BEFORE THE AMTRAK/PRLBC ARBITRATION BOARD

IN THE MATTER OF

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES (BMWED), affiliated with TEAMSTERS RAIL CONFERENCE,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

and

BROTHERHOOD OF RAILROAD SIGNALMEN, AFL-CIO (BRS)

and their representative

PASSENGER RAIL LABOR
BARGAINING COALITION (PRLBC)

NMB NO. A-13638

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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SHYAM DAS, ESQ.
ON BEHALF OF THE PASSENGER RAIL LABOR BARGAINING COALITION (PRLBC):

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WITNESSES

JOSEPH BOARDMAN:
Direct examination by Mr. Reinert . . . . . . . . . . 724
Cross-examination by Mr. Wilder . . . . . . . . . . 748

THOMAS ROTH:
Direct examination by Mr. Wilder . . . . . . . . . . 756
Cross-examination by Mr. Reinert . . . . . . . . . . 950

EXHIBITS
NUMBER MARKED AND ADMITTED
Amtrak 900 955
PROCEDINGS

(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 Do I need to ...

Q Oh. It should be on. Okay.

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 that engaged everyone so that we obtained their best effort.

This would be better for Amtrak, but it
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 injure 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.

Q   What objectives implement the strategic
plan?

A   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 Well, 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 Amtrak has an extra 100 million. It will 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 -- we have 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 BMWED 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.

As I understand, the name of the program is Safe-2-Safer. Is that correct?

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?
There may have been.

I don't know.

I see.

Now, you have pointed out the difficulty with the safety program that focuses overmuch on statistical reporting.

Is that correct?

Yes.

I think we all appreciate what can happen with an overreliance on statistics.

Do you agree?

Yes.

All right. Now, but the FRA still requires reporting of reportable injuries, of lost time, and the so-called lost time ratio.

Is that correct?

Yes. Passenger injuries and employee injuries.

Right. Now, isn't it true that since 2009, the -- each of these categories, that is reportable injuries, lost time, lost time ratio, have all gotten worse?
A Actually, the lost time ratio, the period of time that an employee is injured, has been reduced.

Q From what to what?

A I don't have the numbers in front of me. I just know that that is one of the things that has occurred. The actual number has not reduced, but the amount of time lost per injury has been reduced.

Q So you're speaking in a total figure but not in percentages.

Is that what you're saying?

A I guess that's what I'm saying, yes.

Q But nonetheless the number of injuries has increased, has it not?

A I do not know what the numbers are. I would have to look at the numbers.

Q No. I'm referring to trends.

A I think we were about the same amount in terms of the number of injuries.

But I would have to look to see.

Q All right. Is there anything in the trend
that those statistics or those metrics suggest that
worries you as a CEO focused on safety?

A   Yes.

When we first started this program, we had
a huge number of increases in the number of injuries
reported, which was a good thing.

And the reason it was a good thing was
because it was an endorsement of the fact there had
been a hiding of injuries, and people were not
reporting injuries because of the same reasons of
being pressured not to report injuries.

So in order for us to make improvements,
we needed to know what those injuries were. And so
it bothered me greatly that we had this problem.
But it didn't surprise me greatly, and it hasn't
surprised the freight industry either since they
eliminated the Hammond (phonetic) award.

Because what we had -- I don't want to go
on too long for you, but what we had here was a
situation where there were people looking for these
awards based on statistics so that the supervisory
staff and others in Management wanted to hold down
those number of injuries and report fewer so that they could win.

That's not the right way to run a safety program.

Q All right. And how are you addressing in 2013, 2014 the need to reverse the trends that we spoke of?

A One of the things that is particularly important about Safe-2-Safer is it is an employee-run in many ways program that allows each employee to observe another employee so that it's at that level to make suggestions for improvement to reduce the risk for the employees.

And we have found by that process that folks are much more engaged in the work in the company which was an important element of this.

That there was, in most places, an improvement in work team relations and in leader member exchanges so that Management and leaders and Union members were really talking to each other more and finding out where the problems were.

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    Do you intend to increase these resources?
A    We had a recent evaluation called the OCDI, which evaluates us every two years and where we are.

    We just received that within the last couple of weeks, so we're making those decisions now about what we should do.
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.

    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.

    I don't know in this case.

    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: I see.

MR. WILDER: Pass the witness.

ARBITRATOR JAFFE: Any further direct?

MR. REINERT: No further direct.

ARBITRATOR JAFFE: Anything that you wish to pose?

ARBITRATOR DAS: No.

ARBITRATOR JAFFE: Anything that you wish to pose?

ARBITRATOR FISHGOLD: No.

ARBITRATOR JAFFE: We're in good shape as well.

Thank you very much, Mr. Boardman.

THE WITNESS: Thank you, sir.

Thank you, all.

(Witness stood down.)

MR. REINERT: Just before we take a break, Amtrak rests subject to response on a number of open items, which I suspect we're going to be submitting on rebuttal.

ARBITRATOR JAFFE: That's fine.

Thank you, Mr. Reinert.
How much time would you like for the
morning break and whatever getting ready you would
like, Mr. Wilder, before Mr. Roth testifies?

MR. WILDER: We are ready, and one
question.

ARBITRATOR JAFFE: We can go off the
record. That's fine.

(A recess was taken.)

(Witness sworn by arbitrator.)

Thereupon,

THOMAS ROTH

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

DIRECT EXAMINATION

BY MR. WILDER:

Q Mr. Roth, would you give your full name
for the record, please?

A My name is Thomas R. Roth.

Q Where are you employed, Mr. Roth?

A I'm the president of a firm called Labor
Bureau, Incorporated.
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.

   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.

   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 fact, the Chairman and I first met over
30 years ago in a nurse's case.

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.

In other cases, in the transit industry, I
simply 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.

In the -- and also, in that sector, I also serve 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
appeared as an expert in 22 -- before 22 Presidential Emergency Boards. If you count them up, it's about 85 percent of all the Section 10 cases that have occurred over the past 25 years, including all of the major ones involving class one railroads.

And of course, all of Amtrak's cases.

I represented the BMWE in each of the previous Presidential Emergency Boards involving Amtrak.

Q Mr. Roth, have you prepared an economic report for this proceeding?

A I have.

Q And is that entitled, Summary Statement, Thomas R. Roth?

A Yes.

Q All right. Can you give us an overall conclusion that you have reached as a result of your study of the issues in this proceeding?

A The overall conclusion would be that the national freight agreement that had been reached by the BRS and the BMWE over the course of the past 35
years has been the terms -- have been the terms that
have been highly influential in the making of the
collective bargaining agreements at Amtrak.

So much so that I would characterize that
as a strong pattern relationship and one which I
think is determinative in this case.

It's to be contrasted, of course, with the
Carrier's position here that the so-called internal
pattern should be applicable.

But what the Union has here going for it
is 35 years of consistent practice.

What the Carrier is urging is for the
Board to adopt a fact and factors which have
heretofore been ignored by the BRS and the BMWE and
their counterparts across the table.

