SUMMARY STATEMENT

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The Employees' Wage Case

A. Overview

This statement and the related evidentiary material is presented on behalf of the 2,689 Amtrak employees represented by the Brotherhood of Maintenance of Way Employes/IBT (BMWED) and the Brotherhood of Railroad Signalmen (BRS). Both organizations are represented in this round of bargaining by the Passenger Rail Labor Bargaining Coalition (PRLBC).

Both of these Organizations have collective bargaining agreements with the National Railroad Passenger Corporation (Amtrak) which became amendable four years ago on January 1, 2010. During the pendency of negotiations with Amtrak, both Organizations ratified a 5-year settlement agreement with the National Carriers' Conference Committee (NCCC) of the National Railway Labor Conference which established wages and rules for the period from January 1, 2010 through December 31, 2015. The National Freight Agreements were settled on the basis of recommendations made by the President's Emergency Board No. 243. The central economic terms of the national agreements cover more than 153,700 employees on all Class I freight railroads in the United States, including nearly 30,000 members of the BMWED and BRS. [1/] **It is the Organizations' position that the wages, rules, and wage-related terms of these**

1/ These estimates exclude thousands of additional employees on scores of smaller railroads with "stand-by" agreements.

national freight agreements be applied to Amtrak employees within the BMWED and BRS craft or class over the course of the proposed five-year agreement.

In support of its position to apply the national freight pattern the Organizations rely on the following considerations:

1. **The national freight agreement presents a logical and natural benchmark**. There is no disputing the comparability in job content. The functions are identical; the skills and responsibilities of the jobs are identical; the working conditions and the equipment used are the same. Amtrak's workforce and operations are interwoven with those of the freight railroads. Approximately 72 percent of the miles traveled by Amtrak trains are on tracks owned and maintained by freight railroads. Amtrak, in turn, directs no fewer than 40 daily freight train movements over the Northeast Corridor from Washington to Boston which it owns and maintains.

2. **The application of the national freight agreement is wholly consistent with the parties' past contract determinations**. With one minor exception, all prior collective bargaining agreements on Amtrak involving the Organizations in this case have been coterminous with the freight railroad agreements. All principal benefit programs on Amtrak were inherited from the freight railroads and continue to be the same today. Wage adjustments over the past 35 years have been identical. For better and for worse, these two organizations have had a near perfect pattern relationship with their counterparts on the freights. The objective of the employees wage proposal is to preserve this relationship. Amtrak officials acknowledge the freight railroad standard. During testimony before PEB 222 Amtrak management stated that "the historic relation of Amtrak's compensation to freight wage rates" was an important factor in developing its wage position.

3. **All prior PEBs involving Amtrak have recommended the National Freight Pattern**. PEB 234, hearing the wage dispute between Amtrak and the BMWED, during the 1995 round recommended a framework for settlement which "... provides Amtrak maintenance of way employees with wages comparable to those performing the same work for freight railroads..." In recommending the organizations wage proposal, PEB 242 found

that the ".....proposal on wages has as its principal advantage that it retains the historical linkage between wages at Amtrak and wages for comparable jobs at the Freights."

4. **There is no internal pattern that is binding on the BMWED or BRS.** There is no single, identifiable set of terms which set an internal pattern during this round. The United Transportation Union (UTU) — the second largest organization on the property — settled for economic terms different than the other settled unions. Moreover, all organizations have entered into written "me-too" agreements with the Carrier indicating, explicitly, that the terms of their settlements are not necessarily final.

5. The application of the national freight agreement **results in overall wage progress which enables Amtrak workers to merely keep pace** with the rest of American workers. Comparisons with the Employment Cost Index confirm this conclusion.

6. Maintenance of real pay is perhaps the most widely accepted principle in wage determination. **Real wages today are well below the level of January 1975 — the first agreement on Amtrak**. The wage adjustments under the employees' proposal will establish real pay at the level existing on January 1975.

7. **Ability-To-Pay is not a relevant consideration in this case**. Amtrak has pre-funded the full cost of their proposal less the H&W concessions. This sum is 90 percent of the cost of the Organizations' proposal. The difference between the cost of labor's proposal and the pre-funded sum is $6.5 million over the entire 5-year term, or $2.2 million per year on a terminal cost basis. This is less than .06 percent of Amtrak's $3.4 billion operating budget. Even after the me-too provisions are exercised, the change in Amtrak's fiscal condition is imperceptible.

8. **Requiring Amtrak to cover all operating costs with self-generated commercial revenue is unrealistic and inconsistent with the economic nature of rail passenger transportation**. A self sufficient Amtrak is premised on the notion that no public or social value is generated by mass transportation which is properly supported by public funds. Amtrak should not ask its workers to subsidize taxpayers with substandard pay. The public interest is

protected when Amtrak wage decisions are anchored in the private railroad sector.

9. **It is not within the scope of the Arbitration Board's inquiry to question the will of Congress in funding Amtrak's contribution to the public good**. Amtrak's existence will continue to be a matter of Federal policy and beyond control of the collective bargaining process. Rather, the Board's mission is to examine the role of labor costs in the expense structure of the enterprise, and to judge labor rates against appropriate and acceptable norms. Without question Amtrak does not have a labor cost "problem" which calls for correction. Key indicators such as labor ratios and unit labor costs reflect high productivity and moderate labor cost increases over the past two decades under the Freight Pattern. At current levels both labor ratios and unit labor costs are below comparable modes of transportation. In the end, the Board must be guided, as Emergency Boards before it, by the "standard of people receiving comparable pay for comparable work." This approach will ultimately result in establishing the proper balance between the employees' right to decent compensation and the public's interest in preserving a national passenger rail system.

