

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

ARBITRATION HEARING
Vol. 2
January 7, 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 2

The hearing in the above-entitled matter commenced on the 7th day of January, 2014, at 9:02 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

(All Exhibits premarked and preadmitted)

P R O C E E D I N G S

1
2 ARBITRATOR JAFFE: On the record.

3 MR. REINERT: I just had two preliminary
4 issues.

5 The first is with respect to an additional
6 exhibit for Mr. Glass' testimony.

7 We have marked as Amtrak Exhibit 305 a
8 report of the Presidential Emergency Board 244, and
9 that has been distributed electronically.

10 The other issue, which is an exhibit that
11 will relate to the next witness that Mr. Wilder
12 asked me about prior to the hearing. There was a
13 stipulation between the parties that clarified both
14 of their positions on healthcare benefits. It
15 actually is already in the record as Amtrak Exhibit
16 103.

17 And subject to Mr. Wilder confirming, we
18 have already agreed to that language, but he should
19 take a look at it.

20 ARBITRATOR JAFFE: That's fine.

21 We also received electronically, I think,
22 this morning an exhibit for testimony next week.

1 MR. REINERT: Mr. Gillula's testimony.

2 ARBITRATOR JAFFE: Right.

3 MR. REINERT: That will probably be next
4 week.

5 ARBITRATOR JAFFE: Okay. Anything else by
6 way of preliminary matters before we swear in
7 Mr. Glass?

8 MR. WILDER: None from the organization.

9 ARBITRATOR JAFFE: Okay.

10 (The witness was duly sworn by the arbitrator.)

11 Thereupon,

12 JERROLD GLASS

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

16 DIRECT EXAMINATION

17 BY MR. REINERT:

18 Q Good morning, Mr. Glass, can you state
19 your full name?

20 A Jerrold Allen Glass.

21 Q And what is your current position?

22 A I'm president of F&H Solutions Group.

1 Q And in preparation for your testimony
2 today, did you prepare a PowerPoint presentation?

3 A I did.

4 Q We have projected and I think I have
5 before you a copy of it which we'll be referring to
6 during your testimony.

7 I want to start just to give you an
8 opportunity to explain who you are and what your
9 background is.

10 And I'm going to ask you to go through the
11 slides but also give some explanation in terms of
12 your bio, and particularly to focus on your
13 experience and railroad and other collective
14 bargaining?

15 A Certainly.

16 As I mentioned, I'm president of F&H
17 Solutions Group, and I'll talk about that company in
18 a moment.

19 Prior to being president of F&H Solutions
20 Group, I was Executive Vice President and Chief
21 Human Resources Officer at US Airways, where I was
22 responsible for all HR and labor matters for 30,000

1 employees.

2 Prior to that, I was president of J. Glass
3 and Associates, which was a labor relations
4 consulting firm and the predecessor organization to
5 F&H Solutions Group.

6 Prior to that, I was vice president and
7 treasurer of the Airline Industrial Relations
8 Conference, which is the labor policy and
9 information organization of the labor relations
10 departments of the U.S. scheduled airlines.

11 And then finally, I started out as a
12 member of the Economic Analysis Team at the American
13 Association of University Professors, which is a
14 trade association and collective bargaining
15 representative of college faculty.

16 Q Tell us a little bit more about what F&H
17 Solutions Group does.

18 A Sure. I manage a team of 16 professionals
19 that provide a broad array of consulting in labor
20 and HR.

21 We have clients in a variety of industries
22 airline, railroads, construction, manufacturing,

1 real estate, and property management.

2 We consult on collective bargaining, on
3 absence management, human resources, human resource
4 consulting, diversity and inclusion and training,
5 the typical types of things that you would find in a
6 human resources department.

7 But as to our labor practice, we, myself
8 and another individual, we serve as chief
9 negotiators, members of collective bargaining
10 committees. We develop cost models that are used in
11 negotiations. We draft proposals. We provide
12 strategic advice.

13 We do a lot of industry comparisons in the
14 airlines and in railroad industries. We work with
15 companies or third parties in performing due
16 diligence in mergers, acquisitions, and
17 restructurings.

18 And then we also serve as expert witnesses
19 in litigation and in arbitration.

20 Q If you want to tell us a little bit more
21 about your railroad industry experience?

22 A Sure. As part of F&H Solutions Group, in

1 1994, I cofounded, along with Josh Javits at the
2 time, a group called the Labor Relations Association
3 of Passenger Railroads, the somewhat awkward acronym
4 of LRAPR.

5 We formed that group to allow the chief
6 labor relations officers and their departments to
7 come together to discuss issues on labor and
8 employment-related matters.

9 Right now, we have eight members of LRAPR,
10 which include Long Island Railroad, Metro North,
11 PATH, SEPTA, MBCR, which is the Massachusetts Bay
12 Commuter Railroad, NICTD, which is the Northern
13 Indiana Commuter Transportation District. They
14 provide commuter service from Indiana into Chicago.
15 Chicago Metra.

16 And I think that's all of them.

17 Amtrak used to be a member but is not
18 active at this time.

19 We -- as I mentioned, we provide a lot of
20 information to our members. We hold quarterly
21 meetings so we can talk to our members and bring in
22 guest speakers on topics that are relevant to them.

1 We conduct benchmarking analysis for them.
2 We do ad hoc surveys for them. We help educate the
3 NMB and mediators on the very unique nature of
4 commuter rails in the United States. And just
5 generally any matter related to labor and then some
6 in employment.

7 We will advise and work with our members
8 on those issues.

9 Q Do you have other railroad industry
10 experience?

11 A In addition to the work with the LRAPR
12 group, I have advised commuter and passenger
13 railroads in prior arbitrations and PEBs,
14 specifically Amtrak, MBCR and SEPTA.

15 I have been members of negotiation
16 committees at both Amtrak and NICTD. And for the
17 last I think three or four labor management
18 Passenger Rail Conferences, I have been on the
19 steering committee and helped the board spearhead
20 the organization of putting those programs together.

21 Q And outside the railroad industry, what
22 other types of industries have you actually

1 functioned in collective bargaining?

2 A Well, I'm certainly best known for my work
3 in the airline industry, where I have negotiated
4 scores of contracts.

5 But I also have for the last four rounds
6 of bargaining represented the Elevator Manufacturers
7 Association as their chief negotiator in
8 multiemployer bargaining.

9 And I also represent Jones Lang La Salle,
10 which is the second largest real estate and property
11 management company in the world, and our company
12 handles all of their labor relations matters
13 including contract negotiations.

14 Q Let's turn to your testimony today.

15 What are you going to be testifying about
16 concerning collective bargaining in this and other
17 industries?

18 A Well, certainly, I think that most
19 significant issue before this -- this Board is
20 whether or not an internal pattern has been
21 established at Amtrak with the overwhelming majority
22 of its unions and that I'll be testifying to my

1 opinion that that pattern should apply to the BMW
2 and BRS.

3 And so what I would like to do is just
4 very briefly give you an overview of what I'm going
5 to talk about today. You can see that on the slide.

6 First, I'm going to discuss, give you an
7 overview of my principal findings and conclusions.

8 I'm going to talk about pattern bargaining
9 both internal and external pattern bargaining and
10 what is meant by that.

11 I'll discuss the history of pattern
12 bargaining at Amtrak, discuss their current round,
13 and how issues of pattern bargaining have been
14 resolved in the past in railroad disputes.

15 And then finally, I'm going to render an
16 opinion on the absolute importance of adhering to
17 internal patterns for this round, how it should be
18 concluded, and what the ramifications are for Amtrak
19 if an internal pattern is not followed here.

20 Q Okay. You mentioned your view on whether
21 there's an Amtrak pattern.

22 What's your starting point on that view?

1 A Well, the starting point and I think
2 unquestionably the most significant finding from our
3 work is a rather simple one, which is that an
4 internal pattern has, in fact, been established.

5 You have 13 of Amtrak's 15 labor
6 organizations who have reached 17 voluntary
7 agreements covering 14,500 employees. That's 84
8 percent of the group. And if that's not an internal
9 pattern, there never will be an internal pattern,
10 frankly.

11 So that's the principal finding.

12 Q Review your other principal findings.

13 A We have done a considerable line of
14 research, my team and I, looking at prior rounds of
15 bargaining at Amtrak, and I have concluded that
16 Amtrak has a history of both internal and external
17 pattern bargaining.

18 And what makes this round so unique, which
19 I'll show you on a later slide, is that Amtrak has
20 reached agreement with the majority of their unions
21 prior to the freight railroads even reaching their
22 first agreement.

1 As Mr. Woodcock discussed yesterday and
2 I'll get into some greater detail on it, the results
3 of PEB 242 really resonated with Amtrak. And as a
4 result, they have taken to heart what happened with
5 the findings of 242, and they have bargained in good
6 faith. They have responded appropriately, and they
7 have reached timely settlements with their unions.

8 Next is that past PEBs and interest
9 arbitrations do emphasize the importance of
10 considering internal patterns. And these prior
11 decisions conclude that, barring some extraordinary
12 circumstances, established internal patterns should
13 be maintained. And there are reasons why those
14 prior decisions have said that. And, again, I'll
15 talk about that later on.

16 If you allow a labor organization to
17 deviate from that internal established pattern, you
18 are going -- as a professional that has negotiated
19 well over 100 contracts, you are going to have a
20 destabilized environment for collective bargaining
21 on your property and you are going to have your
22 hands full as a negotiator on a going forward basis.

1 And that the best decision in my view is
2 that, as I stated before, this round should be
3 concluded by adhering to the internal pattern.

4 And by doing so, you're not only promoting
5 future labor stability at Amtrak, you are also
6 following what I believe are principal guidelines of
7 the Railway Labor Act, which asks the parties --
8 asks the parties in the Act to enter into timely
9 agreements, which we know from prior testimony was
10 not the case in 242, but is certainly the case in
11 this round.

12 Q And the overall conclusion you'll be
13 presenting today?

14 A That the pattern that I have talked about
15 cannot be dismissed when you have 84 percent of your
16 employees adhering to a pattern, and that that
17 pattern should be applied to BMW and BRS.

18 Q Let's turn to pattern bargaining a little
19 bit more generally for Amtrak.

20 Can you explain to us what you're talking
21 about when you refer to pattern bargaining?

22 A Sure. You know, like any negotiations,

1 there are always a number of factors when you're
2 determining a bargaining strategy.

3 But you typically are guided by some form
4 of a pattern. And so you either look within your
5 own organization to see if a pattern will be
6 developed there, or you look outside to see if a
7 pattern can be developed there.

8 So based on my experience, I would tell
9 you that internal patterns are those that are
10 typically found at a single employer with multiple
11 unions on the property. And both labor and
12 management recognize that maintaining internal
13 parity between employees does promote good labor
14 relations and stable labor relations.

15 External patterns are typically found when
16 there are competing companies and at least one
17 dominant union, and that dominant union represents
18 employees at these different competing companies.

19 And by their very nature, the competing
20 companies have a virtually identical core of
21 businesses.

22 Q Let's talk a little bit more about

1 internal patterns.

2 Why do internal patterns exist?

3 A Well, I decided in preparing my testimony
4 today that I would at least look at what many to
5 believe the bible of labor relations and
6 arbitrations, and that would be Elkouri & Elkouri.

7 And they, in fact, have a definition of
8 internal pattern patterning which says: "Internal
9 patterns refer to relationships among employee units
10 of the same employer with respect to their terms of
11 employment."

12 And then there are very important benefits
13 that are associated for us involved in collective
14 bargaining with internal patterns.

15 First, it does encourage timely and
16 orderly settlements that, in fact, you don't get
17 rewarded for lagging around and waiting hoping that
18 you're going to get something better.

19 It ensures the fair and equitable
20 treatment of employees. It preserves the parity and
21 historical internal wage relationships. As I said,
22 it discourages unions from delaying or refusing to

1 reach an agreement in the hopes of receiving more.

2 And on that particular point, I will later
3 in my testimony get to this precise point in another
4 railroad where, in fact, 12 of the 14 unions
5 settled; one ultimately held out; and I'll talk to
6 you about how that arbitrator decided what the last
7 union should receive.

8 And then, as I have said before, it
9 encourages labor relations stability.

10 Q Can you tell us about the commuter
11 industry and what it shows with respect to patterns?

12 A Sure. Just, you know, by background, you
13 know, roughly 15 years ago -- 50 years ago, excuse
14 me, the commuters, Amtrak and the freights, all
15 basically had the same agreements with their unions.

16 But while they have started in the same
17 place, they have certainly diverged over that
18 50-year span.

19 And that commuters, Amtrak, freights, and
20 frankly even the short lines, they have all diverged
21 in terms of how they approach negotiating collective
22 bargaining agreements.

1 Q What do you see on the commuters?

2 A The commuters have an absolutely clearly
3 defined internal pattern.

4 And so I talked earlier how you come up
5 with a pattern or how you decide how you're going to
6 bargain in a round. And what the commuter railroads
7 do generally is, the financial objectives are
8 important to them because they have to look at
9 budgetary considerations and other factors.

10 You know, what's the state of the economy?
11 What's the tax base?

12 For example, in the great recession of
13 '08, and continuing until really just about now, the
14 commuter railroads were probably hit harder than
15 just about any other sectors.

16 People were losing their jobs. People
17 were having houses foreclosed. So the tax base and
18 in some case where taxes are an important part of
19 total revenues for a commuter were hurt severely.

20 So that matters.

21 While commuters, as I'll talk about in a
22 minute, do follow internal patterns, they also pay

1 close attention to settlements reached at other
2 municipalities.

3 An example of that, and I think cited by
4 PEB 244 was the reference to the Zuccotti award,
5 which was the arbitration from Transit and the
6 applicability of that decision to, in this case,
7 Long Island Railroad.

8 Q Why do commuters look at Transit and other
9 municipal unions as a pattern issue?

10 A Because generally, you know, they are
11 operating in exactly the same place.

12 They have kind of the same revenue issues,
13 fare box issues. And so it's fair to look at them
14 as all, in essence, public sector employees.

15 Then at the commuters, what they do is
16 they generally will try to reach an agreement with
17 one or more of the unions and use that to establish
18 the pattern.

19 But what they do, and what I'll point out
20 here shortly, is they negotiate on the totality of
21 the contract.

22 So while there are absolute distinct

1 internal patterns, there are occasions where you may
2 see wages not exactly the same. But there are
3 reasons for it, and I'll give you examples of that,
4 and I'll point that out to you shortly.

5 Q Okay. Can you tell us what you see in
6 terms of GWIs on the commuters?

7 A So while I mention that the commuters do
8 negotiate on the totality of the agreement, you
9 know, I apply the 80/20 rule, as I think most
10 negotiators do, meaning that, you know, a small
11 number of issues really account for the bulk of the
12 costs.

13 And certainly the number one cost are
14 wages.

15 So if you -- if we look at -- and we did
16 look at the annual general wage increases received
17 by unions -- that can give you a pretty good
18 indication whether or not an internal or external
19 pattern exists.

20 So what we did is we went back to the
21 early 1980s, and we have tracked all of the general
22 increases at all of our members since that period of

1 time.

2 And as you can see on the chart, it's fair
3 to say that at New Jersey Transit and Metro North
4 all of the unions at each of those airlines have
5 historically received the same GWIs.

6 That is at their own property. Not across
7 the industry, but at their own property.

8 Q I think you misspoke and referred to
9 airlines.

10 A I think I did as I just realized. Yes,
11 thank you.

12 The one railroad that is not on this list
13 is PATH. And the reason for that is that PATH does
14 not have a clearly defined amendable date. They
15 kind of have rolling negotiations, although
16 certainly in the last five years or so, when you
17 look at settlements at PATH, they have generally
18 been the same, I think, given the same general wage
19 increases.

20 Q Turn to the next page, and it's a pretty
21 complicated chart.

22 So I think you're going to have to give an

1 explanation of what it means and what the
2 methodology of obtaining it was.

3 A I think that's a very good idea.

4 So before I get into the detail, let me
5 just try and walk you through the concepts on this
6 chart.

7 So for each railroad, you will see a
8 horizontal line across the page and a number either
9 on a percentage basis or a dollar amount or
10 something in brackets.

11 And so, for example, if we just start at
12 the top, New Jersey Transit, for their unions in
13 1983, the unions all received 3 percent, 84, 3
14 percent so on and so forth.

15 Now, the number that says 3.0 or 5.0,
16 whatever, that indicates an annual agreed-to general
17 wage increase percentage.

18 If a number is in brackets, that either
19 independents a lump sum payment in dollars or as a
20 percentage of wages. And there will be some
21 instances, such as MBCR in orange, where you will
22 see two percentage increases in a year. And that

1 indicates that the unions received more than one
2 percentage increase. Okay?

3 So that's the background, if you will, of
4 this schematic on this particular chart.

5 So first and foremost, you're going to see
6 that, for each of the commuter rails, the GWIs
7 listed apply to all of the unions.

8 Now, I'm going to speak to a couple of
9 exceptions here, which I'll get to in a second.

10 And so as I said, they apply to all of the
11 railroads.

12 Now, there have been some situations where
13 not everybody has agreed to exactly the same general
14 wage increase. And I would point you to Chicago
15 Metra as an example, in the years 2009, '10, '11,
16 and '12.

17 And what we're showing here, the 3, 3, 3
18 and a half, and 3 and a half, those apply to the
19 BLET and the BRS.

20 And what Metra did here -- and this,
21 again, goes back to the whole issue of talking about
22 the totality of the agreement ultimately resulting

1 in the same amount of money being spent.

2 But what Metra did in that round is they
3 said, You really can have one of two choices. You
4 can take the higher percentage increase and agree to
5 participate in employee cost sharing on the health
6 side, or you can take a lower percentage increase
7 and not participate in employee sharing.

8 So in the case of some of the other unions
9 at Metra, they received lower percentage increases.
10 For example, in the first year they received 2
11 percent instead of 3 percent. And then in the last
12 two years, I believe they received 3 percent instead
13 of 3.5.

14 So the bottom line, though, is that they
15 had the same total cost. So the pattern itself was
16 the same.

17 That, I think, for the most part I think
18 explains that chart.

19 Q I do have some questions.

20 A Sure.

21 Q How is it that when you look at, for
22 example, just start at the beginning, the first New

1 Jersey Transit is getting 3 percent in '83; and,
2 across the river, Metro North is getting 7.

3 A How do you explain that?

4 Q How do you explain it?

5 A It's a totally different type of funding,
6 totally different managements, different --
7 different approaches to bargaining.

8 There are multiple factors that would come
9 into play. New Jersey -- and, in fact, New Jersey
10 Transit, as I mentioned before, they're a prime
11 example of an agency that does, in fact, look to
12 other municipalities, what is done for state workers
13 in the state of New Jersey.

14 So that's what they look at.

15 They don't look at all at what happens
16 over the railroad at Metro North, or Long Island
17 Railroad, or even PATH for that matter.

18 Q You have mentioned 244, the recent Long
19 Island Railroad PEB, how at all does that relate to
20 what your findings are in this chart?

21 A Well, what happened, again, in 244, there
22 is no relationship between how Long Island Railroad

1 bargains and has bargained in the past with any of
2 the other commuter railroads on this list or
3 anywhere else.

4 They just -- the commuter railroads do not
5 follow the patterns of other commuter railroads.
6 They just don't.

7 Q Now were you present yesterday during the
8 PRLBC's opening argument?

9 A I was.

10 Q And I think Mr. Wilder made reference that
11 the railroad industry is stratified and commuter pay
12 is at the top of the industry.

13 First of all, do you agree that commuter
14 pay is at the top of the industry?

15 A Yes. I think generally it is.

16 Q Okay. Why, in your view, is that so?

17 A I think, again, it is a function of how
18 those entities have bargained, political
19 considerations and things that occurred during that
20 period of time, historically, the revenue base that
21 existed in a lot of the big cities until more
22 recently. So there are a number of factors as to

1 why that has taken place.

2 And, again, I point out that everybody
3 started in the same place. But over time, I'll say
4 that organizations, entities, have gone their own
5 way.

6 They are doing -- they are bargaining for
7 them based on the facts they have in front of them,
8 not what's going on elsewhere.

9 Q Okay. Let's turn to the next page.

10 And can you review for us some other areas
11 where you observed internal pattern bargaining?

12 A Sure. So I wanted to provide this Board
13 with some other examples of internal pattern
14 bargaining.

15 And one of note is the United States
16 Postal Service, which I know that at least two of
17 the gentlemen here are well aware of.

18 But the most recent round of negotiations
19 do illustrate the importance of maintaining internal
20 pattern bargaining between the Postal Service
21 unions.

22 And what happened in this round is that

1 first there are four major unions. There is the
2 APWU union that's referred to as the Rurals. One
3 referred to as the City Letter Carriers. And
4 finally, the union referred to as the Mail Handlers.

5 And what happened in this last round is
6 that the APWU reached an agreement with the Postal
7 Service through a direct negotiations. But the next
8 agreement, which was the Rurals, was determined by
9 an Arbitration Board, which was chaired by Jack
10 Clarke.

11 And in his decision, he made a number of
12 references to the APWU settlement and determined
13 that he would impose the wage pattern on the rules
14 that existed at the APWU.

15 Next, about a year ago, Arbitrator Das
16 issued an award settling the terms for a
17 four-and-a-half year agreement involving the Rurals,
18 and he recommended that that union follow the
19 pattern reached with the APWU and with the Rurals.

20 ARBITRATOR DAS: That was the City
21 Carriers.

22 THE WITNESS: The City Carriers, excuse

1 me.

2 ARBITRATOR DAS: Uh-huh.

3 THE WITNESS: And then finally Arbitrator
4 Fishgold, who wrote a decision also last year
5 involving a dispute between the Postal Service and
6 its last union, which was the Mail Handlers.

7 And he wrote that the pattern established
8 by the APWU, the Rurals and the City Letter Carriers
9 is an important data point for the Board to
10 consider.

11 He further recognized that pattern when he
12 wrote, and I quote: "On the issue of wages and
13 benefits for mail handlers, a review of the past
14 agreements negotiated between these parties and the
15 awards issued by arbitrators in various interest
16 arbitrations make clear that the terms of this award
17 should not be set without reference to other
18 organizations and awards that occurred during the
19 same round of bargaining."

20 BY MR. REINERT:

21 Q What about municipal governments? What
22 did you observe there?

1 A Well, on municipal governments, you know,
2 I have one example that I have given, there are
3 others as well.

4 But that there has been a historical tie
5 between the firefighters and the police. That tie
6 is recognized in numerous arbitrations. It's noted
7 by academics.