Secondly, I think in terms of the impact
on the -- in terms of the impact on the Carrier, the
application of the national freight agreement to the
BRS and the BMWE will have a -- actually have a
stabilizing affect.

The terms of -- this is the first round of
bargaining where on Amtrak, we have had me-too
agreements, which have been consistently incorporated into all of the collective bargaining settlements with the other organizations. That will provide insurance against the -- what otherwise might be deemed an environment which would cause instability.

So finally once the me-too agreements are exercised, it will have a negligible impact on the financial position of Amtrak and the metrics to which the Carriers looks to when it is assessing its financial position.

Q Mr. Roth, you have developed much economic data in the exhibits that are attached or referred to in your report.

Is that correct?

A That's correct.

Q And those analyses are designed to support the general conclusions which you have just given to the Board?

A Yes.

Q I'm going to ask you, rather than to ask you a few hundred questions, to take your report in
the order in which it is arranged and describe the
data that support the conclusion that you have just
given.

A Certainly.

I think, Mr. Chairman, in terms of what
subject matter I'm going to cover, it's pretty much
contained in the table of contents of the summary
statement that you might direct your attention to at
this point.

I'll be examining the proposals of the
parties and providing evaluation of the -- cost
evaluation of the proposals and a costing of those
proposals.

I'll be describing in some limited way the
BRS and the BMWED classifications, which are core to
any kind of wage level comparison.

Thirdly, I'll be constructing wage
chronologies for the purpose of examining the extent
to which the national freight pattern established by
these two organizations has been influential and, in
fact, determinative in many cases of the terms of
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 -- 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 -- much of -- 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
our -- 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.
There's an additional contingent wage increase, as I call it, which would be effective for Calendar Year 2015 of 3 percent effective January 2015. And then of course would be applicable only if the parties failed to negotiate an alternative, or would be automatic in the event that they reach an impasse and the case is resolved through an impasse procedure, either arbitration or presumably a Presidential Emergency Board.

A fourth element in our proposal is the 1 percent lump sum, which is defined specifically as a straight time earnings during the period from November 1, 2010 through October 31, 2011.

And the fifth element is the adoption of the medical plan design changes, which were negotiated under the national freight agreement, which would be, under our proposal, effective on the date of signing.

Those specific changes have been recounted in this record numerous times by different witnesses. And I'll not repeat them here.

The sixth element is the health and
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.
The source of this information is Joint Exhibit 48. You need not go there now, but for the record it's Joint Exhibit 48, Tab 4, page 16.

That's where we have laid out the gross savings which are attributable according to the Carrier's healthcare consultant for the design changes that we propose, those being the design changes under the national freight agreement.

When you look at the 2013 costs and you divide that by the number of participants, you get a per capita expense a little bit over $65.

If you go to July of 2014, that number grows to $71.46, using the same methodology.

So the point being that this is a number that I get from the Carrier's consultant. And it's consistent with everything that has been said in the record thus far.

The reason why it's growing, of course, is because the -- under these design changes, much of it moves with the -- with inflation.

And so their consultant had projected what that inflation would be. And the per capita cost to
the employee by July 1, 2014 is estimated at $71.46, an estimate by the Carrier, as I said.

So when we net that value out, we get a rate of $28.49 at the end of the contract.

That is, over a five-year term, a 14.9 percent increase net, 16.5 percent gross. In terms of the rate of increase, 3.1 percent gross and 2.8 percent net.

Now, the sixth year numbers are also in there, but I think they're highly irrelevant in this case, and I'm going to explain why momentarily.

By the way, I -- in terms of the total values over time, I'm using the 20 percent overtime factor here, which may be high because, as you have heard on the record already, the Carrier is intent on driving that overtime factor down, and they're doing so by hiring folks into these two bargaining units.

But the 20 percent factor, I think, is appropriate because we're looking back over five years -- or back over four years, at least -- and the overtime factors were high in averaging in that
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.

You mean, Roth 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
a valuation of the national freight agreement by itself.

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.

ARBITRATOR JAFFE: I see.

THE WITNESS: That's where the problem arises.

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.

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.

Guess what? The one that's longer is going to be costing more.
That's just not a proper manner of this kind of analysis.

ARBITRATOR JAFFE: Okay. I have got the response. Thank you.

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.

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.

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.

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.

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.

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.

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.

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.

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,
is composed of foremen who have been misclassified, in Dr. Gillula's testimony, as being simple trackmen.

So, again, you know, we're going to come back to some of this material when we will talk about wage comparisons.

But I think maybe the best place to summarize what we're finding here -- and just for the record, the BRS is on page 7, and they have an average rate of 25.90 with 685 individuals on the list, and 21 discreet classifications.

If you look into the text, I have in tables -- Table 1 and 2 and 3, a kind of summary of the characterization, if you will, of the -- of these two respective bargaining units.

Foremen, for example, make up 24 percent of the BMWE classification. We have a good chunk of linemen. All told, you have, you know, three-quarters of the BMWE classes in the high skilled, high tech area.

The BRS is on the following page.

They have -- this is on page 11 of the
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, and in all cases, Roth 8, if there's any confusion there.

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,
and decisions on that factor alone can be dispositive.

So what other similarly situated parties have found to be fair and reasonable is often assumed to be equally acceptable to another party. And in that context, the wage -- in the context of wage determinations, wage comparisons are what we are talking about.

Now, the relevance and the weight of these comparisons is a matter of degree.

On one hand, there may exist what I call a parity relationship. This is where the pattern or the wage comparison factor is applied in a very exacting way, where the wage levels are the same, where the effective dates of wage change are the same, and where the occupations are normally identical.

There's numerous examples of this.

I mean, we just finished a series of interest cases at the MTA in New York City where wage parity was the kind of degree of wage comparison that was embraced by the arbitration
panel in the making of their decisions.

    This occurred, for example, in Local 1056
and 788, who were New York City Transit Authority
bargaining units who were seeking parity with the
big local, Local 100, because they both represented
bus operators, both working for the same employer,
and yet the employer declined to extend the terms of
the Zuccotti award, Local 100 award to the smaller
unions.

    We go to arbitration. We establish the
parity relationship. It's a slam dunk. We get an
award that says you will apply the pattern
relationship because of the parity relationship
because that's what the parties have embraced in
their history over time.

    That's a parity.

    And you see some of this as well in, you
know, police and firefighter cases and other
contexts. There's numerous examples.

    Now, when a set of terms of one settlement
under a collective bargaining agreement becomes just
highly influential, and it's -- and it's a --
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 history, the bargaining history of the parties, 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
to 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?

And that came externally.

So that's one thing I would ask the Board to keep in mind. Go to the root of the pattern. Where did it come from?

Not just look superficially at what the parties did in that round of bargaining following one another.

The second consideration I'm going to ask you to keep in mind as you kind of pore through this data is job comparability.

