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

ARBITRATION HEARING
Vol. 4
January 14, 2014
IN THE MATTER OF AMTRAK AND PRLBC

BEFORE THE AMTRAK/PRLBC ARBITRATION BOARD

IN THE MATTER OF                  )
NATIONAL RAILROAD PASSENGER       )
CORPORATION (AMTRAK)              )
and                 )
BROTHERHOOD OF MAINTENANCE OF     )
WAY EMPLOYEES (WMEED), 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 4

The hearing in the above-entitled matter recommenced on the 14th day of January, 2014, at 9:04 a.m., at the offices of Morgan Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, NW, Washington, DC.

BEFORE: IRA JAFFE, ESQ. CHAIRMAN
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EXHIBITS
NUMBER MARKED AND ADMITTED
Amtrak 900 955

PROCEEDINGS
(Witness sworn by the arbitrator.)

ARBITRATOR JAFFE: At your convenience, Mr. Reinert.
Thereupon,

JOSEPH BOARDMAN
Called for examination by counsel for the Carrier, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION
BY MR. REINERT:
Q Good morning, Mr. Boardman.
Can you please state your full name for the record?
A Joseph Houston Boardman.
Q And what's your current position?
A I'm the president and chief executive of Amtrak.
Q This morning would you like to give us a
few introductory remarks?
A I would.

Good morning to everybody. It's really an honor to be here with our partners this morning, especially the BMWE and the BRS.
I think I greeted everybody when I came in the room. I think it's a good thing that we're here this morning.

I think it's important for me to say how much I appreciate the willingness of the leadership of the BMWE and BRS to agree to arbitrate the question before this Panel.

I understand that, given the circumstances of this meeting, that might sound a little odd in the beginning. But the fact is that we're here together meeting before this Panel is really nothing short of remarkable. It would have seemed almost unimaginable just a few short years ago.

And it wasn't so long ago that things were very different at Amtrak. And I can vividly remember what the mood of our company was -- was like when I joined Amtrak as president and CEO in November of 2008.

Q Before we go into that story, can you please provide us a brief summary of your background and experience?
A Certainly. Let me explain really how my background has colored my views, frankly, as president and CEO of Amtrak.

I also worked with Amtrak on a number of occasions during the eight years of service as the Commissioner of Transportation for the State of New York. And I sat as a member of the Amtrak Board of Directors, which was part of my role in the federal railroad -- as federal railroad administrator.

That position really taught me the importance of safety for employees and the railroad, along with all the other positions I have held in my 40 years in the transportation industry, which is on the slide behind you.

Q Can you explain some more what your view on safety is and how it has affected your career?
A Well, the experience really that I have had has taught me a great deal about Amtrak and the railroad industry and about safety.

I came to appreciate the work that has been done in many places, to engage the railroad workforce and to develop a modern collaborative work environment, one that really allows employees to work in ways that are challenging and satisfying to them; making the Company a more efficient and a better place, and dramatically improve customer service as a result.

I came away from these experiences with a strong belief in the value for safety and a strategy that prioritized risk reduction and prevention.

I was exposed to the pioneering work that had been done in the industry on behavior-based safety, which was a little bit different than the rules-based safety that was before it.

One thing that really became apparent to me when I was the FRA administrator was that the unanticipated consequences of a statistics-based approach and a can-do culture making the numbers became the goal, and not safety.

This led really to dysfunctional behavior in the industry: Underreporting of injuries, either because people covered them up or Management found ways to avoid counting them, firing or intimidation of employees who got hurt on the job.

And in my belief, that had to end.

Q What did you do with respect to safety at Amtrak?
A Well, we had been -- we have had nearly two decades of experience with efforts in this industry, and one of the most proven ways to engage the workforce is through safety.

Every person has value and can contribute to our Company.

The best way we, as managers, can demonstrate our appreciation for employees is to care about their well-being.

It was clear to me that the can-do culture had become such a problem what we had a basic responsibility as leaders to turn the situation around and make sure the industry safety system did what it was supposed to do, protect people from harm.
That meant we had not only to create a strategy that would take these matters into account, but we had to implement the educational programs that would shape the way our leaders think so that they would look at the problem in terms we need to address.

We involved managers heavily in the conceptualization of the problem and the development of a strategy through a consultive process, a collaboration process.

That meant we had to -- excuse me, I lost my place. That included the Board of Directors for Amtrak and involved the Unions as well.

We also rolled out a behavioral safety program known as Safe-2-Safer.

The program was designed to lay the groundwork for our new strategy, engage the employees in a program designed to identify and mitigate risks rather than react to them, equipped employees with leadership skills that they need to coach and mentor safe behavior. And the expectation that these would be useful not only for safety improvements but for developing leaders who understood the importance of a collaborative culture.

We spent a lot of time discussing with the Union leadership, and we actively sought out their partnership on Safe-2-Safer.

Support of the leadership has contributed greatly to the success, and it has become part of the Company's culture. And we're now in the process of realigning the operating department to that extent.

Q    How does your experience with respect to the Northeast Corridor affected your view on issues on Amtrak?

A    Really introduced me to the challenge and the opportunity in the Northeast Corridor.

I learned how much had been done and how much has to be done to address the challenges that come with century old infrastructure and even older than century old infrastructure.

I acquired a firsthand understanding of the role our labor partners play in that task. The

BMWE and the BRS, in particular, have grown. And they have played an important role in the Northeast Corridor modernization process.

They're going to play just as great a role in the even bigger projects that we foresee Amtrak undertaking in the next decades.

Q    Can you review the challenges that you faced when you became Amtrak's CEO?

A    Sure. Our ridership has been growing steadily for a decade.

We had a large bill to pay after the PEB, PEB 242. And we needed to grow our business. But we couldn't do that without addressing some of the things that held us back.

I knew going into it that we had a lot of challenges. Customer service badly needed improvement. Our demographics were very gray, like myself, which meant we needed to identify, train, and retain the next generation of leaders.

The organizational culture was heavily authoritarian and based on the traditional railroad approach of motivation through consequences. A lot of leaders had no other authority than a hierarchal authority that existed.

Once I became president, we started to turn over rocks, and we found even more.

I knew from my own experience as Commissioner of Transportation for New York State that Amtrak was hard to deal with.

After I came in, we commissioned a survey of our START partners and found that, while they were generally appreciative of our operational skills, they were highly dissatisfied with us as a business partner. Amtrak badly needed to redefine itself, not in terms of who we were because we knew we were a railroad. We needed to redefine what it meant to be a railroader and how we dealt with one another in the railroad.

Q    What role did engaging the workforce play in this approach?

A    The overarching goal really was a company approach of motivation through consequences. A lot
would also be better for our people who would benefit from the feeling that they were valued, that they were making useful contributions, and that they were appreciated and welcomed in this business. Perhaps more importantly, contented and dedicated employees would help us overcome our persistent customer service challenge. This was the first step toward our vision of a fundamentally different company, where decisions were made in a collaborative environment that engaged all employees and insured that everyone was working toward a common set of goals established by a strategic plan. It included explicit statements about the values, culture, and philosophy that take the basic vision of an engaged and committed workforce and translate it into specific qualities. The result is a more engaged and better aligned workforce that will work in what we call a matrixed organization, which most organizations are today, where employees will work in an environment, marked less by traditional up and down lines of authority and responsibility and more by close and well-integrated relationships that cross traditional, departmental, and operational boundaries.

Our focus in the future will be on an organization that is aligned, not to respond to specific departmental responsibilities, but to work together to achieve our corporate goals along the lines laid out by our corporate objectives. I'll talk a little later in my testimony about some of the detail of the safety efforts and other things that we did to implement this philosophy.

Q How are the approaches you have been describing integrated into Amtrak's strategic plan?
A Our strategic plan starts with safety and security. It's our foundation, to set the industry standard for safety and security to ensure that every customer and employee goes home injury free every day. Customer focus. To acquire and maintain the most satisfied customers in the world. Financial and organizational excellence. To be profitable on an operating basis and be good stewards of the capital in order to secure our long-term viability as a company. We'll attain the goals by building a strong team and a culture that reflects deeply on corporate values. And these include the nature of people. We believe they want to do a good job. I believe they want to do a good job.

The way we work, we believe that the best work is done by consultive cross-functional teams. The way we lead. Leaders make it easier for employees to serve their customers. The way we manage businesses. We must have sound and repeatable business processes that account for internal and external risks.

A set of seven corporate objectives tie all of these efforts together in a comprehensive set of efforts designed to achieve our goals. These include to continue and expand Safe-2-Safer, and expand its scope to improve areas critical to organizational excellence, including employee engagement, management quality, customer service, and organizational development. Integrate operational functions. And then implement best practices related to human capital management to institutionalize Amtrak's values and leadership philosophy and create a workforce equipped to achieve the Company's goals.

Q What role does labor relations play in this strategic plan?
A I note the engagement of Union leadership has been vital to the process. Most of our organizations, including the BMWED, have joined us as partners for the Safe-2-Safer. And the program's success would not have been possible without labor support. It's important to note that, while this program is intended to improve our relationship with our workforce over the longer term, we chose not to link it to the contract negotiation process.
I did this deliberately because we felt that, in the wage increase of PEB 242, it was important for an overture of this kind to come directly to the Union leadership without the possible perception of any quid pro quo. I didn't want to take this -- this to take the place of negotiations either. I wanted to establish a precedent for a new kind of relationship, one that included Management, Union leadership, and every employee in the process where all could participate and contribute on an Amtrak team that would be collaborative and inclusive.

Q    You have mentioned PEB 242. What is your view of PEB 242?
A    I knew there was a need for engaging the workforce when I took over at Amtrak because the gulf between labor and management was probably about as wide as it had ever been. Many of our employees had not had raises in eight years. PEB 242 had decisively rejected this Company's negotiating position. It had found particular fault with management's strategy of trying to withhold back pay to obtain an agreement. PEB 242 also found Management principally at fault for the eight-year delay in the bargaining round. There was widespread discontent, and we needed to find a way to get past it. I think the support of our Board and the transformation process has also been vital. Their understanding of the need for a policy reconciliation and engagement had allowed Management to really work on new ways with labor to change the way Amtrak gets run.

The first step of that journey was tackling the biggest issue, and that was back pay. Q    Can you explain the back pay issue in the PEB 242 and how you addressed it? A    Well, we had accepted -- Amtrak had accepted in principle, but had some caveats. We broke the payment into two lump sums. One to be paid in 2008, and another in 2009. We had to do it because of Amtrak's financial situation. And because of that, we could only commit to pay if federal funding was available. That was a significant point. But I think it raised a lot of questions about Management in our employees' minds, and that was justifiable.

So that in their shoes, I would have wondered whether Management would pay the bill or whether they would try to use a lack of federal funding as an excuse for breaking our word. For that reason, I believed that we, as managers, had an absolute obligation to make that second back pay payment. The Board had characterized it as a "no interest loan with employee raises." And I don't think you can welsh on something like that and retain any credibility.

I committed to that within a month of my arrival, and we were able to deliver it on time. And I think that made a big difference to our employees. It demonstrated that we knew what was important to them and that, when we made a commitment, we would live up to it.

It wasn't easy at the time, but we did it. This was part of getting our house in order, but it was only the first step. Q    How did PEB 242 affect Amtrak's approach to bargaining in this round? A    Well, when it came time for this next round of negotiation, I spent a lot of time considering the kind of company we wanted to build. Our goal was a more collaborative culture and engaged workforce, and it would not survive another prolonged round of acrimonious bargaining. My goal was a set of reasonable agreements rapidly arrived at that would allow Management and Union leadership to focus on working together rather than negotiating. We decided not to delay, and so we kept our proposals fair, simple, and limited. This, again, was a lesson that we learned at PEB 242. We found that our labor partners responded very well to our proposals, and we were able to get agreements very quickly with about 50
percent of our workforce and, over time, with about 84 percent of our workforce. I'm disappointed that we weren't able to get to an agreement with the BMWE and the BRS. I regard their willingness to pursue binding arbitration as a positive development.

Q    How did you implement this bargaining strategy?
A    Well, I think this mood was much more conducive to a set of agreements that were both effective and cost effective in the long run. The freight carriers, for example, came in almost two years after we had established a pattern. We were able to get to voluntary agreements. The freights required a PEB. Our offers weren't as generous as the freights because the relative economics of our business are different. The freights are some of the most profitable businesses in America.

When Amtrak's pattern was set in 2010, the Amtrak deals were very good for employees. With the support and engagement of Union leadership, we were able to make agreements that 84 percent of our workforce could live with. They weren't as rich as the freight pattern, but we aren't a profit making entity either. And we found the Union leadership to be understanding and supportive.

I think we achieved three important things: We met our employees' needs. We safeguarded the taxpayers’ interest. And most importantly, we took a big step away from the punitive problematic negotiations of previous years and toward a vision of a cooperative collaborative organization, and we did it together.

Q    How has this approach affected the overall Amtrak operation?
A    The background for this has been very positive.

Amtrak has set ten ridership records in the last 11 years. We set a record for on-time performance in 2012, and we came within a percentage point of doing that again in 2013. We have worked aggressively to cut our debt, and we have transformed the Management benefits package so that we can align incentives for our strategic plan and save over a billion dollars in the next two decades.

Q    What other positive developments have come from this?
A    We're getting some new equipment, which we need badly in the Northeast Corridor. And that will make our employees' jobs easier and our passengers' experience better.

We're implementing new technologies like e-ticketing. It's the only one in the world, by the way. And point of sale that will make us a more efficient and modern company and ease employees' tasks.

We have greatly reduced our need for operating support.

Q    What do you see as the challenges for Amtrak going forward?
A    Well, as important as the accomplishments are, it's important to remember that we're still under constant pressure from Congress to keep our costs down and operate efficiently.

Amtrak is going to be dependent on the federal government, however, for both operating and capital funding for the foreseeable future. We have a lot of capital needs because both our fleet and infrastructure are aging, and they're close to capacity.

We succeeded in shifting close to $100 million in cost to the states as required under Section 209 of PRIIA, but that won't mean that Congress expects us to ask for that much less in operating funding. We're currently working with the states on a similar Section 212 process for the Northeast Corridor.

But this will be a cost sharing process, so it's not yet clear what the results of that process will be from a financial point of view. We also face competition from carriers because they're not railroads and are not regulated under the RLA.
Many are taking over commuter services, the most recent in Boston. They would very much like to get into the state supported business, which has been Amtrak's fastest growing business line.

Q What specific issues has Congress focused on?
A Continued funding is really heavily dependent on Congressional support. And Congress has continued to press us for economies on long-distance services, food and beverage losses, and overtime. The messages Congress is sending are clear. We're also required to report quarterly on the number of employees whose overtime pay exceeds a certain threshold set by Congress.

The overtime issue for them is a huge one because much of it is incurred for capital work on the Northeast Corridor, which often occurs during the hours of darkness or on the weekend when traffic volumes the lower. While I believe Congress will continue to support us, I expect them to continue to press us for cost savings. Amtrak is going to have to continue to find ways to make our operations more economical and more cost effective.

Q How does all of this relate to the approach of the BMWE and the BRS in this proceeding?
A Well, I think in summary, I think our financial situation clearly limits some of our choices. But the existence of an Amtrak pattern offers the Panel a clear and workable solution that will protect everyone's interest.

We believe, as I have said, that the pattern which 84 percent of our employees have attempted -- accepted is a good one for Amtrak and its employees. If this process produces a richer deal than Amtrak pattern, we need to have offsetting cost saving through healthcare plan changes or work rules that will allow us some efficiencies. I think in closing, it's important for us to consider something I said earlier. A settlement with the BMWE and the BRS is of critical importance to Amtrak.

These organizations are critical to our plans for continued investment in the Northeast Corridor.

While we obviously are not yet in agreement on the issues we have discussed here, the fact that we're here today before this Arbitration Panel represents a tremendous step forward for Amtrak.

This is a tough business and reasonable people can disagree. I think this is such a case. What's important is that we have been able to work together to settle this dispute in a manner that's going the protect our mutual interest in an Amtrak that works.

We're prepared to implement what this Board orders. We ask the Board to see the merits of Amtrak's case and issue a decision that will provide us with an equitable and workable solution.

Thank you.

MR. REINERT: Okay.

ARBITRATOR JAFFE: Thank you, Mr. Boardman.

CROSS-EXAMINATION

BY MR. WILDER:

Q Good morning, Mr. Boardman.
A Good morning.

Q I have several questions about the subject of safety, which is the point at which you began your testimony today.
A As I understand, the name of the program is Safe-2-Safer. Is that correct?
Q Yes.
A Yes.

Q And that was a program that was initiated after you became CEO in 2009?
A Yes.

Q All right. Now, speaking for engineering employees, was there a negotiated safety program in effect in 2009?
1 A There may have been.
2 Q I see.
3 A Now, you have pointed out the difficulty
4 with the safety program that focuses overmuch on
5 statistical reporting.
6 Q Is that correct?
7 A Yes.
8 A I don't know.
9 Q I see.
10 A I don't have the numbers in front of me.
11 A I just know that that is one of the things
12 that has occurred. The actual number has not
13 reduced, but the amount of time lost per injury has
14 been reduced.
15 Q So you're speaking in a total figure but
16 not in percentages.
17 Q Is that what you're saying?
18 A I guess that's what I'm saying, yes.
19 Q But nonetheless the number of injuries has
20 increased, has it not?
21 A Do you agree?
22 Q I think we all appreciate what can happen
23 with an overreliance on statistics.
24 A Yes.
25 Q All right. Now, but the FRA still
26 requires reporting of reportable injuries, of lost
27 time, and the so-called lost time ratio.
28 Q Is that correct?
29 A Yes. Passenger injuries and employee
30 injuries.
31 Q Right. Now, isn't it true that since
32 2009, the -- each of these categories, that is
33 reportable injuries, lost time, lost time ratio,
34 have all gotten worse?
35 A Actually, the lost time ratio, the period
36 of time that an employee is injured, has been
37 reduced.
38 Q From what to what?
39 A I don't have the numbers in front of me.
40 I just know that that is one of the things
41 that has occurred. The actual number has not
42 reduced, but the amount of time lost per injury has
43 been reduced.
44 Q So you're speaking in a total figure but
45 not in percentages.
46 Q Is that what you're saying?
47 A I guess that's what I'm saying, yes.
48 Q But nonetheless the number of injuries has
49 increased, has it not?
50 A Do you know what the numbers are.
51 A I would have to look at the numbers.
52 Q No. I'm referring to trends.
53 A I think we were about the same amount in
54 terms of the number of injuries.
55 Q All right. Is there anything in the trend
56 that those statistics or those metrics suggest that
57 worries you as a CEO focused on safety?
58 A Yes.
59 A When we first started this program, we had
60 a huge number of increases in the number of injuries
61 reported, which was a good thing.
62 A And the reason it was a good thing was
63 because it was an endorsement of the fact there had
64 been a hiding of injuries, and people were not
65 reporting injuries because of the same reasons of
66 being pressured not to report injuries.
67 A So in order for us to make improvements,
68 we needed to know what those injuries were. And so
69 it bothered me greatly that we had this problem.
70 A But it didn't surprise me greatly, and it hasn't
71 surprised the freight industry either since they
72 eliminated the Hammond (phonetic) award.
73 A Because what we had -- I don't want to go
74 on too long for you, but what we had here was a
75 situation where there were people looking for these
76 awards based on statistics so that the supervisory
77 staff and others in Management wanted to hold down
78 those number of injuries and report fewer so that
79 they could win.
80 Q That's not the right way to run a safety
81 program.
82 Q All right. And how are you addressing in
83 2013, 2014 the need to reverse the trends that we
84 spoke of?
85 A One of the things that is particularly
86 important about Safe-2-Safer is it is an
87 employee-run in many ways program that allows each
88 employee to observe another employee so that it's at
89 that level to make suggestions for improvement to
90 reduce the risk for the employees.
91 A And we have found by that process that
92 folks are much more engaged in the work in the
93 company which was an important element of this.
94 A That there was, in most places, an
95 improvement in work team relations and in leader
96 member exchanges so that Management and leaders and
97 Union members were really talking to each other more
98 and finding out where the problems were.
99 A That will be expanded and continues. It
is our culture now to have Safe-2-Safer. This is a different way to manage safety.

Q: Do you intend to increase resources that are provided by Amtrak to the Safe-2-Safer program?
A: We have been regularly, as we find the problems and can afford to fix the problem, fixing them, yes.

Q: And there are a number of consultants that have been retained by Amtrak for this program.
A: There's always consultants.

Q: All right. And are there full-time coordinators as well?
A: There is.

Q: You mentioned, during your direct testimony, that the -- Amtrak was displaced from the Boston commuters operation by a commuter railroad?
A: Actually, it was -- that was done ten years ago. But the one that displaced us has just been displaced. That was what I was referring to, and I probably shouldn't have gone off on that.

Q: In the second competition that you referred to, did Amtrak submit a bid?
A: We did not.

Q: I see.
A: And did you say that the successful bidder was not subject to the Railway Labor Act?
A: The Keolis, which was the successful bidder, has been setting up separate organizations throughout the nation. And in some cases, they are; and in some cases, they aren't.

