

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

ARBITRATION HEARING
Vol. 6
January 16, 2014



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BEFORE THE AMTRAK/PRLBC ARBITRATION BOARD

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

VOLUME 6

The hearing in the above-entitled matter recommenced on the 16th day of January, 2014, at 10:05 a.m., at the offices of Morgan Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, NW, Washington, DC.

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

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EXHIBITS

NUMBER MARKED AND ADMITTED

(Exhibits premarked)

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

2 MR. WILDER: Mr. Chairman, Members of the
3 Board, yesterday the Arbitration Board directed
4 certain questions to our economic expert, Thomas R.
5 Roth. And Mr. Roth has performed supplemental work,
6 which I would like him to describe to the Board in
7 this way.

8 First, to restate for the record what
9 question he was asked by the Board, and, therefore,
10 what question he's answering.

11 Second, to identify which of his exhibits
12 were affected by this question. And then to say
13 what it is that he's going to say.

14 ARBITRATOR JAFFE: That's fine.

15 We need to remind you you're still under
16 oath. We don't have to swear you back in.

17 THE WITNESS: Understood, Mr. Chairman.

18 ARBITRATOR JAFFE: Thank you very much.

19 Thereupon,

20 THOMAS ROTH

21 Recalled for examination by counsel for
22 the PRLBC, having been previously duly sworn, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 THE WITNESS: Good morning, gentlemen.

4 Before I get to the inquiry that was made
5 of me by the Chairman, I would direct your attention
6 Roth Exhibit No. 83 updated.

7 And yesterday, Tom Rand had revised some
8 of his valuations of the savings associated with the
9 PRLBC's proposal on healthcare, somewhat of a moving
10 target in a sense that Mr. Rand and his colleague,
11 Matt Quaid, had done some additional investigation
12 with the prescription drug folks and had revised
13 their estimates.

14 You should know that at no time during
15 negotiations or mediation was there any quarrel
16 between me or Matt Quaid and his associates in
17 developing these evaluations of savings or costs
18 associated with respect to health insurance issues
19 before this Board.

20 And so to that end, I wanted to update 83
21 so I could incorporate Tom Rand's new estimates that
22 he offered yesterday in his Exhibits 410 through

1 412.

2 So simply put, the numbers in the second
3 half of the page in the second table where he has
4 got health insurance savings, those are simply
5 updated from Tom Rand's Exhibits 410 through 412
6 that he offered yesterday.

7 My point is that the conclusion that I
8 drew based upon the older data would not change.

9 And I think -- still think it's as a wash
10 with respect to the opportunity costs that both
11 parties have endured or incurred over the course of
12 the delay in getting a resolution to this dispute.

13 And if you will indulge me just a moment,
14 Mr. Chairman. You asked me a question about the
15 effect on opportunity cost an award, hypothetically,
16 would have if the -- if certain general wage
17 increases were -- effective dates of general wage
18 increases were moved so as to account mathematically
19 for the delay in realizing the health insurance
20 savings associated with the PRLBC's proposal, which
21 is a replication of a freight timing of those
22 changes.

1 And I wasn't sure I understood the
2 question at the time. I think I understand it
3 better now, if I stated it correctly just now.

4 And my response, after further reflection,
5 would be as follows:

6 I think certainly you can solve -- if you
7 move effective dates of general wage increases, if
8 you deferred them to the same degree that you
9 deferred the effective date of the savings
10 associated with the health insurance concessions,
11 then clearly you could solve for the opportunity
12 cost incurred by the Carrier.

13 But what I had said yesterday I think
14 holds true, that that would not account for the
15 delay in implementation of the wage increases and
16 the opportunity costs associated with that.

17 And obviously, that hypothetical approach
18 would resolve the opportunity cost problem for the
19 Carrier, but the opportunity costs suffered by the
20 employees would linger.

21 So that's what I am suggesting, that what
22 I show on Exhibit No. 83 is a wash if effective

1 dates are maintained under -- with respect to
2 general wage increases, under the patterns set by
3 the national freight agreement.

4 And I'm hopeful that that satisfied your
5 question to me.

6 ARBITRATOR JAFFE: It responded. You bet.

7 THE WITNESS: Okay.

8 ARBITRATOR JAFFE: Thank you.

9 THE WITNESS: And the second chore here,
10 and I'll drill down on this. This relates to Roth
11 Exhibit No. 46.

12 And you will recall that there was a --
13 this was the exhibit where I was calculating the
14 impact on the Amtrak P&L statement under the
15 five-year plan following the extension of the
16 national freight agreement to all employees,
17 organized employees on the system.

18 And there was a worksheet which dealt with
19 the wage portion of the application of the me-too.
20 That was page 2 of Exhibit 46.

21 And there was a question from the Chairman
22 as to how I developed the terminal cost of

1 \$19,996,000, which was that last number in the
2 right-hand column of that table.

3 So I have offered a worksheet here that
4 should be before you that calculates or recalculates
5 the 2014 terminal wage cost. And so this is how
6 that worked.

7 If you go to the -- if you'll note on page
8 2 of the Exhibit 46, and you'll see that the PRLBC
9 projected wage cost in 2014, this would be the
10 payroll following the application of the PRLBC
11 proposal to its group only. That would be \$203.4
12 million.

13 In that -- so that's the second
14 statistic -- second number on the worksheet.

15 The number before that is the projected
16 wage base for the BRS and BMWED group, which was
17 calculated by the Employer in 2014 which was 199.7.

18 You can see that on page 2 of Exhibit 46.
19 And to that number, I added the 1.5
20 percent.

21 So when you add the 1.5 percent, you get
22 what is the -- a full year of expense, what we call

1 the outgoing -- going out expense or the terminal
2 value in 2014.

3 Now, the difference between those two
4 numbers is \$688,000. And that is an increase of
5 three-tenths of a percent.

6 So the three-tenths of a percent, when you
7 apply it to the systemwide wage and salary line
8 items that is published -- or was published in the
9 testimony of Mr. Stadtler in this record for 2014,
10 you get \$3.3 million. And that is the terminal cost
11 of the 1 and a half percent under the Amtrak
12 proposal.

13 So if you take what was otherwise the
14 incremental cost of applying the Brotherhood's
15 proposal in 2014 of \$19,996,000, and you subtract
16 from that number the \$3.3 million -- you subtract it
17 because when you include the 1 and a half percent,
18 the differences between the parties on a terminal
19 value, or going out value, basis shrinks.

20 So you subtract that number from in
21 \$19,996,000 number, and you get the terminal cost of
22 \$16.7 million.

1 You see that in the worksheet.

2 To that, I add the variable expense of 20
3 percent. That's the variable benefit rate that is
4 used in the analysis and consistent with, of course,
5 the worksheet prepared by Amtrak. And that gets you
6 back up to the \$19,996,000.

7 Now remember yesterday, I said that was a
8 coincidence. It's a coincidence because the
9 difference in 2014, when you include the 1.5
10 percent, happens to be about equal to the variable
11 benefit rate.

12 And that's why we end up back at the 19.9
13 or \$20 million going out difference between the
14 applying the Amtrak proposal or applying the
15 national freight agreement in the out years.

16 But that number then shows up, as you have
17 heard, in the page 4, what was page 5, but now page
18 4 of the exhibit. And you can see that \$20.3
19 million in 2015 and then it going out.

20 So that's the derivation of the \$20
21 million incremental difference between applying the
22 Amtrak proposal or the Brotherhood's property in the

1 year's 2014 and beyond.

2 And if there are no other questions
3 regarding that, then I have completed my testimony.

4 ARBITRATOR JAFFE: The only one clarifier
5 is I think we covered this yesterday.

6 The same assumptions, I think, are built
7 in here, which is that you're not counting the 3
8 percent that's --

9 THE WITNESS: Correct.

10 ARBITRATOR JAFFE: -- that's "conditional"
11 for 2015.

12 THE WITNESS: Exactly.

13 ARBITRATOR JAFFE: That's fine.

14 THE WITNESS: I mean, and we can revisit
15 that again, but you recall my testimony that I
16 can --

17 ARBITRATOR JAFFE: I wasn't looking to
18 revisit.

19 I was looking to clarify that the number
20 excludes it. That's all.

21 THE WITNESS: There's no assumption for
22 what the Amtrak sub-unions will do in 1015 --

1 ARBITRATOR JAFFE: Got it.

2 THE WITNESS: -- when their agreement is
3 amendable.

4 ARBITRATOR JAFFE: Fair enough. Thank
5 you.

6 THE WITNESS: Anything else, Mr. Wilder?

7 MR. WILDER: No. We're prepared to pass
8 the witness.

9 ARBITRATOR JAFFE: Okay.

10 CROSS-EXAMINATION

11 BY MR. REINERT:

12 Q Given Mr. Jaffe's last question, it
13 obviates any need for me to cross-examine you about
14 the calculation of the terminal wage. Okay. So we
15 can put that one aside.

16 With respect to Roth Exhibit 83, I'm
17 assuming you derived these numbers from Amtrak
18 Exhibit 412, or you updated these numbers to reflect
19 Exhibit 412.

20 Maybe we can pull that up.

21 A I can't read that, Mr. Reinert.

22 Q We'll get it bigger.

1 MR. REINERT: Bigger. Bigger. Just go
2 down to the difference and blow it up.

3 We'll get there.

4 BY MR. REINERT:

5 Q I'm looking at the numbers on difference
6 that are 392,000 -- 392,715, 1,559,2 -- do you see
7 those?

8 Those appear to be the numbers you put
9 under health insurance savings.

10 A I don't see them, but you're correct.

11 Q Okay. And Amtrak 412, that's the column
12 for medical savings. To the right, there's a column
13 for drug savings.

14 Do you see that on the document?

15 A Yes. Well, I know it's there, yes.

16 Q You know it's there.

17 Simple question. You have incorporated
18 the Amtrak calculation of the time value of the
19 health insurance savings, but you have not done that
20 with respect to the drug savings?

21 A I intended to do it with both.

22 Q Okay.

1 A It's not?

2 Q It's not.

3 A It should be the total savings associated
4 with design.

5 If it's not, then I looked at the number
6 wrong.

7 ARBITRATOR JAFFE: Why don't we manually
8 ink in the difference?

9 BY MR. REINERT:

10 Q Well, yeah -- no, no, no.

11 And I think if you look at the numbers, if
12 you add the drug side, I think it's going to mean
13 your bottom line numbers go up to about 20 percent.

14 But I want you to take a -- why don't you
15 take a moment to look at Amtrak 412 in hard copy?

16 ARBITRATOR JAFFE: That's fine.

17 BY MR. REINERT:

18 Q And rather than redo the exhibit, if you
19 could just give us a, you know, a quick and dirty of
20 what impact that would have, that would be helpful.

21 A Yeah. I apologize. This is what I get
22 for doing this late at night.

1

2 Q Yeah. It's a hard schedule on all.

3 That's okay.

4 A It should be the total plan design

5 changes.