Job comparability is required in the application of any wage comparison, whether it's pattern, whether it's parity, or whether it's a simple wage comparison. It has to start with some form of job comparability.

The fact of the matter is, there is zero job comparability between the BRS classification and the BMWED classifications and any others within Amtrak.

The comparable jobs lie outside this organization.
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
has been, of course, well established by the
witnesses. There were stand-by agreements, which
means that, whatever Amtrak would hold back, it's in
the sideline that the national freight agreement
delivered by way of wage change, they would adopt
it.

And so predictably, those wage increases
are identical for those two rounds of bargaining.

The third round of bargaining is the round
during which we had the infamous Conrail deferral.

Now, let me talk about that a minute
because I think there was some testimony in this
record that -- to the effect that there was a
difference in this round of bargaining between the
Amtrak contracts settlements and the national
freight.

And that's somehow evidence of breaking
away from the national pattern. Nothing could be
further from the truth.

The fact of the matter is that Conrail --
that the BRS and the BMWE employees came from
Conrail.
During this round of bargaining -- let's get a little framework here.

In 1981, Conrail was the fourth largest railroad in the country. It was the dominant railroad in the northeast, by far. It had 12 percent -- nationwide it had 12 percent of all Class 1 revenue, in 1981.

It was, as I said, the fourth largest railroad. It was larger than the BNSF and the SP at the time, only slightly smaller the CSX, the PN, and the UP.

And then back in the day, there were 21 Class 1 railroads. And Conrail was no -- it was not an insignificant one.

Now, Conrail was organized under the so-called Three R Act, the Regional Rail Reorganization Act.

And that -- the Three R Act was passed to acquire the bankrupt or the insolvent -- not all were technically bankrupt at the time, but they were certainly insolvent, the railroads in the Northeast.

And the largest ones were the Penn Central
Transportation Company, the Central Railroad of New Jersey, Lehigh Valley, Lehigh and Hudson River, the Pennsylvania Reading, Seashore Lines, and then they included parts of three smaller roads at the time. That would be the Reading, the Eerie Lackawanna, and the Ann Arbor Railroad.

So you have these insolvent railroads in the Northeast. In fact, I gave you Union Exhibit No. 78, just by way of background of kind of painting the climate that existed at the time of the Conrail deferral negotiations on Amtrak.

I could have -- 78 is an excerpt from -- 75, I'm sorry.

It's -- I meant Exhibit 75.

It's an excerpt from a report by the Secretary of Transportation back in that era. And I just copied the summary of industry status for your background. You need not read it at this point.

It's just -- I could have gone onto a dozen sources, but I wanted to kind of paint the picture of the industry's financial condition at the time that the Conrail deferral occurred.
So you have these insolvent railroads.

What happens next in a very -- you know, half of the industry was in trouble at the time, as that excerpt demonstrates.

Following the Three R Act, we had the Four R Act, the difference being that the Revitalization and Regulatory Reform Act, which was passed in 1976, and that provided the financing for Conrail.

And it provided federal funds of $2.8 billion, plus other monies went to the Northeast Corridor infrastructure.

But just for Conrail's acquisition alone it was $2.1 billion. So this is where -- this is the Conrail bailout that we all -- maybe not all of us remember, but occurred back in the day. And it enabled Conrail to become up and running as a railroad beginning operations in April of 1976.

So it's -- what happened in the subsequent round of bargaining, first round of bargaining, following public acquisition, was to include -- and it's included in the Four R Act, actually authorized 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.

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
1991 -- the recommendations of the Board were not
acceptable to a single union, and Congress
intervened. There was Congressional imposition of
the terms of the Presidential Emergency Board
recommendations.

   But as the Board members know, PEB
recommendations are often expressed in outline form.
They're kind of directions to the parties and not
definitive contract language.

   So none of it could be implemented without
establishing a special board. And this was --
again, Congress passes a resolution. They implement
a special board to interpret and apply and otherwise
amend, if necessary, the recommendations of PEB 219.
Bob O. Harris was also the chairman of that board, so that didn't come out too well for us, either.

Now, on the -- of course, on the other side of the ledger that we have on PEB 222, which was the -- which was the first of the three Presidential Emergency Boards involving the BMWE -- the BRS was not a party to PEB 222.

So this was a case where the unions pushed in that case for a restoration of the 12 percent deferral.

It was a big issue in the case. And both sides testified as to whether or not it was advisable to recommend wage increases that would account for the 12 percent.

In fact, you can go back in the record, the Carrier called George Daniels. Called him out of retirement, actually. He was then with the NRLC. And he testified -- it's Carrier Exhibit No. 9 -- testified at length in opposition to the restoration of the deferral that the unions were seeking.

But ultimately, it -- we got wage
increases both on the BRS and the BMWED agreement, which were precisely necessary -- the amount necessary to restore the 12 percent.

So essentially, 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 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.

BY MR. WILDER:

Q Would you indicate what exhibits you're on?

A Yes. I want to direct your attention to Exhibit 9.

Following 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 freights 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 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
they have that difference.

And they may want to make other adjustments. I don't know that. Adjustments that we haven't gone over, and that, in my valuations of extending the me-toos to the rest of the population, do not take into account. I haven't made any alternative assumptions as to what they might do.

But I'm just making the observation because we know this to be true. We know that there is no unanimity among the labor organizations as to how cost shifting should occur.

BY MR. WILDER:

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

A I would like to address, at this point, I think, Counselor, the -- some of the observations that were made by Mr. Glass in this connection. And I do have some materials that bear on that point.

First of all, Jerry had testified that -- and I hope you don't mind if I call him Jerry. We're old professional friends. We did a lot of 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
remarks in that record, he said they meet and --
that their intention was to meet or exceed the
increases recommended by the industry by
Presidential Emergency Board 219, and now in effect
on nearly all of the freight railroads.

It goes on to say that: "Over 60 percent
of our employees are now covered by same or similar
proposals."

That's a recognition of the 219 results
being incorporated in the proposals and in the
thinking in terms of wage change and benefit changes
for the -- for Amtrak during that round of
bargaining.

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
going to comment on the time value of money that
Mr. Glass mentioned in his testimony.

A Right. I was just making kind of a simple
observation here.

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
become 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.
I mean, I did -- during the last round of bargaining, I was on -- I was, you know, working on all those projects.

On the MBCR, for example, we represented 14 unions. This was a situation cited by Jerry saying, you know, here the parties -- he quotes, you know, Roberta's award in that case saying that the award was based principally on the internal pattern.

Well, this is an example of where you have to go the genesis of the internal pattern.

In that case, we had 14 unions. We negotiated as a single coalition, including the BMWE and the BRS. And we reached agreement, which was predicated in large measure on the progress we made vis-a-vis the other commuter railroads in the industry.

Every day I would go into a negotiating session, and the first thing the committee asked me is to pull up on the screen -- we would be in a great big room with a screen. And I would go and show them exactly, as the positions changed, how that position changed our relative position in the
industry.

    The notion that what the other commuters were doing was irrelevant is simply not factually correct, not from where I was sitting.

