

1 Presidential Emergency Board No. 243

2 between

3 National Railway Labor Conference

4 representing:

5 Union Pacific Railroad Company

BNSF Railway Company

6 CSX Transportation, Inc.

Norfolk Southern Railway Company

7 The Kansas City Southern Railway Company

Alton & Southern Railway Company

8 The Belt Railway Company of Chicago

Brownsville and Matamoros Bridge Company

9 Central California Traction Company

Columbia & Cowlitz Railway Company

10 Consolidated Rail Corporation

Gary Railway Company

11 Indiana Harbor Belt Railroad Company

Kansas City Terminal Railway Company

12 Longview Switching Company

Los Angeles Junction Railway Company

13 Manufacturers Railway Company

New Orleans Public Belt Railroad

14 Norfolk & Portsmouth Belt Line Railroad Company

Northeast Illinois Regional Commuter Railroad Corporation

15 Oakland Terminal Railway

Portland Terminal Railroad Association

16 Portland Terminal Railroad Company

Soo Line Railroad Company (Canadian Pacific)

17 South Carolina Public Railways

Terminal Railroad Association of St. Louis

18 Texas City Terminal Railway Company

Union Pacific Fruit Express

19 Western Fruit Express Company

Wichita Terminal Association

20 Winston-Salem Southbound Railway Company

21 and their employees represented by:

22 Rail Labor Bargaining Coalition consisting of:

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1 Brotherhood of Railroad Signalman
 Brotherhood of Locomotive Engineers and Trainmen
 2 Brotherhood of Maintenance of Way Employes
 International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders,
 3 Forgers and Helpers
 Sheet Metal Workers' International Association
 4 National Conference of
 5 Firemen & Oilers
 6 and a coalition of Rail Unions,
 7 consisting of:
 8 Transportation-Communications International Union
 American Train Dispatchers Association
 9 International Association of Machinists and Aerospace Workers
 International Brotherhood of Electrical Workers
 10 Transport Workers Union of
 11 America
 12 Panel Members:
 Ira F. Jaffe, Chair
 13 Roberta Golick, Member
 Joshua M. Javits, Member
 14 Gil Vernon, Member
 Arnold M. Zack, Member
 15 on behalf of the Rail
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 21 on behalf of the Coalition of
 22 Rail Unions:

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1 Parcelli.
 2 CARMEN R. PARCELLI: Good morning Mr. Chairman,
 3 Board Members. Well since we already gave our
 4 opening statement on Thursday, the organizations
 5 are ready and eager to proceed with our
 6 presentation to the Board. Let me just briefly
 7 outline to you the order of presentation because
 8 we did make, um, some changes, uh, from what we
 9 had initially indicated. We had some concern that
 10 we had too much in the first day and wanted to
 11 balance it out. So first we'll have introductory
 12 remarks from TCU President Bob Scardelletti and
 13 BRS President Dan Pickett. Uh, then we will hear
 14 from our Economist, Tom Roth; his presentation
 15 will likely straddle the lunch break so we'll just
 16 have to find a suitable breaking point. So after
 17 Mr. Roth wraps up, then we have two witnesses
 18 regarding vacation; we'll have Bill BohnH, IBEW
 19 Director Railroad Department, and then Dennis
 20 Pierce, BLET President. Uh, next we're gonna to
 21 bring Tom Roth back, he'll address Supplemental
 22 Sickness, and then we'll wrap up the day with a

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 14 (OCT. 17, 2011)
 15 CHAIRMAN IRA JAFFE: Good morning everyone. If I
 16 could ask everyone who is still standing to please
 17 take their seats we can get started. MALE SPEAKER
 18 1: Great speech. MALE SPEAKER 2: Thank you. MALE
 19 SPEAKER 3: Thank you, thanks. MALE SPEAKER 1:
 20 Another good day. MALE SPEAKER 4: Good speech.
 21 CHAIRMAN JAFFE: We're ready to begin with the
 22 Union's Case in Chief, at your convenience Ms.

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1 presentation from Roland Wilder regarding our
 2 Information Request Proposal. Then tomorrow we're
 3 gonna to start with Health and Welfare and we'll
 4 have three witnesses on that, and then we'll move
 5 onto the Craft Specific items. So that's how I
 6 think that makes a little more sense than we
 7 originally had it. Now, after rising rapidly
 8 through the ranks of the TCU, Bob Scardelletti was
 9 first elected TCU's President in 1991 and he has
 10 since been returned to office four times. He has
 11 testified before Congress too many times to count
 12 and is also a frequent visitor to Capitol Hill to
 13 speak with congress members regarding rail labor
 14 issues but, also more generally, to speak with
 15 them on issues that are of importance to the
 16 industry as a whole. Bob has also testified during
 17 past PEDs, and he currently acts as Chairman of
 18 the Cooperating Railway Labor Organizations, which
 19 is comprised of representatives from the Rail
 20 Unions that participate in the National Health and
 21 Welfare Plan. So with that I give you Bob.
 22 CHAIRMAN JAFFE: Thank you very much. If I could

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1 ask the reporter to, please swear in Mr.
 2 Scardelletti. MARK MAHONEY, COURT REPORTER: Sure
 3 could. Sir, could you please swear the testimony
 4 you're about to give in this case to be the truth,
 5 the whole truth and nothing but the truth
 6 [inaudible].
 7 ROBERT SCARDELLETTI: I do. Uh, good, uh, good
 8 morning, good morning and, uh, and cer-, certainly
 9 an honor to, uh, be here and, uh, before you, and
 10 in behalf of our, and, and also in behalf of the,
 11 uh, all the Unions here, and to have this
 12 opportunity to speak in their behalf. Um, and I
 13 want to thank you for accepting, uh, this as-,
 14 assignment, which, um, as your experience knows
 15 that, it's, it's a difficult job. A, as, uh, Ca-,
 16 uh, Carmen said, I'm Robert Scardelletti, National
 17 President Transportation Communications Union.
 18 Today I'm, uh, testifying on behalf of 11 Unions
 19 that in this room bargain as two coalitions. The
 20 Coalition of Rail Unions, CRU; and that's a name
 21 we devised just for the purpose of our
 22 presentation, uh, basically we had no name before

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1 that, other than a coalition. It is comprised of
 2 five Unions: The Transportation Communications
 3 Union; The International Association of Machinists
 4 and Aerospace Workers, represented by Railroad
 5 Coordinator and President and Directing Chair of
 6 the EIM (ph) District 19, Joe Duncan; The
 7 International Brotherhood of Electrical Workers,
 8 represented by their Railroad Director, Bill
 9 BohnH; The American Train Dispatchers Association,
 10 represented by their President Leo McCann, who I
 11 might add was just, uh, reelected to his position
 12 last week; The Transport Workers Union, uh,
 13 represented by, by their International Vice
 14 President and Railroad Division Director, Gary
 15 Maslanka. My counterpart, next to me, is Dan
 16 Pickett, President of The Brotherhood Railroad
 17 Signalmen. He is the spokesman for The Rail Labor
 18 Bargaining Coalition, the RLBC, which is comprised
 19 of these six other Unions; President Pickett will
 20 introduce them in his testimony. The two
 21 coalitions, consisting of 11 labor organizations,
 22 represent more than 98,531 employees of the Class

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1 I Rail Carriers Performance Board; 73 percent of
 2 the total unionized workforce. These two
 3 coalitions stand before you united in their belief
 4 that the Carriers' sustained and record-setting
 5 profitability is a direct result of the hard work
 6 and productivity of their employees. We deserve to
 7 share in that success. To reach an agreement
 8 between the parties there needs to be trust and
 9 respect for each other. I don't think you get
 10 there by degrading one of the parties. Every Union
 11 here takes great offense after hearing so-called
 12 experts telling us we are 80 percent overpaid;
 13 undereducated; lucky to have a job; unproductive;
 14 overviews our medical plan by going to the doctor
 15 for no legitimate reason; and that giving us wage
 16 increases could cause a global crisis; and there
 17 were some other remarks. I will tell you who we
 18 are. We are proud career railroaders, a group of
 19 highly skilled professionals, who operate the
 20 equipment and use the technology that the Carriers
 21 have invested in. We love our jobs. We go to work
 22 every day and we give it our all. We are at a very

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1 serious stage under the Railroad Labor Act. The
 2 time for clear thinking is at hand. The comments I
 3 mentioned only serve to move the parties further
 4 apart, so let's just get passed that and, and move
 5 to the real business at hand. Before this Board we
 6 are pitted against each other, and this is as it
 7 must be because we are truly at an impasse. But
 8 this is not to overshadow our day-to-day
 9 cooperation with each other, and I want to give
 10 you just a couple examples, though probably it,
 11 uh, could be as, unlimit-, an unlimited number.
 12 Thousands of Union reps throughout this industry
 13 are working every day with management on the
 14 worksite problem solving, helping to keep the
 15 railroads running smoothly. Moreover, many of us
 16 work very closely with the industry here in
 17 Washington, helping them to overcome a tax from
 18 the shippers or the Congress. In most cases, and
 19 probably every case, all the Rail Unions here, I
 20 think, have a good working relationship with each
 21 of the Carriers and, in most cases, we've known
 22 each other for years. For me, I can say I have

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1 nothing but respect and admiration for the rail
 2 industry; it's been my life. The rail industry
 3 provides the livelihood for hundreds of thousands
 4 of American workers, both on and off the
 5 railroads. Although the work is demanding, I have
 6 always said we have excellent jobs with great
 7 benefits; I say that to our members and I've said
 8 it to the Carriers. But that's why we're here, our
 9 Unions are here to protect and enhance those jobs.
 10 Our level of pay and benefits is the product of
 11 over 150 years of collective bargaining; they are
 12 the product of working for an extraordinary
 13 industry but, even more so, they are the product
 14 of a Union contract. Without the Union it would
 15 not be this way at all and we do not apologize for
 16 that. I hired on the New York Central in 1967 and,
 17 frankly, I've seen it all, I've been through
 18 everything. I became a local officer of our Union
 19 in 1971; moving up the ladder, in 1991 I was
 20 elected International President. In my opinion, I
 21 have never done anything that would impair the
 22 profits of this industry. I have worked very hard

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1 with the industry to achieve the opposite. As to
 2 claiming we were intransigent, refusing to
 3 negotiate healthcare concessions, you might say
 4 that but the Carriers were even more so. With the
 5 Carriers it was either negotiate concessions or
 6 don't negotiate at all. We believe, in this time
 7 of unprecedented profitability, we were justified
 8 to negotiate for improvements! Yes, I said
 9 improvements. But in negotiations, seeing where
 10 the railroads were at, the difficulty we were
 11 having, both coalitions, at one point or another,
 12 took all their health and welfare demands for
 13 improvements off the table. In an effort to move
 14 the process forward, we decided only to request to
 15 keep the status quo. Now this was no easy matter.
 16 Each Union had very serious concerns over issues
 17 in healthcare that they wanted addressed. But we
 18 did it, and for what, it was still now
 19 unacceptable to the Carriers. We then offered to
 20 negotiate of the non-cost shipping elements of the
 21 Carriers' Health and Welfare Proposal, if that
 22 would do the trick, but the Carriers would still

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1 not relent in their demands for cost shifting to
 2 the employees. Intransigent, it was their way or
 3 the highway; negotiate down or don't negotiate at
 4 all. As to the Unions telling our members that we
 5 disagreed with the UTU Settlement, they are right;
 6 we did, of course we did. Our members wanted to
 7 know and we had an obligation to tell them what
 8 their leadership thought of the UTU Agreement. And
 9 the Carriers are correct; we knew they would claim
 10 it was a pattern, just as they're doing. And
 11 finally, and I think this very important, through
 12 all our negotiations never once did they make, did
 13 the Carriers make any kind of coherent wage
 14 proposal, never once. And now, when I look back
 15 and assess what we went through, I can see we
 16 never had a chance, and that's why we're here. The
 17 Carriers' proposed agreement contains smaller wage
 18 increases than we achieved in the last round of
 19 negotiations and is coupled with significant
 20 concessionary health and welfare demands. In
 21 short, we all believe that it is inadequate; we
 22 all believe it is unacceptable to our members and

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1 we all believe it will not ratify. It should be
 2 kept in mind that the Carriers could only get one
 3 Union to sign the deal they would impose on us, an
 4 agreement with one Union, covering less than a
 5 third of the workforce has never before, and
 6 should never be considered a pattern that all
 7 other Unions should have imposed on them. The UTU
 8 Agreement falls short because it only provides for
 9 wage increases totaling 14 percent over a five-
 10 year term, offset by about 1.3 percent in
 11 additional health and welfare costs to be
 12 shouldered by UT members; effectively reducing the
 13 real value over five years to about 12.7. There is
 14 a pre-negotiated 3 percent increase in the first
 15 year of the next agreement's term, which makes it
 16 a six-year agreement for wage purposes. The
 17 reality is that employees under that agreement
 18 will only see 14 percent over the first five years
 19 and 17 percent over six. In contrast, in the last
 20 round of bargaining the Carriers agreed to a 17
 21 percent wage increase over five years. So we have
 22 17 percent over six years, verses 17 percent

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1 previously negotiated under (ph) five years.
 2 Moreover, the UTU deal, through healthcare
 3 designed changes, would shift costs from the, from
 4 the Carriers to the employees, through increasing
 5 deductibles, co-pays and drug costs. This is very
 6 unacceptable to us. However, even if the claim
 7 that they're actually offering us, the UTU deal,
 8 does not however, even the claim that they, they
 9 are actually offering us, the UTU deal, that does
 10 not survive scrutiny. In fact, they are not
 11 offering the settlement they made with the UTU
 12 Trainmen and Conductors, which only apply, which
 13 only ap-, what they're offering only applies to
 14 the Yardmaster segment of the UTU; effectively
 15 that's what they're imposing as their pattern,
 16 which covers 2,930, 93 employees, 2,093 employees;
 17 1.5 percent of the total unionized workforce in
 18 this industry. Trying to impose on us an agreement
 19 covering 1.5 percent of our workforce is no
 20 pattern at all; it simply highlights the cynical
 21 nature of their proposal. While the UTU Agreement
 22 contains a number of additional forms of

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1 compensation, even if properly valued and added to
 2 what has been offered to us, the deal would still
 3 fall short of what we consider to be a fair
 4 settlement. For instance, the agreement with the
 5 UTU grants a FRA certification allowance of \$5.00
 6 per start. The agreement eliminates a fifth year
 7 of the reduced wage scale for new hires, and gives
 8 lump-sum bonuses of 12 or \$3,000.00, 1,200 or
 9 \$3,000.00 to current employees and re-, on the
 10 reduced wage scale, and there is also 12.5 cents
 11 per hour for the rookie (ph) yardmasters and the
 12 yardmasters get a little increase in their
 13 supplemental sickness. In addition, the agreement
 14 provides a framework for further negotiations
 15 intended to resul-, intended to result in
 16 additional compensation enhancement, alternative
 17 compensation, as well as com-, compensated leave
 18 and electronic bidding and bumping. We also know
 19 that the UTU Agreement met certain political needs
 20 as well, because the Carriers have hired numerous
 21 entry-level UTU Trainmen and Conductors;
 22 shortening the wage scale progression for them and

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1 awarding bonuses to reduced wage scale employees
 2 addressed a political problem for the UTU
 3 incumbents on the eve of their convention, which
 4 was just last August. It should be emphasized,
 5 once again, that the UTU Agreement was reached in
 6 the midst of a long-running battle over whether
 7 the UTU's Merger Agreement with the Sheet Metal
 8 Workers is enforceable against the UTU. This
 9 matter was pending in arbitration while various
 10 pieces of related litigation are pending in the
 11 federal courts, and was pending in arbitration at
 12 the time they were negotiating. The UTU badly
 13 needed stability. On October 10th, the arbitrator
 14 found that the UTU was in breach of the merger
 15 agreement and ordered the merger to be
 16 consummated. This development further undercuts
 17 the Carriers' attempt to suggest its agreement
 18 with, with UTU constitutes a pattern. Had the
 19 merger been delayed, or not been delayed, the
 20 agreement would have never been made. It's
 21 unacceptable to the very Union to which the UTU is
 22 merging, the Sheet Metal Workers, whose president,

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1 according to the arbitration decision, tried to
 2 block the UTU from reaching an agreement, but it
 3 was backblock (ph) by UTU's delaying tactics. What
 4 we feel is most upsetting is the Carrier's attempt
 5 to achieve healthcare concessions that it knew, at
 6 the time, were absolutely unacceptable to every
 7 Union here, by negotiating with a Union who
 8 everyone knew might not even exist. And to get
 9 these changes they offered the UTU, the UTU, and
 10 they were rich, specific items that they now argue
 11 don't apply to us. I think that cynicism is
 12 breathtaking. And finally, the agreement was
 13 hurriedly reached only after the National
 14 Mediation Board had informed the UTU and the
 15 company that the release of the CRU Unions, the
 16 coalition I'm involved with, was eminent; in fact,
 17 were to be released within, within approximately
 18 two weeks before they reached the agreement;
 19 release meaning proffer of arbitration. We firmly
 20 believe that our Wage and Benefit Proposal was a
 21 fair one, particularly in light of the years of
 22 Carrier profitability since our last contract.