6 Ignoring the employee contributions, you
7 know what our position is with regard to those. And
8 they would not be relevant to this analysis anyway
9 because, as everybody has recognized, unlike the
10 design changes, the contributions could be made
11 retroactive.

12 But the proper numbers, as Mr. Reinert has
13 pointed out, should not be 393. It should be 520.5.

14 And then in 2013, it should be the 1,926
15 number.

16 And in 2014, it should be 1 -- this is the
17 first quarter, so one-fourth of the 2,537 number.

18 Q Okay.

19 A And if, you know, I just punched those in
20 on my computer, I could give you the bottom line as
21 well.

22 Q You know, any way you want to do it.

1 If you want to just give us a number or --
2 we have no objection just if you want to redo this
3 and submit it after close.

4 ARBITRATOR FISHGOLD: That's fine.

5 THE WITNESS: That would probably be --

6 ARBITRATOR FISHGOLD: Yeah.

7 THE WITNESS: -- most efficient, rather
8 than take important time now to do that.

9 MR. REINERT: Right.

10 ARBITRATOR JAFFE: That's fair.

11 MR. REINERT: And I appreciate it.

12 THE WITNESS: Okay.

13 MR. REINERT: And I just want to echo the
14 sentiment you said, that in the course of mediation,
15 there was no disagreement between you and our folks
16 on the medical care costs, and we appreciate that.

17 THE WITNESS: Yeah. And Charlie Woodcock
18 gave me full access to Matt Quaid and his associates
19 in meetings that -- where we discussed the
20 methodologies and the development numbers, and I was
21 satisfied.

22 MR. REINERT: Thank you.

1 (Witness stood down.)

2 ARBITRATOR JAFFE: I assume no further
3 direct from the fact that Mr. Roth has left the
4 stand; right?

5 We're all in good shape as well.

6 Thank you again.

7 MR. ROTH: Oh, sorry.

8 ARBITRATOR JAFFE: No, it's fine.

9 You made an assumption that turned out to
10 be absolutely correct, which is that no one had any
11 additional questions for you.

12 MR. WILDER: That would conclude this
13 morning's presentation for the Organization.

14 ARBITRATOR JAFFE: That's fine.

15 MR. WILDER: Subject to rebuttal.

16 ARBITRATOR JAFFE: Of course.

17 Were you ready to proceed? Did you need a
18 few moments?

19 MR. REINERT: We're ready to proceed.

20 We're going to call Bruce Pohlot, and
21 going to subcontract this.

22 Mr. Fritts.

1 ARBITRATOR JAFFE: And as with similar
2 witnesses, I need to remind you you're still under
3 oath, Mr. Pohlot.

4 We don't have to swear you back in again.

5 THE WITNESS: Yes. I understand.

6 ARBITRATOR JAFFE: Thank you, sir.

7 Thereupon,

8 BRUCE POHLOT

9 Recalled for examination by counsel for
10 the Carrier, having been previously duly sworn, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FRITTS:

14 Q Mr. Pohlot, good morning.

15 A Good morning.

16 Q Since your testimony on Monday, have you
17 and your team researched the answers to questions
18 that were asked by the Board and by Mr. Wilder
19 during cross-examination in your testimony on
20 Monday?

21 A Yes, we have.

22 Q If we could turn to the next slide.

1 I believe the question at the top of Slide
2 reflects a question that was asked by the Board,
3 which is of all of the employees trained in 2012 and
4 2013 in each of the five classifications that are
5 reflected on the chart below, how many had vacated
6 the position after six months but before one year?

7 A Yes. Taking the information from Slide, I
8 believe it was 10 of my testimony, and adding the
9 two columns over on the right, which basically
10 depict vacating a position after six months and the
11 additional positions vacated prior to the end of 12
12 months, you come up with a number of people that
13 have vacated the position between the six and the
14 one year.

15 So for example, if we take track foreman
16 from 2013. We had ten vacated after six months and
17 one additional person prior to the end of the year
18 for a total of 11.

19 Q And that's of the 62 who were trained as
20 track foremen, going to the column immediately to
21 the left of the 10.

22 A That is correct.

1 Q There is an asterisk with respect to all
2 of the 2013 dates.

3 Can you explain that asterisk in terms of
4 the training completion being less than 12 months?

5 A Well, right. That was relative to the
6 vacancy of prior to the end of the year.

7 Q In other words, do you know yet if there
8 was training in 2013 for these classifications?

9 Do you know yet the extent to which those
10 positions would have been vacated up to a year at
11 this point depending on when the training occurred
12 in 2013?

13 A I'm sorry. You have to --

14 Q Do you follow my question?

15 A No.

16 Q Let me just give you an example to make it
17 clear.

18 Let's assume that there was an employee
19 who was trained as a track foreman in March of 2013.

20 Do you yet know whether that position has
21 been vacated in less than a year?

22 A Not that individual position, no, we do

1 not.

2 Q Okay. Let's now move to Slide 3.

3 MR. WILDER: I'm sorry, Mr. Chairman.

4 I don't understand what's going on here.

5 I thought the question had to do with an
6 individual being trained in 2013, and whether the
7 question that the Board posed of Mr. Pohlot can be
8 answered accurately according to data that are
9 available to the Carrier.

10 But I surely did not understand the
11 answer.

12 MR. FRITTS: If I could answer maybe just
13 by proffer of an explanation of the data.

14 ARBITRATOR JAFFE: Yeah. I was going say
15 we -- there's some lack of clarity, at least from
16 our end of the table, on what we heard.

17 And while I would be happy to take a
18 proffer, I suspect a quick question to Mr. Pohlot,
19 if that's okay, may clean this up.

20 MR. FRITTS: Okay.

21 ARBITRATOR JAFFE: Mr. Pohlot, if you look
22 at -- let's start with the track foreman just

1 because it's on the top. No other particular
2 reason.

3 THE WITNESS: Yes.

4 ARBITRATOR JAFFE: Maybe if we could
5 understand what that line represents or that row
6 represents that will probably clean things up a
7 little.

8 ARBITRATOR FISHGOLD: For 2013?

9 ARBITRATOR JAFFE: I'll start in 2012.
10 So we have positions filled, and it says
11 245?

12 THE WITNESS: Correct.

13 ARBITRATOR JAFFE: So those are the number
14 of -- if you took a snapshot census wise on whatever
15 date you looked at in 2012, that's the number of
16 positions that are actually, not only on the plans,
17 but actually filled.

18 You have got incumbents working in them.

19 THE WITNESS: That is correct.

20 ARBITRATOR JAFFE: Okay. And then it
21 says, Qualified, not in positions.

22 Those are folks who have previously

1 qualified to be a track foreman but who were working
2 in some other position?

3 THE WITNESS: That is correct.

4 ARBITRATOR JAFFE: And are those all lower
5 graded, or is it a mix of lower and either lateral
6 or higher grade?

7 THE WITNESS: Where the person actually is
8 at the time?

9 ARBITRATOR JAFFE: The 97, yes, sir.

10 THE WITNESS: I cannot answer that.

11 ARBITRATOR JAFFE: Fair enough.

12 Vacancies are the difference between the
13 filled and those that you have got on the staffing
14 chart as open, the 271?

15 THE WITNESS: Correct.

16 ARBITRATOR JAFFE: Same as we talked about
17 last time, I believe.

18 THE WITNESS: Right.

19 ARBITRATOR JAFFE: And then we have
20 positions trained. 31 represents the number of
21 human beings in 2012 --

22 THE WITNESS: Correct.

1 ARBITRATOR JAFFE: -- who were trained to
2 become a track foreman.

3 THE WITNESS: That is correct.

4 ARBITRATOR JAFFE: Okay. And then the,
5 Vacated after 11 months, does that column relate --

6 ARBITRATOR FISHGOLD: You mean six?

7 ARBITRATOR JAFFE: After six months. I'm
8 sorry. I misread it. Thank you.

9 Does that relate to 11 out of the 31?

10 THE WITNESS: No.

11 ARBITRATOR JAFFE: No.

12 THE WITNESS: That relates to the 11 out
13 of the total group.

14 ARBITRATOR JAFFE: Okay. When it says,
15 Vacated after six months, does that mean six months
16 after they first became qualified?

17 THE WITNESS: I would actually have to
18 verify that.

19 ARBITRATOR JAFFE: Because that was the
20 question, essentially, that was submitted by the
21 proposed rule change; right?

22 It's a question of holding people in place

1 for a longer period of time; right?

2 THE WITNESS: That is correct.

3 That is our --

4 ARBITRATOR JAFFE: Okay. So wouldn't the
5 focus on vacated have to focus on how long the
6 individuals who vacated had been in the position
7 after becoming fully trained?

8 THE WITNESS: Yes, it would.

9 ARBITRATOR JAFFE: Okay.

10 THE WITNESS: I just would have to verify
11 it.

12 ARBITRATOR JAFFE: Okay. We simply needed
13 to understand.

14 And then the question becomes, Additional
15 vacated by the 12th month. I'm not sure what that
16 means since 11 was supposed to capture everybody
17 after six months.

18 I'm not sure what, Vacated by the 12th
19 month means.

20 THE WITNESS: For the period, as a
21 snapshot in time.

22 ARBITRATOR JAFFE: Right.

1 THE WITNESS: We took a snapshot after six
2 months.

3 ARBITRATOR JAFFE: Right.

4 THE WITNESS: And found 11 people in the
5 six months have vacated a position.

6 ARBITRATOR JAFFE: In the six months.

7 THE WITNESS: Right. And then, from the
8 seventh month to prior to the end of the 12th month,
9 there was an additional one person.

10 ARBITRATOR JAFFE: Right.

11 But if the existing rule precludes you
12 from leaving for six months, how can you have
13 anybody who is left in the first six, unless they
14 just washed out?

15 THE WITNESS: Well, between the first day
16 of the six -- the beginning of the seventh month, if
17 you want to take it -- the six months have passed.
18 The next day, for the 30-day period, the first month
19 after they're allowed to leave, 11 people have left.

20 ARBITRATOR JAFFE: Ah.

21 THE WITNESS: And then --

22 ARBITRATOR JAFFE: The others are seven

1 through -- until 12.

2 THE WITNESS: Right. The other 12, one
3 additional person had left.

4 ARBITRATOR JAFFE: Okay. And just one
5 more, then I'm delighted to turn -- for 2013, it's
6 the same answers as -- do the dates reflect when
7 people left or when they became qualified because of
8 the asterisk that talks about training completion
9 list in 12 months?