B. Description of the Parties' Proposals

The question of appropriate wage increases presents the most important issue in Labor's case before the Board. The Arbitration Board is charged with the responsibility of recommending appropriate wage adjustments for Amtrak workers **retroactively** to January 1, 2010, and over the balance of the moratorium. The Organizations' proposal calls for the application of all terms — including wages, rules and health care design changes — under the agreements reached between the Organizations and the NCCC covering Class I freight railroads over the period from January 1, 2010 through December 31, 2014. The proposal contains the following **seven elements**: (Exhibit 1)

(1) **Duration** — Five years commencing January 1, 2010 with a moratorium through December 31, 2014;

(2) **General Wage Increases** —

July 1, 2010 - 2.0%
July 1, 2011 - 2.5%
July 1, 2012 - 4.3%
July 1, 2013 - 3.0%
July 1, 2014 - 3.8%

(3) **Contingent General Wage Increase** — A negotiated increase for calendar year 2015, or 3.0% effective January 1, 2015 if the wage issue is resolved in arbitration or other administrative proceeding.

(4) **Lump Sum** — 1% of straight-time earnings during the period from November 1, 2010 through October 31, 2011 (after applicable GWIs).

(5) **Health and Welfare Benefit Levels** — Adopt the same medical plan design changes negotiated under the National Freight Agreement effective on date-of-signing. (Exhibit 2)

(6) **Health and Welfare Contributions** — Effective January 2014, employees pay the lesser of 15% of the total monthly payment rate or $177.54. Effective July 1, 2016, employees pay the lesser of 15% of the total monthly payment rate or $230.00.

(7) **Supplemental Sickness** — Effective March 1, 2014, benefits adjusted to restore the replacement rate in effect on December 31, 2009. Subsequent adjustments made in accordance with the National Freight Agreement.

The parties' proposals are illustrated in the tables on Exhibits 3 and 4. Under the Organizations' proposal, nominal wage rates increase on average by 16.5 percent over a 5-year term, or **3.1 percent** per year. (Exhibit 3) The true increase, however, is a more modest 14.9 percent (2.8 percent per year) after accounting for the increase in employee deductibles, co-pays and other AmPlan design changes which, of course, are effective reductions in cash compensation. (Exhibit 3) Based on estimates made by Amtrak's health care consultant, these design changes will cost the average employee about $78 per month. The estimated incremental net value over the 5-year period is $21,893 for the average employee; $13,925 of this sum is retroactive as of January 1, 2014. (Exhibit 3)

Significantly, the Organizations propose to follow the freight pattern by adopting all elements — good and bad. These include major concessions made by labor to change the design of the health care program mentioned above. (Exhibit 2) The Board must understand, however, that **there were no additional rule concessions made by the Organizations under the freight pattern**. Additionally, a consistent application of the pattern principle requires the **improvement** in supplemental sickness benefits recommended by PEB 243 and adopted under the National Freight Agreements.

Amtrak concedes that its Engineering Department workers are entitled to a raise in pay. Under the Carrier's proposal wages will increase 11.5 percent on date-of-signing. (Exhibit 4) Over the proposed 5-year moratorium the total increase is 14.8 percent; this amounts to **2.8 percent** per year. Adjusted for the proposed increase in health insurance contributions, the Amtrak proposal increases wages by 13.9 percent or **2.6 percent** per year. (Exhibit 4)

Exhibit 5 presents an estimate of the total cost of the Organizations' wage and health and welfare contribution proposal compared to Amtrak's. The estimate represents the incremental difference between status quo — i.e., the base case — and total labor costs under the respective proposals. Changes in the health insurance contributions

(Amtrak proposal) and plan design changes (PRLBC proposal) are included. In order to compare the two positions properly, both calculations are for the five-year period from January 1, 2010 to the common amendable date of January 1, 2015. The contingent 3.0 percent under the National Freight Pattern is considered equivalent to the adjustment ultimately made on January 1, 2015 for the other organizations on Amtrak.

The cumulative cost of the Organizations' proposal is estimated at **$79.1 million** over five years compared to **$70.4 million** under Amtrak's proposal. The terminal value equals **$29.8 million** per year under the Organizations' proposal compared to **$26.5 million** under Amtrak's proposal. (Exhibits 5 and 6)

Table I - Summary of Wage Positions

	Organizations'	Amtrak's
General Wage Increases over 5-year Period:	16.5%	14.8%
Annual Rate of Increase Over Term:	3.1%	2.8%
Net of HI Concessions:	2.8%	2.6%
Incremental Value Per Employee Net of Health Care:	$21,893	$19,402
Wage Retroactivity Net of HI Concessions:	$13,925	$12,329
Aggregate Cost over 5-year Period:	$79.1 mil.	$70.4 mil.
Terminal Value (annual "going forward" cost)	$29.1 mil.	$26.5 mil.

C. Description of the Bargaining Units and Covered Occupations

In the application of relevant wage standards — particularly those involving comparability — there is no more important consideration than the content and character of work performed by the employees before the Board. Without a thorough understanding of the work performed by Amtrak employees, and the physical conditions under which that work is performed, there is no foundation for selecting among the vast array of facts and factors those which are meaningful in the determination of appropriate wages. The following provides a brief description of the craft and classes involved in this case.

1. **Brotherhood of Maintenance of Way Employes Division/IBT** — The BMWED craft or class is composed of 2,004 employees spread across 84 discrete classifications. (Exhibit 7) Approximately 95 percent of BMWED members work on Amtrak's Northeast Corridor (NEC). The broad job classification system reflects the physical character of the railroad. The type and mix of occupations are those required to maintain the vast physical property owned or maintained by Amtrak which include 759 miles of road including 363 route miles on the NEC, 105 stations and other structures including 17 tunnels and 1,186 bridges. [2/]

The work content and working conditions characteristic of the Maintenance-of-Way craft involves a blend of highly skilled and responsible positions (e.g., Foremen, Repairmen, Linemen, Plumbers, Electricians, Machine Operators, Welders) and lesser skilled but highly physically demanding jobs (e.g., Trackmen). (Exhibit 7) However, there are certain features of maintenance-of-way work life common to nearly all BMWED occupations which distinguish this craft from all others in the industry and elsewhere in the economy. These include extensive travel and time spent

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2/ *Amtrak Annual Report 2012*, p.8

away from home and family; high exposure to occupational health hazards and injury; and onerous physical working conditions associated with performing outdoor, dirty work over long, irregular hours.