5 (Pages 14 to 17)

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1 We're looking for a 19 percent wage increase over
 2 the life of a five-year agreement, effective
 3 January 1, 2010, with no changes in our health and
 4 welfare plan, and a \$200.00 per month freeze in
 5 employee contributions; and this compares to 17
 6 percent increase in our last negotiated national
 7 agreement, current (ph) 2005 thru 2009, when the
 8 Carriers' with (ph) profits were about half, half
 9 of what they are today. So the Carriers can easily
 10 afford the increases we're seeking. The United
 11 States Senate Committee on Commerce Science and
 12 Transportation, last year reported that the four
 13 Class I Railroads are the most profitable
 14 businesses in the U. S. economy. They also said
 15 that these same Carriers have nearly doubled their
 16 collective profit margin in the last ten years. We
 17 recognize that we have a health and welfare plan
 18 to be proud of and that the Carriers will argue,
 19 as they've done in every negotiations, it's too
 20 good for us; it's too good, it should be scaled
 21 back. Let us not forget that our plan is the
 22 product of sacrifice through negotiations are very

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1 hard fought over generations. We are no longer
 2 asking for improvements in our plan, which based
 3 on any standard of collective bargaining we
 4 would be clearly justified to pursue, but that's
 5 it; we are clearly at our line in the sand. When
 6 we claim the status quo for our plan, we mean it;
 7 we have no intentions of moving backwards. Our
 8 members need the medical care our plan provides
 9 and the Carriers can afford it. However, it became
 10 clear, early in our negotiations, that the
 11 Carriers were immovable in their demand that in
 12 this round we must agree to diminish our plan by
 13 allowing them, in this time of their unprecedented
 14 wealth, to shift greater costs to the employees.
 15 And when they couldn't get it from us, they
 16 vigorously sought it from the UTU, which has a
 17 separate plan in the hope of using the UTU
 18 argument against us, as they're doing, where
 19 proposed cost shifting is nothing more than a way
 20 to take back with one hand the compensation that
 21 they offer, in an already inadequate wage
 22 proposal, with the other. You will hear from our

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1 other witnesses that we are also seeking a long-
 2 overdue increase in vacation, and to restore the
 3 value of our supplemental sickness benefits. Each
 4 Union is also proposing craft-specific rule
 5 changes. Our proposal seeks slightly more than we
 6 obtained in our last round of negotiations, when
 7 voluntary settlements were reached; when the
 8 Carriers' profits, once again, were about half of
 9 what they are today. The rail industry today is
 10 not only among the most profitable businesses in
 11 this country, but it, they are clearly the most
 12 profitable sector of the U. S. transportation
 13 industry. By 2010 operating revenue on Class I
 14 Railroads reached 58.4 billion, an increase of 44
 15 percent over the prior six years, including the
 16 period spanning the great recession. The four
 17 major Carriers, BN, CSX, UP and SFNS (ph) account
 18 for 92 percent of total revenue and employment
 19 associated with Class I Carriers. Over the past
 20 five years these Carrier, Carriers enjoyed average
 21 profit margins of 13.4 percent, enabling these
 22 cash-rich railroads to pay down debt, institute

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1 stock repurchase programs and pay record bonuses
 2 to their executives, while, at the same time,
 3 claiming we should settle for less than we
 4 received in the last bargaining round and make
 5 concessions in our health and welfare plan. All
 6 our members can read; they often send me, and
 7 every president in this room, progress reports and
 8 press clippings showing record profits and bonuses
 9 being raked in by the company. They make it
 10 crystal clear to me they expect to be treated
 11 fairly, and fairness does not mean wages inferior
 12 to the last round, and even more concessions in
 13 our health plan. In spite of the fact that the
 14 Class I Railroads own significantly less track and
 15 employ fewer workers than they did in 1980, as of
 16 2008 they're network handled almost twice as much
 17 cargo. Any increases in labor compensation rates
 18 were more than offset by productivity gains, thus
 19 permitting the railroads to make huge profits;
 20 profit per employee was \$60,983.00 last year. Our
 21 Economist, Tom Roth, will discuss these material
 22 matters in detail. But the bottom line is that

<p style="text-align: right;">Page 22</p> <p>1 while labor costs have been flat, labor 2 productivity has expanded. The American 3 Association of Railroads, in its publication this 4 year, stated that "rail productivity is up 164 5 percent from 1981". Whether as a result of 6 mergers, technological changes, mechanization, 7 automation, increase in skill, education of 8 workers, capital efficiencies, locomotive power, 9 car capacity or shrinking physical plant, the fact 10 is our members have to do much more with fewer 11 people; as European Vice President, Lance Fritz, 12 testified, graphically showing the mast-, how 13 employees must master much more complex and 14 sophisticated equipment and machinery, enabling 15 one worker to accomplish what it took scores of 16 workers to accomplish before. And while pointing 17 to long lines of applicants for every job offered, 18 a dubious standard during the greatest 19 unemployment crisis since the great depression, 20 what they left out was how rigorous Carrier hiring 21 standards have become due to ever-increasing 22 complexity of rail employment. Just recently, the</p>	<p style="text-align: right;">Page 24</p> <p>1 million. Those are very significant sums of money. 2 Total pay for the top five executives in 2010 was 3 up 76 percent over [a 2F4] (ph), while CEO 4 compensation increased 50 percent. Now I'm not 5 claiming some kind of class warfare rhetoric; I'm 6 just citing these levels of compensation because 7 they are a telling barometer of the industry's own 8 view of itself to their top level executives. In 9 every PED report that I can recall, even after 10 Carriers became highly profitable and paid out 11 massive bonuses to their own, they always tried to 12 mislead the PEDs into believing that their profits 13 were an aberration and that financial storm clouds 14 were gathering on the horizon. They always argued 15 that decent wage increases would sink their ship. 16 And in the past they weren't aware of it, but not 17 this time; this time their argument is even more 18 hollow than usual. Analysts predict continued 19 strong performance by the railroads; earnings, 20 profits and yields are projected to continue to 21 grow to record levels. As Economist, Tom Roth, 22 will testify, these predictions are based on their</p>
<p style="text-align: right;">Page 23</p> <p>1 BNSF, and if you're following my written testimony 2 it says "UP" which is incorrect, the BNSF was 3 unable to hire, after sifting through their 4 thousands of applicants, where it was, uh, unable 5 to, was unable to find a qualified machinist at 6 the locations they were interested in hiring. And 7 so they ended up offering, putting out a bulletin 8 to all machinists on their system, offering them 9 incentives to move to the location where they 10 needed them, 10 to \$15,000.00 I'm told; I use that 11 as one example. The analyst's analysis, an 12 analyst, analyst analysts are calling this the 13 golden age of railroads. No place is this more 14 evident than the railroad executive compensation, 15 where favorable financial performance is richly 16 rewarded. In fact, in 2010, 83 percent of 17 executive compensation was supposed to be 18 performance based. So how'd they do? For the year 19 2010 the CEOs of the big three collected 20 approximately 15 million per man in cash bonuses, 21 stock awards and options, which is over and above 22 their fixed cash compensation averaging 1.2</p>	<p style="text-align: right;">Page 25</p> <p>1 continued market dominance and pricing power, and 2 their projected continuing strong volumes in coal 3 and intermodal traffic. The record clearly 4 establishes they are reporting to their 5 shareholders that long-term profit picture has 6 never been better. A Wall Street Journal columnist 7 recently named the "Norfolk Southern as one of the 8 five stocks to own forever". Frankly, I don't 9 think I've ever heard that quote, I mean outside 10 of this quote that I'm makin', about any other 11 company, and that's good. The CSX boasted in its 12 10K reports that it set financial records with 13 "truly outstanding results for investors". In 14 fact, CSX is so confident in its future that 15 Railway Age reports that "it expects to repurchase 16 300 million in company shares to complete its 3- 17 billion-dollar repurchase program". A similar rosy 18 outlook was announced by the UP, who stated 19 publicly that "in 2010 we achieved more financial 20 milestones". It appears that investor, investment 21 icon, Warren Buffet, agrees with us about the 22 future of the rail industry generally and BNSF</p>

7 (Pages 22 to 25)

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1 specifically. In February 2010, Buffet's Berkshire
 2 Hathaway purchased BNSF for a total investment of
 3 44 billion, making it, by far, his largest
 4 holding. At the time he was widely quoted as say
 5 "it was an all-in bet on the future of the U. S.
 6 rail industry" and he didn't have to wait long to
 7 celebrate the results. In physical year 2010 BNSF
 8 was Berkshire's high (ph) Hathaway's strongest
 9 performer. Buffet wasn't gloating when he told the
 10 shareholders "the highlight of 2010 was our
 11 acquisition of Burlington Northern Santa Fe, a
 12 purchase that's working out even better than I
 13 expected". It now appears that owning this
 14 railroad will increase Berkshire's normal earning
 15 power by nearly 30 percent pre-tax and by well
 16 over 30 percent after tax. Reading the Carriers'
 17 submission and listening to their testimony, I was
 18 struck by how they seek to portray our position as
 19 greedy; that we are unfair for not being satisfied
 20 with what they point, paint as a richer than
 21 deserved offer to employees who are already
 22 overpaid and better off than almost everyone else.

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1 To hear them spin it, we should have been grateful
 2 for their offer. Now to reit-, reiterate what I
 3 said, we do appreciate our jobs and we do
 4 recognize they are good jobs, but they reflect the
 5 success of the industry we work in and our
 6 members' contribution to that success, and they
 7 reflect the Union contract. It is not greed or
 8 avarice, as stated by the Carriers, to ask for a
 9 slightly higher wage increase than we achieved
 10 last time, when, when profits have doubled since
 11 then; it is not greed to reject the Carriers'
 12 proposal for less. It is not greed to ask that
 13 there be no cost shifting healthcare concessions,
 14 again, in view of their profits, and at a time
 15 when we already pay more than anyone else in the
 16 railroad industry, and which our consultants will
 17 testify later, too, and other witnesses, and when
 18 we are continuing volunteer effort, our continuing
 19 voluntary efforts to contain cost increases have
 20 succeeded in the health plan; it is not greed to
 21 insist that drug companies don't have more power
 22 over treatment than doctors, giving drug companies

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1 veto power over life and death recommendations of
 2 your doctor is not acceptable to us, any more than
 3 it is grief for railroad CEOs to argue to their
 4 Board of Directors, or I guess in the case of BN,
 5 to the - Warren Buffett - that they should enjoy
 6 higher compensation than CEOs in poorer
 7 industries. That seems to make sense. We don't
 8 begrudge them. I don't begrudge CEO pay or
 9 executive pay, but there can't be a double
 10 standard. We work in a tremendously profitable
 11 industry. Our members' productivity has
 12 contributed greatly to the bottom line. It is
 13 reasonable that they should be awarded
 14 commensurately. When the railroads faced hard
 15 times, they didn't argue that our members should
 16 receive higher increases based on what workers in
 17 prospering industries got; of course, it was just
 18 the opposite. It's hypocritical for them now to
 19 urge this Board to recommend a contract not based
 20 on the railroad industry, but on other industries
 21 that are struggling to survive. Railroad continues
 22 Board to recommend a fair resolution, one that

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1 will lead to an agreement, an agreement that the
 2 employees will ratify; our proposal does just
 3 that. Thank you.
 4 CHAIRMAN JAFFE: Thank you. ROLAND WILDER, JR.,
 5 ESQ.: Mr. Chairman, members of the Board, good
 6 morning.
 7 CHAIRMAN JAFFE: Good morning. ROLAND WILDER, JR.,
 8 ESQ.: I'm Roland Wilder, Counsel for the Rail
 9 Labor Bargaining Coalition. It's my pleasure to
 10 both call and introduce the next witness for the
 11 Chair and coalitions. He is W. Dan Pickett, the
 12 President of the Brotherhood of Railroad Signalmen
 13 and the Chairman of the Rail Labor Bargaining
 14 Coalition. Dan was first elected President of the
 15 BRS on August 21, 1992. He was reelected in 1994
 16 and has been elected again to successive four-
 17 year terms ever since. Dan is not only a career
 18 railroader, he is the son of a career railroader.
 19 In 1965, after studying mechanical electrical
 20 engineering at Fort - Virginia Western Community
 21 College, he followed his father's footsteps by
 22 joining the Signal Department of the Norfolk

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1 Western Railroad as a communication linemen's
 2 helper. Thereafter, he progressed through various
 3 positions at the Norfolk and Western within the
 4 Signal Department, becoming eventually a signal
 5 maintainer. In 1965, Dan was forced to interrupt
 6 his railroad career to serve his country as a
 7 communications noncommissioned officer in the U.S.
 8 Army. After returning to - from Vietnam, he
 9 rejoined Norfolk and Western. Now, during his
 10 railroad career with the Norfolk and Western,
 11 Western Railroad, Dan had a parallel interest and
 12 career. He held a variety of union positions with
 13 BRS Local 77. He held a variety of positions with
 14 the General Committee of the Norfolk and Western
 15 Railway. In 1980, became a Grand Lodge
 16 representative. And in 1986, he became a Vice
 17 President of the organization, and he served in
 18 that capacity until becoming President of the BRS.
 19 Please go ahead, then.
 20 CHAIRMAN JAFFE: If I could ask the court reporter
 21 to please swear in Mr. Pickett.
 22 COURT REPORTER: Do you swear the testimony you're

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1 about to give in this case is the truth, the whole
 2 truth, and nothing but the truth under penalty of
 3 law?
 4 W. DANIEL PICKETT: I do. Good morning.
 5 CHAIRMAN JAFFE: Good morning.
 6 W. DANIEL PICKETT: Good morning, Mr. Chairman and
 7 members of the Board. It is indeed an honor to be
 8 here and to speak. I wish it was on different
 9 circumstances. I wish it was getting agreement
 10 instead of this circumstance. But as Mr. Wilder
 11 said, my name is Dan Pickett, and I am President
 12 of the Brotherhood of Railroad Signalmen, and I
 13 have the honor of serving as Chairman of the Rail
 14 Labor Bargaining and Coalition. The RLBC is a
 15 formal coalition of six rail labor organizations
 16 formed for the purpose of bargaining together on a
 17 multi-union basis in the national negotiations
 18 with the rail freight carriers which are
 19 represented by the National Carriers' Conference
 20 Committee. In accordance with the powers of
 21 attorney executed by each of the members of the
 22 organizations, the RLBC is empowered to represent

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1 them in this round of national handling and before
 2 this Presidential Emergency Board. Our membership
 3 cuts across the entire spectrum of the industry.
 4 It includes the principal operating organization,
 5 the Brotherhood of Locomotive Engineers, IBT,
 6 represented today by its National President,
 7 Dennis Pierce. Most of the engineering
 8 organizations of the rail industry are here, are
 9 in the RLBC: The Brotherhood of Maintenance of Way
 10 Employees, the Division IBT, represented by its
 11 President, Fred Simpson, as well as my own
 12 organization, the Brotherhood of Railroad
 13 Signalmen, which is included in the Engineering
 14 Department. There's three shop craft
 15 organizations: The International Brotherhood of
 16 Boilermakers, represented by the Director of Rail,
 17 Dan Hamilton; the National Conference of Firemen
 18 Oilers, SEIU, represented by the President, John
 19 Thacker; and the Sheet Metal Workers'
 20 International Association, represented by the
 21 Railroad Department Director, Larry Holbert. I
 22 agree wholeheartedly with the statement just made