10 THE WITNESS: It relates to the date that
11 they occupied the position --

12 ARBITRATOR JAFFE: Right.

13 THE WITNESS: -- for a six-month period,
14 and then vacated it in the -- let's say the seventh
15 month.

16 ARBITRATOR JAFFE: Okay. So if I'm
17 trained in '12, but I vacate in '13, where do I show
18 up on the chart?

19 THE WITNESS: It would be in '13.

20 ARBITRATOR JAFFE: Okay. And would I also
21 be in the positions trained in '12, if I was trained
22 in '12.

1 THE WITNESS: Well, the snapshot that we
2 took was in October, I believe the end of October.

3 ARBITRATOR JAFFE: Okay.

4 THE WITNESS: So we could actually work
5 back from there.

6 ARBITRATOR JAFFE: Fair enough.

7 THE WITNESS: So from the -- prior to the
8 end of the 12th month would be the end of October,
9 and then it was just ...

10 ARBITRATOR JAFFE: Got it.

11 Did you have something else you wanted to
12 pose?

13 ARBITRATOR DAS: No. I just want to
14 clarify.

15 Using 2012 -- because in a sense that's an
16 easier year to understand the exhibit by because we
17 don't have the problems of 2013.

18 Am I right then when you say, Vacated
19 after six months, 11 of the -- 11 track foreman,
20 does that mean right on the six -- as soon as the
21 six months was up, they vacated?

22 THE WITNESS: In that 30-day period.

1 ARBITRATOR DAS: In the 30-day period.
2 And then the others are in the seventh
3 through 12th month.

4 THE WITNESS: Right.

5 ARBITRATOR DAS: Okay. Thank you.

6 ARBITRATOR JAFFE: All right. And the
7 last piggyback before we turn it back over.

8 And I apologize for the length of the
9 interruption, Mr. Fritts.

10 So you're actually losing -- if the
11 confirmation confirms your belief -- and I
12 understand you need to double check -- you're
13 actually losing 50 percent to three-quarters of the
14 people you train in a year in each of these jobs?

15 THE WITNESS: On verification, that is
16 correct.

17 ARBITRATOR JAFFE: Okay. Happy to turn it
18 back over to you, at your convenience, Mr. Fritts.

19 MR. FRITTS: Is the Board clear?

20 I understand there was some confusion, and
21 maybe that has resolved. But was there confusion
22 lingering on the 2013 data?

1 Is that something that the Board needs
2 clarification on?

3 ARBITRATOR JAFFE: I don't think so,
4 subject to confirmation by Mr. Pohlot because he
5 wasn't 100 percent certain --

6 MR. FRITTS: Okay.

7 ARBITRATOR JAFFE: -- that the numbers
8 reflect -- the vacancy numbers reflect only those
9 who had been most recently trained in that as
10 opposed to from the position generally.

11 MR. FRITTS: Okay.

12 BY MR. FRITTS:

13 Q Mr. Pohlot, why do you believe that
14 employees are vacating positions after six months?

15 A Well, I -- it's a known fact that
16 employees get on as many rosters as possible to get
17 their seniority date giving them flexibility in
18 their career to jump around from position to
19 position.

20 Q If you could now turn to the next slide,
21 slide 3, which is slide 10 of your testimony.

22 And I'm focusing on the vacancy number as

1 an example for track foremen in 2013. That's the 42
2 number. It's the same 42 number, by the way, that's
3 on the previous slide.

4 And the question that arose during your
5 testimony is whether that vacancy number is a number
6 of vacancies, or is it the number of times -- does
7 it include the number of times that a particular
8 vacancy may be readvertised?

9 A It is not a cumulative number.

10 It is a number if we have -- by example,
11 if there's a vacant position in April, and it's not
12 filled, and we readvertise it two or three times, it
13 is counted as one vacancy.

14 Q Okay, let's move on to Slide 4.

15 And I'm using, again, the same 42 foremen
16 vacancy number from 2013. And this is, I believe,
17 the answer to the question you just gave.

18 Is that correct?

19 A That is correct.

20 Q Okay. Okay. Let's move on to Slide 5.

21 These, I believe, are all questions that
22 were asked during your cross-examination by

1 Mr. Wilder.

2 Let's just start with the first.

3 And we're referring back, again, to your
4 testimony, slide 10, that was listing 86 qualified
5 crane operators as working out of class in 2013.

6 Do you know how many of those were working
7 as foremen?

8 A Yes.

9 We had previously filtered out -- or we
10 thought we had filtered out anyone working in a
11 class who were a grade above that of the operator
12 because it's a moving target on our advertisements
13 and abolishment.

14 One position got by us.

15 So to answer the question, there was one
16 person who was working in a higher class at the
17 time, and that was an equipment repairman.

18 He slipped through.

19 Q Okay. And then moving to the next
20 question, of the ten crane operators who are shown,
21 again, on your slide 10 of your testimony on Monday,
22 how many were on the Kirow crane?

1 A None were trained -- relative to the
2 training on the Kirow crane or the operating of the
3 Kirow crane?

4 Q Operators.

5 How many were trained on the Kirow crane
6 in 2013?

7 A We had no training for the Kirow crane in
8 2013.

9 The crane was in the shop for major
10 overhaul from May 2012 until July of 2013. And when
11 we went out to work, we have had ample operators to
12 put on the job.

13 Q How many operator positions are assigned
14 to the Kirow crane?

15 A There's one operator at the time.

16 Q Slide 6 is another question that arose
17 during your cross-examination, focusing on the 37
18 crane operator positions on the same exhibit or same
19 slide from your testimony.

20 Can you explain the average duration of
21 the assignment for those 37 crane operators?

22 A As stated there, the duration in months on

1 the top, and so basically two-thirds of our
2 positions vacated prior to the end of a year.

3 And the other numbers speak for
4 themselves.

5 Q Okay. Moving to Slide 7.

6 There was a question during
7 cross-examination regarding the percentage of the
8 total BMWED workforce that is in production as
9 opposed to maintenance.

10 Have you researched that number?

11 A Yes, we have.

12 Q And what did you find?

13 A We found it to be about 60 percent of our
14 workforce are in maintenance and about 40 percent
15 are in production.

16 Q And that is effective October 1, 2013?

17 A Yes, it is.

18 Q As of that date, how many BMWED positions
19 existed under Rule 90(d)?

20 A Well, we had 60 positions in our B&B group
21 under 90(d).

22 Q How long has Rule 90 been in effect?

1 A Since 1976.

2 Q This is -- the next slide, Slide 8 is a
3 reference now to the BRS 45-mile rule.

4 And there was a question from the Board in
5 terms of how many BRS employees are working in a
6 lower classification currently.

7 Have you researched that in the New York
8 division?

9 A Yes, we have.

10 Q What did you find?

11 A There were seven.

12 Q When was that data collected?

13 A January 14 of this year.

14 Q Tuesday, in other words?

15 A Tuesday, correct.

16 Q How often does that number change?

17 A The number changes on a daily basis.

18 We have -- you know, we advertise and
19 abolish over 11,000 positions a year.

20 Q And the 11,000 number, is that the BRS?

21 A That's the engineering department.

22 Q Okay. So it would include BMW and the

1 BRS?

2 A Yes, it would include them.

3 Q Moving to Slide 9, this was a question
4 that the Board ask in terms of the work rule options
5 that Amtrak presented in order to fund additional
6 wage increases.

7 There was a question as to which of those
8 options would have future application only?

9 A Underneath the pattern rule, this applies
10 to future training only.

11 Underneath the BMWED force assignment,
12 that's basically a two-part rule.

13 The first part where the new employee and
14 employees promoted after that date is prospective.
15 And Part 2, affecting the junior individual in a
16 qualified work zone, is not grandfathered in.

17 But in the BRS, trouble desk is
18 grandfathered with no effect on existing employees.

19 Q Okay. And then Slide 10.

20 Slide 10 is an issue that was raised
21 during Mr. Roth's testimony with respect to the
22 question of whether BMWED foremen spend 100 percent

1 of their time performing supervisory duties.

2 Have you researched the answer to that
3 question?

4 A Yes. we have.

5 Q What did you find?

6 A About a quarter of our foremen,
7 particularly the inspectors and piloting equipment,
8 are individual contributors, so they do not
9 supervise other employees.

10 There is also about another 25 percent of
11 BMW E foremen -- and I say BMW E, that's where we're
12 referring to all the disciplines in BMW E -- have
13 some supervisory duties, but are far less than the
14 80 percent of their time.

15 They're the working foremen normally with
16 smaller gangs.

17 And the last category is about 50 percent
18 of the remaining foremen, may be above 80 percent.
19 And I say may because it is depending on the size of
20 the gang.

21 If a foreman is on a major production
22 gang, they maybe have 15 people, 20 people under his

1 jurisdiction. He would be closer to 100 percent.
2 While we have other gangs where he may have three,
3 four, or five people, and it would be significantly
4 lower as he may help out the gang.

5 Q To the extent foremen are spending a
6 significant amount of time working alongside the
7 employees they supervise, is that consistent with
8 the BMWED work classification rule?

9 A Yes, it is.

10 MR. FRITTS: That concludes my direct
11 questions.

12 ARBITRATOR JAFFE: Okay.

13 Thank you, Mr. Fritts.

14 CROSS-EXAMINATION

15 BY MR. WILDER:

16 Q I have several questions, but let me start
17 off with Slide 10.

18 And the information on Slide 10 relates
19 exclusively with BMWED. Is that correct?

20 A That is correct.

21 Q Did you do a similar examination of
22 BRS-represented employees?

1 A No, we did not.

2 Q I see.

3 Now, of the supervisory individuals
4 covered by slide 10, are they paid 100 percent of
5 their time as supervisors?

6 A They are paid in the category of which
7 they're assigned and work for.

8 So they're paid for a foreman if they're a
9 foreman.

10 Q So the answer to my question is yes?

11 A No.

12 We do not -- do not advertise as
13 supervisor. We advertise it as foreman.

14 Q All right. Well, for the foreman, are
15 they paid as foremen 100 percent of their time?

16 A That is correct.

17 Q All right. Is there a breakdown for the
18 foremen of the amount of time they spend in active
19 supervision as opposed to the amount of time they
20 spend working at the craft?

21 A No, it does not.

22 Q So there are no data indicating during the

1 work day what a foreman is doing. Is that correct?

2 A Well, not 100 percent.

3 But relative to the categories you have
4 described in the previous question, yes.

5 Q What do you mean by foremen working in the
6 previous categories?

7 Are you referring to the groups that you
8 mentioned?

9 A No.

10 Your previous question was related to
11 whether they -- if their time sheet breaks out their
12 time between being a supervisory work or working
13 hands on, let's say, with a tool.

14 Q Right.

15 A But your second question was relative to
16 if we had the capability of breaking out their time
17 during the day, which we do.

18 But it's broken out relative to work
19 element so that we know where to charge their time
20 relative to projects, whether it be core or whether
21 it be production, the location where they work, and
22 the job that's being performed for the overall gang.

1 ARBITRATOR FISHGOLD: But that would be
2 charged at the foreman's rate.

3 THE WITNESS: For him, it would be charged
4 at the foreman's rate; correct.

5 BY MR. WILDER:

6 Q And do the data that you referred to in
7 your last response enable the Company to determine
8 whether the foreman is supervising or working at the
9 craft?