    And in fact, when you look at the Golick Award, which I put in evidence because it has been quoted, if you look at -- this is Exhibit No. 77. Her conclusions begin on page 7.

    The reasons why the majority found that the MBCR's proposed increases, which were accepted by everybody else except for the BMWE and the ATD, which could not get their agreements ratified, this is what she found.

    She said well, first of all, you participated in a coalition. Your leadership agreed to the terms. You couldn't get it ratified. It should be acceptable.

    Then she has a second reason here. You know, the terms are irreparable because it talks about the conversion of the -- she took care of the question that we're raising about -- and that I raised a moment ago about having disparate
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 about 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 pattering.

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 can I 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 of 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.

You see the screen behind me?

A It's not there yet.

Q Amtrak 300, page 54.

A Okay. I have it.

Yes, well -- okay. Go ahead.

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.

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

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

You know, it's -- Elkouri is, you know, I
guess the current edition is like 1,800 pages, and
about 30 pages are devoted to interest arbitration,
the same 30 pages they had in the first edition.

And what precedes the quotes that Jerry
cites about it being well established, that internal
pattern generally is given great consideration, is
the phrase that interest arbitrators do not pull
standards out of thin air. They're usually the ones
that the parties themselves have used in their own
bargaining.

I mean, I'm just doing this by memory, but
I know that if you go back to Elkouri you will find
that that's the predicate for establishing and
applying any facts or factors or standards that are
brought to your attention as an arbitrator.

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
A  I haven't ...
Q  That is the last sentence prior to the
sentence you were referring to.
A  Right. Exactly.

It precedes the sentence that is quoted by
Mr. Glass. But it says that, The longer a set of
internal linkages is found to have existed, the
greater the weight given to maintenance of the
pattern.

Well, the internal linkage that is alleged
in this case has never existed before. So there is
no -- there are no grounds for applying the
statement what is quoted on page 55 of their
exhibit.

MR. WILDER: This would appear to be a
good time to break for lunch, unless Mr. Roth has a
concluding remark you would like to make.

We can also wait until after lunch.

THE WITNESS: This is a good time to
break.

ARBITRATOR JAFFE: That's fine.
MR. REINERT: You just asked whether he has concluding remarks to make.

Is that the conclusion of his testimony, or were you anticipating extensive more testimony after lunch?

THE WITNESS: More testimony.

MR. WILDER: More testimony.

ARBITRATOR JAFFE: Okay.

That's what I thought. I thought it was relative to that section.

Off the record.

(A lunch recess was taken.)

ARBITRATOR JAFFE: Back on the record, please.

MR. WILDER: Mr. Roth will resume his testimony with consideration of the employment card index and the relevance of historical wage comparisons.

ARBITRATOR JAFFE: That's fine.

THE WITNESS: Okay, gentlemen, I think we have completed the segment of the testimony that precedes Exhibit 19, so I would draw your attention
to 19.

This is the first of a series of two or three exhibits that lay out the relative wage progress for the BMWED and BRS as compared with the Employment Cost Index.

Now, the Employment Cost Index, as I think you know, is the most reliable data published by the BLS or anyone else as a measure of pure wage rate change because it controls for the changing mix of occupations and industries over time, much like the Consumer Price Index does.

And when I get to commenting on Mr. Gillula's work, I will refer to the differences between the Cost Index and the changes in average hourly earnings that he relied upon.

In any event, what we're offering the Employment Cost Index for basically is a check against the wage progress, wage change as obtained under the national freight agreement as compared to how the rest of American workers have progressed over the same period of time.

It's evidence only that there has been
nothing fancy, if you will, about the wage change under that national freight pattern and that a continuation of that practice between these parties will not in any way kind of make -- create some excess wage progress that might otherwise be suspected.

Exhibit No. 19 simply traces the BMWE wage progress since the beginning, in the January of 1975, so the day before the effective date of the first agreement is the base date.

So there's no quarrel with that selection.

And then the result is really shown on Exhibit No. 20. You don't have to go month by month or year. But we have published for you the index number for January and July of every year.

Obviously the graph is composed of data that go -- go month by month throughout that entire period. But you can see on the graph, the green line is the Employment Cost Index for the private sector, and the purple line is the Amtrak BMWED wage change.

And we have tacked on the end of 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.

    Let's see, 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
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.
Exhibit No. 30 is also some good background information for the Board.

This is a restatement of the -- of the income statement of the Carrier. We have revenue, labor costs, nonlabor costs, and the total labor expense.

Suffice it to say that you can -- one of the important metrics that the Carrier looks to in evaluating its financial position is what they call the recovery rate. And that is calculated for you at the last line of the restated operating statement, and it has improved steadily over time.

If you flip the page, you see that, 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.
ARBITRATOR JAFFE: Okay.

THE WITNESS: And I should have mentioned that 2012 is the latest data available.

I wanted to give you a simple measure of labor productivity. I don't know that any of this is controversial.

We have seen that employee work hours over time have been relatively flat. Passenger miles on the other hand have gone up. So if you consider passenger miles to be the output and the input to be the employee hours worked, we have a 32 percent increase in productivity over this period from 1986 through 2012.

And there was a dip in the middle of this period, as you can see.

It's about the same in 2001 as it was in 1986. But since that point, an extraordinarily large increase in labor productivity on this property.

Once again -- and this is not necessarily a basis for wage increases in this round of bargaining given the context of the case -- but
customarily this would be a factor that the Board
would take into account when considering wage
increases.

And I -- again, it should be considered by
the Board, but perhaps in the context of this case
considered a secondary standard.

Exhibit 39 is another measure of
productivity. And this employee -- this is the seat
miles per employee where seat miles is the output
rather than passenger miles.

You think of the difference, of course, is
the load factor. You know, the product that we're
putting out is really the seats.

It's not the employee's -- it's not the
employee's effort and input that creates the
passengers that creates the seats.

In any event, by either measure you can
see that there's been a generous increase in
productivity on the property. It's gone from -- by
this measure up 44 percent from the year 2000.

This is a measure of maintenance of way
and BRS only. The measure I gave you on Exhibit 38
is system wide. So I guess the other point that we could draw from this in terms of productivity increases, certainly these two organizations have contributed their fair share with shrinking hours, shrinking employment, increased product.

Another measure which is associated with the BMWE and BRS only is on 40.

This is the passenger mile metric.

So here we have the labor productivity measured as passenger miles per pay hour. And once again, up 61 percent over the past decade which is pretty extraordinary.

Now, while productivity has gone up, labor costs have been going up at a modest pace. And combining those two factors will produce a decline in unit labor costs.

In this instance we have unit labor costs falling from 28 cents per hour in 2000, to 22 and a half cents in 2012.

So even where under circumstances where the unit labor costs -- I'm sorry. I misspoke.

The unit labor costs are actually up or
constant since 2001. That's the center column.