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1 by President Scardelletti. What has been said well
 2 once need not be said again, so I will not repeat
 3 the points he covered. But I do think it is
 4 important for this Board to recognize that
 5 bargaining in the rail industry was changing in
 6 very important ways for the better. This evolution
 7 is - is being threatened by the NCCC's action in
 8 this round by first entering into an agreement
 9 with the United Transportation Union, then
 10 claiming that that agreement represented a pattern
 11 and declining a bargaining over anything other
 12 than how the UTU's deck chairs might be arranged -
 13 rearranged to suit the other organizations.
 14 Bargaining with the representatives of nearly
 15 three-quarters of the represented employees in the
 16 rail freight industry effectively ended after the
 17 UTU deal was struck. That deal, as I put in my
 18 June 13, 2011 letter to the National Mediation
 19 Board, placed a voluntary agreement, settlement of
 20 that - of dispute I have reached for all of us.
 21 For nearly a quarter of a century after the
 22 enactment of the Staggers Act, national handling

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1 was characterized by bargaining between a strong
 2 unified industry and some 14 individual unions.
 3 The more the industry consolidated, especially
 4 with the overall decline in rail employment, the
 5 more the carriers' bargaining strength grew to the
 6 detriment of organized labor and the members that
 7 we represent. National handling played an
 8 important role in this dysfunctional imbalanced
 9 system. Armed with court decisions that severely
 10 limit the right to strike, the NCCC turned to
 11 national handling, into a sword which enabled it
 12 to dominate negotiations in the rail freight
 13 industry. As well as - as will be detailed later
 14 in our joint presentation, the result was a
 15 quarter of a century of minimum wage growth and
 16 stagnant benefits that lagged wage and benefit
 17 developments elsewhere in the economy. The Rail
 18 Labor Bargaining Coalition was formed at the
 19 beginning of the last round of negotiations in the
 20 belief that multi-union, multi-employed
 21 bargaining, would be more effective and less
 22 chaotic than traditional bargaining in the

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1 national level. We also believed that it would
 2 produce agreements capable of generating broader
 3 employee support because of - multi-union
 4 structure would tend to subordinate the union-
 5 specific interest of individual organizations into
 6 common goals for everyone. Equally important, the
 7 RLBC represented organizations appearing today
 8 under the CRU banner, resolved to cooperate very
 9 closely, freely exchange information, and
 10 coordinate their bargaining efforts. As noted, the
 11 last round of national bargaining was settled by
 12 voluntary agreements which were overwhelmingly
 13 ratified by - by the effective employ in almost
 14 all the crafts. Rail labor left the last round
 15 convinced that important strides had been made to
 16 improve national handling, and we resolved to
 17 pursue the same cooperative approach in this
 18 current round. Put simply, rail labor did and the
 19 carriers did not. When the NCCC could not interest
 20 in any - either of the coalitions for obvious
 21 reasons in degrading the national health plan, it
 22 stepped back in time by entering into an agreement

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1 with the UTU's extraordinary narrow parochial
 2 interests to obtain an agreement on healthcare and
 3 wages that is opposed by every other labor
 4 organization in the rail industry. Like the old
 5 days, this Emergency Board is being told that the
 6 UTU agreement constitutes a pattern for an
 7 industry-wide settlement that should be
 8 recommended. We disagree. Not just because the UTU
 9 rate settlement is inferior to the settlement we
 10 achieved in 2009 - 2005-2009 round. Not just
 11 because the UTU settlement. It's just healthcare
 12 costs from extraordinary profitable carriers to
 13 the most unhealthy employees who must rely on the
 14 plan benefits. Not just because the demographics
 15 of the UTU plan are different than those of the
 16 national plan. And not just because the coalition
 17 organizations appearing before you today do not
 18 share the UTU's unique interest. And not just
 19 because the foolishness of claiming that an
 20 agreement with one organization creates a pattern.
 21 We disagree, because the carriers' position before
 22 this Board, if sustained, will waste all of the

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1 progress made toward improvement in national
 2 handling. The carriers' position is harmful to the
 3 multi-union coordinated bargaining structure that
 4 has proved so successful in the last round, and we
 5 urge the Board to reject that proposal. Thank you.
 6 CHAIRMAN JAFFE: Thank you, Mr. Pickett. Off the
 7 record. (Off the record.)
 8 CHAIRMAN JAFFE: I'm back on, if we can. Am I back
 9 on? If I could ask everyone to take their seats,
 10 please, we'll be ready to resume. For those in the
 11 back of the room, let us apologize. The sound
 12 system is cranked up to its max currently. We're
 13 going to do what we can during the next formal
 14 break both to obtain additional amplification
 15 through the hotel sound system and also plug, to a
 16 greater extent, some of the gaps in the wall, so
 17 hopefully the competing noise from next door will
 18 be diminished as well. I think we're ready to
 19 resume at your convenience. CARMEN PARCELLI, ESQ.:
 20 Thank you, Mr. Chairman. Our next witness, Tom
 21 Roth, likely needs little introduction. For the
 22 record, however, his curriculum vitae appears at

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1 the end of his summary statement as appendix A.
 2 Tom has appeared in numerous past PEBs. In fact, I
 3 think it's safe to say he's probably participated
 4 in more PEBs than any person on the face of the
 5 planet. But Tom's involvement in this matter has
 6 hardly been limited to the PEB stage. In fact,
 7 he's acted as an advisor to both coalitions
 8 throughout the course of the negotiation, so he's
 9 really been steeped in this round of national
 10 handling, as it's fair to say he's been steeped in
 11 probably every past round of national handling in
 12 recent memory. So with that I'll simply give it
 13 over to Tom.
 14 CHAIRMAN JAFFE: Can I ask the court reporter to
 15 please swear in Mr. Roth.
 16 COURT REPORTER: Do you swear the testimony you're
 17 about to give in this case will be the truth, the
 18 whole truth, and nothing but the truth under
 19 penalty of law?
 20 THOMAS R. ROTH: I do. Good morning, Mr. Chairman,
 21 and fellow Board members. As indicated on the
 22 record, I am Thomas R. Roth. I am a labor

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1 relations consultant and financial and economic
 2 advisors to railroad organizations and other labor
 3 organizations. I'm the President of a firm called
 4 Labor Bureau, Inc. and we are the private firm
 5 that is - was established in 1923, and we have
 6 been providing our services to our clients on a
 7 continuous basis over the past 88 years. I mention
 8 that because our practice was actually founded in
 9 the railroad industry. My predecessor sat in this
 10 chair that I have now occupy and in fact had
 11 prepared and presented all the economic evidence
 12 back in 1937, were issues of similar type, and in
 13 fact cover - included similar organizations that
 14 are now in this room. At that point, there was
 15 some 14 organizations; that was PEB number two.
 16 And right - and actually before the day when -
 17 when PEBs were actually given formal numbers, that
 18 didn't actually happen until later in history,
 19 when the NMB realized there'd probably be more
 20 than one or two of them. But so the history of the
 21 firm goes back, and again I mention it as relevant
 22 here in the context of the research that we have

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1 performed. You'll note in my summary statement
 2 that I make reference to some points in history
 3 that are somewhat removed. This does not require a
 4 great deal of research my organization. I can pull
 5 off the shelf the PEB records and PEB literature
 6 for most of the wage or - wage or rule movements
 7 and thereby speak with some authority on exactly
 8 what had occurred during those years. And when I
 9 make reference to PEB literature, I'm not just
 10 talking about the reports by the Presidential
 11 Emergency Boards themselves, I'm talking about the
 12 exhibits and the testimony and the briefs that are
 13 filed by the parties during those proceedings.
 14 Like the NCCC who I believe has a similar
 15 capability, we can perform some rather in-depth
 16 research on exactly what has gone on in this
 17 history. In a moment, this - it will become clear
 18 why I believe that is relevant in this proceeding.
 19 Again, in my - in between PEBs, which of course
 20 you can't make a living on - they don't occur that
 21 frequently - I work, I have extensive practice, in
 22 the airline industry and the urban transit

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1 industry. At any point in time I'm - I'm, you
 2 know, managing or participating in interest
 3 arbitration cases in the transit industry on a
 4 fairly regular basis. I have - my shop probably
 5 has four or five of those in the hopper as we
 6 speak, so it's kind of an ongoing part of the
 7 practice. And I will - and again with that, I will
 8 proceed. Let me - in terms of the documents that I
 9 have furnished, the Board has received a written
 10 statement from me and a book of supporting charts
 11 and tables. And I would ask that those documents
 12 be in front of you as we proceed through my
 13 testimony, because I have determined that I would
 14 prefer to work without the PowerPoints and the
 15 slideshow because I believe that's more of a
 16 distraction. I would rather prefer, if the Board
 17 is willing, to have in front of it what has been
 18 identified as Union Exhibit Number 86 and Union
 19 Exhibit Number 87. The - and with all the material
 20 in this substantial record, I will assume,
 21 nevertheless, that the Board members will at some
 22 point read my statement and review the supporting

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1 documents. So I will refrain as much as possible
 2 from reading that narrative back at you during
 3 this testimony. Also, Mr. Chairman, I understand
 4 that - given our compressed time frame, that the
 5 board is anxious to hear from me in as expeditious
 6 a manner as possible and I will accommodate that
 7 and proceed as proficiently as - as officially as
 8 I can. But I think it's also imperative that the
 9 Board receive the information that I'm offering
 10 with the utmost clarity. And so if the Chairman
 11 rules, I would encourage interruptions from the
 12 Board of any questions it might have as I proceed.
 13 I mean it's not going to deter me and you need not
 14 wait until a lengthy piece of subject matter is
 15 covered before you, you know, raise a question of
 16 clarification or otherwise. But that's - I'm
 17 perfectly comfortable with that.
 18 CHAIRMAN JAFFE: We appreciate the offer. We may or
 19 may not take up on it.
 20 THOMAS R. ROTH: Okay.
 21 CHAIRMAN JAFFE: But we appreciate the offer. Thank
 22 you.

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1 THOMAS R. ROTH: Okay, all right. In the subject
 2 matter that I would be covering then, there are
 3 many points of agreement actually with the
 4 carriers' position as I have understood it. And so
 5 I'm going to try not to focus on our areas of
 6 agreement, but rather on our areas of difference.
 7 Most of these differences with the carriers'
 8 economic case will be dealt with in our formal
 9 rebuttal, but where possible, I will try to weave
 10 into my remarks this morning my view of where
 11 these differences lie and what my position is on
 12 them. As a preface, let me describe what I think
 13 the basic and fundamental differences in approach
 14 are between these parties. It's best described as
 15 the difference between the theoretical and the
 16 reality. Now, theories I understand are useful in
 17 economic analysis, and I'm not begrudging the good
 18 professors their moment in developing and
 19 presenting and applying these economic theories to
 20 you. But after all and in the end, these are
 21 abstractions against which to measure reality. And
 22 we would urge the Board to approach the

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1 determinations in this case by recommending - by
 2 making recommendations that based upon the real
 3 world of collective bargaining in the railroad
 4 industry. This requires you, if I may suggest, to
 5 - to identify and accept wage criteria and
 6 standards for contract determination which can be
 7 validated in the experience of the parties. This
 8 is especially appropriate where you face a very
 9 extensive bargaining history, one spanning well
 10 over a century, for all these railroad
 11 organizations. We were bargaining with their
 12 employers long before - perhaps 50 years before
 13 the Railway Labor Act was actually passed. The
 14 approach I'm suggesting, of course, requires the
 15 Board to ascertain what factors have given weight
 16 by the parties, what considerations have motivated
 17 them at the bargaining table to make the
 18 agreements that they have made. And under some
 19 circumstances, in your own personal experience I'm
 20 sure you have confronted this, that task is - can
 21 be formidable. After all, there is - there may be,
 22 and in most collective bargaining circumstances,

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1 no evidence of particular standards, particular
 2 criteria, or the interpretation and application of
 3 those factors that is obvious from the parties'
 4 collective bargaining agreements with their
 5 practice. But here in the railroad industry, we
 6 are more fortunate. We deal with a wealth of
 7 literature on the subject, including the records
 8 that are made in Presidential Emergency Boards,
 9 together with the Collective Bargaining Agreements
 10 that the parties have - actually consummate after
 11 that, those records are complete. I heard from a
 12 CEO, Ross I think, last weekend. He made a passing
 13 reference that - to the fact that this is un -
 14 kind of unusual circumstance, where here we are
 15 before a Presidential Emergency Board, asking for
 16 some intervention on the making of these
 17 collective bargaining agreements. The fact is this
 18 is not unusual. I mean over the past 50 years,
 19 there have been 15 wage or rule movements
 20 nationwide. In other words, a national wage or
 21 rule movements. And I'm not talking about commuter
 22 railroad cases or Amtrak cases, I'm talking about

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1 the line haul freight contracts, and particularly
 2 those that are managed at the collective
 3 bargaining table by the NCCC and their
 4 predecessors. Only four, only on four occasions by
 5 my count, have - has a round of bargaining as a
 6 wage or rule movement been complete without the
 7 intervention of an interest arbitration panel
 8 convened on the Railway Labor Act or a
 9 Presidential Emergency Board. So for better or for
 10 worse, this not an unusual circumstance in the
 11 sense that a PEB has been asked to help the
 12 parties out in reaching a conclusion. You know, I
 13 say that the - that our differences with the
 14 carrier in this round of bargaining, in
 15 particular, with their expert testimony, lies in
 16 the - in the fact that we regard this as an
 17 extension of the collective bargaining process. We
 18 think that - that for the Board to delve into
 19 those standards and criteria in their application,
 20 as validated by the parties' experience, that
 21 we'll validate or we'll permit that, that
 22 interpretation, to apply. Now, it's - the concept

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1 that a bargaining resolution forum lie on - lies
 2 on a continuum with the collective bargaining
 3 agreement is - is so frequently written up in the
 4 - in interest arbitration literature that it's
 5 become a cliché. But it is, nevertheless, I think,
 6 the really substantial differences in the
 7 approaches taken by the - by these parties. Now,
 8 this fundamental difference between the carriers'
 9 theoretical approach to the case and rail labor's
 10 real-world approach will materialize at least four
 11 areas that I will address and during the course of
 12 my testimony. The first is the use of
 13 productivity, the second will be pay comparisons,
 14 a third will be the application of the pattern
 15 principle, and the fourth will be the financial -
 16 the role that financial and economic condition of
 17 the industry plays in the making of railroad
 18 collective bargaining agreements, so it's really
 19 those four areas. Yeah, and you may find, by the
 20 way, that they kind of parallel Mr. Munro's P's.
 21 He had six of them; I'm going to cover four of
 22 them in - at least. So let me talk about the first

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1 of these, the rate of productivity. Now, Dr. Eakin
 2 and I have a difference of opinion over how you
 3 measure productivity, but it's actually a very
 4 minor point, and I'm going to deal with that when
 5 we get to the material that I have prepared on -
 6 on productivity. But in his Exhibit Number 8, this
 7 is Carriers' Exhibit Number 8, there were - there
 8 was statements to the effect, and I believe I'm
 9 quoting properly here, there's no relationship
 10 between productivity and compensation. Now,
 11 incredibly to me, he stakes out that position as
 12 not only a matter of economic theory, but as an
 13 empirical matter. Now, first of all, several of
 14 the Board members have been involved in urban
 15 transit cases, for example, where you - where the
 16 undisputed fact is that in major cities the urban
 17 transit systems are able to pay their workers
 18 compensation levels that far exceed the smaller
 19 systems; New York pays more than Baltimore,
 20 Washington pays more than Baltimore, Baltimore
 21 pays more than Wilmington, Delaware, for instance.
 22 I know the Chairman is familiar with this world,

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1 having just completed such a case. But then
 2 there's - ask yourself why that is true. In New
 3 York City, for example, where you have high
 4 density, you have load factors on there, on the
 5 trains, which are - which exceed that of smaller
 6 systems. The - there's more investment in the
 7 capital equipment. The fact of the matter is that
 8 their productivity of an employee is much greater
 9 because they're carrying more persons, more miles,
 10 so your output in passenger miles is higher per
 11 person and per man hour than it would be in a
 12 smaller system with - that is less dense in
 13 population served and where you have smaller
 14 trains. That productivity, of course, drives down
 15 unit costs or the price of carrying a passenger a
 16 mile. That in turn is shared with the employees.
 17 It's shared in terms of having - having - being
 18 able to support higher compensation levels; that's
 19 a truism throughout the urban transit system. But
 20 you know, again, you know, we don't have to go
 21 there. I mean here's - here's someone who
 22 testifies before you. There is no relationship