10 A No, it does not.

11 Q So the breakdown relates to project rather
12 than foreman function. Is that correct?

13 A Correct.

14 Q All right. Excuse me.

15 The first bullet point on slide 10, can
16 you tell us what the term "piloting" means?

17 A We have a category where the -- where a
18 track person, foreman, with the qualifications of
19 physical characteristics, pilot equipment
20 particularly for -- or mainly we use it for
21 construction work.

22 He does not have to have the MW 1000

1 qualifications. But I believe this is the same --
2 well, I don't believe this is the same piloting that
3 Mr. Jed Dodd referred to yesterday in his testimony.

4 Q Is piloting operating a machine?

5 A No.

6 Piloting is getting the proper track
7 clearance in order to move equipment on the
8 railroad.

9 Q So piloting is communicating with track
10 control. Is that correct?

11 A With the dispatcher's office; correct.

12 Q I see.

13 And that is a supervisory function, is it
14 not?

15 A No.

16 He does not supervise any people.

17 Q But he is a track foreman, is he not?

18 A He's in the category for pay for track
19 foreman.

20 Q And what is his classification?

21 A Foreman, track foreman.

22 Q I see.

1 And the -- do inspectors work by
2 themselves?

3 A Generally, except if they need a flagman
4 in order to protect them.

5 Q And I take it there is no breakdown of how
6 much time an inspector spends inspecting tracks or
7 working with others?

8 A His primary responsibility is inspecting
9 track and completing the required information on
10 track inspection.

11 Q Now, in the second bullet point, you have
12 indicated that one-quarter of BMWED foremen perform
13 some supervisory duties, but far less than 80
14 percent of the time.

15 A That is correct.

16 Q What is the source of that information,
17 Mr. Pohlot?

18 A That was the evaluation that we had done
19 in the last two days.

20 Q In the last two days.

21 A In the last -- this question was in the
22 last day.

1 Q I see.

2 And how did you go about attaining that
3 information?

4 A We looked at the various categories of all
5 of the foremen in BMW, came up with a total number
6 of foremen in all the classes, broken out by
7 department and title with our experience of myself
8 and the staff, and we calculated which ones in their
9 normal tour of duty do not require managing people,
10 and how much time for those would require to be
11 managed, and came up with our calculation.

12 Q I take it the way this information was
13 developed and compiled represented original research
14 for your organization?

15 A Original research. Can you expand upon
16 that?

17 Q Is this the type of inquiry that is
18 conducted routinely by the engineering department?

19 A No.

20 Q I see.

21 And may we assume that this type of
22 breakdown is not reported to the Labor Department by

1 Amtrak?

2 A I could not answer that question.

3 Q To your knowledge, Mr. Pohlot, has the
4 engineering department developed the kinds of
5 breakdowns that you did in the last day or two and
6 reported on Slide 10 before this week?

7 A Well, the breakdown, as you refer to it,
8 is within the categories as expressed in the Union
9 contract. And it's based on just the positions that
10 we have filled underneath in concurrence with the
11 Union contract.

12 So the information is readily available
13 for our assignment office.

14 Q I see. I see.

15 And can you explain, if you know,
16 Mr. Pohlot, how that information could possible be
17 transmitted to the Bureau of Labor Statistics?

18 A That's not within my jurisdiction.

19 I don't know.

20 Q Now, in your original testimony -- I'm
21 going to withdraw that.

22 On Slide 2, Mr. Pohlot, you have two

1 categories of welders. Is that correct?

2 I'm sorry. Three categories of welder.

3 A That is correct.

4 Q All right. And throughout your career at
5 Amtrak, you have certainly become familiar with the
6 welding classification?

7 A Yes, I have.

8 Q And welding is a arduous task, is it not?

9 A It is a -- I don't know if arduous is the
10 correct word, but it's -- it's a task that needs
11 qualifications and training.

12 Q Yes, of course.

13 And it is also a task whose nature makes
14 it difficult to obtain and keep qualified welders,
15 isn't it?

16 A Well, we have had a vacancy problem in
17 those particular crafts, yes.

18 Q You have had a vacancy problem within the
19 welding classification that has existed as long as
20 you have been associated with Amtrak, haven't you?

21 A I cannot recall all my first 21 years in
22 detail if we had a problem every year in those

1 classes.

2 Q And I'm speaking of the period that you're
3 speaking of now, in other words, your past
4 association with Amtrak.

5 Was the vacancy rate higher within the
6 welding classifications on average than it was for
7 other maintenance of way classifications?

8 A I have -- I did not do the analysis
9 between the various disciplines within BMW.

10 Q I see. I see.

11 And you don't know that of your own
12 knowledge?

13 A Well, I mean, if you took -- if you refer
14 to just the last year, since I have been back, a lot
15 of that information can be calculated right off of
16 the sheet.

17 Q I see. I see.

18 And you prefer to stay with that
19 information; correct?

20 A Yes.

21 Q All right.

22 A Well, if it's actual.

1 I like to deal with facts.

2 MR. WILDER: No further questions.

3 ARBITRATOR JAFFE: Any further direct?

4 REDIRECT EXAMINATION

5 BY MR. FRITTS:

6 Q Just one question, Mr. Pohlott.

7 Does Amtrak have a classification of ARASA
8 maintenance of way supervisors?

9 A We have ARASA, that's correct.

10 Q Who do they supervise?

11 A They supervise the foremen of the various
12 craft, whatever discipline they're in.

13 Q And that would include the BMWED foremen?

14 A That is correct.

15 Q Are they paid as supervisors?

16 A They are -- they are the supervisor's
17 union; correct.

18 MR. FRITTS: That's all I have.

19 ARBITRATOR JAFFE: Any further --

20 MR. WILDER: One question.

21 ARBITRATOR JAFFE: Sure.

22 RECROSS-EXAMINATION

1 BY MR. WILDER:

2 Q Are the ARASA-represented supervisors
3 considered subordinate officials or officials at
4 Amtrak?

5 A No. I don't think I can answer that
6 question because if you're official then you're an
7 officer.

8 If you're an officer, no, they are not.

9 MR. WILDER: Thank you.

10 ARBITRATOR JAFFE: Anything further by way
11 of direct?

12 MR. FRITTS: Nothing further.

13 ARBITRATOR JAFFE: Okay. I have got just
14 one area for cleanup, if I may, Mr. Pohlot, to try
15 and understand a little bit better.

16 Could you take a look at both your Slide 2
17 and Slide 6 together will probably help.

18 I added up the numbers on Slide 6, and
19 they appear to be 37, which is the same number
20 that's listed as positions filled in 2013 on the
21 crane operator. They're meant to describe the same
22 thing?

1 THE WITNESS: Correct.

2 ARBITRATOR JAFFE: Okay. And that's on
3 whatever date in October of 2013 what was used as a
4 measuring date; right?

5 THE WITNESS: Well, slide 6 was a snapshot
6 that was taken at the end of December.

7 ARBITRATOR JAFFE: Oh, end of December.
8 I'm sorry. I didn't mean to get the wrong month.

9 If we take a look at that, the listing of
10 duration, does that refer to the time period before
11 that position was last abolished and then reposted?

12 THE WITNESS: No.

13 ARBITRATOR JAFFE: No.

14 So when it says 13 years for duration,
15 what does that mean?

16 Does that mean that the person has worked
17 continuously as a crane operator for 13 years?

18 THE WITNESS: Correct.

19 ARBITRATOR JAFFE: Not necessarily the
20 same gang or project or job?

21 THE WITNESS: No.

22 The same -- in the same position.

1 ARBITRATOR JAFFE: Same position.

2 THE WITNESS: Advertised position.

3 ARBITRATOR JAFFE: Well, if it's the same
4 advertised position, does that mean that it wasn't
5 abolished and then, as needed, reposted at some
6 other point?

7 THE WITNESS: That is correct.

8 ARBITRATOR JAFFE: Okay. And positions
9 sometimes get advertised because the incumbent bids
10 off or leaves for other reasons, and sometimes
11 because the position is no longer needed for a
12 particular period and then is rebid?

13 THE WITNESS: That is correct.

14 But -- right, all vacated positions are
15 readvertised.

16 ARBITRATOR JAFFE: Right.

17 THE WITNESS: If they're abolished, we
18 normally don't readvertise them unless the gang
19 starts back up.

20 ARBITRATOR JAFFE: Okay. So if I'm a
21 qualified crane operator, work for two years, bid
22 off to something else, and then come back, and then

1 have been working three years as of December 2013, I
2 would show as the -- as a three-year person.

3 THE WITNESS: Correct.

4 ARBITRATOR JAFFE: Okay. And now, let's
5 look if we can at 2 because I thought I understood
6 it before. And as I looked at it more carefully,
7 I'm a little less certain of my own understanding,
8 and I apologize for that.

9 Let's take a look at the 2012 line just to
10 start. And I'll stick with crane operator. I'll
11 keep them consistent. I think the rest will flow
12 out to the other jobs as well.

13 We have 31 positions filled and 85
14 qualified not in positions.

15 Does that mean that we have a total of 116
16 qualified crane operators on property, 85 not
17 working in the job, and then 31 who are working in
18 the job?

19 THE WITNESS: Correct.

20 ARBITRATOR JAFFE: Okay.

21 The 19 for trained, is that included in
22 the 116, or is that on top of the 116, or is it a

1 mix?

2 I think that covers the waterfront.

3 I need to kind of follow the numbers.

4 THE WITNESS: That would be an assumption
5 on my part.

6 ARBITRATOR JAFFE: Okay. Don't know is
7 always a good answer, too, by the way.

8 THE WITNESS: Right.

9 ARBITRATOR JAFFE: If we look at the next
10 year's numbers for '13 as of the snapshot date, we
11 have 37 and 86, which is 123.

12 And if you compare the 116 to the 123, we
13 get a difference of seven, but we have got 19 people
14 trained, 13 of them left.

15 And I was trying to reconcile the movement
16 of people and, frankly, unable to do so. I
17 apologize.

18 THE WITNESS: Well, it's -- it is
19 difficult because these are potentially snapshots in
20 time.

21 ARBITRATOR JAFFE: Sure.

22 THE WITNESS: It changes on a daily basis.

1 We used October for this particular one
2 because it was prior to the abolishment of the
3 production season, gang -- you know, of some of them
4 that started getting abolished.

5 And that is most likely where we're having
6 a problem trying to get these numbers to -- to
7 answer your -- if I understood your question
8 correctly.

9 ARBITRATOR JAFFE: I was simply trying to
10 understand what happened to -- it's an awful lot of
11 missing bodies from one line to the next, and it
12 wasn't clear to me.

13 It was more than I would have normally
14 assumed for departure completely from the property,
15 and I was just trying to understand.

16 THE WITNESS: I don't have an answer to
17 that particular question.

18 But I could say that these were -- the
19 facts were taken off of our data that we have
20 available.

21 ARBITRATOR JAFFE: Fair enough.

22 THE WITNESS: And, again, the information

1 is what it is as far as the number of people.

