it now becomes the
13 task of the advocates to show how the evidence
14 supports adoption by the Board of one proposal or
15 the other for resolution of the dispute on the
16 merits.

17 Framed in this way, the issues in the
18 dispute are economic, not moral. The Board is not
19 called upon to decide whether Amtrak's management
20 "learned its lesson" about delaying bargaining and
21 withholding retroactive pay as industrial weapons as
22 it did in the preceding two rounds and, thus, should

1 have its way as a reward in this round.

2 This proceeding is not about vindicating
3 Mr. Boardman, Mr. Woodcock, Mr. Jed (sic),
4 Mr. Ingersoll, or anyone else.

5 As I said, this issues are economic and
6 not moral.

7 Now, it is also true that, equally true in
8 fact, that there is not a good-faith bargaining
9 issue for the Board to decide. The evidence is
10 clear that both parties met in bargaining, but
11 remained unconvinced by their adversary's position
12 and stuck to their guns. Both were stubborn.

13 And whether one was marginally more
14 stubborn than the other is, frankly, beside the
15 point. It's an interesting talking point, but it
16 wastes time.

17 Now, despite all that has been said in
18 this proceeding, and, frankly, all that will be said
19 this morning, this case is not really about work
20 rules.

21 What the evidence shows is that the work
22 rule changes put forward in this record are not

1 needed by the Carrier. They're not wanted by the
2 organizations, at least, not at the price being
3 offered by Amtrak.

4 This case truly presents one ultimate
5 question. That is, that this record shows that the
6 parties were confronted with such compelling
7 economic circumstances to require them to abandon 35
8 years of bargaining history and enter into an
9 agreement, or two agreements in this case,
10 containing inferior wages and economic benefits.

11 That's the question.

12 The function of an interest arbitrator
13 according to all relevant arbitral authority is not
14 to write the parties' agreement according to his or
15 her dictates. Rather, the function of the interest
16 arbitrator is to discover through examination of the
17 parties' bargaining relationship for the past and
18 present and find out the agreement they would have
19 written themselves had there been a voluntary
20 agreement.

21 I submit that it is appropriate for this
22 Board to ask what has happened in the six years

1 since Presidential Emergency Board 242 made its
2 recommendations which were adopted by the parties
3 for a settlement patterned on the national freight
4 agreement.

5 What has happened to cause the parties to
6 enter into an agreement placing Amtrak employees at
7 the bottom of the rail industry?

8 This is, as I say, an economic inquiry,
9 not a moral one.

10 Now, answering that question inevitably
11 brings the Board to confront the so-called parties'
12 positions.

13 The Organizations saw little change in
14 economic circumstances in this round as compared to
15 those prevailing in the last round. For they
16 proposed, once again, a settlement patterned on the
17 national agreements reached in early 2012, which
18 followed PEB 243 recommendations.

19 Now, this is so, even though the
20 Organizations, frankly, were unenthusiastic about
21 the healthcare plan design changes agreed to by the
22 freight carriers in the national organizations.

1 And it's true that they proposed the
2 freight pattern again, even though they believed
3 that Amtrak's brightened economic prospects in terms
4 of increased operating revenues and moderately
5 increasing operating expense could justify wage
6 raises -- wage rates closer to those paid by the
7 passenger or commuter carriers.

8 The Organizations proposed on February 13,
9 2012 to accept the economic provisions of the
10 freight agreement, good, bad, or ugly, in Mr. Roth's
11 terms, just as they had done every round since 1975.
12 They saw no change compelling a different economic
13 result.

14 Now, during the hearing, the Carrier made
15 much of the Organizations' position that the
16 employee healthcare contributions should be frozen
17 at the Amtrak rate -- excuse me, at the AmPlan rate
18 of 177.54 per month per employee instead of at the
19 \$200 per month per employee as in the national plan.

20 Now, there were two reasons for the
21 Organizations' position on the healthcare
22 contribution issue. Mr. Dodd referred to these in

1 his testimony on Thursday.

2 Presidential Emergency Board 242, at page
3 46 of its report, rejected the notion that the
4 freight agreement dollar amount contribution figures
5 should be applied to AmPlan.

6 What PEB 242 recommended was that the
7 national percentage amount of 15 percent be used by
8 AmPlan so that AmPlan could continue to price its
9 benefits in accordance with the then existent
10 demographic differences between its participants and
11 those of the national plan.

12 This was a conclusion of the Board.

13 And so as a result, when the status quo
14 began at Amtrak on January 1, 2010, the
15 Organizations believed that the 177.54 per-employee
16 per-month figure then prevailing was the appropriate
17 analogue to the national freight agreement.

18 There was another reason, too.

19 Remembering that the settlement on the
20 national level contained substantial plan design
21 changes, there was a belief that the costs at AmPlan
22 would decline much as the costs at the national plan

1 had remained steady and even declined by \$2, as
2 Mr. Dodd testified on Thursday.

3 That was the thinking underlying the
4 Organizations' healthcare contribution proposal in
5 February of 2012.

6 Now, I doubt that the Carrier was truly
7 misled at the February conference. But in any
8 event, at the first mediation session on June 5 of
9 2012, it had no doubt as to what the Organizations'
10 position on healthcare contributions was, in fact.
11 That was testified to by Mr. Woodcock, yesterday.

12 Importantly, the Carrier points to no
13 changed circumstances, compelling or otherwise, that
14 could precipitate what became a race to the bottom
15 in 2010 and 2011.

16 The only fact relied upon by Amtrak in
17 this proceeding is that 11 organizations entered
18 into agreements with it modeled after the TCU deal
19 before the national freight agreement was setted in
20 early 2012.

21 This fact gave rise, according to the
22 Carrier's argument here, to an "internal pattern,"

1 which is to be imposed upon the engineering crafts,
2 even though the evidence is clear and unequivocal
3 that neither the BMW nor the BRS would have
4 accepted the TCU deal voluntarily.

5 From then, the Carrier moves off like the
6 Enterprise, where no one has tread before, in
7 construing a view of pattern principles that has
8 been accepted nowhere.

9 Mr. Roth's statement, at pages 19 and 20,
10 makes clear that, under settled arbitral principles,
11 the supposed internal pattern advanced by Amtrak in
12 this proceeding fails.

13 While the number of Organizations that had
14 entered into TCU type agreements probably meets the
15 critical mass standard that Mr. Roth testified to,
16 it is clear that the TCU agreements lack
17 identifiable terms. And they also lack a linkage of
18 voluntary agreements over time among the employee
19 crafts of the same employer.

20 So what we have is a supposed internal
21 pattern that lacks two of the three essential
22 criteria.

1 The evidence here is that the TCU
2 agreement does not constitute a stable pattern.
3 That is found, as I said, in Mr. Roth's testimony,
4 and, paradoxically, in the testimony of Jerrold
5 Glass, Amtrak's expert.

6 The terms of the April 17, 2013 agreement
7 between Amtrak and the United Transportation Union
8 are different than those of other agreements in the
9 so-called TCU pattern because its conductor
10 promotion bonus provides additional compensation
11 equivalent to 2 percent GWI.

12 And so the claimed pattern lacks
13 identifiable common terms.

14 Let me bring up also, in connection with
15 the UTU promotion bonus, its appropriate
16 categorization by both UTU and Amtrak at the time it
17 was entered into.

18 It is not a certification pay item. It
19 wasn't called certification pay. It wasn't
20 bargained as certification pay. It wasn't justified
21 at the time it was entered into as certification
22 pay.

1 It is, as it is called, a promotion bonus.
2 It deals with wages or wage equivalent.

3 After recently -- excuse me.

4 Recently, the Presidential Emergency Board
5 rendered a recommended decision on the Long Island
6 Railroad under Section 9.a of the Railway Labor Act.
7 And I do want to point out that this is a different
8 case than the Long Island case.

9 At Long Island, the UTU represented not
10 just the traditional operating crafts, but also the
11 entire maintenance of way craft. Its representation
12 purview was much broader at Long Island than it is
13 at Amtrak.

14 At Long Island, the certification pay was
15 not extended to the maintenance of way employees or
16 the nonconductor employees at Long Island. At
17 Amtrak, it wasn't either.

18 Of course at Amtrak, UTU represents other
19 than conductors, 33 yardmasters and one very highly
20 paid steward. The situation is totally different.

21 The other fact which emerged in the
22 testimony of Mr. Dodd and Mr. Ingersoll on Thursday

1 is that every reason put forward to justify the
2 conductor bonus applies with equal force to the
3 engineering crafts.

4 I won't go through that testimony again,
5 but I commend it to your attention.

6 And there is another point as well.

7 Unlike Long Island, we are not asking that
8 the conductor bonus be monetized and spread to other
9 crafts. That is not our purpose in bringing up this
10 issue.

11 Our purpose in bringing up the issue is to
12 show, as Mr. Roth testified, that it is inconsistent
13 with the pattern. It is additional compensation
14 that other groups did not receive.

15 Now, although this vital point was skipped
16 over by Jerrold Glass during his testimony in Volume
17 2, pages 298 and 99, his written testimony, Carrier
18 Exhibit 300 at page 58, quoted a recent MBCR
19 arbitration case which stated, and I quote: "Any
20 extra beyond the pattern is unfair to the Company
21 and other unions who settled on the pattern."

22 This, of course, describes perfectly the

1 UTU bonus.

2 Now, Mr. Glass skipped over this in his
3 oral testimony presumably because it was
4 inconvenient.

5 Mr. Glass' selective appeals to arbitral
6 authority are also evident in his claim that: "A
7 well-established internal pattern generally is given
8 greater consideration by arbitrators than external
9 patterns," which came from the Elkouri treatise.

10 What Mr. Glass ignored was the preceding
11 sentence in that -- on that same page, which made
12 clear that the weight given to the maintenance of
13 internal patterns depends on how long the set of
14 internal linkages on the property had lasted.

15 Now, that interchange during Mr. Glass'
16 cross-examination appears at Volume 2, pages 313 and
17 314.

18 The point is that the claimed internal
19 pattern at Amtrak is a first-time development, not
20 yet agreed upon by all organizations and unsupported
21 by job comparability.

22 There's another facet to this, too.

1 For the first time ever, the organizations
2 at Amtrak and the Carrier entered into formal
3 written me-too agreements.

4 Now, we know what this means in labor --
5 in the labor relations world.

6 What it shows here is that the
7 organizations understood that its deals, or their
8 deals, were neither stable nor durable. They wanted
9 to assure that, if the freight pattern was to be
10 followed by Amtrak in the future, no organization
11 would be treated unfairly.

12 That's the effect of a me-too provision,
13 as Mr. Roth testified to during his direct
14 examination.

15 Come to think of it, Mr. Roth didn't have
16 a direct examination, but he referred to it during
17 his direct.

18 Now, the TCU and the other organizations,
19 taking into account the job classifications that are
20 covered by their agreements, furnish very little
21 guidance for determining the suitability of
22 engineering craft compensation.

1 There are only a handful of
2 classifications within the unions, within the
3 so-called TCU internal pattern, that are comparable
4 to the jobs within the engineering crafts. This was
5 testified to on a number of occasions during this
6 hearing.

7 So what the record shows is that the TCU
8 internal pattern was effectively pulled out of thin
9 air. There are no true comparables.

10 Now, the Carrier tried to get around this
11 problem by putting forward the wage comparability
12 study of Dr. Gillula. But those kinds of
13 comparability studies have very limited utility in
14 the rail industry because rail jobs are considered
15 and known to be unique.

16 As the record also shows, there were other
17 problems with that comparability study that turned
18 on technical issues by trying to match rail jobs to
19 the BLS data that formed the data sets used by
20 Dr. Gillula.

21 At last one remarkable shortfall would
22 result in about 25 percent of the maintenance of way

1 craft or class not having comparables within the
2 study.