Q: Do you happen to know whether the request for proposal for that work required a carrier subject to the RLA?
A: I don't know.
Q    And what does that firm do?
A    The Labor Bureau is a -- provides labor relations consulting and financial and economic adviser services to labor organizations. And we have done so over the past 90 years, probably the oldest continuous certainly labor consulting firm in the country. And we assist with our clients in a variety of matters requiring any labor relations expertise or technical knowledge, including -- mostly in support of their collective bargaining activities. This includes research and preparation for negotiations, arbitration and fact finding proceedings, contract analysis, comparative compensation surveys, corporate financial and economic performance analysis, hands-on advocacy in contract negotiations, and serving as partisan arbitrators in interest arbitration cases. And of course, providing economic and financial expert testimony in various proceedings, including arbitrations, fact findings, and Presidential Emergency Boards.

Q    Mr. Roth, I'm going to draw your attention to Roth Exhibit No. 71.
A    Yes.
Q    Is that your CV?
A    It is.
Q    It's a basic kind of short form resume, yes.
Q    All right. And that elaborates upon your experience and qualification to testify --
A    Yes, it does.
Q    -- in this proceeding?
A    It does.
Q    And, again, I have been with the firm for 40 years. I have been the director and president of it activities for about the last 35 years. And over the course of that time, I have served my clients in a variety of industries, including appearances as an expert witness in arbitration proceedings in healthcare, in police and firefighter cases, school boards, and a variety of other industry, newspaper publishing. In the transit industry, I have made appearances as an expert witness in interest arbitration cases in well over 200 cases. I have lost count. They're not recorded here in this Exhibit No. 71, but they're in the hundreds in terms of my actual appearances.

Q    In fact, the Chairman and I first met over 30 years ago in a nurse's case.
A    My apologies for reminding you that you have been in this business that long, but this -- that was a DC nurse's case, I believe, back in the early '80s. The focus of my practice, however, is really in the transportation industry, principally in the urban transit industry, airlines and railroads. And that has been the concentration of my professional work over the past 40 years. In that connection, I have, in terms of my experience in the urban transit industry, I have served in a variety of capacities, anywhere from providing for economic support, advice for the negotiating team, all the way to serving -- drafting proposals and serving as the chief negotiator for several of the major transit systems in the Northeast, including Washington and Baltimore and Boston, for example.

Q    simpy appeared as an expert witness on behalf of my clients. And such as the case in New York City, for example, even Boston, Washington, Baltimore Pittsburgh, a variety of other major urban transit systems throughout the United States. In the transit industry, I have made appearances as an expert witness in interest arbitration cases in well over 200 cases. I have lost count. They're not recorded here in this Exhibit No. 71, but they're in the hundreds in terms of my actual appearances.

Q    In the -- and also, in that sector, I also serves as a partisan and a Board member as well as presenting the economic evidence. For example, I have a case a week after next in the Kansas City Area Transit Authority with -- where I'll be sitting on the Panel as a partisan arbitrator with your colleague, Rich Bloch. And that hearing begins a week after next. In the airline industry, I have typically served on the negotiating team as a financial and
economic adviser to unions representing ground service employees. And I have done so on a regular and continuous basis in every round of bargaining on one airline or the other since the early 1990s. My clients are, as I said, almost exclusively the ground service employees, and they are represented typically by either the TWU or the International Association of Machinists. In that connection, I have also participated as financial and economic adviser. And normally the chief or the sole lead financial adviser in the restructuring cases that have been taking place in the airline industry over the past 20 or 30 years. I began in the early 1990s with Northwest Airlines, where I was the principal architect of the ESOP when the employees purchased the airline in part. We followed up in a later round in the mid 1990s on United Airlines when we also developed an ESOP, which, again, I was an architect of. And, again, leveraged the contracts in order to purchase equity in the company in order to keep it from -- keep it solvent, keep it from tipping into bankruptcy. But unfortunately, over this period of time, as the Panel knows, the airline industry has not been successful largely in avoiding Chapter 11. And there has been a number of 1113(c) cases over that period of time. And as indicated in this Exhibit No. 71, I have participated as financial adviser to the ground service employees in the numerous restructuring cases. In fact, probably 14 all told, some in and some out of bankruptcy. But all of the -- I have handled all of the bankruptcy cases for the airline and ground service employees in the airline industry with the exception of Delta, which of course, where the employees are not organized on the ground. And in that capacity, I would analyze the financial position of the company, determine whether labor cost restructuring was necessary. I would determine whether the targeted savings for my client were fair and reasonable and equitable under the 1113(c) requirements, as opposed to other stakeholders. I developed all the costing models to value changes made to the collective bargaining agreements. I would develop and design positions on financial returns such as profit sharing, stock options, you know, bankruptcy claims, and the like. I would serve as union spokesman at the bargaining table on financial and economic issues. And I would audit the terms of other collective bargaining agreements to make certain that other stakeholders were making their fair share toward the process. I would prepare ratification materials. In each of the cases, I have written an expert report which was filed with the court and appeared, I think, in three of the five -- three of the five bankruptcies, I think, we actually went to trial and where I would testify before the court. But as indicated in the resume here, my experience in the airline industry is extensive.

I'm currently at the bargaining table with United Airlines. We just finished four large contracts with the IAM where we merged the Continental and the United Airline agreements. I'm currently representing the dispatchers, which is an independent union, representing their actually end on Delta as we speak. And I just finished the American Airlines restructuring the old 1113(c) work for the TWU. That was my responsibility. And I'm currently engaged with them on the implementation of those terms of that -- of those agreements, including the equity -- developing the formula for the equity, which was given in consideration for the concessions that the union made during the process. The TWU actually outsourced that process to my shop, and we're engaged in it as we speak. The -- my experience in the railroad industry is also fairly extensive. I mean, I have a list, a partial list -- it may be somewhat complete actually, it's -- I have
1 appeared as an expert in 22 -- before 22
2 Presidential Emergency Boards. If you count them
3 up, it's about 85 percent of all the Section 10
4 cases that have occurred over the past 25 years,
5 including all of the major ones involving class one
6 railroads.
7 And of course, all of Amtrak's cases.
8 I represented the BMWE in each of the
9 previous Presidential Emergency Boards involving
10 Amtrak.
11 Q    Mr. Roth, have you prepared an economic
12 report for this proceeding?
13 A    I have.
14 Q    And is that entitled, Summary Statement,
15 Thomas R. Roth?
16 A    Yes.
17 Q    All right. Can you give us an overall
18 conclusion that you have reached as a result of your
19 study of the issues in this proceeding?
20 A    The overall conclusion would be that the
21 national freight agreement that had been reached by
22 the BRS and the BMWE over the course of the past 35
23 years has been the terms -- have been the terms that
24 have been highly influential in the making of the
25 collective bargaining agreements at Amtrak.
26 So much so that I would characterize that
27 as a strong pattern relationship and one which I
28 think is determinative in this case.
29 It's to be contrasted, of course, with the
30 Carrier's position here that the so-called internal
31 pattern should be applicable.
32 But what the Union has here going for it
33 is 35 years of consistent practice.
34 What the Carrier is urging is for the
35 Board to adopt a fact and factors which have
36 heretofore been ignored by the BRS and the BMWE and
37 their counterparts across the table.
38 Secondly, I think in terms of the impact
39 on the -- in terms of the impact on the Carrier, the
40 application of the national freight agreement to the
41 BRS and the BMWE will have a -- actually have a
42 stabilizing affect.
43 The terms of -- this is the first round of
44 bargaining where on Amtrak, we have had me-too
45 agreements, which have been consistently
46 incorporated into all of the collective bargaining
47 settlements with the other organizations. That will
48 provide insurance against the -- what otherwise
49 might be deemed an environment which would cause
50 instability.
51 So finally once the me-too agreements are
52 exercised, it will have a negligible impact on the
53 financial position of Amtrak and the metrics to
54 which the Carriers looks to when it is assessing its
55 financial position.
56 Q    Mr. Roth, you have developed much economic
57 data in the exhibits that are attached or referred
58 to in your report.
59 A    That's correct.
60 Q    And those analyses are designed to support
61 the general conclusions which you have just given to
62 the Board?
63 A    Yes.
64 Q    I'm going to ask you, rather than to ask
65 you a few hundred questions, to take your report in
66 the order in which it is arranged and describe the
67 data that support the conclusion that you have just
68 given.
69 A    Certainly.
70 I think, Mr. Chairman, in terms of what
71 subject matter I'm going to cover, it's pretty much
72 contained in the table of contents of the summary
73 statement that you might direct your attention to at
74 this point.
75 I'll be examining the proposals of the
76 parties and providing evaluation of the -- cost
77 evaluation of the proposals and a costing of those
78 proposals.
79 I'll be describing in some limited way the
80 BRS and the BMWED classifications, which are core to
81 any kind of wage level comparison.
82 Thirdly, I'll be constructing wage
83 chronologies for the purpose of examining the extent
84 to which the national freight pattern established by
85 these two organizations has been influential and, in
86 fact, determinative in many cases of the terms of
87 their Amtrak contracts.
Fourth, I'm going to look at what the Carriers have described here as the internal pattern, and to opine on its role in this case given the me-too that we have incorporated in the various settlement agreements and other considerations on the definition of applicable pattern principles. Fifthly, I'll be constructing a real wage analysis and looking to the Employment Cost Index for the limited purpose of putting the national freight pattern increases in perspective. And finally, I'll be performing an analysis of the impact on the financial position of the organization under adoption of the PRLBC proposal, looking again to the customary metrics that both the Carrier and the organizations might point to in measuring physical capacity and financial health of an organization of this type.

Before we proceed, though, just a word on the manner of presentation. Much of what I have to offer and what -- most of what I have to present here does not lend itself to kind of a high level PowerPoint presentation of the kind that the Carrier has used in its presentation. Now, what that means, unfortunately, is that my case is not as colorful in that regard, and it will challenge the Board on occasion to kind of drill down on some numbers, which may be at points seem tedious. But I apologize in advance, and I ask for your indulgence as we kind of pore through some of these numbers, which in my view, I think are critical to a sound understanding of the application of pattern principle in this case and the differences between the parties on the valuation of these two positions. That requires an analysis of numbers, which we cannot avoid in my view. So with that said, let's move on. The first thing I want to -- I'm not going to work off of the text. I assume that the Board has read the information. I'm not going to read any of this at you at this point. I do want to kind of go into the first subject matter, which will be a valuation of the respective positions and point out what the significant differences between the parties are in that regard.

The proposal itself has been accurately laid out for you, I think, by several witnesses, including Charlie Woodcock, who accurately, you know, described the respective terms of the PRLBC proposal. That information, for your convenience, I have copied what was our original term sheet as Roth Exhibit 1.

It's in here. It's also summarized in the body of the text. And I think that's on -- that's on page 5 of my text. As you know, we are calling for a five-year agreement here that has an amendable date of January 1, 2015. General wage increases are each July beginning in 2010 of 2 percent, two and a half, 4.3, 3 percent, and 3.8.
welfare contribution. And we proposed effective 2014 that we pay the lesser of 15 percent of the total required contribution or 777.54.

What would be an effective July 1, 2016. A cap would go to $230, unless of course amended otherwise in negotiations that -- in that year.

And then finally the seventh piece, which I think is noncontroversial here. It's part of both parties' term sheets. And that would be the adoption of the supplemental sickness terms that flow from application of the national freight pattern.

So those are basically the pieces of our proposal that have been incorporated in the valuation that I performed beginning on page -- or Exhibit No. 3. So perhaps we should go to Exhibit No. 3 at this point.

This is a very simple chronology of the change in the hourly wage rate under the PRLBC proposal.

Our average rate is $24.80. That's a number that's different than what you heard yesterday for the average going into this round of bargaining. But I'll explain those differences when we get to comment on that presentation made yesterday.

The actual weighted average straight time rate, when you take the headcounts effective in the middle of July and multiply them by the applicable wage rates by title, will give you that $24.80 rate.

So that's kind of the key average rate going through this document.

Then we just apply the general wage increases. We end up with that $28.90 gross rate.

From that, we discounted for the July 1, 2014 cost, if you will, per capita of the health and welfare design provisions.

Now, this is another number that you yet have not seen in this record.

You have heard from Mr. Rand in the Carrier's presentation that the per capita cost is estimated by the Carrier's consultants as around $65.

And so I have 71.46.
range during that period of time.

So I think that's an appropriate look.

I'm asking you to contrast Exhibit 3 with Exhibit 4, which is the same exact modeling of the change in the hourly wage rate for under the Amtrak proposal.

And there, again, starting with the same average wage rate, you grow it to $28.48 over a five-year period. And when you net out the monthly health insurance contributions, you get 28.24 by the end of the term.

Now, once again, the monthly health insurance contribution estimates are -- again, there's no controversy here as to what those numbers are. You can find these elsewhere in the record.

I'm simply converting them to a monthly amount and ultimately converting it to an hourly figure.

So you have -- under the Carrier's proposal, you have a net increase of 13.9 percent.

And under our proposal, you have 14.9, a 1 percent point cumulative difference over the five-year period.

In gross terms, it's a 1.7 percent difference between us.

The reason I'm kind of dwelling on these calculations is because these are going to be contrasted momentarily with what the Carrier has presented yesterday, which I think is an inappropriate manner of comparing these two positions. So, again, keep your eye and your ear on those numbers.

Let's see what else here.

Okay. Let's turn to -- so that's kind of the wage chronology. This is kind of a look at what we nearly always do when we're at the bargaining table because it's the view that the employee sees.

The employees don't really relate to millions of dollars of expense when they're ratifying contracts. They want to know what's going to happen to their wage rates over the course.

And so those first two looks of Exhibits 3 and 4 perform the evaluation of the respective positions from the employees' position.

Now, we're going to look to it really from the employer's position, and that is what's happening to my gross payroll over time. And for that purpose, I would ask you to concentrate on Exhibits 5 and 6.

I know the Chairman has seen this model before. I have been using this -- the same kind of method of valuing labor agreements for a long time, and my model has been vetted by the best of them on the other side of the table. And it seems like they always work.

The format, I think, is obvious or seems simple enough to me. We have got the incremental changes shown in the central column. This is a very simple settlement to value, and it only has two moving parts, wages and health insurance.

We have neutralized the supplemental sickness expense, the one that -- to the extent there is one there because that is in the term sheet of both parties. So we're looking at the differences between them.

So you can see how this grows. The expense tiers up over the years from 2010 to 2014. Down at the bottom, we have health insurance adjustment. This is the full year effective January 2014.

We're going to see some other analysis later where I adjust this to account for the delay in implementation.

But back when this was prepared, I got a full year of the cost in here.

This is -- if you look at the next page, that's Exhibit No. 6. This is the same model, only it's populated with the Carrier's proposal on wages.

Now, let's take a look at the differences between us.

If you add up the 79.8 million for general wage increases plus the 1.7 for the lump sum, you see those numbers on -- five on the right-hand column? That adds up to 81.5 million.

Okay. That's 81.5 million. This is just wages only.

And if you look at the five-year total under the Amtrak proposal, which is on the next
Exhibit, No. 6, you'll see 72.6. So the difference
between the positions, 81.5 and 72.6, is 8.9.
Now, I want to -- again, this is one of --
part of the testimony that may be -- qualifies as
being tedious, but this is what we're going to do.
I would ask you to go to Union Exhibit 46
and look at the second to the last page.
Because I think it's important,
Mr. Chairman, that the Board have a grip on how the
parties differ over the valuation of these two
positions because I think this might be ultimately
important in your deliberations.

ARBITRATOR FISHGOLD: You said Union
Exhibit 46.
THE WITNESS: Roth 46.
ARBITRATOR FISHGOLD: Oh, okay.
THE WITNESS: Yes. At the back of that
exhibit, I have appended two worksheets which are in
the record but have not been identified as an
exhibit.
So I wanted to make certain that they were
convenient to you when we review this data.
And if you look it the second page, this
is the one that has two -- it's the second to the
last page.
Mr. Das has the right one.
If you look at the top of that analysis,
you'll see that this is the Amtrak pattern through
2015. So this is a six-year valuation of the Amtrak
proposal.
And you'll see that it's the -- it would
cost them, according to the Carrier, $102.9 million.
That's the total far hand right column at
the bottom.
Now, that of course includes the -- a
six-year agreement in which there are no further
adjustments in wages under what they refer to as the
Amtrak pattern.
If you look at over a five-year period,
which I am advocating, the number is 71 million. Do
you see that under Calendar Year '14, far right-hand
column it says $71 million? This is their
calculation, not mine.

But go down below. For some reason, they
have omitted the five-year calculation under our
proposal.
We are proposing just five years. We're
not proposing six.
If you add up the first five years in that
far right-hand column, you get 78.1.
That's the total of $121 minus that sixth
year of 42.9 million. Okay. So you get 78.1. If
you add to that the lump sum, which is 1.7, you get
79.8.
Now, note, for example, we're largely in
agreement on these numbers when you look at it over
an apples-to-apples view, a five-year-to-five-year
view.
The 1.7 percent lump sum is exactly what I
had calculated. And it should be because we're
dealing with the same base data. Even though we --
they do like a bottom-- you know, tops down. Mine
is a bottoms up. But we reached the same place.
So the total cost under the PRLBC proposal
over the five-year agreement that we proposed,
including the lump sum, is 79.8.
79.8 minus 71 is an $8.8 million
difference.
Now, when you flip back to my Exhibits 5
and 6, what did I say the difference was? 8.9.
We are in agreement on the differences
between the parties on aggregate cost when you value
these positions over a five-year term that the Union
is proposing -- that the unions are proposing.
So it's not -- you'll note that the flow
of the projected average wages is different than
mine.
I think what happened is we reached the
same end point, but their numbers are a little bit
different because I think they have been updated.
I have no quarrel over the Board using
what we see here on the Carrier's worksheet because
I think it has been updated from my data.
I think they got some actuals 2013 in
here.
I think at the time I was developing the
model at the bargaining table, we had -- we were
projecting those numbers.

So either way, you get to a difference in the aggregate between the two positions of 8.8 versus 8.9, virtually the same.

Mine is actually the higher one.

Now, let's -- this contrasts with the testimony you heard yesterday. And you don't have to go there, but for the record, this is Mr. Stadtler's testimony on page 31 of his statement, of his PowerPoint presentation.

And there you will find that he is -- had priced the Amtrak pattern as 102.9 million compared to the PRLBC's proposal, which on the face of his slide is 122.7. That is a $19.8 million difference, which I think is wholly -- which I think is stark hyperbole.

Because what is embedded in that analysis is the assumption that under the Amtrak settlements, there will be no wage increase in 2015 for all the other unions whose contracts will be amendable in January of that year.

Now, that is a bold assumption.

Under Circumstances A, where there hasn't been a year in which those unions have not had a wage increase for 23 years.

And B, where in projecting the increases in salaries and overtime over the five-year business plan, the Carrier's financial people have assumed 3 percent wage increases per year, one and a half percent every six months. You heard that in Mr. Stadtler's testimony yesterday.

So number one, it's an assumption made for the purposes of this proceeding to exaggerate the differences between the parties, which is inconsistent with all the history, at least back a quarter century.

And also is inconsistent with their projecting under the five-year business plan.

Now, I don't think there is any place in expert testimony for speculation. And that, Mr. Chairman, is pure speculation. You cannot assume that the other organizations are going to come to the table in January 2015 and agree to a wage freeze.

And that's what's embedded in the management's analysis. It happens here, and it happens when they also apply the me-too, which I'm going to get to later on.

So I'm encouraging the Board to look at these differences between us, these valuations of our respective positions on an apples-to-apples basis, five years to five years. Those are the -- that's the duration. That's the moratorium under both proposed agreements.

Why would you look at anything different except to exaggerate the cost of adopting our proposal?

Kind of the second subject matter -- and by the way, Mr. Chairman and Board members, it's important that the testimony go in with the utmost clarity.

If you have any questions as I go through this and you want to interrupt me, please do so because I won’t -- I promise you, I won't lose my train of thought.

ARBITRATOR JAFFE: Given the invitation, let me pose one and piggyback to your last comment, if I may, Mr. Roth.

THE WITNESS: Sure.

ARBITRATOR JAFFE: How would you account then for the contingent wage increase that's part of the Union's proposal in this case, when comparing the proposal to the -- I'll put Amtrak pattern in quotes throughout. We're not looking to decide any of those issues at the moment.

Do you view that as a nonissue even though there's a difference between the split three that's there for budgeting and the potential for three as of the beginning of the year? Do you ignore it completely? What do you do it with?

THE WITNESS: Well, number one, it is contingent.

ARBITRATOR JAFFE: Okay.

THE WITNESS: So we don’t -- we can't be assured that it will be paid. Maybe more will be paid; maybe less will be paid.