2 ARBITRATOR JAFFE: Sure. I'm happy to
3 leave it at that.

4 ARBITRATOR FISHGOLD: Is the problem with
5 filling these positions a combination of the fact
6 that those who hold the positions and obviously were
7 qualified have vacated, and those who were qualified
8 and don't hold the positions don't wish to bid on
9 those positions?

10 THE WITNESS: That's exactly correct.

11 ARBITRATOR FISHGOLD: Have you thought
12 about what can incent -- what would -- and I'm just
13 thinking out loud.

14 This is more thought than it is anything.

15 What would incentivize someone who is
16 otherwise qualified to bid on a position? Because I
17 thought part of the -- your explanation as to why it
18 is that someone might vacate a position is because
19 they would like to be qualified based on their
20 seniority in a number of different positions.

21 So if they get the six months experience
22 as the crane operator, and then they can bid on

1 something else, and they can get whatever -- so I'm
2 really trying to understand when you have so many
3 qualified people, they're not being -- it appears
4 they're really not being -- from Amtrak's
5 perspective, they're not being properly utilized.

6 THE WITNESS: Well, that is our point.
7 That's exactly our point.

8 We are constantly training, yet we have
9 consistent vacancies. And the implication of the
10 vacancies is the additional cost relative, whether
11 it's additional training or whether it's having to
12 cover that on an overtime basis.

13 Why they do it is -- I strongly believe
14 they want their seniority dates. It gives them
15 flexibility during furlough time to take a lot of
16 different positions.

17 And also, though, some of the positions
18 have a higher level of responsibility that sometimes
19 some people wish to shy away from.

20 But also we know is that if you have a
21 lower level position with a little responsibility,
22 like a flagman flagging construction projects, that

1 they flock to those particular positions because
2 they make a lot of overtime for holding a flag.

3 ARBITRATOR FISHGOLD: All right.

4 Now, let me proffer another concern then.

5 If that is the reason why people vacate
6 their positions, and you were to get -- if this
7 Board were to adopt the lock-in, would that be a
8 deterrent to having otherwise qualified people bid
9 into a position knowing now that they can't vacate
10 it within the six months or after six months, they
11 would now have to stay in that position for a year,
12 would that shrink the utilization of otherwise
13 qualified individuals?

14 Would it have that kind of an effect?

15 THE WITNESS: Well, I believe it
16 definitely would.

17 I mean, first of all -- it would.

18 And as I mentioned in my testimony, it
19 also allows the employee himself to gain a higher
20 level of proficiency and a higher comfort level in
21 doing that particular job.

22 I think some people would not particularly

1 go for that training position knowing that they
2 would have to stay there for a year.

3 ARBITRATOR FISHGOLD: I take it this
4 problem has not just been a problem with the
5 snapshot in 2013.

6 The problem with regard to otherwise
7 qualified but unfilled and vacation of otherwise
8 qualified positions after that short period of time
9 has been something that's recurring.

10 It's not just 2013. It has been going on
11 for a period of time.

12 THE WITNESS: That is correct.

13 ARBITRATOR FISHGOLD: Okay. Have you ever
14 had occasion to discuss this with the appropriate
15 officials with the BMW in terms of, Here is
16 Amtrak's concerns; how can we possibly address this
17 under the current system?

18 THE WITNESS: Since I have been back,
19 which is since December of 2012, we had a fairly
20 intensive conversation relative to New York and
21 foremen in this particular area.

22 ARBITRATOR FISHGOLD: And I mean -- but

1 have you found that to be a productive way of trying
2 to approach the problem?

3 THE WITNESS: No.

4 I mean, it -- no, it is not.

5 ARBITRATOR FISHGOLD: Okay.

6 If that prompts anything, obviously.

7 ARBITRATOR JAFFE: Just one from my end.

8 The determination of the positions that
9 you're going to train for, do you advertise for many
10 more, and these are simply the folks who bid? Or do
11 you determine the number to be trained based among
12 other things on need?

13 THE WITNESS: The number that we
14 advertised are based on need.

15 The number that actually put in for the
16 positions is not always at the same level as what we
17 have advertised.

18 It has often been lower.

19 ARBITRATOR JAFFE: But if we look at '12,
20 you actually trained 21 people, even though there
21 were only five vacancies for welder, electric
22 welder; right?

1 THE WITNESS: That is correct.

2 But the five vacancies were for that year,
3 and it could have been that was -- well, actually
4 before I came here.

5 But it's -- a good assumption would be
6 that, projected on future needs, because the amount
7 of time it takes training, that we would have
8 advertised it.

9 ARBITRATOR JAFFE: Got it.
10 Anything further?

11 ARBITRATOR DAS: Well, just one follow-up
12 on Chairman Jaffe's earlier question about the crane
13 operators.

14 You contrasted that the positions filled
15 in 2012 and 2013, and it -- they increased by six,
16 from 31 to 37, the number of positions filled.

17 THE WITNESS: Correct.

18 ARBITRATOR DAS: And I think his question
19 to you was, Well, you trained 19 people in 2012, and
20 you have only filled six more positions.

21 Am I correct that the other 13 or, in the
22 two right-hand columns, the 11 who vacated after six

1 months and the two who vacated by the 12th month?

2 I mean, at least the numbers add up.

3 THE WITNESS: I believe that's correct,
4 yes.

5 ARBITRATOR JAFFE: They do on that one.
6 They don't on some of the others.

7 Fair enough.

8 Anything further from the Panel?

9 Any further direct, Mr. Fritts?

10 MR. FRITTS: No, Mr. Chairman.

11 ARBITRATOR JAFFE: Any further cross,
12 Mr. Wilder?

13 MR. WILDER: Yes, I have several
14 questions.

15 FURTHER RECROSS-EXAMINATION

16 BY MR. WILDER:

17 Q Mr. Pohlott, does Amtrak possess the
18 discretion to start a successful bidder in training?

19 A We have the discretion to start the
20 training, yes.

21 Q I see.

22 So if there were six successful bidders,

1 and you felt that you only needed four, you could
2 admit the top four in seniority to the training
3 program and wait for the others?

4 A That is correct.

5 We would advertise the four.

6 Q I understand.

7 All right. Now, I have a couple of
8 questions about the New York area. One relates to
9 BMW.

10 And the question is with respect to last
11 December, did Amtrak enter into a lock-in agreement
12 for four maintenance of way positions?

13 A I believe I would need more information.

14 Can you clarify the four positions you're
15 referring to?

16 Q All right. Was there a lock-in agreement
17 concluded for track foremen?

18 A Are you referring to the Penn Station or
19 the Zone 6?

20 Q I'm referring to what you spoke of, New
21 York and New England.

22 ARBITRATOR FISHGOLD: If you have

1 knowledge of a particular agreement that was reached
2 with regard to Penn Station, you can say, I know
3 this and maybe that.

4 BY MR. WILDER:

5 Q That's the question.

6 A We came to an agreement in order to try to
7 have foreman vacancies for inspection in Penn
8 Station New York filled.

9 That was -- we did come to an agreement on
10 that.

11 Q Was there another lock-in agreement
12 reached between Amtrak and the BMWED?

13 (Consultation between Mr. Dodd and Mr. Wilder, and
14 no answer was given from the witness.)

15 BY MR. WILDER:

16 Q All right. Well, while we're on New York.

17 On Slide 8 of the exhibit presented
18 today -- or not the exhibit, but rather the answers
19 to the questions, you indicated that there are seven
20 BRS employees in the New York division working in a
21 lower classification.

22 Can you tell us how many BRS employees are

1 in the New York division?

2 A Actually working, 221.

3 Q 21?

4 A 221.

5 Q I see. Of which seven are working in a
6 lower classification?

7 A That is correct.

8 Q I see. And can you tell us the
9 classifications involved for those seven employees?

10 A I can get back to you on that.

11 I believe, if you want to go off of my
12 memory, I could probably give you a good idea of
13 what it is.

14 I believe most of them are -- of the
15 seven, I believe two are signalmen instead of being
16 in a classification as maintainers.

17 And others are assistant foremen instead
18 of being foremen.

19 Q I see. All right. Thank you.

20 MR. WILDER: No further questions.

21 ARBITRATOR JAFFE: Anything further by way
22 of direct?

1 MR. FRITTS: Could I just have one minute?

2 ARBITRATOR JAFFE: Of course.

3 ARBITRATOR FISHGOLD: Sure.

4 Go off the record.

5 (A recess was taken.)

6 MR. FRITTS: I don't have anything
7 further.

8 ARBITRATOR JAFFE: Anything further?

9 MR. WILDER: Nothing further.

10 ARBITRATOR JAFFE: Are you in good shape?

11 ARBITRATOR DAS: I'm fine.

12 ARBITRATOR JAFFE: Are you in good shape
13 as well?

14 We're in good shape. Thank you,
15 Mr. Pohlot.

16 MR. REINERT: Ten-minute break.

17 ARBITRATOR JAFFE: Sure. We're off.

18 (A recess was taken.)

19 ARBITRATOR JAFFE: Are you ready?

20 MR. REINERT: I am ready.

21 And I'm just going to note for the record,
22 that this is the sixth day of hearing, and I just

1 noticed that my microphone says Danish
2 Interpretation Systems.

3 There are three possibilities:

4 One, that is the manufacturer of the
5 microphone stand; two, Morgan Lewis bought them in
6 surplus; three, the transcript is going to be in
7 Danish.

8 ARBITRATOR FISHGOLD: Well, I -- we're off
9 the record; right?

10 ARBITRATOR JAFFE: No. But we can be now.
11 Do want this on the record?

12 MR. REINERT: Sure.

13 ARBITRATOR FISHGOLD: Well, then I'll go
14 on the record as well.

15 This Board was aware of that, having
16 surveyed the room before we came. And we inquired,
17 we needed a court reporter who spoke Danish.

18 MR. REINERT: Okay. Let's get back to
19 work.

20 ARBITRATOR JAFFE: That's fine.

21 Mr. Woodcock, we need to remind you that
22 you're still under oath. We don't have to swear you

1 back in.

2 THE WITNESS: Yes, sir.

3 ARBITRATOR JAFFE: Thank you.

4 THE WITNESS: And good morning to the
5 Panel and the BMW and BRS.

6 Thereupon,

7 CHARLES WOODCOCK

8 Recalled for examination by counsel for
9 the Carrier, having been duly sworn, was examined
10 and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. REINERT:

13 Q Mr. Woodcock, were you present during the
14 testimony of Jed Dodd yesterday?

15 A Yes, I was.

16 Q Okay. And in a portion of his testimony,
17 he said that in March 2013, the PRLBC had asked
18 Amtrak about the details of the UTU conductor
19 agreement, and you did not give those details.