3 That in itself is sufficient to invalidate
4 the usefulness of that study.

5 Now, in contrast to the TCU deal, the
6 freight pattern meets and exceeds all of the
7 criteria for a true pattern.

8 Let's run down the criteria.

9 Under the freight deal, all parties have
10 voluntarily agreed to join this pattern round after
11 round for 35 years. Its critical mass is
12 unquestioned.

13 The terms of the freight agreement are
14 familiar and relatively uniform for comparable jobs
15 across the entire Class 1 industry.

16 The freight agreement has proven
17 remarkably stable and durable providing moderate but
18 steady wage and benefit growth for rail employees
19 and their families over time.

20 Now, as Mr. Roth testified, real wage
21 growth in the rail industry has been slow.

22 Indeed, by applying the freight pattern to

1 Amtrak, Amtrak's employees will be at 1975 real wage
2 levels, when Amtrak was created.

3 Now, that sounds not just slow, but
4 stagnant. But what the history of the industry
5 shows is that this slow growth has always been
6 positive.

7 Round after round, in good times and bad,
8 rail bargaining has afforded the boom and bust
9 cycles at the airline industry. It has worked.

10 This does not mean that it will also
11 always work. There may be, in the future,
12 compelling economic circumstances that could cause
13 carriers, cause Amtrak and its unions and future
14 boards for that matter, to mark out a different
15 course than the one we advocate today.

16 We can't see into the future. We don't
17 know what the economic future will bring.

18 But we can examine this record. And we
19 can see that there are no compelling circumstances
20 in this round that require abandonment of the
21 freight pattern.

22 I also want to say without qualification

1 that it is inappropriate to force a party into a
2 newly minted pattern to which that party has never
3 agreed.

4 I mention that because it was a refrain
5 that occurred throughout the Organizations' case,
6 and I would be remiss in not reminding the Board of
7 it.

8 Now, in terms of the financial
9 considerations, we can move through those in this
10 closing statement somewhat quickly because we had
11 just a thorough grounding on them during Mr. Roth's
12 testimony.

13 As he said, this is not a case where
14 ability to pay is a meaningful factor.

15 Financial metrics important to the
16 Carrier, recovery rate, labor ratio, productivity,
17 and unit labor costs, are at an all-time best at
18 Amtrak.

19 The TCU pattern, which is reflected in the
20 Amtrak proposal, is prefunded. The difference
21 between the aggregate cost of the Amtrak proposal
22 and the proposal of the PRLBC is minimal.

1 In that connection, I refer you to Roth
2 Exhibit No. 46, at page 5, in which the difference
3 in cost of imposing or agreeing to the national
4 freight agreement for all of Amtrak's employees as
5 compared to the cost of the Amtrak proposal is set
6 forth.

7 What that shows is that the difference is
8 in the order of \$20 million per year on a payroll of
9 \$2 billion.

10 That is a minuscule figure, which I would
11 give to you, if I was as good at math as other
12 people in this room, but it is far less than 1
13 percent. It's a fraction of 1 percent.

14 There is one financial controversy
15 disclosed in this record, and this is truly for the
16 Board to decide.

17 The comparable patterns run from January
18 of 2010 through December 31 of 2014.

19 Those are the five-year durations, which
20 are and have been compared innumerable times in the
21 record.

22 It is the Union's position, or the

1 Organizations' position, that adding a sixth year is
2 difficult because there are no suitable data for
3 that year.

4 Amtrak made the effort to make this
5 comparison, but it was forced to assume that the
6 organization signatory to the TCU -- organizations
7 signatory to the TCU pattern would accept a wage
8 freeze in 2015.

9 But that is the assumption.

10 What Mr. Roth testified to is that he was
11 unwilling to make that assumption.

12 He didn't say it because it's argument. I
13 can say it because it is preposterous that 13
14 organizations would accept a wage freeze in 2015
15 when there has never been a wage freeze in any year
16 since Amtrak's inception.

17 Again, the Carrier urges the Board to go
18 where no one has gone before.

19 Now, I said in my introductory remarks
20 that this is not truly a case about work rules.

21 What the record shows is that the sharply
22 increasing productivity, both at Amtrak and across

1 the Class 1 rail industry, has made work rule
2 bargaining something that has not been engaged in
3 for two or three rounds simply because it is
4 unnecessary.

5 The productivity increases on the order of
6 30 percent have, in effect, squeezed employee
7 productivity to the Carrier's advantage to the point
8 where talking about work rules is practically an
9 academic exercise.

10 And that is what happened here with most
11 of the work rule issues that have been raised in
12 this proceeding.

13 What Amtrak did is to put forward what I
14 call a smorgasbord of work rule changes. And what
15 the evidence shows is that most of these proposed
16 changes were old dogs.

17 You pick them off the shelf. You dust
18 them off. You put them on the table, and you hope
19 nobody chokes.

20 That's what happened.

21 Did Amtrak want or need these work rule
22 changes? No.

1 It was putting them on the table, telling
2 the Organizations, Pick as many of these as you can
3 stomach, and we'll tell you when it's enough.

4 Now, Mr. Reinert and I had an exchange
5 likening this approach to the 1113 approach. I feel
6 strongly about it, too.

7 Amtrak's approach was even worse than the
8 1113 approach because at least there, they have a
9 bottom line to make up in terms of cost containment.

10 Here, we didn't have a bottom line.

11 I'm reminded of the early days of
12 affirmative action in which the government used to
13 tell government contractors, You have got to apply
14 affirmative action principles, and the contractors
15 would say, What do we do?

16 You go ahead and tell us what you're
17 planning to do, we'll tell you whether that's all
18 right. Well, that format ended many, many years
19 ago.

20 The same principle was applied here.

21 The point is, if you don't care what work
22 rule changes you get, how badly do you need the work

1 rule changes that are on the table?

2 That's the reality of this.

3 Now, we did go through this with Mr. Dodd
4 for the BMWED and Mr. Ingersoll for the BRS. What
5 it showed, strikingly, is that these parties have
6 done traditional rail labor bargaining.

7 Remember in Elgin and Burley in which the
8 Supreme Court described the processes of the Act as
9 a continuous product of conference and negotiation
10 going on all the time? And many of those
11 conferences, of course, are outside of the Section 6
12 processes of the Act.

13 In fact, in rail bargaining -- and this is
14 very important -- it is not like airline bargaining.

15 We do not have durations. We don't have
16 Section 6 notices to other sides like the Manhattan
17 Telephone Directory, and we don't stagger through
18 bargaining for months and years in negotiations.

19 What has happened at Amtrak in the
20 engineering department is that the operating people,
21 those who are responsible for operations, meet with
22 the general chairman, and they resolve these

1 problems.

2 Do you remember the testimony of Mr. Dodd
3 on the contracting out and the pages and hundreds of
4 projects that are in the record before you and the
5 rapidity with which these agreements were entered
6 into and solved?

7 That's how it's done.

8 Now, what Amtrak is suggesting is that the
9 Board adopt general rules, a la airline bargaining,
10 that the Carrier will apply, and then we'll fight
11 about it in a grievance procedure thereafter.

12 So we'll have an avalanche of grievances.
13 We'll have unhappy employees. And we'll lose the
14 benefit of what we're doing now. I don't think the
15 Company really wants this.

16 Didn't say it wanted it. It said it would
17 accept it if we did it.

18 We don't want it. They don't need it.
19 And that will hold true for the rest of the work
20 rules put forward both to the BRS and the BMWED.

21 There is even some doubt that the rules
22 sought by Amtrak are even needed because there's

1 adequate flexibility under the agreement itself.

2 Some of the rules put forward to the BRS
3 appear to be drafted by someone who had not read the
4 BRS agreement.

5 Now, there are two rules issues, though,
6 that I wanted to discuss with you because these are
7 the rules that Amtrak put forward as part of its
8 proposal.

9 For the BMWED, Amtrak wanted, at the price
10 for giving the BMWED the TCU pattern, an extension
11 by six months of the lock-in period that follows a
12 promotion from one classification to another.

13 I'll deal with the substance of that rule
14 in a moment, but let's examine the process to start
15 with.

16 What Amtrak wanted as part of the internal
17 pattern was a concession from BMWED of a core job
18 security rule as opposed to the administrative rules
19 and the technical rules that were asked of other
20 organizations.

21 That's important.

22 That shows or reinforces our argument

1 against the pattern because patterns are based on
2 job comparability. And asking one organization for
3 the kinds of changes that other organizations were
4 not asked for militates against the pattern. That's
5 important.

6 The same is true of the BRS. They were
7 asked for a concession of an extraordinarily
8 important job security measure, the so-called
9 45-mile Rule.

10 They, too, were treated differently for
11 purposes of the internal pattern.

12 Exhibit 248 sets forth all of the changes
13 that were agreed upon by the organizations that did
14 agree to the TCU pattern. And I submit to you that
15 there is no concession of similar character to the
16 concessions that were asked of BMWED and the BRS.

17 Now, in terms of why Amtrak wanted an
18 extension of the six month lock-in period, the
19 evidence is at best weak.

20 We know that in certain occupations,
21 primarily welding, crane operator, and the foreman
22 occupation, that some employees transfer or exercise

1 their seniority rights to bid to a different
2 occupation as soon as they can. That is after six
3 months from the date they qualified in one of those
4 occupations.

5 There are reasons for that. In the
6 welding occupation, welding is a difficult,
7 dangerous job, and it's not for all people. Same is
8 true of crane operators.

9 Mr. Jed's written statement points out the
10 pressures involved in operating a crane under the
11 overhead wires that stretch over much of Amtrak's
12 infrastructure and what would happen if they made a
13 mistake.

14 And likewise, the responsibilities that
15 come with track foremen are not for everybody as
16 well. Some people aren't comfortable with that
17 responsibility, and some people go to other
18 positions as a consequence.

19 But in the aggregate, in the aggregate, is
20 the problem described in this proceeding such as to
21 require the BMWED to yield what I call a core job
22 security protection or not?

1 If the idea is -- and this was
2 acknowledged during this proceeding. If the lock-in
3 period is enlarged from six months to one year,
4 there will be people -- more difficulty getting
5 people to bid for trainee positions to become
6 trained as supervisors, crane operators, and
7 welders, and that's not a good thing.

8 Let me turn to the 45-mile rule because,
9 whereas the justification for the change sought by
10 Amtrak in the BMWED's six month lock-in is weak, the
11 justification for changing the 45-mile rule is
12 nonexistent.

13 What we have learned is that it is
14 difficult to fill positions in New York, in the New
15 York City area. New York is not for everybody. We
16 know that.

17 But what the evidence shows is that there
18 are exactly seven signal employees, two signalmen
19 who have qualified as signal maintainers, two
20 maintainers that have qualified as foremen, and
21 three assistant foremen who have qualified as
22 foremen working in the New York headquarters.

1 How many employees are in the
2 headquarters?

3 You might remember me asking that question
4 of the Carrier's witness. We learned that there are
5 221 employees. That's seven out of 221.

6 We also learned that there is and remains
7 an enormous training problem under which Amtrak
8 hires signal employees as helpers, moves them into
9 training programs, at which point they become
10 trainees. And then, they progress through the
11 various cells of that training program until they
12 graduate.

13 What Mr. Ingersoll's testimony showed was
14 that there are 200 hirees as helpers. There are 99
15 vacancies as signalmen and maintainers.

16 And what we're not doing is moving those
17 hirees through the process to become signalmen.

18 What is the problem?

19 Well, the problem is that it is at the
20 Carrier's discretion when the Carrier will allow the
21 helper to progress into the training program and
22 become a trainee.

1 Due to its capital projects, the Carrier
2 needed more helpers. And, therefore, it bargained
3 with the BRS to extend the period within which the
4 Carrier is obliged to move a helper into the
5 training program. That is one year to two years.