I would not ignore it if I was performing
1 a valuation of the national freight agreement by itself.
2 The problem arises when you make that calculation and then attempt to apply it or to compare it to the changes that are made under the alleged Amtrak pattern.
3 ARBITRATOR JAFFE: I see.
4 THE WITNESS: That's where the problem arises.
5 So my judgment is to make certain that there's an apples-to-apples comparison to use the five-year terms because both plans have a five-year moratorium, or both proposals have a five-year moratorium.
6 And in all my experience, in all my valuations that I have done hundreds of times in the airline industry and elsewhere, I have never heard of someone comparing two positions, one with you know, a seven-year agreement, and one with a three-year agreement.
7 Guess what? The one that's longer is going to be costing more.
8 That's just not a proper manner of this kind of analysis.
9 ARBITRATOR JAFFE: Okay. I have got the response. Thank you.
10 THE WITNESS: Okay. The second portion of the testimony has to do with just identifying the classifications that are represented by the BRS and the BMWED.
11 I'm not going to spend a lot of time on this, Mr. Chairman, because yesterday we had some, you know, some testimony from Chief Engineer Pohlot, and he kind of got into the training requirements and a lot of the other subject matter that otherwise might be part of this kind of -- of this area of presentation.
12 Moreover, I'm going to be followed by Jed and Dave, who are speaking of behalf of their respective organizations. And they're far more expert in kind of describing the details of what their -- what these classifications do and what they don't do.
13 And that would be a great opportunity for the Panel to raise questions in that regard, you know, if you have any of that sort.
14 What I want to do here is simply go to Exhibit No. 7 and kind of lay out for you what is a very complex classification system in these two organizations.
15 As you can see, we have -- the first six pages of our BMWED classifications. There are 2004 at this point in time in the bargaining unit. This was mid 2012 head counts.
16 There are 84 discreet classifications of work. And the average rate for the BMWED folks is $24.42 at the moratorium of the predecessor agreement.
17 This is going to be -- some of this data is going to be important in this record when we go to contrast it with some wage comparisons that we heard yesterday.
18 So when I get to that part of the subject, we can circle back to these numbers because you're going to -- I'm going to point out, for instance, that a good portion of the BMWED unit, for instance,
text as Table 3, 14 percent of their unit are
foreman inspectors. A big chunk of the population
266 out of 685 are maintainers.
This is a higher level of the signalman
craft. And you can see over time how the Carrier is
preferring to train up to the maintainer level in
lieu of having the signalmen a kind of -- not an
entry classification, but a middle classification.
So you have this kind of migration over time to
higher level work at the maintainer level.
Typically, on a railroad, the signalmen
would be more engaged in construction activities.
The maintainers would be more highly skilled and
engaged in the maintenance of the signals and signal
equipment.
Okay. I'm going to move on then from that
material and turn your attention to Exhibit No. 8.
This begins a series of wage chronologies
that are going to lay out the bargaining history
from the beginning to the current period for both of
these organizations.
And we're going to do this, not only for
both the BRS and the BMWE, but we're also going to
do it for Amtrak agreements and other National
Freight agreements.
Now, before I go into -- before I go into
this, let me make a couple of comments about the
kind of application pattern principle because I
heard from my friend Jerry Glass, you know, his kind
of explanation of how he defines and regards
patterns.
And so that there aren't any
definitional -- well, I think the best way to say it
so that you're aware of definitional differences
between us as we use these terms in our testimony,
let me say a couple of words about this.
Now, in my experience, practitioners and
arbitrators alike refer to prevailing practice and
comparative norms as important and weighty factors
in the making of collective bargaining agreements.
In fact, you can read interest arbitration
opinions or Presidential Emergency Board opinions,
there's a relationship that's established over a considerable period of time, there is said to be a pattern relationship. The application of a pattern need not produce identical wage rates, and sometimes there's some deviation in the general wage increase. But it's clear through the parties' practice that, while it's not as exacting as a parity relationship, it is more than a simple wage comparison that you might draw out of thin air because it has with it -- it carries with it an important credential, and that is the fact that they have embraced it, this comparison over time. That's what I would define as a pattern relationship. And you find other evidence of its importance. The collective bargaining agreements of the parties themselves might make reference to those agreements, such as the BRS and the BMWE agreements, which incorporate by reference important provisions of the national freight agreement.

Even in this round of bargaining, both parties agree that the supplemental sickness will be incorporated by reference. That doesn't come out of thin air. That's evidence that the national freight pattern has been determinative with respect to that particular benefit. There is -- now, if -- however, then you have this kind of third degree wage comparison, parity patterning, third degree of wage comparison, maybe simply that you have neither of those credentials where you have this long bargaining -- you know, demonstrable bargaining history to support its application, but you might just have logical comparisons. We see this all the time in the transit industry. The dispute turns not on whether or not comparisons with other transit systems are important or are influential, but you argue about the comparables. You know, what's the database to which you are going to look and -- when you make these wage -- historical and current level wage comparisons?

But that doesn't -- again, those typically are -- it's prevailing practice in the industry. This is the wage progress. These are the wage levels. It's the prevailing practice. But it doesn't have the kind of the virtues that a pattern principle or a pattern relationship carries. The purpose of describing, of course, this framework is to demonstrate that not all wage comparisons are created equal. Amtrak has asked you to give weight, controlling weight they say in this case to the terms reached by other unions on the property. Whereas, the PRLBC is asking you to give controlling weight to the terms reached by cohorts on the freight railroads. That's the challenge. It's easily stated. I think Charlie Woodcock said it at the outset. This case is about -- you know, it's a tale of two patterns. Which one applies? Now, it's my view that -- and it's the proper mission of an Arbitration Panel to ascertain to the best of its ability those facts and factors which the parties themselves have embraced in the exercise of their free collective bargaining activity at the bargaining table. And those, you know, those factors which have themselves -- the parties have found themselves to be most influential in the construction of their collective bargaining agreements. And I'm about to describe the bargaining history, which I think carries that important kind of historical comparison virtue. Before I get to that, there's two other considerations when you're talking about pattern, and I promise this will be the end. In an effort to determine, you know, and define and to identify the applicable pattern, the Board must account for two other considerations. The first is, you have to uncover the origin of the pattern. There is in this business a kind of chicken-and-egg quality to identifying these patterns because -- and think about it. When you look to the bargaining history...
that Jerry Glass put in, for example, demonstrating that in every round of bargaining -- it's the colorful chart that had the effective dates of all of the MOUs. And if what -- and what it shows is that there is a sequence of settlements.

In any round of bargaining here at Amtrak you could say, even that round of bargaining in 1995 where the BMWE led off -- that's the best example. Let's talk about that.

The 1995 round of bargaining, the BMWE leads off. They go to the Emergency Board. And they get a recommendation from Arnold Zack's Board that the National Freight pattern applies.

Okay. They're the first ones. Then you have a sequence of other settlements which follow those same terms.

Now, I suppose if you wanted to be naive about it, you could look at that round of bargaining and say, Hey, look. There's an internal pattern. Everybody followed them -- followed the BMWE. But you have got to ask yourself where -- what's the genesis of the pattern? Where did that come from?

Principally, on the -- in this case, on the -- when you look at the history, the one that counts is the national freight agreements. Although, arguably, they exist on commuter railroads and urban transit systems as well. But the one thing we do know is that the BRS and the BMWE came from Conrail. And they have looked to the national freight agreement for 35 years.

Wage change has been essentially the same from beginning to end. Cumulative wage change, as I will demonstrate, has been identical. That's not an accident. And what we're also going to see that the wage levels that they reach as a consequence of this national freight pattern application are within pennies of what the successor rates, successor -- the Conrail successor rates are on the CSX, for example.

So think about wage comparability and the pattern dimension of wage comparability. Keep in mind wage levels and job comparability because we don't think it exists in the application of the alleged internal pattern, but it certainly does exist when you look outside of Amtrak.

Okay. Let's move on to Exhibit No. 8. Just by way of introduction here, there's a series of four exhibits in -- for each of the organizations. The first one is Exhibit No. 8. And that lays out the basic wage changes under the national freight agreement that is the BMWED's national freight agreement. And on the right-hand side, you have the Amtrak agreement.

Each of the boxes, when you look at Exhibit 8, represents one collective bargaining agreement, one round of bargaining. The first one goes from January '75 through December of 1977, and it shows you the changes in wage rates under that agreement. On the right-hand side, you have the changes to the agreement under Amtrak.

So you can track things as you go along. You see the first two agreements. This
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1 has been, of course, well established by the
2 witnesses. There were stand-by agreements, which
3 means that, whatever Amtrak would hold back, it's in
4 the sideline that the national freight agreement
5 delivered by way of wage change, they would adopt
6 it.
7 And so predictably, those wage increases
8 are identical for those two rounds of bargaining.
9 The third round of bargaining is the round
during which we had the infamous Conrail deferral.
10 Now, let me talk about that a minute
11 because I think there was some testimony in this
12 record that -- to the effect that there was a
13 difference in this round of bargaining between the
14 Amtrak contracts settlements and the national
15 freight.
16 And that's somehow evidence of breaking
17 away from the national pattern. Nothing could be
18 further from the truth.
19 The fact of the matter is that Conrail --
20 that the BRS and the BMWE employees came from
21 Conrail.

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1 During this round of bargaining -- let's
2 get a little framework here.
3 In 1981, Conrail was the fourth largest
4 railroad in the country. It was the dominant
5 railroad in the northeast, by far. It had 12
6 percent -- nationwide it had 12 percent of all Class
7 1 revenue, in 1981.
8 It was, as I said, the fourth largest
9 railroad. It was larger than the BNSF and the SP at
10 the time, only slightly smaller the CSX, the PN, and
11 the UP.
12 And then back in the day, there were 21
13 Class 1 railroads. And Conrail was no -- it was not
14 an insignificant one.
15 Now, Conrail was organized under the
16 so-called Three R Act, the Regional Rail
17 Reorganization Act.
18 And that -- the Three R Act was passed to
19 acquire the bankrupt or the insolvent -- not all
20 were technically bankrupt at the time, but they were
21 certainly insolvent, the railroads in the Northeast.
22 And the largest ones were the Penn Central

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1 Transportation Company, the Central Railroad of New
2 Jersey, Lehigh Valley, Lehigh and Hudson River, the
3 Pennsylvania Reading, Seashore Lines, and then they
4 included parts of three smaller roads at the time.
5 That would be the Reading, the Erie
6 Lackawanna, and the Ann Arbor Railroad.
7 So you have these insolvent railroads in
8 the Northeast. In fact, I gave you Union Exhibit
9 No. 78, just by way of background of kind of
10 painting the climate that existed at the time of the
11 Conrail deferral negotiations on Amtrak.
12 I could have -- 78 is an excerpt from --
13 75, I'm sorry.
14 It's -- I meant Exhibit 75.
15 It's an excerpt from a report by the
16 Secretary of Transportation back in that era. And I
17 just copied the summary of industry status for your
18 background. You need not read it at this point.
19 It's just -- I could have gone onto a
dozens of sources, but I wanted to kind of paint the
21 picture of the industry's financial condition at the
22 time that the Conrail deferral occurred.

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1 So you have these insolvent railroads.
2 What happens next in a very -- you know,
3 half of the industry was in trouble at the time, as
4 that excerpt demonstrates.
5 Following the Three R Act, we had the Four
6 R Act, the difference being that the Revitalization
7 and Regulatory Reform Act, which was passed in 1976,
8 and that provided the financing for Conrail.
9 And it provided federal funds of $2.8
10 billion, plus other monies went to the Northeast
11 Corridor infrastructure.
12 But just for Conrail's acquisition alone
13 it was $2.1 billion. So this is where -- this is
14 the Conrail bailout that we all -- maybe not all of
15 us remember, but occurred back in the day. And it
16 enabled Conrail to become up and running as a
17 railroad beginning operations in April of 1976.
18 So it's -- what happened in the subsequent
19 round of bargaining, first round of bargaining,
20 following public acquisition, was to include -- and
21 it's included in the Four R Act, actually authorized
22 the establishment of an ESOP for Conrail employees.
A long story short, the $2.1 billion represented 85 percent of the ownership in Conrail. The other 15 percent went to the employees' ESOP. And in consideration for that 15 percent ownership, they agreed -- they, the labor organizations across the board, agreed to a deferral.

What's the deferral? The deferral on Conrail was the exception of the first 12 percent increase under what otherwise would be the national freight agreement. It was the first 5 percent of all general wage increases including cost of living that were payable in 1981, a 4 percent deferral of the increase that would otherwise be payable in '82 and 3 percent of the increase that otherwise would be payable in 1983.

So here we are. We have the relevant national freight agreement being Conrail in 1981 agreeing to -- having the unions agree to the 12 percent deferral. When the parties on Amtrak came to the bargaining table, the Carrier insisted that Conrail be the national freight pattern, and ultimately the unions agreed. They came from Conrail. They understood that it was the principal carrier in the Northeast from which they came and the territory in which they worked, and they agreed to the exact terms of the Conrail deferral.

Now, this is not an example or an exception to the application of the national freight pattern. It's the opposite. They embraced what was the relevant national freight contract pattern in that round of bargaining, hook, line, and sinker, for better or for worse. And in this case, it was for the worse from the employees' perspective. That's where we are in 1981.

Okay. Now we go to the next round of bargaining. And then, using this illustration here, the BMWE, this is page 2 of Exhibit No. 8. This round of bargaining, the parties copied precisely the terms of the national freight agreement.

Now, in the interim, the parties -- and I think it was 1984 -- the parties to the Conrail agreement negotiated a snapback of the 12 percent deferral. So they got an extra increase, which is almost 12 percent depending on the classification because some of that deferral was a fixed dollar increase above COLA. So depending on your classification, it ranged from 11 and a half to over 12 percent snapback. That's in 1984.

In October '86, the Conrail Privatization Act is passed, and the 85 percent ownership of the -- that the government held, goes to an IPO. It was at the time, by the way, the largest equity offering in the history of the United States. Had ones much larger than that since, but at the time it was a big IPO.

The employees also were -- shortly thereafter, I think, it was October of the following year, 1987, after the IPO in early '87, the IPO comes out. A few months after that the ESOP was canceled and all the employees got -- or Conrail got the benefits of the ESOP distributed to them.

So now, Conrail is back in the National -- otherwise, national freight pattern for all purposes at that time.

But during this round, during the pendency of all this activity of selling Conrail, the parties on Amtrak, for the BRS and the BMWE, agreed to simply the national freight pattern at the time.

Now, we go into the next round of bargaining, which is on the freight side is PEB 219. Now, you remember, Presidential Emergency Board 219 was at the end of a very -- or maybe the beginning of a very difficult time in labor relations and between the Class 1 railroads and their organizations.

BY MR. WILDER:

Q    Mr. Roth, 219 refers to Presidential Emergency Board.
A    Presidential Emergency Board 219.

Q    A    Presidential Emergency Board 219. Bob O. Harris was the Chairman of that Board. Rich Kasher was on it, and I forgot who...
else, others.

And that Board -- all of the organizations were in that case. I represented all of them. I prepared all of the economic financial evidence on their behalf.

And I'm not bragging because that was a disaster for the labor organizations.

In fact, it followed 219, which was a disaster for the labor organizations.

So essential, it was 219 plus whatever was necessary to restore the position of these two organizations to where they would have been had there been no 12 percent deferral.

Now, you can do the math, if you will.

Let's look at the -- this is Exhibit No. -- this would be page 2 of Exhibit No. 10. Can we direct your attention there, and you know, page 2. And this is the Amtrak wage chronology.

The wage rate for the trackmen went from $10.87 to $13.23 by the end of the contract that flowed from PEB 222. That's a 21.7 percent increase.

Going into that round of bargaining, the trackmen was 89.5 percent of the freight rate.

That's -- you can drive -- comparing that $10.87 rate with the rate of $12.14, which was the rate on June 30, 1988 under the freight agreement.

Okay. So if you take the -- under the freight agreement, wage rates under the BMWE agreement rose only 10.3 percent.

So if you -- if the freight is paying $100 and on Amtrak, we're paying 89.5, take 89.5 and you increase it by 21.7 and you get to the same point.

You get to 110.3.

Point being that mathematically it was the number that was necessary. It was the increase that was necessary to eliminate the 12 percent deferral that resulted from the 1981 agreement.

So now, we're back on track, literally, with the national freight pattern.

By the way, we can do that. The arithmetic also can be performed for you for the BMWE when you compare -- or BRS rather, and that would be on exhibits -- see if I can find them.

That's Exhibit 14.

If you look at page 2, it's 11 percent increase under the Freight Agreement, goes from 14.14 to 15.69, that's 11 percent.

And then if you look to the increase under the -- on page 2 of Exhibit 15, under the
Amtrak agreement, it goes from 12.81 to 15.69, that's a 22 and a half percent increase. Again, at the outset of that agreement, the BRS signalman rate was 90.6 percent of the freight rate. And by the end to that contract, they were identical. So it's exactly the amount necessary to restore the 12 percent deferral. And if you look at the BRS wage increase at the end of the 1988 agreement, it was 148.3 percent above the beginning rate in January of 1975 percent above the beginning rate in January of 1975 on Amtrak. That's exactly the same percentage increase, 148.3, cumulative wage increase under the freight contract. That's not an accident. People are looking to the national freight contract when they make these decisions. 

By the way, I was there. I'm not just looking at numbers. I was there with -- I wasn't there with the BRS. I was there with the BMWE, and we made this calculation back in that time.

ARBITRATOR JAFFE: Is this a good point for a brief break?

THE WITNESS: If you wish, yes.

ARBITRATOR JAFFE: I was getting some signals from some others in the room.

THE WITNESS: Okay.

ARBITRATOR JAFFE: Why don't we take keep it brief, perhaps 10. Thank you.

(A recess was taken.)

MR. WILDER: We are prepared to rejoin Mr. Roth's testimony.

ARBITRATOR JAFFE: Follow the exhibit -- and, again, the BRS has a companion to this where we lay out the terms of the wage agreements over this 35-year period. But the next exhibit in the series is Exhibit No. 9, and I just want to take a minute to explain the manner in which this was prepared. This actually is a date-by-date chronology of the changes that are made. And the difference between this and the previous exhibit is here, we are converting the wage change to a movement in the wage rate so that we can perform some other comparative analysis thereafter. And the methodology involves taking the current rate, which is on -- if you look at page 3, you'll see the $21.42 trackmen rate, and that comes from Exhibit 7, where you'll see that -- Exhibit No. 7, page 5, you'll see that we have -- that's the key trackman rate today of $21.42. And we have some 205 trackmen in that -- at that rate of pay. And the methodology here is to take the terms of the wage agreements and back them up. This can be a -- challenging at times because you sometimes get a lot of rounding noise or a formula noise in here. But I -- after this was complete, I checked by happenstance, actually, the very first agreement between the BMWE and Amtrak, which was effective March 1, 1976, the so-called Interim Agreement. And like all other MOUs that followed it, it actually has wage rates in it that were established.

If you look at that document and look at page 2, you'll find that the trackman rate in that contract was expressed specifically, and is $5.32. If you go back to Exhibit No. 9 and look at the October 1, 1975 wage rates, it's $5.32. So the methodology was perfect. And this is, again, the same methodology that I used for the BRS. But the math worked precisely, so there was no kind of interpretation problems or anything else. You can go frontwards or backwards or backwards to frontwards, and you'll still get the same answers. So that worked out fine. In any event, we were -- following the round of bargaining that was predicated under the PEB 219, which I described, we had subsequent rounds of bargaining which matched the freight agreements in large part.
There was some nuances that you will see when you study the data under the BMWE agreement. Not so much the BRS, but the BMWE. This is during the period of time when they were foregoing increases in the contribution rates and instead using offsets against their COLA. In other words, exchanging wage change for increases in health insurance contributions.

And so there's differences between the Amtrak agreement and the freight agreement in terms of these -- this dollar movement that's accounted for exclusively by the deferral of cost of living increases to compensate for the payment of health insurance contributions directly as was done under the Amtrak agreement.

Now, that -- all of that was erased, by the way. It was kind of -- the consequence of that was reversed under the last agreement following the recommendations of the -- of 243 on the freight side. If you look to -- let me see if I can find it here for you -- the trackman rate.

Yeah. It's actually the July 1, 2007 agreement, which was effective January 2005 on the freight side. You'll see that extra 47 cents. That's -- there was $1.48 paid -- or $1.01 in COLA. It would have been $1.48 in COLA. 47 cents was deferred to pay for health insurance contributions.

So they reversed that and put it back into the wage rate.

So, again, it came out of synch with what otherwise had been the case had no cost of living deferral occurred.

That's the only difference that you'll see there.

So let's -- we'll pick up the pace here and move to Exhibit No. 11. This takes the wage increases that are developed in the prior page and converts them to an index.

And you understand why we had to, you know, cite a wage rate because some increases are in percentage terms, some are in cent per hour terms, and so you have got to convert that -- convert those cent per hour to a percentage basis in order to construct the indices that I do in Exhibit No. 11 and 12.

So if you look at 11, go to -- I think the conclusion here is really on page 3.

So we have bargained for 35 years. And the percentage wage increase under the Amtrak agreement for the trackmen is precisely the same as it would have been had the Class 1 freight terms applied.

It's -- as you can see on page 3, it's a 322.8 percent increase since 1975 for Amtrak. And under the Class 1 freight agreements, those increases would have produced 322.9 percent.

Now, graphically, we show that to you in Exhibit No. 12, which was -- again, there's some ups and downs when you look at the application of the pattern principle to the BMWE agreement.

But, again, some twists and turns because of the Conrail deferral. But ultimately, they're tracking the increases that the national freight agreement would have dictated.

I'm going to ask you at this point, Mr. Chairman and Board members, to go to Roth Exhibit 72 because what I'm going to show here is that, after 35 years of bargaining, the wage rates for comparable jobs are within pennies of what they currently are on the CSX, which is a predecessor road for Conrail. As you know, Conrail was purchased, acquired by both NS and CSX in the Northeast, back in 1995, I want to say.

And if you look at Exhibit No. 72, you'll see it's a very simple table that I prepared that show the Amtrak and CSXT wage rates for these key classifications as of July 1, 2009. So this would have been our -- before our amendable date of our current rates.