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1 between productivity and compensation. I guess he
 2 doesn't understand how an airline pilot is paid
 3 and why someone flying a 777 or a 747 might be
 4 earning more than someone flying an A-300 or a
 5 737. The answer is: Productivity. The answer is
 6 that, in a larger airplane, unit costs are much
 7 smaller, the - the productivity is much higher,
 8 and you are able to share that with your employee
 9 directly through the compensation structure that
 10 is applicable in that industry. So I don't know
 11 what empirical evidence he is looking to or
 12 toward, but there are real-world examples every -
 13 in every industry of what I'm accounting for. But
 14 aside from this global application and outside
 15 industry, I think the best examples of the
 16 connection between productivity and compensation
 17 lie in the railroad industry, and apparently Mr.
 18 Eakin has never heard of the dual basis of pay.
 19 The dual basis of pay has, for generations,
 20 compensated employees in train and engine service
 21 on the basis of their productivity. As the trains
 22 got heavier and there was more weight on

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1 locomotives, they automatically were paid more. As
 2 the trains got speedier and got across the tracks
 3 more efficiently and quicker because of the - in
 4 part, because of the employers' investment in
 5 better - in heavier and more powerful locomotives,
 6 the train and engine service employees, the BLE,
 7 and the UTU automatically had increases in their
 8 compensation. It was a direct connection between
 9 productivity and their compensation. As their
 10 efficiency went up, as they produced more ton
 11 miles, their pay automatically went up. If you
 12 trace this historically, you can see it in the
 13 data. The average hourly earnings for a locomotive
 14 engineer or a conductor far outpaced the changes
 15 in wage rates per se as reflected in general wage
 16 increases under collective bargaining agreements.
 17 The delta between those two trends is directly the
 18 result of the application of the dual basis of
 19 pay, what is, in effect, a productivity escalator
 20 that gave the train and engine service employees
 21 more money; again, perhaps one of the best
 22 examples ever of a direct connection between

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1 productivity and compensation. But I don't have to
 2 stop there. This history of railroad bargaining is
 3 - is peppered with - with increases in
 4 compensation that are directly associated with the
 5 elevated scale levels of the employees. The
 6 Brotherhood of Railroad Signalmen, the BNWE, and
 7 the shop crafts as a group, as a group and
 8 individually, have negotiated what has been called
 9 - what are called scale adjustments. A scale
 10 adjustment is something - is an increase in your
 11 pay rate, in addition to the general wage
 12 increases that may be applicable to the rest of
 13 the population, which are directly associated with
 14 your elevated skills and your resulting efficiency
 15 and productivity in that job. As I said, the
 16 history is - is complex, but it is peppered with
 17 these illustrations of where the skill adjustments
 18 have been negotiated between the parties as a
 19 matter of reimbursement for the - and for the
 20 encouragement of the employees to gain these
 21 elevated skill levels. If you will indulge me, I
 22 just want to give you one kind of recent case.

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1 Following the PEB 219, there was a series of -
 2 actually following 219 there were a series of -
 3 not a series, but there were at least two other
 4 PEBs, PEB 220 and 221, and - which had been cited
 5 repeatedly for other reasons in this case. But I
 6 think part of the recommendations of 221, which
 7 involved the machinists, was to negotiate a skill
 8 adjustment. So long story short, parties could not
 9 agree, and that was ultimately referred to an
 10 interest arbitrator, Dick Mittenthal. So Dick
 11 Mittenthal hears the interest case on establishing
 12 the skill adjustment or the skill - well, yeah,
 13 the skill adjustment, the skill premium, for the
 14 IAM. In his award, and I'm going to off - I'll put
 15 this all together for you when we get to our
 16 rebuttal materials. But in his award he states
 17 that - and I quote - the new differentials, while
 18 probably not wholly satisfactory to either party,
 19 seem sensible to me because they reflect, to a
 20 substantial degree, the parties' expertise in
 21 practical knowhow rather than any theorizing on my
 22 part, unquote. Dick Mittenthal understood what I

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1 was talking about by reflecting on the parties'
 2 own practice and experience in deferring to it
 3 rather than theorizing on what this adjustment
 4 should be, and this of course is after he heard
 5 numerous days of testimony on the - on the nature
 6 of the work, the content of the jobs, the training
 7 that they've involved. In the implementation of
 8 the Mittenenthal award, which, by the way, is dated
 9 June 19 - June 1992, there was an information
 10 agreement reached between the carriers and the IAM
 11 implementing the Mittenenthal award; that was
 12 reached in July of '92. And by the way, this extra
 13 skill adjustment was equivalent to 3.2 percent of
 14 the then-existing basic journeymen rate for the
 15 machinists. But in the implementation agreement,
 16 which is very interesting, you can - you will
 17 find, when you read it, after identifying those
 18 jobs, those positions that would be subject to the
 19 - to the new skill premium, the parties also
 20 identified the manner in which persons who were
 21 not yet qualified may become qualified to receive
 22 the skill premium. Well, guess what? Extra

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1 training and other forms of qualification would
 2 enable you to bid on the job that held the skill
 3 premium, the point being that there's a direct
 4 connection between your compensation and your
 5 willingness and ability to be trained and to
 6 elevate your skills. The notion that there is no
 7 empirical evidence of this in the railroad
 8 industry is silly. I want to give you the -
 9 probably maybe the best example, because I can -
 10 this can go on interminably. There was a - there
 11 was a time when the railroads did not come to
 12 negotiations or to a PEB and argue as then state
 13 blatantly, as they have in this case, that
 14 productivity doesn't matter when you are setting
 15 levels of compensation for the workers, and that's
 16 precisely what they have said in this case when
 17 you read their - read their brief. Let me - let me
 18 read a - there was a time when the railroads
 19 instead would take the position, not that it's
 20 irrelevant, or not that there's not a connection
 21 between compensation and productivity, but that we
 22 have already adequately compensated you for that

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1 extra productivity. Now, in PEB 219, and this is
 2 Carrier Exhibit Number 20, the following statement
 3 was made: The pay of conductors and trainmen, and
 4 I'm quoting, in the UTU have already risen by
 5 virtue of productivity, based payments directly
 6 tied to agreed-upon reductions in train crew
 7 consists. Short crew allowances, productivity fund
 8 payments, and stock bonuses will continue to fuel
 9 this growth. Because these employees have already
 10 arranged to receive payments tied directly to
 11 productivity-related reforms involving their
 12 organization, no logic can support any additional
 13 increases of this sort for them, unquote. That's a
 14 quote from Chuck Hopkins. There's a guy who could
 15 cut a deal. There's a guy who knew the difference
 16 between a theoretical approach and a real-world
 17 approach at the bargaining table. And so what
 18 Chuck, Chuck Hopkins - and for some of the Board
 19 members who may not know, he was Ken Gradia's -
 20 one of Ken's former colleagues and bosses and once
 21 held, and held for many years, the position now
 22 that Ken occupies. And I think before - that makes

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1 me - when Chuck was still working, I could never -
 2 I could never claim that I had more PEB experience
 3 than anybody because he trumped me on that. Chuck
 4 Hopkins was around forever, and as - like I said,
 5 he did not take the position that there's no
 6 connection between productivity and compensation.
 7 Quite to the contrary, he says what would a
 8 productivity fund be for if not to reward for
 9 productivity increases? Part of Mr. Eakin's
 10 presentation on the economic theory, that has no
 11 application in the real world of collective
 12 bargaining in the railroad industry, was the
 13 assertion that there's no empirical evidence that,
 14 "an increase in skills substantially contributed
 15 to the improvement in output per hour." That's a
 16 quote from his testimony. Now this could be big
 17 news in the training departments of the railroads
 18 because they invest an enormous amount of money in
 19 the training of, of an, and advancement of the
 20 skills of the work force so they can transition
 21 employees from the pick and shovel jobs and the
 22 laboring positions into the operation of the high

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1 tech machinery that uh, was um, uh, described by
 2 Mr. Fitz, an operating officer in his testimony
 3 before you. I would suggest that Mr. Eakin sit
 4 down with Mr. Fitz and work this out because it's
 5 obvious that there is a, there is a, a direct
 6 interest that the Carrier has in elevating the
 7 skills of its workforce so that they can now
 8 occupy and perform effectively and increase the
 9 efficiency of the operation by uh, by um, um, by
 10 having the skills necessary to operate the, the
 11 new high tech machinery. There is a way to
 12 quantify this by the way. Let me give you a
 13 preview of what I will present in our, our
 14 rebuttal piece. Um, again the subject of Mr.
 15 Fitz's testimony was the maintenance of lay
 16 employees. This happens to be one classification
 17 where the data sources permit us to um, isolate
 18 the skill jobs from the non-skill jobs. I-I can't
 19 do that with any, any degree of precision uh, for
 20 shop crafts, for example, because the reporting
 21 divisions on wages all lump everybody together.
 22 But in the BMWWE craft um, you can trace this

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1 historically. And when I went back to look at the
 2 facts in 1980 uh, at the time of deregulation, I
 3 found that 51 percent of all of the employees in
 4 the BMWWE craft and remember they are responsible
 5 for all maintenance of way except for signaling
 6 which is the BRS job. But 1980 was uh, 51 percent,
 7 so 51 percent of the entire population was a
 8 laborer that persons depicted in the, in the
 9 testimony of Mr. Fitz as walking alongside the,
 10 the ballast machines and, you know, and, and the
 11 lining uh, uh, rail uh with picks and shovels.
 12 When we look at the uh, 2010 data the laborers are
 13 now only 20 percent of the entire population. Now
 14 conversely the machine operator category went from
 15 19 percent in 1980 to 36 percent today. On top of
 16 that, you have a growth in the number of foremen.
 17 Now foremen in the maintenance of lay craft are
 18 working foremen. They are, they too are the um,
 19 uh, are, are trained in the uh, uh in the
 20 performance of the higher skilled uh, functions
 21 across the railroad. And their numbers went up
 22 from 19 percent as well to 26 percent by 2010. The

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1 moral of the story is that in this particular
 2 craft, you have had a change in the mix of
 3 classifications over the period of deregulation
 4 from a laboring class 80 some uh, a majority 51
 5 percent in 1980, to today where it is only 20
 6 percent and 80 percent are in the skilled
 7 categories. Now if that's not a, a contribution by
 8 labor to elevate the skills within the craft I
 9 don't know what is. You should also realize uh,
 10 that the trackmen job, the track laborer job is a
 11 portal position for this particular craft. The
 12 Carriers recruit uh, persons with aptitude with,
 13 who are able to perform the higher level jobs.
 14 They uh, trackmen, that is, are hired at that
 15 portal position and then they can bid and move
 16 upwards within the pay structure and the
 17 promotional ladders to achieve the higher pay and
 18 the more sophisticated, better trained jobs. So
 19 it's not only a change in the global mix of
 20 classifications within the craft that cause an
 21 overall elevation of skill levels within it. It's
 22 also the elevation of the skills for particular

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1 individuals who are hired as laborers, who go
 2 through training and through uh, and, and result
 3 in persons who are capable of doing the higher
 4 job. So once again, I think that the notion that
 5 there is no connection between productivity and
 6 compensation is false. I think that there is no
 7 uh, that, that the whole notion that there, that
 8 the elevation of the skill levels within the
 9 population of railroad workers is not subject to
 10 direct increases in remuneration is also false.
 11 And anyone who says there is no empirical evidence
 12 of this has, has not opened his eyes to it and has
 13 not made the investigation. It's as simple as
 14 that. The second area is compensation. And again,
 15 here is another example of a complete failure on
 16 the part of the Carrier and their uh, spokespeople
 17 to recognize the rail bargaining history. Uh,
 18 think about this; the Carriers come before you uh,
 19 this Board and argue that the Coalition members
 20 that are represented here on average are paid 50
 21 to 80 percent over the "market". So this, and I
 22 think the 80 percent number there are several

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1 numbers floating out there depending on what
 2 source they are using uh, but generally it's the,
 3 when you add in all compensation it's an 80
 4 percent uh, premium as they call it. So you're, 80
 5 percent of your pay. The Board members have to ask
 6 themselves this. How does that happen? How do you
 7 get to a point in 2010 where you are paying your
 8 persons 80 percent over what they should be paid?
 9 Now that by itself is an indictment of every
 10 negotiator representing the Carriers over the past
 11 100 years because you don't get to this (stutter)
 12 particular condition unless, there is one or two
 13 explanations for it obviously. The first is that
 14 the Unions have bargained against Carrier
 15 negotiators that were somewhat inexperienced or
 16 they were uninformed or they were just generally
 17 incompetent and agreed to these excess, overpaid
 18 amounts. Or alternatively, the method of
 19 determining the so-called premium is invalid. The
 20 comparisons are invalid upon which they are based.
 21 The job matching is invalid upon which the total
 22 compensation is based. And accordingly, the

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1 parties have ignored this material and it has
 2 wholly failed to motivate them in the past. Now
 3 what I'm going to show you when we get to the
 4 rebuttal materials is that I can go back into
 5 every single, every single just never be absolute
 6 in this business but I can go back for a
 7 substantial number of cases, going back 50 years
 8 and I can prove to you that the Carriers have
 9 offered evidence before a Presidential Emergency
 10 Board that demonstrated that this is one of the
 11 highest, the top four or five highest paid uh,
 12 work forces in the country. All right? That has
 13 been, that was a given. That is something that
 14 they could establish. Now, I believe that that is
 15 a function of the uh, the, the, the skills and the
 16 compensation that is required of the employer to,
 17 to, to compensate adequately the skills of an
 18 occupational mix that is required to run a
 19 railroad. This is not Wal-Mart. I understand that
 20 average compensation in the railroad industry is
 21 going to be high and higher than the general
 22 private sector which is now dominated by the uh,

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1 service industry where you have persons working at
 2 WalMart and similar places or perhaps this hotel
 3 and where their compensation in the, in the total
 4 will be less than what you will find in the
 5 railroad industry. You know why because they don't
 6 have to hire in Wal, at WalMart a train dispatcher
 7 or an engineer or an IEM skilled mechanic. They
 8 don't hire those occupations. So would you expect
 9 the compensation to be higher in this, in this
 10 industry? I think so. It's just, it, it might be a
 11 fact, it's just a fact that's not material in the
 12 determination of compensation levels for the
 13 railroad worker; not any more now than it was over
 14 the past 50 years which, of course, involves the
 15 decisions by the parties themselves that brought
 16 us to this point of having been overpaid. Uh,
 17 there's a, there's a story in the back of my mind
 18 that, that um, I, I have to contribute. Uh, uh,
 19 the dates and the uh, and the um, and the, and the
 20 context but it was I believe it was Ralph Walton
 21 (sp?) in PEB 230 but as this evidence went in he
 22 inquired, "How long have you been overpaying your

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1 workers?" And he looked around, "Well, since World
 2 War II," was the answer. That says it all. Uh,
 3 Ralph Walton understood what I'm talking about.
 4 Um, I want to give you one example though because
 5 this is classic. You look at the charts of the, of
 6 Dr. Evans and um, Dr. Fay (sp?) uh, you'll see
 7 that the one that when they line up all of the
 8 crafts, a couple that stick out uh, are the
 9 dispatchers and the locomotive engineers. Uh, the
 10 dispatchers in fact are said to be paid 110
 11 percent premium, in other words 110 percent
 12 overpaid. Wow, you know, if, if I saw that, I
 13 would think to myself, "You know, that's too good
 14 to be true." You know, if you're advocating their
 15 position that is absolutely too good to be true.
 16 How could it be double what they have to pay?
 17 Well, the answer is that isn't true. And if you
 18 look at the comparisons that they made and we were
 19 offered this 'cause I had dug into all of the OEC
 20 data and, you know, all the BLS data on which
 21 this, these job matches are made. You will find
 22 that they're comparing the train dispatcher on a

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1 line haul freight railroad who's job by the way
 2 uh, will be described more thoroughly by Leo
 3 McCann, President of the organization, when he
 4 testifies. But um, uh, uh, they're comparing that
 5 job with a dis-; with a dispatcher such as the
 6 person who calls the uh, van that will take you
 7 from the hotel to the airport or dispatches
 8 taxicabs or perhaps you call up a WalMart and you
 9 want something delivered. That person will
 10 dispatch a delivery truck. That's their idea of a
 11 job match to a train dispatcher and I suggest that
 12 they together Dr. Evans and Dr. Fay have not even
 13 bothered to find out what a train dispatcher does
 14 in the industry. They haven't even bothered and
 15 that results in this enormous overpayment that the
 16 Carriers themselves are responsible for number one
 17 by mutual agreement with the organization. And
 18 secondly, has actually grown over time. I remember
 19 fi-: I remember 219, the recommendations came out
 20 in 219 it strains my memory a bit but um, and Leo
 21 can confirm this when he testifies but following
 22 219 there was a general recommendation of general