The organization of work within the maintenance-of-way function varies from railroad to railroad. The occupational mix will depend on such factors as the degree of automation and employment of high-tech equipment, the extent to which working foremen are used to perform routine subordinate work, the employment of production gangs in the track department, the use of subcontractors, and, of course, the ratio of track to structures on the property. Additionally, on Amtrak there is an electric traction maintenance function falling within the BMWED scope which is not typically found on the freight railroad. The BMWED craft on Amtrak includes a significant portion (10%) of high-skilled Linemen, Groundmen, Electricians and ET Foremen and related classes. Including the ET department and equipment repairmen, **over 78 percent of the BMWED members work in the high-skilled occupational group.** Nearly **one-quarter** of the unit is in the foremen classification.

With so many separate classifications of varying skill levels, the range of wage rates in the BMWED craft is predicably wide. Current maximum rates span from \$21.42 for the Trackman to \$30.87 for the highest paid Foreman. (Exhibit 7)

Table II - Distribution of the BMWED Unit			
Occupational Group	Weighted Average Rate	Number of Employees	Percent of Unit
Foremen	$27.50	480	24.0%
B & B Craftsmen	$23.69	295	14.7%
E.T. Linemen et. al.	$24.39	201	10.0%
Machine Operators/Engineers	$23.99	359	17.9%
Truck Drivers	$23.31	158	7.9%
Trackmen	$21.11	283	14.1%
Welders	$24.02	113	5.6%
Track Equip. Repair	$25.29	99	4.9%
Bridge Operators	$22.74	16	.8%
Total BMWED	$24.42	2,004	100%

2. **Brotherhood of Railroad Signalmen** — The BRS represents approximately 685 Amtrak employees engaged in the construction, repair, inspection, testing and maintenance of signal and communication systems used directly and indirectly in train operations. Classifications include Inspector, Foreman, Signalmen, Maintainers (or Signal Maintainers), Electronic Technicians, Electronic Specialists and Signal Helpers. (Exhibit 7) All employees perform highly-skilled signal and communication inspection, testing, maintenance, installation and repair work within assigned geographic areas. However, the classification system recognizes three general skill levels: Signalmen perform the less-skilled tasks such as signal construction and installation; Signal Maintainers perform the intermediate-level troubleshooting and maintenance tasks; and the more highly technical tasks, such as inspecting and repairing computer hardware, are reserved for the Technicians. BRS members work the 759 miles of railroad owned by Amtrak, including the 363 miles along the NEC. Employees entering the craft spend two

years as Helper before entering the three-year Training Program for the Signalman class.[3/] The pay structure is further complicated by regional differences in rates of pay for the same classification. (Exhibit 7)

Table III - Distribution of the BRS Unit			
Occupational Group	Weighted Average Rate	Number of Employees	Percent of Unit
Foreman/Inspectors	$30.05	98	14%
Electronic Techs/Specialists	$29.89	88	13%
Maintainers	$26.76	266	39%
Signalmen	$23.89	96	14%
Helpers	$20.10	137	20%
Total BRS	$25.90	685	100%

D. Amtrak and Freight Railroads

Amtrak was created by the Rail Passenger Service Act of 1970 to preserve and revitalize the nation's intercity passenger rail network which had deteriorated under the ownership and operation of the freight railroad system. It began operations on May 1, 1971 as a contractor using services, equipment and trackage of freight railroads over which it operated. Thus, between 1971 and 1976, maintenance-of-way, signal repair and equipment maintenance, along with other functions were performed by freight railroad personnel under contract with Amtrak. On April 1, 1976, Amtrak became a full-fledged operating railroad with the acquisition of the "Northeast Corridor" from Conrail. Initially trains and stations were staffed by employees of the operating railroads, principally

3/ In recent years management has used the BRS Training Program to advance employees to the qualified Maintainer position in lieu of Signalman.

Conrail. Amtrak gradually assumed station and maintenance functions by switching railroad employees to the Amtrak payroll. Between 1975 and 1980, Amtrak employment rose from 8,808 to 21,416 as Conrail employees transferred to Amtrak. [4/]

Today, Amtrak remains inextricably bound to the freight railroad system. Of Amtrak's 21.2 thousand mile route system, 20.5 thousand miles of road are operated over infrastructure owned and maintained by the Class I freight railroad employees covered under the national freight labor agreements. Approximately 70 percent of the miles traveled by Amtrak trains are on tracks owned by freight railroads including the BNSF, CSX, UP, NS and CN. [5/] Over the 460 miles of road owned and/or maintained by Amtrak in the Northeast Corridor there are no fewer than 38 freight train movements per day. [6/] Unavoidably the workforces of both freight and intercity passenger railroads work side-by-side in performing integrated functions particularly maintenance-of-way and signal maintenance. There can be no greater proof of job comparability than the historic sharing of employees and capital facilities between Amtrak and the freight carriers.

For collective bargaining purposes the comparison between the national freight carriers and Amtrak is natural and unavoidable. The wage and benefit terms of the

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4/ Amtrak's first agreement was with the TCU (formerly BRAC) in 1972. The Amtrak Service Workers Council (ASWC) followed in 1973. The rest of the nonoperating crafts followed in 1975 through 1977. The initial agreements with the Engineers (BLE) and Conductors (UTU) were negotiated in 1982 and 1985.

5/ *An Overview of Amtrak*, Joseph H. Boardman, February 9, 2011, p.1

6/ GAO, *Commuter Rail, Commuter Rail Issues Should Be Considered in Debate over Amtrak*, GAO-06-470, p.5, (Washington, D.C., April 2006) national freight agreements cover more than 90 percent of all freight railroad workers in the U.S. Although the labor agreements are separate, the labor representatives are the same, the mix of classifications and work performed are identical. And most importantly, the parties to this proceeding have historically embraced the freight pattern in the making of their collective bargaining agreements on Amtrak. As developed more thoroughly elsewhere in this record, health and welfare provisions, retirement plans, and work rules are essentially the same.