There's a trackman rate of 21.42. The CSXT rate at that date was 21.52. This is prior to the -- obviously, the last round of national handling.

That's 99.5 percent.

So what's important here is not that Amtrak is above or below the CSXT rates. What's important is that they're within pennies.

And this is rounding noise. You're...
bargaining for 35 years and you get two rates which were comparable with what you had in the private sector in the Northeast. This is not an accident. This is intentional. And this is a wage level comparison that you need to consider when you're determining which of these various patterns, internal, external, carry the most weight. I should note at this point, Mr. Chairman, that the other crafts who have settled on the property are not similarly situated. I mean, as you know by Charlie Woodcock's testimony and his accounting of all of the organizations that are under the contract, that some of them have actually no counterparts on the freight side. An exhibit like 72 could not be prepared, for example, for the Onboard Service Workers Council. And that's a -- you know, that's a fairly large group. It has 1,847 persons according to Amtrak Exhibit 200, pages 6 and 7. So 1,847 persons who settled, who would not be able to relate, as BRS and the BMWE can, to the freight railroad side of the house. Same is true, of course, with the JCC. The JCC is composed -- 80 percent of JCC are coach cleaners. The other half are carmen. Carmen obviously have counterparts on the freights within the shops, but there are no car cleaners. That's 80 percent of the JCC. The TCU -- I would estimate that 70 percent of the TCU on Amtrak -- and this has got a number that's subject to check by the Carrier. But by my database, it's about 70 percent of the TCU clerks' craft are -- is composed of reservation and information clerks, ticket clerks, baggage handlers, i.e., sky -- redcaps, and other such personnel that have no counterpart on the freight side. So this wage level comparison would not be relevant in their bargaining. Now, that's also true, of course, for the onboard service supervisors. I want to draw your attention to this kind of conclusion for the BRS as well. That's on -- that is on Exhibit 17. Actually, 16 and 17. 17 is the graphic. 16 is the -- are the numbers. I think I mentioned these numbers before, as of September 1995, following that -- that -- two of the PEB 222 round of bargaining, which the BRS was not involved in, but the wage increases from up until that point were identical for the Class 1 freight and Amtrak. There's some little breaking away from that, as you see, by the time we get to the amendable date of this predecessor agreement of ours. We're at 292 percent on Amtrak and 297 on the Freights. There's a little bit of slippage there. I haven't uncovered the reason for that, but there were times when skill adjustments were negotiated. And oftentimes, they were -- they applied to specific classifications. Other times, they were converted to general wage increases and swept across the population. If they were converted, I included them as a general wage increase because they applied to everybody in the bargaining unit. If they only applied to a few people or the few classifications, I excluded them as special adjustments. That's just the manner in which the exhibit is constructed. But still, I think you see a strong relationship between these wage changes for the signalmen. And that's made evident by the graph on Exhibit No. 17. And once again, you can turn to Exhibit 72, the one we just looked at on wage levels, and see that with respect to wage levels, the BRS is within a few pennies of what the rates for these same classifications are on CSXT. It happens on CSXT that they have more -- a bright line, if you will, between construction and maintenance. So that's why I included two rates there. The one -- the maintainer is maintenance and the signalman, and the other maintainer is construction.
So they have that dollar difference there, so I reported on both rates. Our tendency here at Amtrak is more to blend the two to maintain a rate. So it's a slightly different organization of work. But the rates are what they are, and they're either 97 percent or 100 percent of the CSXT at this point.

And, again, I would conclude that that's not accidental. Okay. Unless there are some questions about the histories, I would prefer to move forward. I think there's a lot of detail there, but I can -- I prefer not to belabor the record. If the Board is satisfied, I'll move on.

ARBITRATOR JAFFE: We're fine. Thank you.

THE WITNESS: All right. Just a few comments about the -- at this point about the alleged internal pattern. Now, I think that if you saw my text testimony that I would regard -- again, as I said earlier, you know, the extent to which a wage relationship is influential, whether it's a parity pattern or just general wage comparisons, is a matter of degree. And when you -- and I think that for a pattern to have some controlling influence, that it has to meet those credentials, as I call them, or those virtues that I indicated are necessary.

No one is the critical mass, as I refer to it. And when you get up the 84, 85 percent range, I think you have that. That's -- that would be normally sufficient to kind of -- to cause us to look at a pattern. Now, I would add, however, that we have 100 percent on our side.

I mean, to look at -- we have 100 percent of everybody on the national freight agreement. So by that we have critical mass on that side as well. But secondly, and -- we should look to whether or not there are terms which are holding consistent among the settlements that are being alleged as applicable patterns. And we have this question of whether or not the compensation, that extra compensation that the conductor receives, is indeed evidence that the -- there is no single pattern out there.

I would -- you know, again, I looked at -- I heard all the testimony over the last couple of days regarding the UTU deal. I think what's important for me is not whether or not there was some quid pro quos involved in that exchange of money, but the fact that it's different. It's different, and it does provide for greater compensation for the individuals.

Whether there is some motivation for the Management to provide this extra compensation is, of course, a matter for those parties to determine. But think about it. What they have -- the conditions that led to the savings that are being alleged -- and I haven't looked at the numbers carefully enough yet. But basically they are -- the benefit to the Company is that we are -- we are able to incentivize the acquiring and the maintaining of qualifications that are necessary to perform the job, that this increased pay will increase, you know, productivity.

Well, you know, isn't that true of any wage increase? Isn't it true of -- isn't that true if you provide for this -- these bargaining units the extra adjustments that are available by virtue of the national freight pattern, wouldn't that increase morale?

Wouldn't that facilitate the recruitment and the retention objectives of the Carrier? Wouldn't that avoid turnover?

Wouldn't that help, you know, the associated training costs when you have to backfill quits or persons who don't want to move up for higher pay? All of those reasons that are associated with giving employees more compensation reside with the application of the pattern principle within the national freight pattern, as well as it does in applying the extra increases for the conductors. I just don't see any difference. And there may be more on this later on by me and other witnesses.
But with regard to the important things about the application of the internal, the alleged internal pattern, is this.

First of all, we have heard a lot and we have -- and we know by virtue of reading the PEB literature that -- and arbitration literature generally, that it is -- that consistency within the organization and the application of wage change or benefit provisions is important to provide the stability of labor relations. And that's been stated in a number of different ways on this record and elsewhere.

We understand that. I understand that, and I know that that's -- that's embedded in the advancement of these internal patterns when they have been applied.

But here we have a very unique set of circumstances. We have -- for the first time on Amtrak we have uniform me-too provisions in all of the settlements that were made.

Now, Charlie Woodcock testified that he's not aware of any that occurred in the last round of bargaining.

I went back and looked at all the prior rounds of bargaining, and I couldn't find any round of bargaining where there were universal me-toos in existence.

Now, what does that mean? Well, it means by definition that this is insurance against the probability that these agreements would not be durable and would not withstand the proper and appropriate application of the relevant pattern, which is the national freight agreement, number one.

But what's important, of course, is that it automatically provides and removes from your consideration the problem associated with disparate treatment of employees and a high probability that there would be instability in labor relations.

It moves that consideration from your thinking. And I have to say this, you know, we're not certain -- and the stability, by the way, the test here is not whether or not the other organizations exercised their right to acquire equality.

The me-toos represent the other organizations' right to acquire satisfaction in the agreements that they have reached.

And there is a difference because I know, having worked with all of these organizations over many years, that there is no consensus among rail labor as to the best method of cost shifting.

Obviously, we always want to avoid cost shifting on healthcare. We would much prefer that the employer pay for it all. But that is not the world we live in today.

And over the several -- last several rounds of bargaining here and elsewhere in the transportation sector, we see the gradual shifting of the costs of healthcare from the employer firm to the employees.

But the manner in which that is done is not -- is not a matter of union doctrinaire.

Some unions prefer, if they are confronted with this, with the cost shifting issue, to shift the cost from the employer to the employees through an increase in your required contribution because that sweeps across all of the members equally.

Some unions prefer, however, to shift the cost from the patient to the plan by the introduction of design changes which are -- which kind of focus the extra expense, the cost shifting on the heavier users of the plan.

The theory there being that the heavy users of the plan will not be offended as much by having to pay a little more for what they get. Whereas, the other line of thinking, shifting from the employer to the employee through extra contributions stands for the proposition that the strong should protect the weak, and that a good union distributes the pain more equally among its members.

My point is that there is no assurance that the organizations that exercise their me-too will exercise it in the manner in which -- which will result in an exact replication of what the national freight agreement would call for because
1. they have that difference.
2. And they may want to make other
3. adjustments. I don't know that. Adjustments that
4. we haven't gone over, and that, in my valuations of
5. extending the me-tos to the rest of the population,
6. do not take into account. I haven't made any
7. alternative assumptions as to what they might do.
8. But I'm just making the observation
9. because we know this to be true. We know that there
10. is no unanimity among the labor organizations as to
11. how cost shifting should occur.

BY MR. WILDER:

Q    Mr. Roth, have you finished with your
14. discussion of the pattern issues?

A    I would like to address, at this point, I
16. think, Counselor, the -- some of the observations
17. that were made by Mr. Glass in this connection. And
18. I do have some materials that bear on that point.
19. First of all, Jerry had testified that --
20. and I hope you don't mind if I call him Jerry.
21. We're old professional friends. We did a lot of
22. good work together around US Airways and elsewhere.

In any event, he testified that, in his
view, the 1981 round and 1988 round were not
patterns in his view because they were -- for two
reasons. They were different. And that there
was -- and that in any event, there is -- when you
have this lag in the -- in establishing the same
increases, a problem with the time value of money.
That has to be accounted for.

So let me just comment on those two
points.

First of all, I have already explained in
1981 why it was different. It was not different
from what was the relevant national freight pattern
that was Conrail. And that's why I spent a great
deal of time going into those details because I
wanted the Board to understand what -- exactly what
happened during that round of bargaining.

The 1988 round, we had different terms
than the national, but that was to account for the
catch-up of the deferral that we had suffered in the
1981 round.

You know, and when you -- I went back
since Jerry testified and went and looked at the
record in 222, and read what the Carrier had said.
I give you one brief reference to that in
our Exhibit No. 76. This is Carrier Exhibit No. 1
for 222. And it is a statement by the -- by Graham
Claytor, then the CEO of the National Railroad
Passenger Corporation.

And if you look at the very opening
9. remarks in that record, he said they meet and --
10. that their intention was to meet or exceed the
11. increases recommended by the industry by
12. Presidential Emergency Board 219, and now in effect
13. on nearly all of the freight railroads.
14. It goes on to say that: "Over 60 percent
15. of our employees are now covered by same or similar
16. proposals."
17. That's a recognition of the 219 results
18. being incorporated in the proposals and in the
19. thinking in terms of wage change and benefit changes
20. for the -- for Amtrak during that round of
21. bargaining.
22. There is much more in that record that I
did not want to burden you with, but there is more
references in other testimony by Mr. Lang, who was
their chief labor officer at the time, and what
their intentions were during that round.

So Amtrak was looking to a national
freight pattern when it developed its position at
then bargaining table during the 1988 round of
bargaining. There's no question about that.

The notion that just because they were
different, that those terms weren't relevant, is
not, in my view, supported by the history.

The second thing that Mr. Glass testified
to that I would take issue with is that the general
proposition that the transportation industry has
been segmented.

BY MR. WILDER:

Q    Before we move to that, Mr. Roth, you were
18. going to comment on the time value of money that
19. Mr. Glass mentioned in his testimony.

A    Right. I was just making kind of a simple
20. observation here.
21. It is true that, unless in the application
of any pattern, the increases are paid on the
same -- on the same -- excuse me. The agreementsecome effective on the same date, you will always
have an opportunity cost for the union that settles
later.

Obviously, if you're the last in line in
settling for terms, you have foregone the immediate
payment of wages otherwise payable, and there is a
time value of money.

So the whole notion that that is a
distinguishing feature and a part of a definition of
whether a pattern applies or not, in my view, is
erroneous because that factor would apply in any
round of bargaining and to any set of circumstances
where you claim there's a pattern, internal or
external.

And then lastly, with respect to
Mr. Glass, I would -- again, this notion that the
transportation history is segmented, and that we
see, for example, on -- in fact, he said
specifically that it is segmented into the freights,
to inner city passenger, i.e., Amtrak, short lines,
and the freights. And that they're becoming
increasingly kind of disconnected for purposes of
collective bargaining.

And the last part I was paraphrasing.
But I take issue with that. I think the
opposite is true. And I have got a couple of
examples here for you.

The -- and I think Jerry focused on
commuter railroads where, you know, he has some
experience. And he was pointing out that -- and as
he laid out those histories of wage increases that
they're different.

They are different, but the notion that
the -- that at the bargaining table the parties are
not making reference to commuter railroads elsewhere
is simply factually untrue.

During the last round of bargaining I have
represented Long Island Railroad Coalition, all the
unions -- all the unions on Metro North, most of the
unions on Metro, and in the past, unions on SEPTA
and New Jersey Transit as well.

Tri Rail.
agreements. She made certain that the agreement met
the test of having equal agreements across all of
the units by monetizing what otherwise would have
been a cert pay applicable to conductors only.
And, third -- this is real important.
This is on page 8. This is what I mean. And I
quote: "BMWED's stated goal in these negotiations
was to narrow the wage gap between itself and its
commuter rail counterparts elsewhere in the
northeast."
A stated goal. This award did that.
This did it because we had -- we were
referring throughout bargaining. And in our
arguments to the MBCR, the employer, our -- that our
relative position in the industry had to improve.
This is evidence that the other commuters
are relevant to the bargaining, that they become and
can become patterns.
They don't -- I don't see the historical
connection yet. But to say that they're
disconnected and should be disconnected is untrue.
The Chairman will recall from the Long
Island railroad case that we did last month that on
SEPTA -- during the same round of bargaining, their
annual rates of increase were 2.4 percent. The Long
Island railroad, under the recommendations, will be
gross 2.9 and net 2.5 percent per year. Metro
grossed 3.1 percent, net after health insurance, 2.8
percent.
The MBCR was 3.6 percent per year gross,
and 3.4 percent net after the health insurance
contribution.
That's the collapsing of the difference
between MBCR and the other commuter railroads that
I'm talking about, a stated objective of the unions
at the bargaining table and evidence that there is a
direct connection among the commuters.
There are other examples.
And look at -- I copied for you the
exhibit in last month's Long Island Railroad case.
I'm trying to find it. It's Exhibit No. 73.
If it is true that external patterning is
dissolving, why would the Long Island Railroad find
it necessary to retain an expert to conduct a
relative wage analysis between the commuters and
Long Island, which is what this exhibit is?
Exhibit 73 is Carrier Exhibit 37 before
PEB 244.
And note that they were making the point
that Long Island Railroad rates were high relative
to their counterparts.
They even found it necessary to include
Amtrak, which is fascinating in the sense that
Amtrak would say that the commuters are irrelevant
and the Long Island Railroad would say that Amtrak
rates are relevant. So it depends on which employer
you relate to.
But my point is simply not so much that
our rates are lower than the commuters because we're
not claiming comparability with the commuters in
this case.
I'm simply drawing your attention to the
reality of the fact that these external comparisons
are made on a regular basis when you're working
within the commuter railroad industry.

One last kind of simple point on the
notion external versus internal pattern
bargaining -- and I think this is also referenced to
Mr. Glass' observations that it is somewhat
diminishing on the national scene.
I would remind him that in the airline
industry, it is all about external comparison. It's
all about external patterning.
And I just give you illustrations of the
last two rounds of bargaining on the major -- on
American and on United Airlines.
Let me see if I can find that exhibit.
That's ...
ARBITRATOR FISHGOLD: Might that be 74?
THE WITNESS: Thank you, Mr. Fishgold.
Right. This is a very simple exhibit.
This is a table that reflects for the
major bargaining unions the six-year agreements that
were reached through Chapter 11, Section 1113(c).
And you note, first of all, that they're
all different in terms of their general wage
increases.
And there are no -- when -- the pilots do not look to the mechanics. The mechanics don't look to the pilots when they're making their contracts. That's simply the reality of -- with airline bargaining.

And in fact, if you want the best example of external bargaining, look at the footnote. Every single one of these agreements include what is called the industry adjustment, which is the -- depending on the unit, it's the average of the big legacy carriers.

And they're going to get the wage increases that are fixed or the average of the -- under the respective formulas for the industry average.

It's the average, not internally. It's the average of their cohorts on other major airlines.

This is a pure example or external bargaining and hardly -- and again, because it fights the notion that pattern bargaining is on -- external pattern bargaining is on the wane.

United Airlines experience is on the next -- second page here. This is very simple. You note that the increases are different with the exception of the IAM groups. We bargained this all together. Did these contracts last year. And these were bargained all together.

But the dispatchers, which I'm currently handling, I just did work for them last night. They're at the bargaining table in my absence. But the whole offer from the Company is Delta parity. We'll give you the Delta rate.

Now, we're arguing over how you price that, how you value that, what elements of compensation are we talking about. But the notion that the agreements that are reached internally by the other bargaining units are irrelevant to the negotiations of the dispatchers, which are focused on the Delta compensation and Delta parity. Another perfect example of how in that industry you have external patterning and external comparisons driving the negotiations.

BY MR. WILDER:

Q    Before we leave the pattern area, Mr. Roth, I'm going to ask you to look at Amtrak Exhibit 300, page 54, which consists of Mr. Glass' testimony.

A    You see the screen behind me?

A    It's not there yet.

Q    Amtrak 300, page 54.

Q    My question is, do you agree with Mr. Glass' testimony that the Amtrak internal pattern of this round had become "well established"?

A    It's not even well established, not established at all in the bargaining history of these parties.

Q    And that's what gives weight to the -- to another settlement in terms of its establishing, you know, application of the pattern principle.

Q    You know, I'm always amused when people are quoting Elkouri in an interest case.

Q    Let me refresh --

A    In this case, we have no evidence that these two bargaining units ever looked anywhere except to the national freights.

Q    Let me refresh your recollection from the Elkouri & Elkouri, and I'm referring to Chapter 22, Section 10D, at page 22-87, in the middle of the
1 page.
2 A    I haven't ...
3 Q    That is the last sentence prior to the
4 sentence you were referring to.
5 A    Right. Exactly.
6 It precedes the sentence that is quoted by
7 Mr. Glass. But it says that, The longer a set of
8 internal linkages is found to have existed, the
9 greater the weight given to maintenance of the
10 pattern.
11 Well, the internal linkage that is alleged
12 in this case has never existed before. So there is
13 no -- there are no grounds for applying the
14 statement what is quoted on page 55 of their
15 exhibit.
16 MR. WILDER: This would appear to be a
17 good time to break for lunch, unless Mr. Roth has a
18 concluding remark you would like to make.
19 We can also wait until after lunch.
20 THE WITNESS: This is a good time to
21 break.
22 ARBITRATOR JAFFE: That's fine.