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1 wage increases. Uh, the dispatchers got more. They
 2 were back to the bargaining table and got 4
 3 percent more than anybody else. Why, why would the
 4 Carriers agree to that if they already were
 5 overpaying these guys by 110 percent? The answer
 6 is they're not. And the answer further is that
 7 whatever these data show, they are not material to
 8 the wage determination in this industry and they
 9 have never been and the proof lies in the fact
 10 that you have this differential today, this
 11 alleged premium, and it has actually grown over
 12 time. How does that happen? Um, this
 13 (indecipherable at 0:12:48) wrote about the third
 14 area and that's the pattern principle. Uh, what,
 15 what, I think what I would like, I-I would like to
 16 perform a service for the Board that would, that I
 17 would offer as follows. Uh, I keep in my office a
 18 catalog of Presidential Emergency Boards and in
 19 that it identifies the case obviously and the
 20 participants but it adds to that record uh, what
 21 you don't have all the time when you read the
 22 reports. And that is the percentage of the

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1 industry participating in the PEB. What percent of
 2 the class one railroads are participating in the
 3 case before the PEB? So I have a record of that
 4 which I have not prepared for this case. It is
 5 just something that we do. Um, and uh, and where a
 6 PEB which is not unusual fails to identify that
 7 statistic we calculate it by going to the record
 8 or going to external sources of, of employment
 9 data for class one railroad employees and
 10 estimating it ourselves. So we have such a
 11 document and I think, it may or may not be helpful
 12 to the Board but I intend to uh, offer it as an
 13 Exhibit when we get to our rebuttal case. But it
 14 is, it is uh, pertinent in this regard. I looked
 15 at the lists and I picked out and it's a subject
 16 of some refinement but I think I got them all uh,
 17 19 cases that the Carriers cite in their brief as
 18 being supportive of the proposition to apply the
 19 UTU pattern in this case; okay, 19 cases.
 20 Invariably, these cases involve a tiny portion of
 21 the industry, in other words, the tail trying to
 22 wag the dog. They involve situations and this

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1 where there is maybe one, two, three, four percent
 2 of the Carriers' employees who are trying to get
 3 something different than what the vast, vast
 4 majority have agreed to. Um, I have, I have
 5 determined that of the 19 cases, 17 of them
 6 involve cases where there is less than 25 of all
 7 railroad workers participating before the PEB. Now
 8 what does that mean? That means that, that the
 9 Boards were more inclined to apply the pattern
 10 principle under circumstances where the vast
 11 majority of all other railroad employees were
 12 already under contract, contracts with similar
 13 terms. That's a qualitatively different than what
 14 they are asking you to do in this case when we
 15 only have 40 percent approximately under contract
 16 and 70 percent of the population before you. I can
 17 only find one case out of the history of the PEBs
 18 that supports the proposition that the Carriers
 19 are trying to promote in this case; where you have
 20 70 percent of the, of employees before a Board and
 21 where the Carriers are asking the minority to uh,
 22 a decision to apply. In the cases where you have

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1 the strongest language on pattern principles and
 2 patterns applying I should say more accurately.
 3 Cases like uh, 220 and 221 and maybe they were
 4 emphasized here because of uh, members acts uh,
 5 familiar with those cases and participation on
 6 those Boards. But I would remind him and I'm sure
 7 he already recalls that um, in 220, 220 was the
 8 um, let's see if I've got these right. 220 was the
 9 uh, was the BMW case. And the BMW case was a
 10 Conrail case. In other words, the whole industry
 11 settles, all right? The BMW did not participate
 12 with respect to 219 on the wage and
 13 (indecipherable at 0:16:56) recommended or
 14 determined by 219 with regard to Conrail. Conrail
 15 was carved out. So here the BMW goes before the,
 16 the um, Mr. Zack's (sp?) board that would have
 17 been um, uh, uh, that was.
 18 CHAIRMAN JAFFE: 221 BMW.
 19 MR. ROTH: 221 was that, I got them reversed. Okay
 20 I'm sorry, right this, right and this was exactly.
 21 Okay, I got the other way around. But the one ca-
 22 ; they happened right on (stuttering) the heels of

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1 one another following 219. In the IEM case, now
 2 the BMW case that I was talking about 220 or 221
 3 that involved the circumstance where the BMW had
 4 already settled on all under a, under a, under a,
 5 under terms that were applicable to the rest of
 6 the industry, the non-Conrail industry. And so the
 7 question there was, not only was there a pattern
 8 because the BMW at the time uh, represented only
 9 um, um, that would have been 4.2 percent of the
 10 industry. So in other words, 95.2 percent of the
 11 class one railroads and their employees were
 12 already settled. Moreover, one of the, one of the
 13 principle arguments that the organizations make in
 14 opposition to rigid application of the pattern
 15 principle is that it denies them to right, the
 16 right to bargain. It denies them of their self-
 17 governance and their legal responsibility to
 18 determine for their own persons as their agents,
 19 the terms and conditions of work. Well, if you had
 20 a circumstance where the BMW not only um, uh, was
 21 seeking to evade an agreement, a pattern
 22 agreement, that it made itself, in other words,

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1 the terms that it had agreed to in all of the
 2 other class one railroads. So the notion that that
 3 particular Board would embrace the pattern in a
 4 very literal way does not surprise me. And if you
 5 get to the other case which was 221 and 221 it's
 6 1.6 percent of the population that has yet to
 7 settle. And that, of course, was the IEN who was
 8 not participating in the Presidential Board 219
 9 and was off by itself. So, 1.6 percent of all
 10 class one workers come to you and say uh, "We want
 11 something different than what 98.4 percent of the
 12 rest of the population agreed to." That's
 13 qualitatively different than, than imposing a UTU
 14 deal which represents a minority of workers on the
 15 70 percent that are before you now. And those are
 16 the kinds of cases where you find the strongest
 17 language in support of applying patterns and those
 18 are the cases that the Carrier cites here but they
 19 cannot come up with a case except for one. I found
 20 one that I think supports their position. It's
 21 114, I think that one helps them because you have
 22 about 70 percent of the, of the uh, class one

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1 workers in front of a Board that ultimately says,
 2 "I'm gonna give you guys what the minority has." I
 3 think that's the exception that proves the rule.
 4 But if this Board were to give any weight to the
 5 UTU Agreement, you would be doing so under
 6 circumstances that are highly unusual and rare in
 7 the experience of the making of collective
 8 bargaining agreements in this industry. And that's
 9 something you have to be conscious of. The last
 10 point of our departure and it's a proper
 11 introduction to the next subject matter which will
 12 be a review of the financial and economic position
 13 of the industry. And this of course is the role of
 14 ability to pay. Now the carriers, as I read their
 15 position, have said that they are not claiming
 16 inability to pay, but I don't know, does that mean
 17 that they have the ability to pay? That's
 18 something that the board will probably have to
 19 sort out. I'm not clear what they're saying. But
 20 what they have made clear, by reading their
 21 materials and listening to their experts, is that
 22 they believe the whole matter is irrelevant. Now

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1 I've got to tell you, this is going to be happy
 2 news to my clients on American Airlines. And to
 3 the U.S. Postal Service unions as well. And in
 4 fact, you know I spent part of my professional
 5 life, about ten years of it, doing workouts in the
 6 airline industry. I've done 14 restructuring cases
 7 where the principle question was whether or not
 8 there should be some adjustment or [inaudible]
 9 they call the restructuring of labor costs in
 10 order to enable these airlines to return to
 11 profitability. If only I would have known that it
 12 was irrelevant, I'd have been much less kind to
 13 the management's position, because as you know, in
 14 all of those cases, the plan of reorganization
 15 calls for radical changes in compensation levels
 16 and benefit levels in order to assure that the
 17 plan of reorganization, this is in a bankruptcy
 18 concept, an 1113 case, assures that the carrier
 19 can immerge making profits in a sustainable way.
 20 But there again, this I learned for the first time
 21 from Dr. Murphy and also repeated several times
 22 throughout the carriers' case on wages and in

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1 their opening statement, that there is no
 2 connection between the carriers' financial
 3 position and the determination of wages and
 4 benefits. Now I have to say that this is the first
 5 time, to my knowledge, that the carriers have said
 6 that the financial and economic condition of the
 7 industry wasn't a weighty consideration. And in
 8 fact, in the 70's it was not just a weighty and
 9 important consideration, it was the only
 10 consideration. It was the one that they said
 11 should drive a recommendation by a PEB because
 12 there is nothing more important than our financial
 13 position and the making of collective bargaining
 14 agreements. We'll offered some proof of this, that
 15 comment I just made, formerly when we put in our
 16 rebuttal case, but I just want to give you a
 17 little preview. Here's a carrier's prehearing
 18 submission in 1994. I quote, "since the passage of
 19 the Railroad Labor Act, each and every emergency
 20 board that has had occasion to consider the matter
 21 as held that the financial condition and future
 22 prospects of the railroad industry are material in

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1 disputes involving proposals that would affect
 2 railway labor cost." That doesn't sound like
 3 somebody that now argues that the subject is
 4 irrelevant. 1967, this is PEB, before PEB 169.
 5 Again, this is from the carrier, not from the
 6 board. I quote, "ability to pay is a recognized
 7 element in wage termination in prior emergency
 8 boards that have considered railroad wages, have
 9 given this factor considerable weight." Moving
 10 forward in time, this is 1971. This is PEB 179 and
 11 this is some general observations of the board
 12 based upon the record that was made before it. I
 13 quote, "it is appropriate at the outset to make
 14 some general observations concerning the economic
 15 issues involved in this case before we enter into
 16 a detailed discussion of wages, wage related and
 17 proposals before the board. In the course of their
 18 presentation, the carriers placed considerable
 19 emphasis upon the current financial plight of many
 20 of the railroads of this country. It is a matter
 21 of public knowledge that a number of railroads are
 22 near crisis situation in this respect and we are

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1 well aware of this important matter." Again,
 2 doesn't sound like a situation where the financial
 3 condition is irrelevant to the determination of
 4 the issues before the board. Again, going forward,
 5 this is emergency board 211. This is the Ruckus
 6 [ph] board. He's discussing the general standards
 7 and I quote, "in developing settlement
 8 recommendations the board must consider and
 9 properly way the application of the normative
 10 settlement criteria used in interest disputes.
 11 These criteria include comparability, ability to
 12 pay, cost of living." Again, moving forward, this
 13 is January 15, 1991. This is 219. I quote, this is
 14 the board describing the carriers' position before
 15 it. I quote, "the carriers believe that unless the
 16 industry can hold the line on wages and
 17 compensation and eliminate restrictive work rules,
 18 the prospects for the 1990's are abysmal. And the
 19 carriers contend that if they will agree to wage
 20 increases and rule changes sought by the
 21 organization, the entire industry would be awash
 22 in red ink by 1994." Of course the red ink that

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1 they're talking about is now the apparent black
 2 ink that we see today. So if it's relevant and
 3 weighty and important when things are bad, does
 4 the converse apply? Finally, again, you can go
 5 over every round of bargaining and find this
 6 material, but this is more current. This is 1996.
 7 This is Dick Littenthal [ph], Bob O'Brian and
 8 David Vaughn [ph]. PEB 230. "The carriers assert
 9 that a realistic appraisal of the industry
 10 economics requires railroads to continue to find
 11 ways to reduce their costs, not increase them. To
 12 compete in the deregulated transportation
 13 marketplace they stress that freight revenues have
 14 grown very slowly and that industry profits are
 15 attributable to large improvements in productivity
 16 which have in turn stemmed from new technologies,
 17 a much smaller work force and carefully
 18 rationalized rail operations." And the rest of
 19 this is important because now he actually
 20 identifies the criteria that they used to advance
 21 that former proposition. I quote, "they note that
 22 the market share of railroads with respect to

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1 freight transportation has fallen, that yields
 2 have eroded, that unit prices have therefore
 3 fallen, and that capital needs remain high. That
 4 return on investment, while rising, still does not
 5 compare favorably with most industries, and that a
 6 cash shortage still plagues the industry." Now
 7 think of those measures that in a mouthful, the
 8 Littenthal board had identified. Contrast it to
 9 what we have today. Revenue is not declining,
 10 revenue is going up. Profits are not flat, profits
 11 are going up. Yields and unit revenue is going up,
 12 not flat, not down. Market share is going up, not
 13 stagnant, not going down. The RRE, return on
 14 investment, is not only competitive, but it is
 15 superior to the majority of outside industry. And
 16 in terms of cash flow, it's never been better, not
 17 in the history of the railroad world. And their
 18 cash - looking at this last sentence that I
 19 quoted, their cash now covers not only taxes and
 20 fixed charges but covers them by a long shot. The
 21 fixed cost coverage ratio, as we're going to
 22 learn, is about 177 percent of fixed charges. So

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1 all of the metrics identified by the Littenthal
 2 board, if applied here, would put you at a totally
 3 reverse conclusion about their ability to pay. And
 4 of course it stands basically for the proposition
 5 that they, the carriers, in the real world of
 6 collective bargaining and PEB determinations, have
 7 relied heavily and extensively on that particular
 8 criteria. Now let me add that of course labor and
 9 personally myself have pushed back on the subject.
 10 We have argued that the situation was never as bad
 11 as reported and that the doom and gloom forecast
 12 that we often heard in these cases were unduly
 13 pessimistic in view of recent trends. Now
 14 sometimes, we were successful in persuading boards
 15 that the financial condition should be given less
 16 weigh than that urged by the carriers. Or at least
 17 that there are other important wage criteria that
 18 should be given comparable weight. But we have
 19 never persuaded a board to ignore such
 20 considerations. I wish it were otherwise, but I
 21 have never been successful in convincing a board
 22 that the financial position of the employer was

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1 not material in the making of a collective
 2 bargaining agreement. Now if this board does so,
 3 and it follows the position of the employer, it
 4 will be the first PEB that I know of that has done
 5 so in a case involving a private for profit
 6 enterprise, and of course there I'm distinguishing
 7 PEB's that may be established in the commuter
 8 railroad industry where you have public sector
 9 considerations for involving the willingness and
 10 the ability to pay a subject matter. Okay, now
 11 apart from the relevance and weight of the ability
 12 to pay subject matter, the parties are also
 13 separated over their views of future performance
 14 and when I get to that part of my presentation,
 15 that is something we need to focus on. And again,
 16 you will find as we proceed through the evidence
 17 that this is not a story of overnight success, the
 18 current success of the railroads, financially and
 19 economically speaking, is not the consequence of
 20 some coalition of some external forces that they
 21 got lucky over. This has been a process, a painful
 22 process that begins in the 70's with the creation

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1 of Conrail and picks up considerable steam with
 2 the passage of the Staggers Act in 1980, and
 3 evolved over many years to the point that we are
 4 today. But the reason why we will demonstrate and
 5 why outside analysts are so optimistic about the
 6 industry is because of the fundamental change. The
 7 structural change that now will dictate the
 8 persistence in profitability and future success of
 9 the carriers. That's my introduction. I'm ready to
 10 put on some evidence.
 11 CHAIRMAN JAFFE: That's fine. Why don't we take a
 12 brief break.
 13 MR. ROTH: Okay.
 14 CHAIRMAN JAFFE: Back on please. At your
 15 convenience, Mr. Roth.
 16 MR. ROTH: Uh, thank you sir. Um, I-I would ask the
 17 Board members to have before them those two
 18 exhibits of mine that we made reference to at the
 19 outset. Um, you'll, you'll note that in just a
 20 couple uh, kind of procedural things um, the,
 21 both, all of the documents that I've furnished
 22 both the statistical supplement and the summary

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1 statement have a detailed Table of Contents which
 2 uh, the Board can make reference to in trying to
 3 locate some material that I refer to. The Chairman
 4 has also uh, asked me if I could uh, remember uh,
 5 to uh, identify the um, the, the table or the
 6 reference that I'm, that I'm making by the um,
 7 page number, the Bates page number so I'll, I'll
 8 try to do that as well.
 9 CHAIRMAN JAFFE: Thank you.
 10 MR. ROTH: Um, the, the first thing I want to say
 11 goes to the kind of uh, uh, data sources that we
 12 have used. There is basically two. Um, one would
 13 be the uh, the, the general class one data that
 14 has it's uh, uh genesis the, the outrun reports
 15 which are filed by the class one railroads with
 16 the uh, Surface Transportation Board and its
 17 predecessor, ICC. Uh, the second source would be
 18 the public information that's available through
 19 SEC sources for the corporate entity for the
 20 railroads. And so we'll see sometimes I will flip
 21 back and forth and I will measure uh, certain
 22 performance on the basis on the class one average