1. **The 1975-1981 Agreements** — During the first two rounds of bargaining, agreements between Amtrak and the non-operating labor organizations, covering the period from January 1, 1975 to April 1, 1981, were identical in all respects to the national freight agreements. (Exhibits 8 and 13) In fact, during this period wage increases and rule changes for Amtrak employees were typically based on "standby agreements" designed to **automatically** apply the outcome of the freight industry agreements between the NCCC and the various rail labor organizations. Consequently, prior to the agreement commencing April 1, 1981, the rates of pay for comparable classifications on Conrail and Amtrak for the BMWED and BRS were the same.[7/] (Exhibits 10 - 17)

2. **The 1981 Agreements** — Over the initial years of the 1981 agreements, both Conrail and Amtrak "deferred" the first 12 percent of the total wage increase negotiated under the national freight agreement; the balance of the freight pattern was

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7/ The weighted average rate for any individual organization was different at any point in time because of differences in the classification mix on the two railroads.

otherwise applicable on both Amtrak and Conrail. The reasons for the 12 percent deferral were peculiar to Conrail but were adopted by the Amtrak unions by force of the pattern principle. Again, wages, benefits and rules on Conrail and Amtrak were the same over the term of the 1981 contract(s). (Exhibits 10 - 17)

3. The 1984 Agreements — During February 1985, the BMWED and the BRS signed agreements on Conrail calling for the full restoration of pay rates to the level that would have existed had no deferral occurred. These agreements restored Conrail rates, effective July 1, 1984, to the level that would have prevailed had the national freight agreements applied without interruption. However, no such "snap-back" agreement had yet been reached on Amtrak and rates of pay fell below Conrail effective February 14, 1985.

The 1984 Amtrak agreements once again followed the national freight pattern for all organizations. For the BMWED and the BRS the wage terms of the National Agreements were simply incorporated by reference. During this contract the difference between Amtrak and freight rates caused by the 12 percent deferral was temporarily preserved. (Exhibits 10 - 17)

4. The 1988 Agreements — The national freight agreement commencing July 1, 1988 involved a bitter dispute between the labor organizations and the nation's Class I Railroads. PEB 219 issued recommendations to resolve the dispute which were rejected by all of the organizations involved. Ultimately, the recommendations of PEB 219 were imposed by the U.S.

Congress. [8/] The 6.5 year agreement, amendable January 1, 1995, provided a 36-month wage freeze followed by wage increases totaling 10.3 percent.

The Amtrak unions resisted the application of the 219 pattern without a "catch-up" increase to account for the 12 percent deferral. Several organizations, including the BRS, settled under wage terms which accomplished this objective. However, other unions did not settle and an impasse persisted over numerous issues, principally rules. The dispute involved among others, the BMWED, IBEW, IAM, ATDA. Ultimately the issues were heard by Presidential Emergency Board 222. In accordance with the recommendations of the Board the subsequent agreements called for total cumulative wage adjustments of 21.8 percent over the term.[9/] (Exhibits 10 - 17)

The agreements following PEB 222 recommendations effectively eliminated the gap between Amtrak and freight railroad wages created by the 12 percent deferral. The BRS Signalman rate, for example, was 90.6 percent of the freight rate on the amendable date (July 1, 1988) going into negotiations. The freight rates rose 11.0 percent under PEB 219. The Amtrak rates rose 22.5 percent under the 1988 agreement. **The rates by the end of the 1988 round of bargaining were equal.** At this point, general wage change between January 1, 1975 and July 1, 1995 for the Signalman on

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8/ The IAM nationally, and the BMWED with respect to Conrail, were not party to PEB 219. However, PEB 220 and PEB 221 recommended adopting PEB 219 recommendations in those cases. Settlements followed the recommendations.

9/ This excludes "equity" or "skill" adjustments received by certain classifications.

Amtrak and under the National Freight Agreement was exactly **148.3 percent** in both cases. (Exhibits 10 - 17)

Similarly, the BMWED Trackman rate was 89.5 percent of the freight rate on the amendable date (July 1, 1988) going into negotiations. The freight rates rose 10.3 percent under PEB 219. The Amtrak rates rose 21.7 percent under PEB 222. By the end of the agreement rates were equal, and the cumulative wage increase since January 1, 1975 was substantially the same — 162.7 on Amtrak and 165.9 on the freights. (Exhibits 10 - 17)

5. The 1995 Agreements — The 1995 round of negotiations on the freights resulted in common wage terms among the Shopcraft unions with some variations under the BRS and BMWED settlements related to the timing and level of employee health insurance contributions offsets to general wage increases (GWI). Subsequently, on Amtrak, the BMWED led the 1995 round of negotiations which resulted in an impasse and the appointment of PEB 234. In its case before the Board the BMWED sought the application of the freight pattern. The PEB made the following recommendation:

> "This Board has recommended a framework for settlement which provides Amtrak maintenance of way employees with wages comparable to those performing the same work for freight railroads...." [10/]

In the subsequent settlements reached on Amtrak by the BMWED and BRS, the terms of the national freight settlements, as recommended by PEB 234, formed the **exclusive** basis of their respective agreements. (Exhibits 10 - 17)

10/ PEB 234, p. 9.

6. The 2000 Agreements — The last bargaining cycle on Amtrak for the BMWED and BRS covered the ten-year period from January 1, 2000 through December 31, 2009. During the pendency of the Amtrak negotiations both the BMWED and the BRS settled two agreements with the NCCC covering their members on the freights. However, on Amtrak an impasse developed and persisted until the creation of PEB 242 on December 1, 2007.