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1 MR. REINERT: You just asked whether he
2 has concluding remarks to make.
3 Is that the conclusion of his testimony,
4 or were you anticipating extensive more testimony
5 after lunch?
6 THE WITNESS: More testimony.
7 MR. WILDER: More testimony.
8 ARBITRATOR JAFFE: Okay.
9 That's what I thought. I thought it was
10 relative to that section.
11 Off the record.
12 (A lunch recess was taken.)
13 ARBITRATOR JAFFE: Back on the record,
14 please.
15 MR. WILDER: Mr. Roth will resume his
16 testimony with consideration of the employment card
17 index and the relevance of historical wage
18 comparisons.
19 ARBITRATOR JAFFE: That's fine.
20 THE WITNESS: Okay, gentlemen, I think we
21 have completed the segment of the testimony that
22 precedes Exhibit 19, so I would draw your attention
23 to 19.
24 This is the first of a series of two or
25 three exhibits that lay out the relative wage
26 progress for the BMWED and BRS as compared with the
27 Employment Cost Index.
28 Now, the Employment Cost Index, as I think
29 you know, is the most reliable data published by the
30 BLS or anyone else as a measure of pure wage rate
31 change because it controls for the changing mix of
32 occupations and industries over time, much like the
33 Consumer Price Index does.
34 And when I get to commenting on
35 Mr. Gillula's work, I will refer to the differences
36 between the Cost Index and the changes in average
37 hourly earnings that he relied upon.
38 In any event, what we're offering the
39 Employment Cost Index for basically is a check
40 against the wage progress, wage change as obtained
41 under the national freight agreement as compared to
42 how the rest of American workers have progressed
43 over the same period of time.
44 It's evidence only that there has been
45 nothing fancy, if you will, about the wage change
46 under that national freight pattern and that a
47 continuation of that practice between these parties
48 will not in any way kind of make -- create some
49 excess wage progress that might otherwise be
50 suspected.
51 Exhibit No. 19 simply traces the BMWE wage
52 progress since the beginning, in the January of
53 1975, so the day before the effective date of the
54 first agreement is the base date.
55 So there's no quarrel with that selection.
56 And then the result is really shown on
57 Exhibit No. 20. You don't have to go month by month
58 or year. But we have published for you the index
59 number for January and July of every year.
60 Obviously the graph is composed of data
61 that go -- go month by month throughout that entire
62 period. But you can see on the graph, the green
63 line is the Employment Cost Index for the private
64 sector, and the purple line is the Amtrak BMWED wage
65 change.
66 And we have tacked on the end of that that
red component, which is our proposal. And as you can see that even over -- even with the application of the national freight pattern, we will not catch what would otherwise be wage progress for the private sector generally. A similar and similarly constructed analysis begins on Exhibit 21 for the -- for the BRS. And once again, this is based upon, as the footnote indicates, the average BRS rate of $25.90. For this purpose, though, we are not using the signalman rate or the trackman rate, per se. This is the average rate for the bargaining unit, and we trace it over this period of time. And once again, you can see from the graph there's a similar experience for the average BRS employee by application of the national freight pattern over these years. There's been no evidence of excessive wage change, and in fact, with the extension of the wage increases under the national freight agreement, we will still fall behind the progress that has been made by others. That's the BRS. That's 22. I'm going to turn now to Exhibit No. 23, which in the context of the case that you are hearing. These are subordinate factors, but they're nevertheless important. I don't have to tell the Board that many a wage decision is made by arbitrators purely on the basis of the maintenance of real wage standard. And again, while this may not be one of those cases, I thought it necessary nevertheless to give you this frame of reference. If you look at the BMWED experience, you'll see that by the end of the -- on the amendable date of the current contract, we were about even with where we were in January of 1975. This is evidence of, you know, of real wage treadmill, if you will. There has been no real wage progress to speak of over the 35 years of bargaining. This attests to the moderation in wage change over this entire period, and, again, puts in context the reasonableness and the moderation that the national freight agreement has dictated over this period. Under our proposal, we actually get to break even with our January 1975 real wage, which is -- and it would take a long time, but we're trying to get back to where we began when these employees transferred from Conrail back in 1975. And that's evident for the BMWED on Exhibit 24, on the graph that you can see on the screen. Thank you. There it is. The companion exhibits for the BRS are represented on the Exhibit 25 and 26. And once again, a similar story. We're a little bit further behind in terms of real wage change for the average BRS employee. But nevertheless, our proposal to apply the national freight agreement will bring us up there, 98 percent of where we were in January of 1975. Again, the same conclusions can be drawn. There has been nothing fancy, nothing excessive about the wage change that has been predicted by application of the national freight agreement. Okay. If there are no questions about those pieces, Mr. Chairman, I'm going to move forward to another area. ARBITRATOR JAFFE: That's fine. THE WITNESS: And this -- I think I called this in the -- in my summary statement the impact of the respective proposals on the financial position of Amtrak. And we have already had some testimony in the record regarding recent ridership trends and, you know, how we have been breaking records in that regard for over the last few years, and I'm not going to repeat that. I don't think this information is contested. I have for you on Exhibit No. 27 a news release that was published recently back in October of 2013. And this is -- come from the record breaking ridership numbers for Amtrak. And there's a graph that was included in
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PRLBC

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the news release that's on the third page of the
exhibit. You might want to take a blink at that.

It graphically shows that you have -- what
Mr. Boardman is reporting here as -- has become very
significant progress.

In fact, you might have some of this data,
perhaps not for as long a period, but have some of
this data from 2010, at least, forward in the record
evidence produced by Amtrak.

Exhibit 28 is more of the same, so I'm not
going to dwell on that. We'll move forward.

I want to look at labor cost ratios. This
is an indicator of the role that labor costs played
in the -- both the expense structure and the
revenue -- in revenue yield of the employer.

It's a good indicator of the kind of trend
in the increases in labor costs as opposed to both
revenue and nonlabor expenses.

So, you know, I look at this labor ratios
to see the extent to which an employer has a labor
cost problem. You know, it's going to be made
evident by an increasing labor cost ratio.

In the right-hand column you have -- I'm
sorry. In the second to the right-hand column you
have the labor cost as a percent of revenue.

And as you can see that has been falling
in the long run for certain. And at 71.5 percent
it's, I guess, the lowest in history that we're
looking at here, indicating obviously that labor is
claiming less and less of the revenue dollar that's
coming in.

In terms of labor's role in the expense
structure, that's the labor cost expense ratio, and
that's in the right-hand column.

And, again, we're at a level today in
2012, which is the last year of a -- full year of
available data, the same place we were a few years
ago at the outset of this agreement and well, in
2007. It actually -- it's about the same -- exactly
the same as we were in 2007 and 2001.

So it has been flat lining basically for a
couple of decades now, which, again, is evident that
the labor costs have not been -- have not gone up in
an excessive way.


calculated in this fashion, it's 82.4 percent.
I'm going to mention this later on as
well, but there's a couple of different ways of
making this calculation. You know, we can -- it
depends on whether you do it before or after noncash
charges.

So they typically report the noncash
piece. This is the lower recovery rate, if you
will. So if you see in the record, both in Amtrak's
materials and in mine, a higher recovery rate in
2012, it's because it has been calculated in that
alternative fashion.

Because right now, by the alternative
calculation, it's up around 80, 90 percent rather
than 82.4.
So if that's clear, I'll move forward.
I wanted to put this kind of operating
expense of the recovery rate in perspective here.
And we're comparing it with other transit modes.
And suffice it to say that now Amtrak goes far
better than other -- in fact, all other urban
transit modes, with the exception of heavy rail
systems which also have a good recovery rate up in
the 60s.

So this is back in 2011.
And I wanted to -- again, this number is
calculated slightly different, but I want it to
match the manner in which the recovery rate is
calculated for these other transit modes.
Bus system, for example, they collect, you
know, maybe cover about 27 percent of their
operating expenses through commercial revenue, mainly fare box revenue.

ARBITRATOR JAFFE: What does the heavy rail line on this exhibit reference?

THE WITNESS: Heavy rail systems are those -- that mode of urban transit systems that are subways.

ARBITRATOR JAFFE: Okay. Got it.

Thank you.

THE WITNESS: Right. As opposed to commuter railroads.

Commuter railroads generally community to community.

ARBITRATOR JAFFE: I understood it wasn't commuter rail. I wasn't certain what heavy rail was referencing. Sorry.

THE WITNESS: And light rail, like streetcars.

ARBITRATOR JAFFE: Sure.

THE WITNESS: Exclusive right-of-way, smaller -- shorter vehicles typically. But you know, nevertheless self-propelled, normally over a catenary system.

ARBITRATOR JAFFE: Thank you.

THE WITNESS: Okay. Exhibit No. 32 is, again, looking at a trend in recovery rates in other -- in the public transit industry generally.

You can see that they have struggled with this, unlike Amtrak, which has improved significantly over time. This has been fairly a static picture for the rest of the passenger transportation, rail transportation sector.

I'm not the only one that kind of looks to these metrics to compare Amtrak. Amtrak itself looks at these numbers, as you can see in Exhibit No. 33, which is simply a photographic reproduction of a graph that they had published some time ago.

I don't have a day on here, but -- yeah, there it is, May 25, 2011.

And, again, they're making the same point I was just making, that compared with other modes of transportation, they -- Amtrak does very, very well.

Exhibit 34 turns to another -- turns back I should say to the labor cost ratios. And once

again, I wanted to compare Amtrak at 49.4 percent to commuter railroads which are generally much higher, up in the 70s.

And you can see we picked the big five here in the Northeast and along with, yeah, along with Metro in Chicago. These would be the big six commuter railroads in the country.

Exhibit No. 35 is some background for some comments that I made earlier in my text regarding the trend in employment.

There have been a -- there has been several references to the increase in employment in these bargaining units, and that's certainly true from 2007, which was kind of a low point.

And we gained much employment, but we're still down, well down over the past decade where we had almost 38 -- more than 3,800 people in the BMWE and BRS bargaining units.

So over the long run, we have shrunk the employment. We have shrunk work hours. And we have increased output. And you're going to see that our productivity has risen accordingly.

Exhibit 36 is -- turns to a different source of information. The Surface Transportation Board collects information from Amtrak and reports on number of employees, the hours worked and paid at straight time, plus total compensation.

In Surface Transportation parlance, total compensation is not what you think it is. It's just wage. It's just cash compensation. It does not have any benefits in it.

But so they call it compensation. And this is for hours worked and paid at straight time.

The Surface Transportation Board, under the Uniform System of Accounting, which Amtrak complies with when they report, organizes all the -- organizes the classifications of workers in accordance with what's been the old A300 format, which what is no longer published following -- 1983 was the last -- the published information.

I should say published information by specific reporting division because there's some 80, 90 reporting divisions.

What they do report are general groups,
general divisions. Group 300 is maintenance of way. It includes the BRS. So it would be essentially the BMWE and the BRS headcounts in hours in that number. So we calculate the average straight time hourly rate in the right-hand column. But -- let me see, this is basically background for the next exhibit, Exhibit 37, number of employees. And this is giving you kind of the trend in overtime. Up at the top, you have the top segment on the table on 37. You have the number of employees. You have overtime hours paid for at punitive rates, and straight time hours paid for at -- straight time hours paid for. So on the right-hand column I'm able to calculate what I call an overtime factor. These are overtime hours as a percent of hours paid at straight time. So if you consider straight time a 40-hour week, 2,080 hours a year, then this would be the percent on top of that number that individuals work. And as you can see, the overtime rates here are significantly above what I would find elsewhere in the -- on freight railroads, for example. And in 2010 it was 32.5 percent, which is extraordinarily high. We heard some other related testimony to this. This is why they had those numbers, which we -- that we heard of the number of employees who received X dollars above the cap on overtime because they had some extraordinary work hours in that year. In 2012 they made a better effort at cutting back overtime. And I think that's the intention of the Carrier to kind of staff up in a manner which can mitigate the need for these excessive overtime numbers.

ARBITRATOR JAFFE: 2010, was it affected at all by the weather?

THE WITNESS: That was the year where they had the extra capital monies from the feds to invest in the infrastructure. So they just burned it up and worked everybody. 2010 and part of 2011, you had some high rates.
1. is system wide. So I guess the other point that we
2. could draw from this in terms of productivity
3. increases, certainly these two organizations have
4. contributed their fair share with shrinking hours,
5. shrinking employment, increased product.
6. Another measure which is associated with
7. the BMWE and BRS only is on 40.
8. This is the passenger mile metric.
9. So here we have the labor productivity
10. measured as passenger miles per pay hour. And once
11. again, up 61 percent over the past decade which is
12. pretty extraordinary.
13. Now, while productivity has gone up, labor
14. costs have been going up at a modest pace. And
15. combining those two factors will produce a decline
16. in unit labor costs.
17. In this instance we have unit labor costs
18. falling from 28 cents per hour in 2000, to 22 and a
19. half cents in 2012.
20. So even where under circumstances where
21. the unit labor costs -- I'm sorry. I misspoke.
22. The unit labor costs are actually up or

1. constant since 2001. That's the center column.
2. The last three columns compute for you the
3. change in real unit labor costs. So labor costs
4. are -- unit labor costs are flat. And that's, of
5. course, a function of both increasing productivity
6. and moderate labor cost increases.
7. And so in 2001, we are at about the same
8. level on unit labor cost as we were in 2012.
9. In real terms, of course, there has been a
10. diminution in unit labor costs falling from 100 --
11. or 28 cents to 22 cents by 2012. And the current
12. level is only 80 percent of where we were in the
13. year 2000 in terms of real unit labor costs.
14. ARBITRATOR JAFFE: And these are based on
15. real -- actual wages and contain no adjustments for
16. '10, '11, and '12.
17. THE WITNESS: There are no adjustments for
18. any of the actual wages paid out.
19. ARBITRATOR JAFFE: Got it. Thank you.
20. THE WITNESS: It's actually -- it's all
21. labor costs, wages, benefits, everything.
22. Again, I wanted to offer some perspective

on this. And so we have for you on Exhibit 42,
2. is unit labor costs calculated on the passenger mile
3. basis. And we're comparing ourself with the heavy
4. rail urban transit sector.
5. That would be that most analogous in terms
6. of both our recovery rates, and also their labor
7. ratios are higher. But I thought we would take a
8. look at these heavy rail urban transit systems.
9. These are about all of them in the
10. country, by the way, 15 of them. There might be a
11. couple we -- I think there's only 14 or 15 systems.
12. In any event, you can see that, even by
13. this standard, we are at unit labor costs that are
14. much smaller.
15. The next one gives you the same metric
16. calculated for the commuter railroads. And once
17. again we are below the commuter railroads in terms
18. of our unit labor costs.
19. And that's Exhibit 43.
20. Okay. I want to -- again, I went over
21. that material rather quickly because I don't sense
22. that there's any controversy between the parties

regarding the basic progress that Amtrak has made
2. both with respect to its control of labor costs and
3. its escalation, you know, of other financial
4. metrics.
5. I think that has been confirmed by other
6. witnesses in this record.
7. So I want to focus now, Mr. Chairman, on
8. something that's very important. And this is the
9. kind of analysis of the impact of adopting the
10. Union's proposal in this case on the financial --
11. the financial position of Amtrak.
12. And as you have probably suspected as we
13. reviewed the materials, there is a difference
14. between the parties as to how this should be
15. measured.
16. So I want to -- what I -- let me do some
17. homework here. I have some process matter here.
18. Exhibit 41 or 44 is the last published
19. five-year business plan. It is the -- was the
20. source of the original Roth Exhibit 46, which we now
21. should just abandon because I have now revised and
22. updated that material based upon the revised
five-year plan numbers that were placed in evidence yesterday by -- that would have been Mr. -- I'm sorry.

Our chief -- not financial officer, chief operating officer.

MR. WILDER: Yes, Stadtler.

THE WITNESS: Yes, thank you.

Thank you. Right.

And so based upon the material that he put in -- and I cite it down below -- that would be Amtrak Exhibit No. 700, pages 19 and 22, we have revised and updated the analysis that was found earlier in 46.

The second thing I would like to do here is you have page 4 of Exhibit 46 before you. It should be ripped out. It has nothing to do with the exhibit.

Apparentely when I sent this to the office yesterday, they included a page that was the earlier iteration that I just said we should ignore.

So you should have -- this exhibit is 46 the one before you, Mr. Fishgold.

ARBITRATOR FISHGOLD: Is this the one that said P and L Statement with national freight pattern?

THE WITNESS: Yeah. You have seven pages.

ARBITRATOR FISHGOLD: Yeah. There's a page 5, which is the same heading.

THE WITNESS: 5, you keep.

ARBITRATOR FISHGOLD: 5, we keep.

4, we discard.

THE WITNESS: 4, you throw out.

ARBITRATOR FISHGOLD: Okay, throwing out.

THE WITNESS: Thank you.

ARBITRATOR FISHGOLD: Thank you.

Now we can begin to discuss this.

If you go to Amtrak Exhibit 700, pages 19 and 22, you will find all of the information that we set forth on page 1 of this exhibit.

Okay. We just lifted it off of the testimony in exhibit material that was furnished by Mr. Stadtler.

Total operating revenue as shown in the top of the page. He then takes us through the various operating expense categories and notes the federal support that is required.

And comes up with the bottom line is the federal support, which is in the middle of the table, 353.8 million in 2013.

The last three columns I have added, the seat miles and passenger miles are lifted from the five-year business plan that is published.

There was nothing else offered in this record that enabled us to update those numbers.

So if you go back into Exhibit 44 and we lift from that document the seat miles and passenger miles that are projected for Amtrak over the five-year business plan.

The next -- what's derived from the data above that line are the expense recovery ratio, the labor ratio, and the unit labor costs calculated in those two different styles that I used thus far, namely seat mile basis and a passenger mile basis.

Okay. So this is the plan as projected by the Carrier.

We're going to go from an 89.4 percent expense recovery rate. And, again, this is calculated the way it would be reported out by the Carrier would improve slightly in 2014, and then pretty much hold flat. You get 89 percent again by 2017.

Now, what I did learn for the first time from Mr. Stadtler yesterday, that, embedded in the labor expense line, are assumptions for wage increases.

And I believe he said they were 3 percent a year or 1 and a half percent every six months. I think that was the assumption. I didn't know that was in there before his testimony.

So this is the plan going forward.

In terms of the labor ratio, it would hold again fairly flat, creep up a bit. It would go from 69.1 percent, and with those raises and perhaps new hiring and whatever other elements in the projection that finance incorporates, the labor ratio creeps up slightly to 69.7 percent.

Unit labor costs are also going up, 16.2 percent. And under plan, they would creep up to 18 percent.
1 cents by the end of 2017. Calculated the other way
2 around, it goes from 30 cents roughly to 32 cents by
3 2017.
4 So this is the kind of -- this the
5 five-year business plan as projected by the Carrier.
6 Now, I'm going to make some adjustments to
7 it. And the first adjustment I'm going to make is
8 shown on page 2.
9 And I wanted to provide the math behind
10 this rather than just tell you just get to the
11 conclusion because I suspect that the Board may want
12 to uncover the differences between the parties in
13 this kind of calculation.

BY MR. WILDER:

Q Mr. Roth, page 2 of what?
A 46. Page 2 of 46.
Q Thank you.
A If you -- it begins this way, this is the
methodology that I have employed.
The PRLBC projected wage line under Amtrak
proposal is lifted off the worksheet that was
provided by the Carrier in this case.

If you look to page 7 of this exhibit, you
will see in the far left-hand side the projected
average wages under their proposal.
See those numbers?
It starts with $211 million and ends in
MR. REINERT: Let the record reflect it
doesn't end in 199.764. It goes through CY15.
(Interruption by the court reporter.)
MR. REINERT: It goes through FY25 (sic)
with $204 million.
ARBITRATOR FISHGOLD: Y15, you said 25.
MR. REINERT: 15, yes, correct.
THE WITNESS: Are we there?
All right. For my purposes
notwithstanding, they report all the information is
my point. And I'm using them -- their line item as
the source of my calculation.
I am going to take this calculation
through the amendable date or through the moratorium
of the respective proposals for all of the reasons I
said earlier.

Again, just to recall to your memory, it
doesn't make any sense to me to make an assumption
for contracts that are going to be open. And I
think that is dangerous speculation for the Panel as
well.
Now, we don't know what's going to happen
on the freight side. They'll be open in January of
2015. And we certainly don't know what's going to
happen here for the settled groups.
So in terms of the Amtrak "pattern," it
cannot contemplate any cost or associated values for
employees in Calendar 2015 because they are unknown.
So we're going to look at a five-year
agreement, which is the proposal of both sides. And
my point being here is that the source of the top
line and the second line on page 2 is the Carrier.
All right. We're just going to accept
their numbers. I measured the difference between
them. That's the third line on the table, on page
2. So in year 2010, Calendar Year 2010, there's a
525 million -- $525,000 difference.

Those are not my numbers. Those are the
Carrier's numbers.
Now, what I derive from that is the
percentage difference.
In other words, our cost -- the Amtrak
cost as modeled over this period and projected over
this period is going to go up by the percentages
that I show.
So it would be two-tenths of a percent in
year one, minus five-tenths of a percent in year 2.
An increase of four-tenths in 2012. A 1
percent increase in 2013, and a 1.8 percent increase
in 2014.
Next, I lift off of the system wide wages
and overtime line item in the Amtrak -- this
includes the Amtrak proposal, of course.
This is -- that line is lifted off of the

difference in 2011, goes to 677. Then the 1,963,000
in 2013. And as all of the general wage increases
ramp up, by the time you get to the last year of the
collective bargaining agreement, the difference
between the parties is $3,684,000.
Those are not my numbers. Those are the
Carrier's numbers.
Now, what I derive from that is the
percentage difference.
In other words, our cost -- the Amtrak
cost as modeled over this period and projected over
this period is going to go up by the percentages
that I show.
materials that were furnished by Mr. Stadtler. So you recall in cross-examination, he identified that line item as being the one that is associated with unionized employees. The salary line item above that is for the non-represented.

So there is a projection by the Carrier for the years 2010 and 2014 and beyond -- I'm sorry, it wouldn't be a projection beyond -- these are actual numbers, by the way, through 2013.

I misspoke. 2014 would be a projection. And that was -- and that comes off of -- 2013 and 2014 come off of Stadtler's numbers. The previous numbers come off of reports that were filed as actual data for salary and overtime numbers from the Carrier from all other sources.

So if I increase that line item by the percentage difference between the two positions, I get the incremental increase in salary -- or wages and overtime of the numbers that are shown in the additional cost of the me-too.

And this is to say that if these -- if this salary and overtime -- or wage and overtime line item rose by the difference between the parties, this would be the additional cost system wide including the parties to this proceeding.

Okay so far?

So the cumulative cost difference over this five-year period is the $31.6 million which is the addition of the five years above it.

Now, to that, I'm going to add the railroad retirement tax and other variable benefits, at the average paid over this period of time, which is 20 percent. So I add 20 percent variable benefit rate, which is 6,000 -- $6.3 million.

And to that I'm going to add the lump sum value as calculated by Mr. Stadtler and reported in his exhibit, which was 11.5 million. And that's, of course, system wide.

This is applying the national freight agreement, our proposal, to the entire system.

So if you add up the $31.6 million number for wages, if you role that up by the variable benefit expense of 6.3 and add the lump sum, 11.5, you get a total of $49.4 million.

That's the cost, the incremental cost of applying the organization's proposal in this case before you to everybody on the property that is represented in that wage and salary line item, which was defined for us as the all the represented employees.

ARBITRATOR JAFFE: Okay. So this is the dollar cost over the life of this agreement?

THE WITNESS: Yes.

MR. REINERT: Object to form.

ARBITRATOR JAFFE: And treats, perhaps in the next line, the difference between the ending wage rate under the organization's proposal with the me-toos, and where you would be under the Amtrak pattern as the starting point as of 1-1-15; right?