The last three columns compute for you the change in real unit labor costs. So labor costs are -- unit labor costs are flat. And that's, of course, a function of both increasing productivity and moderate labor cost increases.

And so in 2001, we are at about the same level on unit labor cost as we were in 2012.

In real terms, of course, there has been a diminution in unit labor costs falling from 100 -- or 28 cents to 22 cents by 2012. And the current level is only 80 percent of where we were in the year 2000 in terms of real unit labor costs.

ARBITRATOR JAFFE: And these are based on real -- actual wages and contain no adjustments for '10, '11, and '12.

THE WITNESS: There are no adjustments for any of the actual wages paid out.

ARBITRATOR JAFFE: Got it. Thank you.

THE WITNESS: It's actually -- it's all labor costs, wages, benefits, everything.

Again, I wanted to offer some perspective
on this. And so we have for you on Exhibit 42, this is unit labor costs calculated on the passenger mile basis. And we're comparing ourself with the heavy rail urban transit sector.

That would be that most analogous in terms of both our recovery rates, and also their labor ratios are higher. But I thought we would take a look at these heavy rail urban transit systems.

These are about all of them in the country, by the way, 15 of them. There might be a couple we -- I think there's only 14 or 15 systems.

In any event, you can see that, even by this standard, we are at unit labor costs that are much smaller.

The next one gives you the same metric calculated for the commuter railroads. And once again we are below the commuter railroads in terms of our unit labor costs.

And that's Exhibit 43.

Okay. I want to -- again, I went over that material rather quickly because I don't sense that there's any controversy between the parties
regarding the basic progress that Amtrak has made
both with respect to its control of labor costs and
its escalation, you know, of other financial
metrics.

I think that has been confirmed by other
witnesses in this record.

So I want to focus now, Mr. Chairman, on
something that's very important. And this is the
kind of analysis of the impact of adopting the
Union's proposal in this case on the financial --
the financial position of Amtrak.

And as you have probably suspected as we
reviewed the materials, there is a difference
between the parties as to how this should be
measured.

So I want to -- what I -- let me do some
homework here. I have some process matter here.

Exhibit 41 or 44 is the last published
five-year business plan. It is the -- was the
source of the original Roth Exhibit 46, which we now
should just abandon because I have now revised and
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.

Apparently 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.
ARBTRATOR FISHGOLD: Is this the one that said P and L Statement with national freight pattern?
That should come out?
THE WITNESS: Yeah. You have seven pages.
ARBTRATOR FISHGOLD: Yeah. There's a page 5, which is the same heading.
THE WITNESS: 5, you keep.
ARBTRATOR FISHGOLD: 5, we keep.
4, we discard.
THE WITNESS: 4, you throw out.
ARBTRATOR FISHGOLD: Okay, throwing out.
THE WITNESS: 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
two-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
two-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
cents by the end of 2017. Calculated the other way
around, it goes from 30 cents roughly to 32 cents by
2017.

So this is the kind of -- this the
five-year business plan as projected by the Carrier.

Now, I'm going to make some adjustments to
it. And the first adjustment I'm going to make is
shown on page 2.

And I wanted to provide the math behind
this rather than just tell you just get to the
conclusion because I suspect that the Board may want
to uncover the differences between the parties in
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 2014 at 199.8. Far left-hand column. On the top.

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.

That's actually a minus $964,000
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.

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
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,
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 --

THE WITNESS: Yes.

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.

ARBITRATION JAFFE: That's the difference.

THE WITNESS: Correct.

ARBITRATION JAFFE: That's the delta; right?

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

ARBITRATION JAFFE: That's where I was going.

ARBITRATION FISCHGOLD: Okay. Sorry.

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

THE WITNESS: Yes.

ARBITRATION 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.

ARBITRATION JAFFE: I understand.

THE WITNESS: The terminal value would.

ARBITRATION 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
percent conditional adjustment or anything else.

THE WITNESS: No. It does.

ARBITRATOR JAFFE: It does.

THE WITNESS: It includes the 1 and a half.

It does not include any element in wage increase that is not already determined.

ARBITRATOR FISHGOLD: Okay. Let me see if I understand it then.

THE WITNESS: One other last thought, Mr. Fishgold, before -- you'll notice that the 2014 number of 19,996,000 is the same.

I checked this five times. That is fairly coincidental because those are two separate calculations.

But that 19.9 is rolled up for variable expense and includes the 1 and a half going forward.

MR. REINERT: May I just ask a question, just for clarification?

ARBITRATOR JAFFE: Yeah. Feel free, but I'm still not there.

But go ahead.
MR. REINERT: If I have heard him correctly, it includes the 1 and a half percent of the January 1, 2015 Amtrak increase. But it does not include the 3 percent in the PRLBC proposal.

ARBITRATOR JAFFE: Right. That's what I heard as well.

We heard the same thing.

MR. REINERT: Okay.

ARBITRATOR JAFFE: I'm still not sure I understand, though.

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?

THE WITNESS: Yes.

ARBITRATOR JAFFE: Okay. And the terminal cost was calculated by taking the --

THE WITNESS: Because -- tell you what, the percentage difference in 2015 changes.

ARBITRATOR JAFFE: Right.

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.

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.

It may become more clear if I can add a column here that shows the math, but that's what happened.

ARBITRATOR FISHGOLD: Might be helpful if we do leave the record open for you to amend that.

THE WITNESS: Okay. I can put some more worksheet on here to show the calculation behind it.

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.

So both of them are five-year agreements.

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.

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.

THE WITNESS: No.

ARBITRATOR FISHGOLD: No.

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.

ARBITRATOR FISHGOLD: No. But are you saying --

THE WITNESS: You assume zero under the --

ARBITRATOR FISHGOLD: Well, we don't know -- hypothetically, we don't know what that percentage might be.

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.

THE WITNESS: It could be higher.

It could be lower.
ARBITRATOR FISHGOLD: Okay. Well.

THE WITNESS: It's only guaranteed 3 percent if they go to arbitration or to a PEB.

ARBITRATOR FISHGOLD: I remember that now.

THE WITNESS: I mean, you know what, you can -- if you read it as a minimum and if you want to perform the analysis over a six-year period, you can.

If you do it over a six-year period in order to have apples to apples, you have to make an assumption for wage change under the settled contracts in 2015.

ARBITRATOR JAFFE: I understand.

THE WITNESS: If you tell me what that's going to be, I'll put it in. But I don't know what it's going to be.

ARBITRATOR JAFFE: I understand.

THE WITNESS: And because I believe that it's probably beyond the scope of your work to predict what that should be in 2015 for the unsettled unions, that it would be wiser and more prudent to look at these agreements over the
five-year moratoriums.

Because you cannot, as a matter of math, look at it on a five-year and six-year basis.

That's just wrong.

ARBITRATOR FISHLAND: So let me -- as I'm looking at this and, as I have heard your testimony then, there are three numbers in the explanation for them that this Board should be considering in some fashion.

One is that the 2014 total cost of 49 million whatever does not include the 1 and a half percent.

Is that correct?