The case before PEB 242 has many similarities to the present case. The Carrier was insisting on the application of an alleged "internal pattern" predicated on settlements with the Transportation Communication's Union (TCU), the Amtrak Service Workers Council (ASWC), and the TCU-American Railway & Airway Supervisors Association (OBS). Additionally, the American Train Dispatchers Association (ATDA), and the Brotherhood of Locomotive Engineers and Trainmen (BLET) settled agreements which failed ratification. [11/] Over the objection of the Carrier, PEB 242 found that "Amtrak's Internal Pattern Claim is Not Persuasive in this Case." [12/] The Board recommended that the terms of the National Freight Agreements for the BMWED and BRS be applied over the entire 10-year period — including the same general wage change over the term of the agreement(s). [13/] Subsequent voluntary settlements for both organizations followed the Board's recommendations. (Exhibits 10 - 17)

11/ PEB 242, p. 16.

12/ Ibid. pp. 24, 25.

13/ Ibid. p. 29

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Notwithstanding a couple of twists and turns associated with the Conrail wage deferral, it is true that for these two organizations, the National Freight Agreements have formed the pattern for wage negotiations on Amtrak throughout the entire history of Amtrak bargaining. Over the entire thirty-five years between January 1975 and January 2010, all freight and Amtrak agreements have been co-terminus with one exception for the BRS. [14/] **BMWED wage increases under the national freight pattern had totaled 322.5 percent over the 35-year period — exactly the same as under the Amtrak agreement**. (Exhibit 16) **The cumulative increase under the BRS national freight agreement was 297.3 percent compared with 291.6 percent on Amtrak**. (Exhibit 17) Moreover, the language in the BMWED and BRS agreements on Amtrak routinely incorporated by reference the terms of the National Freight settlements. These provisions covered subjects such as supplemental sickness, health plan design, vacations etc.

Critics of wage bargaining on Amtrak, and other public or quasi-public organizations, often cite the lack of market discipline characteristic of wage determinations in the private sector. However, the Organizations in this case seek wages, benefits and rules which have been set in the private sector and which have proven to be competitive in the marketplace. The proposed compensation package has enabled freight railroads to reach historic levels of profitability. Under these circumstances, there is no

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14/ The BRS Amtrak agreement executed January 23, 1992 extended the motorium to September 30, 1995.

logical basis for recommending a wage agreement that deviates from the parties' mutually acceptable practice.

E. The "Internal Pattern:"

An internal pattern — i.e., a settlement made by one or several bargaining units with the same employer — must meet three conditions in order to be binding on a follower unit: (1) the alleged pattern must have achieved critical mass (i.e., cover a vast majority of the relevant population); (2) the settlement must have singular, clear, identifiable terms; and (3) an historical pattern relationship, established by the parties over a significant period of time, must be evident. The settlements reached on Amtrak during this bargaining cycle fail to carry 2 of the 3 necessary credentials.

1. Critical Mass — The facts suggest that a meaningful proportion of Amtrak's unionized workforce has settled. The so-called shopcraft/TCU settlement covers about 73 percent of the workforce. The UTU settlement covers another 12 percent; and the BMWED/BRS group represents 15 percent of the unionized population. By contrast, at the time of PEB 242, ratified agreements covered fewer than one-third of all represented employees.

2. Identifiable Terms — There is no single pattern settlement for the Board to apply. The shopcraft/TCU deal is precisely the one proposed by Amtrak in this case. But the UTU agreement calls for economic terms — i.e., cash compensation — which add significant value for the employees. The UTU settlement, covering 12 percent of the population, provides a "performance bonus" equal to $1,250 per year per Conductor. (Exhibit 18, pp. 5&6) Essentially, bonus eligibility requires the employee to simply obtain and maintain the qualifications necessary to perform the job as Passenger Conductor (including applicable Federal certification), and meet a work requirement by performing any work in the classification for not less than 120 days during the 6-month "performance period."

Based on the average PRLBC rate, this bonus is equivalent to an additional 2.0 percent general wage increase. [15/] The additional 2.0 percent on Amtrak's proposal to the PRLBC of 14.8 percent, puts the total wage change at16.8 percent, which actually exceeds the Organizations' proposed 16.5 percent over term. The UTU "internal pattern" was reached after the shopcraft/TCU settlement and is now subject to the "me-too" provisions negotiated by the TCU and others.

3. Historical Relationships — As developed earlier, the leader-follower relationship between the BMWED/BRS Amtrak settlements and their National Freight counterparts, is consistent over the 35 years of Amtrak's existence. By contrast the relationship between the TCU/UTU and BMWED/BRS on Amtrak is far more tenuous. As recently as the last round of bargaining, it was recognized by PEB 242 that the connection between Amtrak and the Freights was superior to the alleged internal pattern for the unions before it — even though the TCU was under contract for the first 5 years

15/ $1,250 equals $.60 per straight-time hour, or 2.4% of $24.80. Because the performance bonus is not incorporated into the base rates for overtime purposes, 2.4% is equal to a 2.0% GWI subject to an OT factor of 20%.

of the recommended agreement. [16/] Moreover, on prior occasions the BMWED **led** the other organizations in bargaining, and did not follow others on the property, as suggested in this case.[17/]

F. "Me-Too" Provisions

It is significant, that unlike prior rounds of bargaining, this round is distinguished by the presence of written me-too provisions in all current settlement agreements, including the UTU's. The me-too agreements provide automatic incorporation of "more favorable general wage increases or benefits" negotiated by any other Amtrak union, unless they are offset by rule changes of comparable value. (Exhibit 18; Letter #9) The very existence of these formal provisions amount to tacit recognition that the "internal pattern" will not hold under the appropriate application of pattern principles, and that, consistent with all prior history, the freight pattern will prevail.

In the application of the pattern principle PEBs have considered the need to maintain labor relations stability. Quoting PEB 221, the President's Emergency Board in 222 (Amtrak) put the proposition in these words:

> "We consider it critical to the public interest that labor relations and collective bargaining on the nations' railroads be fair, stable, and reasonably consistent. Conversely, we believe that political competition between and among unions for supremacy of benefits, with its inevitably

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16/ The TCU reached its tentative agreement on August 3, 2003, PEB 242 issued recommendations on December 30, 2007.