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1 and then on occasion will uh, focus in on the uh,
 2 Big 3 or Big 4 as I am calling them. Um, in Table
 3 2 of the Statistical Supplement and this is page
 4 2183 uh, you will see a profile of class one
 5 railroads and this is simply documents what I
 6 think you already know. I will talk about the
 7 major four railroads uh, the CSX Transportation
 8 uh, Norfolk Southern uh, the BNSF and the UP uh,
 9 they constitute a majority of class one railroads
 10 no matter what measure of system size you use. Uh,
 11 they are 93 percent of operating revenue; 93
 12 percent of ton miles. They are 92 percent of the
 13 uh, employees in the class one sector and uh, they
 14 have 87 percent of the miles of road operated. So
 15 I guess when we look at the class one data and we
 16 flip to the big three or big four you're not
 17 losing a lot. You'll see a lot of uh, similarities
 18 in the trends because obviously that data is
 19 dominated by the big four. All right uh, the first
 20 uh; subject matter that I've covered uh, in my
 21 statement and it has to do with measures of
 22 profitability. Um, this is kind of an ending or

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1 starting where you might otherwise end. This is
 2 the bottom line uh, measure or productivity, or
 3 profitability. We can explain as we go through the
 4 data how we got to this situation where we have
 5 these record profits. But the analysis begins by
 6 looking at the income statement and uh, measuring
 7 profitability by four metrics. Uh, the first is
 8 net income, the net income margin uh, that is uh,
 9 uh, profit margin. There's the operating ratio;
 10 uh, there is return on net investment and finally
 11 the return on equity. Um, I don't sense that
 12 there's any kind of dispute between the Parties as
 13 to these facts or even in recognition that in 2010
 14 and in the prior few years uh, there have been the
 15 performance by way of profitability has been
 16 excellent in the industry. I don't sense that this
 17 uh, uh disputable here. What they have said with
 18 some uncharacteristic understatement that it's
 19 better than it has been in the last few years.
 20 Well, that's not quite true. It's better than it
 21 has been ever. It's better than the profit margin
 22 has been, it's better in 2010 that it has in the

<p style="text-align: right;">Page 86</p> <p>1 past 100 years except for uh, except for uh, 1916. 2 So when we use words like um, um, "This is the 3 best," or uh, "This is uh, unprecedented in terms 4 of profitability." I don't mean that in a 5 hyperbole way quite literally because I have 6 looked at all of the numbers since uh, the turn of 7 the last century and through the current date to 8 come to these conclusions overall level of profit 9 and performance. Um, most of the material, as you 10 can see, begin with the deregulation period. Uh, 11 the uh, I don't want to go into too much ancient 12 history. Uh, Chart 2 uh, which is 2186 uh, gives 13 you the growth and net income for the years 1979 14 for 2010. 2010 is used to measure performance over 15 the, the post-deregulation period because that 16 becomes the base year. In other words, the, the 17 year prior to uh, the year in which the Staggers 18 Act was passed. So we're looking to performance 19 from the base year of 1979 uh, for all of these 20 indicators. Chart 2 and um, um, uh, is uh, speaks 21 for itself. Uh, as you can see, the, the growth in 22 net income itself has been enormous both in</p>	<p style="text-align: right;">Page 88</p> <p>1 of the last collective bargaining agreement if you 2 will. So, up 40, from 2004 base year, remember our 3 contract started in, in January of '05 so looking 4 what happened over, since we last entered into a 5 collective bargaining agreement. Revenue up 43 6 percent but operating expenses up 20 percent so 7 obviously that results in a significant increase 8 in the operating margin. Uh, the operating margin, 9 or operating ratio is the relationship between 10 operating expenses and operating revenues. The 11 lower that number the better it is. And as you can 12 see, it has dropped significantly from, for the 13 Big 4 railroads, from .85 in 2004 to .718 uh, in 14 2010. That's a change of 1,315 basis points, a 15 significant move. You will note that um, uh, the 16 way I have this structured here have in the top 17 portion uh, this deals with while we're dealing 18 with the railroad corporations it is dealing with 19 their, that portion of operation that is uh, 20 described as the railroad piece; railroad 21 operation. In the day preceding the mergers and 22 the uh, the, of the 1990's, mid-1990's, there was</p>
<p style="text-align: right;">Page 87</p> <p>1 current terms and, and even in the constant 2 dollars it has jumped significantly over the past 3 five years. Uh, Table 4 I would ask you to focus 4 on, this is at 2187. Are we okay? 5 MALE SPEAKER: The date stamps are only on the 6 electronic copies. 7 MR. ROTH: Okay, than I should make reference to 8 the, the page in my document. Okay, that would be. 9 MALE SPEAKER: Right. 10 MR. ROTH: .Table 4 is on page 6. Is that better? 11 Uh, Table 4 is a statement uh, of the, a Big 4 12 railroad corporation. It is a consolidated 13 financial review in, in might words and I measure 14 what has happened over the course over the last 15 contract. These numbers are significant, Mr. 16 Chairman, because they include naturally the 17 results and the performance that uh, has occurred 18 in the Great Recession between the end of 2007 and 19 progressing through 2008. Um, the key lines here 20 for uh, your consideration would be the change in 21 railway operating revenue up 33 percent over this 22 period of time. And again, this is over the course</p>	<p style="text-align: right;">Page 89</p> <p>1 a time when uh, the major railroad corporations 2 held other interests in companies and uh, maritime 3 companies and even hotels uh, and so as they 4 divested themselves of those enterprises, kind of 5 analysis became simpler because now most of their 6 performance; most of their income and in fact in 7 this case in 2010 99 percent of it came from their 8 railroad operations because they are principally 9 learned that uh, what they do well is run 10 railroads and they got out of the rest of the 11 business. Uh, moving down to the net income line, 12 this is and again I uh, in the way of routine I 13 would exclude any none recurring items. We're 14 looking at uh, any kind of special expenses or 15 would be excluded here in this format. Uh, there, 16 there's none really to speak of. In any event uh, 17 the net income or profit is up 203 percent over 18 this period of time. The uh, the margin is up 854 19 basis points from 7.3 percent to 15.8 percent over 20 this period. And uh, again I show the pretax 21 income line is somewhat redundant. All margins are 22 up. They're all significantly over the past six</p>

23 (Pages 86 to 89)

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1 years. At the second portion at the bottom of the
 2 Table, second to last portion, we are getting the
 3 sum of the uh, reasons why increases in total
 4 shareholder return have been so uh, significant.
 5 The first thing in this line is that over this six
 6 year period, average shares have been cut by 72
 7 percent so several references to the stock
 8 repurchase programs that the corporations are
 9 currently uh, um, uh financing. And this uh, kind
 10 of a result of that over this period of time in
 11 terms of the shares that were taken out of
 12 circulation. Uh, earliest per share shot up 266
 13 percent over this period and uh, dividends went up
 14 208 percent on the Big 4. The yields on these
 15 dividends has gone up as well. So, Table 4 gives
 16 you a look at what has happened on the Big 4 uh,
 17 uh, railroads and there, as a subset of the class
 18 ones if you will.
 19 CHAIRMAN JAFFE: The exclusion of the BNSF from the
 20 bottom data was that because the data was
 21 unavailable or was there another reason?
 22 MR. ROTH: We're going to talk about that later.

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1 But, but when this period of time uh, over uh,
 2 overcomes the purchase by the BNSF by uh,
 3 Berkshire and at that moment um, the, the, of that
 4 acquisition the BNSF stock as such was no longer
 5 available to trade. Of course, you can invest in
 6 Berkshire but uh, you can no longer invest
 7 directly so I excluded them from that portion so
 8 that I could have an apples to apples look over
 9 the two points in time.
 10 CHAIRMAN JAFFE: Thank you.
 11 MR. ROTH: Again another in Chart 3 which is on
 12 page 7 of the uh, material you have. This is the
 13 profit margin going back to '79 again uh, historic
 14 levels in 2010. Big 4 income net income margins
 15 and this is the profit margin, this is on, this is
 16 Chart 4 and this would be on page 8 and I would
 17 ask you to uh, take a look at that. So, a-again
 18 we're making the point here obviously that, that
 19 while everybody agrees that 2010 was a good year.
 20 It wasn't just a good year. It was the best ever.
 21 And uh, when and so when you put this in
 22 historical perspective you don't see anything like

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1 it. The, the profit margin from 12.8 percent to
 2 15.8 percent for the Big 4, you know, in one year
 3 and from the prior peak of 2008 which was the
 4 recessionary number of uh, of 12, of 13.2. So, so,
 5 you, you can see that the, you know, performance
 6 was pretty solid over the whole course of time
 7 from 2004 to 2010 but particularly in 2010. I
 8 explained a bit about the operating ratios, the
 9 second of our metrics. This is on Chart 5 and page
 10 9 of the document and you can see over the
 11 operating ratio had collapsed significantly
 12 indicating that the Carriers are turning um, um, a
 13 greater, greater, generating greater revenue from
 14 every dollar than it did on expenses. So this is
 15 kind of a measure of efficiency for the
 16 organization for every dollar that's, for every
 17 \$0.73 that they spend on expenses they're turning
 18 into dollars of revenue. And that again is also
 19 historically high. Uh, look at the operating
 20 ratio, like the margins, the profit and the return
 21 on investment margins which were um, as good as
 22 they have been since um, uh, since the 19-; since

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1 1916. Uh, the operating ratio is better than
 2 during World War II as you can see from Chart 6
 3 page 10, just flip the page. This uh, brings us
 4 back to 1995 and calculates the operating ratio
 5 through the current period. And so while we hit a
 6 good point in 2010, it uh, it is, it isn't quite
 7 as good as what it was during World War II. They
 8 weren't making any money but they were busy. Okay,
 9 more rail operating ratios on Chart 7, this is
 10 page 11. We can skip over that momentarily. Okay,
 11 I'm going to talk a bit about the return on
 12 investment. One of the, one of the arguments that
 13 the Carriers have made invariably during
 14 negotiations and at PEDs uh, was that the earnings
 15 alone uh, do not predict the long-term viability
 16 of the corporations. That profits have to be
 17 sufficient to enable the Carriers to access the
 18 capital markets. This is particularly important in
 19 an industry that's capital intensive and has, have
 20 a large CAPX budgets. Uh, in theory uh, capital
 21 will move away from companies with poor returns
 22 and in favor of those with better returns. And so,

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1 this um, uh, reality becomes important to the
 2 extent that the railroads are reliant on external
 3 sources of capital such as uh, debt or stock
 4 issuance. So we look here at what the Carriers
 5 themselves have focused on in prior cases. I went
 6 to the extent possible to find agreement with the
 7 Carriers on what metrics to look at and then to
 8 see how they have performed over time. And one of
 9 the big uh, uh, arguments made by the Carriers in
 10 the past is that the uh, that the railroads have
 11 not been revenue adequate uh, as determined by the
 12 Transportation Board. Now it has been argued that
 13 this revenue adequacy that if, if the railroad is
 14 revenue adequate than the uh, they were not able
 15 to compete effectively in the capital markets for
 16 the money that they need to fund their capital
 17 expenditures. So we'd better look and see what's
 18 happened over this course of time with respect to
 19 the return on investment as it compared to the
 20 cost of capital that was uh, calculated by the
 21 STB. Now the first thing that I want to bring to
 22 your attention is what is accounted for in

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1 Appendix B of my statement. But we're not going to
 2 read that or really review it to any degree but I
 3 did want to bring to your attention the fact that
 4 in terms of a measure of revenue adequacy, there
 5 is controversy regarding the use of the STB
 6 determinations. Because essentially the STB
 7 determination of revenue adequacy is a regulatory
 8 device which has the effect of uh, of triggering
 9 certain provisions under the Staggers Act uh,
 10 regarding uh, uh, regarding in particular the
 11 ability of the railroads to increase their rates
 12 on, on shippers captive and otherwise. So as you
 13 go through history, the calculation of the cost
 14 cap which is peculiar to STB and you need not
 15 understand or learn any more about how you do it
 16 but they publish a cost of capital statistic. Uh,
 17 that's actually on, in Appendix B uh, which is um,
 18 Appendix B to my statement. It's Bates page 2130
 19 and I recorded for you there uh, the comparison
 20 between the cost of capital, the railroads rate of
 21 investment as determined by the STB. In short,
 22 there have been very few railroads over this

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1 period of time that have been determined to be
 2 revenue adequate, okay, by this calculation. Now I
 3 have um, stated and continued to point out that
 4 uh, that there is no practical implication on
 5 class one Carriers for being revenue adequate as
 6 determined by the STB. There is absolutely no
 7 evidence of their inability to attract uh,
 8 adequate capital to finance their uh, their very
 9 aggressive capital program. Uh, that's point
 10 number one. Point number two is that, that
 11 whatever the determination means and whatever this
 12 alleged uh, gap between return on investment and
 13 cost of capital signifies that gap has narrowed
 14 considerably over time. And, in fact, by 2-; the
 15 last analysis, the last published piece of
 16 information on this was uh, just recently obtained
 17 on the uh, - let's see if I can find that the um,
 18 yes in the, it's actually on page 9 of the summary
 19 statement. And I, it's during uh, yeah, this is
 20 worth noting here, these are the facts that go
 21 along with Chart 8 on page 12. If you look at that
 22 chart during the first 25 years of STB

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1 determination, following deregulation uh, which
 2 covers the period from 1980 to 2005 uh, class one
 3 railroads made slow and steady progress at
 4 narrowing the gap between the cost of capital and
 5 the return on investment. This is uh, indicated in
 6 Chart 8. That the cost of capital hovers around 10
 7 to 12 percent range and the return on investment,
 8 of course, steadily improved as the railroads
 9 became more uh, more and more profitable. Uh, the
 10 rate of return on investment averaged 4.4 percent
 11 in the 1980's and then as you look at the, at the
 12 kind of the, at Chart 8 you'll see the shaded
 13 portion are shrinking. During the 1990's uh, the
 14 ROI was 7 percent and then between 2000 and 2004
 15 it was .6 percent. So by 2004, the gap which is
 16 reflected in the blue portion of the chart uh,
 17 actually had approximately 400 basis points. And
 18 what I indicated a balance of that analysis is
 19 the, as with all other financial measures uh, the
 20 class one railroads posted record results in
 21 achieving the, the close of this uh, of the, of
 22 the cost of capital return on investment gap. And