THE WITNESS: I don't know.

Is that a question?

ARBITRATOR JAFFE: Yeah, it is.

It is.

THE WITNESS: This is the cost, the incremental cost, over the five years from 2010 to 2014.

ARBITRATOR JAFFE: Right. It does nothing to account either way for the difference in wage rates at the end of the Union's proposal with me-toos on the one hand, or the application of the Amtrak "pattern" on the other.

THE WITNESS: Another way to put it is that when you measure over this five-year period what the incremental cash cost is, it would not give value to the 1 and a half percent under the Amtrak pattern that was paid in the last day of the contract because it's not paid in the five-year period, nor, of course, account for anything, any speculative increase in 2015.

ARBITRATOR JAFFE: But it also doesn't take into account the fact that the organization's proposal has the hourly wage rates higher at the end of even as of December 31, 2014, than the Amtrak pattern does.

THE WITNESS: That's where I would recommend, as I do with all my clients, that when
you are valuing a labor agreement, you have to look
at two metrics.

The cost over the term and the terminal
value, what I call the going out cost.

ARBITRATOR JAFFE: I understand.

THE WITNESS: Because in the last year of
the contract including, something that was due and
payable in the very last day has value going
forward.

ARBITRATOR JAFFE: Right. Absent the
scale back of it, absolutely.

THE WITNESS: Absolutely. So that's what
I define as terminal cost.

ARBITRATOR JAFFE: Good. Same page.

THE WITNESS: Accounting term or finance
term that means the cost at the end of the contract.

So in the 19.9 or the $20 million --

ARBITRATOR JAFFE: Right.

THE WITNESS: -- that is the cost going
forward in 2015, '16, '17, '18, that would be the
incremental cost in the out years.

And it would include in it the 1 and a

half percent which is payable under the so-called
Amtrak pattern or Amtrak proposal on the last day of
the contract.

So I'm looking at -- that's why I
highlight both numbers. And neither one of them --
both of them are of equal importance.

ARBITRATOR JAFFE: I apologize.

THE WITNESS: That's okay.

ARBITRATOR JAFFE: I was there until your
very last comment, Mr. Roth.

If we looked at what the cost was through
December 31, 2014. I'm going to stop there at the
moment just to make sure that we understand.

That cost as you have calculated is
roughly 49 and a half million?

That's both wage --

ARBITRATOR JAFFE: -- and lump sum and
nets. It doesn't do anything for the health; right?

THE WITNESS: It does not.

ARBITRATOR JAFFE: But in terms of just
focusing on the wage piece of the package.

THE WITNESS: Yes.

ARBITRATOR JAFFE: That's the difference.

THE WITNESS: Correct.

ARBITRATOR JAFFE: That's the delta; right?

ARBITRATOR FISHGOLD: And it doesn't
include the 1 and a half percent that's payable on
the last day.

ARBITRATOR JAFFE: That's where I was
going.

ARBITRATOR FISHGOLD: Okay. Sorry.

ARBITRATOR JAFFE: I think the last day as
they have defined it is January 1, 15; right?

THE WITNESS: Yes.

ARBITRATOR JAFFE: Which is why I stopped
where I stopped.

THE WITNESS: Right. So the 49.4 would
not include the 1 and a half percent.

ARBITRATOR JAFFE: I understand.

THE WITNESS: And '15, '16.

ARBITRATOR JAFFE: In year '15.

THE WITNESS: The terminal value would.

ARBITRATOR JAFFE: Right. So that if one
looked at 1 and a half percent, hypothetically, as
of 1-1-15 and you were measure as of that date, you
would have to take into account both the percent and
a half and the terminal cost number because at that
point, that's in play as well; right?

THE WITNESS: I'm not following you.

You take into account which?

ARBITRATOR JAFFE: The 1 and a half
percent would be ignored in value because it's only
in place for a day.

THE WITNESS: No, no, no, no.

It would be -- it's annualized.

It's annualized. It's the cost of 19 --
the $20 million number is the cost in 2000 -- the
incremental cost associated with adopting our
proposal for everybody in year '16.

ARBITRATOR JAFFE: Right. I understand.

THE WITNESS: And '15, '16.

ARBITRATOR JAFFE: In year '15.

THE WITNESS: In year '15, and going
forward.

ARBITRATOR JAFFE: But that doesn't
include any 1 and a half percent adjustment or a 3
1 percent conditional adjustment or anything else.
2 THE WITNESS: No. It does.
3 ARBITRATOR JAFFE: It does.
4 THE WITNESS: It includes the 1 and a half.
5 It does not include any element in wage increase that is not already determined.
6 ARBITRATOR FISHGOLD: Okay. Let me see if I understand it then.
7 THE WITNESS: One other last thought, Mr. Fishgold, before -- you'll notice that the 2014 number of 19,996,000 is the same.
8 I checked this five times. That is fairly coincidental because those are two separate calculations.
9 But that 19.9 is rolled up for variable expense and includes the 1 and a half going forward.
10 MR. REINERT: May I just ask a question, just for clarification?
11 ARBITRATOR JAFFE: Right. That's what I heard as well.
12 We heard the same thing.
13 MR. REINERT: Okay.
14 ARBITRATOR JAFFE: I'm still not sure I understand, though.
15 With the additional -- you're saying that the additional cost of me-too, which nets out at 19,996, is simply coincidentally the terminal cost?
16 THE WITNESS: Yes.
17 ARBITRATOR JAFFE: Okay. And the terminal cost was calculated by taking the --
18 THE WITNESS: Because -- tell you what, the percentage difference in 2015 changes.
19 ARBITRATOR JAFFE: Right.
20 THE WITNESS: So the incremental cost goes down. And then when I load it up with the one and a half and with the variable benefit expense, it goes back up to 20 million.
21 But when you carry this out one more year, as I did when I made the terminal cost calculation, the percentage difference between the two calculations goes down.
22 It may become more clear if I can add a column here that shows the math, but that's what happened.
23 ARBITRATOR FISHGOLD: Might be helpful if we do leave the record open for you to amend that.
24 THE WITNESS: Okay. I can put some more worksheet on here to show the calculation behind it.
25 But I think everybody is clear that it would have the one and a half benefit, but it would not have any value associated with the -- what the national freight agreement beyond what is already known to the amendable date through the moratorium.
26 So both of them are five-year agreements.
27 ARBITRATOR FISHGOLD: Is that truly -- is that something that this Board should consider as a significant difference in the proposals? In other words -- and how you calculate the proposals.
28 Because that 3 percent is in the Union proposal, but is not payable at the termination date of the amendable date of the other contracts, that it should not be included in factoring costs.
29 THE WITNESS: No.
30 ARBITRATOR FISHGOLD: No.
31 THE WITNESS: Because it assumes implicitly that the "Amtrak pattern" assumes a wage freeze for 2015, which I think is -- I think is a reach.
32 ARBITRATOR FISHGOLD: No. But are you saying --
33 THE WITNESS: You assume zero under the -- ARBITRATOR FISHGOLD: Well, we don't know -- hypothetically, we don't know what that percentage might be.
34 But we do know, according to your proposal as I'm hearing it, that there will be at least a 3 percent in 2015 under the Union proposal.
35 THE WITNESS: It could be higher.
36 It could be lower.
1 ARBITRATOR FISHGOLD: Okay. Well.
2 THE WITNESS: It's only guaranteed 3
3 percent if they go to arbitration or to a PEB.
4 ARBITRATOR FISHGOLD: I remember that now.
5 THE WITNESS: I mean, you know what, you
6 can -- if you read it as a minimum and if you want
7 to perform the analysis over a six-year period, you
8 can.
9 If you do it over a six-year period in
10 order to have apples to apples, you have to make an
11 assumption for wage change under the settled
12 contracts in 2015.
13 ARBITRATOR JAFFE: I understand.
14 THE WITNESS: If you tell me what that's
15 going to be, I'll put it in. But I don't know what
16 it's going to be.
17 ARBITRATOR JAFFE: Well, I understand.
18 THE WITNESS: And because I believe that
19 it's probably beyond the scope of your work to
20 predict what that should be in 2015 for the
21 unsettled unions, that it would be wiser and more
22 prudent to look at these agreements over the
23 five-year moratoriums.
24 Because you cannot, as a matter of math,
25 look at it on a five-year and six-year basis.
26 That's just wrong.
27 ARBITRATOR FISHGOLD: So let me -- as I'm
28 looking at this and, as I have heard your testimony
29 then, there are three numbers in the explanation for
30 them that this Board should be considering in some
31 fashion.
32 One is that the 2014 total cost of 49
33 million whatever does not include the 1 and a half
34 percent.
35 Is that correct?
36 Does not include the 1 and a half percent.
37 ARBITRATOR FISHGOLD: And that the
38 terminal cost of close to 20 million includes the 1
39 and a half percent.
40 THE WITNESS: Yes.
41 ARBITRATOR FISHGOLD: But does not include
42 the 3 percent in the Union's proposal.
43 THE WITNESS: Well, we're not proposing 3
44 percent.
45 ARBITRATOR FISHGOLD: No. But -- well.
46 THE WITNESS: That's not --
47 ARBITRATOR FISHGOLD: Well, that's what
48 I'm not clear on.
49 THE WITNESS: -- include any increase.
50 It does not include a 3 percent going out.
51 ARBITRATOR JAFFE: Doesn't it include the
52 ability to go ahead and say, I'll take the 3 percent
53 conditionally then bargain? And then not advocate
54 for something greater in a PEB or interest arb
55 process?
56 THE WITNESS: Again, I could -- that's
57 just a matter of arithmetic for me.
58 And I can include it.
59 ARBITRATOR JAFFE: Well, I understand.
60 ARBITRATOR FISHGOLD: We need to
61 understand, though.
62 THE WITNESS: It's speculation on my part
63 as to what the parties will do.
64 ARBITRATOR FISHGOLD: And there's a
65 reason -- well, there's a lot of reasons why we want
66 to know.
67 And one is that we have talked a lot --
68 and I don't mean we -- but the parties have talked a
69 lot -- certainly your testimony has talked a lot
70 about the freight proposal and how the freight
71 proposal factors into -- as a pattern, an external
72 pattern for what we should be considering.
73 And I guess my question to you, Is what
74 the Union is proposing strictly the freight
75 proposal, or is there something in addition to the
76 freight proposal that the Union proposal is looking
77 for?
78 THE WITNESS: Now, at some point we need to really
79 understand that, I think.
80 ARBITRATOR FISHGOLD: No. Different
81 from --
82 ARBITRATOR JAFFE: On wages.
83 ARBITRATOR FISHGOLD: On wages. That
84 would be higher than for -- to be very clear.
85 ARBITRATOR JAFFE: Are you seeking something in wages in
your -- in the proposal that's being presented to us
in this proceeding that exceeds the freight
proposal?

THE WITNESS: No.

But the -- what is -- for 2015, what will
be generated by application of the freight pattern
is unknown.

And I can -- again, as for me it's a
matter of math. If you give me an assumption on
what they're going to do on the freight side and
what they're going to do on the Amtrak side, I can
impute it.

But I -- in my work, I thought it more
prudent as an expert to not speculate.

I can work with any assumptions the Board
wants me to.

For example, if we say that the freights
are going to settle for 3 percent on January 1, and
the Amtrak settled contracts are also going to get 3
percent, we can put that in there.

But then there will be a wash. It will
still have the same incremental difference.

But that's an assumption you can make, or
you can assume, as the Carrier has, that they're
going to take a zero in that year, which I think is
still a leap of faith particularly under the
circumstances where that hasn't occurred for a
quarter of a century, and secondly where they have
planned on providing 3 percent raises or 1 and a
half percent every sixth months.

ARBITRATOR JAFFE: To follow up, if I may
at the moment, at least.

ARBITRATOR JAFFE: If we look at that
19,996 terminal cost, you said it included an
assumed percent and a half as of 1-1-15?

THE WITNESS: Yes.

ARBITRATOR JAFFE: So that would -- I just
want to make sure I have the concept right.

So if we reduced that backwards, that
would mean that the cost as of December 31, 2014,
one day earlier, would be the one over 1.015, which
would be nineteen seven, roughly?

THE WITNESS: Yes. Because the difference
it would be a lower -- the difference shrinks
because they got the 1 and a half.

ARBITRATOR JAFFE: I understand.

So it becomes 19 million 7.

THE WITNESS: Right.

ARBITRATOR JAFFE: Roughly, unless you're
doing this differently than I understand it.

That's why I was asking.

THE WITNESS: No. And I think you got it
right.

I mean, at the break, I can get on the
computer and give you the numbers behind this, give
you the math behind it.

As Mr. Fishgold has suggested, I can give
you an additional worksheet.

ARBITRATOR FISCHGOLD: I would rather you
take the time to do that.

ARBITRATOR JAFFE: Okay. And so going
back to Mr. Stadtler's testimony that you
referenced, he came up with a total of approximately
124 million; correct?

THE WITNESS: Right. 123 and change.

ARBITRATOR JAFFE: 123.7, I'm looking at.

I rounded it, admittedly for purposes of
the question.

ARBITRATOR JAFFE: Yes.

ARBITRATOR JAFFE: And you're at a number
that's roughly 50; right?

THE WITNESS: Correct.

ARBITRATOR JAFFE: That difference is
beyond the percent and a half difference, is it not?

THE WITNESS: It's the 3 percent that he
is -- that he embedded in the -- in the next year.

It's not only the incremental increase.

It's a whole other year of wages.

ARBITRATOR JAFFE: I understand.

So your understanding is that the 3
percent is approximately equivalent to the 75
million give or take, about 25 million a year.

THE WITNESS: I think it's on the
worksheets.

It's -- if you turn ...

ARBITRATOR JAFFE: And I apologize, I
should have that facile right there, but I don't.

THE WITNESS: I have the answer to your question because I know what you're thinking about.

ARBITER JAFFE: Good.


ARBITER FISHGOLD: Of your Exhibit 46?

THE WITNESS: Of 46, is the worksheet that lies behind Mr. Stadtler's testimony.

And you can find the very bottom, the right-hand column, you see the 123.7.

ARBITER JAFFE: Yes.

Okay. That is accounted for because he has another $66.6 million difference in year 2015.

Which is generated by an assumption that the settled unions get zero --

ARBITER JAFFE: Okay.

THE WITNESS: -- for that year, and we get 3 percent.

If you subtract that from the 123, you'll get the apples to apples, except they're different and here's the reason why.

Are you ready?

These projected wages that are used for this purpose are different than the projected wages under the plan. I don't know why.

But I preferred to use to published information, the information of the salaries and the wages and overtime that were published, rather than what is characterized here as projections for 2014 and '15.

So what you have in evidence are two separate sets of projections --

ARBITER JAFFE: Okay.

THE WITNESS: -- for base salaries, which explain the balance of the difference between us.

I'm using the numbers that were published yesterday by Mr. -- by Mr. Stadtler. And these are the numbers that Mr. -- that were otherwise relied upon by -- and I don't know where the numbers came from, but this is the worksheet.

ARBITER JAFFE: And so if you use the same conceptual approach that you're advocating, just to clarify what's mathematical versus conceptual, you come up at about 57 million for him as opposed to 50 million for you; right?

123.7 minus 66.6?

ARBITER JAFFE: Yes. I can get there.

ARBITER JAFFE: Which I think is right about 57 as opposed to your 50.

ARBITER JAFFE: Yes. So, I can account for that 7 million.

It's built into the assumed projected wage base for these unions, which may be predicated by the way on overtime rates. That excessive overtime rates from prior periods projected forward under circumstances where the Carrier in its business plan is projecting a diminution in that overtime reliance, so you have got different projections made by the Carrier.

And I'm using one of them.

ARBITER JAFFE: Fair enough.

Anything else for the interruption?

ARBITER FISHGOLD: No.

That was very helpful.

ARBITER JAFFE: Okay. Thank you.

Are we okay?

ARBITER FISHGOLD: Very helpful.

THE WITNESS: And back to Mr. Fishgold's question about what's purpose, why are we doing this?

Well, you know, you have to circle back to the me-too. We are taking the position -- I am taking the position that with that -- the me-too provides all of the comfort necessary to eliminate any concern for the instability of labor that's sometimes associated with these arguments that the parties are making because the other unions are going to have an opportunity to satisfy either with what they bargained for or with the application of the organizations' proposals in this case.

If they choose the latter, the purpose of -- the whole purpose of this exercise to demonstrate that the cost impact is not going to be not only not fatal to the employer, but will be fully accommodated in the projections that they made over the five-year business plan when you look at the principal metrics that they look at and I look...
1 at on the financial position of the company, which
2 we haven't got on the next step yet, but we're going
3 there.
4 But that's why -- that's the purpose of
5 the analysis. If we didn't have this question of
6 the impact of me-too, I wouldn't be going through
7 this exercise.
8 Okay. So let's go back to -- okay. The
9 second step, of course, is to account for the
10 savings associated with the health insurance piece
11 because there, if you recall, Mr. Stadtler ignored
12 it.
13 Okay. This is the cost, $123 million,
14 asking you to consider that as impact on their
15 finances without accounting at all for significant
16 savings associated with the other half of this
17 package.
18 And so what I did on page 3 of this
19 Exhibit 46 is attempt to put a number behind it.
20 The headcounts that you see at the top of
21 the page for years 2011 through 2017 are drawn from
22 Charlie Woodcock's testimony.
23 He had -- and basically the numbers are
24 14.5 without the PRLBC, and then 17. -- you know,
25 17,229 with.
26 So these just come from Charles'
27 testimony.
28 Now, in terms of the employee
29 participation in the health insurance plan, it's
30 probably somewhat diminished from those numbers
31 straightly.
32 I don't have those numbers. So I'm using
33 as a proxy for calculating per capita savings the
34 headcounts that would otherwise be in the record.
35 And of course, I'm showing that they're
36 stable. I don't know if they will creep up or down
37 over the course of this time. But this is going to
give us a good estimate. And that's all it is for
the values associated with the concessions made by
the organizations on healthcare.
So the next thing I do is I lift from the
exhibits -- I think this is Exhibit 400. This is
Mr. Rand's testimony. Go to Mr. Rand's testimony
1 pages 24, 25. You will see those contributions per
2 employee per year numbers, $24, 96, 262, and then a
3 partial year.
4 We're going to -- let me see what I do
5 here.
6 That's July. That's a half a year.
7 Okay. So half a year -- half of the year
8 that he reported in 2014, so those are the Carrier's
9 numbers. These are the savings that they report
associated with the settled unions person.
10 Now, if you multiply the headcounts by
11 those per person numbers, you get the total
12 contributions line. And you see the label, total
13 contributions return because what I contemplate in
14 the application of the me-toos if you apply them
15 literally and completely -- and we don't know -- for
16 the reasons I said earlier, it doesn't have.
17 But if it did, you have got to pay back
18 those contributions; right?
19 So you're going to pay back $347,000 in
20 year one. And that grows, as you can see to $3.8
21 million you have got to give back to the set of
unions. And then for half of 2014, I got to give
back another 1.9 million.
3 That's what I give back.
4 Now, however, if they accept the literal
5 application of the Organization's proposals in this
6 case, then of course the Carrier is going to get all
7 the design changes.
8 So then what I do is I go to the same
9 exhibits that were produced by Mr. Rand, where he
10 records the annual savings associated with adopting
11 the Union's design changes.
12 And they would be 435, 940 -- actually,
13 half of the year, twice that number, in 2014, but I
14 took half of it because we're not implementing until
15 July.
16 ARBITRATOR JAFFE: Okay. So you're using
17 the ramp ups in 243, but starting the process
18 prospectively, the design change ramp ups.
19 THE WITNESS: No, I'm not.
20 Not in this example.
21 ARBITRATOR JAFFE: No.
22 THE WITNESS: We're going to -- our
proposal was to ignored the value of the ramp up. We're saying we're going to go 100 percent of the design changes. We actually said, you know, January 1, but that time has passed. So as soon as it gets effectuated, it's 100 percent.

There's no ramp up under the PRLBC's proposal.

ARBITRATOR JAFFE: Okay.

THE WITNESS: Is that right, Mr. Wilder?

MR. WILDER: That's correct.

ARBITRATOR JAFFE: Okay.

THE WITNESS: So those are the full annual values. And, again, these are just lifted out of their exhibits; right? This is just the stream of these costs and savings.

So then again I multiply them by the full population, and these are the savings I'm going to get in the out years. So I'm going to save 7.55 million for half a year of 2014. That grows to 16.3 million savings in '15, 17.8 in 2016, and 19.5 million by year 2017.

Now, this is interesting because the form of the concessions made by and being proposed -- I should say made by the national freight contracts and being proposed here have a totally different savings profile than the -- than design changes -- I'm sorry, than contribution savings.

Yeah. The design savings are being driven by inflation factors that are assumed by the plan -- by the consultants to Amtrak.

Again, not my assumptions. But they're their assumptions. And they're pretty strong.

You know, 8 percent and 9 percent depending on the health insurance element.

You know, dental is different than medical. Prescription drug may be different. But they are driven up on an inflation -- inflation rate.

The contributions overall go up at a slower rate. So in some sense -- and that's why we in the out years, the terminal values of our healthcare concessions are worth more than the terminal value of the concessions that the others

Now, what I'm doing -- the reason it's only a $2 million savings in 2014 is because I'm going to pay back all the contributions that were made. And then I'm going to install the design changes in July. And I'm still going to net a savings of $2 million.