8 In fact, in the Katz and Kochan book, an
9 Introduction to Collective Bargaining and Industrial
10 Relations, they write: "In the vast majority of
11 municipal governments, wages and fringe benefits of
12 police and firefighters are tied to each other
13 through pay parity or pattern bargaining."

14 New York City is also an example of where
15 a pattern is set within the municipal government.

16 And as I mentioned earlier, in PEB 244,
17 the Board references the Zuccotti award in its
18 decision.

19 Q Let's turn to external pattern.

20 What is an external pattern, and why do
21 they occur?

22 A Well, again, just quoting Elkouri &

1 Elkouri, they refer to external patterns as,
2 "relationships between the terms of employment of
3 one unit of an employer and those for units of
4 employees of one or more other jurisdictions
5 performing similar jobs."

6 So in external bargaining, the Union's
7 goal is to standardize the industry, to make wages
8 and benefits and even work rules as similar as
9 possible.

10 And in fact, in external pattern
11 bargaining, you will often see what I refer to as
12 the stair-step approach, where the dominant union
13 settles with Company A, next is Company B, and
14 they'll settle for that plus a little more, and then
15 Company C, and so on.

16 And that's one way that wages continue to
17 move up and the quality of life of employees is
18 improved through increased earnings.

19 As I mentioned, earlier external pattern
20 bargaining really is appropriate and it exists when
21 there's one dominant union in common at competing
22 companies, and that they have virtually the same

1 core business.

2 Q Why is that important?

3 A Well, that's how the unions and even
4 management understand there's a rhythm in these --
5 in negotiations.

6 And they both understand that when they're
7 bargaining, they're going to be looking at the
8 competitors. Okay. And one of the things that is
9 accomplished oftentimes in external pattern
10 bargaining is taking labor costs out of the
11 competitive field.

12 So that if everybody is at a level playing
13 field in external bargaining, then the labor costs
14 have much less importance in terms of overall
15 profitability when you compete one versus another.

16 Now, I think for those of us that have
17 been doing this a while, we know that external
18 pattern bargaining is not nearly as prevalent as it
19 used to be. And a number of factors have come into
20 play as companies have shifted more and more to what
21 I call company specific bargaining and less looking
22 at what is taking place at other competing entities.

1 Q Can you describe some of the industries
2 where external pattern bargaining is observed?

3 A Sure. Just briefly, I think that the best
4 example of one we all know best is from the auto
5 industry, where the Big Three engaged in the classic
6 type of external bargaining for many years.

7 You had one dominant union, the UAW. They
8 would pick one of the Big Three in that round of
9 bargaining. They would negotiate with them,
10 ultimately settle, whether there was a strike or
11 not. And the terms of that settlement served as the
12 basis of the settlement with the other two.

13 Each round, you know, they would decide as
14 a union who they would pick to be the stocking
15 horse, and the other two companies knew that would
16 be the case.

17 But, of course, as we also know from the
18 period of the great recession, that in the most
19 recent round of bargaining, the Big Three really
20 went their own way.

21 GM was in very bad shape. They were in
22 bankruptcy. Chrysler in bad shape. Ford, less so.

1 And they each forged agreements with the UAW that
2 were specific to their companies as opposed to going
3 back to the pattern that used to exist.

4 In the tire industry, for a long time,
5 there was an external pattern between the major tire
6 makers, B.F. Goodrich, Goodyear, Uniroyal, and
7 Firestone.

8 And, again, those agreements were all made
9 with the United Rubber Workers and the big four tire
10 makers.

11 But really starting close to 20 years ago,
12 the other companies began negotiating based on their
13 internal factors as the state of the industry
14 changed.

15 And as a Firestone representative said at
16 that time: "The days of rich pattern settlements
17 are over," and insisted on tailoring the pattern to
18 its own needs.

19 Q What other industries have shown
20 pattern -- external pattern bargaining?

21 A The two other examples -- and, again,
22 these are well known and great examples of what has

1 happened over time as industries have changed and
2 companies have had to change the way they have
3 bargained, and unions have had to adapt as well.

4 The steel industry, a great example of
5 traditional multiemployer bargaining where there
6 were five major steel companies. And, as a group,
7 they bargained at the Steel Companies Coordinating
8 Committee with the United Steel Workers as the
9 dominant union at each of those companies.

10 Going back 20 years ago, the multiemployer
11 bargaining committee was dissolved. Each
12 committee -- excuse me, company started bargaining
13 on its own.

14 And, as we know, in essence, the steel
15 industry, the pattern bargaining, and certainly the
16 industry as we once knew it exists no longer.

17 And then finally, the oil refinery
18 industry, where external pattern bargaining really
19 does still exist and has been in existence for a
20 long. The Steel Workers delegates meet. They
21 decide on what proposals to present, and they kick
22 off negotiations and bargaining with those unions as

1 a group.

2 Q You're aware that in this proceeding,
3 there are discussions of the relationship between
4 Amtrak and the rail freight industry.

5 In your view, is that relationship the
6 type of external pattern bargaining you have been
7 talking about?

8 A No, not at all.

9 There is a historic relationship. There's
10 no question about that. I don't think anybody
11 denies that historic relationship. But it's
12 certainly not a classic external pattern bargaining.

13 Q And why not?

14 A Well, for a number of reasons.

15 They're not competing companies, for one.

16 We're not talking about one dominant
17 union. We're talking about in these cases 12, 13,
18 14, even 15 different unions.

19 And that, again, I go back to kind of the
20 beginning of how each of these entities got started.

21 As I mentioned, they all started in the
22 same place. But over time, you have seen the

1 railroad industry break into different segments and
2 really different parts of an industry.

3 You do have the freights. You do have the
4 commuters. You have passenger rail, Amtrak. And
5 you have the short lines.

6 Each of them have or are going their own
7 way, and they don't look at the others any longer
8 for how they're going to settle.

9 Q Let's talk about the relationship between
10 Amtrak and freights and the history of bargaining on
11 Amtrak.

12 Have you reviewed that history?

13 A I have.

14 Q And what have you concluded?

15 A In looking at the history of pattern
16 bargaining at Amtrak, at different points in time in
17 Amtrak's history, the carrier has utilized different
18 strategies.

19 Earlier in its history -- and I'll point
20 this out here shortly -- Amtrak and its unions often
21 signed standby agreements which adopted the terms of
22 the National Freight Agreements.

1 In some cases Amtrak was, in fact, a party
2 to certain freight agreements and participated
3 actually in freight handling, national handling.

4 And in some agreements were more of a mix
5 where -- Amtrak agreeing to adopt certain provisions
6 in the freight agreement, but not others.

7 So you might find if you read through old
8 Amtrak contracts, it would say, The provisions of
9 Article X of the national agreement dated such and
10 such will be made part of this agreement.

11 You will also see provisions that say, you
12 know, other provisions, an article. In the
13 contract, you won't see a reference to the national
14 agreement where Amtrak has negotiated, for example,
15 work rules that are completely different than what's
16 negotiated on the freights.

17 Q On the issue of general wage increases,
18 have the Amtrak settlements varied from freight
19 settlements in different rounds?

20 A They have, yes.

21 Q Why don't you explain some more on how
22 Amtrak has differed from the freight pattern in past

1 rounds?

2 A Sure. One example of that and an
3 important one is the 1981 national round of
4 bargaining.

5 Amtrak reached agreements with the -- with
6 the majority -- excuse me. Amtrak reached
7 agreements in '81 after the majority of the freight
8 agreements were settled.

9 But the settlements at Amtrak didn't
10 follow the freight pattern on quite a few terms,
11 including the wage increase.

12 And each of the Amtrak agreements
13 reference the National Freight Agreement in the '81
14 round, but specifically and explicitly said that, in
15 terms of the general wage increases that were given
16 at the freights, that they would not apply at
17 Amtrak.

18 I mean, that was specifically and
19 explicitly said in that agreement.

20 Q What about other rounds?

21 A Well, one thing just generally, in most of
22 the rounds, that Amtrak negotiates its work rules on

1 a national level.

2 And while there are some work rules that
3 are negotiated on a national level on the freights,
4 it's much more common that the freights negotiate
5 work rules on a local level.

6 And so that's also a significant
7 difference.

8 In the '88 round, Amtrak reached
9 settlements with BMWE and BRS, which were not the
10 same as the freight pattern. They were
11 significantly different as well.

12 And then lastly, in PEB 234 between Amtrak
13 and the BMWE, the Board acknowledged, while they did
14 agree that the wage settlements would be the same,
15 they acknowledged that Amtrak's work rules are
16 separate and unique from those at the freights, and
17 that, in that case, the Board recommended that the
18 parties sit down and engage in mediation to
19 negotiate work rule changes.

20 So it has not been a clear and consistent
21 pattern through all the years.

22 Q Okay. The PRLBC's expert, Tom Roth, will

1 testify that basically when you stand back, the wage
2 relationships between the freights and Amtrak have
3 remained fairly close over a long period of time.

4 How do you reconcile that perspective with
5 what you have seen in terms of differences from a
6 freight pattern at different times?

7 A In my view -- and I don't think there's
8 any question because the facts do bear this out --
9 there have been times when the rates themselves have
10 been very close, if not identical. But there have
11 been times when the rates have not been the same or
12 identical.

13 And, again, you know, an example of that,
14 if I go back to the '81 round where the freights had
15 agreements that were increases significantly higher
16 than Amtrak.

17 And in Mr. Roth's testimony, he does
18 say -- and I don't disagree -- that at some period
19 of time thereafter, Amtrak reached settlements with
20 higher percentages than the freights. And
21 ultimately, in the case of the unions he represents,
22 rates did come close to once again becoming equal.

1 But there was a significant period of time
2 where they were not.

3 And just the fact that perhaps six or
4 eight or ten years later you are now at the same
5 rate does not mean that you have had that pattern.

6 In fact, the employees at Amtrak made
7 considerably less than those at the freight
8 comparable positions over a period of time. And
9 even though you "catch up," you don't ever really
10 catch up because there is time value of money.

11 And the fact of the matter is, if I'm here
12 and it takes me to there to get up there to that
13 rate where the freights are and they're already up
14 here, then I, as a worker, have, in fact, lost money
15 over time, and I have not been making the same as a
16 counterpart elsewhere.

17 Q Turning to the next slide, what have you
18 examined in terms of the timing of Amtrak and
19 freight settlements?

20 A So I thought it would be an interesting
21 exercise to go back as far as we could and look at
22 the chronology of settlements. Because one of the

1 arguments being made by the unions in this case is
2 that Amtrak has always followed the freight pattern,
3 which in turn would lead one to believe that they
4 always wait until after the freight settlement.

5 So I wanted to do some research on that.

6 And so I put together this graphic to
7 illustrate the chronology of Amtrak settlements
8 compared to the freights.

9 Q Can you walk us through this and what it
10 shows?

11 A Sure. So what we're putting up on the
12 board now are prior rounds of bargaining at Amtrak
13 and the freights.

14 Those unions in red indicate the freights
15 with the dates that they settled, and those in blue
16 indicate Amtrak.

17 Now, just a very quick look, you know,
18 without doing any kind of analysis, you can come to
19 the conclusion pretty clearly that the freights have
20 generally settled before Amtrak.

21 Certainly, that's the case in the '81 to
22 '84 round, in the '85 to '88 round. You had really

1 a mix, and this is what I talked about earlier.

2 You had some unions to agreeing to
3 standby. You had some unions agreeing to freight
4 handling, and you had a third group that settled
5 directly with Amtrak.

6 ARBITRATOR JAFFE: Were there any unions
7 that settled at Amtrak before the same union had
8 settled at the freights?

9 THE WITNESS: Well, if you look at, for
10 example, the '88 to '94 round.

11 ARBITRATOR JAFFE: Right.

12 THE WITNESS: The very first union that
13 settled was the service workers in that round.

14 Now, there is no comparable union at the
15 freights.

16 ARBITRATOR JAFFE: Right.

17 MR. REINERT: But what is indicative,
18 Mr. Jaffe, is that in that round, it would certainly
19 appear to me that service workers is one of the
20 biggest unions on the property and that Amtrak, at
21 least in that round, attempted to start a pattern by
22 settling with the service workers first.

1 Okay, it did not happen.

2 But it does indicate that Amtrak has not
3 just lock, stock, and barrel said, You know what?
4 We're not going to bother negotiating. We're going
5 to wait until the freights, and we'll start after.
6 Okay?

7 But generally speaking, to answer your
8 question, that is for the most part the most
9 prominent exception.

10 ARBITRATOR JAFFE: Okay. Yeah. I
11 couldn't find any on the chart when I looked at it
12 before. That's why I asked.

13 THE WITNESS: And I think that's accurate.

14 ARBITRATOR FISHGOLD: Could I -- referring
15 to that same chart.

16 Did you have occasion to look at, in all
17 those groupings, the settlement dates of the two
18 unions that are currently before us?

19 THE WITNESS: Yes. They're all -- they're
20 all here.

21 And again, you know, it varies.

22 The BMWED and the BRS have not always been

1 the last unions to settle. They are in this round,
2 but they have not always been. So we did look at
3 that. Okay?

4 BY MR. REINERT:

5 Q Are you ready for this round?

6 A Okay. So on this round, you can see that
7 exactly the opposite.

8 This round is different because Amtrak
9 went first. And if you look at two, four, six,
10 eight, about nine or ten of Amtrak's unions settled
11 in 2010.

12 You had four more settle at 11, and the
13 freights did not start settling until, in essence,
14 late 2011 with the majority in 2012.

15 So this round is, in fact, different.
16 There's no denying it. You can't say anything other
17 than that.

18 Amtrak went first, and they reached
19 agreements with 11 of their 15 labor organizations
20 before the freights had any settlements. Okay.

21 Mr. Woodcock explained why there was a
22 change in philosophy in bargaining. I'm going to

1 talk about that as well in some detail shortly.

2 MR. REINERT: I think this would be a good
3 point to take a break.

4 ARBITRATOR JAFFE: That's sounds fine.

5 We're off the record.

6 (A recess was taken.)

7 BY MR. REINERT:

8 Q Okay. Mr. Glass, we're now going to turn
9 back to your slides.

10 And I think your next topic is your
11 analysis of the current round of bargaining on
12 Amtrak, so why don't we turn to that?

13 And you just were referencing the timing
14 change.

15 How did the timing change in terms of
16 Amtrak going before the freights affect this round?

17 A It affected the round in that, in the
18 obvious, that Amtrak was not influenced at all by
19 the freight settlements because they had
20 established -- clearly established their own
21 pattern, with I think 65 percent or so of the unions
22 had already negotiated contracts before the first

1 freight deal was even done.

2 Q Turn to your next slide that just reflects
3 the 65 percent you were just discussing.

4 And you have already stated in your view
5 there was an Amtrak internal pattern at that time.

6 Is there any doubt in your mind that
7 there's an internal pattern in this round?

8 A No, none whatsoever.

9 Q Why not?

10 A Because it meets all of the criteria
11 whatsoever that I have talked about in terms of what
12 defines an internal pattern.

13 Q Are you caught up with us? I think,
14 we're --

15 A Yes. So let's see where we are.

16 Well, let me if I can just back up just
17 one second. And, you know, when we talk about this
18 current round, I think the genesis of this current
19 round really started the day after PEB 242 came out
20 and all of the criticisms and comments that were
21 made from that Board.

22 And really, as a result of the new

1 leadership and the new vision, Amtrak's objective
2 was very simple, as Mr. Woodcock testified, get
3 agreements done early and make sure they're fair,
4 and let's not drag these negotiations out as we have
5 in the past.

6 So what happens, as we look here, we
7 mention, Through good faith bargaining Amtrak was
8 able to reach an agreement with 13 of its 15 unions
9 that represented 84 percent of their workforce.

10 Q The next slide refers to the fact that
11 several PRLBC unions joined the pattern.

12 What's the significance of that in your
13 view?

14 A Well, BRS and BMWED were part of the
15 bargaining coalition.

16 And in this case, three of those five
17 coalition members decided to withdraw from the
18 coalition, and each one reached mutually acceptable
19 agreements with Amtrak.

20 And not only did the three unions reach
21 agreements with Amtrak, but they were reached prior
22 to the report of PEB 243 coming out, and which

1 dictated the terms of the freight.

2 I think that's the significance with
3 respect to the first bullet.

4 Q And after PEB 243 came out, what happened
5 to the operating unions?

6 A After 243 came out, the two largest
7 operating unions at Amtrak, BLET and UTU, decided
8 not to use the freight settlement and decided to go
9 with the pattern established by Amtrak.

10 Q And what's the significance of that to
11 you?

12 A Well, the significance is, number one,
13 it's the two largest operating unions.

14 They are identical unions at the freights
15 settling for something different, and yet they still
16 voluntarily agreed to the Amtrak pattern and not
17 fight the pattern and go with something different.

18 Q Can you review just the chronology of
19 these settlements and what significance you see in
20 the timing?

21 A Sure. I'll go through this rather
22 quickly.

1 You can see first in June 21, 2010 an
2 agreement was reached with the JCC. Then a day
3 later, an agreement reached with the TCU. And then
4 a week after that, the service workers.

5 So you had three unions in place in less
6 than a month that represented almost more than 40
7 percent of the Amtrak workforce.

8 Followed by the dispatchers in July. A
9 month later in August, the maintenance of way
10 supervisors, and the IAM, the engineering
11 supervisors.

12 And then by October, you had the on-board
13 service supervisor. And just taking a snapshot in
14 the span of between June and October of 2010, more
15 than half of the employees at Amtrak were now
16 covered under an agreement with the same pattern.

17 Q You have bargained under the Railway Labor
18 Act.

19 How common is it for agreements to be
20 reached at that speed under the Railway Labor Act?

21 A I would call it unprecedented.

22 I'm not aware of any group of unions

1 representing this percentage of employees that have
2 settled this quickly, ever.

3 Q Why do you think that's so?

4 A I think that -- you know, I keep going
5 back to 242.

6 I think that Amtrak learned a valuable
7 lesson. And under the direction and guidance of Joe
8 Boardman talking to Charlie Woodcock, they put very
9 fair and reasonable proposals on the table.

10 And the fact of the matter is, even at
11 that point in time, we were still in the throes of
12 the recession. And these were certainly by those --
13 at that point in time, and even today by any
14 measurement, those were very fair and generous
15 agreements.

16 I think the percentages you just don't see
17 elsewhere in American industry.

18 Q Would you continue through your
19 chronology?

20 A Sure. So next, also in October, the IBEW
21 settled. Now, we're up to 57 percent.

22 And shortly thereafter, the sheet metal

1 workers settled.

2 And now, within one year from when this
3 started, June 7 of '11, we have FOP. And then, in
4 the span of a year, nearly 63 percent of Amtrak's
5 employees are covered under the same pattern.

6 Then in August, the NCFO settled, followed
7 by the IBBB. And it's at this point in time, with
8 11 unions in place, with 64 percent of the workforce
9 now covered under an agreement, that the freights
10 reached their first settlement.

11 Q Which settlement was that?

12 A The UTU, I believe.

13 So following the freight settlement, BLET,
14 very big and important union. Followed by the
15 conductors, the UTU.

16 You can see three agreements reached
17 there. And now, we're at 84 percent. And so what's
18 left are just the two unions, BRS and BMWED.

19 Q You mentioned 242.

20 Can you give your analysis of the impact
21 of 242 on this round on Amtrak?

22 A I can. And just if I can, just a moment

1 in background.

2 I mentioned earlier in my experience that
3 I have worked on prior PEBs. And in fact, I was on
4 the team with Amtrak in PEB 242. I was at the
5 hearing. And I'm well aware of the decision and the
6 fallout that came from that decision and the
7 reflection that Amtrak took, how serious they took
8 242, and what they had to do to fix that.

9 And I had numerous discussions with
10 Mr. Woodcock about the ramifications of 242 and what
11 Amtrak needed to do on a going forward basis if they
12 wanted to avoid that same fate again.

13 So ultimately, when you look, when you do
14 a really thorough analysis of 242, I think it's very
15 important to understand what came out of that round
16 and that report, and it served as the springboard
17 for what happened in this round.

18 Clearly, as I think you gentlemen know,
19 the Board found that there wasn't a sufficient
20 internal pattern established at Amtrak. And they
21 did decide that Amtrak should follow the freights in
22 that round.

1 They determined that the settlements
2 covered a minority of Amtrak's unionized workforces
3 and did not prove acceptable as a basis for reaching
4 agreement with the organizations in this dispute.

5 And they further stated that there really
6 was no real pattern at Amtrak as a result of that.

7 So really, how did those recommendations
8 affect Amtrak's strategy as they went into this
9 round?

10 And so what I -- what I did is I went back
11 into 242, and I tried to identify all of the major
12 issues or most of the major issues put forward by
13 242 and said, okay, how did Amtrak resolve, if they
14 did, those issues during this current round?

15 So let's just start by putting the first
16 one up, which is that Amtrak failed -- excuse me,
17 that Amtrak failed to provide a compelling
18 operational need.

19 Q I think you are a page back.

20 The other way.

21 A I'm sorry.

22 First and foremost, that Amtrak had argued

1 against granting retro pay, as Mr. Woodcock
2 testified. They have provided retro pay where
3 applicable in all of the agreements.

4 Secondly, the Board found that -- that
5 they were charged with figuring out fair and
6 reasonable basis for agreements, and that it was up
7 to Congress to fund those.

8 As, again, Mr. Woodcock testified, Amtrak
9 worked cooperatively with Congress to arrive at fair
10 and reasonable proposals, and those were accepted by
11 13 of the 15 unions.

12 Then the Board went on to say that Amtrak
13 had failed to meet the internal pattern that TCU,
14 with the service workers, and ARASA, on-board
15 service supervisors, have never been used as
16 patterns before, that the settlements covered a
17 minority of Amtrak's unions.

18 So what did Amtrak do?

19 The established the internal pattern and
20 the pattern set by the 11 unions that were settled
21 before the freight. And that, rather than the
22 settlements covering a minority of Amtrak's unions,

1 they covered 13 of the 15, which was 84 percent.

2 242 also found that there was no pattern
3 at all after 12-31-04. And in this case, the
4 pattern covers the same period for all groups 2010
5 through '15.

6 They also noted that the settled unions
7 were all nonoperating crafts and had never been used
8 by the parties to set a pattern.

9 And in this round, both operating and
10 nonoperating crafts, including three unions who were
11 formerly part of the PRLBC, all settled with Amtrak.

12 And that, in fact, in 242 the Board
13 pointed out that Amtrak even tried to use a failed
14 TA to justify its pattern. And here the pattern has
15 been set by the ratification of 13 agreements.