Does not include the 1 and a half percent.

THE WITNESS: Does not.

ARBITRATOR FISHLAND: And that the terminal cost of close to 20 million includes the 1 and a half percent.

THE WITNESS: Yes.

ARBITRATOR FISHLAND: But does not include the 3 percent in the Union's proposal.

THE WITNESS: Well, we're not proposing 3
percent.

   ARBITRATOR FISHGOLD: No. But -- well.

   THE WITNESS: That's not --

   ARBITRATOR FISHGOLD: Well, that's what

I'm not clear on.

   ARBITRATOR FISHGOLD: And there's a

   reason -- well, there's a lot of reasons why we want
to know.

And one is that we have talked a lot --
and I don't mean we -- but the parties have talked a lot
about the freight proposal and how the freight
proposal factors into -- as a pattern, an external
pattern for what we should be considering.

And I guess my question to you, Is what
the Union is proposing strictly the freight
proposal, or is there something in addition to the
freight proposal that the Union proposal is looking
for?

Now, at some point we need to really
understand that, I think.

THE WITNESS: There's nothing more that
we're looking for in the freight proposal. No.

ARBITRATOR FISHGOLD: No. Different
from --

ARBITRATOR JAFFE: On wages.

ARBITRATOR FISHGOLD: On wages. That
would be higher than for -- to be very clear.

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.

THE WITNESS: Sure.

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

THE WITNESS: Yeah. It's correct.

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.

THE WITNESS: 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.

    ARBITRATOR JAFFE: Good.


    ARBITRATOR 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.

    ARBITRATOR JAFFE: Yes.

    THE WITNESS: 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 --

    ARBITRATOR 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 --

ARBITRATOR 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.

ARBITRATOR 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?

THE WITNESS: Yes. I can get there.

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

THE WITNESS: Right. And 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.

ARBITRATOR JAFFE: Fair enough.

Anything else for the interruption?

ARBITRATOR FISHGOLD: No.

That was very helpful.

ARBITRATOR JAFFE: Okay. Thank you.
THE WITNESS: Are we okay?

ARBITRATOR 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
at on the financial position of the company, which we haven't got on the next step yet, but we're going there.

But that's why -- that's the purpose of the analysis. If we didn't have this question of the impact of me-too, I wouldn't be going through this exercise.

Okay. So let's go back to -- okay. The second step, of course, is to account for the savings associated with the health insurance piece because there, if you recall, Mr. Stadtler ignored it.

Okay. This is the cost, $123 million, asking you to consider that as impact on their finances without accounting at all for significant savings associated with the other half of this package.

And so what I did on page 3 of this Exhibit 46 is attempt to put a number behind it. And this is how it works. The headcounts that you see at the top of the page for years 2011 through 2017 are drawn from
Charlie Woodcock's testimony.

He had -- and basically the numbers are 14.5 without the PRLBC, and then 17. -- you know, 17,229 with.

So these just come from Charles' testimony.

Now, in terms of the employee participation in the health insurance plan, it's probably somewhat diminished from those numbers straightly.

I don't have those numbers. So I'm using as a proxy for calculating per capita savings the headcounts that would otherwise be in the record.

And of course, I'm showing that they're stable. I don't know if they will creep up or down 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
pages 24, 25. You will see those contributions per employee per year numbers, $24, 96, 262, and then a partial year.

We're going to -- let me see what I do here.

That's July. That's a half a year.

Okay. So half a year -- half of the year that he reported in 2014, so those are the Carrier's numbers. These are the savings that they report associated with the settled unions per person.

Now, if you multiply the headcounts by those per person numbers, you get the total contributions line. And you see the label, total contributions return because what I contemplate in the application of the me-toos if you apply them literally and completely -- and we don't know -- for the reasons I said earlier, it doesn't have.

But if it did, you have got to pay back those contributions; right?

So you're going to pay back $347,000 in year one. And that grows, as you can see to $3.8 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.

That's what I give back.

Now, however, if they accept the literal
application of the Organization's proposals in this
case, then of course the Carrier is going to get all
the design changes.

So then what I do is I go to the same
exhibits that were produced by Mr. Rand, where he
records the annual savings associated with adopting
the Union's design changes.

And they would be 435, 940 -- actually,
half of the year, twice that number, in 2014, but I
took half of it because we're not implementing until
July.

ARBITRATOR JAFFE: Okay. So you're using
the ramp ups in 243, but starting the process
prospectively, the design change ramp ups.

THE WITNESS: No, I'm not.

Not in this example.

ARBITRATOR JAFFE: No.

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
made.

All right. Okay, now go to page 5.

We threw out 4.

I'm going to take page 1, which is a --

the restatement of the plan. And I'm just going to

plot on the numbers that we produced on worksheets

page 2 and 3.

So I start with the same operating

revenue. I haven't touched that line. I'm not

changing the plan in any way.

We have the salaries line item. I'm not

changing that. The wages and overtime are as shown.

And then the incremental costs of the me-too, 49.4

million, which is my -- for in that year, I have to

pay the retro.

And then it flattens out to the 19. It's

actually 20.

And the reason it grows is because I'm

growing the terminal value by the change in the wage

of overtime line item. Because it may be -- because

in this embedded in here somewhere is our

assumptions that finance is making for staffing and
overtime factors.

So as that line moves, the terminal value will move. Okay. So that's why that line is creeping up.

Then I take employee benefit line, that's as reported. I add to it the benefit savings. This is the difference between the numbers you have seen on page 3.

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
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.
Where you -- then the second half of that table has various interest rates. I was doing some interest rate sensitivities because I don't know what -- you know, we can talk about that in a minute, but let me clear up the math.

For the health insurance savings foregone by the Carrier, it's not only the interest on those dollars. It's also the principal. They lost the money that they would have saved plus any kind of opportunity costs on those savings.

So what you see in the body of the table on the right-hand side are not only the dollars that are lost in each of those years on interest, but also on the principal.

In other words, I added in that first column on health insurance. That's the math.

You add them up and -- for the months in turn. I laid it out in a very simple way so that people could replicate this calculation with a calculator. You don't need anything fancy.

So overall, if at a 3 percent interest rate, I calculate that opportunity cost to Amtrak
for losing the design change is $2.2 million, 2.1.

If you assume a 6 percent interest rate, the loss is slightly higher. It's the principal plus some more interest on that 2.2.

So that's -- this fits the value of the money that they lost by this delay.

Okay. Now, let's calculate the opportunity cost to the member for having foregone or having delayed the implementation of the wages.

This is what Jerry Glass was talking about, about the, you know, the time value of money and how this needs to be taken into consideration when you look at these deals.

You take the wage cost under the Amtrak proposal -- and by the way, this is under the Amtrak proposal. This is not the wages that the -- or the interest on the wages that were lost by the employees under their proposal. Okay. This is money that was banked by the Carrier.

So -- and what you see in this calculation is not the principal. Because, guess what? We're going to get that retroactive. We going to be paid
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.