So it's almost a wash. But it's -- I'm paying back all of the contributions that the settled employees made.

And then, of course, I go forward with those large savings that everybody is going to now make and contribute to the plan. So my benefit cost will change accordingly.

So if I add all of that up, I get total overtime factors.
labor expenses that, as you can see, are different than on page 1. And let's look at -- and it goes from -- you compare it to page 1, you can see how -- what's happening to the labor cost line. That's just a sum of the numbers before, including the salaries. Okay. So that's just in addition to those lines. So you can see how the line is creeping up. But by the time we get to the end of this plan, the design changes are going to offset the incremental cost of giving up the extra wage increase. Will offset. Right. The nonlabor expense stays the same. We broke out here to be consistent with how it's reported by the -- in the Carrier's material, we broke out interest expense. And you add that up and you get total expense, and you can see the way the expense line changes over time. So I have an operating loss that changes. I have noncash line item which stays the same. And I have got my federal support, which is different.

So by definition, if my operating loss goes up, my federal subsidy rises at exactly the same dollar amount. The seat miles, passenger miles are the same as under the plan, as you see on page 1. And now I just simply do the arithmetic and calculate for you the expense recovery rate, the labor ratio, the unit labor cost, and the unit labor cost calculated on a passenger mile basis. Now, I'm going to ask you to compare those bottom lines on page 1 with page 5. And when I testified in my written statement that the impact of applying the me-too to everybody had an imperceptible impact on the financial metrics of the Carrier, this is what I was talking about. Recovery rate is basically the same. You have a little slight tick up in unit costs and a slight tick up in a labor ratio. And of course this is incremental to the additional wage increases that are embedded in the plan for out years, which you know, are a matter of -- that's just financial planning. If we're okay with that, absent my refinement of the worksheet, I'll move forward. ARBITRATOR JAFFE: We'll certainly hold anything else until we're done. We may double back, but for now, we're fine. THE WITNESS: All right. We have one last piece of math to perform for you. That's Exhibit 83. We -- I didn't hear any -- much testimony about this, but we did hear -- well, actually, I think Tom Rand testified that unlike design changes, changes in contribution rates can be made retroactively. Now, implicit in that testimony -- and I don't know if you inferred it or not -- but you can infer from that that the -- that you cannot apply the national freight pattern in a literal fashion without -- and still make the Carrier whole, or still put the Carrier in the same position that the freight railroads were in when they met those obligations because the design changes to the freight railroads received are valuable, and, according to Mr. Rand, cannot be made retroactively. So we take that as the premise. No retroactive design changes. So I think what you have and what I have calculated in the second below -- the second table actually, this is the opportunity cost to Amtrak for having health insurance savings delayed. Those savings that would otherwise be obtainable had the freight agreement been applied from the beginning. And so how does that look? Well, you take the savings that are reported by Mr. Rand in his analysis for the years -- actually he only had '13 and '14. I had to go back in -- if you go back into the exhibit materials, the joint exhibit on mediation materials where Aon, their consultant on healthcare during the course of mediation and bargaining, they have numbers on the savings
associated with adopting the Union's design
proposals that reach back further than what Mr. Rand
had in his testimony because he had -- he was
pushing the numbers forward under his theory that
you can't capture that metric.

The only point I want to make is that the
numbers on health insurance savings are those that
are produced by the Carrier. They're not generated
by me in any form or fashion.

All I did is I took them and I applied --
I took the total savings that were going to be
available in 2012, and I phased them in under the
pace of recommended and ultimately adopted by the
parties to -- to the 243 proceedings.

So it was, as I recall, 7 -- I want to say
75 percent in 2012, 80 percent in 2013, and 100
percent effective 2014.

Actually, they went into effect, the 75
percent went into effect July of 2012. So you had a
half a year, and 75 percent of the half a year
obtainable under the national freight agreement in
that calendar year.

Then you have, effective January,
according to 234, 85 percent of those savings
captured by the Carrier in 2013.

And by January 2014, it's 100 percent.
For this analysis, I'm going through the
first quarter. I can -- you know, you can adjust
this at any time during '14.
But let's assume -- because I think
Mr. Rand is assuming in his numbers that you can
make this effective April 1.

I think that's what he's saying.

So how many months are there between the
first quarter of -- the end of the first quarter of
2014 and July 2012, 13 and a half months.

So I'm losing the -- this is -- let me
see, these are in -- these are millions of dollars,
so that's $298,000 I'm losing for 13 and a half
months.

I'm losing another $1.3 million for seven
and a half months, another $559,000 for one and a
half months.

So this is what I did.
the $1.9 million. We're going to be paid that 8.7.
That's a retroactive check.
All I'm accounting for here is the interest on that money over the period of time from the time it was payable under their proposal to the time that we receive it, which here would be April 1, 2014, at a 3 percent interest rate, that's about $1.9 million. At 6 percent, it's about $3.9 million.
It's in interest.
And so what's the moral of the story?
The moral of the story that there are opportunity costs associated with the delay of these proceedings, delay of the implementation of either agreement.
But my point is and my position is that it works for the Carrier. It's a wash.
We're not looking to be made whole here.
Because I can't -- I don't know what interest rate is appropriate, frankly. I just know that at any interest rate, it's a wash. And the higher the interest rate, the more suffering, the more opportunity costs the members have experienced as opposed to the Carrier.
Now, you can look at these opportunity costs in two ways.
If the employer puts money into a bank account, I suppose you can say, you know, they actually had a raise on it. Or you can say, well, you know, that's money that they otherwise -- they used the money, and they otherwise would have had to borrow. So you can look at their borrowing rate.
The average borrowing on all of the outstanding for Amtrak is over 7 percent. It's in the financial reports.
But I don't think they actually used this money for operating purposes. I probably just -- I understand the testimony to be that we put it in -- put it in a -- we accounted for it and put it aside.
I don't know where it is actually.
But from the employee's perspective, what's the proper interest rate?
Well, if I had this money, maybe I could have paid down my mortgage, which is 4 or 5 percent rate. Maybe I could have paid a Visa -- my Visa down, which is like 12 or 13 percent.
So I don't know what the measure is and, frankly, I don't care. I don't think it's important.
I think the takeaway here, Mr. Chairman, is that both parties had opportunity costs. You cannot penalize the labor organizations for the delay that is involved in the processing of the Railway Labor Act and impasse procedures on the Railway Labor Act by discounting the application of the national freight pattern because of some, you know, egregious opportunity costs suffered by Amtrak for not having the value of the design changes in place earlier than later.
That's the takeaway because we had a loss, too, and it was offsetting.
ARBITRATOR JAFFE: Have you done a comparison similar to 83, but comparing it to the freight pattern if it were hypothetically applied as of the dates in question rather than perhaps otherwise?
The WITNESS: I did not.
But obviously that would blow up our loss. Their loss would stay the same. Our loss would go up.
ARBITRATOR JAFFE: It would increase as opposed to 83.
THE WITNESS: Yes. Only the topside.
ARBITRATOR JAFFE: I understand.
THE WITNESS: But yes.
I did not. This is more conservative look. I certainly can do the other one.
ARBITRATOR JAFFE: And last question on 83, the bottom includes the design changes or is just focused on the premium changes?
THE WITNESS: These numbers include the total savings -- the total savings that were reported by the Carrier.
That was my intention.
I can clarify that.
ARBITRATOR JAFFE: It includes both?
THE WITNESS: That was my intention.
As you recall, the slide that Mr. Rand had
had various columns including the totals. This was the total column. And I used, by the way, in developing the per capita costs the -- no, for this purpose, I used the aggregate that he reported.

ARBITRATOR JAFFE: Okay.

THE WITNESS: I can find it for you at the break, if you wish.

ARBITRATOR JAFFE: That's fine.

So with respect to contributions, it focuses on the actual premium rates that are paid by folks covered by the freight agreement?

THE WITNESS: No. Covered by -- this would be the -- the savings that the Amtrak has -- no, there would be no change in contribution is what I'm saying.

On the national freight agreement the sole source of the savings that have -- that they have -- Amtrak has foregone were in the nature of design changes.

So the bottom --

ARBITRATOR JAFFE: Yes. But the starting points of the contributions were different, were they not?

THE WITNESS: Yes.

ARBITRATOR JAFFE: And all I was asking is this analysis at the bottom of 83, does it include anything for the difference between the rate --

THE WITNESS: Oh, I see.

ARBITRATOR JAFFE: -- that Amtrak employees are contributing?

I think it's 177.54.

THE WITNESS: Correct.

ARBITRATOR JAFFE: As opposed to the rate that employees under the freight agreement were paying for their health coverage, which was a different rate starting, but is also a different rate from 2010 forward.

THE WITNESS: Right.

ARBITRATOR JAFFE: And I know the parties have different views as to what it means to apply the freight --

THE WITNESS: Right.

ARBITRATOR JAFFE: -- even assuming one were to do so.

I'm not trying to change your position.

I'm actually trying to understand what's embedded mathematically in Exhibit 83.

THE WITNESS: No.

There's no contribution change --

ARBITRATOR JAFFE: Okay.

THE WITNESS: -- associated with the calculation at the bottom of the page.

ARBITRATOR JAFFE: That's what I was trying ...

THE WITNESS: And I would think it would be inappropriate to include that given the fact that what -- that the proper application of the freight pattern captures the 177.54 rate for us, because what you're trying to measure here is the incremental change.

There was no increase change under the national freight contract on the health insurance contributions. The differences in those rate levels are attributable to the differences in utilization of Management of those perspective plans, which we don't intend to pay for, by, again, by paying more than $177.

That's the proper interpretation of how to apply it.

ARBITRATOR JAFFE: I understood that was the Organization's position. Fair enough.

Is there anything that you want to pose at this time?

ARBITRATOR DAS: No.

ARBITRATOR JAFFE: Mr. Chairman?

ARBITRATOR FISHGOLD: That's fine.

ARBITRATOR JAFFE: Okay.

ARBITRATOR FISHGOLD: Okay.

THE WITNESS: Thank you.

THE WITNESS: One last thing.

I won't wait for counsel to ask me the next question.

He's busy.

MR. WILDER: We might want a break about this time. Is that a suitable time?

ARBITRATOR FISHGOLD: He's almost ...

MR. WILDER: Going an hour and a half.

ARBITRATOR JAFFE: That's fine.
MR. REINERT: How much longer do we have?

THE WITNESS: Half hour, maybe.

ARBITRATOR JAFFE: Why don't we take --

MR. WILDER: Twenty minutes?

We're off the record.

(A recess was taken.)

BY MR. WILDER:

Q    Mr. Roth, why don't you pick up your testimony where you left off just prior to the recess.

A    Okay.  Gentlemen, I would like to bring you back to Exhibit No. 83.

The calculations that I made for the delayed health insurance under the national freight agreement are correct.

But I misrecalled the actual phase-in percentages under the national freight agreement.

It was actually 50 percent, effective July 1, 2012, and 75 percent January of '13, and then 100 percent in '14.

And I think I said something totally different.  So I just wanted the record to be straight on that.

With regard to the balance of my testimony, I just have a couple comments, which shouldn't take long with respect to the testimony that was produced by Mr. Gillula.

And for that purpose, I guess I want to have you look at Exhibit No. 1, which is the -- was appended to the testimony.

(A discussion was held off the record.)

ARBITRATOR JAFFE: I believe you're referring to Exhibit 601.

THE WITNESS: So it's 601.

ARBITRATOR FISHPOLD: Yes.

ARBITRATOR DAS: Yes.

THE WITNESS: Thank you very much.

BY MR. WILDER:

Q    Do you have that before you?

A    I do.

ARBITRATOR DAS: Somebody tell me what volume it is.

(A discussion was held off the record.)
Now, the first line supervisors under the OES, when you pull up the data -- and anybody can go online and do it -- you'll find first line supervisors, their average reported national rate is $30.40.

If you add the 7 percent cost of living differential that was applied to all of the other rates that were lifted from the OES data, you get a rate of $35.53. That's the rate that you would compare with our average rate of $27.84.

ARBITRATOR JAFFE: I'm sorry. I apologize. How did we get from $30.40 to 35.53?

THE WITNESS: I was able to confirm that. When you look at Exhibit 601.

ARBITRATOR JAFFE: Right.

THE WITNESS: You take 7 percent off of all these rates for these various categories.

ARBITRATOR JAFFE: Right.

THE WITNESS: You will find the reported --

ARBITRATOR JAFFE: I understand. But if you add 7 percent to $30.40, you don't get up to 35.

THE WITNESS: Did I do the math wrong?

ARBITRATOR JAFFE: I believe it's a calculational error.

THE WITNESS: Okay.

ARBITRATOR JAFFE: It should be about --

THE WITNESS: 32.53.

ARBITRATOR JAFFE: That sounds better.

Thank you.

THE WITNESS: Thank you.

ARBITRATOR JAFFE: Not a problem.

THE WITNESS: I was just seeing if you were awake.

ARBITRATOR JAFFE: I appreciate it.

THE WITNESS: 32.53, and that would compare with our $27.84.

ARBITRATOR JAFFE: Got it.

THE WITNESS: All right. Now, of course, if you create another line item in Exhibit No. 601, and you take our foremen and put it into those categories, guess what? The weighted average for the OES data would rise.

The other reporting mistake is made with respect to all the B and B mechanics.

The line item that is shown here as the building maintenance employees who like are trained to, you know, maintain buildings like part of the engineering janitorial staff, they run around the buildings and repair them.

That's who is in here.

According to the BLS, if you report a carpenter or a painter or any other -- or a mason and all the other kind of crafts that we have within our B and B workforce -- and, of course, they're titled as such -- they would be reported in the construction and extraction group, which is not --

The average rate there is 22 -- I'm sorry, the average rate -- I don't think I even have that.

But suffice it to say that it is not --

oh, I'm sorry, it would be $22.64 plus the 7 percent. That's 24.22.

And that would compare to the $19.13 average OES rate that was used in the report.

So I think without doing a rigorous reconstruction of the exhibit by using the occupational matches that are appropriate, I would say that some of this premium that was otherwise reported on page 5 of Exhibit 600, is a result of mismatching the occupations that are involved.

And like I said, those two examples that I gave you are confirmed by the BLS.

And by the way, just a couple of other numbers that you might be interested in. If you extract from the average BMWED, BRS rate which is reported here as 25.06, the weighted average that I report on, given the headcounts and the -- the headcounts and the wage rates going into this case for the entire bargaining unit was 24.80. Subtract the foremen, and that rate falls to 24.07.

So right there, it's a 3 percent discount just by taking the foremen and putting them elsewhere.
And then if you account for the foremen in 
their relative wage rate in the balance of the 
report, it could and probably would change the 
conclusions that are drawn here regarding the -- our 
relative position to the OAS data. 

The only other comment I would like to 
make -- and this is probably self-evident to the 
Board -- but, you know, the timelines that are 
reported here, which I understand to be average 
hourly earnings, are inappropriate in my view when 
comparing to a wage trends. 

And the caption of the exhibit material is 
entitled Comparable Private Sector Wages. These are 
not wage rate changes. These are average hourly 
earnings, and they're influenced markedly by changes 
in the composition and the mix of the 
classifications that are included in the category 
that's being looked at. 

So, for example, in the private sector, 
you have a flattening of changes in average hourly 
earnings due to a shift from high paid occupations 
to low paid occupations.

The opposite is true in the BMWE, BRS 
classification where you have a -- where average 
hourly earnings have outpaced average wage rate 
changes over any period of time because of a 
migration from the trackmen in the lower skill 
classifications to the machine operator and the 
foremen in the higher rated classifications over 
time. 

As technology on the railroad is 
introduced in a massive way, you have fewer -- you 
have less need for people with -- swinging a pick 
and shovel and -- using pick and shovel, and more 
need for a highly skilled equipment operators. 

And over time, that shift -- I have 
calculated this a dozen times, but there is a -- at 
BMWED in particular, there has been an increase in 
average hourly wages which outpace their change in 
the average hourly rate, per se. 

But I would just caution the Board in 
drawing any conclusions about relative wage rate 
change when you're looking at average hourly rates. 

It's as simple as that.

And I don't think I have anything further 
on that exhibit, thank you. 

BY MR. WILDER: 

Q Mr. Roth, would you summarize your 
conclusions, please? 

A Yes. I think that for that purpose it 
probably tracks what I had said in my written 
statement. 

I would say first of all, the freight 
standard has been embraced by the parties in the 
past. We have direct evidence of that in the 
incorporation of national freight agreement terms by 
referenced into their Collective Bargaining 
Agreement and a variety of important benefits. 

And I remind you, I think Jerry Glass 
pointed to the fact that rules have been -- are more 
likely to be bargained locally and wages looked at 
separately. 

Well, in the railroad industry -- and I 
wasn't sure the Board was fully cognizant of this. 
But when we talk about rules -- and they can be 
vacation rules; they can be supplemental sickness.
agreement which were influenced heavily by 
bankruptcies and insolvency of freight carriers and 
under other circumstances, particularly the 219 
debleque.

Under those circumstances, the Carrier was 
anxious to adopt the national freight agreement.

And now, we come to 2010 when for the 
first time there's an incremental difference, an 
incremental advantage to the employees of the 
national freight agreement.

And now it should not be applied.

Now, we are instructed to ignore that.

We think that when under the circumstances 
the history demonstrates that we have adopted the 
national freight agreement, the good, the bad, and 
the ugly, that we should not be denied this minor 
incremental improvement just because the national 
freight agreements happened to be making money 
during this last round of bargaining.

Second, the conclusion there is no single 
internal pattern here to guide the Board.

Apply the terms of the UTU, the settlement 
on Amtrak actually would exceed the value of the 
PRLBC proposal because of the extra dollars, the 
extra cash compensation that they have received.

And whether or not there are some 
synergies associated with the extra compensation 
that the UTU conductors have received, I argue and I 
would suggest that those same kinds of synergies, 
whether it be incentives to be promoted, retention, 
incentives to train, prevention of turn over, all of 
that exists in any award compensation.

Third, the existence of the me-too 
provisions with all settled Amtrak unions bear 
witness to the high probability of alternative 
agreements.

The Carrier's traditional concerns for 
distorted pay relationships and this stabilized 
labor relation is totally and completely avoided in 
the presence of written me-too arrangements.

And ones that are for the first time in 
Amtrak's history universally adopted.

In fact, this whole notion about having 
adopting general wage increases that are different 
is kind of defeated by the employer's proposals to 
exchange work rules for extra general wage 
increases.

Obviously, there's no concern of the 
Carrier to have to change the kind of internal 
hierarchy of wage rate levels. They're more than 
willing to do that for rule changes.

So that cannot be any doctrinaire position 
on which they rest.

Fourth, the Amtrak proposal is prefunded.

The difference between the aggregate cost 
of the Amtrak proposal and the PRLBC's proposal is 
minimal.

Even after extending the freight terms to 
all the represented employees on the property, the 
impact on the meaningful financial and economic 
metrics is, as I have said, imperceptible.

There is no credible ability to pay 
argument in this case. Amtrak is at kind of an 
all-time high with respect to all of its important 
financial indicators.

Fifth, wage standards in this case, as in 
any interest arbitration case, revolve around 
comparability.

There are over 30,000 maintenance of way 
and signal maintainers performing identical work on 
national -- under national freight arrangements 
negotiated by the BMWE and the BRS.

And this excludes the dozen and dozens of 
other smaller classes of railroads that were party, 
for example, to 243, and who have since adopted by 
external comparisons the terms of the national 
freight Class 1 Railroad Pattern.

By contrast, there are no employees in 
similar classifications to BRS, BMWD -- at TCU or 
the UTU or the BLE or the other organizations that 
have already settled.

In the absence of wage level comparability 
or job comparability, period, that dilutes the 
importance and the significance of those settlements 
in fashioning an acceptable agreement for the PRLBC.

Now, finally, you know, I would suggest 
that kind of end where I began.

I think it's a proper function of an
Arbitration Panel to determine to the best of its ability those facts and factors that have motivated the parties at the bargaining table in the past. And we think we have provided you with a frame of reference that enables you to do that. To do otherwise, is to kind of pull the standards out of thin air, contrary to all, you know, standard approaches to resolve impasses of this kind.

The national freight pattern simply has the important distinguishing feature of being acceptable to the parties in the past. The alleged internal pattern does not. And it's upon that difference that the Board should make its recommendation. I don't think it's appropriate to kind of pull out a whole cloth a standard which the parties themselves have not embraced in making prior agreements. It may develop over time that the parties migrate away from the particular standard. Maybe they turn increasingly to the commuters for guidance in the making of their wage agreements. I don't know. But that may or may not emerge in the future. I don't think it's the proper mission of this Arbitration Board to direct which external factors should be determinative in this case. That's all I have. Thank you.

ARBITRATOR JAFFE: Thank you, Mr. Roth. MR. WILDER: Pass the witness. ARBITRATOR JAFFE: Okay. What's your pleasure, Mr. Reinert?

MR. REINERT: My pleasure is to begin conducting cross-examination.

CROSS-EXAMINATION

BY MR. REINERT:

Q Good afternoon, Mr. Roth.

A Good afternoon.

Q I'm Thomas Reinert, and I represent Amtrak.

A I'm saying that what -- I'm willing to, you know, for the sake of terminology, acknowledge pattern with Amtrak.

So when I look at your report at page 3, the top, you have paragraph No. 4. Do you have that before you?

A I have it.