16 Next, Amtrak failed to show significant
17 reasons to justify variation from the freight
18 railroad. And I think, as Mr. Woodcock has
19 testified, and I have testified thus far, with 11 of
20 15 unions settling, there was no freight pattern to
21 follow. They, in fact, went first.

22 In 242, Amtrak took a lot of criticism for

1 failing to provide a compelling operational need for
2 work rule changes.

3 And in this round, Amtrak proposed work
4 rule changes. They were justified with detailed
5 explanations. There was costing provided. The
6 subject matter experts were always available to go
7 through these work rule changes at the bargaining
8 table. And they showed the cost implications of
9 their proposals.

10 The sought-after work rule changes were
11 out of line with previous patterns of work rule
12 changes, including those at the settled agreements.

13 And here, as Mr. Woodcock testified, the
14 proposed work rule changes for the BMW and BRS are
15 in line with the internal pattern that has been set.

16 Amtrak failed to have meaningful
17 bargaining sessions, according to the report on 242,
18 including detailed proposals, as I said, on key work
19 rule issues or other quids.

20 And in this round, I don't think there's
21 any doubt that they -- Amtrak bargained meaningfully
22 on all of the work rule proposals, and they have

1 provided detailed proposals as well as the
2 explanations and the cost implications.

3 Next, Amtrak opposed being released and
4 opposed offers to arbitrate. And this round, Amtrak
5 was available and met each and every time it was
6 requested to do so by the unions and/or the NMB and
7 it had its subject matter experts on hand and
8 available.

9 And finally, Report 242 stated Amtrak
10 failed to meet the standard for what might be
11 reasonably accomplished through good faith, arm's
12 length collective bargaining including the absence
13 of substantial concessions by Amtrak as they went
14 through negotiations.

15 And, again, by any measure, Amtrak has
16 engaged in good faith bargaining with all of its
17 unions, which has resulted in 13 ratified
18 agreements.

19 They have done it timely. They have done
20 it in a productive manner. These agreements include
21 significant improvements for the unionized workforce
22 during a very difficult economic period for this

1 country.

2 Q Have you looked at other Presidential
3 Emergency Boards and interest arbitration decisions
4 to address the pattern issues?

5 A I have. And in looking at these, I have
6 learned, although I knew it before, that maintaining
7 internal pattern parity is a very important factor
8 to both parties during negotiations.

9 Again, looking at Elkouri & Elkouri, they
10 said: "A well-established internal pattern
11 generally is given greater consideration by
12 arbitrators than external patterns."

13 And if you look at prior interest
14 arbitrations and PEBs, I think it will show that to
15 be the case.

16 Q Can you give us an example of some
17 specific PEBs that have done that?

18 A Sure. In PEB 176, the report stated:
19 "Late settlements above a pattern earlier
20 established penalize employees involved in the
21 earlier voluntary negotiations. This is destructive
22 of the broader system of collective bargaining in

1 the industry."

2 And in 222, the Board recognized that the
3 distinct internal pattern Amtrak set with, "about 50
4 percent" of its union workforce and determined, "to
5 ignore the pattern and to grant each of the
6 organizations here involved its own wage demand
7 would reduce Amtrak's wage structure to chaos. We
8 decline to make such a recommendation."

9 And of course, as a reminder, PEB 222, the
10 Amtrak pattern provided higher wages than was
11 proposed by the freights.

12 And, again, as I alluded to in Mr. Roth's
13 testimony, excuse me, in his report, there is a
14 reason for that because this was "the catch up"
15 around.

16 But in fact, the settlements were higher
17 than the freights.

18 Q PEB 231?

19 A In 231, the Board found that wages should
20 adhere to the internal pattern between SEPTA and the
21 BLET. And the Board understood that allowing the
22 last union to hold out and not follow the internal

1 pattern could negatively impact the carrier's
2 relationship with its other unions, impact the
3 morale of the employees, and leave other unions to
4 start looking externally.

5 In PEB 240, which involved Metro North and
6 a number of its unions, they had established a
7 pattern with ACRE which represented six of the
8 carriers' 17 bargaining units.

9 And the Board found in favor of Metro
10 North using the same wage pattern it had established
11 with ACRE to the coalition.

12 Now, interestingly enough, in PEB 243, the
13 Board found just the opposite. That one union,
14 which in this case UTU, did not represent an
15 internal pattern. They only represented 27 percent
16 of the workforce.

17 But as part of the union's argument, one
18 of the Union attorneys, Carmen Parcelli, explained
19 in her opening statement that the majority of PEBs
20 have used the pattern principle where 80 to 90
21 percent of the employees have settled.

22 Let me quote if I can from her opening

1 statement: "There's a substantial body of PEB
2 precedent that is built up regarding the pattern
3 principle. These precedents address both of what
4 constitutes a pattern and, if there is a pattern,
5 what that pattern consists of.

6 "So here we have the carriers contending
7 that an agreement formed with only one organization
8 represents only 27 percent of the workforce sets a
9 pattern that 11 other organizations should follow.

10 To call an agreement a pattern would be a
11 substantial departure from past PEB decisions. It
12 would also be very detrimental to healthy bargaining
13 and labor relations in the industry.

14 "Past PEBs have been clear. In order to
15 serve as a guide for the other 13 recommended
16 settlements, a claim pattern must be 'clearly
17 established and ascertainable.'"

18 She goes on to say: "In fact, the vast
19 majority of PEBs have turned to the pattern
20 principle in cases where 80 to 90 percent of
21 employees have settled."

22 So why have past PEBs insisted on the

1 majority to find a pattern?

2 Well, they have held so because
3 settlements with only a minority simply do not
4 provide sufficient evidence of broad acceptability
5 among employees.

6 And in this case, there is no doubt there
7 is broad acceptability among the employees in the
8 unions.

9 Q Turning beyond the PEBS to interest
10 arbitration decisions, have you found relevant
11 reference points there?

12 A Yes. And this is an important one. And
13 it's a case that I alluded to earlier in my
14 testimony about, in essence, not rewarding unions
15 that don't settle in a timely manner.

16 At the Massachusetts Bay Commuter
17 Railroad, they had 14 unions opening. They had all
18 in a coalition. 12 of those 14 reached voluntary
19 settlements. The BMW did reach an agreement. It
20 failed ratification. The arbitrator imposed the
21 pattern.

22 Only one union from the coalition, the

1 dispatchers, was then unable to reach an agreement.
2 And the Board not only extended the agreement with
3 the other crafts to ATDA -- I point you to the
4 bottom bullet -- ATDA was penalized.

5 The Board ruled that the lump sum payments
6 for ATDA members would be reduced by the amount of
7 savings the members could have realized for the
8 company had they been paying the higher health
9 insurance co-pays set forth in the TA since July 1,
10 2011.

11 That is an unusual award in that it points
12 out that, not only should you not be rewarded for
13 failing to make timely agreements, the arbitrator in
14 this case said that they should be penalized.

15 Q Can you provide the Board with an overview
16 of your concluding opinion?

17 A Sure. As I have stated, past PEBs and
18 arbitrations support the idea and the notion that
19 similar settlements covering 84 percent of
20 employer's unionized workforces does constitute an
21 internal pattern, that Amtrak's approach has not
22 been consistent during all of the rounds of

1 bargaining.

2 In this round, Amtrak preceded the
3 freights in reaching an agreement. And this Board's
4 decision is important.

5 Just as 242 dealt with what was taking
6 place in that round, this Board should not decide
7 that the relationship between freight settlements
8 and Amtrak settlements should be viewed as the
9 solution for this particular dispute.

10 And it's not and should not be the
11 permanent establishment of a future relationship.

12 The Board will decide the appropriate
13 outcome in this case, I recommend, based on this
14 round alone and the facts surrounding this round.

15 What happens in the next round, there may
16 be a whole new set of factors that take place.

17 What is important and what is critical is
18 what happens in this round and that the principal
19 guidelines in the negotiating principles of the
20 Railway Labor Act, which is to obligate the parties
21 to bargain in good faith, to try and avoid any
22 interruption in interstate commerce, and encourage

1 labor relations, should be used by this Board in
2 determining its decision.

3 Q What do you see as the choice before the
4 Board?

5 A I really see one of two choices.

6 It's really the internal pattern or an
7 external pattern, both of which I have discussed
8 here today.

9 Q What are the consequences of going with an
10 external pattern based on freight settlements?

11 A So as, again, somebody that has bargained
12 so many contracts in so many industries, these are
13 things I worry about as an actual negotiator person
14 at the table.

15 If the internal pattern is not utilized
16 here, I think it has very significant consequences
17 to what happens to labor relations in collective
18 bargaining at Amtrak.

19 One could make the argument, if I'm the
20 unions, as a result of what happens here, I'm not
21 going to even bargaining with Amtrak until I see
22 what the freights do.

1 Even if Amtrak and its unions do bargain
2 and negotiate, what are their targets? They went
3 first in this round. Their contracts come open
4 shortly.

5 What are the targets that they're going to
6 use when they negotiate and the freights haven't
7 settled?

8 How do you negotiate the critical issues
9 like pay and benefits?

10 If the freights don't negotiate any work
11 rules, does that mean that the unions can refuse to
12 negotiate work rules here?

13 As we have talked about, that's not the
14 way it has been in the past. Amtrak has bargained
15 work rules when the freights have not, on occasion.

16 What happens in the event, perhaps
17 unlikely, that the freights -- Amtrak does settle
18 first?

19 And because the freights have different
20 lines of business, they're for-profit companies. If
21 something happens on that side, if the freights
22 settle for less, if Amtrak settled first, what

1 happens?

2 If in fact you're bargaining based on the
3 freights, do you have to give back money?

4 I know it sounds on the surface absurd,
5 but, as a negotiator, you think of all of those
6 possibilities of what could happen.

7 And if this Board finds that the freight
8 pattern does exist, are we in essence in reality
9 punishing those employees who want to make early and
10 timely settlements because there's time value to
11 money?

12 Yes, they get retroactive pay. But tell
13 me an individual that wouldn't like to have a dollar
14 in his pocket today versus a dollar two years from
15 now.

16 And what does it mean in terms of Amtrak
17 being able to bring its own issues to the bargaining
18 table?

19 And how do you handle medical because the
20 AmPlan is different, and they separated it from the
21 freight plan many years ago.

22 Q What are the consequences of following an

1 internal pattern?

2 A It means that what Joe Boardman, under his
3 leadership, as executed by Charlie Woodcock, and all
4 of the unions that step forth to negotiate in good
5 faith is not done in vain.

6 I think it puts incredible trust in
7 Amtrak's leadership, Amtrak's collective bargaining,
8 Amtrak's labor relations people to adhere to the
9 internal pattern.

10 And that neither party will delay
11 negotiations in the future in anticipation of having
12 to wait for a freight settlement.

13 Q So what conclusion would you like to
14 present to the Board?

15 A Very simply that, based on my experience
16 and familiarity with Amtrak's history, the current
17 round of bargaining, the precedents set in prior
18 PEBs and arbitration, and in consideration of the
19 consequences that I have just laid out, that BRS and
20 BMWWE should follow the current internal pattern that
21 has been established by Amtrak.

22 MR. REINERT: Thank you, Mr. Glass.

1 I have no further questions.

2 ARBITRATOR JAFFE: Fair enough.

3 Do you want some time before cross?

4 MR. WILDER: Yes, I think so, perhaps at
5 11.

6 ARBITRATOR JAFFE: We will stand in recess
7 until then. Thank you.

8 (A recess was taken.)

9 MR. WILDER: We are ready to proceed?

10 ARBITRATOR JAFFE: At your convenience,
11 sir.

12 CROSS-EXAMINATION

13 BY MR. WILDER:

14 Q Good morning, Mr. Glass.

15 A Good morning.

16 Q When did your professional relationship
17 with Amtrak, begin, Mr. Glass?

18 A 1994.

19 Q Do I assume from that response that you
20 were not involved in the creation of Amtrak in the
21 mid 1970s?

22 A That's correct.

1 Q Were you involved in the -- either the
2 1981 or the 1988 round of bargaining between Amtrak
3 and its organization?

4 A No.

5 Q In preparation for your testimony today,
6 did you study the creation of Amtrak in the mid
7 1970s?

8 A No.

9 Q Are you familiar with the emergence of
10 Conrail from the bankruptcies in the early -- in the
11 late 1970s and 1980s?

12 A Yes.

13 Q You are.

14 Was there a connection between Amtrak
15 bargaining and Conrail bargaining?

16 A Yes.

17 Q Would you explain that connection?

18 A They -- it was Conrail basically
19 bargaining and Amtrak doing the same.

20 Q Did they bargain separately?

21 A Back in their creation?

22 Q Yes.

1 A I don't believe so.

2 Q Were Amtrak employees drawn from Conrail,
3 Mr. Glass?

4 A Yes, sir.

5 Q Were the initial rates of pay rules and
6 working conditions at Amtrak those at Conrail?

7 A At their creation?

8 Q Yes.

9 A I believe they were, but I haven't looked
10 at it, so I couldn't tell you definitively.

11 Q I see. You made reference in your direct
12 testimony to a deferred wage.

13 Is that correct?

14 A Yes.

15 Q Would you explain that for us?

16 A Because of some -- and I can't remember
17 the particulars, but because of some specific issue
18 or issues at Conrail, Amtrak -- when Conrail took
19 deferrals, Amtrak did as well.

20 Q Was that because the bargaining at Amtrak
21 looked to be bargaining at Conrail?

22 A I believe that's the case, yes.

1 Q So that was an external pattern, was it
2 not?

3 A I wouldn't call it an external pattern
4 necessarily.

5 At that point in time, they were
6 bargaining the way Conrail was. So it was, call it
7 a piggy back, or they were doing what Conrail was
8 doing at that time.

9 Q I see. Now, on page 23 of your PowerPoint
10 presentation --

11 A Yes.

12 Q -- you indicate that Amtrak's agreements
13 with its unions were drastically different than
14 those reached at the freights in the 1981 round of
15 bargaining?

16 A That's correct.

17 Q Was that explainable by what you just
18 indicated, that the Amtrak bargaining depended upon
19 Conrail, and the Conrail experience in 1981 was
20 different from those of the other freights?

21 A My testimony with respect to the '81
22 round, I didn't testify as to why.

1 I was testifying to the fact that it was
2 not the same as the freights.

3 Q All right. Do you know why that is true?

4 A I do not off the top of my head.

5 Q Now, moving down to the third bullet point
6 on page 23 of your testimony, Mr. Glass, you
7 indicate that in the 1988 round, the BMWED and BRS
8 wage increases at Amtrak were significantly
9 different from the "freight pattern."

10 A Uh-huh.

11 Q Was this difference explained by the
12 recovery of Amtrak of the 12 percent deferral?

13 A Yes, it is.

14 Q And, thereafter, did the wage pattern at
15 Amtrak mirror that at the freights?

16 A It only did until the last round of
17 bargaining.

18 This round of bargaining, it is not
19 mirrored. So there was a period of time in which it
20 did mirror and a period of time in which it did not
21 mirror.

22 Q I see. And that period of time was

1 between 1981 and 1988; correct?

2 A Well, not only then, but also this round
3 as well.

4 Q The one that you're referring to that
5 began in 2010?

6 A That is correct.

7 Q Now, I think I understood your direct
8 testimony on the point that was raised by the
9 Chairman and Member Fishgold, but just to make
10 absolutely certain, was it at any time disclosed in
11 your studies in preparation for your testimony today
12 that the BMWED and the BRS settled prior to the
13 freights?

14 A No, they have not.

15 Q And you consulted page 24 of your
16 testimony, or the chronology of settlements that you
17 had prepared?

18 A That's correct.

19 Q I'm going to draw your attention to the
20 far left-hand column on the chronology page 24 of
21 your testimony.

22 Would you annotate that for me and tell me

1 when?

2 A Yes.

3 In this particular column, the BMWWE was
4 the first railroad to settle at Amtrak in that
5 round.

6 Q All right. But after the freights?

7 A After some the freights, but not all of
8 the freights.

9 And interestingly enough, they settled
10 prior to two of the largest freight unions BLET and
11 UTU.

12 Q When did the BMWED settle on the freights
13 in that round?

14 A April 27 of '82.

15 Q All right.

16 ARBITRATOR JAFFE: I'm sorry. You just
17 answered what's coded as the Amtrak column.

18 THE WITNESS: I'm sorry. Freights?

19 BY MR. WILDER:

20 Q Yes, freights.

21 A Oh, my apologies.

22 BMWWE is not on here, actually.

1 It must be an omission.

2 Q Do you happen to know when that was so we
3 can annotate this?

4 A No, I don't.

5 But -- no.

6 Q Have you participated in bargaining
7 negotiations at Metro North, one of the commuter
8 railroads you referred to?

9 A No.

10 Q Have you participated in collective
11 bargaining -- withdrawn.

12 Do you happen to know as a result of your
13 researches whether collective bargaining at Metro
14 North is influenced in any way by collective
15 bargaining at the Long Island Railroad with
16 reference to the maintenance of way craft and class?

17 A No, not specifically that union.

18 Q Now, I believe that you referred to
19 Elkouri & Elkouri's work as the bible of industrial
20 relations in the industry.

21 Is that correct?

22 A Yes, sir.

1 Q I take it from that that you regard the
2 work as authoritative?

3 A It is authoritative.

4 Q You don't question that in any way, do
5 you?

6 A No.

7 Being authoritative and questioning are
8 two different things.

9 Q Fair enough.

10 Now, in the discussion of internal
11 patterns that you reference in your exhibits and
12 during your testimony today, it indicates that a
13 well-established internal pattern generally is given
14 greater consideration by arbitrators than external
15 patterns.

16 That is the part of Elkouri & Elkouri
17 you're referring to?

18 A Yes.

19 Q All right. Now, just above that last line
20 of the preceding paragraph, on the same page, that
21 is page 22-88, in Chapter 22, in Section 10.D,
22 Elkouri & Elkouri state: "The longer a set of

1 internal linkages is found to have existed, the
2 greater the weight given to the maintenance of the
3 pattern."

4 Do you agree with that?

5 A Can you say that again, please?

6 Read that again for me again, please.

7 Q I -- instead of reading it again, let me
8 show it to you.

9 A Okay. Sure.

10 Q All right?

11 A Yeah. Thank you.

12 Q I don't have another copy for counsel, but
13 I think he can assume that I'm not misquoting.

14 A Okay. I have read it.

15 Q I see. Do you agree with it?

16 A No. Not necessarily. I agree in part
17 with it.

18 If the reference to the word "longer"
19 means a long period of time versus the period within
20 that round, I do not necessarily agree with it
21 because in all round -- in all bargaining and in all
22 rounds, you have to ultimately rely on the set of

1 facts and circumstances that govern this round of
2 bargaining.

3 It is not enough for frankly either side
4 to say that because we have done it this way for the
5 past 20 years, that that has to dictate what's going
6 to happen now or in the future because circumstances
7 change, managements change, ways management approach
8 complex issues and labor changes.

9 So, no, I don't necessarily agree with
10 that.

11 Q All right. Is it a fact, Mr. Glass, that
12 the internal pattern that you referred to as
13 emerging during the 2010 round of bargaining at
14 Amtrak is a first-time development?

15 A Yes.

16 Q So it has not lasted very long at all, has
17 it?

18 A Lasted -- I'm not sure what you mean by
19 that.

20 Q Well, it hasn't lasted any longer than the
21 midpoint of 2010 when the first agreement was
22 entered into, has it?

1 A No.

2 It has lasted beyond that. It has
3 lasted -- it has lasted up to this point until the
4 last agreement was reached.

5 Actually, in my view, quite remarkable
6 that it has held together.

7 It's a testament, frankly, to the unions
8 that have participated and the management team, that
9 even after the freight agreements were settled, the
10 two largest operating unions who could have easily
11 made an argument to the Company that, despite even
12 then a well-established pattern, they would prefer
13 to go with the freights, that they opted to agree
14 with Amtrak and go with the pattern that had been
15 established.

16 Q Is it your testimony that any variation
17 from the national freight pattern is by definition
18 well established?

19 A I'm not -- I apologize, but I'm not sure I
20 understand the question.

21 Q Do you view the 2010 Amtrak internal
22 pattern, which was described by Mr. Woodcock and

1 yourself, as "well established?"

2 A Yes.

3 Q Why?

4 A Because with 15 unions on the property,
5 from the very first settlement until now, each and
6 every union had the opportunity to say either, I'm
7 going to wait and see what the freights do, or I
8 want more and what has been settled is not
9 sufficient for me.

10 And yet, they have chosen not to do that.

11 Q Now, you testified about the time value of
12 money, very briefly of course, in your direct
13 testimony.

14 A Yes.

15 Q Now, isn't it a fact that the time value
16 of money is a principle that is applicable to all
17 economic relationships?

18 A Yes.

19 Q So it makes no difference whether the
20 parties are adopting an internal pattern or an
21 external pattern with reference to the time value of
22 money, does it?

1 A Yes, it does.

2 And I would disagree with your comment
3 because I think that what you have to look at with
4 respect to the time value of money is actually both
5 sides.

6 There is time value of money to a company
7 or an agency to hold onto it for it being used for
8 other purposes or not spending it. And there is a
9 time value of money to employees to get it in their
10 pockets faster.

11 And I think it's critical to note that --
12 you know, I discussed in my testimony to a great
13 deal all of the lessons that Amtrak learned as a
14 result of 242.

15 And I would say to you, Mr. Wilder, that I
16 think that the unions learned an incredibly valuable
17 lesson as well, indicated by the incredible number
18 of unions that settled so quickly.

19 And I would testify and tell you that they
20 recognized the time value of money. That, even
21 though they ultimately knew that they were going to
22 get retroactive pay because 242 had talked about

1 that, those unions elected to represent their
2 members by saying, I'm going to put money in their
3 pockets as quickly as possible because there is
4 value to money being in my members' pockets as
5 opposed to waiting and waiting and waiting.

6 Q So other words, the time value of money
7 turns on the timing of the settlements.

8 Is that correct?

9 A It may, yes.

10 Q And it doesn't turn on whether the
11 internal or external pattern is referred to, but
12 rather the timing of the settlements within the
13 pattern; correct?

14 A No, not correct.

15 And perhaps I didn't make my point well
16 enough. I apologize for that.

17 If the unions had decided to wait for an
18 "external pattern" and in this case waiting for the
19 freights to settle, then that time value of money is
20 very meaningful in terms of what they lost.

21 They opted to go with the internal pattern
22 so that their members would receive money as quickly

1 as possible.

2 Q Did the time value of money affect the
3 settlements of the sheet metal workers, the NCFO,
4 and the IBBB in relation to the settlement of the
5 TCU that settled first?