17/ PEB 234 involved BMWED exclusively; there were no prior settlements on Amtrak at the time.

> destabilizing consequences, is damaging to the public interest." That observation seems to us to be equally applicable to the instant case. [18/]

The me-too provisions protect the settled unions against the probability of having the more appropriate freight pattern applied to the unsettled unions. For its part, the Carrier's interest in having "fair, stable, and reasonably consistent" terms applied across all agreements is guaranteed by the me-too. In the end, the me-too provisions obviate the "destabilizing consequences" often feared when an internal pattern is discounted or ignored altogether.

G. The Employment Cost Index and Historical Wage Comparisons

It is clear from the foregoing analysis that pay comparisons with identical occupations on the freight railroads support the wage increases proposed by the Organizations on Amtrak. There is no controversy regarding the relevance or importance of comparisons with the Class I freight railroads in the making of Amtrak wage agreements. Past Emergency Board records prove the point. Valid pay **level** (i.e., absolute dollar) comparisons contemplate equal or comparable job content; that is to say, comparable working conditions, work tasks, duties, responsibility, qualifications, health risks, etc. Absent a factual foundation establishing comparable job content, wage level comparisons are meaningless. The Amtrak/freight comparison offers this foundation for signalmen, trackmen and the other workers involved in this case.

18/ PEB 222; p. 10

Historical wage trends take on special significance in this proceeding since strictly comparable jobs outside the railroad sector are limited. It is reasonable, however, to infer that the job content differences apparent today have existed during past contract determinations and that negotiators have taken these differences into account. We do not suggest that negotiators or Emergency Boards have specifically tied Amtrak rates of pay to jobs outside the rail sector by establishing some definitive differential. Nevertheless, the results of negotiated and recommended agreements have created a certain relative position for Amtrak workers in the hierarchy of wage rates in the national economy. In determining the appropriate wage increase in the current year, it is instructive, therefore, to examine: (a) the extent to which a consistent, relative position has existed; and (b) the extent to which a historical position has been distorted in recent years by the lack of adequate wage change. At the very least, historical wage trends place the proposed Amtrak wage changes in proper perspective.

Comparisons with the BLS Employment Cost Index (ECI) show a pattern of inadequate wage increases under Amtrak agreements. (Exhibits 19-22) During Amtrak's first decade wages matched the increases for all private sector workers — cumulative wage increases were 78 percent for all US worker compared to 78 percent for the BMWED; 75 percent for the BRS. However, the wage hiatus in 1984-1986 caused Amtrak workers to fall behind. By the amendable date of the current contract — January 2010 — a wage **gap of 14.7 percent** had emerged for the BRS, and **11.7 percent** for the BMWED).

Significantly, the Organizations' proposal will close but not eliminate the wage gap. All private sector workers — as measured by the ECI — increased their wages by 6.6 percent between January 2010 and June 2013. Under the Organizations' proposal Amtrak wages will increase 12.3 percent over that period. By June 2013 (the most recent ECI data) the wage gap will shrink to 8.8 percent and 6.6 percent for the BRS and BMWED respectively. (Exhibits 19-22)

The ECI analysis also provides a check on the appropriateness of the freight pattern. Over the course of the last 10-year agreement — predicated exclusively on the freight pattern — wages on Amtrak rose 35 percent compared to 32 percent for the rest of the American work force. There is nothing extraordinary about wage change under the National Freight Agreements.

H. Cost of Living and Rising Real Wages:

Arbitral case law and Emergency Board literature is replete with affirmative statements on the high degree of relevance of cost-of-living changes in the wage determining process. Application of this standard translates into wage adjustments sufficient to cover rises in the cost of living in the recent past, and anticipated increases over the course of the renewal agreement.

It is true, of course, that cost of living is a minimum standard. If applied strictly and exclusively, it would be too rigid a measure, not allowing wages the flexibility to adjust upward in order to provide workers with improvement in the quality of living through advancing **real** pay. Amtrak workers are entitled to share in the prosperity of our expanding economy, and the progress shared is to be measured in terms of rising real wages.

Wage adjustments under the first six wage agreements on Amtrak were not sufficient to maintain real pay. Real pay at the outset of the last agreement on January 1, 2000 was only 90 percent of the level on January 1, 1975. (Exhibits 23-26) The last agreement based on the recommendations of PEB 242 provided some measure of catch-up. At the expiration of the moratorium of the current agreement on January 1, 2010 real pay for the BMWED was 98 percent of the level 35 years earlier — the effective date of the first Amtrak contract. (Exhibits 23-26) The level for BRS is only 96 percent. The practice of copying the freight railroads has, for certain, resulted in only moderate wage change by this standard. Specifically, Amtrak workers have not yet recovered from the effects of the wage freeze driven by PEB 219 involving the freights.

Since the amendable date, the CPI has risen 8.7 percent (January 2010 to the last known CPI for July 2013). Under the Organization's proposal nominal wages will rise by 12.3 percent. Under the Organization's proposal, the resulting real wage today will be exactly at the January 1975 level. (Exhibits 23-26) The consequence of the Organizations' present wage proposal is to restore real wages to the level enjoyed 38 years ago on January 1975. This is a very modest and realistic goal in any wage determination.

I. Impact of the Organizations' Wage Proposal on Amtrak's Financial Position

1. The Economic Nature of Intercity Rail Transportation

The concept of profitability, however useful in evaluating the condition of a private sector corporation, is incompatible with public and quasi-public organizations such as Amtrak. Amtrak, like other quasi-public agencies, has no mechanism by which the service provided may be directly related to the total commercial revenues received. Amtrak collects revenues directly from passengers and indirectly from the public through government subsidies in exchange for the transportation "product" which contains mixed characteristics of pure public and pure private goods. On one hand, the benefits of rail transportation accrue directly to the individual who rides the system. This is a private exchange. And in this respect, public rail transportation is a private good.