ARBITERATOR 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.

ARBITERATOR JAFFE: -- that Amtrak employees are contributing?

I think it's 177.54.

THE WITNESS: Correct.

ARBITERATOR 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.

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

THE WITNESS: Right.

ARBITERATOR 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.

THE WITNESS: Okay.

ARBITRATOR JAFFE: 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 FISHGOLD: 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.)
ARBITRATOR DAS: Can somebody tell me what volume it is?

THE WITNESS: I'm sorry, Mr. Das. I don't know that you even need to take it out. I was going to make a couple of observations.

ARBITRATOR DAS: You mean, I don't really need it?

Thank you. That will make it easier.

THE WITNESS: I apologize.

Again, I just have some general comments.

ARBITRATOR DAS: Okay.

THE WITNESS: And no additional exhibit material to offer, but would like to make the following points.

If -- and I don't want to be too critical of Mr. Gillula because I understand that he relied upon somebody else to make these job matches.

And we have in our bargaining unit a considerable number of foremen. The fact of the matter is that the foremen were incorporated. And of course, the foremen in our bargaining unit, by the way, have their average straight time pay rates
as calculated from Roth Exhibit 7, I think it is, are $27.84.

So obviously our foremen are among the highest, and we have a great deal of them.

It turns out that they were included in the computation of the average earnings for the Amtrak BRS, BMWE group.

However, according to the BLS the EOS, when it sees a foreman, that title would place them in first line supervisor category.

And they would not appear in rail track lane and maintenance equipment operators. They would not appear in signal and track switch repair.

That was my suspicion, which led to the question that Mr. Wilder asked yesterday.

But in order to be certain, we confirmed that with the BLS this morning. So we actually had correspondence with the BLS, and for the analyst who was responsible for maintaining this database.

And he confirmed that if there is a foreman title, that would be removed from these categories and be placed in first line supervisor
group.

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 maintenance and repair workers general, these are 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 -- does not show up on Exhibit 601.

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 BWED, 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.
I mean, rule is a big category of compensation as opposed to what we generally talk about when we're outside the railroad industry.

And rules with respect to kind of the basic benefit programs, like wages and healthcare and a variety of other such, you know, holidays, whatever it is, have been patterned directly after the national freight agreement.

On top of that, we have demonstrated that throughout the bargaining history here at Amtrak, the parties have embraced the wage changes that have been made over the long term.

In fact, as we have demonstrated as of now and over the past 35 years, the wage increases are almost the same.

The other thing that -- the other point with respect to this first conclusion is that this has been -- the freight pattern has been followed in good times and in bad.

The Unions have been stuck. These two organizations have been stuck, for lack of a better word, with rounds of bargaining national freight
agreement which were influenced heavily by
bankruptcies and insolvency of freight carriers and
under other circumstances, particularly the 219
debacle.

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 turnover, 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, BMWED -- 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.

I want to make sure I understand your opinion concerning the existence of an internal
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.

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

A   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.

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

A   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.

Q    And I understand you completely, Mr. Roth.

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?

A    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    You call --
A     I define it.

I say that it's a settlement made by one
or more of several units with the same employer.
Q     But you don't say that the Amtrak
agreements are an internal pattern.
A     Because it doesn't meet all the conditions
of being binding on a follower unit.
     It's a matter of degree.
     I say that the pattern has to achieve
critical mass. I have said several times that I
think it meets that test.
     But I don't think it meets the other two
tests that I ascribe to it. It doesn't have
historical relationship that can be relied upon.
And it doesn't have -- and there's no single
settlement that is clear and identifiable.
Q     Okay.
A     That's what I'm saying.
Q     And you, in fact, testified about the
Amtrak internal pattern at the Long Island Railroad
Presidential Emergency Board, did you not?
     Let me refresh your recollection.
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: I'm sorry. 23 of what?

MR. REINERT: 23 of -- page 23 of Amtrak Exhibit 900.

THE WITNESS: I have it.

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?
MR. REINERT: Sure.

ARBITRATOR JAFFE: I'm sorry.

It looks -- did you find it, Mr. Wilder?
You look like you were having some difficulty.

THE WITNESS: I think so.

It doesn't look like a transcript to me.

MR. REINERT: No. No. No. It's --

ARBITRATOR JAFFE: It's not a transcript.

BY MR. REINERT:

Q In fact, why don't you identify what Amtrak Exhibit 900 is.

A This is a summary statement of my testimony.

Q And it was submitted to PEB 244 and dated December 2, 2013?

A It was.

Q Okay. And you see on page 23, there's a reference to Amtrak agreements.

Can you read that paragraph into the record?

A TCU entered into an agreement on April
2010. The settlement ultimately served as an internal pattern for all other nonoperating organizations except the BRS and BMWE.

The agreement is for five years and provides for increases of 2.83 percent per year.

(Interruption by the court reporter.)

THE WITNESS: The agreement is for five years and provides for increases of 2.83 percent per year. 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.
Q I just --
A I would like to complete my answer.
Q No. I just asked you whether that was your statement.

That's a yes-or-no answer.
MR. WILDER: Oh, no. Oh, no. We don't do yes-or-no answers.
MR. REINERT: Yeah, we do, on questions that are yes-or-no questions.
ARBITRATOR JAFFE: Let me suggest, if we may, we're not going to limit Mr. Roth to a yes or no. We haven't limited any witness.

But ultimately, the questions that need to be answered are those that are posed by counsel, and you will have the opportunity for further direct if Mr. Wilder either wishes to focus your attention on something or simply asks you if you want to add something.

That's his call or will be when it's his turn again.

We'll get there.

THE WITNESS: I'm easily instructed.
ARBITRATOR JAFFE:  Thank you.

That works.

MR. REINERT:  So where does this set the question?

ARBITRATOR JAFFE:  Next question.

THE WITNESS:  I recall it.

The answer is yes.

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?

I don't have it.

ARBITRATOR FISCHGOLD:  Seems to end with Attachment 26 in this particular copy.

THE WITNESS:  There are another 25 or 30 attachments missing, but I recall what it was.

ARBITRATOR JAFFE:  They came in separate files, as I recall.

And actually, the first file went up
through Attachment 20 something, then the others came in.

THE WITNESS: It was a chronology of wage change under the TCU agreement.

ARBITRATOR FISHGOLD: There is a table apparently, if we look at summary statement exhibits attached, which is toward the front of the document.

Now, what is marked as page 3, there is -- it's something -- Attachment 51, change in hourly rate of pay over a five-year term, Amtrak agreements applied to average rate for eight cooperating rail labor organizations, LIRR.

Is that the exhibit you're referencing?

THE WITNESS: I think so, yes.

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 the BMWED, which agreements were you referring to?

A I was talking about the nonoperating agreements other than the BRS and BMWED.
It did not and should not apply as a pattern to these organizations. It didn't apply as a pattern to certain other nonoperating organizations. It did not apply as a pattern to the UTU because they got more.

So it's exactly what I state.