20 A Yes, correct.

21 Q Is that correct?

22 A Yes.

1 Q Would you like to just explain what
2 happened?

3 A Yes.

4 I was asked the question about the deal,
5 which at that time was out for tentative
6 ratification.

7 And I made it very clear that my
8 understanding with the UTU, as not uncommon with any
9 other union going out with a contract for
10 ratification, is that Management would remain quiet
11 and not discuss the deal.

12 I have one exception, and that was with my
13 chief executive officer, Joseph Boardman, and I had
14 to the approval of the UTU to do that.

15 Q And Mr. Dodd also testified that
16 subsequently, after the UTU deal was ratified,
17 during July 2013 mediation sessions, he asked you
18 for the information again, and Amtrak would not
19 provide it.

20 Is that true?

21 A That is not correct.

22 Q And why is it not true?

1 A That never came up at all.

2 And, frankly, if it did, I'm sure it would
3 have come up through the Mediation Board and the
4 folks from the Mediation Board that were there.

5 But it never came up.

6 And I -- as a matter of fact, last night,
7 I asked all of my Negotiating Committee whether they
8 ever remember that coming up. Because if it had,
9 there would be no reason not to share it.

10 Q And in mediation, if -- is it your
11 practice not to provide information requested by the
12 other side with the mediator?

13 A No.

14 As a matter of fact, the thickness of
15 these binders, I think, attest to the paper and the
16 proposals and the information we have exchanged,
17 both in direct requests of the PRLBC, and by the
18 Mediation Board in an effort to move these
19 negotiations along.

20 Q Okay. Mr. Dodd also testified his belief
21 that Amtrak was confused over the issue of whether
22 the PRLBC's proposal on a contribution rate for

1 healthcare was \$200 versus \$177.54.

2 Do you recall that testimony?

3 A Yes, I do.

4 Q Has Amtrak had any confusion over this
5 issue?

6 A Absolutely not.

7 Q And what was your basis for believing that
8 the number proposed by the PRLBC was 200?

9 A When they came in in February in the
10 afternoon session, they plopped the BMW then
11 tentative freight deal on the table and said, We're
12 prepared to sign this, and this is the basis of the
13 settlement.

14 There was no further discussion that day
15 of any substance.

16 We knew we had to go and look at it and
17 have our healthcare people look at the numbers and
18 look at the benefits, but that's where it ended that
19 day.

20 Q Okay. And did they, during the course of
21 the discussion in the February 2012 meeting, say
22 that they intended the 177.54 number instead of 200?

1 A No.

2 And there was no amendment to the proposal
3 that was given to us.

4 Q Okay. When did you first learn that the
5 PRLBC proposal was not for the \$200 contained in the
6 document, but in the 177.54?

7 A We learned that at the June mediation
8 session, which was the first mediation session, June
9 of '13.

10 Q And your references have been to the
11 February 13 --

12 A Excuse me. At that point it was '12.

13 Q Your references were to the February 13,
14 2012 direct negotiations meeting?

15 A Yes.

16 Q And the document they gave you was Joint
17 Exhibit 27, the tentative BMW proposal?

18 A I believe that would be the one, but I
19 could --

20 MR. REINERT: Could we call it up, Joint
21 Exhibit 27?

22 THE WITNESS: Yes. That's the proposal,

1 Feb 2 of '12.

2 BY MR. REINERT:

3 Q And can you go down to the page that has
4 the \$200 proposal? There it is.

5 Is that the page you're referring to?

6 A Yes, that is.

7 Q Okay. And after the June 5, 2012 session
8 when the PRLBC told you that their position was
9 177.54, did you understand that was their position?

10 A Yes, I did.

11 Q Any confusion about that?

12 A No confusion.

13 Q Mr. Dodd also testified about an interim
14 agreement proposal that Amtrak made.

15 Do you recall an interim agreement
16 proposal?

17 A Yes, sir.

18 Q Okay. And I believe his testimony was
19 that the PRLBC rejected Amtrak's interim agreement
20 proposal because it provided less money than the
21 freight deal.

22 Do you recall that testimony?

1 A Yes, I do.

2 Q Do you have any reaction to that
3 testimony?

4 A I was quite surprised by it because that's
5 inaccurate.

6 Q And why is it inaccurate?

7 A Well, that was not the reason given why
8 they did not wish to pursue or discuss it.

9 It was that they wished to pursue a
10 complete agreement.

11 Additionally, it's not true based on the
12 facts of the proposal that we gave them.

13 Q And what is the proposal you gave them?

14 MR. REINERT: Why don't we call up Joint
15 Exhibit 25?

16 BY MR. REINERT:

17 Q What were the economics of the proposal,
18 the interim proposal you offered in February 2012?

19 A Right. The 25 and 26 are the different
20 proposals between BMW and BRS.

21 But in this one, there were four general
22 wage increases that we offered that happened to be

1 part of the Amtrak pattern.

2 And it would have closed out wages and all
3 the elements through June 30, 2012, leaving
4 everything open for further discussion under the
5 terms of the Railway Labor Act from July 2012
6 forward.

7 And that had four general wage increases.
8 If I may, just to recap them, on pages 1, and 2.

9 A July 1, 1.5. A January 1, '11, 1.5.
10 Page 2, is July 1, 2011, 1.5.

11 And a fourth general wage increase of
12 January 1, 2012 of 1 percent, which, when you add
13 them up is 5.5, and a little over that when you
14 compound it.

15 Q And what was the freight deal for the same
16 period?

17 A The freight deal for the same period had
18 two wage increases, and I believe it was the exhibit
19 we previously pulled up.

20 July 2010, there was a 2 percent.

21 And July of '11, there was a 2.5, for a
22 4.5 percent wage increase.

1 Q And you had this conversation with the
2 PRLBC negotiators when?

3 A It was at the February direct negotiations
4 meeting.

5 Q So February 1, 2010?

6 A I believe it was the 13th, yes.

7 Q At what time of day did you have this
8 discussion?

9 A That was in the morning.

10 Q And what happened in the afternoon?

11 A In the afternoon, the PRLBC came in and
12 gave us the BMW freight February 3, 2012 tentative
13 agreement.

14 ARBITRATOR FISHGOLD: Just to correct the
15 record, I think you referenced the February meeting
16 that he's talking about as 2010.

17 MR. REINERT: It was 2012.

18 ARBITRATOR FISHGOLD: Yeah.

19 MR. REINERT: In my records, it should be
20 2012.

21 ARBITRATOR FISHGOLD: Thank you.

22

1 BY MR. REINERT:

2 Q Okay. Were you also present during the
3 testimony of Mr. Ingersoll yesterday afternoon?

4 A Yes, sir, I was.

5 Q Okay. And Mr. Ingersoll testified about a
6 delay in training a large group of helpers.

7 Do you recall that testimony?

8 A Yes, I do.

9 Q Do you have any reaction to that
10 testimony?

11 A Yes, I did.

12 I think it's incomplete with what Amtrak
13 and the BRS had been doing in the 2009 through the
14 subsequent years.

15 Q And in what way is it incomplete?

16 A Well, it's incomplete. Because starting
17 in 2009, in anticipation of all the work that we
18 knew we were going to get with the BRS through some
19 of the funding, like ARRA and other funding sources,
20 TSA, security work, et cetera, we knew we were going
21 to need a dramatic increase in the number of workers
22 to do what I will call basic lower skilled and

1 laboring work to get the projects done.

2 Q And how did Amtrak want to accomplish
3 that?

4 A Amtrak's desire was to hire a new
5 classification of employees within the BRS that
6 would be not subject to future training requirements
7 that would help us accomplish this work, and that
8 was rejected by the BRS.

9 Q And did you ultimately reach agreement
10 with the BRS on how this issue would be resolved?

11 A Yes, we did.

12 And that is contained within our Joint
13 Exhibit 6, page 67.

14 It is a side letter that the parties cut
15 on January 1, 2010. And, yes, it was January 1,
16 2010 as the date of the agreement.

17 And it was in response to how we could
18 jointly agree to accomplish what we needed to
19 accomplish with this extra work.

20 Q And what impact has that agreement and the
21 employees who were hired had on the training process
22 of signalmen?

1 A It has strained the training process in
2 terms of the numbers you saw yesterday.

3 Q Would getting this group of employees who
4 are currently helpers trained to signalmen status
5 address the issues that Amtrak is raising with its
6 proposal to the BRS on the 45 to 60-mile rule?

7 A No, it would not.

8 Q Why not?

9 A Because the issue in the 45- to 60-mile
10 rule is simply one of, if you are trained and if you
11 do have the skills and you go back down, this allows
12 us, within the terms of that rule, which we were
13 only changing the mileage, to basically utilize you
14 back in the vacancy in accordance with the rule.

15 Q Mr. Ingersoll testified that the rule on
16 Amtrak came from the freights.

17 Is that correct?

18 A No. That is not correct.

19 Q Do you know where the rule came from?

20 A Yes.

21 That was an Amtrak rule negotiated in May
22 of 1976.

1 Q And do you know where the language with
2 respect to a mileage limitation on assignment came
3 from?

4 A Yes.

5 That was contemporaneous with some of the
6 language in the Four R Act about changing residence.
7 And that's what has been referred to as a strict
8 mileage.

9 But you see, there are different tests
10 that need to be met within that rule.

11 Q To your knowledge, do the freight
12 railroads have a similar 45-, 30-, or 60-mile rule?

13 A Not that I'm aware of, no.

14 As a matter of fact, last night we tried
15 to reach several roads, and we did the CSXT, the IC,
16 and the BNSF, and they indicated they did not have
17 such a rule on their property.

18 And, frankly, neither did Amtrak prior to
19 the May 1976 agreement.

20 Q Now, Mr. Ingersoll also testified that he
21 never heard from Amtrak about production gang rule
22 issues after PEB 242.

1 Do you recall that testimony?

2 A I do.

3 Q What's your reaction to that?

4 A Somewhat stunned, frankly.

5 Q Why so?

6 A Because this has been the subject since
7 every meeting that we have talked about work rules
8 with the BRS and starting with the -- basically the
9 August 2011 meeting.

10 Q And where are the --

11 MR. REINERT: Let's pull up Joint Exhibit
12 17.

13 BY MR. REINERT:

14 Q What is Joint Exhibit 17?

15 A Joint Exhibit 17 is one of our handouts.

16 And if you would scroll down, you will see
17 the actual BRS page. It's broken into groups the
18 way it's put in the book and I believe on the
19 screen.

20 You would be able to scroll down and get
21 an equivalent page for the BRS. It would be
22 probably halfway down, is my guess.

1 There it is.

2 Q Okay. And can you draw our attention to
3 where it discusses production gangs?

4 A Yes. In Item No. 3, and then also
5 subsequent, or behind that, are attachments of
6 examples that we currently have with the maintenance
7 of way that we gave as illustrative examples of the
8 kind of rule we could obtain that would accomplish
9 our needs and our railroad's operations.

10 Q And was Amtrak's proposed approach with
11 respect to production gangs explained to
12 Mr. Ingersoll in your negotiation sessions in 2010?