<p style="text-align: right;">Page 98</p> <p>1 although this has been a very elusive statutory 2 target to hit uh, they are now uh, a couple of, or 3 a point, less than a point uh, percentage point of 4 erasing the total gap altogether. The last 5 published information for 2010 uh, the return on 6 investment hit 10.4 percent against the STB's 7 determined cost of capital uh, which is 11 8 percent. Uh, there's a piece and again I, I don't 9 believe I need to dwell on this but I do uh, urge 10 you if you have an opportunity to look at Appendix 11 B. It, it goes to the kind of the weight 12 importance that should be given uh, this 13 particular indicator, financial ability. On, on, 14 on several occasions, the railroads had the 15 opportunity to participate in rule making that 16 would have changed the definition or the means of 17 calculating costs of capital so as to uh, make the 18 target lower. Uh, they have argued consistently 19 that the cost of capital number should be higher 20 because it's not in their interest to become 21 revenue adequate under the statute. It sounds 22 counterintuitive if you were to believe that they</p>	<p style="text-align: right;">Page 100</p> <p>1 down debt. They haven't gone out and borrowed as 2 much. And they're uh, they're, the, the because 3 they have a great deal of money internally to plow 4 back into the, into their capital requirements, 5 there's no need to seek external sources and they 6 have not. Consequently uh, the whole revenue 7 adequacy determination has become less important 8 than it was even a few years ago. Speaking of the 9 capital requirements, let's uh, let's focus on the 10 next section of the statement. Uh, we can skip 11 over the return on investment. Return on 12 investment has paralleled uh, the other metrics 13 for financial and profitability performance they 14 have gone up and there are at currently record 15 good levels. (audio interruption).capital 16 investments - I just - begins with a discussion of 17 capital needs. And I just noted that a moment ago. 18 We recognize - this is something by the way that 19 carrier experts have talked about. CEO Ross has 20 talked about it. You know, he wants you to be 21 aware of the fact that we have in this industry 22 capital needs and that requires a lot of cash and</p>
<p style="text-align: right;">Page 99</p> <p>1 considered this an important indicator of uh, 2 financial performance and ability to attract 3 capital in the market. But actually the, the AAL 4 on behalf of the Carriers argues that rural 5 railroads should be less adequate as determined by 6 the STB because to do otherwise would trigger the 7 uh, regulation on pricing and also affect merger 8 considerations, abandonment of lines and other STB 9 determination where the cost of capital and 10 revenue adequacy determination is used by the STB 11 to judge the, whether or not the regulation uh, 12 uh, should be greater regulated. So in any case, 13 it sounds complicated but it really isn't because 14 in the end the only thing that matters is, "Has, 15 have the railroads, in fact in practice uh, had 16 trouble attracting capital to fund their massive 17 investment programs." And so the answer to that is 18 categorically, a categorical "no". In fact, they 19 in recent years as we're going to see when we look 20 at the capital structure data uh, they, the, the 21 external sources of capital actually have shrunk 22 in the, in the capital structure. They've paid</p>	<p style="text-align: right;">Page 101</p> <p>1 a lot of profit and a lot of income in order to 2 finance these capital improvements. We, of course, 3 agree that capital investment is critical to the 4 continued performance of the corporations. In the 5 end capital improvements add to the bottom line by 6 promoting service, reliability and capital 7 efficiencies by reduces slow orders, transit 8 times, the frequency and cost of damaged 9 merchandise. So capital investment is necessary in 10 order to maintain service levels to meet the 11 demand. Demand which then will ultimately increase 12 your traffic and your volumes, lower your unit 13 costs, and create an expansion of the revenue 14 margin which leads to profitability. So it is all 15 interwound and important. We recognize the fact 16 that capital expenditures have been also at record 17 levels. If you look at our Chart 11, which is on 18 Page 21 of the chart book, you can see that in 19 2010 there's \$9.8 billion expended by the Class 1 20 Railroads in capital improvements. And when you 21 consider the fact, you look at this trend line, 22 this is also reflected on Chart 12, if you</p>

<p style="text-align: right;">Page 102</p> <p>1 consider the trend line in capital expenditures in 2 light of the fact that the infrastructure has 3 shrunk and that the physical plant has been cut 4 considerably since deregulation, the amount of 5 investment that the railroads have made is even 6 more impressive. Chart 12 on Page 22, the chart 7 book that gives you the capital expenditures for 8 road and structures per mile of road owned. And as 9 you can see, this takes you all the way back to 10 1950. So in the early 1950s, you can see that 11 there was, that capital investment was weak. This 12 is in part what led to the bankruptcies of course 13 in 1970. The Penn Central went down in 1970. In 14 the early part of the 1970s some 20 percent of all 15 Class 1 capacity was in bankruptcy. That's 16 attributable in main part to the lack of capital 17 investment and the deterioration of the 18 infrastructure during those years, among other 19 factors which are not particularly relevant to 20 this discussion. And from that point you can see, 21 particularly since the deregulation in 1980, the 22 expenditures per mile of road took off. And that</p>	<p style="text-align: right;">Page 104</p> <p>1 economic recovery because it promotes service 2 reliability and all capital efficiencies including 3 transit times and other things. Okay, Charts 11 4 though - where am I - the beginning of Chart 14, 5 I want to turn to the other half of this 6 discussion and that is where does the money come 7 from to finance capital improvements, which 8 everyone agrees is critical to the future of the 9 railroads? Well it can come from four sources. 10 First you have cash that's generated internally, 11 in other words cash from operations or cash flow, 12 after you meet certain other obligations such as 13 paying dividends. Secondly it can come from the 14 sale of assets. There was a time when the 15 railroads had significant assets that could be put 16 up on the block and when sold generated 17 significant amounts of money for the railroad. The 18 third source of course is sale of equity. You can 19 sale stocks. You can issue stocks and generate 20 capital that way. And then finally the all- 21 popular debt. You can borrow money. So those are 22 basically your four sources. Cash from operations,</p>
<p style="text-align: right;">Page 103</p> <p>1 of course reflects a concentration of the same 2 dollars on an ever-shrinking infrastructure. So 3 not only are the investments going up in dollar 4 terms, they're being spread across or concentrated 5 on a smaller railroad. If you, while I have your 6 attention here, if you jump to Chart 19, that's 7 further in the chart book at Page 30 - that'd be 8 Page Number 2211 in the general record; Page 30 of 9 your book - you can see how the miles of road both 10 operated, both track-operated and road operated, 11 shrunk over this period of time, most of it 12 happening in the first half of the deregulated 13 period where the capacity went down by 34 percent 14 between 1979 and 1997. That's about 34 percent 15 cut. So when you have more dollars distributed 16 across fewer miles of track and road, obviously 17 it's going to accelerate your improvement in the 18 system. And that's reflected both on Charts 12 and 19 Chart 13, which follows. That's on Page 23 of the 20 book. So again, this is important. You know, we 21 understand that capital expenditures are an 22 important part of the whole industry story of</p>	<p style="text-align: right;">Page 105</p> <p>1 sale of assets, sale of equity in the stock 2 market, or borrow. So I want to look at which of 3 these sources had become the predominant means of 4 financing capital today, as we proceed through the 5 book. Now the one thing that jumps out is on Chart 6 14, is the increase in cash flow. Chart 14 also 7 together with the Table 8, which is on 26, 8 indicate the growth in cash flow. So this is what 9 the railroads have left over from their income 10 from operations after paying depreciation, 11 deferred taxes. That's what we see on Chart 14. On 12 Table 8, we take that to another step and 13 calculate discretionary cash flow, which begins 14 with your income, your operating income, subtracts 15 depreciation, deferred taxes, takes out dividends 16 and your capital expenditures, as well as any debt 17 service. So when you subtract all that, you have 18 your pre-tax discretionary cash flow which is 19 reflected on Table 8. So both, when you look to 20 the discretionary cash flow and the grossed up 21 cash flow, either way the carriers are generating 22 internally from their operations significant sums</p>

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<p style="text-align: right;">Page 106</p> <p>1 of money, money that is used to finance, in the 2 case of the Chart 14, capital expenditures. On 3 Table 8, this is net of the capital expenditures. 4 CHAIRMAN JAFFE: Unlike Chart 11, are these real 5 dollars rather than level or constant dollars? 6 THOMAS ROTH: The dollars on Chart 14 are gross, so 7 those are current dollars and not constant 8 dollars. 9 CHAIRMAN JAFFE: Thank you. 10 THOMAS ROTH: Focusing on Table 8, which is on Page 11 26, let's take a look at that for a minute because 12 this is fairly impressive. We talked about the 13 capital expenditures, we talked about how they 14 have grown as the needs of the railroad to compete 15 have intensified, and we also talked about the 16 cash dividends that were paid out to shareholders. 17 But when you lit (ph) all of that out to a pre- 18 tax discretionary cash flow is still at record 19 levels. In 2010 it's \$11.3 billion. That's 20 billions - \$11.3 billion. That's up from \$8.8 21 billion in 2009 and up from an average going from 22 2004 to 2008 of under \$6 billion. So if you look</p>	<p style="text-align: right;">Page 108</p> <p>1 expenditures. That's what we refer to as the cash 2 flow ratio that is recorded for you on, cash flow 3 ratio would be on Chart 15 which is Page 25. So 4 what that means is that in 2010, the cash flow is 5 1.77 or the - or reflecting the railroad's ability 6 to finance capital expenditures with funds 7 generated internally. The greater use of internal 8 sources of cash to finance their CapEx activities 9 is also made evident by looking at the debt to 10 capital ratio. This goes to the capital structure 11 as the capital structure has the shareholder 12 equity and your debt. And debt as a percent of 13 that total capital is reflected in Chart 16, which 14 is on Page 27. So as that graph shrinks, as the 15 debt to capital ratio falls, it signifies a lower 16 reliance on debt as a means to finance your 17 capital. It's falling in the capital structure. In 18 fact, and it's falling at a rate that is more than 19 significant. It's .146 today, which is less than 20 half of where it was just in 2000, and 21 significantly below the levels that we had at the 22 outset of deregulation. So debt to capital ratio</p>
<p style="text-align: right;">Page 107</p> <p>1 at the far right hand column on Table 8, that will 2 give you a picture of what has been a fairly, you 3 know, impressive record of generating cash 4 internally not only to use for discretionary 5 measure but also to finance their capital needs 6 and to treat their shareholders to increases in 7 their dividends. So the moral of the story here is 8 that the persistent improvement in railroad net 9 income or profits have enable the carriers to 10 lower their dependence on outside debt. I 11 described for you the sources, the kinds of debt 12 they normally engage in. There's a movement in 13 recent years to take advantage of low rates of 14 interest in the general markets and borrow money 15 in a traditional way but they have also used 16 equipment obligations and other debt instruments 17 that are peculiar to the industry to finance those 18 locomotives and other rolling stock in the past, a 19 detail which we need not focus on. The point is 20 that cash flow is exceptionally strong today and 21 that in 2010 alone it was a record \$17.3 billion 22 and it covered 177 percent of capital</p>	<p style="text-align: right;">Page 109</p> <p>1 indicates a smaller portion of capital 2 expenditures being financed with external 3 borrowing. The other external sources that I 4 mentioned was the sale of assets and the sale of 5 equity or the issuance of stock. Neither one of 6 those less sources of capital have been widely 7 used by the railroads in recent years. I think I 8 note on Page 14 of the summary statement that, you 9 know, apart from these debt instruments that we 10 discussed, the second external source of capital 11 funds is the sale of property. And in the past it 12 was mainly real estate but it also includes land 13 grants for minerals and coal and gas and lumber 14 and such. Well in 2010 the sale of property 15 produced \$325 million in capital which was fairly 16 insignificant for the railroads as a whole. And 17 that source of capital has diminished in 18 importance over the years, which is predictable 19 given the fact that the railroad infrastructure is 20 now highly rationalized, the short lines and less 21 dense rail lines have been sold off along with the 22 property. The third source that are, of external</p>

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1 sources, and the fourth source of capital overall
 2 is the issuance of stock. Again, historically when
 3 I look at the data, new stock issuance has played
 4 a very minor role in capital funding and over the
 5 last eight years I was not able to find any equity
 6 sales for Class 1 railroads. Not counting, of
 7 course, the total acquisition of the BNSF. The
 8 strong cash flow together with the availability of
 9 the special debt instruments that I discussed made
 10 it unnecessary really to attract a lot of capital
 11 from outside sources. In fact, in recent years as
 12 you have learned, the railroads have engaged in
 13 significant stock repurchase programs. So they're
 14 actually not selling stock, they're buying their
 15 own stock back and putting it on the treasury
 16 shelf. In the footnote on Page 15 of the summary
 17 statement, which is Record Page 2091, I note that
 18 the UP spent \$1.3 billion in 2010 purchasing 17.6
 19 million shares. That was followed by \$1.6 billion
 20 in 2008 and \$1.4 billion in 2007 on their stock-
 21 repurchasing program. In February 3, 2011, the UP
 22 Board of Directors authorized management to buy

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1 another 40 million shares. And the CSX followed
 2 suit, as the footnote indicates. So they're
 3 purchasing a great deal of their own stock with
 4 the cash, discretionary cash that they have. And I
 5 also have noted elsewhere in the statement that
 6 the carriers have announced, the big three
 7 carriers that are now publicly traded, have
 8 announced that they intend in 2012 and 2013 to
 9 take another 3 percent of their shares out of
 10 circulation. That's 3 percent each out of
 11 circulation in each of those years. So that's
 12 another 6 percent each of a reduction in their
 13 shares outstanding. This is what - you know,
 14 another hat that I wear in my work, I advise
 15 union-appointed Board of Directors on United
 16 Airlines and Northwest Airlines when it had a
 17 Board of Directors, and U.S. West Airways when it
 18 had a union-appointed Board of Directors. United's
 19 the only one left that has that function under its
 20 collective bargain agreements. My point is that I
 21 regularly get through my confidentiality
 22 agreements, the same records, the same information

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1 that the Board of Directors get. And I recall that
 2 the discussions about what in the boardroom as to
 3 what occurs when companies have - are cash rich.
 4 What do they do with the extra money? This was not
 5 - this is something that United Airlines dealt
 6 with in the run up in the 1990s when it had more
 7 money than it knew what to do with. Today the
 8 railroads are well positioned. Their liquidity
 9 sits at an all-time high. They have cash and cash
 10 equivalents for CSX, NS and UP alone are almost \$4
 11 billion. So the question is what do you do when
 12 you have all that money? Well you can do three
 13 things. You can plow it back into the corporation
 14 and buy financing capital investment programs.
 15 Two, you can pay down debt. Three, you can
 16 increase your return to shareholders by sponsoring
 17 a share repurchase program and drawing those
 18 shares out of circulation thereby increasing the -
 19 it's like a anti-dilution effect on the
 20 shareholder stock. And also for the shareholder
 21 you can finance increases in dividends. Well the
 22 railroads have done all of that. They have so much

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1 money they have engaged in each of those practices
 2 that corporations engage in when they have a lot
 3 of cash extra, when they have a lot of
 4 discretionary cash. Cash above and beyond what is
 5 required to finance to again to meet their normal
 6 obligations. We saw that their using some of this
 7 money to plow back into the enterprise, to finance
 8 what might otherwise be borrowed for capital
 9 expenditures. But they're paying down the debt;
 10 that is becoming the smaller part of the capital
 11 structure. And of course we're seeing the most
 12 obvious expenditure for that extra cash is for the
 13 increase in dividends in the stock repurchase
 14 programs that I alluded to. I'm going to talk a
 15 bit about the, moving forward here, talk a bit
 16 about the market share. We are frequently reminded
 17 by the carriers that while all indicators of
 18 financial position are positive they may be, they
 19 should be regarded as being fragile. That our
 20 current position may not hold depending on what
 21 the competitive world looks like in the future. So
 22 they would argue that there's a continued need to

<p style="text-align: right;">Page 114</p> <p>1 hold the line on expenses in order to continue to 2 compete. So what I'm going to do with this section 3 of my testimony is look back to see how they are 4 doing in this regard. How they're doing against 5 the competition, how they're doing against market 6 share, and I think this will explain why we see 7 later on in the summary statement all of this 8 evidence of outside analysts being optimistic 9 about the future financial performance and success 10 of the railroads. I think much of that is grounded 11 in what the analysts are seeing by way of 12 improving competitive performance within the 13 freight market that the railroads are currently 14 experiencing. This actually begins in the 15 statement on Page 15 which is Record Page 2091, 16 Page 15 of my exhibit. And I tell the whole story 17 here which I'm not - I don't need to recount for 18 this board - about how in the old days the falling 19 market share was mostly blamed on the competition 20 from the trucking industry which had emerged when 21 in the Eisenhower period the interstate highway 22 system was first conceived and constructed through</p>	<p style="text-align: right;">Page 116</p> <p>1 railroads actually begins in the 1950s and 60s. 2 During that period of time, track miles declined 3 by 4 percent and 6 percent in each of those 4 decades. So 4 percent in 1950; 6 percent in the 5 1960s. And that process was accelerated in the 6 1970s when 15 percent of the industry's capacity 7 was removed. But it wasn't until after the 8 Staggers Act where the railroad management had the 9 tools to really accelerate that process because 10 now the barriers to line abandonment and sale were 11 erased. And really the Staggers Act launched a 12 wave of structural change that is the background 13 and foundation of the financial state of the 14 industry that we see today. During the 25 years 15 following deregulation, the nation's freight 16 system collapsed through the sales of abandoned 17 and light density lines and through a series of 18 mega-mergers and consolidations. Some 107 miles of 19 track were eliminated; it was about 35 percent of 20 capacity. The car fleet was cut in half; 322,631 21 jobs were abolished. That was about 68 percent of 22 the Class 1 workforce that we had at the outset of</p>
<p style="text-align: right;">Page 115</p> <p>1 the 1960s. So the trucking industry grew, market 2 share for the railroads fell as the competition 3 got stiff and (ph) those markets and in those 4 commodities where the freight railroads competed 5 directly with trucks. And that whole picture has 6 changed significantly. First of all there's, we 7 talk about on Page 16 of the summary statement, 8 the structural changes that railroads engaged in. 9 This whole question about capital or capacity 10 rationalization, that we are identifying for you 11 on our Chart 19, Page 30, where the railroad 12 infrastructure is shrinking. Where they're able to 13 invest concentrated monies in the rehabilitation 14 and the revitalization of the physical plant which 15 leads of course to better service. Better service 16 leads to higher prices; higher prices lead to more 17 revenue; and their whole competitive position is 18 improved. The - looking at the capacity numbers, 19 and this is on Page 17 of the summary statement, 20 in the 19 - and this is reflected on several 21 charts we have - this rationalization of capacity 22 or rationalization of the infrastructure of the</p>	<p style="text-align: right;">Page 117</p> <p>1 deregulation. A lot of jobs lost. So by 2 eliminating the excess capacity, consolidating the 3 physical plant through mergers, the railroads were 4 able to increase capital utilization across the 5 board. Now this gets into some of the capital 6 efficiencies and the causes of productivity that 7 were discussed loosely during the employer's case 8 and I will drill down on them when we get to the 9 productivity subject. But clearly nobody has ever 10 said, and I have never said, that productivity 11 gain in the industry comes exclusively from the 12 harder work of the employees. No one has ever 13 taken that position. It comes from the coalition 14 of factors and investments that the management 15 makes into capital. So the capital efficiencies 16 and there's, which lead to labor productivity 17 increases. And I record some of those improvements 18 since deregulation on Chart 20, Page 31, where I 19 show that since deregulation you have 17.8 percent 20 increase in the speed of trains; you have 102.6 21 percent increase in train utilization. In terms of 22 the trainload it's up 72 percent; the length of</p>