6 Was the time value of money different for
7 those organizations?

8 A Yes. But it's a great -- to me, it's a
9 great example on the value of money.

10 I suspect -- and, you know, I can't speak
11 for them. But as an observer and as an experienced
12 negotiator, I suspect that they took the position
13 early on by being part of the coalition and that the
14 coalition was going to stay and wait for the freight
15 agreement to be done because they opted at some
16 point and made the conscious decision to pull out of
17 the coalition, not wait any longer for when
18 settlements were done or how long it would take
19 after the freight settlements finished, and made the
20 conscious decision to break from the coalition and
21 get money into their members' hands.

22 But there was some impact, in my view, on

1 the time value of money because they did wait some
2 period of time, but certainly not as long as others.

3 Q And that is your speculation. Is that
4 correct?

5 A That's my observation based on my 30-plus
6 years of doing this and how unions make decisions.

7 Q All right. I think we can agree that the
8 time value of money applies equally to your
9 experience and to mine; correct?

10 A I would agree with you.

11 Q Fine. That's great.

12 Mr. Glass, we normally meet in the airline
13 industry.

14 Is that correct?

15 A Is that correct.

16 Q All right. Are you familiar with the
17 collective bargaining experiences that have occurred
18 in connection with the American Airlines-US Airways
19 transaction?

20 A Am I familiar with it? Yes.

21 Q I'm going to refer to the pilots agreement
22 in particular.

1 A Okay.

2 Q And I think you know that the current
3 agreement that's governing the craft and class of
4 pilots -- well, both crafts and classes of pilots at
5 American and US Airways is the so-called Merger
6 Transition Agreement that consists of the agreement
7 between American Airlines and the ATA that was
8 approved by the bankruptcy court in December of
9 2012?

10 A I am familiar with it, yes.

11 Q And also the so-called memorandum of
12 understanding that was negotiated by US Airways,
13 American Airlines, the Allied Pilots Association
14 representing American Airlines pilots, and the U.S.
15 Airline Pilots Association representing US Airways
16 pilots and the unsecured creditors?

17 A Yes.

18 Q I see. And is it not a feature of that
19 agreement that the next wage package and the next
20 wage agreement between the pilots and the new
21 American Airlines will be determined by averaging
22 pilot rates of pays at Delta Airlines and at United

1 Airlines?

2 A Yes.

3 That's the first time that has been done.

4 Q And that is a very recent example of would
5 you describe as internal pattern?

6 A That -- well, the -- no, in fact, that
7 would be an example of an external pattern because
8 they'll be looking at other competitors in the same
9 industry, albeit different unions.

10 Q Right.

11 A But, you know, I mean, I think it's a
12 great example to point out.

13 But in this case, that you treat every
14 single round based on the facts that you have in
15 front of you.

16 And so this is a first for them. They
17 were not bound by what others have done in the past
18 or what they have done in the past.

19 They put the facts in front of them in
20 this round and bargained that way.

21 Q Have there been other instances of that
22 type of bargaining in the airline industry?

1 A Some. Not a lot, but there are some.

2 Q Alaska Airlines would be one, would it
3 not?

4 A And, again, another perfect example of
5 what I was talking about. They used to have it, and
6 they got rid of it because times change;
7 circumstances change. Parties were unhappy with the
8 process or the outcome and elected to no longer use
9 that provision.

10 Q Could you tell us something which you
11 referred to during this cross-examination, and that
12 concerns your relationship with Amtrak through 1994?

13 A What would you like to know?

14 Q I would like to know, did you participate
15 in collective bargaining negotiations during that
16 period?

17 A Yes.

18 Q With what crafts?

19 A This current round, I was brought in for
20 the last two mediation sessions with BMWED and BRS.

21 Q I remember that.

22 A I'm glad to hear that.

1 Q Beyond that recent experience with Amtrak,
2 did you participate earlier in the bargaining
3 negotiations at Amtrak?

4 A No, I did not.

5 Q Is Amtrak a member of your coalition?

6 A They used to be.

7 They are no longer a member.

8 Q I see. When was that connection severed?

9 A I think they withdrew three years ago as a
10 member.

11 They still subscribe to some of our
12 services, however.

13 Q I see. And prior to withdrawing three
14 years ago, how long had they been a member?

15 A They were a founding member.

16 So they were in since 1994 until, I'm
17 going to say, again, about three years ago.

18 Q Now, at any time between 1994 and this
19 round of bargaining at Amtrak, Mr. Glass, were you
20 retained by Amtrak?

21 A Yes.

22 Q To do what?

1 A In -- at the end of the last round of
2 negotiations, just prior to PEB 242, I was asked to
3 come in and take a look at what was -- give an
4 outsider's view of what was taking place in
5 negotiations knowing that they were close to the end
6 game.

7 And they asked me for my opinions as to
8 how the negotiations would conclude or should
9 conclude or how they might conclude.

10 Q Were you retained by Amtrak in a similar
11 or other capacity between 1994 and the aftermath of
12 PEB 242?

13 A It wasn't the aftermath.

14 I was actually retained prior to 242.

15 Q I see. Excuse me.

16 A But to answer your question, prior to my
17 retention.

18 Q Yeah.

19 A Before 242, I had not been at the table
20 with Amtrak bargaining.

21 Q Were you retained by Amtrak?

22 A In -- during the period before then?

1 Q Yes. Yes.

2 A For work other than related to -- yes.

3 I actually believe we may have testified
4 or a member of my team may have testified in an
5 arbitration over a dispute.

6 And I think we may have been retained once
7 or twice in that regard.

8 Q All right.

9 MR. WILDER: Excuse me, Mr. Jaffe.

10 ARBITRATOR JAFFE: Of course.

11 MR. WILDER: No further questions.

12 Thank you, Mr. Glass.

13 ARBITRATOR JAFFE: Any further direct?

14 MR. REINERT: I just have some very short
15 direct.

16 REDIRECT EXAMINATION

17 BY MR. REINERT:

18 Q Mr. Wilder asked you a question about
19 Elkouri and the duration of internal patterns.

20 Looking at your review of Amtrak
21 agreements going back historically, have different
22 groups on Amtrak received different GWIs in the same

1 round?

2 A Yes.

3 Q And when has that occurred?

4 A I believe the -- and I would have to
5 double check, but I want to say the '81 round, maybe
6 the '85 round for sure.

7 But I do know in my research, it has not
8 always -- not everybody has gotten the same.

9 Q In most of the rounds, have most of the
10 unions gotten the same thing?

11 A Yes.

12 MR. REINERT: No further questions.

13 MR. WILDER: Nothing further.

14 ARBITRATOR JAFFE: Anything from that you
15 wish to pose?

16 ARBITRATOR DAS: No.

17 ARBITRATOR FISHGOLD: No.

18 ARBITRATOR JAFFE: Just one question,
19 Mr. Glass, if I may on what was Slide 15, that was
20 the commuter railroad --

21 THE WITNESS: Yes, sir.

22 ARBITRATOR JAFFE: -- slide.

1 Is it your understanding that the similar
2 numbers we see for many of the years for the New
3 Jersey Transit and Metro North and Long Island
4 Railroad columns are essentially coincidence or
5 happen to be circumstance, or do you believe that,
6 even if there's no showing of pattern as such, that
7 there's clearly some linkage?

8 THE WITNESS: With respect to Metro North
9 and Long Island Railroad, I point that out to you
10 that from the period of 1999 until now -- or excuse
11 me, from 2009, the increases were identical.

12 They were not prior to that.

13 So clearly, there was a change in
14 philosophy such that the pattern did change at that
15 point in time. But it has not always been the same.

16 And with respect -- you asked about New
17 Jersey Transit?

18 ARBITRATOR JAFFE: I did.

19 THE WITNESS: There really is no
20 connection whatsoever between New Jersey Transit and
21 Metro North or Long Island Railroad.

22 If there are any years in which they got

1 the same increase, it's purely coincidental because
2 the vast majority, they did not always get the same.

3 ARBITRATOR JAFFE: I'll leave it at that.

4 Any further direct?

5 MR. REINERT: Just a follow-up on that.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. REINERT:

8 Q Are you aware of what the structure is
9 with respect to Long Island Railroad and Metro North
10 with respect to organization and funding?

11 A Yes.

12 And I believe it was pointed out in PEB
13 244, both of those agencies are covered by the
14 Metropolitan Transit Authority, the MTA.

15 They're both sister organizations within
16 the MTA, as there are other entities within that --
17 under that umbrella as well.

18 Q Do you know when that organizational
19 structure became applicable?

20 A I actually do not.

21 MR. REINERT: No further questions.

22 ARBITRATOR JAFFE: Any further cross?

1 MR. WILDER: Nothing further.

2 ARBITRATOR JAFFE: You guys okay?

3 ARBITRATOR DAS: Yeah.

4 ARBITRATOR FISHGOLD: Yeah.

5 ARBITRATOR JAFFE: I'm in good shape as

6 well.

7 Thank you, Mr. Glass.

8 THE WITNESS: Thank you, Mr. Jaffe.

9 ARBITRATOR FISHGOLD: Off the record?

10 ARBITRATOR JAFFE: Yeah. Sure.

11 (A discussion was held off the record, and the

12 witness stood down.)

13 ARBITRATOR JAFFE: We stand in adjournment

14 until 1:15.

15 (The lunch recess was taken.)

16 (The witness was duly sworn by the arbitrator.)

17 MR. REINERT: Before the next part of the

18 case, I'm going to turn the proceeding over to my

19 colleague and partner, Donald Havermann.

20 Thereupon,

21 THOMAS O. S. RAND

22 Called for examination by counsel for the

1 Carrier, having been duly sworn, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. HAVERMANN:

5 Q Good afternoon, Mr. Rand.

6 A Yes.

7 Q Can we go over your name for the record,
8 please?

9 A Yes. Thomas Osee (phonetic) Sewel
10 (phonetic) Rand.

11 Q And, Mr. Rand, your position, please?

12 A I'm currently managing director, employee
13 benefits for PRM Consulting Group.

14 We're an actuarial and benefits consulting
15 firm.

16 Q And your expertise lies in healthcare.
17 Is that correct?

18 A It does.

19 I have been in the consulting business,
20 the employee benefit consulting business,
21 principally in the healthcare consulting business
22 since 1970.

1 Q Let's talk about your background just for
2 a bit.

3 If you can tell us a little bit about your
4 employment history and any expert testimony that you
5 have given.

6 A Yes. I graduated from Dartmouth College,
7 and then later from the law school of American
8 University. As I indicated, I have been in this
9 business since 1970.

10 Interestingly enough, that coincided with
11 the first work that I undertook for Amtrak when they
12 were still operating under the Board of
13 Incorporators, before they actually became
14 operational as a company in May of 1971.

15 In terms of my background and expertise
16 with interest arbitrations and representing
17 employers in these matters, I have done that type of
18 work over the last 25 years for the United States
19 Postal Service.

20 I served on the arbitration panel that was
21 the Valtin panel in 1994 that dealt exclusively with
22 health benefit issues for the Postal Service in the

1 arbitration with what was then the Joint Bargaining
2 Committee. That was the City Letter carriers and
3 the clerks.

4 And I have appeared in a dozen interest
5 arbitrations as an expert witness on USPS's behalf.
6 Most recently, the arbitration that was concluded in
7 early 2013 between the Postal Service and the Mail
8 Handlers.

9 I have also appeared in four interest
10 arbitrations on behalf of the Washington
11 Metropolitan Area Transit Authority.

12 In terms of my work in this particular
13 area, with Amtrak, I appeared as an expert witness
14 in the Zumas arbitration, which dealt with the
15 question of the appropriateness and essentially the
16 legality of Amtrak removing itself from the industry
17 wide plan.

18 I believe that arbitration date was 2000.

19 Actually, I think it was earlier than
20 that. I think it was 1990. It definitely was
21 earlier than that. It was 1990.

22 I also appeared in an -- two earlier PEBs,

1 including most recently PEB 242 that was concluded
2 in early 2008.

3 My testimony was in December 2007.

4 Q Okay. And your testimony in that
5 proceeding dealt with AmPlan.

6 Is that correct?

7 A That's correct?

8 Q And you're familiar with AmPlan?

9 A I am.

10 Q What assignment were you given by Amtrak
11 in connection with this proceeding?

12 A Really to assist in the analysis of the
13 issues that involved the differences between the
14 parties having to do with the benefits provided
15 under the AmPlan and the contribution levels that
16 were in play in this particular labor negotiation,
17 and ultimately in the mediation sessions.

18 Q Okay. And you have prepared the
19 PowerPoint that appears on the screen in front of
20 us?

21 A I have.

22 Q Why don't we walk through that, if we

1 could, Mr. Rand, starting with Slide 2.

2 A Right.

3 Q What do you intend to cover today?

4 A Just briefly the key issues that I'm going
5 to cover in the testimony today are the general
6 provisions, the benefit provisions of AmPlan and the
7 freight plans before and after dealing with the both
8 employee contributions, and also the major or key
9 plan provisions.

10 I'm also going to review for the Board's
11 benefit how AmPlan benefits compare with comparators
12 in the private sector and also with respect to the
13 Federal Employee Health Benefit Program.

14 The private sector comparison I have drawn
15 from a review of two surveys, the Hay Group survey
16 and the Kaiser Family Foundation, their annual
17 survey.

18 And I have basically in this presentation
19 used data from the latter survey. Both surveys
20 essentially show the same sort of pattern, if you
21 will, in terms of benefit levels and contributions.

22 That survey is widely used. It has been

1 around for many years. And it was cited with some
2 particularly in PEB 243 and also PEB 244.

3 With respect to the Federal Employee
4 Health Benefit Program, what I have done for the
5 Panel's benefit is to review the benefit provisions
6 of Amtrak compared with the benefit provisions and
7 contribution levels under the six largest FEHB
8 programs, which collectively cover about 75 percent
9 of all federal employee participants.

10 I'm go to briefly comment on a key timing
11 issue that I think will factor into this Board's
12 considerations.

13 I also will review for the Board the
14 effect of the Patient Protection and Affordable Care
15 Act. It already has substantial affects on the
16 AmPlan as it has on employee benefit plans, health
17 plans in the U.S. economy generally.

18 And there is an impending future effect in
19 terms of the so-called Cadillac tax. And I'll
20 review what Amtrak's consultants have developed with
21 respect to the potential exposure of AmPlan to the
22 excise tax that is a feature of the Affordable Care

1 Act.

2 Then I'm going to turn to the economic
3 value that's associated with a variety of changes
4 that were discussed and/or proposed between the
5 parties in the mediation sessions, Amtrak's
6 proposals presented to the unions in mediation, the
7 effect in terms of the savings that are associated
8 on a per-participant basis, as well as in the
9 aggregate for Amtrak, and then Amtrak's statement of
10 position that was delivered in July of 2013 to the
11 Union.

12 And finally, in the context of that next
13 to last bullet, I'm going to discuss what
14 Mr. Reinert had referred to as opportunities for the
15 Board's consideration having to do with a variety of
16 ways that the Board might seek to entertain
17 tradeoffs between general wage increases over and
18 above the Amtrak pattern proposal, and where a
19 savings might be generated to fund those general
20 wage increases.

21 Q Mr. Rand, what do slides 3 and 4 purport
22 to represent?

1 A These are really here simply for the
2 Board's convenience to give you a table of contents,
3 if you will, that references the sections of my
4 presentation that I intend to go through and the
5 particular slides that refer to those particular
6 sections.

7 So that if you're reviewing the material
8 after the presentation, it will be easier and more
9 convenient to simply refer to this table of contents
10 as sort of an index to take you to the proper slide.

11 Q Why don't we start with slide 5, if we
12 could.

13 A Yeah. Slide 5 in a sense is also here for
14 the Board's convenience.

15 It's to give you really a summary picture
16 of sort of where the parties have been during the
17 course of the negotiations and the mediation
18 sections and where the parties currently stand in
19 terms of the proposals that each have presented to
20 this Board.

21 If you look at the third column going down
22 the page, that really -- that column shows both

1 employee contributions and benefit levels for the
2 Amtrak pattern established through the June 2010
3 agreements with the other unions.

4 Now, up to 13 of the 15 Amtrak unions.

5 The second column or the column
6 immediately to the right of that is Amtrak's July
7 17, 2013 statement of position, which essentially is
8 an amalgam of the Amtrak pattern employee
9 contributions and the benefit changes that reflect
10 the freight deal that was consummated in 2011.

11 And as we note in some of the text here,
12 some elements of that freight deal, particularly
13 those having to do with utilization management, were
14 already in place in AmPlan. Those had been put in
15 place by the agreement between the parties through
16 the Joint Medical Administration Committee.

17 That's the committee that oversees the
18 ministerial aspects of administering AmPlan. And
19 its a joint committee that it has equal
20 representation of management and labor. And that
21 committee has been in place since AmPlan was first
22 instituted a number of years ago.

1 The column immediately to the right of
2 that shows the key elements of the freight deal.

3 And it's pretty much the same as the
4 column to its left with the exception of the
5 contribution rates, which are somewhat higher in the
6 early year and then lower in the out years compared
7 with the contributions under the Amtrak pattern.

8 The next column over shows the PRLBC,
9 February 2012 of proposal.

10 And then the final column shows the most
11 recent statement of position.

12 And I believe the only difference in the
13 PRLBC's statement of position as of November 2013 is
14 the acceptance in 2016 of the contribution change
15 that would mirror what I understand is in the
16 freight deal that is going to contribution that's
17 the lesser of 15 percent of premiums in 2016, or
18 \$230 monthly.

19 Q So, Mr. Rand, with respect to
20 contributions in the first row, if we turn to the
21 PRLBC February 13, 2012 proposal, those contribution
22 rates proposed by the PRLBC are 177.54 for the

1 duration of -- through the end of -- well, through
2 July of 2016?

3 A That's correct.

4 It will be unchanged through 2016.

5 Q And those numbers are different from the
6 numbers that the freight railroads are asking their
7 employees to contribute.

8 A They are. They're a fair amount lower,
9 some 12 percent, 10, 12 percent lower.

10 Q Okay. In the Amtrak pattern column, in
11 the second row dealing with the futures of the
12 medical plan, there are the words 100 percent, zero
13 dollars, N/A, \$75, and then a 25/20.

14 Do you see that?

15 A Yes.

16 Q Okay. The \$75 ER co-pay, that is the only
17 change from the status quo in that proposal?

18 A Yes. That is the only change that was
19 made in the AmPlan benefits in the negotiations with
20 the other unions.

21 And as the Board can see, there are some
22 significant differences. There's no deductible

1 under the AmPlan, no general annual deductible.

2 There's 100 percent co-insurance.

3 So with respect to many expenses under the
4 plan, there's essentially 100 percent coverage.

5 The unions were interested in retaining
6 that. And Amtrak bargained around that interest and
7 came up with that proposal.

8 And in an environment where particularly,
9 as time passed by, it became clear that the freights
10 were going to seek some fairly significant
11 restructuring of the medical plan benefits, which is
12 reflected in the deal that was ultimately reached
13 under the sort of aegis of the PEB 242 proceeding.

14 Q Footnote 3 is referenced in this chart in
15 several -- a number of places, actually.

16 MR. HAVERMANN: And just for the Board's
17 benefit, these are the verbal clarifications that we
18 reached with counsel for the organizations, and that
19 they're reflected in Amtrak Exhibit 103.

20 BY MR. HAVERMANN:

21 Q All right. Let's turn to Slide 6.

22 And, Mr. Rand, if you could walk us

1 through what this slide shows.

2 A Yeah. Thank you. The next several slides
3 really reflect data that's taken from this Kaiser
4 Family Foundation 2013 survey.

5 And I thought it was useful for the Board
6 as sort of a foundation in terms of your
7 deliberations and considerations to show this
8 particular slide directly from that KFF survey.

9 (A discussion was held off the record about the
10 microphone.)

11 THE WITNESS: Thank you for letting me
12 know.

13 This slide is repeated year and after year
14 in the Kaiser Family Foundation survey. And what it
15 shows is over the past 15 years, the top two lines
16 show the growth in employer total premiums for
17 healthcare coverage and the growth in employee
18 contribution, worker contributions, participant
19 contributions towards those premiums.

20 And as the Board can see, over that
21 15-year period, these costs essentially tripled --
22 just under tripled and were increasing at a pace of

1 right around 8 percent annually. So they basically
2 doubled every nine years.

3 In terms of total compensation, wages and
4 CPI both increased at a much slower pace, as we're
5 all aware, through that period.

6 Wages grew just 50 percent over the
7 period, which is just under 3 percent a year. And
8 CPI over that same period -- and for that purpose,
9 the Kaiser Family Foundation uses the city averages
10 of CPI. CPI increased over the same period 40
11 percent.

12 So there was a very, very small delta
13 between the pace of increase in wages over that
14 period as reported by the Kaiser survey respondents
15 compared to the CPI.

16 It's also worth mentioning that over the
17 same period, the cost of AmPlan increased 247
18 percent. So it actually increased. And I think
19 partly that's reflective of the relative generosity
20 of the AmPlan benefit.

21 And it's partly reflective of the cost
22 shifting effect that goes on because of the

1 composite rate structure that's used in AmPlan where
2 a participant pays exactly the same contribution,
3 and the premiums are expressed as the same dollar
4 amount regardless of whether that participant is a
5 self-only participant or it covers dependents.

6 And so, as I indicated, over that period,
7 the cost of AmPlan grew at a compound rate of 9
8 percent a year, so doubling in effect every eight
9 years.

10 BY MR. HAVERMANN:

11 Q Mr. Rand, is the freight plan a similar
12 structure, where it has a composite rate as opposed
13 to the --

14 A It is, and that's not an uncommon
15 structure in collectively bargained plans.

16 It's actually quite common.

17 Q All right. Let's take a look at Slide 7,
18 which appears to discuss the concept of actuarial
19 value?

20 A Yeah. Slide 7 reflects I think two
21 things.

22 One is -- and it will be used by me later

1 in this presentation. It's a tool that has recently
2 been published by The Center for Medicare and
3 Medicaid Services which permits insurers,
4 consultants, like us, employers to calculate the
5 relative value of benefit plans, health benefit
6 plans based on the plan provisions.

7 And in the context of the Affordable Care
8 Act, it's also used to denominate plans that are
9 offered under the exchanges as to whether those
10 plans are so called Bronze plans.

11 Bronze plans, under the law, provide a
12 benefit level that's designed to cover 60 percent of
13 the average costs of claims across the U.S.
14 population; silver plans, which are designed to
15 cover 70 percent; gold plans, 80 percent; and
16 so-called Platinum plans, the most expensive and
17 generous of the plans permitted under the exchanges,
18 which are designed to cover 90 percent of the cost.