6 It doubled the Carrier's discretion, and
7 that was an agreement.

8 But what the Carrier is not doing is
9 moving people through the training program to fill
10 the signal vacancies.

11 We also know that once a signalman
12 qualifies, finishes the final training module, and
13 graduates, he can be placed anywhere on the system
14 for at least six months.

15 This is not a problem with the 45-mile
16 rule. The problem is nonexistent.

17 So the BRS is being asked to give up a
18 fundamental core job security protection for reasons
19 that simply do not appear in this record.

20 That will conclude what I had planned to
21 say at the beginning of this closing argument,
22 Mr. Chairman.

1 I'm not sure how much time I really had,
2 so I don't know how much time to reserve.

3 ARBITRATOR JAFFE: We don't need any
4 formerly reserved.

5 We chatted yesterday, I think, when we
6 were off the record, and we're going to allow you
7 folks to follow through so that no one is
8 disadvantaged or advantaged in any way by going
9 first or second, unless or until you each become
10 unduly repetitive.

11 MR. WILDER: Then I will simply reserve
12 that amount of time that is equal to the outrageous
13 statements made by my opponent that require
14 rebuttal.

15 Thank you.

16 ARBITRATOR JAFFE: Thank you, Mr. Wilder.
17 Mr. Reinert, do you want to take ten?

18 MR. REINERT: That would be a good idea.
19 We do have some stuff to say, too.

20 ARBITRATOR JAFFE: Perfect.

21 We're off.

22 (A recess was taken.)

1 MR. REINERT: Are we ready?

2 ARBITRATOR JAFFE: We are.

3 MR. REINERT: Thank you Members of the
4 Board. Thank you, again, for undertaking this case,
5 which I said at the outset was an important one.

6 And now, I thank you for conducting a
7 smooth hearing that got the record created, I think,
8 at a very efficient level.

9 In my opening, I asked the Board to
10 carefully consider the evidence and argument. I
11 guess I have no doubts this Board has reviewed the
12 record carefully.

13 In fact, Mr. Jaffe's review of the
14 electronic expert working papers sets a level of
15 case preparation to which we all should aspire,
16 especially since I haven't reviewed all those
17 working papers.

18 I also would like to thank Roland Wilder
19 and Stephen Feinberg for continued cooperation in
20 the hearing. That's the reason this case has gone
21 forward as smoothly as it has procedurally,
22 notwithstanding the sharp differences between our

1 clients.

2 Notwithstanding the confrontation that's
3 inherent in this process as well as the specific way
4 this case has proceeded, Amtrak again thanks the
5 BMW and BRS leadership for participating in this
6 interest arbitration.

7 I want to begin by talking a little bit
8 about the relationship between these parties, which
9 unfortunately is not a good relationship. I think
10 that should be apparent from what you have heard in
11 the last seven days.

12 Now, you heard the testimony from Amtrak's
13 CEO Joseph Boardman and our chief labor relations
14 officer, Charlie Woodcock, about how this case
15 relates to the last bargaining round in PEB 242.

16 The result of PEB 242 was not favorable to
17 Amtrak. And Board members, including Mr. Jaffe, we
18 believe sent a message to Amtrak about what was
19 expected in Amtrak's future bargaining behavior.

20 Amtrak heard that message. They took it
21 to heart. Its action in this round and its
22 positions in this proceeding are directly responsive

1 to the PEB 242 Board's criticisms.

2 And even before this round, in 2008, you
3 heard Joseph Boardman say that, when he became the
4 new CEO of Amtrak, he had to make sure that the back
5 pay commitment made post PEB 242 was funded by
6 Congress. And he went, and he did that.

7 In his own words, as part of restoring
8 trust with labor, Mr. Boardman and his Amtrak team
9 then set out to seek a collaborative bargaining
10 relationship, bargaining and outside bargaining
11 relationship, with labor.

12 The vision of Amtrak under Mr. Boardman is
13 that such collaboration is necessary. It's
14 necessary for future success. It's necessary for
15 future success with respect to a safer and more
16 secure environment for workers and passengers.

17 It is necessary to provide customer
18 service. It's necessary to be financially stable.

19 That overture for collaboration, as he
20 described, began in the safety area and has been
21 extended to collective bargaining.

22 And you heard the testimony first from

1 Mr. Woodcock and then from Mr. Boardman how Amtrak
2 implemented a strategy in this round based upon the
3 proper lessons learned from PEB 242.

4 Bargain early, bargain reasonably, treat
5 the unions fairly, and get deals. And they got
6 deals.

7 In effect, Amtrak laid down or offered an
8 olive branch to organized labor. The leadership of
9 Amtrak's unions, except for the two organizations in
10 this proceeding, picked up that olive branch.

11 Thirteen of the 15 unions entered 17 new voluntary
12 agreements.

13 There were no PEBs or interest
14 arbitrations necessary for those voluntary
15 agreements.

16 More than half of Amtrak's organized
17 employees were covered by new settlements in less
18 than a year of opening of this round.

19 As Jerry Glass testified, that is
20 basically unprecedented in the Railway Labor Act, in
21 the history of the Railway Labor Act, that you have
22 that many agreements that quickly.

1 But unfortunately, Amtrak's post PEB 242
2 effort at collaboration and a collaborative round of
3 collective bargaining was not universally
4 successful. That is why we are here.

5 While 13 labor organizations picked up the
6 olive branch, two labor organizations, the BMWED and
7 the BRS, instead shot back arrows. There's no other
8 way to describe it. And unfortunately, this
9 proceeding has shown a continued disinterest in
10 collaboration with Amtrak from the BMWED and BRS
11 leadership.

12 At a minimum, it has been an opportunity
13 foregone by the PRLBC organizations to structure a
14 settlement.

15 It has been marked with this continued
16 shooting of arrows, including Mr. Dodd's unfortunate
17 remarks concerning Amtrak's safety program and
18 Mr. Boardman.

19 Now, I have been doing this for a while,
20 as has Mr. Wilder. And we know that in labor
21 proceedings, each party is entitled to a strategy.
22 It's entitled to vigorous advocacy of each of its

1 position, and each party is accountable on how it
2 presents its positions.

3 The PRLBC has pursued in this proceeding
4 what can only be determined a strategy of denial.

5 The central approach has been to deny the
6 very existence of the Amtrak internal pattern, even
7 when its existence is obvious and undeniable.

8 It has included in argument that a 3
9 percent January 1, 2015 increase in the proposal
10 from the PRLBC is economically indistinguishable
11 from the 1.5 percent January 1, 2015 increase in the
12 Amtrak internal pattern.

13 It has included in argument that, when the
14 PRLBC's representatives put a written proposal on
15 the table that says \$200, Amtrak should have known
16 it really meant \$177.54.

17 It has included in argument that the
18 multimillion dollar financially material issues in
19 this case are minimal, insignificant, imperceptible,
20 and now miniscule.

21 This Board must ultimately determine the
22 credibility of each side's witnesses, their

1 evidence, their arguments. That's your job.

2 Amtrak must continue to deal with these
3 two organizations, and Amtrak will continue to
4 pursue a collaborative and cooperative relationship
5 with each in this proceeding as it continues and
6 outside this proceeding.

7 But the positions these two organizations
8 have taken in this proceeding have not advanced the
9 credibility of these organizations or their
10 leadership.

11 Let me turn to my formal argument.

12 I'm going to be utilizing a PowerPoint
13 presentation, and we can move to the first slide.
14 And everything in this is all from the record of the
15 Board. There's nothing new. It's just excerpts.

16 Amtrak's principle argument, our central
17 argument, is that the Amtrak internal pattern should
18 be the basis for the Board's award.

19 The three most important facts in this
20 case which have been proven are, one, there exists
21 an Amtrak internal pattern of 17 agreements; two,
22 the Amtrak internal pattern was established in 2010,

1 almost two years before the freight deals; and,
2 three, this development, a strong Amtrak internal
3 pattern, established before the first freight
4 agreements in this round, is unprecedented in
5 Amtrak's collective bargaining history.

6 And we have pulled up a slide from Jerry
7 Glass' presentation. It's the red-and-blue slide.
8 It's the most important slide in this proceeding
9 because it demonstrates in one graphic what's
10 different, how this round is different.

11 As Jerry Glass explained, it shows that,
12 throughout the history of prior rounds, not without
13 exception, but typically, the freights went first,
14 and the Amtrak pattern followed the freight patterns
15 with modifications.

16 That was the typical approach, although if
17 you look in those earlier rounds, it's much more
18 modeled.

19 That is not what happened this year.

20 If you look to that right-hand column, big
21 block of blue for Amtrak agreements lead the round,
22 and only later do you have the freight agreements

1 showing up.

2 And if you look in the fine print, the
3 time delay between those Amtrak agreements and the
4 freight agreements is larger than what you typically
5 saw in prior rounds.

6 It's two years.

7 So you're talking 2010 for the Amtrak
8 agreements. 2012 for most of the freight
9 agreements.

10 This Board must resolve this dispute with
11 due recognition of all of the facts, but these facts
12 are at the core. So let me address the existence of
13 the Amtrak pattern agreements.

14 I said in opening that the fact of the
15 Amtrak internal pattern is an undeniable fact, not a
16 matter of opinion.

17 This record is clear concerning the 17
18 agreements, when they were entered, and what were
19 their terms. And we have listed the first page of
20 them and the second page.

21 This is from Mr. Woodcock's exhibits. The
22 date they were entered. Who were the parties. It

1 has all been established.

2 Nonetheless, the PRLBC made the incredible
3 argument that the Amtrak pattern did not exist.
4 They have referred in this proceeding to the
5 "alleged" pattern and the "so-called pattern." And
6 then they sent their expert, Tom Roth, to make the
7 argument that the Amtrak pattern didn't exist.

8 But their denial of the existence of the
9 Amtrak internal pattern ran into reality in the
10 basic facts in Mr. Roth's prior testimony in
11 Presidential Emergency Board 244.

12 On cross-examination, Mr. Roth admitted
13 that 16 of the agreements, all except the last one,
14 the UTU conductor agreement, had the same economic
15 terms.

16 We're putting it up, the quotes from the
17 transcript.

18 And on further questioning, Mr. Roth
19 admitted that the economic terms of the UTU
20 conductor agreement were the same as the Amtrak
21 pattern agreements until the last quarter of the
22 five-year duration of the agreements when conductor

1 bonuses became payable under the Amtrak agreement in
2 September 2014.

3 With these admissions of the existence of
4 at least a 16-agreement pattern, and a 17-agreement
5 pattern over four years, three-quarters, the PRLBC's
6 fact case against the Amtrak internal pattern fell
7 apart.

8 Now, you have heard Mr. Wilder in the
9 closing say there are no identifiable terms to the
10 Amtrak pattern.

11 Well, he needs to review the transcript
12 testimony of his expert, Mr. Roth, who admitted to
13 the identifiable terms. And indeed, in Mr. Roth's
14 report in the Long Island Railroad Presidential
15 Emergency Board 244, he identified and analyzed
16 those economic terms.

17 And oh, by the way, PEB 244 does talk
18 about the Amtrak agreements. So we're not dealing
19 with an alleged pattern or a so-called pattern. We
20 have just got an admitted Amtrak internal pattern.

21 The PRLBC also likes to refer -- make a
22 reference to the "TCU agreement" when making an

1 oblique reference to the pattern.

2 There are 17 agreements in this pattern.
3 It's not the TCU agreement. If I had to go through
4 it, it would be the TCU -- the JCC, I mean. I'm not
5 going to stand here and say 17 acronyms. It's the
6 17-agreement pattern.