13 A Yes. It was by the chief engineer and
14 labor relations at the time that was at that
15 particular session and in subsequent sessions.

16 Q Do you recall the reaction from
17 Mr. Ingersoll or anyone else at the BRS?

18 A Basically, disinterested in the proposal,
19 and silence.

20 Q Were you present during the testimony of
21 Mr. Roth?

22 A Yes, I was.

1 Q And do you recall a portion of the
2 cross-examination where I drew his attention to a
3 six-year cost-out of the difference between the
4 PRLBC proposal and the Amtrak proposal?

5 A Yes, I do.

6 Q Okay. And there was spreadsheet.
7 It's actually in Joint Exhibit 32, but you
8 don't need to call it up.

9 MR. REINERT: Call instead Amtrak Exhibit
10 253.

11 BY MR. REINERT:

12 Q Do you know what Amtrak Exhibit 253 is?

13 A Yes. It's a letter that was issued by the
14 PRLBC on December 4, 2012.

15 Q And who is it to?

16 A It was to the members of those unions, to
17 brothers and sisters.

18 Q And if you scroll down -- is there a
19 spreadsheet attached?

20 Do you recognize that?

21 A Yes.

22 I think this was discussed yesterday, with

1 Mr. Roth.

2 Q I think if you focus on it, there may be a
3 difference in the spreadsheets on the effective
4 date.

5 The numbers might have been updated on one
6 line at the bottom. But you -- the Board can go
7 back and compare it to Joint Exhibit 32.

8 And in the letter that attaches that
9 spreadsheet to the membership, how are the
10 differences between the two proposals characterized?

11 A Well, they're costed over a six-year
12 period.

13 There are various pieces of information
14 starting with the average rate of pay that is
15 calculated through the term of both contracts, and
16 then there are a series of calculations.

17 I think Mr. Roth referred to this as
18 basically on impact per employee in terms of what's
19 in their pocket that include with health insurance,
20 without health insurance, and gross, and net.

21 Q Turning to the bottom of page 2 of the
22 cover letter, how is the difference between the

1 proposals characterized?

2 A At the bottom paragraph, it is
3 characterized to the members as a "real money
4 difference" in the proposals.

5 MR. REINERT: I have no further questions
6 of Mr. Woodcock.

7 ARBITRATOR JAFFE: Ready for cross, or do
8 you need a few?

9 MR. WILDER: Yes. I would like a short
10 recess.

11 ARBITRATOR JAFFE: Sure. We off.

12 (A recess was taken.)

13 MR. WILDER: Mr. Chairman, I think perhaps
14 the most efficient way to proceed is to proceed with
15 Mr. Woodcock's cross, which will not take long.

16 And then after we know what that is, then
17 we'll be in a position to know what kind of rebuttal
18 we are going to put on, if any.

19 ARBITRATOR JAFFE: That's fine.

20 MR. WILDER: So I propose a two-step
21 approach to answering your questions.

22 ARBITRATOR JAFFE: That's fine.

1 MR. WILDER: All right.

2 ARBITRATOR JAFFE: We know how to do two
3 steps as well. It works.

4 MR. WILDER: Good.

5 CROSS-EXAMINATION

6 BY MR. WILDER:

7 Q Mr. Woodcock, your testimony touched on
8 both the BRS and the BMWE.

9 And I think we'll start with the BRS.

10 A Okay.

11 Q All right.

12 A Thank you.

13 Q Now, you had testimony during your direct
14 examination by Mr. Reinert pertaining to a proposal
15 that you made to the BRS with respect to increasing
16 helper hiring in order to deal with additional
17 capital projects in the 2010 time frame.

18 Is that correct?

19 A I believe I referred to an actual
20 agreement that is in Joint Exhibit 6.

21 Q Now, the agreement you referred to is, I
22 believe, on page 67 of Joint Exhibit 6.

1 Is that correct?

2 A Yes, sir.

3 Q All right.

4 MR. WILDER: Bring that up, perhaps.

5 BY MR. WILDER:

6 Q All right. This is the memorandum of
7 understanding between Amtrak and the BRS. Is that
8 correct?

9 A Yes, sir.

10 Q And it starts out with: "IT IS AGREED:

11 A. Helpers/Trainees;" correct?

12 A Correct.

13 Q All right. Now, is it not -- it is a
14 fact, Mr. Woodcock, that this agreement did not
15 dispense with training for signalmen and maintainer
16 positions, but rather was designed to extend the
17 time within which Amtrak could decide when to start
18 the training of a helper who was going to be a
19 trainee.

20 Is that correct?

21 A It relaxed the period within the context I
22 discussed earlier.

1 Yes, sir.

2 Q And prior to this agreement, do I
3 understand correctly that Amtrak had the discretion
4 to begin a helper in training within one year from
5 the helper's date of hire; correct?

6 A Without looking at the agreement, I
7 believe that's correct.

8 Q All right. And the purpose of the
9 agreement that we're examining now was to extend
10 that one-year period to two years.

11 Is that correct?

12 A I don't believe that is correct, but it
13 was to extend the ability to put the training later
14 so that we would have the ability to utilize these
15 workers in lower classed work to help us get our
16 various capital ARRA work and TSA work that we
17 needed to get done done.

18 Q I think from your response, Mr. Woodcock,
19 the only exception you are taking to my question is
20 that I put that extension at one year, that is from
21 one year to two.

22 And did the agreement extend Amtrak's

1 discretion to begin training from one year to two
2 years dating from the helper's date of hire?

3 A Yes, it did.

4 Q It did. All right.

5 But is it also true that at the end of
6 that two-year period, Amtrak was obliged to begin
7 training the helper to become a signalman or
8 maintainer?

9 A Yes.

10 If it was available -- the training was
11 available, and we were able to do it -- which I
12 think if you look at the bottom of page 67, over in
13 the next page, you will see the language that was
14 controlling in this case.

15 Again, you have to look at this within the
16 context of needing to get all this work done.

17 Q But the work that you were concerned about
18 and which led to the formation of this letter of
19 agreement was helper work, was it not?

20 A I would call it laborer work, but it was
21 with the proviso that we did not want to have to
22 burden the training system with additional training.

1 We wanted a classification within the BRS
2 that would be utilized to do a lot of the laboring,
3 what I would call unskilled work, to help us get
4 this work done.

5 That was the context in which this was
6 negotiated.

7 Q And you dealt with this problem with the
8 BRS by extending the period within which a helper
9 would be engaged in helper work under the Amtrak
10 classification provisions instead of being a
11 trainee.

12 Is that correct?

13 A I don't think we put a limitation in the
14 agreement that I'm aware of that the amount of time
15 you could engage work as a helper.

16 What we did over on page 2 was enter into
17 a provision that said, No matter what happens, in
18 essence, you will elevate the person to another rate
19 of pay if you should not be able to put the person
20 in the program at that time.

21 Q I see. And what paragraph are you
22 speaking of?

1 A That would be at the top of 68.

2 Q All right. And that is: "Helpers who are
3 not enrolled in training upon completion of two
4 years active service shall be compensated at the
5 Phase 1 Trainee Rate of pay until they actually
6 complete their initial phase of training.
7 Thereafter, their rate of pay will increase as
8 provided in the Training Agreement;" correct?

9 A Yes, sir.

10 Q All right. Would it be accurate to say,
11 Mr. Woodcock, that the agreement we are looking at
12 now was not addressed to the problem of filling
13 signalmen and maintaining vacancies, but rather to
14 deal with Amtrak's need for laborers?

15 A This was the genesis of this agreement and
16 the process of our collective bargaining.

17 Q The answer to my question is yes?

18 A Yes.

19 Q All right. Thank you.

20 Now, relative to your testimony concerning
21 the so-called 45-mile Rule, Mr. Woodcock, have you
22 personally examined the national BRS agreement?

1 A No, I have not.

2 Q I see. And you're not familiar with the
3 provisions dealing with the change of residence?

4 A In that particular agreement?

5 Q Yes.

6 A No, I am not.

7 Q And are you familiar with the BRS
8 agreements -- withdrawn.

9 Are you familiar with the agreements that
10 BRS entered into with Conrail?

11 A No. I'm not familiar with them.

12 I have seen them, but, no, I'm not
13 familiar with them.

14 Q So if there was testimony to the effect
15 that the 30-mile Rule was found within the various
16 Conrail agreements and was continued at NS, CSX, and
17 other railroads, you wouldn't know whether that was
18 right or wrong.

19 Is that correct?

20 A I think we would, depending on our survey,
21 which as I said, we did get the opportunity to call
22 three roads.

1 And I was responding to whether the
2 45-mile rule evolved from the freights. And that's
3 what I was answering.

4 But it's possible on some of those other
5 properties I did not examine that they could have
6 some other rule. I just don't know.

7 Q I see. Do you happen to know there are
8 30-mile rules at MNCA?

9 A I'm not familiar with that -- what's that
10 designation?

11 I'm not familiar with the designation.

12 Q The Massachusetts Bay.

13 A I don't know, but they took the Amtrak
14 agreement, so they may well have it.

15 Q All right. To your knowledge,
16 Mr. Woodcock, do you know whether officials within
17 Amtrak's engineering department discussed with
18 Mr. Ingersoll production gangs?

19 A I do not have any direct knowledge, but I
20 know they had frequent conversations about matters
21 of business, but I'm not privy to them.

22 Q I see. In fact, Mr. Ingersoll testified

1 to some of those discussions, did he not?

2 A I remember him talking yesterday about his
3 discussions with engineering, yes.

4 Q So when your rebuttal took issue with
5 Mr. Ingersoll's statement that he had not previously
6 discussed the production gang rule, you were
7 referring to what occurred at the collective
8 bargaining table.

9 Is that correct?

10 A I was because that's what he stated
11 yesterday.

12 Q And was there any doubt in your
13 involvement with Mr. Ingersoll during collective
14 bargaining that he was disinclined to accept the
15 production gang proposal?

16 A Was there any doubt?

17 Q Yes.

18 A No, there was none.

19 Q Now, from the -- from February of 2011
20 until -- until the session -- withdrawn.

21 Was there any doubt from February of 2012
22 until the mediation session that took place in June

1 of 2012, that Amtrak was rejecting the freight
2 agreement?

3 A Was there any doubt?

4 Q Yes.

5 A We hadn't discussed it to any great
6 degree.

7 As a matter of fact, I think the
8 subsequent efforts that we made were in costing out,
9 particularly the healthcare, which we had not costed
10 out.

11 And I believe that either the June or the
12 following mediation session we presented information
13 on what that might be worth.

14 Q And I think your testimony during this
15 rebuttal phase was that, as of the June 2012
16 mediation session, that there was no doubt in your
17 mind that the proposal for the healthcare premium
18 contribution was 177.54.