At the same time, other products of inter-urban transportation are public in nature. These public goods, or benefits, include the conservation of energy, the increase and stability of employment, increased real estate values, more productive utilization of land space resources, affordable transportation for those for whom transportation would otherwise be difficult or nonexistent, and reduced highway traffic congestion and environmental pollution. These are the public products of intercity transportation and a significant portion of Amtrak's Congressional mission. These kinds of benefits carry strong logical, economic justification for government allocation. They are consumed collectively by all residents of the community, and are not divisible or priceable to the individual. Once in existence, everyone is able to benefit from public transportation, regardless of whether the individual himself has paid for it and regardless of how many others are also benefitting from it. There is no disagreement between the parties in this case regarding the propositions stated above. [19/] On October 14, 2013, management stated that "Amtrak itself is an economic engine that returns nearly three dollars to local communities for every one dollar of federal investment (FY 2010-FY 2012)." (Exhibit 27)

The decision to acquire and operate the intercity passenger rail system was made by Congress in recognition of the fact that the public benefits of mass rail transportation are necessary and possessive of highly significant indirect by-products. Profitability is not the standard of success for passenger rail transportation. If it were otherwise, the Congress would not have salvaged Amtrak from the private sector and would not have poured billions of dollars into the capitalization and operation of Amtrak over the past 40 years.

It is wrong for the management to use the potential increase in government subsidies as a weapon against otherwise justifiable compensation for railroad workers, as though public support were some novel method of financing public services. In examining the financial position of the employer in this case, the fundamental economic nature of quasi-public organizations must be kept foremost in mind.

19/ See for example *Amtrak Annual Report 2012*, p. 23. and Exhibit 27.

2. Labor Costs and Recovery Rates

The recovery rate is the percent of operating expenses (excluding non-cash items) recovered through commercial revenue sources — mainly passenger fares and commuter service contracts. Given the quasi-public nature of the Carrier, the recovery rate indicates the balance between users (passengers fares) and the public (subsidies) in funding Amtrak service. The recovery rate has long been regarded by management and Federal policymakers as significant indicator of the Carrier's **commercial** success.

Over the past 42 years commercial revenues have risen steadily. Even as Amtrak abandoned its mail and express delivery business, and reduced its direct operations of several commuter railroads, revenue has climbed to record levels principally as the result of increased ridership, load factors and yields (i.e., passenger revenue per passenger mile). Amtrak recently reported that ridership for Fiscal Year 2013 increased to **31.6 million**, marking the "**tenth ridership record in 11 years**." (Exhibits 27 and 28) It reported further that "FY 2013 produced eight individual monthly ridership records, the single best month in Amtrak history and new records on 20 routes." (Exhibit 27)

Total expenses, on the other hand, have been held in check principally by compressing the rise in labor costs. Overall labor costs as a percent of revenue have fallen steadily from 90 percent in 1987, to 80 percent in 1999, and to 71 percent in 2012. (Exhibit 29) Labor costs in the expense structure have been relatively constant — 53 percent in 1987, 54 percent in 1999 and under 50 percent today. (Exhibit 29) Together these favorable developments produced a meaningful increase in Amtrak's recovery rate between 1991 and 2013 — a 14 percentage point improvement. Today, commercial revenue as a percent of total operating expense is 87.6 percent. (Exhibits 30 and 46)

Amtrak's recovery rate is far better than any other sector of the public transportation industry. All told, the public transit industry covers 35.3 percent of operating expenses with commercial revenue sources. Motor bus systems average 27.4 percent; commuter rail systems such as Metro North or the Long Island Rail Road are typically in the 52 percent range; only heavy rail urban transit systems are reasonably close at 66.0 percent. (Exhibits 31-33)

It is clear that the historical application of freight railroad wage and benefit standards to Amtrak's work force has not impaired the company's commercial success. Total labor costs have consumed a diminishing portion of the revenue dollar, and in real terms, have **dropped 8.5 percent** over the past 10-year agreement. Throughout this period, Amtrak has been able to achieve and sustain a cost recovery level superior to any other mode of passenger transportation. (Exhibits 31-33)

3. Productivity and Unit Labor Costs

The Organizations have said repeatedly that Amtrak does not have a labor cost problem that calls for correction — in rules or wages — during this round of bargaining. The facts are these: (1) employment has shrunk and production has increased; the consequent labor productivity has soared; (2) moderate increase in total compensation, including wages, benefits and overtime, combined with rising productivity, has caused unit labor costs to remain nearly flat; (3) unit labor costs have lagged well behind U.S. Industry, and at current levels, are below other modes of passenger rail transportation.

Over the past 12 years, employment in the BMWED craft on Amtrak fell 33 percent; BRS employment fell 30 percent. (Exhibits 35) Accounting for an estimated 367 workers transferred to Massachusetts Bay Commuter Railroad (MBCR), 866 jobs have been abolished or **23 percent** of the BMWED/BRS workforce (assuming the total change during 2003 was attributable to the MBCR transfer). An alternative measure is based on data reported to the Surface Transportation Board (STB). Since 2000 employment in maintenance-of-way (including BRS) declined by 19 percent through 2012. (Exhibit 36) During this period, overtime hours per employee were reduced by 35 percent; and total hours paid-for fell 25 percent. (Exhibits 35 and 37)

Over the long run output has climbed, especially over the past 12 years. Seat-miles are up 8.0 percent and passenger-miles have increased 21.1 percent, even as Amtrak dropped some commuter service and long distance routes. (Exhibits 38 and 39) With fewer man-hours producing more seat-miles, labor productivity in the maintenance of way groups has increased significantly — up 44 percent since 2000. On a passenger mile basis, BMWED/BRS productivity has increased 62 percent since 2000. (Exhibits 39 and 40)

The analysis of unit labor costs combines the effects of labor costs and productivity on the financial position of the employer. The money receipts, or revenue, depend on the quantity of output multiplied by the price per unit. The cost of production depends on the quantity of inputs (labor, material, equipment) multiplied by the price paid for them per unit of output. For Amtrak the quantity of output — i.e., passenger-miles — is rising relative to the quantity of input (labor, capital), evidencing an increase in productive efficiency, but this effect can potentially be offset by adverse price movements creating a "cost-yield gap." For example, the price per seat-mile may fall because of stiffer competition from airlines or slack demand; or the price of inputs may be rising, because of wage increases, greater demand in the factor markets — for fuel and materials, or uncontrollable increases in health care costs. In this connection we look at unit labor costs — total labor expense per passenger-mile. **Unit costs explain how productivity gains are translated into a better financial position**.