19 In order to sell a plan on the exchange,
20 the plan has to come in at an actuarial value of
21 those percentages, 60, 70, 80, or 90 percent, with a
22 corridor of plus or minus 2 percent permitted.

1 AmPlan, which is illustrated at the bottom
2 of the page, has an actuarial value using the CMS
3 tool of 92.1 percent. So its provisions are more
4 generous than would be permitted under any plan that
5 could be sold under the exchanges under current law.

6 And I will use that to particularly in
7 showing the difference in actuarial value of the
8 AmPlan benefits vis-a-vis the benefits provided
9 under FEHB.

10 Q Now, on the next set of slides, you
11 started to compare elements of the AmPlan's benefit
12 features with the private sector.

13 Is that correct?

14 A That's correct.

15 What I have done here is just take from
16 the Kaiser Family Foundation survey that
17 concentrates on those major features, and I compared
18 the data with the PPO plans.

19 I should note that the AmPlan itself is
20 characterized as a so-called point-of-service plan.
21 But it's an open access point-of-service plan, which
22 means that there's no requirement that you select a

1 primary care physician, and there's no need for a
2 referral to go to a specialist. So functionally,
3 it's the equivalent of a PPO plan.

4 And the data is significantly more robust
5 in the Kaiser Family Foundation survey for PPO
6 plans, which is why I chose to select this
7 particular comparer.

8 What you see at the top of this table
9 here, this graphic presentation, is that within the
10 respondents to the Kaiser survey, 81 percent, more
11 than four out of five, of the plans require a
12 general annual deductible.

13 That's just being introduced, has just
14 been introduced in the freight plans. There is none
15 in AmPlan. And the average amount of the deductible
16 in the Kaiser respondents is just under \$800.

17 That understates the cost sharing,
18 however, that is significantly different in private
19 sector practice relative to the AmPlan benefits.

20 Because even among that minority of plans,
21 that small minority of plans that don't have a
22 general annual deductible, well over 80 percent of

1 those plans have other forms of hospital cost
2 sharing that impose costs on the participants.

3 Those cost sharing techniques, if you
4 will, take the form of coinsurance. That's in place
5 in 61 percent of the Kaiser respondents surveyed.
6 The average coinsurance level imposed on
7 participants is just under 20 percent.

8 Another 16 percent have average co-pays
9 expressed as typically X dollars per day of
10 confinement, often limited to the first five days of
11 confinement. And that average co-pay is \$278.

12 And then the other plans have a deductible
13 that applies specifically to hospital expenses, but
14 to no other under the plan.

15 The next slide, if you'll just move on to
16 the next slide, you see a slightly different picture
17 with respect to the other key features. But there's
18 also variations there depending on which key feature
19 you're talking about.

20 The AmPlan benefits are right on the money
21 in terms of standard private sector practice with
22 respect to physician office visit co-pays. The

1 primary care benefit, or co-pay, if you will, under
2 AmPlan is \$20, and the Kaiser survey is \$23.

3 The specialist co-pay is exactly the same
4 as the average of the private sector respondents, 35
5 and 35.

6 There is a significant difference,
7 however, when you move to the drug benefit. The
8 drug benefits are the same for generic benefits.

9 And common practice among health benefit
10 plans today is to have a significant spread between
11 the cost of generic benefits compared with so-called
12 preferred brand drugs, drugs that are listed on the
13 formulary published by the drug plan vendor, and
14 non-preferred benefits.

15 But, as the Board can see, there is a
16 significant variation in terms of those co-pay
17 requirements for brand name drugs, again, providing
18 a greater incentive for individuals to use generic
19 drugs, which are the cheaper equivalent and produce
20 significant cost savings without effecting in a
21 material way health outcomes.

22 Q Now, you have also examined trends

1 involving employee contributions to plans in the
2 private sector?

3 A Yes. This, again, is sort of a standard
4 graph that's in each KFF survey.

5 And what it shows the light blue line on
6 the bottom shows the progression of self-only
7 participant contributions from 1999 through 2013.

8 And that self-only contribution
9 requirement has drifted up in a fairly significant
10 way over that 15-year period from 14 percent at the
11 beginning of the period to 18 percent at the end of
12 the period.

13 The contributions -- and this, again, is
14 typical in the private sector and typical, for that
15 matter, in state and local government plans, and is
16 also the case with the FEHB program.

17 The contributions are higher for family
18 coverage, and they're materially higher in the
19 private sector and in most state and local
20 government plans for dependents coverage expressed
21 as a percentage of the cost of the dependents
22 coverage.

1 As the Board can see, at the beginning of
2 the period, that cost is 27 percent of average
3 premiums. At the end of the period, 29 percent of
4 average premiums.

5 So really over that curve that's
6 illustrated here, over that period of time, roughly
7 29 percent, just under 30 percent of premiums is the
8 average contribution required of the participants
9 who cover their families.

10 And I'll talk momentarily about some of
11 the effects that that creates compared to this
12 composite rate structure.

13 Q What is the reference in red at the bottom
14 of the slide?

15 A It just shows that the AmPlan employee
16 contribution is currently at 12.7 percent of the
17 composite rate, so under the 15 percent standard
18 because of the imposition of the cap.

19 Q All right. Let's turn to Slide 11.

20 A On Slide 11, we take that same data. And
21 if you look at the highlighted portion, that's the
22 PPO contributions.

1 The breakdown that Kaiser provides there
2 shows the total cost at the right-hand side of the
3 split bar, and that total cost is \$6,031 for
4 self-only coverage. And then a total cost for
5 family coverage in the bars immediately below that
6 or the bar immediately below that, which is \$16,671.

7 The employee contributions really pretty
8 well track with what was shown on the previous
9 slide.

10 The average participant contribution is
11 \$1,024, which is 17 percent of the total premium.
12 And the average contribution for family coverage in
13 this Kaiser data is 27 and a half percent of total
14 premium, or just under \$4,600 a year.

15 Q All right. Let's move on to Slide 12, if
16 we could.

17 A On Slide 12, what we show here is
18 basically four sets of contribution rates.

19 We show under Amtrak the proposal by the
20 PRLBC, which is essentially to freeze the
21 contribution rate, the 2009 contribution rate level
22 expressed in dollars, that is \$177.54 a month.

1 And then we compare that with the Amtrak
2 pattern rates where the organizations agree to an
3 increase in the employee contributions over the
4 period that's covered by those agreements.

5 And of course, part of the consideration
6 for that was that there were to be essentially no
7 changes and actually no changes other than the small
8 increase in the emergency room co-pay with respect
9 to benefit levels.

10 Those pattern contributions will move up
11 over the period from 177.54 monthly to \$209.19,
12 which is where the cap comes into play starting in
13 the period ending in June of 2014.

14 ARBITRATOR JAFFE: Mr. Rand, I'm sorry,
15 the 12.7 percent number that you calculated, was
16 that using the 209.19, which is the July 13 rate, or
17 did you use something else?

18 THE WITNESS: It would have to be using
19 the later number where that cap comes into play;
20 right.

21 ARBITRATOR JAFFE: Thank you.

22 THE WITNESS: And then with respect to the

1 freights, what we show is the presettlement
2 contributions.

3 The way the freight pattern was under, as
4 I understand it, 242, the contribution was expressed
5 as 15 percent of premiums subject to a cap that was
6 the greater of \$200 monthly, or whatever the 2009
7 contribution was.

8 And so that was the \$200 that's reflected
9 in those first two rows there.

10 The freight deal that was consummated
11 between the parties following 243 takes that
12 contribution down slightly from \$200 monthly to \$198
13 through the period until you get to 2016, when it's
14 scheduled to go up to \$230, the lessor of \$230 or 15
15 percent of the plan cost, subject to negotiations
16 between the parties between now and then.

17 BY MR. HAVERMANN:

18 Q And, again, those numbers that appear on
19 the far right-hand column under the freight deal,
20 those numbers are not being offered by the
21 organizations to Amtrak, are they?

22 A No.

1 Q Okay. Let's move the Slide 13, if we can.

2 A Well, the next couple of slides, I really
3 want to comment on the effect of -- on cost because
4 it's really a material effect of this composite
5 structure.

6 And this is not to suggest and Amtrak has
7 not proposed that we change the arrangement. But I
8 think it's important for the Panel to understand the
9 implications of this type of arrangement.

10 And this also this math exercise will
11 permit a more direct comparison with the Kaiser
12 data.

13 The 2012 medical plan cost for
14 participants, which forms the basis for the 2013
15 rates, is 1,327.91 monthly, or just under \$16,000 in
16 terms of annual costs. That's essentially the same
17 cost as is currently the case for the freight plan
18 pre-changes that were agreed to post PEB 243.

19 The participant contributions for this
20 period are the 177.54, 12.7 percent of the total
21 cost for all coverages. And the percentage applied
22 just to the medical composite rate is 13.4 percent.

1 When you convert this rate to a single and
2 family rate equivalent -- and that's just an algebra
3 exercise.

4 Basically what you're solving for is, if
5 you use the same ratio of family premium to single
6 premium that is reflected in the Kaiser survey, and
7 the ratio is 2.8 to 1, what are the dollar amounts
8 that you have to multiply it by the exposures --
9 that is self-only contracts versus self-and-family
10 contracts -- to yield the same dollar amount of
11 premiums for that period.

12 When you do that math, you come up with a
13 representative, if you will, or a comparable single
14 and family rate of \$7,356 for AmPlan for single
15 coverage, and \$20,598 for family coverage.

16 The effect that this has is that the
17 family coverage is perceived accurately by
18 participants as free. But it also has the odd
19 effect mathematically of sort of reversing the
20 percentages compared to what you see in typical
21 private sector practice.

22 Because when you take this really

1 comparable rate for single and family coverage and
2 take the 177.54 monthly that participants are
3 paying, participants who don't have dependents who
4 are covering themselves only are really covering
5 through their contributions almost 30 percent of the
6 cost. And participants who cover their family
7 members are covering 10 percent of the cost.

8 You can then compare those numbers with
9 the Kaiser Family Foundation data for PPOs, and what
10 you see is that the cost of single coverage
11 converted in this exercise from the Amtrak -- AmPlan
12 composite rate, is 22 percent higher than the cost
13 reported in the Kaiser data.

14 That's roughly reflective of the
15 difference in value of the more generous plan
16 features that are associated with AmPlan.

17 And when you look at the comparable family
18 number, the family premiums are some 24 percent
19 higher than is reflected in the Kaiser data.

20 So if we could turn to the next slide.

21 Q Slide 15.

22 A Yeah. So what effect does this have and

1 how does it work into the costs?

2 The key effect of the composite rate
3 structure, again, not uncommon in collective
4 bargaining situations, is that these collectively
5 bargained plans in effect are subsidizing other
6 plans in the U.S. healthcare economy, which has
7 structured their contributions in a different way in
8 order to encourage employees who are in working
9 households not to select their more generous plan,
10 the less expensive plan in every instance, but to
11 split those claims costs, if you will, among
12 employers in those working households.

13 And working households in the U.S. economy
14 are very significant. About 40 percent of all
15 workers employed in the U.S. are in households where
16 both spouses work.

17 That's reflected in the percentage of
18 people who are covering dependents under AmPlan,
19 compared with in the private sector.

20 The private sector data -- and this is
21 from the most recent Mercer health benefits
22 survey -- shows that 53 percent of participants in

1 large health plans reflected in their survey cover
2 family members, that comparable percentage for
3 AmPlan is 65 percent.

4 That spread in family coverage adds about
5 10 percent to the plan cost of AmPlan and certainly
6 is a factor in why these costs are higher than the
7 costs in the private sector generally and will
8 continue to be so so long as this composite rate is
9 maintained as the basis for setting premiums and
10 setting participate contributions.

11 Q You have also done comparison to plans
12 that are available in the federal sector?

13 A Right. And we have done that for a couple
14 of reasons.

15 One is, that if you just type into your
16 search engine FEHB program, gold standard, you will
17 come up with literally hundreds of hits of articles
18 and literature that's associated with the fact that
19 the Federal Employee Health Benefit Program, which
20 provides coverage across the country to all federal
21 employees including all postal workers, provides
22 what to many people is a model benefits program

1 providing a wide array of choices, more than 200
2 plans in the system with typically 12 to 20 plans
3 available regardless of where the individual is
4 located.

5 What we have done is show that comparison,
6 as I indicated earlier, with the six largest plans,
7 which covers 75 percent of the FEHB population.

8 The other reason that this is an
9 appropriate comparator is because it is referenced
10 frequently in Amtrak's supplication, if you will,
11 for Congress for continued or additional funding.

12 Because Amtrak is constantly being pressed
13 on, How do your benefits compare with private sector
14 practice?

15 How do they compare with federal employee
16 plans both in terms of benefit levels and also
17 participant contributions?

18 Q Let's go ahead and move into the next
19 slide, plan features.

20 A Yeah. If you look at the plan features --
21 and we don't need to spend time on the detail of
22 this. The Panel can review this at your leisure.

1 But all you have to do is really glance at
2 this data to see how much more generous the AmPlan
3 benefit is than the benefits provided in these two
4 largest FEHB plans.

5 The largest plan is the Blue Cross Blue
6 Shield Standard plan. The next largest plan is the
7 Blue Cross Blue Shield Basic plan. Collectively,
8 those two plans alone cover over 60 percent of the
9 FEHB population.

10 And as you'll see in those plans, in
11 common with private sector practice there are
12 substantial cost sharing elements that are
13 associated with the participants.

14 They're deductibles, they're co-pays,
15 they're coinsurance features. And in particular, in
16 the drug area, the benefits are far less generous
17 than the benefits that are provided under AmPlan, a
18 significant extra cost exposure at the participant
19 level.

20 That's reflected, if you will focus on the
21 very last row here, actuarial value.

22 We have been able to determine the

1 actuarial value of those two large FEHB plans
2 through the use of the tool promulgated by the
3 Center for Medicare and Medicaid Service.

4 And as the Panel can see, there's almost a
5 10 percent spread in actuarial value between the
6 largest FEHB plan, 82.6 percent. Typical claims
7 would be covered under that Blue Cross Blue Shield
8 Standard plan versus the 92.1 percent for the Amtrak
9 pattern.

10 The basic plan does provide a higher level
11 of benefits and relatively close to the Amtrak
12 pattern benefits at 88.7 percent of claims versus
13 92.1.

14 But it's important to stress that the Blue
15 Cross Blue Shield Basic plan -- and this is one of
16 the reasons why I had much lower contribution --
17 even though it is less expensive and also provides a
18 much higher level of benefits, is functionally the
19 same as an HMO.

20 It's a so-called EPO or exclusive provider
21 only plan. So the benefit is zero if you go out of
22 network. And that's why the participant base is

1 somewhat smaller because participants are unwilling
2 to take the risk that they may need services out of
3 network.

4 The next set of plans just really fortify
5 the same point, or the next two slides, rather. The
6 next two largest plans which are significantly
7 smaller are the Mail Handlers Benefit plan standard,
8 which has a value of 81.8 percent. And the GEHA
9 Standard plan, which has a value of 81.5 percent.

10 So a very significant differential
11 compared with the 92.1 percent value for the Amtrak
12 pattern.

13 And then the very last of these three
14 slides shows the same values for the GEHA High
15 Option plan and the National Association of Letter
16 Carriers plan.

17 And, again, it's just making the same
18 point that none of the large FEHB plans -- in fact,
19 I would submit to you none of the FEHB plans provide
20 benefits anywhere near as generous as the benefits
21 provided under AmPlan.

22 Q Let's move to Slide 20, and I'll ask you

1 for you takeaways on that slide.

2 A Right. Slide 20 just reviews the same
3 participant contribution data in the same way that
4 we did before.

5 The algebra is a little different. And
6 the reason that it's different is because in the
7 federal system, they use what's essentially the
8 obsolete way of differentiating single and family
9 coverage.

10 They have only two tiers.

11 You either are a self-only participant or
12 a self-and-family participant. So there's no
13 self-and-spouse coverage. There's no self-and-child
14 or children, which is the more common way and which
15 is reflected in that 2.8 to 1 ratio that I
16 referenced earlier.

17 The ratio that I have used here is the
18 ratio that applies in the large FEHB plans, which is
19 2.3 to 1, which is the proper ratio in you have a
20 two-tier single-and-family coverage arrangement
21 rather than four-tier.

22 And so what you see in the top row are the

1 monthly employee contributions for the Amtrak
2 pattern. And we have selected the point at which
3 those contributions would be 209.19 a month. And
4 then compared that contribution with the Blue Cross
5 Blue Shield Standard, Basic, the other four of the
6 six plans that we're comparing.

7 And the Panel can see the total premium in
8 the middle columns, employee and family, and compare
9 that with the composite premium medical plan only.

10 And then in the final three rows at the
11 bottom of this particular chart, we have shown
12 again, the same effect that the -- when you do the
13 conversion of the premiums to get to a single and
14 family equivalent, employees under the Amtrak
15 pattern are paying just under 30 percent of the
16 premiums for employee-only coverage, and 13 percent
17 of the premiums for family coverage, which
18 translates in this particular example to a 16
19 percent of the composite premium if you calculated
20 that just based on the medical only.

21 The reason that that 16 percent is higher
22 than the 15 percent is because a portion of these

1 contributions are actually attributable to the
2 dental and the vision paid plan.

3 Then what you see by going across the
4 board, the 29 percent is actually in the same range
5 as the percentage that federal employees pay on --
6 the way the federal contribution formula works is
7 it's a two-step calculation.

8 The employer contribution is calculated as
9 a maximum dollar amount equal to the weighted
10 average premium based on the prior year's
11 participant count in all of the FEHB plans. And so
12 that's just denominated as a number that is X
13 dollars bi-weekly is the way that they express it.

14 These are all expressed as monthly
15 contributions.

16 The second step in the calculation is the
17 employer contribution that is the maximum amount
18 that can be distributed to any particular plan is 25
19 percent of the premium.

20 So the net effect is the cheap plans and
21 not all those cheap plans, by the way, convey poor
22 value. Many of them convey very good value.

1 But the less expensive plans, the employee
2 contribution is going to be 25 percent of pay. The
3 more expensive plans, it can get up to 34, 35, 36
4 percent of pay.

5 On average, federal employees pay 39
6 percent of premiums, single and family combined. So
7 that's comparable to what the self-only comparable
8 percentage would be under the Amtrak pattern. But
9 obviously significantly greater than the family
10 contribution.

11 And that has the same effect with respect
12 to the percentage of federal employees that cover
13 their families compared with the much higher
14 percentage that cover families in AmPlan.

15 Q All right. Let's turn to the bullets on
16 Slide 21. These represent your conclusions?

17 A Yeah.

18 This is just generally the conclusions
19 that I think are inevitably drawn from the data just
20 presented.

21 AmPlan benefits are more generous than
22 both private sector practice and the Federal

1 Employee Benefit plans. The premiums reflect that
2 generosity. The participant contributions are 29
3 percent of the self-only premium, which is -- when
4 you do this conversion, for both private sector and
5 FEHB plans for family coverage, the comparable
6 percentages are 10 percent for the private sector
7 and 13 percent for single participants using the
8 private sector data.

9 Family coverage is also much lower than
10 AmPlan, 60 percent rather than 65 percent among
11 federal participants.

12 And so, again, I believe the inevitable
13 conclusion is that the AmPlan is more generous than
14 both private sector norms and typical benefit and
15 contribution patterns under the federal employees
16 program.

17 Q All right. I would like to move the
18 discussion to timing, if I could, and ask you to
19 turn to Slide 22.

20 A Right. There's a key timing issue that's
21 illustrated on this and the next slide that I think
22 the Panel will need to take into consideration as

1 you undertake your deliberations and ultimately
2 produce a resolution of this dispute.

3 And that's this, that with respect to
4 changing contributions or changing benefits the much
5 more powerful effect in terms of dollars for Amtrak
6 is a change in contributions. And that occurs
7 because the contributions effectively can be
8 retroactive since they can be charged against the
9 back pay.

10 There's no way to make benefit changes
11 retroactively. So any benefit change will be
12 perspective only.

13 So we show here the value of the
14 contribution changes that are in play between the
15 parties. Showing first the Amtrak pattern and
16 expressing that in both the rates, which for AmPlan
17 change mid year, which is why you have two rates
18 until you hit the cap. And then the value expressed
19 in dollars, dollar savings to Amtrak.

20 And then we show in the final two columns
21 on this page the value of the freight deal. Just
22 zeroing in on the contributions, not on the benefit

1 changes. The benefit changes are shown on this next
2 slide.

3 If you turn to that slide, Slide 23.

4 As you can see, the value of the Amtrak
5 pattern benefit changes is miniscule. That's the
6 change in \$50 emergency room co-pay to \$75. The
7 only change that was negotiated with the
8 organizations that are participating in the Amtrak
9 pattern.

10 And the dollar amounts in a program of
11 this size are quite insignificant.

12 The freight deal of benefit changes on the
13 other hand are not. If freight deal benefit levels
14 were adopted by the Panel, that would indeed
15 generate opportunity in the sense of substantial
16 additional savings that could be applied to
17 modification of the general wage increases.

18 Q And if we flip back to Slide 22, if the
19 freight deal rates were being offered to Amtrak,
20 which they're not, they would also generate
21 additional savings; correct?

22 A Correct.

1 Q Okay.

2 MR. HAVERMANN: Mr. Jaffe, would now be a
3 good opportunity to take a quick break?

4 ARBITRATOR JAFFE: Of course.

5 Are you looking for ten minutes?

6 That's fine.

7 (A recess was taken.)

8 BY MR. HAVERMANN:

9 Q I would like to start with Slide 24, if I
10 could, and ask you, Mr. Rand, to tell me what you
11 have done on this slide.

12 A Thank you.

13 This and the next few slides are really to
14 give the Panel a foundation around the information
15 that's presented in summary form in Slide 5.

16 That chart that showed the position of the
17 parties at various points during the mediation and
18 currently.

19 And what we have done here is we show the
20 value that's broken down among the medical plan
21 changes, savings, drug plan changes, savings. It's
22 a format that we're going to use throughout.

1 It's obviously zero since there's no
2 changes in the Amtrak pattern as respects
3 prescription drug benefits, total plan savings, and
4 then the savings associated with employee
5 contributions.

6 And then we convert that to the annual
7 savings per participant, which is in the last column
8 of figures.

9 And, as you can see, just for example, the
10 total savings in calendar year 2015, which would be
11 the first full year for benefit changes, would be
12 \$1,035,759 and that translates to just under \$400
13 per participant.

14 Q So the change in medical for 2014
15 representing a savings of \$31,000, is that the
16 change in the emergency room co-pay?