19 Is that correct?

20 A At that time, that became clear by the
21 spokesmen, M-E-N, spokesmen of the PRLBC.

22 Q Had you earlier communicated to the PRLBC

1 Amtrak's interest in accepting the proposal made in
2 February of 2012 for adoption of the freight
3 agreement subject to Amtrak's costing out of the
4 healthcare issue?

5 A I'm not sure I understand that question,
6 Mr. Wilder.

7 Could you repeat it or rephrase it?

8 Q Let me try it again.

9 Had you communicated to the PRLBC the
10 possibility that the freight agreement would be
11 accepted by Amtrak for the BRS and the BMWED is
12 subject to Amtrak's costing out of the healthcare
13 piece?

14 A Did I indicate it would be acceptable?

15 Q Yes.

16 A No, I did not.

17 But, if I may, we thought the healthcare
18 ideas could provide us with additional opportunities
19 to provide compensation to this bargaining group
20 above the Amtrak pattern at that time.

21 Q Now, with respect to your testimony on
22 direct concerning the interim proposal, that is a

1 proposal that Amtrak made to the PRLBC for an
2 interim agreement?

3 A Yes.

4 Q Can you tell us whether the one percent
5 payment provided for the freight agreement was
6 included within your proposals for the interim
7 agreement?

8 A No, it wasn't because we presented that in
9 the morning.

10 And, as I think I indicated to the PRLBC
11 at that time, we thought this was an opportunity to
12 move negotiations forward where essentially, in the
13 front end, we had very little disagreement.

14 And that it would be an opportunity to put
15 money in people's pockets and still leave open, from
16 July 1 of '12, open the negotiations subject to RLA.

17 But we were just clearing out the money
18 that was already essentially there. And in
19 addition, there were a few other things in there, if
20 I may, including the providing of supplemental
21 sickness.

22 Q And last of all, during your direct

1 testimony, you had displayed on the screen a letter
2 from Mr. Dodd, I believe.

3 And I'm going to come up with the exhibit
4 number on that in a moment.

5 MR. REINERT: Amtrak Exhibit 253.

6 MR. WILDER: Yes. 253. Good.

7 BY MR. WILDER:

8 Q This -- would it be accurate to describe
9 this as an internal union communication?

10 A I don't know.

11 It was addressed to their members, so it's
12 a public document.

13 Q I'm not suggesting that it's private.

14 I'm just asking whether it's an internal
15 union document.

16 A I would assume it -- I don't know who it
17 went to and where it was posted.

18 Q Now, do you know whether this reflects any
19 policy decision of the PRLBC or whether this
20 reflects the BMWED's position?

21 A And that would be speculation on my part
22 without -- if you could scroll down to the signature

1 page, I could get a better idea of who signed it.

2 But at the top it's PRLBC. It looks like,
3 at the moment, that it is -- both sides are
4 signatory to that from what I can see with my
5 eyesight.

6 Progressives are only good for certain
7 things.

8 MR. WILDER: Pass the witness.

9 ARBITRATOR JAFFE: Any further direct?

10 MR. REINERT: Very, very brief questions.

11 REDIRECT EXAMINATION

12 BY MR. REINERT:

13 Q You were asked a question by Mr. Wilder on
14 whether you knew whether there was a 45-mile rule in
15 the Conrail agreement.

16 Do you recall that question?

17 A Yes, I do.

18 Q Okay. And you had said that it was your
19 view that the negotiation of the 45-mile rule for
20 the BRS agreement on Amtrak was related to Four R
21 Act provisions?

22 A Is that correct.

1 Q Were Conrail employees subject to similar
2 or the same type of statutory labor protective
3 provisions, to your knowledge?

4 A Yes, they were.

5 MR. REINERT: No further questions.

6 ARBITRATOR JAFFE: Any further cross?

7 MR. WILDER: No. No, further cross.

8 I fear that we will have rebuttal.

9 ARBITRATOR JAFFE: That's fine.

10 We have just one brief area of inquiry,
11 Mr. Woodcock, if I may.

12 THE WITNESS: Okay. Thank you.

13 ARBITRATOR JAFFE: And it's actually not
14 responsive to the questions and answers posed to you
15 today, but it follows up with some of the testimony
16 that we heard yesterday from others.

17 Do you have any understanding as to how
18 the me-too provisions would work if this Board were
19 to ultimately go ahead and direct the "freight
20 deal?"

21 I'll put that in quotes.

22 THE WITNESS: My belief is, the way that

1 letter is written, which refers to additional GWIs
2 or benefit changes that would change the economic
3 value of that, I believe that we would have unions
4 in here unless those were accompanied by the types
5 of offsets, which is only fair, frankly, in terms of
6 awarding additional compensation over and above the
7 Amtrak pattern and pattern work rules.

8 ARBITRATOR JAFFE: Do you have a view at
9 the moment as to whether that would involve
10 supplemental bargaining, or whether it would be on a
11 package basis? One would take the good and the bad
12 or reject it, as the case may be, organization or by
13 organization, or something else?

14 I'm not looking to lead you, just trying
15 to understand a little better.

16 THE WITNESS: Okay. That would require
17 some thinking on my part.

18 ARBITRATOR JAFFE: That's a fair response
19 as well.

20 THE WITNESS: I think that we all talked
21 the past couple of days about the behavior of
22 individual unions, but they will be looking very

1 closely at what I believe this Panel would do.

2 ARBITRATOR JAFFE: Sure.

3 And, again, that's not an indication of
4 ruling. It was simply a what-if kind of question.

5 We'll leave it at that.

6 Anything further by way of direct?

7 MR. REINERT: Nothing further.

8 ARBITRATOR JAFFE: Any further cross?

9 MR. WILDER: No, Mr. Chairman.

10 ARBITRATOR JAFFE: Thank you, again.

11 THE WITNESS: Thank you.

12 (Witness stood down.)

13 ARBITRATOR JAFFE: You indicated a
14 two-step response.

15 Was the suggestion that you're going to
16 have rebuttal suggestive that we ought to break for
17 lunch, or did you wish to proceed directly, or do
18 something else?

19 MR. WILDER: If we could have a brief
20 recess for lunch, I think that would probably be a
21 good idea.

22 ARBITRATOR JAFFE: That's fine.

1 Would 2 o'clock be workable for everybody,
2 or do you wish something else?

3 MR. REINERT: That's fine.

4 MR. WILDER: That's certainly plenty of
5 time.

6 That would certainly be plenty of time.

7 ARBITRATOR JAFFE: That's fine.

8 MR. REINERT: Do we have any estimate of
9 how long rebuttal might take?

10 MR. WILDER: A lot shorter than lunch.

11 MR. REINERT: Okay.

12 ARBITRATOR JAFFE: That's fine.

13 Thank you. We will stand in recess.

14 (A lunch recess was taken.)

15 MR. WILDER: We are prepared to proceed
16 with surrebuttal.

17 ARBITRATOR JAFFE: That's fine.

18 MR. WILDER: The organizations call Dennis
19 M. Boston.

20 (Witness sworn by the arbitrator.)

21 Thereupon,

22 DENNIS BOSTON

1 Called for examination by counsel for the
2 PRLBC, having been duly sworn, was examined and
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. WILDER:

6 Q Mr. Boston, would you give your full name
7 for the record and tell us where you're employed?

8 A Dennis Michael Boston.

9 I'm the Vice President for the Railroad
10 Signalmen.

11 Q What is your area of responsibility,
12 Mr. Boston?

13 A For the Brotherhood of Railroad Signalmen,
14 I have jurisdiction of all transit commuters and
15 passenger properties that we represent in the United
16 States.

17 Q And that would include the Northeast as
18 well?

19 A It includes all of the Northeast
20 properties that came out of the bankruptcies,
21 starting with Amtrak going to New Jersey Transit,
22 going up to MBCR, Long Island, SEPTA, PATH, and all

1 of those.

2 And then of course, Metra, going out to
3 California, TASI, which is the new carrier out on
4 the West coast.

5 Q Speaking of the Northeast, Mr. Boston, are
6 there various roads under your jurisdiction that
7 were derived from Conrail?

8 A Yes, sir.

9 All of them in the Northeast.

10 Q All right. And could you name them?

11 A Of course my home railroad is Penn
12 Central/Conrail, I was on the Conrail.

13 And again, SEPTA, New Jersey Transit,
14 Metro North, on, and on, and on.

15 I mean, the whole East Coast that was part
16 of the bankruptcies.

17 Q Are you familiar with the collective
18 bargaining agreements on these properties?

19 A Intimately, yes.

20 Q Now, do those collective bargaining
21 agreements contain radius limitations on the
22 assignment of signalmen and signal maintainers?

1 A Yes, they do.

2 Q Are those radius limitations similar to
3 the so-called 45-mile rule that appears in the
4 Collective Bargaining Agreement between Amtrak and
5 the Brotherhood of Railroad Signalmen?

6 A Yes, they do.

7 Q And are these -- withdrawn.

8 Do these radius limitations differ in
9 terms of the length of radius?

10 A They do.

11 The Conrail, the railroad I was on, was a
12 30-mile rule. And it was the exact same rule that
13 Conrail -- that came from Conrail, that was on
14 Amtrak, which is who we're talking about, the same
15 identical rule that was on New Jersey Transit, was
16 on Metro North, PATH, going on and on.

17 Q Now, over time, Mr. Boston, have any of
18 those rules evolved as did Amtrak's?

19 A Yes, they have.

20 Some have stayed the same. The old
21 Conrail is the same, the old 30-mile. But then from
22 that, New Jersey Transit has changed slightly. So

1 there are some variations in the Northeast.

2 Q And overall, do a majority of the roads
3 that emerged from Conrail still maintain a 30-mile
4 radius limitation?

5 A Yes, they do.

6 MR. WILDER: Pass the witness.

7 MR. REINERT: No questions.

8 MR. WILDER: I think my --

9 ARBITRATOR JAFFE: We're in good shape.
10 Thank you, Mr. Boston.

11 MR. WILDER: -- rebuttal will be short.

12 (Witness stood down.)

13 MR. WILDER: Now, Mr. Chairman, having
14 complied with they commitment that my rebuttal will
15 be shorter than the lunch, the organization rests.

16 ARBITRATOR JAFFE: Okay. I don't know
17 what comes after surrebuttal, but do you have
18 anything else?

19 MR. REINERT: I don't think so.

20 ARBITRATOR JAFFE: That's fine as well.
21 Off the record.

22 (A discussion was held off the record.)

1 ARBITRATOR JAFFE: Back on the record.

2 We have agreed upon a 10 a.m. starting
3 time for tomorrow, and that, based on counsel's best
4 estimates of the length of projected closings, we
5 should be able to conclude in the morning rather
6 than have the need for a lunch break.

7 And we'll see you all tomorrow at 10
8 o'clock.

9 Thank you all very much.

10 (Whereupon, the proceedings in the above-captioned
11 matter were concluded at 2:08 p.m. to resume on
12 January 17, 2014 at 10:00 a.m.)

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CERTIFICATE OF REPORTER

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

Joseph A. Inabnet
Court Reporter