As stated, productivity is up and total labor cost per hour rose at a moderate pace; the result is that the labor cost per unit of output has been flat for a decade**.** Adjusted for inflation, unit costs have **fallen by 19.6** percent since 2000. (Exhibit 41) To place this experience in perspective, Amtrak's unit labor costs today are below commuter railroads and heavy rail transit systems. (Exhibits 42 and 43)

4. Impact of Me-Too Provisions

The Me-Too provisions included in the agreements of all settled Amtrak organizations, if exercised, will result in uniform, Carrier-wide general wage change and health insurance terms. However, **under this scenario the incremental cost to Amtrak is minimal.**

Amtrak's latest five-year plan covers FY 2013 through FY 2017. (Exhibit 41) Operating revenue from 2013-2017 is projected to increase 14.2 percent. Operating expenses are projected to increase 12.9 percent. Thus, operating losses and associated Federal support is projected to **decline by 5.8 percent** as the expense recovery rate climbs from 87.2 percent to 88.7 percent. (Exhibits 44 and 46)

Total labor costs are expected to increase 14.5 percent. Imbedded in these numbers are assumptions for changes in staffing, overtime, fixed benefit inflation, and, of course, wage increases under the Amtrak's proposed internal pattern. The labor ratio is projected to hold steady at 67.2 to 67.4 percent. (Exhibit 46) However, if the plan is adjusted to include the application of the freight pattern to **all represented employees** (86% of Amtrak) the retroactive bill for FY 2014 will equal approximately $39 million. The going-out, or terminal value, is only $8 million. (Exhibit 46) Under this scenario the recovery rate goes from 88.7 under the Plan to 88.5 in the FY 2015-FY 2017 time frame; the labor ratio moves imperceptibly by two-tenths of a percentage point from 67.4 to 67.6.

Significantly, after applying the me-too, the projected recovery rate and the labor ratio will still reach record-best levels. (Exhibit 46)

The Federal support requirement would be $8.0 million higher than Plan. All told, the incremental cost of adopting the freight pattern for all represented employees will add two-tenths of one percent to the Amtrak budget. (Exhibit 46)

Perhaps the best method of weighing the impact is to examine unit labor costs. Under the Plan labor costs per seat-mile reach $0.175 by FY 2017; under the Plan with the incremental me-too expense, unit labor cost goes to $0.176 by FY 2017. Unit costs on a passenger-mile basis paints a similar picture: unit labor costs increase from $0.309 to $0.310. (Exhibit 46)

J. Conclusion

An award which applies the literal terms of the BMWED and BRS National Freight Agreements to the same classifications on Amtrak is fully supported by the facts before this Board.

First, the freight standard has been embraced by the parties — in good times and in bad — consistently over the entire Amtrak bargaining history. Moreover, when the freight pattern met the interest of the employer, such as in 1981, Amtrak insisted on following the freight pattern precedent.

Second, there is no single, internal pattern on Amtrak to guide the Board. Applying the terms of the UTU settlement on Amtrak actually exceeds the value of the PRLBC proposal.

Third, the existence of me-too provisions with all settled Amtrak unions bears witness to the high probability of alternative agreements. Significantly, the Carrier's traditional concerns for distorted pay relationships and destabilized labor relationships is totally avoided in the presence of the me-too arrangements.

Fourth, the Amtrak proposal is pre-funded; the difference between the aggregate cost of the Amtrak proposal and the PRLBC's is minimal. Even after extending the freight terms to all other represented employees on the property, the impact on all meaningful financial and economic metrics is imperceptible. There is no credible ability-to-pay argument.

Fifth, wage standards must, in this case, as in any interest case, revolve around job comparability. There are 30,000-plus maintenance-of-way and signal maintainers performing identical work under the National Freight Agreements negotiated by the BMWED and BRS. There are no employees in similar classifications in the TCU, UTU, BLE, or any other organization with settled agreements on Amtrak.

In the end, the challenge before the Board is to determine what level of compensation is fair and reasonable. In other words, what is the proper "standard" in setting Amtrak wages and benefits? In recommending the application of the national freight railroad pattern during the 1995 round of bargaining PEB 234 stated the proposition in these words.

> "We recognize that the cost of labor, like the cost of any other industrial asset, must be considered in formulating priorities. Fair and reasonable costs are as integral a part of the budget picture as payment of the prevailing rates for power, equipment, supplies and the like. Labor costs should not be considered a residual element of funding dependent upon the availability of remaining money, or be temporarily suppressed to present an unduly rosy view of Amtrak's costs.
>
> It is our charge and responsibility to determine the equitable terms and condition of employment for BMWE employees on Amtrak based on the record, and guided by the standard of people receiving comparable pay for comparable work. Congress must be informed of considerations of equity in labor costs, rules and conditions if it is to make realistic judgments on continuing funding of Amtrak Only if properly appraised of the true cost of this enterprise, including the impact of fair wages and benefits, can Congress exercise a truly informed judgment as to the real costs, the pitfalls and shortfalls of running the system. Accordingly we recommend a package which recognizes the costs of employing a skilled and dedicated work force and which permits the parties to resolve outstanding issues. We regard it essential that our recommendations reflect the reality of comparable relationships." (PEB 234, p.3 of Report)