17 A That's the change in the emergency room
18 co-pay.

19 Q From 50 to \$75?

20 A Right. And it's -- as small as it is in
21 2014 because with respect to all of these for
22 practical reasons if the Board completes its work

1 very efficiently, the earliest effective date for
2 these benefit changes would be April 1, 2014.

3 ARBITRATOR JAFFE: So for the 31,822, in
4 addition to the fact that it's a prorated year, does
5 that simply credit for the increase in co-pays, or
6 does that also include an actuarial estimate of the
7 saved costs due to reduced emergency room usage?

8 THE WITNESS: It's a rate that was
9 calculated by Aon Hewitt, the actuarial consultant
10 for the AmPlan and for Amtrak benefits generally.

11 ARBITRATOR JAFFE: Right.

12 THE WITNESS: And it would take into
13 account both.

14 ARBITRATOR JAFFE: Both.

15 THE WITNESS: It represents a rate
16 calculation times the exposure.

17 ARBITRATOR JAFFE: Okay. So it includes
18 both the increased payment when there are ER visits,
19 and also the reduced ER visit cost?

20 THE WITNESS: That's correct.

21 And that actually illustrates an important
22 point in the Panel's consideration of these and

1 other slides that are going to follow, which is that
2 the savings that stem from changes in patterns and
3 utilization do not necessarily impose extra costs on
4 the participants.

5 Particularly, for example, if you move
6 the -- if you went to the freight patterns, so you
7 moved the generic co-pays down from \$10 to \$5,
8 that's actually going to be a benefit to the
9 participant without effecting their health.

10 So what we have illustrated here is the
11 savings expressed on a per participant basis.

12 But that overstates the costs at the
13 participant level.

14 ARBITRATOR JAFFE: That's fine.

15 And one more on this slide, if you don't
16 mind, and factual in nature.

17 The total savings and the annual savings
18 per participant. Are those limited to actives, or
19 does that include all of the participants which may
20 include whatever the retirees are and you're
21 allocating out pro rata or per capita, so to speak,
22 the savings numbers?

1 THE WITNESS: I was hoping you wouldn't
2 ask that question.

3 ARBITRATOR JAFFE: Sorry.

4 THE WITNESS: But it's actually a little
5 more complicated than that.

6 ARBITRATOR JAFFE: Fair enough.

7 THE WITNESS: We have got two different
8 denominators that are in play.

9 ARBITRATOR JAFFE: Okay.

10 THE WITNESS: So the cost savings are
11 derived by using a denominator that is the number of
12 participants who are actually contributing towards
13 the cost of the plan --

14 ARBITRATOR JAFFE: Okay.

15 THE WITNESS: -- among the active
16 population.

17 And the benefit savings are calculated by
18 using a denominator that is the number of
19 participants in the plan.

20 There are participants who are continuing
21 in the plan but who, for whatever reason, are not in
22 contribution status at a particular point in time.

1 So in order to err on the side of as much
2 accuracy as we could, we use those two different
3 denominators in those two different contexts and
4 then just add them up to get to the 96 or 262 or
5 whatever the number is.

6 ARBITRATOR JAFFE: All right. And these
7 are a plan as a whole, and are not intended to
8 reference these two groups of employees?

9 THE WITNESS: That's correct.
10 This is -- no, no.

11 This is the PRLBC as a whole.

12 ARBITRATOR JAFFE: Okay. Got it.

13 Now, when -- but are you talking about
14 just the maintenance of way and BRS at this point or
15 are you talking about all of the groups that
16 originally constituted the PRLBC?

17 THE WITNESS: No, not all of the groups.

18 ARBITRATOR JAFFE: Okay. Just the two
19 groups in question?

20 THE WITNESS: That's correct.

21 ARBITRATOR JAFFE: Thank you.

22 That's what I was trying to drill in on.

1 THE WITNESS: Right.

2 ARBITRATOR JAFFE: Thank you very much.

3 BY MR. HAVERMANN:

4 Q All right. Let's turn to Slide 25.

5 And I'll ask you about what that
6 represents.

7 A Slide 25 is just the same sort of
8 calculation, but it's applying the freight deal to
9 the AmPlan program and comparing those savings
10 versus the status quo.

11 And as the Panel can see, the savings by
12 virtue of the fairly significant restructuring
13 changes that are associated with the freight deal
14 are very substantial when you get to the out years.

15 The employee contributions are what they
16 are, and then the total savings increased
17 dramatically in 2014, 2015, and 2016.

18 And just focusing on the 2015 numbers, the
19 savings per participant calculated in the way I just
20 described would be just over \$1,200 annually.

21 Q Let me focus on the column Employee
22 Contributions for a moment.

1 A Right.

2 Q The formula you used here would be the
3 freight deal contributions which are not being
4 offered to Amtrak by the PRLBC.

5 Is that correct?

6 A That's correct.

7 Q And that's because the PRLBC is insisting
8 that Amtrak remain at the 177.54 number?

9 A That's their proposal.

10 Q Okay. All right. Let's turn to Slide 26,
11 and I'll ask you to sum up.

12 A Slide 26, by the way, this differential
13 was discussed with the organizations during the
14 mediation sessions.

15 I was not in those mediation sessions, but
16 it's my understanding from the Aon Hewitt colleague
17 who is with me here today, who was in those
18 meetings, that this information has already been
19 presented to the organization.

20 The value of the benefit changes in the
21 freight deal is slightly less for AmPlan than it was
22 for the freight deal. And the reason for that is

1 really spoken to on this slide.

2 The value of the benefit changes in the
3 freight deal were calculated by the two actuarial
4 firms, Towers Watson for management and Cheiron for
5 the organization. They're essentially the same
6 number at \$80 a month or \$960 a year, just under
7 \$1,000 a year per participant.

8 And that gives kind of a reference point,
9 Mr. Jaffe, for this point we were just speaking to,
10 that if the savings per participant was calculated
11 at \$80 a month, the additional cost to the
12 participant by virtue of the higher cost sharing
13 where that was promulgated in the freight
14 negotiations was significantly less than that, about
15 \$410 a month.

16 The key difference that drives the savings
17 down to the \$65 per month that's been used in these
18 calculations is the fact that a number of the
19 utilization management features that were negotiated
20 between the parties and the freight deal were
21 already in place at AmPlan and had been agreed to by
22 the joint medical administration committee in their

1 administrative function over at AmPlan earlier.

2 Q And the dollar differences, do you want to
3 review those on the bottom of 26?

4 A Yeah. The dollar differences, basically
5 the overall difference in the pharmacy Amtrak
6 determined a lower value for the co-pay changes,
7 Amtrak's actuary, and already has some utilization
8 programs in place.

9 That difference draws down the \$79 a month
10 by \$14, and then they are offsetting differences in
11 terms of medical utilization management.

12 And, again, actuarial -- the actuarial
13 consultant for AmPlan, Aon Hewitt priced the changes
14 that were associated with the medical cost sharing
15 to be actually more valuable than the pricing that
16 was conducted by Cheiron and Towers Watson.

17 So that's just referenced on this slide.

18 But it's basically the \$79 minus the 14,
19 the net difference is how you get to the \$65.

20 Q Let's flip to Slide 27, please.

21 A And this is really again responsive to one
22 or your earlier questions, Mr. Jaffe.

1 All of these data are really calculated
2 just on the PRLBC population, which represents about
3 15 percent of the full-time represented workforce.

4 And of course, there's no guarantee that
5 changes that are promulgated by the arbitration
6 award will necessarily be applied to the other
7 bargaining groups.

8 Q All right. There was a mediation proposal
9 that Amtrak made in July of 2013.

10 And I take it that covered healthcare, and
11 you're prepared to review that on Slide 28?

12 A Yes. And this is the same data that was
13 included with multiple other columns in Slide 5.

14 So it's just a portion of that chart.

15 And what it shows is the status quo with
16 respect to contributions, which is the proposal from
17 PRLBC is to maintain the 2009 contribution of 177.54
18 in effect throughout the duration of this contract
19 period.

20 Amtrak's statement of position would move
21 those contributions up in accordance with the Amtrak
22 pattern from the 177.54 to a cap ultimately of

1 \$209.19. And then they included -- and this is not
2 in the Amtrak pattern -- but they included one final
3 proposal in this particular statement of position,
4 and that is to adopt the freight cap that's in the
5 freight settlement of 15 percent or \$230 monthly as
6 of July 2016 in the absence of the parties otherwise
7 agreeing.

8 Otherwise, the information is what we
9 conveyed earlier the status quo is indicated in that
10 next set of rows. And we have not reflected there
11 the increase in the Employer co-pay, since we're
12 talking about status quo not Amtrak pattern, from
13 \$50 to \$75.

14 And then the statement of position does
15 reflect that \$75 emergency room co-pay. And the
16 other features that were agreed to following the 243
17 in the freight deal.

18 So that's basically what that summary is
19 all about.

20 Q Is it your understanding, Mr. Rand, that
21 the 7-17-2013 plan changes proposed by Amtrak were
22 designed to generate an additional percentage point

1 of GWI?

2 A It's my understanding that that was in the
3 context of in effect funding an additional 1 percent
4 of GWI compared with the Amtrak pattern GWI
5 increases.

6 Q All right.

7 Let's turn to Slide 29, if we could.

8 Tell me what that represents.

9 A This really provides the Panel with
10 effective dollars on the same basis for the Amtrak
11 July 17 proposal versus the status quo.

12 And, again, it breaks it down separately
13 for the medical and drug changes. The total plan
14 changes in the third column of figures, the employee
15 contributions and the total savings, and then
16 expresses those total savings on the per participant
17 basis we noted earlier.

18 Q All right. Let's move to slide 30 and
19 cover the PPA, if we could.

20 A Right. But before we get into the balance
21 of the slides having to do with the economic value
22 of the proposals that have been discussed with the

1 organizations in mediation, I wanted to talk briefly
2 about the affect of the Affordable Care Act.

3 And in particular one consideration that I
4 think bears on the Panel's deliberations in arriving
5 at a resolution here.

6 First of all, there has been a significant
7 effect already under the Affordable Care Act, and
8 that's summarized in this particular table.

9 In the first year, that effect was
10 marginally positive, creating savings to Amtrak of
11 just over three-quarters of a million dollars.

12 And the bulk of that -- well, actually all
13 of it was really generated through the early
14 retirement reimbursement program, and that was a
15 five billion dollar fund that was set up by the
16 Congress in the Affordable Care Act to encourage
17 employers that provided post retiree health benefits
18 to pre-Medicare retirees by reimbursing a portion of
19 their claims costs until the five billion dollars
20 ran out.

21 And Amtrak's share of that five billion
22 dollar pot, which was fully realized in 2011, was

1 just over \$4 million, so then a plan change is that
2 created the three-quarters of a million dollar
3 savings.

4 It's all downhill from there.

5 Everything beyond that point is
6 illustrated in the last two columns as the annual
7 incremental costs and then the annual totals an
8 accumulative.

9 And as the Panel can see, over the period
10 that has elapsed through the current period, 2014,
11 the total cost to Amtrak of the changes that were
12 required under the Affordable Care Act will be just
13 under 16 million dollars. So obviously a very
14 significant add to the cost for the carrier.

15 Q And in my last question, I used the
16 words -- the acronym PDA, of course I meant ACA, the
17 Affordable Care Act.

18 A BPA, ZA, so... so it's close enough,
19 right.

20 Q All right. Let me ask you a question
21 about the Cadillac tax briefly, Slide 31, if I
22 could.

1 A Yeah.

2 Q When will that be imposed?

3 A That's going to be imposed to plan
4 sponsors under the current law in 2018.

5 And it's going to have a very significant
6 negative effect for AmPlan in the absence of further
7 plan changes.

8 It's also important because this really
9 cuts the other way in terms of the power, the
10 economic value, if you will to Amtrak of benefit
11 changes versus contribution changes.

12 The timing issue is one consideration
13 because those benefit changes cannot be retained.

14 But the flip side of that is contribution
15 changes don't do anything to defer the imposition of
16 this excise tax.

17 Amtrak's costs for the plan are already
18 very substantial, and they are projected at
19 relatively modest rates of increase in cost between
20 now and 2018.

21 These costs were really developed by
22 Amtrak's actuaries as part of the development of

1 their financial accounting standard 106 liability
2 for post retirement health benefits.

3 And with no changes in the benefit levels,
4 Amtrak is projected to be among that quite small
5 minority of U.S. employers who will feel that effect
6 of the tax in the first year in 2018.

7 The leveraging that's involved in this tax
8 is potentially an enormous burden for Amtrak
9 because, once you hit that threshold and you're over
10 that -- those thresholds are actually for single
11 coverage, \$10,200 for individual and 27,500 for
12 family.

13 Once you're over that threshold, 100
14 percent of every dollar of premium increase
15 self-and-family, is going to be exposed to that 40
16 percent excise tax.

17 So with the inflation assumptions that are
18 assumed in the past 106 valuation, that tax is
19 projected to increase for Amtrak between the period
20 of 2018 and 2025 from just over 3 million a year to
21 over 103 million a year.

22 That's a pace of increase in these costs

1 of 62 percent compounded annually. So this is a
2 real killer for plans that are situated as AmPlan is
3 currently in the absence of legislative relief from
4 the Congress. And I'm certain that there will be
5 many supplications to the Congress, if you will, to
6 defer or eliminate this tax.

7 But under current law, this is potentially
8 a major problem. And it would be a major source of
9 relief if benefit changes were included in this
10 award.

11 Q Why is AmPlan subject to this Cadillac
12 tax?

13 A Because their current costs are so high.

14 And so the projection is that at roughly a
15 6 percent increase in those costs over the period
16 depicted here, they will be from their current --
17 the current composite cost is right around \$16 a
18 year.

19 When you convert that to the
20 single-and-family costs, you get to those numbers
21 that we reviewed earlier, 7,000 and change and
22 20,000 and change, your projection goes forward.

1 You're going to be over this threshold of 10,200 and
2 27,500 by the beginning of this period.

3 The projections -- there was a scholarly
4 paper on this that was done by a couple of
5 economists from Hopkins that show that, depending on
6 whether you assume that healthcare inflation is
7 going to be sort of at the low end, four and a half
8 percent a year, or higher end, 6 percent a year, the
9 projection is that some 6 percent to as many as 16
10 percent of U.S. employers will feel the brunt of
11 this tax in the first year.

12 That's a very small minority.

13 And Amtrak is there because of the
14 generous benefits a high cost that are currently
15 associated with Amtrak benefits.

16 ARBITRATOR FISHGOLD: So does that chart
17 reflect -- the Cadillac tax that you have there,
18 does that chart reflect without any additional
19 savings to the plan the AmPlan?

20 THE WITNESS: That's correct.

21 ARBITRATOR FISHGOLD: Go ahead.

22 I'm sorry. I didn't mean to cut you off.

1 THE WITNESS: That assumes, Mr. Fishgold,
2 the status quo.

3 ARBITRATOR FISHGOLD: And have you
4 calculated or do you have an opinion as to what
5 effect it would have on Amtrak's liability for
6 Cadillac tax if there were the types of changes made
7 that generated the types of savings that your charts
8 reflect?

9 Have you either determined or have opinion
10 as to whether or not the Cadillac tax would still
11 apply to Amtrak in that situation?

12 THE WITNESS: It would not apply in the
13 first year.

14 For example, if the freight deal benefit
15 levels were provided. And that's I think an
16 important point for another reason.

17 Plans that are facing this kind of
18 economic ruin, and that's what this is.

19 I mean, this really totally changes the
20 economics in the absence of legislative relief of
21 maintaining health benefit plans at these high
22 benefit levels. They will be forced to negotiate

1 around benefit changes that will impose additional
2 costs on participants or incorporate other cost
3 saving measures because driving those premiums down
4 is so important.

5 That 40 percent excise tax, which for
6 private sector companies is non-deductible. For
7 Amtrak, deductibility doesn't matter. It's just a
8 burden that is very hard to envision circumstances
9 in which Amtrak would be able to really meet it.

10 The other thing that I think is also
11 important to note is that employers who are in this
12 situation are going to be making these changes.

13 And in some respects, it's better to make
14 those changes in small bits over a period of time
15 rather than waiting until 2017 and having to make
16 more radical changes in order to avoid this
17 situation as it's coming into play.

18 So I think that's another consideration
19 for the Board's deliberations.

20 BY MR. HAVERMANN:

21 Q In terms of the 40 percent excise tax,
22 it's 40 percent of what?

1 A It's 40 percent of the excess over those
2 thresholds that are built into the Act.

3 The initial threshold in 2018 is 10,200.
4 And I have to look at this every time because I
5 just -- I just can't wrap my memory around these
6 numbers. It was 10,200 for individual and 27,500
7 for the family.

8 So if your premium rate is over that,
9 there are certain adjustments that can be made in
10 certain circumstances that wouldn't help Amtrak in
11 terms of the 2018 projection.

12 The other thing about this is that plans
13 are going to face this anyway, and many more plans
14 are projected to be subject to this tax in the out
15 years.

16 This was a key financing aspect of the
17 Affordable Care Act. I mean, that tax is a big
18 number in terms of the representation that the Act
19 was budget neutral.

20 So there's going to be significant fiscal
21 pressure against eliminating this tax. But the
22 indexing of those thresholds, that 10,200 and 27,500

1 is designed to, in effect, not increase as rapidly
2 as healthcare costs at the employer level.

3 It's not indexed even to medical cost
4 inflation in the out years. It's indexed to a lower
5 number so that a much greater proportion of the
6 plans over time than this 6 to 16 percent projection
7 for 2018 will be effected by this tax.

8 ARBITRATOR JAFFE: The cut off numbers,
9 are they net of any employee contributions?

10 THE WITNESS: No. You cannot take
11 employee contributions into account.

12 So even if you were charging the maximum
13 contributions permitted under the Affordable Care
14 Act, that doesn't give you any relief in terms of
15 the Cadillac tax.

16 ARBITRATOR JAFFE: And there's some
17 special provision for high risk occupations.

18 Isn't that correct?

19 THE WITNESS: There is.

20 ARBITRATOR JAFFE: Do you know whether
21 there has been determination as to whether
22 individuals working in the railroad jobs of the type

1 that these folks would qualify or not for special
2 treatment?

3 THE WITNESS: I have not asked that
4 question of Cathy Bird, who is the actuary at Aon
5 who prepared these numbers.

6 I will think to do so, but I don't know.

7 ARBITRATOR JAFFE: Fair enough.

8 Don't know is always an okay answer by me.

9 Thank you.

10 BY MR. HAVERMANN:

11 Q All right. Let's move on in your
12 testimony, Mr. Rand, to some other calculations that
13 you have performed on starting on Slide 32.

14 A Right. Slide 32.

15 What we wanted to do here is just to give
16 the Board the math that's involved in terms of how
17 much money needs to be generated in order to support
18 a 1 percent additional general wage increase.

19 And at current compensation levels, this
20 would be 2013/2014 compensation levels for the
21 PRLBC, that 1 percent GWI translates to an annual
22 savings requirement of just under \$2.4 million.

1 And that \$2.4 million includes both wages
2 and the taxes that are associated with the Railroad
3 Retirement Act, which as you know are at a
4 relatively high level.

5 In terms of the effect on participants, as
6 we indicated earlier, this is a gross affect not
7 taking into account the changes in utilization
8 patterns. But that savings that's necessarily
9 translates to savings of just under \$900 per year
10 per participant.

11 And as Mr. Reinert indicated in his
12 opening statement yesterday, Amtrak is flexible and
13 wanted to give the Board the opportunity to consider
14 variations that would yield the type of savings that
15 would be required if an additional GWI is to be part
16 of the resolution of this dispute.

17 Savings can be achieved through any
18 combination of benefit changes, contribution
19 increases, or both of those in the healthcare area.

20 Q Before we move on, in terms of the effect
21 on participants of savings, the \$870, number that is
22 not a real cost number; right?

1 The real cost would be less than that?

2 A The cost to participants would be less
3 than that because that's the savings that would be
4 generated from the combination of what I would
5 characterize as direct cost shifting to participants
6 where you're providing, for example, the \$200
7 general annual deductible and 95 percent
8 coinsurance.

9 But it would be lessened by those savings
10 that are generated through encouraging incentives,
11 if you will, different patterns of utilization among
12 participants.

13 Q Okay. And as an example of that, a change
14 to encourage people to use generic drugs, would that
15 be an example?

16 A That's the best example because the
17 freight deal has moved the copayment for generic
18 drugs down from \$10 to \$5.

19 That would benefit every participant who
20 is currently using generic drugs. And is
21 projected -- and that's in the cost estimates -- is
22 projected by widening the spread, both reducing the

1 co-pay for generic drugs and increasing
2 significantly co-pays for preferred and
3 non-preferred brand drugs.

4 Widening that spread always creates
5 additional generic utilization.

6 And that generally is perceived, I think,
7 correctly to not affect adversely the health of
8 participants, but it has a powerful effect on
9 reducing costs including costs at the participant
10 level.

11 Q Okay. Now, let's move on to the next set
12 of slides starting with Slide 33.

13 These purport to put savings numbers
14 attributable to other changes that were referenced
15 in mediation?

16 A Yeah. And I think that's -- this is a key
17 point.

18 And I think for the Panel's benefit, it's
19 not necessary to spend a great deal of time on
20 either of these slides.

21 The slides that follow here, until you get
22 towards the very end of the presentation, are simply

1 a series of slides, each of which was presented to
2 the organizations during the mediation sessions. So
3 this is not new data for them.

4 But it reflects the fact that Amtrak did
5 want to offer flexibility and various approaches to
6 suggest other benefit and/or contribution changes
7 that could be dealt with in the mix of resolving the
8 dispute as to both general wage increases and
9 benefits and contributions under AmPlan.

10 The first of these slides shows the 2015
11 savings for changes that were categorized as
12 increases in the deductibles, changes in the
13 out-of-pocket maximums, and emergency room co-pays.

14 And those changes are essentially
15 additives. So if you look at each of those changes
16 individually, add up that column of numbers on the
17 right, the 58,000 through the \$98,000, that comes up
18 to a total estimated 2015 savings of \$312,000.

19 The next slide just returns to the format
20 we talked about earlier where in each instance here
21 what we have done is identified the savings relative
22 to proposed plan changes and/or employee

1 contributions, the total savings, and what that
2 translates to in annual savings for participants.

3 And as the Panel can see, in terms of the
4 \$870 that would be needed to be generated to fund a
5 1 percent GWI, this would represent a relatively
6 small proportion of that target, if you will.