Q Mr. Roth, we'll have a long discussion of the UTU, I guarantee you.

But let's talk about which ones were encompassed in your opinion before PEB 244.

MR. REINERT: Can we call up Amtrak Exhibit 200, page 6? It's Charlie Woodcock's testimony.

Do we have that?

BY MR. REINERT:

Q So what I have put up is the list of the Amtrak agreements this round that Charlie Woodcock referred to.

And I just want to -- I want to ensure that we're on the same page.

What agreements you were referring to with respect to your statement on the Long Island
Railroad about internal patterns, so can you go through the list?

A    I can't see that.

But if you give me the reference.

Q    Yeah, it's page 6 of Exhibit 200, Amtrak Exhibit 200.

A    Got it.

Q    You got it?

A    Yep. It will be everybody on the first page with the exception of -- well, everybody on the first page, everybody on the second page with the exception of the BLET and the SMART Transportation Board.

Q    Okay. So just to go down the list you have got JCC, TCU, ASWC, ATDA, ARASA MW, IAM, ARASA ME, ARASA OBS, IBEW, SMART SM, or sheet metal workers, FOP, NCFO, and IBBB are the agreements you identified as ones that were nonoperating agreements within the Amtrak internal pattern.

Is that correct?

A    Yes.

Q    Okay. Now, with respect to the terms of
the BLET agreement, BLET is obviously an operating union.

Is there any difference in the economic terms from those of the agreements you identified as part of the nonoperating internal pattern?

A I don't know because I haven't -- I would have to look at their work rule changes and see if there's any economics in there.

Q Okay. Well. Let's take a moment and do it.

It's joint -- no, that should be Charlie Amtrak Exhibit -- we have got to make sure we give him the book of the exhibits, Amtrak Exhibits.

(A discussion was held off the record.)

BY MR. REINERT:

Q 242.

A I think I have it.

Q And my question -- do you have the actual agreement?

There's ratification. Make sure you have 242. Yeah.

And just a quick perusal, is there any
difference in the economics of the BLET agreement from the agreements you have referred to as the nonoperating agreements setting the internal pattern?

A Not -- I don't see any with respect to anything that's of economic consequence.

Q And I will represent to you that Amtrak's belief is there is nothing else.

So let's -- and I want to hold aside a moment the UTU conductor agreement.

Have you had an opportunity to look at either the UTU Yardmasters Agreement or the UTU Stewards Agreement?

A Yes.

Q Okay. Do you -- I'll ask you a question. If you want to refer to agreements, you can.

Is there anything in the economics of those agreements that distinguish them from the nonoperating agreements you have identified as part of the Amtrak internal pattern?

A No, I don't think so.

Q Okay. So the 13 nonoperating agreements
and three operating agreements BLET, SMART-Trans (UTU) stewards, SMART-Trans yardmasters, we have got no disagreement that those formulate what looks like an internal pattern.

Is that fair?

A    That's -- yes, that's fair.

Q    Okay. Now, you have submitted a lot of exhibits.

How many exhibits have you submitted?

A    They -- just in terms of the numbers, I don't know.

Q    I'm thinking it's 86?

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.

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.

I want to focus on the Amtrak agreements for a few minutes more.
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.

The answer is yes.

Q Is it your testimony that that just means they lie outside the pattern or that the UTU conductor agreement broke the pattern?

A I think that they have a -- I think they have a different agreement with different economics, and there is no one single set of terms, therefore, that can be -- that can be relied upon here by the Board.

Q Now, the term that you say is different with respect to the UTU Conductor Agreement are the performance bonuses; correct?

A Correct.
Q    And do you recall when the first
performance bonuses become payable under the UTU
Conductor Agreement?
A    I know they were deferred from the
effective date, but I don't recall the date.
Q    Okay.
A    But I'll -- whatever, if you know, then --
Q    If I represent that there were no bonus
payments under the UTU Conductor Agreement on Amtrak
until September 2014, would you have any reason to
contest that?
A    No.
Q    Okay. And if you look at the economics of
the UTU Conductor Agreement on Amtrak through the
July 1, 2014 wage increase, they're identical to the
Amtrak Internal Pattern Agreements.
A    If you look at -- yeah, if you look at
part of the agreement, part of it is consistent and
part of it is not.
Q    I'm focusing temporarily that from January
1, 2010 to July 1, 2014, there is no economic
difference between the UTU Conductor Agreement and
the agreements that form the Amtrak Internal Pattern.

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.

You recall that testimony?

A  Yes.

Q  And you had an opportunity to review the Amtrak analysis.

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    Yes.

Q    It's irrelevant because you should -- your opinion is that the Board should only look at the dollars paid to the employees and not the offsetting productivity cost savings received by Amtrak.

A    That's not my testimony.

Q    Okay. Let me try again.

You testified that because the employees are receiving dollar payouts, that that makes their -- beyond the other Amtrak pattern agreements, that makes it a different agreement for pattern purposes.

A    Yes.

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.

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.

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.

It's no different.

Q    I think you may have heard the testimony
of Bruce Pohlot that Amtrak is interested in ways of
finding for the BMWE and the BRS employees to come
to work in the positions we need them in at the time we need them in?

A    Well, we're going to get extra money for coming to work, maybe you have an audience.

Q    So with respect to the UTU conductor bonuses, I believe it's your testimony that you think those should be monetized as an additional general wage increase equivalent for other employee groups.

Is that your testimony?

A    No.

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. If we -- if -- I don't understand the question.

Q    Okay.

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.

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.

ARBITRATOR JAFFE: I think it's 22.

MR. REINERT: Joint Exhibit 58.

I'll get it for you.

MR. WILDER: The page number is 50.

BY MR. REINERT:

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.

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.

I don't know that there are any alternative cost savings. But I think the direct answer is, no, I don't regard it as relevant.

Q  Are you analyzing the UTU Conductor Agreement on Amtrak to see if Amtrak properly valued the cost savings from that agreement?

A  No.

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. So I have had no opportunity to analyze it one way or the other.

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 incentive 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. Like I said, I didn't analyze that. And I didn't -- what I glanced at was not particularly
meaningful to me.

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.

Yes, 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.

And to speculate on what the wage change will be in a year beyond the amendable date, it
would be -- is irresponsible for an expert.

That would be pure speculation, and I think experts should avoid that.

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.

Are you aware of that?

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.

Q    Which has $200 in it; correct?
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.
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.
A Okay. Well, let me explain the math.
Q Well, let me ask you a question.
Let me just ask you a question.
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."

Do you see that?
A No. What page?
Q Top of page 7.
A Right. That's exactly right.
Okay. I see it.
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.

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.

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

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.

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 Do you know what Joint Exhibit 51 is?

A This is a valuation of the two agreements over a six-year period.

Q Which was prepared by you?

A Yes.

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.

   I don't recall.

   Q   Okay. But you did do a six-year analysis through 2015 of the Amtrak proposal and the PRLBC proposal.

   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.

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

   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
Court Reporter