7 Three of those unions, the NCFO, the sheet
8 metal workers, and the IBBB left the PRLBC to join
9 the pattern.

10 Now, you have heard some statements, Well,
11 the unions covered under this pattern are not the
12 same. Three of them work in the engineering
13 department and were in the coalition.

14 So it's just difficult to continue to deny
15 basic facts, that Amtrak has a well-established
16 internal pattern in this round.

17 Nonetheless, they attempted to do so, and
18 the evidence has shown otherwise.

19 Well, why did -- the Board should ask
20 this: Why did 13 Amtrak labor organizations join
21 this Amtrak pattern?

22 We put up a slide from Mr. Gillula, and

1 it's his last slide, showing percentage wage
2 increases. And you'll see the top line is the
3 Amtrak pattern. It's compared to the federal GS
4 schedule, the comparable private sector workers, the
5 Union's ECI for wages.

6 And the Amtrak internal pattern line is
7 the top of the group. And you look at those
8 increases this 2010, 2011, 2012. This is a good
9 agreement. That's why they joined it.

10 The economics were very good, and they
11 were particularly good in the context of entering an
12 agreement in 2010 when we were really in a much
13 deeper portion of the great recession.

14 But unions continued to join it 2011,
15 2012, and 2013. There are ratification materials in
16 the record, Amtrak Exhibits 212, 213, 218, 231, 240,
17 243.

18 Those ratification materials, they made
19 good economic deals. They had minimal healthcare
20 changes. That was an important issue.

21 You know, the freights were out with a
22 very aggressive position about changing their

1 healthcare plans. And the Amtrak unions were able
2 to say, We're going to get a good economic deal, and
3 we don't have to worry about what the freight do
4 with respect to healthcare.

5 That was attractive to them.

6 And they got the money up front, good
7 deals, money up front, don't have to worry about
8 healthcare. That action of those 13 labor
9 organizations that entered those agreements deserves
10 this Board's respect.

11 Now, beyond the facts, there are prior PEB
12 and interest arbitration discussions about the
13 criteria for an internal pattern.

14 And in our prehearing brief for Amtrak, we
15 identified those criteria used by prior PEBs and
16 interest arbitration boards for finding and giving
17 weight to an internal pattern. And then, we
18 measured the Amtrak internal pattern against those
19 criteria.

20 And just to review, the PEB decisions look
21 at critical mass, how many employees are covered.

22 They usually say 50 percent is the

1 minimum. We have 84 percent. Some of the decisions
2 talk about whether you reach operating and
3 nonoperating unions.

4 Mr. Roth, in his report to PEB 244, called
5 it a nonoperating union pattern but, on cross,
6 admitted, yes, the BLET had joined it. And we do,
7 in fact, have the UTU.

8 So it covers nonoperating and operating
9 unions, contemporaneous, all covered in the same
10 period, in the same round, includes economic terms,
11 wages, health, but also noneconomic terms with
12 respect to work rules.

13 The Amtrak agreements since 2010 meet all
14 the recognized Presidential Emergency Board criteria
15 for such patterns.

16 And we -- just putting up the slide, we
17 have a section in the prehearing brief where we just
18 list those prior PEBs and how they recite the
19 standards.

20 So what's the PRLBC's argument?

21 Well, Mr. Roth makes an argument, very
22 interesting argument. Roth report at pages 20 to

1 21, it was referenced by Mr. Wilder. He adds an
2 additional criteria not found in those decisions.
3 There needs to be "a historical relationship" for
4 there to be an internal pattern.

5 According to Mr. Roth, a new internal
6 pattern just does not do it. You need to establish
7 an internal pattern as a historical relationship
8 over several rounds.

9 And there was an interchange between
10 Chairman Jaffe and Mr. Roth, you know, What do you
11 think? Well, two or three rounds might set this
12 internal pattern history that you're referring to.

13 Very interesting concept. It's just
14 wrong. It has no historical basis in the PEB
15 awards.

16 All they looked at is whether you have an
17 internal pattern in the current round, whether it's
18 contemporaneous. They focus on the round which is
19 at issue.

20 In PEB 242, Amtrak settled with unions --
21 some unions on different terms. And what the Board
22 said is that Amtrak "has introduced into the present

1 case an internal model different from that
2 established by PEB 219."

3 What creates an internal pattern is a set
4 of agreements in a round. There was no discussion
5 in 222 about prior history or you need to come back
6 for several rounds in order for this to really take.

7 PEB 242, the Board rejected that Amtrak
8 had established an internal pattern because there
9 wasn't a sufficient number of agreements, and they
10 didn't cover the entire term.

11 There was no discussion of the Board
12 saying, Hey, we don't even have to think about this
13 because this is just the first time you have done
14 it, so it doesn't really count.

15 Historical relationships are relevant to
16 external patterns, but not internal patterns.

17 Roth's historical relationship argument
18 actually doesn't make much sense in terms of labor
19 relations.

20 The issue with internal patterns are
21 employee perceptions of equity in their present
22 workplace and the destabilizing effect if a Board

1 breaks a pattern among a series of employees in the
2 work place.

3 Employees are concerned about whether --
4 what other employees at the same employers make, and
5 that doesn't need to be established by history
6 because it's always present.

7 That concern of internal equity is always
8 present. And when it has taken form through an
9 internal pattern of agreement, it's respected.

10 That was actually the reason for my
11 cross-examination of Mr. Ingersoll, the BRS. I
12 asked him, Why do you care what the UTU conductors
13 make on Amtrak? We had heard from PRLBC's experts,
14 not similarly situated.

15 His response, one word, equity.

16 Even the BRS leadership, fighting against
17 an Amtrak internal pattern, advocating a freight
18 pattern, coming to this hearing, are concerned about
19 internal equity on Amtrak.

20 That is because internal equity is such a
21 strong force in labor relations. And destabilizing
22 an internal pattern is a labor relations problem no

1 matter whether it's the first time a pattern has
2 been established, the second, third, fourth, fifth.
3 That's the reason internal patterns are respected by
4 the Boards.

5 Now, I know that Mr. Das and Mr. Fishgold
6 have postal service experience, and they were on
7 interest arbitration boards last year at the postal
8 service.

9 And those -- if you look at postal service
10 decisions, they typically focus on internal equity.

11 And Mr. Roth said, Well, that's a
12 historical pattern. Not the point.

13 The interest arbitration decisions on the
14 postal service focus on internal equity under a
15 statutory scheme where the only thing they're
16 supposed to be looking at is comparability to the
17 private sector.

18 Internal equity is so strong an issue that
19 it has overridden the statutory standard at the
20 postal service in repeated interest arbitration
21 cases because arbitrators understand, when you have
22 an agreement with one or multiple unions, that is a

1 touchstone of perception among the other unions.

2 Ultimately, the PRLBC's historical
3 relationship argument is disingenuous.

4 Why is it disingenuous? Well, just think
5 it through for a moment.

6 If this Board were to say, Oh, you know,
7 given the history, the freight pattern applies; the
8 internal pattern doesn't because it's just the first
9 time. It hasn't been historically established.

10 Okay, next round we come back, We have
11 another internal Amtrak pattern. Do you think the
12 PRLBC's argument is going to be, Oh, now you have
13 done it twice; that's good enough; you can look at
14 the internal pattern.

15 No. It's going to be, This Board rejected
16 a strong internal pattern for the freight pattern.
17 That's the way it has always been. That's the way
18 it should always be ad infinitum.

19 So the bottom line is internal patterns in
20 many PEB decisions, in many interest arbitration
21 awards, trump external patterns. It's a labor
22 relations principle.

1 If this is viewed as a battle of precedent
2 which represents labor relations consensus, Amtrak
3 wins.

4 The PEB reports and interest arbitration
5 awards which we have cited in our prehearing brief
6 repeatedly say that a strong internal pattern must
7 be given predominant weight.

8 The bottom line is Amtrak has presented a
9 compelling case both on the facts of the internal
10 pattern at Amtrak and the labor relations rationale
11 through many PEB cases that internal patterns and
12 this internal pattern must be a predominant
13 consideration of the Board.

14 My second major point on behalf of Amtrak
15 is that the freight deal should not be the basis for
16 the award. This Board should not follow the freight
17 deal as a pattern that's binding upon it.

18 Now, the PRLBC's case is a historical
19 argument, freight patterns always prevail, an
20 historical argument presented on an unprecedented
21 factual situation of this round.

22 Now, Mr. Roth has written what I have

1 called, more out of respect than disrespect, an ode
2 to the freight patterns in his report.

3 I mean, he goes into great detail. He has
4 got the numbers. It's very well presented.

5 Freight patterns have been important in
6 this industry. No one is denying that.

7 But as Jerry Glass testified, it's not the
8 complete story. If you drill down on the facts and
9 what has happened on Amtrak, it has been much more
10 of a mixed bag. There have been periods of
11 discontinuity.

12 And it almost oscillates in Amtrak that
13 bargaining, sometimes being close to the freights,
14 sometimes not being close to the freights.

15 And that's a function of the collective
16 bargaining process because actually the collective
17 bargaining process is not a lock step, They got that
18 over there; we have here.

19 It is an adaptation to the circumstances
20 on every employer, group of employees, at the time
21 presented.

22 And I mention time, and I said at the

1 outset, and I'll say again, focus on the timing
2 here. Timing is crucial.

3 Because the facts are the Amtrak pattern
4 preceded, and we have a multiple year delay. And
5 that actually makes it very difficult to apply the
6 freight pattern here even if you wanted to do it.

7 The lateness, this period of time from
8 April 2010 until the after PEB 243 in early 2012,
9 really makes the freight deals less relevant in the
10 process.

11 The PRLBC argument is, Oh, there can't be
12 any gap. As soon as the freight deal comes, you
13 have to agree to it.

14 Well, you know, quite frankly, given here
15 we are on the fifth year of a five-year agreement.
16 The relationship between the Amtrak pattern and the
17 freight deals is really an issue for the next round.
18 It's for the next round that begins in a matter of
19 months, not years.

20 And, again, that oscillation process,
21 which it -- quite frankly, PEB 242 is one of the
22 examples.

1 You heard Mr. Wilder say, Well, you know,
2 these voluntary agreements on the freights -- well,
3 not so much.

4 The Amtrak internal pattern is significant
5 in its 17 voluntary agreements, purely voluntary.

6 Mr. Jaffe, you did a great job in PEB 243.
7 We all respect you, but it's much better to get a
8 deal without you around. And Amtrak's ability to do
9 that is something the freights were unable to do.

10 So while you talk about the freight deal
11 as this great voluntary deal, it wasn't. It was in
12 part a matter of intervention, third-party
13 intervention. That fact alone requires giving
14 greater weight to the Amtrak internal pattern.

15 The freight pattern also does not fit
16 Amtrak. The PRLBC approach is really a wooden
17 approach. You just got to take what the freight
18 deal is, and we put it on the table, and you sign
19 it. It's identical.

20 That's what they did on February 13, 2012.
21 They came in with the BMWWE tentative agreement and
22 said, Sign it. Didn't even bother to convert it to

1 a proposal for Amtrak.

2 The problem, as Jerry Glass testified at
3 length, is that every labor agreement is unique.
4 It's a result of the bargaining issues presented and
5 the compromises between the parties.

6 And what happens in one bargaining
7 resolution with a different group of employees does
8 not apply easily to another, if at all.

9 Let me give you an analogy.

10 Mr. Das, I have a nice new Italian suit
11 for you. Unfortunately, it was tailored for
12 Mr. Jaffe.

13 Mr. Jaffe, you're going get Mr. Das' suit.

14 Mr. Fishgold, no suit for you. You're
15 going to have to resolve the dispute between the two
16 of them.

17 The point is taking someone else's
18 collective bargaining agreement and saying it
19 applies to you doesn't work, and it particularly
20 doesn't work here.