7 Q All right. Why don't we take the slides
8 two at a time, if we could?

9 A We can. The next slide, 35, active
10 prescription co-pay.

11 These are not additive. These were three
12 different potential changes in prescription co-pays.

13 And if you turn to page 36, what we have
14 done is we have taken the highest of the savings
15 illustrated on the previous slide, that's \$636,000,
16 and that's the savings in 2015, which is the first
17 full year in which those savings would be in effect.

18 And that generates an annual savings per
19 participant in 2015 of \$231 monthly.

20 Q All right. Slide 37 and 38.

21 A Retiring prescription drug co-pays.

22 This, in my judgment, is relatively

1 trivial, and I don't think it will be seriously
2 considered by the Board. But it was among those
3 items that were presented, to use Mr. Roland's word,
4 as the smorgasbord that Amtrak was putting in front
5 of the organizations during the course of the
6 mediation.

7 On the next slide, 36, the annual savings
8 per participant.

9 Q 38.

10 A 38, sorry, is quite limited \$54 monthly --
11 \$54 annually per participant in 2015.

12 Q All right. Slide 39 and 40?

13 A Slides 39 and 40 are cost illustrations,
14 savings illustrations that were associated with
15 potential changes in the active and retiree
16 contribution share.

17 The first savings 1,838,000 would accrue
18 from changing the contribution share from the
19 current 177.54 to 15 percent of plan costs and no
20 cap. And this assumes the Amtrak pattern benefit
21 design.

22 The second row shows the change from

1 177.54 to 20 percent of plan costs with no cap. And
2 that comes in at 4.3 million. And then the --

3 Q That's at Slide 41?

4 A That's Slide 39 is what I'm on.

5 Q 39?

6 A Are we together on that?

7 ARBITRATOR JAFFE: We are.

8 But when say the Amtrak pattern benefit
9 design, are we talking about the proposal in
10 mediation that would have switched the plan design
11 to the freight model?

12 THE WITNESS: No.

13 We're talking about the status quo with
14 the only change being the 50 to \$75 increase in the
15 co-pay.

16 ARBITRATOR JAFFE: Thank you.

17 THE WITNESS: And by the way, I mean,
18 there's no sort of continuum here or particular
19 logic.

20 This is just a series of tables and cost
21 data that were presented to the union in the course
22 of sort of a free ranging set of discussions in

1 mediation.

2 ARBITRATOR JAFFE: Got you.

3 So the savings here really only increased
4 employee contributions.

5 THE WITNESS: That's correct.

6 ARBITRATOR JAFFE: Thank you.

7 THE WITNESS: And then on Slide 40, if
8 you'll turn to that, that converts those savings to
9 the savings per participant in the last column.

10 And as you can see, when we get to 2015,
11 you're approaching that \$870 number with a change to
12 the 15 percent of monthly premiums with no cap.

13 On the next slide, 41, that moves up
14 obviously if you change the contribution to 20
15 percent of costs, no cap.

16 And then 2015, you could support a healthy
17 change in the GWI with that particular change.

18 On Slide 42, here again, this is I think a
19 trivial amount. And I don't think it will be
20 seriously considered by the Board. But it was cost
21 information that was provided to the unions in
22 negotiations.

1 And the annual savings per participant are
2 relatively small proportion of the savings that
3 would be required to fund a 1 percent GWI increase.

4 The next couple of slides are worth
5 spending a few minutes on.

6 This would be, I think, fairly stated a
7 radical departure from current plan design. But it
8 was among the items that were discussed with the
9 unions in negotiations.

10 Amtrak or its management employees moved
11 effective January 1, 2014 substantially in the
12 direction of providing most of the healthcare
13 benefits through a so-called consumer directed
14 health plan.

15 Actually, in the case of the management
16 offerings, there will be three plans offered. One
17 would be a more expensive plan with much higher
18 employee contributions. Employee contributions in
19 the 30 to 35 percent of premium range that will
20 mirror the open access PPO arrangement that was
21 previously in effect for all of the management
22 plans.

1 The two other plans that will be offered
2 are a low option consumer directed health plan and a
3 high option consumer directed health plan with
4 significantly lower participant contributions. But
5 also with significantly greater exposure to
6 out-of-pocket costs on the part of participants.

7 The plan that was priced out in the course
8 of the negotiations is the plan design that is shown
9 here, an annual deductible of \$2,000 self-only,
10 \$4,000 family. And Amtrak provided health
11 reimbursement account of \$500 or \$1,000 in part to
12 help participants defray the cost of that deductible
13 since the amounts that are in that account can be
14 applied first dollar for any medical coverage, and
15 they can be rolled over from year to year, 10
16 percent in network employee coinsurance with
17 coinsurance maximums as indicated here, 1,000 in
18 network, \$3,000 out of network.

19 That's very low co-insurance maximums for
20 one of these types of plans.

21 And then for family \$2,000 in network and
22 \$6,000 out of network with an employee contribution

1 of \$200 per month.

2 Another feature of this particular plan
3 that was priced out is including a health risk
4 assessment and chronic condition management program,
5 both of which are designed to in effect buttress the
6 current utilization management and wellness programs
7 that are in place in the AmPlan currently.

8 And the plan savings, if this type of plan
9 were extended to all participants in 2015, would be
10 in excess of \$6 million.

11 So that would obviously be a very
12 significant, A, departure from present plan benefits
13 and present practices. But ultimately it may be the
14 direction that, in order to deal with Cadillac tax
15 and other issues, plan sponsors are going to
16 continue to go.

17 These plans are growing very rapidly, as
18 the Panel is aware, and they're projected to grow
19 more rapidly in the future.

20 ARBITRATOR JAFFE: And the all
21 participants means not just the PRLBC.

22 THE WITNESS: No, no. It's just the

1 PRLBC, but all active employees, not just new hires.

2 ARBITRATOR JAFFE: Okay.

3 THE WITNESS: The other alternative that
4 was priced out was applying the CEHP to just new
5 hires only.

6 ARBITRATOR JAFFE: Got it. Thank you.

7 BY MR. HAVERMANN:

8 Q That's 44 and 45.

9 A Yeah. 44 shows that in the heading, yeah.
10 And that \$6,039,000 in 2015 converts to
11 annual savings per participant of just under \$200.

12 This next two slides just takes that same
13 data and applies that only to new hires. And there,
14 of course, the savings are really deferred and
15 deferred very substantially into the out years.

16 We show on Slide 46 that those savings
17 would be \$7,600 when you take the savings and divide
18 that by the number of participants.

19 Q All right. Why don't we sum up with 47 an
20 48?

21 A Right. And in summary -- and this is to a
22 degree repetitive of Mr. Reinert's opening

1 statement -- we would urge the Board to consider, in
2 the alternative, awarding the Amtrak pattern on
3 healthcare coupled with Amtrak's proposal on general
4 wage increase over the term of the contract.

5 In terms of the opportunity to consider
6 other avenues to a resolution of this matter, the
7 Board could consider any combination of those
8 initial changes discussed in mediation which could
9 be used to support additional general wage increase
10 over and above the Amtrak pattern.

11 We have illustrated that on 48, which is
12 the last slide with substantive data. And it takes
13 a little explanation to get to how these numbers
14 work, but I believe part of the Panel's deliberation
15 and work in getting to a resolution of this matter.

16 What we show under 1 in this table 2015
17 savings, is that the Amtrak July 17, 2000 proposal
18 in mediation would generate additional savings of
19 \$2,531,000.

20 That translates to savings of \$918 per
21 participant, and that's savings relative to the
22 Amtrak pattern.

1 So these are additive savings that would
2 be associated with substituting the proposal in
3 mediation for the Amtrak pattern. The Amtrak
4 pattern savings alone were \$1,035,000.

5 So you would have to add those two numbers
6 together to generate what the total savings would
7 be.

8 That \$918 translates to a GWI equivalent
9 of just over 1 percent, which essentially was the
10 offer that was discussed with the unions in the
11 mediation sessions.

12 Then other possible combinations -- and
13 this is a little bit like fitting a jigsaw puzzle
14 together, you're going to have to do this in pieces.

15 Item 2 would show the additive savings
16 that would be associated with changing the active
17 employee contributions as indicated here. That
18 would generate another savings of \$205 per
19 participant, or an additional .22 percent.

20 Item 3 would generate savings of \$334,000
21 annually, an additional savings of \$121 per
22 participant or an additional savings of .14 percent.

1 And Item 4, in effect what you would have
2 to do to get to the 6,036,000 that we showed or
3 6,039,000 that we showed for the savings for the
4 CEHP for all participants, you get there by adding
5 up the 2,473,000 plus the 2,531,000 in Item 1, plus
6 the 1,035,000 that was associated with the Amtrak
7 pattern increases.

8 So that's how you could build, if you
9 will, a table of fitting together different pieces
10 of what has been discussed in mediation to get to
11 any particular number that you wish to get to with
12 respect to savings that could support an additional
13 GWI award.

14 And that concludes my presentation.

15 Q And before your turn your slides off, turn
16 to Slide 24, if you could for just a minute.

17 A Sure.

18 Q Slide 24 is the calculation of the savings
19 related to the Amtrak pattern versus the status quo.

20 A Right.

21 Q And for 2015, that's where you show your
22 \$1,035,000 number.

1 A Right. Right.

2 Q So that's the --

3 A We don't show the 1,035,000 on that last
4 slide that we just went through, but that -- in
5 terms of getting to the 6,039,000 that was the
6 estimated savings for the consumer directed health
7 plan for all participants, that number is in that
8 calculation.

9 MR. HAVERMANN: All right.

10 Nothing further on direct. Thank you.

11 ARBITRATOR JAFFE: Fair enough.

12 What's your pleasure, Mr. Wilder?

13 THE WITNESS: I think a 20-minute recess
14 would be appropriate.

15 ARBITRATOR JAFFE: That sounds fine.

16 Let's stand in adjournment.

17 (A recess was taken.)

18 CROSS-EXAMINATION

19 BY MR. WILDER:

20 Q Mr. Rand, I am Roland Wilder, counsel for
21 the organization.

22 As I understood your direct testimony,

1 Mr. Rand, you were not physically present at the
2 mediation session that was conducted between Amtrak
3 and the PRLBC Union on July 15 and 16 of 2013.

4 Is that correct?

5 A That's correct.

6 Q All right. Did you receive a report from
7 whomsoever was present in the -- to represent Amtrak
8 in the healthcare area?

9 A I didn't receive a report
10 contemporaneously.

11 In other words, very shortly after, I did
12 receive a variety of documents and documentation
13 later when I was engaged to appear in this interest
14 arbitration.

15 Q Now, my first question has to do with the
16 Slide 33, additional changes suggested for
17 mediation.

18 A Okay. Let me turn to that, Mr. Wilder.
19 I'm there.

20 Q All right. Now, did anyone at Amtrak tell
21 you whether or not there was any interest by the
22 organizations in these so-called additional changes?

1 A No.

2 Q No, they did not or, no, there was no
3 interest?

4 A No, they did not.

5 Q I see. Now, is it accurate to say that
6 the supposed changes on Slide 33 affect users of the
7 plan?

8 A Yes.

9 Q In other words, they impact more heavily
10 on the sick, the elderly, and disabled.

11 Is that true?

12 A Right.

13 When you change benefits, as indicated on
14 this particular page, you are imposing additional
15 out-of-pocket costs on the participants in some
16 instances, not in others.

17 Q I see. All right. And that is
18 contrasted, for example, with a higher premium
19 contribution by the employees which the AmPlan and
20 National Plan would be uniform.

21 Is that correct?

22 A That's correct.

1 Q All right. In preparing this document,
2 and I'm speaking of your testimony that was reduced
3 to PowerPoint form.

4 Did anyone at Amtrak indicate the level of
5 organization interest in the additional changes in
6 the healthcare plan?

7 A No.

8 I was presented with the PRLBC proposals
9 and would have assumed from that that there was not
10 a robust level of interest.

11 But I never had that discussion with
12 Amtrak management.

13 Q If I don't ask you a single question about
14 those additional changes, would you interpret that
15 as being a lack of interest?

16 A On your part?

17 Q Yes.

18 A Yeah, I would say so.

19 Q Let's move to somewhere else.

20 A Okay.

21 Q All right. Let me draw your attention to
22 page 25.

1 A I'm there.

2 Q I want to make certain that I understand
3 the chart.

4 Going to the third column from the
5 right-hand side of the page entitled employee
6 contributions.

7 A The third column from the right-hand side,
8 yes.

9 Q And you have a negative 670,566.
10 And I take it this represents a value of
11 employee contributions in year 2011 in the National
12 Plan.

13 Is that correct?

14 A Correct.

15 Q All right. And for 2011, that was \$200.
16 Is that correct?

17 A 270, yes.

18 Q I'm sorry?

19 A You're talk about the annual savings per
20 participant on the right-hand side?

21 Q No. I'm talking about the employee
22 contribution.

1 I'm still on that column.

2 A Okay, yes.

3 Q All right. What figure did you use to
4 calculate the column which is the third column from
5 the right-hand side?

6 A I didn't do these calculations myself.
7 These calculations were done by Aon
8 Hewitt. And I have a consulting arrangement with
9 Aon Hewitt as well as with Amtrak. So they were
10 done by a colleague essentially under my
11 supervision, but I didn't do the calculations
12 myself.

13 It's my understanding from my discussions
14 with my colleague who directly participated in the
15 development of these numbers that these were numbers
16 that were shared with the organizations at various
17 points during the mediation sessions.

18 ARBITRATOR FISHGOLD: Can I ask -- maybe
19 help clarify that.

20 When -- is it your understanding that the
21 monthly employee contributions that was used by Aon
22 to arrive at the number 670,566 was whatever the

1 freight deal provided for the employee contribution
2 in the year 2011?

3 THE WITNESS: Applied to AmPlan versus the
4 status quo; right.

5 ARBITRATOR FISHGOLD: I think that was
6 what you were trying to ...

7 BY MR. WILDER:

8 Q And that figure was \$200.

9 Is that correct?

10 A I'm not sure where you're getting the
11 \$200.

12 ARBITRATOR JAFFE: Slide 22.

13 THE WITNESS: Oh, the \$200, the \$200
14 maximum contribution per participant.

15 BY MR. WILDER:

16 Q Yes.

17 A That's right.

18 Q Are we in agreement on that column?

19 A So far.

20 Q I'm going to go to the column to the left
21 of the one that we're speaking of, the fourth column
22 from the right-hand side.

1 A Right.

2 Q And I'm going to go down to year 2015.

3 All right?

4 A Okay.

5 Q And the savings, as I understand it -- and
6 by the way, is this expressed in hundreds, thousands
7 or what?

8 A In dollars.

9 Q All right. Hundreds of dollars, or just
10 dollars, just plain dollars?

11 A Yeah. I think the chart speaks for
12 itself.

13 For example, the savings under total plan
14 is shown here for 2014 is \$1,770,000 -- 770,981.

15 Q All right. So we're talking about the
16 total plan savings in year 2015 as being \$2,577,067.

17 Is that correct?

18 A Correct.

19 Q All right. Now, to yield a current
20 participant savings, I assume you would divide that
21 figure by the number of participants.

22 Is that correct?

1 A On the total plan would be the number of
2 participants who are receiving benefits under the
3 plan.

4 Q All right. And do you know what that
5 figure is?

6 A I'm not -- let me see, I may have that in
7 my notes page on this. Bear with me just a second,
8 Mr. Wilder.

9 Let's see, that's 25.

10 I don't have the number. You could do the
11 long division, and that would derive the number.
12 It's somewhere around 2,800 per participant.

13 Q The number we have used -- and I'm not
14 asking whether it's right or wrong, but I don't
15 think you have the basis to determine that, but
16 2,721.

17 Does that sound outlandish?

18 A That's sounds in the ballpark, yeah.

19 Q All right. If you divide 2.58 million by
20 2,721, you come up with a figure of \$79 per
21 participant.

22 You can do that or take my word for it.

1 A I'll take your word for it, Mr. Wilder.

2 Q All right. And that -- let me see if I
3 can put this in question form.

4 Was that the savings participant that was
5 used at the July 15, 16, 2013 mediation?

6 A Well, as I explained earlier, the way
7 these charts were developed, we used two different
8 denominators.

9 One denominator is the number of
10 participants who were actually making contributions,
11 and that's a lower number than the total participant
12 count because there are people who are active
13 participants in plan status who, for a variety of
14 reasons, at any particular point in time are not
15 making contributions.

16 That's how the savings were developed on a
17 per-participant basis for the contribution savings
18 using that lower denominator, if you will, because
19 some participants are not making contributions.

20 Q All right.

21 A We used a higher denominator when we're
22 talking about plan savings. And then we added those

1 two numbers together.

2 So you can't take the total savings
3 divided by one number and come up with the amount
4 that's here because that's not the way the math was
5 done.

6 Q All right.

7 ARBITRATOR JAFFE: Do you know which
8 column was developed first?

9 Did they take the annual savings per
10 participant then multiply by the number that were
11 making contributions to come up with the savings, or
12 did it work the other way around that they came up
13 with a savings figure and then derived the annual
14 savings per participant backwards?

15 THE WITNESS: They did the latter,
16 Mr. Jaffe.

17 The way the math was done in the Excel
18 spreadsheets that form the foundation for this, it
19 was done in a rate calculation exercise which would
20 be standard in developing these kind of numbers.

21 ARBITRATOR JAFFE: Right.

22 THE WITNESS: And then calculated in the

1 Excel spreadsheet. And I believe those Excel
2 spreadsheets have been provided to the organizations
3 and are a part of the record.

4 I think they are indicated on the very
5 last slide in this presentation.

6 But then, in constructing these tables, we
7 used those two different denominators. Those
8 different denominators are in the Excel
9 spreadsheets, if you will.

10 ARBITRATOR JAFFE: I apologize for
11 following up, but if you take the \$200 number,
12 subtract the 177.54, which is also on Slide 22.

13 THE WITNESS: Right.

14 ARBITRATOR JAFFE: The difference is
15 2,246.

16 And if you multiply that by 12, you come
17 up with 269.52, which is actually rounded to the 270
18 figure.

19 So it's suggested at least that the last
20 column at least in the first line of Slide 25 may
21 have been obtained first because that number is
22 independent of the number of people that you then

1 multiply it by to get total savings; right?

2 THE WITNESS: That's entirely possible.

3 And I have not gone back and actually
4 reviewed the Excel spreadsheets, reviewed the
5 formulas in any depth.

6 ARBITRATOR JAFFE: Okay. Fair enough.

7 Thank you for the interruption,
8 Mr. Wilder.

9 MR. WILDER: No. That's very helpful.

10 BY MR. WILDER:

11 Q What I'm trying to -- the problem that I'm
12 dealing with here is that at the national level, we
13 went into -- by we, I mean, two well thought of
14 actuarial firms went into this issue in detail, came
15 up with virtually the same answer which was 79 or
16 \$80 per participant.

17 And you have come up with a lower
18 figure --

19 A Correct.

20 Q -- on the same plan.

21 Now, I'm going to get into the duplicative
22 issue later on.

1 A Right.

2 Q But right now, we're just talking about
3 savings that flow from the offer that the PRLBC made
4 to Amtrak; right?

5 And we're using your figures, which was a
6 \$200 employee monthly contribution. All right?

7 And I'm try to account for the difference
8 in the per-participant savings estimate that was
9 made at the national level and that was made at the
10 Amtrak level?

11 A Well, the principal difference is the one
12 that is spoken to on Slide 26.

13 And that is that the AmPlan, the freight
14 changes applied to AmPlan yield a lower savings than
15 the freight changes applies to the freight plan.

16 The reason that's the case is because some
17 of the utilization management changes that were in
18 the freight deal were already in place in AmPlan.

19 So if they're already in place, there's no
20 additive savings that accrues from that.

21 I mean, that's essentially what was
22 explained when we went over the data on Slide 26.

1 Q Yes. But whether the savings are
2 pre-existing or new, they're still savings, aren't
3 they?

4 A I mean, the savings mathematically speak
5 for themselves.

6 I mean, we're showing the savings of the
7 freight deal versus the status quo. So the answer
8 to your question is no.

9 Q Now, while we're on that subject, is it
10 your understanding that the \$200 that freight
11 employees were contributing on a monthly basis to
12 the national health plan was the cap amount that
13 existed on December 31 of 2009, the so-called status
14 quo figure?

15 A That's my understanding, yes.

16 Q And what was that figure at Amtrak?

17 A The figure at Amtrak for the calendar
18 year, actually Amtrak straddles the years as I
19 mentioned earlier, but the figure for the closest
20 comparable period was 177.54.

21 Q I see. Could I draw your attention to
22 slide 26, please?

1 A Right.

2 Q Now, you have a sentence with a
3 conjunction.

4 Now, I'll give you a warning.

5 Conjunctions really bother lawyers.

6 All right. And I don't want to talk a lot
7 about that, but keep that in mind.

8 A I'm a lawyer, but they haven't bothered me
9 since law school.

10 Q All right. Fair enough.

11 Now, under the third bullet point entitled
12 differences, you have pharmacy Amtrak determined
13 lower value for the co-pay changes and already had
14 some utilization programs in place, difference \$14.

15 All right. Now, is that difference at \$14
16 attributable largely to the fact that Amtrak already
17 had some utilization programs in place, or to the
18 lower value for the co-pay changes?

19 A I really wouldn't know the answer to that.

20 Let me describe the process and maybe that
21 will be helpful to you and also helpful to the
22 Panel.

1 There were two different actuarial firms
2 that were associated with providing data separately
3 to the organizations and to the freight railroads in
4 the matter that was before PEB 243.

5 Cheiron was used by the organizations, as
6 I understand it. And Towers Watson was used by the
7 roads (phonetic). They came up with essentially the
8 same number, which was this \$80 or \$79 per month
9 difference.

10 When Amtrak engaged their own actuarial
11 consulting firm, Aon Hewitt, to develop numbers
12 based on these same plan changes, they used a
13 proprietary actuarial valuation tool to price out
14 plan changes.

15 And so the data was loaded into that tool.

16 This used to be done, when I came into the
17 business, basically on pieces of paper. It's a tool
18 that calculates.

19 For example, if you have a plan that
20 covers 100 percent of all medical expenses but has a
21 \$200 deductible in once instance and \$100 in another
22 instance, the difference in the value of those two

1 plans is going to be slightly less than \$100 because
2 some people won't hit either deductible.

3 So it's really just a calculation tool
4 that determines, based on actuarial principles, what
5 the difference in costs would be for a plan that has
6 these design characteristics compared with a plan
7 that has the separate design characteristics.

8 And that tool came up with slightly
9 different values than the values that were
10 calculated by either Cheiron or Towers Watson.