Q And you say "there is no internal pattern that is binding on the BMWED or BRS. There is no single identifiable set of terms which set an internal pattern during this round."

Is that your opinion?

A Yes.

As I have said, I think that the UTU distinguishes -- which is the second largest union -- settled under terms which distinguish it from what the other organizations have agreed to.

Q We'll get to the UTU in a little while. Let's turn to page 19. Bottom of the page of your report under the paragraph that's headed identifiable terms. You say "there is no single pattern settlement for the Board to apply."

Is that your opinion?

A Yes.

Q And in the course of your testimony today, you have referred to the internal pattern that Amtrak has presented as "alleged."

Is that your testimony, it's only an alleged pattern?

A Well, you certainly have alleged that a pattern exists, so that's how I meant it.

Q You know what that term means.

A You're asserting that it's not existent; correct?

Q I'm asserting that however you define these settlements to whatever extent they may carry the credentials of a pattern, which may or may not be applicable to other unions, they are not applicable to these unions.

Q Okay. Let's make sure we get this correct.

A Are you saying, as a factual matter, there is no internal pattern of agreements on Amtrak?

Q I'm saying that what -- I'm willing to, you know, for the sake of terminology, acknowledge
what you have said a pattern to be. What I was saying -- and I thought I was explicit in my testimony -- that it is a matter of degree. Wage comparisons are a matter to degree. It's a matter of the extent to which they become influential in the making of follower contracts and follower unions as a matter of degree. If there -- even if I were to say, Okay, there is an internal pattern. What I'm also saying is there is an external pattern that has more virtue and should be determinative in this case. You have given us your ode to the freight external pattern, and you say it is worthy of more weight. My question to you is, are you saying that an internal pattern does not exist on Amtrak? I think that the -- in order for -- no, I think my testimony is clear. I'm saying that internal pattern -- I called internal pattern in my statement. Q And you, in fact, testified about the Amtrak internal pattern at the Long Island Railroad Presidential Emergency Board, did you not?

A I have a document I would like to have marked as Amtrak Exhibit 900, which we will distribute. (A discussion was held off the record.) (Whereupon, Amtrak Exhibit No. 900 was marked for identification and received into evidence.) MR. WILDER: What was that number? ARBITRATOR JAFFE: 900.

BY MR. REINERT: Q If I could direct your attention to what's page 23.

MR. WILDER: 23 of what?

ARBITRATOR JAFFE: 900.

BY MR. REINERT: Q Do you have it before you?

A Yes.

Q Do you see the paragraph that has the -- ARBITRATOR JAFFE: Could you wait just a moment?

A TCU entered into an agreement on April
1. The settlement ultimately served as an internal pattern for all other nonoperating organizations except the BRS and BMWED.
2. The agreement is for five years and provides for increases of 2.83 percent per year.
3. Employee health and welfare contributions were increased under the agreement. Thus the annual wage rate changed net of incremental health and welfare contribution increases equal 2.74 percent.

BY MR. REINERT:
Q    And so your testimony to PEB 244 is that the TCU agreement entered into April 2010, "ultimately served as the internal pattern for all other nonoperating organizations except the BRS and the BMWE."
A    Yes.
Q    Was that your stated opinion?
A    Of course, yeah. And it's totally consistent with what I'm saying here.

ARBITRATOR JAFFE: Thank you.
BY MR. REINERT:
Q    Okay. By the way, what was Attachment 1 you gave to PEB 244?
A    Attachment 1?
Q    51.
A    51. It's probably attached.
Q    Is it?
A    I don't have it.

BY MR. REINERT:
Q    Okay. My question to you is, when you referred that the settlement ultimately served as the internal pattern for all other nonoperating organizations except the BRS and BMWED, which agreements were you referring to?
A    I was talking about the nonoperating agreements other than the BRS and BMWED.
1 It did not and should not apply as a
2 pattern to these organizations. It didn't apply as
3 a pattern to certain other nonoperating
4 organizations. It did not apply as a pattern to the
5 UTU because they got more.
6 So it's exactly what I state.
7 Q Mr. Roth, we'll have a long discussion of
8 the UTU, I guarantee you.
9 But let's talk about which ones were
10 encompassed in your opinion before PEB 244.
11 MR. REINERT: Can we call up Amtrak
12 Exhibit 200, page 6? It's Charlie Woodcock's
13 testimony.
14 BY MR. REINERT:
15 Q So what I have put up is the list of the
16 Amtrak agreements this round that Charlie Woodcock
17 referred to.
18 And I just want to -- I want to ensure
19 that we're on the same page.
20 What agreements you were referring to with
21 respect to your statement on the Long Island
22 Railroad about internal patterns, so can you go
through the list?
2 A I can't see that.
3 Q But if you give me the reference.
4 A Yeah, it's page 6 of Exhibit 200, Amtrak
5 Exhibit 200.
6 Q Got it.
7 Q You got it?
8 Q Yep. It will be everybody on the first
9 page with the exception of -- well, everybody on the
10 first page, everybody on the second page with the
11 exception of the BLET and the SMART Transportation
12 Board.
13 Q Okay. So just to go down the list you
14 have got JCC, TCU, ASWC, ATDA, ARASA MW, IAM, ARASA
15 ME, ARASA OBS, IBEW, SMART SM, or sheet metal
16 workers, FOP, NCFO, and IBBB are the agreements you
17 identified as ones that were nonoperating agreements
18 within the Amtrak internal pattern.
19 Q Is that correct?
21 A Yes.
22 Q Okay. Now, with respect to the terms of
1 the BLET agreement, BLET is obviously an operating
2 union.
3 Q Is there any difference in the economic
terms from those of the agreements you identified as
5 part of the nonoperating internal pattern?
6 A I don't know because I haven't -- I would
7 have to look at their work rule changes and see if
8 there's any economics in there.
9 Q Okay. Well. Let's take a moment and do
10 it.
11 Q It's joint -- no, that should be Charlie
12 Amtrak Exhibit -- we have got to make sure we give
13 him the book of the exhibits, Amtrak Exhibits.
14 (A discussion was held off the record.)
15 BY MR. REINERT:
16 Q 242.
17 A I think I have it.
18 Q And my question -- do you have the actual
19 agreement?
20 There's ratification. Make sure you have
21 242. Yeah.
22 And just a quick perusal, is there any
It's your opinion, is it not, that the UTU conductor agreement on Amtrak is not part of the internal pattern of agreements?

A    Correct.

Q    And the reason for your opinion on that point is that there are bonus payments provided for in that agreement.

A    There are performance bonus payments made under that agreement.

Q    The answer is yes.

ARBITRATOR JAFFE: There were about 25 or 30 in the middle that were from Mr. Dodd and Mr. Ingersoll.

MR. REINERT: Okay.

ARBITRATOR JAFFE: So if you cull those out, I think you get to the right number, Mr. Reinert.

BY MR. REINERT:

Q    Okay. Whatever number of exhibits you have submitted, do any of them analyze the agreements that make up the Amtrak internal pattern as we have just referred to it a few minutes ago?

A    No.

Q    And is it fair to say it's your testimony before this Board that the Board should just ignore those 16 agreements for purposes of its analysis in this case?

A    It would be presumptuous for me to say that they should ignore a part of the record which has been made by the Carrier in this case. I don't expect that, and I wouldn't urge it.

Q    What I would urge that they look at the totality of the record and conclude that the freight pattern as it applies to the BRS and the BMWE is the persuasive one. It's the dominant one. It's the one that has historical reference, and it should be given the greatest weight as to all other considerations.

Q    Fair enough.

A    I want to focus on the Amtrak agreements for a few minutes more.
Isn't that correct?
A    That would be correct if the timing of their federal wage increases were the same, yes.
Q    Now, Amtrak has presented testimony that the payment of the performance bonuses under the UTU Conductor Agreement are more than offset through associated cost savings work rules.
A    Yes.
Q    Do you have any basis sitting here today to say that Amtrak is incorrect in asserting that the total cost of those performance bonuses are offset by productivity increases?
A    Well, your premise is that I have done an analysis of those representations, and I have not. So I have no basis to conclude one way or the other.
Q    Okay. But you have opined that, even if Amtrak's analysis is true, and that the cost of those UTU conductor performance bonuses are more than offset by productivity improvements, it's irrelevant.
A    That's not my testimony.
Q    On the question of monetizing the UTU conductor bonuses, is it relevant in your view on whether there were offsetting cost reductions?
A    This is a hypothetical.
Q    Okay. Let me try again.
A    You testified that because the employees are receiving dollar payouts, that makes their -- beyond the other Amtrak pattern agreements, that makes it a different agreement for pattern purposes.
Q    And you're aware, are you not, that Amtrak proposed to the BMWE and BRS that they could get additional increases beyond the Amtrak internal pattern through productivity or healthcare savings?
A    I think -- I believe I heard that testimony in this record, yes.
Q    So it would be your testimony that if we had done that, those agreements would have broken the Amtrak internal pattern even if we totally offset the cost of those additional increases?
A    The nature of the increases that are provided for the UTU are no different than the -- than applying a general wage increase.
Q    They're essentially being compensated for coming to work and being -- and performing their job and meeting the qualifications that are required of them by the Carrier.
A    That's no different than the organizations, the BRS and the BMWE, who are required to come to work and to meet the qualifications for the jobs that they perform in any competent and productive manner as a condition of employment.
Q    It's no different.
A    Let's try it again.
Q    You're familiar with PEB 243, are you not?
A    I am.
Q    And in PEB 243, the Board monetized the
conductor's certification bonuses as a 1.3 percent increase for the other employee groups; correct?

A    No. There was more to it than that.

The monetization actually applied in two areas. One, a conversion of the certification pay that the conductors receive. And another piece that came from the change made in entry rates that had the effect of increasing average pay in the UTU bargaining unit.

Q    Wasn't that separately monetized?
A    Yes.

Q    So the 1.3 percent monetization was with respect to the certification pay.
A    Do you want to look at a copy of PEB 243?
A    I would rather not take the time.
Q    We have all the time in the world.
A    Well, then give me a copy. I don't remember exactly that the number was.
Q    Okay.

MR. WILDER: Since we are time saving, why don't we point out the appropriate page?

MR. REINERT: Yep.
MR. JAFFE: I think it's 22.
MR. REINERT: Joint Exhibit 58.
I'll get it for you.
MR. WILDER: The page number is 50.

Q    It's 58, Joint Exhibit 58, and it's the bottom of page 22.
A    All right. The answer is yes.
Q    Okay. And that monetization of 1.3 percent was effective July 1, 2012 because that was the approximate date the certification pay begun to be paid.
A    Is that correct?
A    I don't recall the connection between the effective date and the -- of the general wage increase and the certification pay.
But I wouldn't doubt that that would be a logical approach.
Q    Well, but the opinion says: "While the precise date that the UTU certification payment will begin is not known, July 1, 2012 appears to be the most appropriate date to incorporate that element of value into the proposed agreements between the organization and the Carriers."
A    It speaks for itself.
Q    Okay. Now, we have already discussed that Amtrak has its own bonus payment that will begin payouts in September 2014; correct?
A    Yes.
Q    Isn't it true that the PRLBC's wage proposal has a built-in 1.3 percent increase on July 1, 2012 that was adopted as a matter of internal equity on the freights between the conductors and the other organizations?
A    Under the national freight agreement?
Q    Under the national freight agreement.
A    It was added for that and a number of other reasons.
Q    Well, show me in PEB 243 what other reasons it was added for because it's the only one that I see cited in the opinion.
A    That would be -- that's the monetization of those UTU ingredients led to the additional general wage increases.
That's a fact.
Q    Okay. So if you were to adopt a freight pattern in this proceeding, wouldn't it be appropriate for the Board to reduce the July 1, 2012 wage increase by 1.3 percent, and then address the question of UTU bonus payments and whether they need to be monetized effective September 1, 2014?
A    No.
Q    Why not?
A    Well, first of all, we are not interested in nor have we advocated the monetization of any part of the UTU agreement in this round of bargaining on Amtrak.
And secondly, the -- what counts here is the application of the general wage increases that were -- that were applied under the national freight agreement.
Historically, there's been a lot of reasons and a lot of, you know, a lot of factors which determined the pace of wage change under the national freight agreement.
This just happened to be a round where there's one factor. But it doesn't alter my conclusion that the pace of wage change has to be applied to the BRS and the BMWED in order to maintain their relative position with the freights. Fact of the matter is, whatever the cause and whatever the genesis of those extra increases under the national freight agreement, they will produce wage levels that we seek to relate to as just a matter of, you know, industry equity and comparability of jobs.

And that would be totally defeated if you somehow diluted the wage increases that the maintainers and the trackmen received under the national freight agreement.

Q    So it's your opinion that the Board should ignore the fact that the freight wage rates have baked in a July 1, 2012, 1.3 percent increase for purposes of internal equity and just apply those freight wages no matter what?
A    Yes.
Q    Okay. And is it of any relevance in your view whether the UTU certification pay at issue in PEB 243 was funded through other cost savings or not?
A    I don't know that the -- it's a false premise.
Q    Are you analyzing the UTU Conductor Agreement on Amtrak to see if Amtrak properly valued the cost savings from that agreement?
A    No.
Q    We haven't seen -- I was not privy to the analysis that you're talking about before a couple of days ago when it was admitted into evidence here.
Q    Okay. But you have no plans to analyze it?
A    Not unless I'm requested by my client to do so.
Q    Okay. And it's your opinion it's not relevant anyhow?
A    It's not particularly relevant because what we're looking at is a different contract, not to whether it's -- if it has some effect of making conductors happier in their job, then otherwise, I'm ...
Q    Do you understand that Amtrak's cost savings is a result of conductors being happier?
A    Essentially yes, coming to -- right, being satisfied with their work, being you know, promoted, not coming -- you know, having an intentive to come to work.
Q    Do you understand that the result of it is to have people who are certified as conductor who aren't going to be bidding down to assistant conductor?
A    Yes.
Q    And isn't there a productivity improvement in there?
A    I'm not sure.
Q    Okay. There was discussion with the Board about the valuation with respect to 2015 wage increases. Do you remember that discussion?
A    Yes.
Q    And you gave a series of reasons why you thought it's not appropriate to do a valuation for 2015 with respect to wage increases.
A    I did.
Q    Okay. And just refresh us on what those reasons are.
MR. WILDER: Before we ask, are we talking about this Board?
MR. REINERT: This Board.
MR. WILDER: All right.
THE WITNESS: Well, the principal reasons that we're dealing with a comparison between two contracts which have common moratoriums.
Q    And to speculate on what the wage change will be in a year beyond the amendable date, it
BY MR. REINERT:

Q    So it --

A    That's one reason.

The second reason is that to -- the speculation, if you were to go down that road, would suggest embedding wage increases for -- under the settled Amtrak contracts consistent with what they have experienced in the past.

And there are no years in recent history where they have taken a one year without an increase.

So I think that it would be inappropriate to assume that they would.

Q    Do you understand that the PRLBC has presented its proposal as a 3 percent GWI effective 1-1-15?

A    They have not.

I thought I put in evidence as my Exhibit No. 1 the term sheet, which is defining the scope of this Board's authority, and that it says that any increases in 2015 are contingent.

Q    Well, I'm looking at the PRLBC's proposal for resolution of this dispute, and under changes and rate of pay, it has effective date 7-1-15, and it has 3.0 percent GWI.

And then they compound it with the other increases.

So are you saying that the Association, the PRLBC, is not proposing a 3 percent increase for 2015 as part of the Board's decision?

A    I thought that the counsel for the PRLBC made it clear, as I did, that they are proposing adoption of the terms of their respective national freight agreements, which make, on the face of those agreements, any increase in 2015 contingent.

And that's the way it has been described.

Any kind of characterization to the contrary is not consistent with the position that the unions have outlined here.

Q    So do I understand you to be saying that it doesn't matter to the PRLBC if the Board awarded a 1.5 percent January 1, 2015 increase instead of a 3 percent January 1, 2015 increase?

A    We don't expect the Board to award anything effective January 1, 2015.

We expect the Board to award the terms of the national freight agreement, which say on its face, I repeat, that that 3 percent will be contingent on the negotiations that occur in the national freight agreement front.

And in the event that the parties move to an impasse and have that impasse resolved through arbitration or some other forum of similar kind, presumably including a Presidential Emergency Board, that effective retroactively on that date, there will be a 3 percent raise.

Q    Okay.  You understand that with respect to healthcare, the PRLBC says it's proposing the National Plan, but proposes 177.54 instead of 200.

A    Of course.  That would be the only logical and appropriate proposal to make if you wanted to replicate the national freight agreement.

Q    Except the national freight agreement has the number of $200 as the healthcare contribution in it?

A    What you're not understanding is that the national freight agreement on the last round of bargaining made no change in the status quo with regard to the contribution made by employees.

And that 15 percent of the national plan happens to result in a higher number preceding the last round of bargaining, which is how we got the difference between 177 and 200, is a matter of demographics between the two groups.

Q    Yes.

And when you come into bargaining and you say, Here's my proposal, and it has got the number 200 on it, that means 177.54?

Is that your testimony?

A    Yeah.  My testimony that the PRLBC representatives in mediation made it clear as a bell that they were proposing the adoption of the national freight agreement.
A I guess you -- I guess -- is this a got-you moment, or do you really want to know what the proposal was?

Q No. No. No. I'm trying to understand.

A You're saying 200 equals 154. And I think you're saying 1.5 percent equals 3 percent. I'm having trouble with the math, sir.

Q Well, let me explain the math.

A Let me just ask you a question.

Q On your -- on your report, page 7, top of the page, you say: "The contingent 3.0 percent under the national freight pattern agreement is considered equivalent to the adjustment hopefully made on January 1, 2015 for the other organizations at Amtrak."

A Do you see that?

Q No. What page?

A Right. That's exactly right. Okay. I see it.

Q What's the question?

Q Are you saying 3 percent is equal to 1.5 percent?

A The 1.5 percent was a deferred increase under their predecessor agreement, the agreement that will expire in January of 2015 when their agreement is amendable. They will then be free to negotiate increases from that amendable date and forward. As I testified earlier, you can model this in two ways. You can ignore the 2015 altogether, or you can impute some increase for the settled contracts on Amtrak as part of the Amtrak chronology.

Q Either way, you come to the same conclusion. You have to value these agreements over a five-year period. Otherwise it's apples and oranges.

A And to do otherwise is just wrong. It's inconsistent with any experience that any negotiator or analyst has ever had.

Q And the notion that you look at a five-year agreement and a six-year agreement and price them out is just foreign to all of my experience.

A I can't help you any more than that.

Q Okay. Let's look at Joint Exhibit 51.

A 51?

Q 51.

A My 51 or?

Q Joint Exhibit 51.

MR. REINERT: Do we have it for him?

BY MR. REINERT:

Q Joint Exhibit 51, do you have it before you?

A I have it.

Q And given in mediation?

A I don't know if I exchanged it myself or whether this was -- a client brought it.

Q From PRLBC 7-16-2013, you were in mediation on July of 2013?

A If I was, you can tell me.

Q I don't recall.

A I did.

Q And that's the same type of analysis that you just testified no professional would ever do?

A I didn't say no professional would do. I said it's not an accurate rendition of the two agreements.

Q And this is -- and that was a -- we were getting -- let me explain this.

A In mediation, we would exchange information and valuations so as to enable the analysts to kind of synch up on assumptions and methods. I wanted to make -- the only way you can uncover differences between the analyst and in this case, the finance or labor was -- the financial people in labor were performing a similar analysis.
This is the Carrier's look at the world, the same look that you have seen in this record. So I wanted to prepare a -- have a product and make -- take a look at the world as they viewed it so I could compare the results and determine whether or not I was getting a different answer under my modeling, which is a wholly different approach than theirs, as opposed to their modeling. This kind of analysis would uncover differences between us. But I never advocated that this was the proper way to look at the two agreements, and that's the difference. So, yeah, am I capable of punching the numbers this way? Of course. I can do it so I can test the accuracy of the documents and the analysis that the Carrier produced. But I stand by the testimony that when you are looking -- that when you are comparing two agreements, you have to look at durations that are comparable, otherwise it doesn't make any sense. This is probably an example of the way I was showing the Carrier how their approach didn't make sense.

MR. REINERT: I think this would be a good time to take a break.

ARBITRATOR JAFFE: Sure.

Off the record.

(A recess was taken.)

ARBITRATOR JAFFE: Why don't we go back on then.

Let me note that it's my understanding from a colloquy with both of the attorneys that this seems like an appropriate point to break for the day.

Mr. Reinert has indicated that he will unitize the time in between now and tomorrow to probably expedite the remaining cross-examination, so we may have saved time just by breaking a little early today.

And we are going to take Mr. Rand out order tomorrow in order to make certain that we get him on for limited rebuttal before he becomes unavailable, but that will take place after Mr. Roth's testimony is completed.

Have I misstated anything or failed to note anything that we need to note?

MR. REINERT: No. Thank you.

ARBITRATOR JAFFE: Okay. With that, we will stand in recess for the day. Thank you very much.

(Whereupon, the proceedings in the above-captioned matter were recessed at 4:36 p.m. to resume at 9:00 a.m. on January 15, 2014.)

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
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### Table 9

| 9 (5) | 814:19;818:16,22; |
| 9 (5) | 820:8;914:12 |
| 9:00 (1) | 991:10 |
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| 940 (1) | 912:12 |
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| 98 (1) | 859:19 |
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