21 Let me go through the examples because
22 they're very clear in the record. Let me start with

1 example number one. The infamous -- oh, is that the
2 one?

3 Okay. That's okay. We'll wait on it.

4 The \$200/177.54 issue.

5 The BMW's February 13, 22 (sic) proposal
6 of the BMW deal clearly said \$200 as the first year
7 contribution rate, as did PEB 243.

8 But the BMWED had to turn around and say,
9 That's not what we intended. This really needs to
10 be adjusted because our prior contribution rates
11 were different than the freight rates.

12 Well, yeah. It's a difference. Freight
13 and Amtrak healthcare contribution rates are
14 different. And if you say you're going to take the
15 PEB deal -- the PEB 243 and the freight deal and
16 impose it on Amtrak, you have either got to modify
17 it, or it's no longer the freight deal. It's a
18 different deal.

19 Amtrak's health expert, Tom Rand,
20 presented testimony about his attempt to reconcile
21 the freight healthcare deal with the AmPlan and this
22 difference between the \$79 in savings versus 65.

1 If we go back to the managed care pharmacy
2 programs, we can jack that up a little bit to \$70.
3 We're getting close, but we really can't get the 79
4 to the 70 because we have got different populations;
5 our vendors have different approaches. They price
6 the plans differently.

7 Yeah. The freight healthcare plan and
8 AmPlan have different designs with different vendors
9 with different populations. They're different from
10 the freight plan.

11 Example number three. The, I guess what I
12 would call quasi duration wage side letter on 3
13 percent contained in PEB 243 and the freight deals.

14 Now, Mr. Jaffe, I don't know if you're the
15 parent or the obstetrician on this one, but it's a
16 strange baby. It took me a lot of times to read
17 this and try to figure out what it was about.

18 No doubt it was a compromise of competing
19 specific positions between the parties in PEB 243.

20 I don't know what level of input they had.
21 I don't know what their interests were. I don't
22 know why this was the appropriate resolution.

1 I do know this: It's not Amtrak's
2 resolution. We look at this and say, What is this
3 about? Why did they do it? We don't understand it.

4 Even you, Mr. Jaffe, had questions to
5 Mr. Roth, Well, how would this apply on Amtrak?
6 Would it give the Amtrak unions elections on whether
7 to take the 3 percent, or do they have to follow the
8 freight unions elections?

9 It just illustrates the problem of taking
10 another collective bargaining agreement and applying
11 it in a totally different situation.

12 Now, I can anticipate the PRLBC's
13 argument. Well, wage schedules and GWIs are easy to
14 apply across carriers.

15 Actually, not.

16 It took me a while to figure this out.
17 But if you look at the wage schedules, you put them
18 side by side, there's something that just bothers me
19 about that picture, and I didn't know what it was.

20 And it's the gaps on the PRLBC's proposal,
21 which is the freight, versus the small increments on
22 the Amtrak side.

1 What's that about?

2 Well, Mr. Stadtler, our chief operating
3 officer talked about this. We like, at Amtrak, like
4 to smooth out with small increases because we have
5 cash flow issues.

6 So the freights are fine with giving a 3
7 percent on January 1. We would put that as two 1.5s
8 on January 1 and July 1. That's a basic difference
9 between the two companies, again, not reflecting
10 when you take agreements from elsewhere and try to
11 impose it.

12 And let me talk about the most important
13 reason why the freight agreement just doesn't work.

14 It's UTU conductor internal equity.

15 The freight agreement has baked into it a
16 resolution between the freights and unions, other
17 than the UTU, of compensation for the specific UTU
18 certification pay and the specific UTU adjustment to
19 entry level wages.

20 If you look at that and you look at PEB
21 243, is up there. The recommended wage adjustment
22 to be made effective July 1, 2012 is 1.3 percent

1 higher than the comparable figure contained in the
2 UTU agreements.

3 The reason for this is to monetize in a
4 more appropriate to the organization in this dispute
5 the certification for pay provided by the UTU
6 agreement.

7 Go to the next page, same discussion about
8 entry level rates. And that's also reflected in the
9 discussion about the 1 percent lump sum.

10 So you have got a whole structure of wage
11 compensation in the freight agreement, which was
12 fashioned to solve an internal equity problem on the
13 freights.

14 Well, why is that a problem?

15 Well, that's a problem because it has
16 nothing to do with Amtrak. We -- this is totally
17 alien to Amtrak.

18 We have our own conductor promotion rule.
19 It has some -- it is -- reflects the same UTU
20 interest in achieving some sort of payment related
21 to certification, but it's structured totally
22 differently. And it was structured in the context

1 of the Amtrak internal pattern.

2 And actually, it was very carefully
3 structured. And if you read it through fast, you
4 might not catch it because you have got to know
5 what's going on, like most collective bargaining
6 agreements.

7 You may note that it has something
8 referenced about certification and other elements as
9 a condition of employment.

10 Well, that means you get fired if you
11 don't meet the conditions. That has nothing to do
12 with the certification payments approach on the
13 freights. They don't have that.

14 It requires performance of assistant
15 conductors to perform conductor jobs once a year.
16 Well, that means you got to bid. You got to bid
17 into the conductor jobs.

18 It has two separate parts for the payment.
19 It requires 120 compensated days in a six-month
20 period. This is totally different than anything
21 that's on the freights. It's totally different than
22 anything on the commuters.

1 And we, on Amtrak, concurrently negotiated
2 agreements with the yardmasters and stewards. There
3 was no monetization of the performance bonus in the
4 other two UTU agreements.

5 I mean, does anyone here think UTU
6 negotiators are stupid? Do they leave money on the
7 table?

8 There was a -- they realized that what was
9 going on with respect to the UTU conductor bonus on
10 Amtrak was not an increase in the value of the
11 package. It was a tradeoff. It had compensatory
12 cost savings on the Amtrak side. And that's the
13 reason why it's a totally different result from the
14 freights.

15 Now, Mr. Wilder talked about PEB 244.

16 He said, Well, they didn't monetize the
17 UTU certification pay. It was a different
18 agreement, a different situation.

19 Exactly my point. You have one resolution
20 on freights. You have one resolution on Amtrak.
21 And you have one resolution on the Long Island
22 Railroad.

1 And I do want to mention, you know, this
2 costing out. We presented evidence of how Amtrak
3 costs it out.

4 And the other side can quibble with our
5 costing out. They have presented no evidence to
6 contest it. It is uncontested in this record.

7 And what it shows is that Amtrak's
8 estimates back in April at -- shortly after the time
9 it was negotiated, was that this would, not only pay
10 for itself, but it would generate cost savings for
11 Amtrak.

12 That's not true with any other situation.

13 And we have been somewhat bemused on the
14 Amtrak side on how fixated the PRLBC seemed to be on
15 this UTU conductor bonus.

16 Because what it is is a provision that was
17 bargained arm's length in the contracts of the
18 Amtrak internal pattern that presented tradeoffs.
19 People got more money in their pockets for cost
20 savings to Amtrak.

21 That's exactly what we were prepared and
22 attempted to do with these two unions. They refused

1 to play ball. And to say, Well, you made a deal
2 with someone else. Well, you gave them more money.
3 Yeah. And we got something back.

4 We tried to do that with you, and you
5 weren't interested.

6 So there's no internal equity issue
7 between these unions and the UTU on Amtrak because
8 the UTU on Amtrak gave us a tradeoff.

9 Now, I have gone through this in some
10 detail, but the bottom line is that the freight wage
11 pattern has baked into it an internal equity factor
12 for the UTU conductor deal and has no bearing on
13 Amtrak.

14 What did Mr. Roth say?

15 It doesn't matter. As long as that deal
16 is out there, that's a comparable deal Amtrak has to
17 follow.

18 That's neither rational nor equitable to
19 apply a wage pattern designed to address an internal
20 equity problem on another employer to Amtrak where
21 the internal equity issue is totally different.

22 Let's talk about work rules.

1 The freight deal has no work rule changes.
2 And the BMW and BRS say, Oh, that means you must
3 have no work rule changes.

4 Mr. Wilder said, Well, this case isn't
5 really about work rules. I actually agree with
6 this. That's not the major issue in this case.
7 This is principally an economic case.

8 Then why is so much of the PRLBC's case
9 directed toward work rules?

10 Because there were work rule problems on
11 Amtrak, we offered an opportunity for them to do
12 some tradeoffs to get additional GWIs by addressing
13 some of our problems.

14 And the Amtrak internal pattern has a
15 pattern of work rule changes, craft-specific work
16 rules, which we made proposals to them.

17 The bottom line, though, is that Amtrak is
18 differently situated from the freights with respect
19 to congestion and passenger operation. We don't
20 like to disrupt our passengers. That means work has
21 to be done at certain times, and that requires some
22 differences in approach.

1 I'll talk more about work rules later on.

2 But, again, saying, Well, the freights
3 haven't done anything on work rules, is just not a
4 reason for saying that the freight deals suit
5 Amtrak.

6 So I have gone through these number of
7 circumstances, and I think it really illustrates the
8 problem of just almost taking a collective
9 bargaining agreement off the shelf and saying, Here;
10 it's yours. It just doesn't work.

11 The hard part about collective bargaining
12 is drilling down on the local problems on each
13 employer that need to be resolved.

14 And while external patterns are important
15 in many contexts, we are in a situation in this
16 round where the freight pattern just doesn't fit on
17 Amtrak, and we have a strong internal pattern.

18 I also want to talk about bargaining
19 behavior, and let me state it simply.

20 An award of the freight deal in this case
21 will reward bad bargaining behavior and punish good
22 bargaining behavior.

1 Now, I know Mr. Wilder said at the
2 beginning this is an economic, not a moral case.
3 But equitable considerations of the respective
4 behavior of the parties are within this Board's
5 consideration.

6 And, indeed -- and we have this in our
7 brief -- if you go back and look at the PRLBC's
8 argument before PEB 242, it was largely about the
9 equitable conduct of Amtrak in that bargaining
10 round.

11 And when the shoe is on the other foot, it
12 might be a little tight, but the reality is, this
13 round, Amtrak engaged in good bargaining behavior,
14 and the PRLBC engaged in bad bargaining behavior.

15 I want to make something very clear on
16 terminology.

17 I think Mr. Wilder said in his opening
18 that the Carrier's argument was "almost bad faith
19 bargaining" by the PRLBC. And actually, we were
20 very careful never to use the term or to allege bad
21 faith bargaining. And that's both a legal, and it's
22 an emotional term. Okay? And it's an issue over

1 which this Board has no jurisdiction.

2 But as I did say, there is equitable
3 consideration of the respective bargaining behavior
4 and how it has led to the problem.

5 I have used the term bad bargaining
6 behavior, good bargaining behavior for simplicity.
7 If you want to say positive, negative; if you want
8 if say constructive, destructive; it doesn't matter
9 which word you use. One party was working more to
10 get agreements. The other party was working less.

11 And we have the chronology on the board.
12 We have it projected up. And the chronology shows
13 this gap, this gap from December 15, 2010 bargaining
14 session until February 13, 2012 bargaining session.

15 And there just can be no dispute on this
16 record that there was intentional delay by the PRLBC
17 in bargaining to wait for the freight settlement.

18 We can pull up the letter from December
19 2010 that the PRLBC sent. They straight out say it,
20 We're waiting for the freight deal. We're not going
21 to settle before.

22 There's no factual dispute, but that was

1 the PRLBC strategy. And that delay itself is a
2 negative equitable factor.

3 But there was more to it, and my
4 cross-examination of Mr. Dodd establishes it.

5 They didn't tell us what they were doing.
6 They didn't say, you know, we would really like to
7 take some time out because we think the freights
8 will be resolved within the year and maybe we can
9 sit down again. They didn't say, you know, we can
10 do a stand-by agreement.