11 Q And do you know how that affected the
12 Towers Watson/Cheiron estimate of \$79 and \$80?

13 A Yeah. The net effect was that it
14 calculated a slightly reduced value from \$79 to \$65
15 per month per participant as the savings that was
16 going to be generated by the plan design changes in
17 the freight deal if applied to AmPlan as it existed
18 prior to the freight deal.

19 Q All right. If the difference between \$80
20 per participant and \$65 per participant is entirely
21 explained by the lower value of the co-pay changes,
22 what effect does the Amtrak's participation in some

1 of the same utilization programs have?

2 A I can give you that data. It's basically
3 in my notes here.

4 And this is an excerpt from the Excel
5 spreadsheet where these calculations were presented.

6 The deductibles and co-pay features, the
7 value that was calculated by Cheiron in terms of
8 projected savings, was \$51.

9 The value that was calculated by Aon
10 Hewitt for the deductible and co-pay changes was
11 actually higher. Their calculation tool produced a
12 higher number, and that is a savings of \$57.

13 So a net difference of a negative \$6 when
14 that was done.

15 On the utilization management medical, the
16 value that Cheiron calculated was \$6. The value
17 that Aon Hewitt calculated for AmPlan because
18 basically those medical utilization management
19 features were already in place, was zero.

20 So that produced a difference of an
21 offsetting \$6.

22 Is that helpful?

1 Q Yes. But I'm still trying to understand
2 the effect of the lower value for the co-pay changes
3 and how that affected the --

4 A No. Actually --

5 Q What you just said --

6 A Actually, Aon Hewitt calculated a higher
7 value.

8 Q That's what I thought.

9 A I see.

10 Q So how do we go from higher to lower?

11 A Oh. The medical co-pay changes, the
12 deductibles and co-pays -- you have got two
13 different sets here.

14 You have got the pharmacy and the medical,
15 one of which is buried in the \$14 calculation. And
16 then the medical cost sharing changes is the minus
17 \$6 that I just indicated from the spreadsheet.

18 Q So your earlier testimony about Cheiron
19 estimating a higher per-participant savings in the
20 pharmacy area really refers to something else.

21 Is that --

22 A Yeah. The utilization management in drug,

1 the calculation Cheiron produced shows a value in
2 terms of additive savings of \$22.

3 The value that was calculated by Aon
4 Hewitt because some of that utilization management
5 with respect to drugs was already in place is lower.
6 That's only \$8.

7 So that's the \$14 difference. So you get
8 to the \$79, if you will.

9 In the Cheiron calculation, \$51 is
10 attributable to deductibles and co-pays; \$6 is
11 attributable to utilization management and medical;
12 and \$22 is attributable to utilization management
13 drug.

14 You add up those three figures; you get to
15 \$79. That's their number.

16 Q All right. Mr. Rand, what utilization
17 management programs were already within the AmPlan?

18 A I don't have that -- command of that
19 information.

20 I don't know.

21 Q Would it be accurate to say that in
22 constructing these series of slides, particularly

1 with reference to the value of benefit changes and
2 the freight deal if applied to Amtrak, you relied
3 very heavily on the work of the other actuarial
4 firm?

5 A I relied completely on that work as I do
6 in any of these types of engagements.

7 (A discussion was held off the record.)

8 BY MR. WILDER:

9 Q Now, one last question.

10 And in your testimony today, did you refer
11 to the offer that the PRLBC made to Amtrak in the
12 healthcare area as "not being the freight deal"?

13 A I don't recall that I said that precisely.

14 Q But it is the freight deal, is it not?

15 A It is the freight deal, as I understand
16 it, with respect to benefit levels.

17 It is the freight deal as represented by
18 the -- and I'm sure it's accurate in terms of the
19 language, that the 177.54 is the 2009 contributions
20 compared to the 2009 contributions for the freight
21 pattern of \$200.

22 There's a foundation that's missing there,

1 though. Because if you go back to 242, what 242 did
2 was set forth a calculation procedure for the
3 freight deal that was really the subject of that
4 report that indicated that the -- in the freight
5 plan the contribution level would be 15 percent
6 subject to a cap that was the greater of \$200 or the
7 2009 contribution level.

8 And since the greater of those two numbers
9 as of the point at which that came into play, was
10 \$200, that's basically what the freight deal
11 contribution was.

12 In addition, I think it's important to
13 note that basically almost no difference now between
14 the cost of the freight pattern presettlement. It's
15 actually a little more expensive than the cost of
16 AmPlan, but not much.

17 And that wasn't the case back in the time
18 frame that was associated with the PEB 242.

19 Q Thank you.

20 MR. WILDER: We have no further questions,
21 Mr. Chairman.

22 ARBITRATOR JAFFE: Any further direct,

1 Mr. Havermann.

2 Do you want a moment? Sure.

3 (A recess was taken.)

4 REDIRECT EXAMINATION

5 BY MR. HAVERMANN:

6 Q Slide 26, please.

7 The \$14 difference between the calculation
8 in the freight negotiations and the calculation of
9 the changes in the freight deal as applied to
10 Amtrak, that \$14 difference was already part of the
11 savings that had been achieved in the status quo
12 prior to the freight deal?

13 A Yeah. Some of it was.

14 I mean, basically, you get the two
15 different numbers in this way. And this is reading
16 from my notes, not what's on this slide.

17 The value that was assigned by Cheiron in
18 their calculations, the deductibles and co-pays was
19 \$51. They assigned an additional value of \$6 to the
20 utilization management of medical, and they assigned
21 a \$22 value to the utilization management features
22 that were introduced in the prescription drug

1 program.

2 You add up those three numbers, 51, 6, and
3 22, you get to their \$79.

4 The calculations that were done by Aon
5 Hewitt, using their valuation tool, produced a
6 savings from the deductibles and co-pay that was
7 higher than the savings that was predicted by
8 Cheiron. And that savings was \$57.

9 But there was no savings attributable to
10 utilization management from medical because, from
11 the data that was reviewed the Aon Hewitt, all of
12 those utilization management features that were new
13 to the freight plan were already in place at Amtrak.

14 There was some additional value from some
15 of the utilization management in drugs that was \$8,
16 so 57 plus 8 is the \$65.

17 I mean, that's the math.

18 Q Yeah. I'm just -- I'm -- the question
19 that I want the clarification on is whether the
20 savings that are attributable to the utilization
21 management features of AmPlan that were already in
22 place during prior negotiations represented the

1 status quo?

2 A They are already embedded in the rates;
3 correct.

4 MR. HAVERMANN: That's all I have.

5 ARBITRATOR JAFFE: Any further cross?

6 MR. WILDER: No, Mr. Chairman.

7 ARBITRATOR JAFFE: Okay. I have got some,
8 but I need to preface it given Mr. Wilder's
9 observation at the beginning of his cross.

10 No one should draw any inferences with
11 respect to interest in the decisional sense from the
12 fact that we're posing questions.

13 We're simply posing questions to make sure
14 that we have a very clear understanding of the
15 factual issues that are in play. The rest we'll
16 opine on later.

17 Somewhere in the nature of just
18 understanding your report, if I may, Mr. Rand. And
19 others are by way of additional clarity. So I'll
20 try and hit them as best an order I can.

21 With respect to the middle tiers that you
22 described, did those exclude employee contributions

1 as well?

2 THE WITNESS: Yes, they do exclude
3 employee contributions.

4 It's just the value of the plan benefit.

5 And it's expressed under the tools as the
6 percentage of claims that would actually be paid by
7 the plan for in effect the entire U.S. population.

8 ARBITRATOR JAFFE: Fair enough.

9 You provided some testimony earlier on
10 relative to the family single numbers in terms of
11 the 2.8 to 1 ratio initially, and then there was
12 discussion of multiple tiers versus just two tiers
13 by way of that.

14 THE WITNESS: Right.

15 ARBITRATOR JAFFE: And one of the other
16 slides listed 65 percent for AmPlan as covering
17 dependents, I think was the phrase that was used.

18 THE WITNESS: That's correct.

19 ARBITRATOR JAFFE: Does that include both
20 spouse and other covered dependents?

21 THE WITNESS: Any configuration of
22 dependents?

1 ARBITRATOR JAFFE: So 35 percent would be
2 singles under this plan?

3 THE WITNESS: 35 percent of AmPlan
4 participants cover themselves on -- by the way,
5 that's not optional on the part of the participant.

6 ARBITRATOR JAFFE: I understand.

7 THE WITNESS: You're either in the plan or
8 not, and you're covered.

9 ARBITRATOR JAFFE: And you're either
10 single or you're not.

11 THE WITNESS: You cover your household,
12 exactly.

13 ARBITRATOR JAFFE: Fair enough.

14 Those numbers -- I think the 65/35 comes
15 out to about 1.87 to 1, assuming that my simple
16 division was right.

17 Is that an unusual demographic for large
18 plans of this type?

19 THE WITNESS: Well, it sort of it is and
20 it isn't.

21 And another good example is the Postal
22 Service. I think perhaps all members of the Panel

1 are aware, the Postal Service in the federal
2 employee system is different in the sense that their
3 employee contributions are lower.

4 And that traces back to a settlement that
5 goes all the way back to '78. It was changed in the
6 Valtin arbitration in '94. But they are lower, and
7 they're lower by a fairly significant margin than
8 participant contributions for non-postal employees.

9 As a consequence, the Postal Service has
10 family coverage of more than 70 percent of its
11 participants around 71, 72 percent. And that
12 compares with the 60 percent family coverage for
13 non-postal employees in the federal system.

14 So these numbers are not surprising to me
15 in terms of the ratio of how many people have family
16 coverage versus single coverage.

17 If it were going to be -- if I were going
18 to express a little bit of surprise, it would be
19 that, quite honestly, the 65 percent is as low as it
20 is because often you would see higher percentages of
21 people who are actually married or single parents or
22 have dependents than 65 percent.

1 ARBITRATOR JAFFE: That's actually what I
2 was asking the -- with the 65 that low, it makes the
3 ratio actually much lower than the other comparables
4 you cited.

5 That's why I asked the question.

6 1.86 is a lot less than either 2.8 to 1 or
7 2.3 to 1.

8 THE WITNESS: Those are actually two
9 different ratios, Mr. Jaffe.

10 ARBITRATOR JAFFE: Oh. Okay.

11 THE WITNESS: Yeah. I mean, that's just
12 the ratio of 65 divided by 35.

13 The ratio that I was referring to is if
14 you -- let me point you to a particular slide.

15 ARBITRATOR JAFFE: Sure. And I apologize
16 if I misunderstood.

17 THE WITNESS: Yeah.

18 If you go to Slide 11.

19 ARBITRATOR JAFFE: Okay.

20 THE WITNESS: If you divided the total
21 premium there, which with these eyes, I'm having a
22 really hard time. Let me get to it on my notes

1 because I have got this number somewhere else.

2 The self-only premium in that PPO set of
3 numbers that's highlighted as in yellow.

4 ARBITRATOR JAFFE: Yeah.

5 THE WITNESS: The self-only premium, total
6 premium is 6,031.

7 ARBITRATOR JAFFE: Yes, sir.

8 THE WITNESS: The family premium is
9 16,671.

10 ARBITRATOR JAFFE: Yes.

11 THE WITNESS: If you divide 16,671 by
12 6,031, you'll come up with the 2.8 to 1.

13 ARBITRATOR JAFFE: Oh. The 2.8 was a
14 ratio of premiums, not a ratio of the numbers of
15 people.

16 THE WITNESS: Correct.

17 ARBITRATOR JAFFE: Got it. At least that
18 wasn't clear before.

19 But that's okay.

20 THE WITNESS: Sorry. I should have made
21 that clearer than I did.

22 ARBITRATOR JAFFE: At least I follow now.

1 THE WITNESS: And by the way, that's
2 reflective of that other number. The reason the 2.3
3 to 1 is used rather than 2.8 to 1 is because in that
4 two-tier system, that's the ratio of the family
5 premium, if you will --

6 ARBITRATOR JAFFE: Got it.

7 THE WITNESS: -- in the FEHB plan to the
8 single premium.

9 ARBITRATOR JAFFE: Got it.

10 If we go back to PEB 243, there were a
11 series of recommendations made relative to design
12 changes as well as to premium amounts that were
13 phased in starting in July 1 to 2012 and then
14 working forward.

15 THE WITNESS: That's correct.

16 ARBITRATOR JAFFE: Do any of your exhibits
17 attempt to compare the cost of what Amtrak would
18 have paid out for this -- these two bargaining units
19 if the freight recommendations had been applied on
20 time to AmPlan?

21 THE WITNESS: We haven't done that
22 calculation, but I can pretty much do it in my head.

1 I mean, the deductibles and co-pays in the
2 Cheiron data were \$51, and the Aon Hewitt data were
3 \$57.

4 My understanding of the phase-in was that
5 those -- that those were phased in on the basis
6 where, in the first year, it would be 50 percent of
7 the changes in the deductibles, co-pays,
8 coinsurance, in the second year 75 percent, and in
9 the third year, 100 percent.

10 So if you took that savings in 2015, you
11 discounted it by 7 percent, and then you multiplied
12 it times 62 and a half percent, times two, I mean
13 that's how you would get to the number.

14 ARBITRATOR JAFFE: Okay.

15 And a question to counsel more than to
16 you, and then I'll be back to you in just a second,
17 Mr. Rand.

18 Mr. Havermann, is it possible to provide
19 the Board with a copy of the Aon Hewitt analysis so
20 that we see it firsthand rather than summarized, or
21 is that already here, and I haven't focused on it?

22 MR. HAVERMANN: Isn't that in the backup

1 data?

2 ARBITRATOR JAFFE: Is it. I didn't know.

3 The backup data, as I understood it, was
4 there, but not technically part of the record;
5 right, unless and until someone offered it.

6 MR. HAVERMANN: Yeah. I think -- yeah.

7 ARBITRATOR JAFFE: I read it before I knew
8 that was the case.

9 Sorry about that, but I don't recall
10 seeing the Aon Hewitt report as such.

11 MR. REINERT: Okay. I think the
12 understanding on the ground rules was that we had
13 obligations to produce expert working papers, which
14 we did, and we placed them into the client's site E
15 room.

16 ARBITRATOR JAFFE: Okay.

17 MR. REINERT: We -- they're not exhibits
18 unless otherwise made exhibits.

19 ARBITRATOR JAFFE: Got it.

20 MR. REINERT: You know, from the Company's
21 perspective, if you want to go review those, you can
22 go review those, but we're not offering them as part

1 of the record.

2 ARBITRATOR JAFFE: And I actually wasn't
3 asking to review them.

4 If it's already there, then it's easy
5 enough to address that one specifically. I don't
6 know that it is.

7 MR. REINERT: Let us confirm that it's
8 already there.

9 ARBITRATOR JAFFE: If it's there, that's
10 fine.

11 I don't recall seeing it. And I told you
12 I looked before I understood actually that that
13 wasn't intended for us because we all had access to
14 the same shared site.

15 MR. REINERT: Can you clarify the specific
16 analysis you're looking for?

17 ARBITRATOR JAFFE: The one that was
18 described by Mr. Rand dealing with the 57, 22, and
19 zero; right, as opposed to the Towers Perrin, which
20 was part of the record in 243, and the Cheiron which
21 was part of the record in 243.

22 MR. REINERT: It's just in an Excel.

1 ARBITRATOR JAFFE: And this is a third
2 one.

3 MR. REINERT: Yeah. It's in an Excel
4 spreadsheet.

5 I have a copy of it on my hard drive, so
6 it's easy enough to come up with.

7 ARBITRATOR JAFFE: Okay.

8 THE WITNESS: It isn't particularly
9 analytical. I mean, it just has the numbers on it.

10 ARBITRATOR JAFFE: I doesn't explain why
11 they -- what assumptions they made or anything else.

12 It's just an answer.

13 THE WITNESS: Well, that's correct. It is
14 the answer.

15 ARBITRATOR JAFFE: Okay.

16 THE WITNESS: And really, the way that
17 function is undertaken by Aon Hewitt -- and this
18 would be basically the same way with Towers Watson
19 or Cheiron, or anybody who is in this business, you
20 basically have a computer screen in front of you,
21 and you feed in the plan futures, the deductibles,
22 the co-pays, the coinsurance amounts, if any, et

1 cetera, et cetera.

2 And then the computer spits out a number
3 that gives you those relative values. And then that
4 relative value is applied to whatever the current
5 premium is to come up with a dollar difference.

6 ARBITRATOR JAFFE: Okay. So we're on
7 slide 26. It says used vendor determination of the
8 incremental utilization management programs under
9 pharmacy.

10 That vendor is Aon Hewitt? That wasn't
11 data that was obtained from some pharmacy vendor?

12 THE WITNESS: I think it was data that
13 was -- yeah.

14 MR. HAVERMANN: Would that be Caremark?

15 ARBITRATOR JAFFE: I don't know.

16 I'm just reading the exhibit, and it
17 wasn't clear to me what the basis was, which is why
18 I was asking.

19 THE WITNESS: Yeah. That was information
20 that was developed from CVS Caremark.

21 ARBITRATOR JAFFE: Okay.

22 MR. REINERT: So going back to your

1 request, you're looking for the underlying
2 calculation, basically, for Slide 26.

3 ARBITRATOR JAFFE: I was certainly trying
4 to understand it, Mr. Reinert.

5 MR. REINERT: Okay.

6 ARBITRATOR JAFFE: That's correct.

7 And when I read that -- if it turns out
8 that the difference between 22 and 8, which is 14
9 according to my math, is simply a question of CVS
10 CareMark was asked to go ahead and price the package
11 one way or the other, and this is the number they
12 gave, that's an explanation; right?

13 If it turns out it was some actuarial
14 analysis done by Aon Hewitt, that's on a different
15 level; right?

16 And all we want to do is actually
17 understand the numbers at the moment.

18 MR. REINERT: We will identify the answer
19 to that question.

20 ARBITRATOR JAFFE: Thank you.

21 MR. REINERT: And if there's material we
22 haven't produced, we'll produce it.

1 ARBITRATOR JAFFE: That will work from our
2 end. Let me put it that way.

3 MR. WILDER: Mr. Jaffe.

4 ARBITRATOR JAFFE: Oh, yes.

5 MR. WILDER: One point.

6 Implicit in your question to Mr. Rand
7 about the application of the national freight health
8 and welfare settlement to Amtrak at the time it was
9 made in 2012 was the notion that we proposed the
10 phase-ins that were part of the 242.

11 We did not.

12 ARBITRATOR JAFFE: I understood that.

13 MR. WILDER: And that is reflected on our
14 statement of our proposal.

15 ARBITRATOR JAFFE: And I appreciate the
16 clarification.

17 I wasn't attempting to do anything more
18 than obtain information at the moment, Mr. Wilder.

19 MR. WILDER: All right.

20 ARBITRATOR JAFFE: So I wasn't looking to
21 attribute that to your proposal, if that helps.

22 THE WITNESS: And we're not supposed to

1 draw any inferences from your questions.

2 ARBITRATOR JAFFE: That's correct as well.
3 I think I disclaimed adequately; right?

4 Bear with me just a moment. I think a
5 couple of the answers have already been addressed.

6 A few more quick ones.

7 Without having gone back and reread, my
8 recollection from 242 was that there was some
9 discussion of demographic differences between the
10 participants and AmPlan, and the participants in the
11 freight plans based on age and a variety of other
12 things?

13 THE WITNESS: Yeah. That's actually an
14 interesting part of the history of how AmPlan came
15 into being.

16 For many years, in the early going, Amtrak
17 was part of what was called GA 23,000, which was the
18 contract number for the old Traveler's contract.

19 But what had happened over the years, the
20 cost of the freight plan the GA 23,000 was going up
21 considerably faster than the cost of healthcare
22 trends in the employer workplace generally.

1 And there was in all probability a reason
2 for that. Amtrak asked for, understandably was
3 refused a number of times over the years for actual
4 claims data with respect to the Amtrak population.

5 And what they were seeking was to
6 ascertain whether there would be any economic
7 advantage for withdrawing from AmPlan.

8 The supposition was that there was. And
9 the reason for that was because, if you go back to
10 the early '70s, there were 250,000 employees covered
11 under the GA 23,000 contract, and about 20,000
12 Amtrak bargaining employees.

13 When you got 15, 20 years down the road
14 when the decision was also made to withdraw, the
15 headcount for Amtrak had remained roughly level at
16 20,000, but the headcount in the freight railroads
17 had dropped dramatically.

18 So inevitably there had to be an aging of
19 the freight population --

20 ARBITRATOR JAFFE: Sure.

21 THE WITNESS: -- from a participant
22 standpoint relative to the Amtrak population because

1 you weren't getting any new entrants.

2 So that was the reason why Amtrak elected
3 to pull out. And in the early going, it turned out
4 to be very significant economic advantage to Amtrak
5 from the inception.

6 That advantage has essentially dissipated
7 because the costs now are basically the same for the
8 freight railroad's plan and the AmPlan.

9 ARBITRATOR JAFFE: That was what I was
10 trying to lead up to, which is your testimony is
11 that has essentially disappeared in terms of the
12 demographic differences?

13 THE WITNESS: The premiums are pretty
14 close to the same now, so the legitimate assumption
15 is that that's a reflection largely of the
16 converging of the demographics.

17 ARBITRATOR JAFFE: Got it. Bear with me
18 just a moment, please.

19 I think the rest have already been covered
20 by way of your responses.

21 Do you have anything you wish to pose?

22 Okay. Any further direct?

1 MR. HAVERMANN: No thank you.

2 ARBITRATOR JAFFE: Any further cross?

3 MR. WILDER: No, Mr. Chairman.

4 ARBITRATOR JAFFE: Thank you very much,
5 Mr. Rand.

6 THE WITNESS: Thank you.

7 (Witness stood down.)

8 MR. HAVERMANN: With that, we propose to
9 close for the day.

10 ARBITRATOR JAFFE: That sounds fine.

11 Are we restarting next week at 9 or at 10?

12 It's a logistical question.

13 MR. REINERT: It would be advisable to do
14 it at 9 because we're going to try to get three
15 witnesses done on Monday.

16 ARBITRATOR JAFFE: Yes, okay. The Board
17 certainly can do it. We will all be here.

18 Does that work from your end at well,
19 Mr. Wilder?

20 MR. WILDER: I'm sorry?

21 ARBITRATOR JAFFE: Will 9 o'clock start
22 for Monday work from your end as well?

1 MR. WILDER: We can be here.

2 ARBITRATOR JAFFE: That sounds fine.

3 We will stand in recess then until next
4 Monday at 9 a.m.

5 Thank you all very much.

6 (Whereupon, the proceedings in the above-captioned
7 matter were recessed at 4:27 p.m. to resume on
8 January 13, 2014 at 9:00 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