11 No. They just, We're not available.

12 I mean, you know, some honesty in this
13 process really goes a long way because the worst
14 thing we could have said is, We don't like that.

15 We might have said, Okay, we understand.
16 We're going to focus on the other unions. We'll
17 talk to you later.

18 But to go and not say what you're doing is
19 not helpful to the collective bargaining process.

20 Then there's the famous \$200/177.54.

21 Now, I'll say right out, we don't know if
22 this action was intentional or negligent. It could

1 have been negligent.

2 You know, they came in and said, We made a
3 mistake at the last meeting. We put something on
4 the table we shouldn't have put on. But that would
5 have required an admission that what they wanted was
6 really something a bit different than the freight
7 deal.

8 So they didn't honestly say that's what
9 happened, let's talk about it. Let's be
10 straightforward about our position. They were
11 cherry picking combined with an aggressive move,
12 combined with not telling us why it had happened.

13 Then we have got this corporate campaign
14 stuff, the picketing of the offices of the Amtrak's
15 chairman, Coscia, and the home of another member
16 with the union buster signs.

17 You know, union buster in an inflammatory
18 term. It does not fit an employer that has
19 voluntary labor agreements covering 84 percent of
20 its employees. And when a union uses it without
21 basis, it really raises questions both about its
22 credibility and its motivation and its conduct.

1 We talked about table behavior. Charlie
2 Woodcock described it in some detail. They just did
3 not engage on the issue of alternative funding for
4 additional GWIs.

5 I mean, you could have done it with work
6 rules. You know, they just didn't want to talk
7 about work rules.

8 They went away. And when they came back,
9 they were not bargaining to get a deal. They were
10 bargaining to impose the freight settlement.

11 There was good behavior by Amtrak. And
12 it's not about patting ourselves on our back. It's
13 just in contrast.

14 We followed the lessons of PEB 242. We
15 made deals by putting good proposals on the table.
16 We were open on information. We shared information
17 with the BMWE and the BRS, their consultants, the
18 NMB.

19 And even Mr. Roth's comment on healthcare
20 the other day, he was constructive in sharing
21 information on healthcare and dealing with our
22 healthcare folks, and that needs to be reflected in

1 the record.

2 Amtrak offered an interim deal on February
3 13, 2012 so employees wouldn't have a delay in their
4 wage increases.

5 Given where the differences were between
6 the freights and Amtrak at that time, that would
7 have been a good deal for the employees. It was
8 without prejudice to all bargaining positions on the
9 table.

10 And we developed and attempted to explore
11 both healthcare and work rule options for funding
12 additional GWIs.

13 Now, this is a large record and these many
14 volumes around here. I think if you go through it,
15 a substantial portion of it is paper passed across
16 the table by Amtrak providing rationale on work
17 rules, costing out on work rules, healthcare basis.

18 You should compare that to the amount of
19 paper that came back, which was largely Section 6
20 proposals, and then the February 13, 2012 BMW
21 freight deal.

22 So this Board should give weight to the

1 equities of the two sides' behaviors.

2 If the Board awards the freight deal, the
3 BMW and BRS will believe that they have won, that
4 their bad bargaining behavior has been rewarded, and
5 it will be continued. And Amtrak, which followed
6 the instructions of PEB 244, will be punished.

7 And it's worse than that because it will
8 have a long-term impact on the bargaining.

9 Jerry Glass, an experienced Railway Labor
10 Act negotiator, spoke about that for Amtrak, the
11 consequence of the Board decision.

12 If this Board says freight deal, there
13 will be no separate deals negotiated at Amtrak in
14 the future.

15 And that's not hyperbole. The unions just
16 won't have any incentive to come to the table and
17 make a deal before the freights. And once the
18 freight deals are concluded, the unions will put
19 them on the table and say, Sign here.

20 That doesn't sound like collective
21 bargaining.

22 And that, we believe, is actually the

1 PRLBC's goal in this proceeding, to get an interest
2 arbitration decision that says, Amtrak must follow
3 the freight pattern no matter what, and to use that
4 as leverage in future rounds.

5 Let me talk a little bit about the
6 finances.

7 An award of the freight deal will have a
8 material impact on Amtrak. Let me be very careful
9 what I'm saying.

10 Amtrak quite intentionally has not argued
11 ability to pay.

12 What this Board orders is Amtrak will do
13 its best to get it funded and implement it. But
14 that doesn't mean Amtrak's finances are irrelevant
15 to this Board's determination.

16 And as a result of the internal pattern
17 and the me-too deals and probably even if the me-too
18 deals hadn't been there, the award of the freight
19 deals for these unions will have direct financial
20 implications with the other unions.

21 Mr. Stadtler did the financial analysis of
22 the aggregate \$123 million number.

1 By any calculation, if that's number
2 requires any adjustment, it's still -- it's a big
3 number, and it's material to our financial
4 situation. And it just provides another incremental
5 reason for not awarding the freight deal.

6 Before I leave, just my comments on the
7 freight deal. I just want to offer the Board a
8 suggestion.

9 It's something I heard from a federal
10 district court judge many years ago. It's how you
11 decide a preliminary injunction. And the thought
12 is, ask yourself which wrong decision has the worst
13 result.

14 So if you pick the internal pattern, even
15 if that's the wrong way to go, the outcome is the
16 PRLBC gets the same economic deals as the other
17 Amtrak unions and, before the end of this year, will
18 be in a new round of bargaining with the PRLBC, and
19 it can pursue a different outcome. Collective
20 bargaining will self-correct.

21 If you pick the freight deals, and that's
22 wrong, the outcome will be long-term damage to

1 Amtrak's ability to get its unions to come to the
2 table and negotiate deals.

3 For all these reasons, the right result in
4 this case is not to award the freight deal.

5 Now, that section of my argument was more
6 than argument. It was a legal and factual argument
7 much like any closing argument.

8 I said in my opening that Amtrak's goal in
9 this proceeding is to assist the Board in doing its
10 job to fashion a settlement by identifying
11 opportunities and alternatives, and that's what a
12 lot of our proof has been about.

13 We had hoped that it would have led to
14 some dialogue in this proceeding. It has not.

15 And as I offer some suggestions on how the
16 Board might approach this issue, I have to be clear
17 up front.

18 Amtrak doesn't think this Board can avoid
19 the hard decision of internal pattern versus
20 external pattern. The PRLBC's bargaining choices
21 and its litigation posture have forced the issue.

22 And the question of internal pattern

1 versus external pattern will need to be decided
2 based upon the facts and the labor relation
3 principles that are embodied in prior PEB decisions.

4 And it really has been fully presented and
5 argued by the parties.

6 The right choice is to use the Amtrak
7 internal pattern as the basis for settlement. Let
8 me explain further, however, some of the
9 methodological permutations the Board might go
10 through to help it analytically.

11 You will recall my cross-examination of
12 Mr. Roth on six-year costing out. And what I was
13 trying to get to, and I think we did get to it, is
14 an analysis of the final salary number difference as
15 of January 21, 15 under the two proposals was 4.5
16 percent.

17 And the reason we did that is it -- and
18 the numbers are actually much more complex than
19 that, given the time value of money and everything
20 else. But just as a way of trying to approach this
21 problem, when you look at that 4.5 gap, it really
22 has three portions of it.

1 One portion of it -- and it depends on how
2 you calculate it. It's at least 1.6 percent -- is
3 the UTU conductor equity pay adjustments for
4 certification pay that are in the freight deal.

5 The second component of it is really year
6 2015. January 1, you have a 3 percent, or you have
7 a 1.5 under the two proposals. And that leaves, you
8 know, about 1.4 percent. And that relates
9 principally to questions about healthcare and
10 costing out of healthcare.

11 That's a really rough approach, but it is
12 something conceptually that helps get you there.

13 The freights also had a 1 percent lump
14 sum, which in the freight PEB 243, is also related
15 to UTU.

16 We have, in the Amtrak pattern, an
17 incentive plan alternative which has not gone
18 forward.

19 Those -- both those issues just really
20 need to be put aside.

21 So our approach is to say start with the
22 Amtrak internal pattern. And the goal is to, see

1 can there be more money and GWIs provided than
2 what's in the pattern agreements.

3 Well, which GWIs are potentially subject
4 to adjustment.

5 Well, you have got wage adjustments under
6 the Amtrak pattern from July 1, 2010 to January 1,
7 2014. They have been paid to the other employees.

8 In our view, that's a retro pay issue.
9 You don't have a lot of flexibility going backwards.

10 We have July 1, 2014 at 1.5 percent.
11 January 1, 2015 of 1.5 percent. And not yet paid
12 but, you know, they could be subject to increase if
13 their cost savings offsets.

14 Where can those cost savings offsets come
15 from?

16 We go back to Amtrak's July 17, 2013
17 proposal. We provide an additional 1 percent in
18 2014 for healthcare plan adjustments that were based
19 upon the freight settlement.

20 Let me just pull up another slide. Yeah,
21 Dr. Gillula's. Yep, that one.

22 There has been discussion about

1 Dr. Gillula's comparability analysis and the
2 argument that it has misclassified people. And it's
3 up.

4 This slide is the slide that incorporates
5 total benefits and compensation. And it really is
6 irrelevant what the wage and salary provisions are
7 for purposes of this slide.

8 You just need to step back and look at
9 numbers sometimes and see what jumps out. And the
10 number that jumps out is 123 percent.

11 And what's that about?

12 That's really saying how far above the
13 private sector the BMWED BRS, the AmPlan benefits
14 are. That's huge.

15 It's not -- you know, there's just no way
16 of talking about it, no way of denying it. There
17 was no effort to deny it.

18 Tom Rand came in and talked about a
19 comparability analysis of healthcare plans across
20 the industry.

21 We now have this government thing where,
22 you know, you have precious metal categories that

1 are like airline frequent flyer classifications.

2 Well, the AmPlan is platinum plus. It's
3 the top. Okay?

4 So what does that mean? Where there's
5 money. That's where there's money that can be used
6 for GWIs through some proper cost savings.

7 The last slide of Tom Rand's presentation
8 really laid out an analysis which, based upon
9 subsequent testimony from Mr. Rand, you probably
10 need to adjust the numbers.

11 But basically it says that if you look at
12 the July 17, 23 (sic) proposal in mediation, which
13 probably can be adjusted up somewhat now with the
14 pharmacy managed care adjustments he subsequently
15 testified to. He got over 1 percent, just over one
16 percent with respect to that.

17 And then he looked at a couple of other
18 issues sticking with prescription, prescription
19 co-pays could be implemented now that maybe overlap
20 with the managed care, and you have to look at that
21 number. And then he also looked at premiums.

22 Why don't we have a 15 percent premium?

1 That's an interesting question given \$200
2 and 177.54 in arguments on that. Do you want to
3 eliminate that?

4 It's 15 percent. That's easily monetized.

5 What's the bottom line? Well, if you look
6 through the record and massage the numbers, as I
7 know Mr. Jaffe will, there is perhaps something
8 approaching 1.5 percent in what is really in the
9 range of the doable in terms of healthcare cost
10 contributions savings.

11 Mr. Rand also looked at a consumer driven
12 health plan. And that has been implemented, just
13 recently implemented, with Amtrak's management
14 employees. And that would generate an additional 1
15 percent.

16 Now, that's a big step, but that's a
17 possibility.

18 So if you look across the record with
19 respect to healthcare, that's really the starting
20 map on where you could potentially go there.

21 What's -- where else do you look? Well,
22 you look at 2015.

1 2015 is on the radar screen because delay
2 has provided the parties the limited time to deal
3 with issues, limited time to deal with cost savings
4 that could be generated.

5 And I should say on the healthcare plan, I
6 mean, we're not in a position to implement anything
7 at this point before July 1, 2014. So when are your
8 savings coming in?

9 You're already at the end of the contract.

10 We had this lengthy discussion about 1.5
11 versus 3 percent and different positions. And, you
12 know, the two proposals do have a 1.5 percent
13 difference.

14 However, if 2015 is implied, that
15 difference could go away very easily. But that's a
16 duration change. Is that something the Board should
17 consider?

18 Along with everything else, that's
19 worthwhile because 2015 is actually a period of time
20 over which you could have obtained some cost savings
21 through healthcare adjustments.

22 So the one other point I should make with

1 respect to 2015, is the me-toos are not applicable
2 after 1, 2015. So anything you do after that has no
3 me-too implication that will have implication to
4 what the other Amtrak employees look at as they
5 enter their round, or whether they decide they
6 wanted to change some duration depending upon what
7 the Board implemented.

8 Bottom line is, we are at the end of a
9 five-year deal. And creativity is -- would benefit
10 from time. But whether -- you know, that has not
11 been an issue that has been briefed or argued here,
12 and we don't intend to do it now. We're just
13 identifying it as an issue that the Board should
14 look at.

15 Okay. Work rules.

16 Now, the Amtrak internal pattern includes
17 these four administrative work rules, which I'm not
18 going to go into.

19 I will talk about the craft-specific work
20 rules that have generated a lot of controversy, one
21 that we proposed to the BMW, that six-year -- that
22 future employees, the employees who in the future

1 get trained for a certain -- should be locked in
2 under the training agreement for one year instead of
3 six months.

4 We think we made a strong argument that we
5 have a problem. And we just put up the rebuttal
6 chart that Bruce Pohlot prepared really showing what
7 portion of our folks leave after six months of
8 training.

9 You know, within that seventh month, we're
10 not losing a few people.

11 Now, Mr. Wilder said, Oh, this is a core
12 job security protection.

13 We don't understand that because you're
14 requiring people to stay in a job 12 months instead
15 of six months.

16 This is about vacating positions.

17 What this is about, on the Union's side,
18 is the ability to move around. That's what it's
19 about.

20 And as Bruce Pohlot said, people like to
21 go punch their ticket, get on a seniority roster,
22 and then sometime in the future they can go back to

1 the position.

2 There was discussion, well, this is going
3 to be a disincentive for people bidding into these
4 training positions.

5 No. It's going to get different people.
6 The people who are going to go into the positions
7 are the people who are going to want to stay there.

8 They might be more junior, but it's going
9 to keep senior people from just playing the system
10 of getting their card punched on all these seniority
11 rosters. And it's going to get people who really
12 want to go in the position.

13 This is not weak evidence. This is not
14 some employees transferring. This is a
15 well-established problem with a very easy solution
16 that would be prospective in application.

17 The BRS 45-, 60-mile rule has really
18 generated more heat than light. It is an attempt to
19 deal with a similar problem of people not bidding at
20 the level they were trained for, and that is really
21 a recurring problem.

22 If the BRS is so upset about that one,

1 there was another work rule that is like the
2 vacancy, the trouble desk.

3 We have a 50 percent vacancy rate in this
4 position, you know. You insist that your guy has
5 got to fill these positions at a certain level, then
6 they don't bid. Allow us to create the
7 administrative position.

8 And the reason we raise this one is the
9 Board asked about prospective and grandfathering
10 application.

11 Well, the trouble desk is one that really
12 grandfathers. I mean, the people who are in it, who
13 want it, can get it. It's just -- it's really the
14 vacancy issue we're trying to address.

15 These rules, in our view, are low lying
16 fruit. Despite the protests from the BMW and BRS,
17 they are comparable to other concessions by other
18 groups.

19 All the other work rule proposals from
20 Amtrak are for purposes of getting these guys more
21 money.

22 They didn't like the Amtrak pattern. They

1 wanted higher GWIs. Here's things we identified as
2 alternatives. No. You can't talk about that.

3 It has become a topic in this proceeding
4 that really exceeds what is before the Board.

5 We think the bottom line is that Amtrak
6 internal pattern approach can be built on the basic
7 Amtrak wage pattern, and what has been paid already
8 becomes retro. Additional GWIs funded through
9 healthcare cost savings. Consideration that those
10 GWIs be paid during 2015, and maybe a real
11 additional year in the contract. The Amtrak pattern
12 on administrative work rules. And one
13 craft-specific work rule for each.

14 That is an appropriate structure for
15 settlement. It is within the Amtrak pattern, but it
16 responds to issues that I have raised.

17 Now, just for purposes of your analytic
18 approach, I thought it would be useful to do the
19 mathematical exercise of going in the other
20 direction.

21 Now, let me make it clear.

22 Amtrak does not believe any form of

1 freight settlement is an appropriate basis for
2 settlement, should be given serious consideration
3 for the Board. But as a reality check, and
4 particularly that any form of freight pattern with
5 the title "freight pattern" on it is going to
6 generate me-toos. It's going the destabilize our
7 labor relations.

8 It's going to reward bad behavior, and
9 it's going to pose tradeoffs that are not tailored
10 for Amtrak.

11 But as a mathematical exercise, to test
12 the Amtrak internal pattern approach, deconstruct
13 the freight settlement.

14 What do I mean?

15 Look at those freight numbers and then
16 say, How much would you have to adjust to deal with
17 the UTU equity?

18 You got to take money out. You got to
19 take money out. The 1.6, the lump sum, that's got
20 to go. And you will wind up, you have got very
21 different numbers at different times.

22 There has been testimony presented at the

1 request of the Board about the adjustment for delay
2 in healthcare cost savings.

3 Tom Rand provided an analysis that that
4 was \$3.7 million. Again, that's a lot of money that
5 has to come out of the freight approach.

6 I'm not going to address the argument by
7 Mr. Roth that you need to give an adjustment for the
8 time value of money of foregone wages to this group
9 of employees when their representative delayed
10 bargaining and refused an interim agreement.

11 And then you got to deal with 2015. The
12 2015 issue is still there with the freight deal.

13 And if you did the adjustments that would
14 really be necessary, you would have something that's
15 not going to look like the freight deal to any
16 employee who is going to look at it.

17 It would not be worth the freight label,
18 and it would not be viewed by the employees who
19 received the money as the same thing.

20 What does that mean?

21 That analysis drives you back to the
22 Amtrak internal pattern. It's where you have to

1 start. It's where you have to start as a matter of
2 factual and legal analysis.

3 And that's the best platform on which to
4 try to do something to close this 4.5 percent
5 difference so an enriched and perhaps extended
6 Amtrak internal pattern approach with cost savings
7 offset and healthcare is the most promising
8 approach.

9 I want to have a brief final discussion on
10 work rules because what I have just suggested
11 doesn't have the cost savings for work rules because
12 the folks across the table aren't interested in it.

13 My retired partner, Harry Risetto, used to
14 say Railway Labor Act practice is like domestic
15 relations law without divorce.

16 And if you have been married for a long
17 time, I'm going to identify a phrase you're familiar
18 with: I don't want to talk about it.

19 You have either heard that phrase or you
20 have uttered that phrase or you have done both.

21 And when it has been uttered, what is very
22 apparent is you're going to have to talk about it,

1 and you're going to have to talk about it sooner
2 rather than later.

3 BMW and BRS complain about the UTU bonus
4 plan, but that is a model on how you resolve
5 difficult issues and make tradeoffs.

6 The irony is that in this proceeding,
7 there has been more talking, perhaps not discussion,
8 about work rules than there have been in 14 years of
9 these bargaining relationships.

10 There has been no meaningful bargaining,
11 but at least we have articulation of positions.

12 The reality is Amtrak is different from
13 the freights. We have a different operation. We
14 have different overtime problems.

15 And Bruce Pohlot's testimony to explain
16 the options really showed the problems, the work
17 rule problems.

18 I actually come from a railroad family.
19 My father was a locomotive engineer on the
20 Pennsylvania. And a certain irony in my life that I
21 do this for a living. I'm like Michael Corleone in
22 the Godfather. I can't get away from the family

1 business. Right?

2 But it's important in my background
3 because it becomes sort of a reality check.

4 I sometimes listen to problems and say,
5 you know, How would my father hear that issue? You
6 know, Just what would be his perspective?

7 And there was one thing in this proceeding
8 which was the only thing I think would have gotten
9 his attention, and that was Bruce Pohlot's testimony
10 that, you know, we have highly skilled BMWED guys,
11 and they're bidding down to flagmen to get overtime.

12 Well, we all know workers like overtime.
13 That wouldn't have surprised him.

14 What would have surprised him would have
15 been the issue of pride of craft, that people who
16 are highly trained are going to low level positions
17 for overtime.

18 There's something wrong.

19 And this isn't any disservice to flagmen.
20 Flagmen perform an important function. They help
21 keep people from getting killed and injured. That's
22 important.

1 But if you have been highly skilled on the
2 most complex machinery in the BMW craft, and you're
3 bidding to flagman, there's a problem in the
4 incentives under the work rules.

5 That's a problem we need to address.

6 And if we don't do it in this proceeding
7 because they don't want to do it in this proceeding,
8 eventually you got to deal with it. It's going to
9 be an issue in the next round. Those problems don't
10 go away. And just saying, you know, we're not
11 interested in the Company's interest in this area,
12 just doesn't get anywhere.

13 We have got excessive overtime. We have
14 got Congress asking for everyone who gets over
15 \$35,000, the President has to approve it. That's
16 not a good situation.

17 I think the folks across the table should
18 recognize that, and there should be a basis for
19 further discussion.

20 Amtrak recognizes this case presents with
21 not a zero sum gain, a case where one party is going
22 to be more happy with the outcome than the other.

1 And PRLBC is responsible for the position it is in.

2 They gambled on a strategy of delay of the
3 freight settlements.

4 If the Board rejects the PRLBC's position,
5 as we think it must on this record, it can still
6 give a settlement package that significantly
7 improves GWIs from the Amtrak internal pattern
8 through offsetting healthcare and make changes that
9 won't break the pattern and will be a settlement
10 that PRLBC will not be happy with, but they won't
11 need to feel they're injured.

12 The Board -- Amtrak asks this Board, at
13 last, to remember PEB 242.

14 Carefully weigh the parties' conduct and
15 do the right thing.

16 Thank you.

17 ARBITRATOR JAFFE: Thank you, Mr. Reinert.

18 Any additional comment, Mr. Wilder?

19 MR. WILDER: Yes. I think if we could
20 take ten minutes, that would be a good idea.

21 ARBITRATOR JAFFE: That would be fine.

22 Not a problem. We're off.

1 (A recess was taken.)

2 MR. WILDER: Mr. Chairman, Members
3 Fishgold and Das, because I proceeded first on this
4 closing argument, I took the opportunity to
5 anticipate what I thought would be many of my
6 opponent's arguments.

7 And because I have said that this is not
8 about accolades to anyone, Mr. Boardman or even to
9 me, I'm not going to pat myself on the back about
10 it. But you have heard much of what my rebuttal
11 would be already, and I'm not going to restate that.
12 But I am going to look to another tool.

13 You recall that I ended my discussion of
14 the pattern principle with the statement, which I
15 thought was as clear as the English language would
16 permit, that we are not urging the Board to look to
17 the future and decide that the freight pattern will
18 always be applicable to Amtrak.

19 That's what I said, and I meant it.

20 And I meant it because the theme of the
21 Organizations' case is that when something is going
22 well, when you have a bargaining construct or

1 strategy that has lent itself to stability and labor
2 peace over time, you stick with what works unless
3 there are compelling economic reasons to change.

4 And what I said for this round is there
5 are no compelling economic reasons have been shown
6 for departing from what has worked.

7 That may not be true in the future. And
8 the parties, given the genius of the pragmatic
9 nature of collective bargaining, will adjust to it.

10 Now, that gets to the point about always
11 waiting for the freight deal to be entered into on
12 the national freight carriers, delay in bargaining,
13 et cetera, et cetera. And each round will respond
14 to the kinds of economic pressures that I have just
15 described which I cannot now anticipate.

16 All I can deal with is this record. All
17 you can deal with is this record.

18 And I urge not to -- and I probably don't
19 have to say this, but I will anyway, don't buy into
20 the parade of horribles you have heard in my
21 opponent's closing argument. They are not there.

22 Equally, we have heard about delay,

1 less-than-exemplary conduct, who should be rewarded,
2 who should go to the corner, who deserves a
3 time-out, et cetera, et cetera.

4 This, I would hope, can be seen as frankly
5 a sophomoric approach to a serious matter, which is
6 collective bargaining.

7 In this round, both sides developed a
8 bargaining strategy. Nothing wrong with that.
9 That's what you're expected to do.

10 Both sides stuck to their guns throughout,
11 and are still sticking to their guns today. That's
12 what this case is about.

13 No one delayed anymore than anyone else.

14 The questions about would it have been
15 nice to do this, would it have been nice to do that,
16 et cetera, et cetera.

17 Collective bargaining is not a tea party.
18 We're not going to judge collective bargaining norms
19 by the norms that occur on Sunday morning, or at a
20 tea party, et cetera.

21 This is serious business, and the parties,
22 frankly, have always and will always try to leverage

1 their positions to maximize their bargaining
2 strength.

3 And if that involves a recourse to the
4 First Amendment -- the First Amendment deals with
5 the freedom of speech. I want to add that because
6 it's apparently unclear what freedom of speech is.

7 And that occurs in labor disputes. And
8 this is and was a labor dispute.

9 Now, moving from that area to some more
10 technical theories. Let me return to the 200 versus
11 177.54, and I promise to limit this to less than a
12 minute for fear that somebody will scream, and I
13 don't want that to happen.

14 The difference between 200 and 177.54 at
15 the conclusion of the last agreement -- that is when
16 the last agreement became amendable -- was due
17 entirely to the differential costs of plan
18 administration between the AmPlan and the national
19 plan and different demographics between those two
20 plans.

21 That's what it was all about.

22 And I commend the PEB 242 decision at the

1 page numbers that I cited in my opening to you for
2 recognition that that has been seen by someone other
3 than me.

4 Now, moving into the pattern argument.

5 What I tried to make clear in my initial
6 remarks is that the testimony in this case deals
7 more with internal pattern, external pattern, and
8 what label you attach to what.

9 That's not really the point here.

10 The point is, and Mr. Roth testified to
11 this directly, that not all patterns are created
12 equally.

13 There are some patterns due to their
14 nature that are proven more durable and enduring
15 over time, and, therefore, are better attributed to
16 labor peace. And that is what the issue is truly
17 about, not so much the label that's attached to it.

18 You remember Mr. Roth's testimony about
19 the organizations that were the first to sign onto
20 the so-called TCU agreement.

21 One was the JCCC. Then there was the TCU.
22 Then there was the Onboard Service Workers.

1 And do you remember the testimony to the
2 effect that 80 percent of the job classifications
3 within the JCCC don't have any comparator within the
4 freight industry or with the engineering crafts?

5 For the TCU, 70 percent fall into that
6 same category of not having a comparator within the
7 freight industry or the engineering crafts. For the
8 Onboard Service Workers, of course, it is 100
9 percent.

10 And I ask, is this the stuff that will
11 make an enduring pattern?

12 How do you judge internal equities of
13 which we heard so much from my colleague and
14 opponent if there's no comparability at all?

15 That's the question.

16 Some patterns are more enduring and are of
17 higher quality than others. That is a key point of
18 the Organization's case and a key point that was
19 made on this record.

20 Along those lines, if we could bring up
21 slide 8, please, that was part of Mr. Reinert's
22 presentation. Thank you.

1 Now, this was a slide that was prepared by
2 Dr. Gillula and is subject to the imperfections we
3 described before.

4 But a comparability study is not based on
5 the same job classifications that is largely based
6 on different industries not even covered by the
7 Railway Labor Act, and doesn't cover fully 25
8 percent of the incumbents in the engineering crafts.

9 It's not the kind of chart, however pretty
10 it is, that can be appropriately relied on in a
11 serious proceeding of this sort.

12 Moving to Slide 9.

13 This relates to the point that I made a
14 moment ago, and that is that not all patterns are
15 created equally. Some are weightier and more
16 enduring than others due to how they are
17 constructed.

18 Do you remember I used the term how the
19 TCU pattern was created out of thin air and
20 nothingness?

21 The PEB decisions relied upon and cited in
22 Slide 9, PEB 222, PEB 97, and PEB 57, did involve

1 internal patterns, as Mr. Reinert pointed out. But
2 what he didn't point out was the genesis of those
3 internal patterns.

4 In each of those cases, the genesis of
5 those internal patterns lie -- I'm sorry, lay in an
6 external pattern.

7 It was based on something.

8 It was based on something meaty that could
9 promise an enduring, stable collective bargaining
10 relationship.

11 That's not true here.

12 That's a fundamental difference between
13 the TCU pattern, the TCU plus-12 pattern that is
14 being urged on this Board.

15 Fundamental and fundamentally important.

16 There was a reference to the freight
17 pattern as being a "wooden approach."

18 Well, if you're going to have a wooden
19 approach, that is if you're going to take an
20 agreement done by somebody else and drop it on the
21 table, then I submit that it makes more sense to
22 take a piece of wood that at least bears some

1 resemblance to the job classifications for which you
2 are bargaining, and that is not true with the TCU
3 agreement. It's just not there.

4 There is no job comparability as between
5 the unions that joined in that settlement and the
6 engineering crafts. There just is not.

7 And that is not something that's going to
8 contribute either to prompt collective bargaining or
9 an enduring relationship.

10 Now, I'm going to ask that we call up
11 slide 23, please.

12 This was an attachment to the internal
13 union communication from the leadership of the BRS
14 and the BMWED to their respective memberships, and
15 it deals with a "4.5 percent gap."

16 Now, it's hard to see on the screen, but
17 perhaps on your hard copies you could look at the
18 footnote. What the footnote says for the benefit of
19 those who don't have hard copies: "TCU Amtrak
20 amendable January 1, 2015 no increase for 2015
21 assumed."

22 Now, we have talked about this before. I

1 know I mentioned it initially in this closing
2 argument. But we think that it is unrealistic to
3 assume that there will be no wage increase for the
4 TCU plus the other unions embracing that pattern in
5 2015.

6 The factor is that union members want to
7 know something and they want to know what an
8 agreement would like with an extra year. And it's
9 incumbent on the membership to tell them -- it's
10 incumbent on the leadership to tell them with
11 appropriate qualifications.

12 That is what was done here.

13 It is a mistake to read this as an
14 endorsement of something other than what was urged
15 in this proceeding by the Organizations.

16 Four and a half percent gap relies upon a
17 wage freeze in 2015 to exist. Absent that wage
18 freeze, that doesn't happen.

19 Now, the comments about the UTU conductor
20 bonus during Mr. Reinert's closing argument, and we
21 are assured that Amtrak obtained value for this.

22 Another way to look at this, first of all,

1 and I think a more instructive way, is to ask what
2 did the UTU give up to get the 2 percent?

3 Were they asked to give up job security?
4 Were they asked to give up seniority rights? Were
5 they asked to give up any one of the things that the
6 engineering crafts have been asked to give up, both
7 to sign onto the Amtrak pattern or to obtain
8 additional GWI?

9 I think the answer has to be no.

10 As I said in the -- my opening part of
11 this closing argument, that what is required of the
12 UTU members to obtain this performance bonus is
13 exactly what is required of every member of the
14 engineering crafts.

15 They come to work. They maintain
16 qualifications. They satisfy their current and
17 their promotional training, and they do their job.

18 That's a differential.

19 You can't -- you just -- no matter how you
20 paper that, you simply cannot disguise that fact.

21 And finally, relative to my opponent's
22 comments about how the Board might approach this

1 case, I think my initial comment is that there's a
2 time and place for everything, that time and place
3 for closing argument, what should occur in it is
4 advocacy.

5 You can't advocate your client's cause if
6 you don't know what it is.

7 It's difficult to advocate for anything if
8 it keeps shifting and shimmering and changing and
9 moving off into the future.

10 You have got to have something in front in
11 order to investigate it to determine whether it has
12 merit and whether it should serve as a matter of
13 settling this case.

14 So I'm not going to bargain during closing
15 arguments. That, I'm not going to do.

16 But I am going to point out something that
17 has to be said, and this is extraordinarily
18 important.

19 Do you remember the comment about
20 healthcare and the nature of the AmPlan as a
21 platinum plan, and there is money there that could
22 be transformed into GWI? That's fine.

1 Now, think of something else shown by this
2 record. GWI, as conceived, is flat, moving across
3 different time periods. The base of healthcare
4 inflation is steadily up at 8 and 9 percent.

5 So a healthcare dollar projected into the
6 future has a much different value than a wage dollar
7 projected into the future.

8 To go about that on a one-for-one basis is
9 an invitation to get snookered. We ask that you
10 take that into account.

11 I am not going to say anything that I have
12 said before. I'm going to try not to repeat myself,
13 and that is because we may award gold stars to this
14 closing argument, and I wouldn't want my behavior to
15 be judged harshly.

16 Thank you.

17 ARBITRATOR JAFFE: Thank you, Mr. Wilder.

18 Anything additional by way of closing
19 argument, Mr. Reinert?

20 MR. REINERT: This is a long hearing.

21 We're all pretty tired. And I think we
22 have heard most of what we needed to hear. And I

1 was trying to think of some positive way to end this
2 proceeding, and that's not easy to do.

3 But one of the gentlemen bargaining
4 representatives gave me an opportunity.

5 He approached me during the break and
6 said, Your cookies are great; it would be really
7 nice to have some to go. So we have bags and
8 another tray of cookies outside.

9 Thank you.

10 ARBITRATOR JAFFE: Thank you.

11 I assume nothing further after that from
12 your end, Mr. Wilder; correct?

13 MR. WILDER: Correct.

14 ARBITRATOR JAFFE: Before we go off the
15 record, the Board would like to extend thanks to
16 counsel on both sides for their assistance in terms
17 of dealing with these very significant and in a
18 number of respects nuanced and complex issues.

19 We want to thank you for your courtesy,
20 which we expected, frankly, from having had the
21 privilege of working with you both before. But it's
22 always welcome and nice to see.

1 We want to also thank the witnesses for
2 their assistance, and the audience for your courtesy
3 and attention throughout as well.

4 With that, we will stand in a adjournment.

5 The Board will be in touch with counsel
6 relative to the timing of the issuance of the award.
7 We have a commitment to appropriately expedite it
8 from our end. The details of the precise date needs
9 to be worked out.

10 Is there anything else before we stand in
11 adjournment?

12 MR. REINERT: Nothing further from the
13 company.

14 MR. WILDER: Nothing further.

15 ARBITRATOR JAFFE: And I didn't want to
16 leave Joey out.

17 And I want to thank him as well for having
18 done seven days of next-day production of the
19 transcript, not an easy task.

20 ARBITRATOR FISHGOLD: Here, here.

21 ARBITRATOR JAFFE: Okay.

22 With that, we're done. Thank you.

1 (Whereupon, the proceedings in the above-captioned
2 matter were concluded at 1:20 p.m.)
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CERTIFICATE OF REPORTER

I, Joseph A. Inabnet, do hereby certify that the transcript of the foregoing proceedings was taken by me in Stenotype and thereafter reduced to typewriting under my supervision; that said transcript is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Joseph A. Inabnet
Court Reporter