30 (Pages 114 to 117)

<p style="text-align: right;">Page 118</p> <p>1 the haul, the length of the trip is up 49 percent, 2 almost 50 percent; and traffic density, which is 3 very important, is up 188.7 percent. That's the 4 measure of capital utilization of your track and 5 road. So by all of these measures, capital 6 efficiency rises by there (ph) over this period of 7 time. Apart from the kind of the capacity 8 rationalization, the second largest factor has to 9 do with - that lead to this foundation of 10 profitability today is the, and improving by the 11 way the future of the rails competitive position, 12 has to do with the growth of intermodal service. 13 I've really said that the, and I think most 14 experts agree, that the transportation market is 15 somewhat compartmentalized. And that is to say 16 there are large volumes of freight movements that 17 are bulk commodities that are handled by line haul 18 railroads that are basically immune from trucking 19 competition. You know, the railroads dominate and 20 have dominated for a long time the long-haul 21 movement of coal, for example, and grain and 22 certain chemicals. On the other hand there is</p>	<p style="text-align: right;">Page 120</p> <p>1 otherwise haul except that the rail is doing the 2 long-haul line haul portion of the move from end 3 to end. So what has happened, and we kind of 4 record what has happened to this segment of the 5 market on Chart 23 - this is Page 34 of the chart 6 book - and you can see that this growing segment, 7 it's expanded greatly. It's 14 times the level of 8 carloads - carloads are 14 times the level they 9 were in 1961 and about 4 times the level that they 10 were at the outset of deregulation of 1979. So 11 again, this is a growth area for the railroads 12 that gives rise to the analysts and other experts 13 optimistic view that demand rail services will 14 persists and persist at a strong level going 15 forward. Because it is within this particular 16 market where the railroad has the pricey advantage 17 over the truck because clearly the length of haul 18 for all modes of transportation are inversely 19 related to unit costs. As the length of the trip 20 lengthens, the unit costs fall down. So the cost 21 advantage - and this cost advantage that the 22 railroads have is magnified when you consider</p>
<p style="text-align: right;">Page 119</p> <p>1 another compartment of the freight transportation 2 market that today and probably forever will be 3 dominated by trucks which is untouchable by rail 4 at any price. And that of course, is because we 5 don't go, that is to say the railroad can't go 6 where trucks do. And these involve high-valued 7 products moving short distances and light 8 shipments where transit times and reliability is 9 the primary concern of the shipment. Now in 10 between those two segments there is an overlap. 11 There is another very large segment of the freight 12 transportation market where the, which is called 13 intermodal service, where the carriers have gained 14 a great measure of success in recent years. But 15 intermodal moves are transportation of truck, 16 trailers and shipping containers by rail. So with 17 most of the intermodal moves, rail performs the 18 line-haul portion of the move and the truck 19 handles the shorter front and back end loads of 20 the moves. And so the commodities that move by 21 intermodal of course include the full breadth of 22 products and commodities that trucks would</p>	<p style="text-align: right;">Page 121</p> <p>1 their fuel efficiency. There's lots of those 2 numbers in the public press. There's 3 advertisements on TV by the railroads to this 4 effect. But the numbers for your review are on 5 Page 18 of our summary statement and I note that 6 in 2010 trains were able to move 1 ton of freight 7 484 miles on a single gallon of fuel, equivalent 8 to moving a ton coast to coast on 7 gallons. 9 That's four times the efficiency of a truck move. 10 So this cost advantage has enabled the railroads 11 to capture this intermodal sector. In fact some of 12 their best customers are trucking companies who 13 have obviously realized that sending their 14 products in containers on trucks - containers or 15 trailers on rail is more cost efficient for 16 shipping their, serving their customers than it 17 would be if they were hiring the driver and paying 18 the fuel to commute across the country. So the 19 consequence of all this leads to a favorable trend 20 on the overall market which is captured by freight 21 railroads. That is indicated on Chart 21, Page 32 22 of the chart book. That. (audio interruption)</p>

31 (Pages 118 to 121)

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1 Chart 22 on page uh, 33 gives you some information
 2 on another way of looking at this fuel efficiency
 3 and this competitive advantage that railroads have
 4 over trucks. Uh, fuel uh, this chart shows that
 5 um, that the revenue ton miles which is the red
 6 line has gone, has gone up greatly, in fact volume
 7 has doubled over the, the deregulated era but fuel
 8 consumption has remained flat. This is the, this
 9 is the fuel consumed in the, in the aggregate
 10 where 1979 equals 100. So fuel expenditures are
 11 flat, volume is going up.
 12 MS. PARCELLI: Mr. Chairman, Mr. Roth advises this
 13 might be a natural breaking point if this uh,
 14 suits the Board in terms of a lunch break.
 15 CHAIRMAN JAFFE: That's fine. It's now a little
 16 before 12:15. Why don't we try and reconvene at
 17 1:00, 1:15, 1:15. (audio break)
 18 BAILIFF: Rise, please.
 19 CHAIRMAN JAFFE: If I could ask everyone to take
 20 their seats again, perhaps we could then resume?
 21 Back on the record and at your convenience, Mr.
 22 Roth.

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1 THOMAS R. ROTH: Thank you, Mr. Chairman, before
 2 the recess, I believe we have completed our
 3 discussion of the summary statement and related
 4 materials going through the first 18 pages. If
 5 not, I'm going to skip to the next subject, in any
 6 event, which is the relative labor costs and
 7 productivity. There are some differences between
 8 the parties, some of which I've already
 9 identified, and others that may emerge as I
 10 discuss this matter, so I think it's probably
 11 important that you have a crystallized view of
 12 where labor is on the particular subject matter.
 13 First of all, let me say that some of what the
 14 carrier said in, I guess, defense of the argument
 15 they predicted we would make with regard to
 16 productivity is misplaced. They've kind of over-
 17 reacted. This subject matter on productivity and
 18 labor, the world of labor costs, is in my
 19 materials that deal with the financial economic
 20 condition of the industry, and intentionally not
 21 in the materially that's related generally to the
 22 wage question. Or the increases in general wages.

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1 The reason for that is deliberate. The increase in
 2 productivity and resulting cuts in labor cost are
 3 part of the story, part of the explanation for how
 4 the carriers have arrived at the position that
 5 they're in today, regarding their financial
 6 position. It's the same kind of, again,
 7 explanation that you might give another industry
 8 that has benefited from increasing productivity
 9 and falling unit costs. So, it's somewhat of a
 10 straw man to set up a situation where we're saying
 11 because of the increases in labor productivity,
 12 that equals increases in compensation. That's not
 13 to say that the parties themselves in another
 14 context, have not directly connected productivity
 15 change to compensation increases as I've described
 16 earlier this morning. That certainly has occurred,
 17 but in this part of my presentation and this part
 18 of where labor's argument and position, we are
 19 identifying changes in labor productivity as in
 20 connection with its effect on unit labor costs and
 21 the ability of the carriers over time to broaden
 22 the margin, the revenue margin and that is the

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1 difference between the cost of delivering a unit
 2 of output and the revenue that they received for
 3 the unit of output. But with that introduction,
 4 let me go forward. To begin with, you know, we
 5 have never taken the position, and I have never
 6 taken the position that the sole increase, sole
 7 reason for the increase in labor productivity or
 8 productivity, generically across the system, is
 9 because labor is working hard. We acknowledged, as
 10 I do in our definition, our text, which is on page
 11 20 of the summary statement, this will be, record
 12 page 2096, and hat we will get into some materials
 13 in the chart book that relate to the subject. But
 14 here is what I described for you in defining
 15 productivity. It is the relationship between
 16 physical input and physical output. What am I
 17 putting in? What am I putting out? It's a measure
 18 of a degree to which the physical inputs are
 19 usually producing outputs. And productivity, in my
 20 view, is best expressed as a rate rather than an
 21 absolute quantity, and it's traditionally in the
 22 railroad industry, productivity has been measured

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1 in terms of freight revenue ton miles as the
 2 physical unit of output. And the input, the proxy
 3 for the input, in terms of the factors of
 4 production is man hours of labor, which is the
 5 most commonly used measure of input. Now,
 6 apparently, some of the experts produced by the
 7 carriers take issue with this measurement
 8 question. And I submit that they file a grievance
 9 with their client, because this is. if you go to
 10 the 10Ks, for example, of the carriers, and in
 11 particular, the most recent one I read was for the
 12 BNSF, you will find that within their description
 13 of, to the shareholder, of improvements and
 14 productivity, they will use ton miles per
 15 employee, so I'd sooner remember ton miles per
 16 employee, ton miles per man hour, which is a
 17 refinement of the employee (inaudible), it's
 18 actually a better measure, because obviously, it
 19 captures changes in the extent to which there is
 20 overtime used to put out more output, but in any
 21 event, my point, obviously, is that I'm not
 22 inventing this measure of productivity. It is one

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1 that has been embraced by the parties at the
 2 bargaining table for decades, and it's also. it's
 3 currently being cited and used by the carriers
 4 themselves in the context. So, if somebody has
 5 some theoretical reason why it is misleading. I'm
 6 really not that sensitive, I've been called a lot
 7 worse, but Mr. Rankin (Sp?) got great pleasure out
 8 of repeatedly saying that I was attempting to
 9 mislead the Board in my measurements of
 10 productivity. And he had a lot of fun doing that,
 11 and that's good for him. But it's, the fact of the
 12 matter is that this is a way of measuring
 13 productivity in the business. It's not to say that
 14 all of the improvement and productivity is
 15 attributable to labor's effort. In fact, I say
 16 here specifically, that over the years, there's
 17 been many sources of productivity gained in the
 18 railroad industry. There are technological change,
 19 and that's changes in materials and equipment,
 20 resulting from investments by the carriers to a
 21 mechanism and automation, some other reason why
 22 you can get a lift in productivity. An increase in

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1 skill and education of the workers is one, which
 2 they ignore, but it is certainly among those
 3 factors that contribute to productivity increases.
 4 Then, of course, capital efficiencies across the
 5 board increases the locomotive power, car
 6 capacity, all of that. The (inaudible) physical
 7 plant that we described in a fair amount of detail
 8 this morning, contributes to the reorganization
 9 and centralized control of the railroad and that
 10 would also create efficiencies and in improvements
 11 in productivity across the system. All of these
 12 sources coalesce over the years to cause industry
 13 productivity to go up at a rapid pace. So I'm not
 14 here to testify that this is because of labor's
 15 increased effort, although it's part of it, as I
 16 said this morning. Call me old-fashioned, but I
 17 remember when the education of American labor
 18 force included on-the-job training or when it
 19 included the apprenticeship programs that are
 20 sponsored by the railroads and embraced under the
 21 collective body agreements between the shop crafts
 22 and the BRS and the railroads. In the day, we used

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1 to regard that as increased education and skills
 2 of the American. of the work force. We heard from
 3 Berkshire of Chicago, that that cannot be,
 4 theoretically, that you have to discount whatever
 5 wages they receive because of lack of their degrees
 6 from the University of Chicago and other
 7 institutions. Take that for what it is worth.
 8 Productivity. So labor productivity, is, again,
 9 has gone up tremendously over the period of
 10 deregulation. It's really a two-part story that
 11 I'm going to get to momentarily. The greatest
 12 strides in productivity gain happened over the
 13 first half of the deregulated period and I need to
 14 find, let's. our first reference here is a chart of
 15 25, which is in the chart book at page 36. It is
 16 record page 2217 in the Newman's case. And this
 17 kind of lays it out for you, the ingredients of
 18 this productivity improvement, freight ton miles
 19 is what an output is, is up 484 percent, whereas
 20 the. I'm sorry, I misspoke, the freight weather
 21 return miles up 87 percent, that's the green line,
 22 total man hours collapses over this time by 68

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1 percent as capacity is drawing down and employees
 2 are laid off, so that produces a revenue, freight
 3 revenue, ton miles per man hour, of some 484
 4 percent. And you can see why there's been some
 5 interruptions in the blue line over time, in the
 6 past 31 years, generally speaking, it has been
 7 progressively forward. And so the slope of the
 8 curve is, I think, when you do the numbers,
 9 probably a little stronger in the early years than
 10 later years, but it is in continuing. Even over
 11 the course of our last agreement, which is chart
 12 26, on the next page in the chart book, you can
 13 see that we've had this labor productivity and
 14 improvement has persisted. Again, this is all
 15 Class One railroads over the course of the last
 16 agreement. We have freight ton miles going up
 17 marginally, less than 2 percent over the entire
 18 period, yet total man hours was reduced by nearly
 19 15 percent and those two numbers together produced
 20 increases in productivity of 16.6 percent. That's
 21 the way this works. The on chart 27, which is next
 22 in the chart book on page 38, this is a table of

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1 employment. You've seen some of these numbers
 2 before. You can see that most of the carnage
 3 occurred in the first part of the PITLA de-
 4 regulated period when employment went from 475,000
 5 employees down to a low of well it's kept forming
 6 but it's pretty much stabilized over the past six
 7 or eight years as compared with earlier periods.
 8 But when we say as we do, that this productive
 9 decline has been a painful experience for rail
 10 labor, I mean that quite literally. These jobs go
 11 away, this is, regardless of the income, and that
 12 is passed along to the surviving workforce by way
 13 of productivity sharing, increases in
 14 compensation, for instance, apart from that, there
 15 has been a substantial loss of jobs. Some 68
 16 percent. 322,631 jobs abolished since
 17 deregulation. Well, the authority, excuse me,
 18 carriers have put a price tag on this. If you add
 19 up the heads count in each year by the cost per
 20 head, as calculated by the carriers, that's some
 21 \$15.8 billion worth of compensation that has been
 22 lost. Now where this. this money went to the

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1 railroad and it's been lost to the employees whose
 2 jobs have been abolished and whose jobs have been
 3 laid off as a consequence of this growing, this
 4 improvement in productivity. Chart 28 is next in
 5 the chart book. It's on page 38 of the doc. This
 6 makes a simple point that the our experience in
 7 this industry is really quite extraordinary
 8 compared to the rest of the US business. That
 9 speaks for itself, need no further comment on it.
 10 I want to turn now to the role that productivity
 11 plays in creating a wealth for the corporation.
 12 The analysis of unit labor costs combines the
 13 effects of labor costs and productivity on the
 14 financial position of the employer. If you bring
 15 revenue, which is like I say, a function of the
 16 amount of quality that you put out and the price
 17 you get for the quantity, that's of course, the
 18 revenue, or revenue per unit of output, revenue
 19 per ton mile, in this instance. The cost of the
 20 extent to which you can convert that into profits,
 21 and income to the company is a function of how
 22 your unit costs will behave over this period. So,

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1 if you are you could have a situation as we did
 2 for some part of this period where your unit costs
 3 are rising relative to the unit revenue and
 4 thereby putting a squeeze on the revenue margin.
 5 We'll see that momentarily. But unit costs
 6 themselves in our industry have been fairly flat
 7 for about ten years, and over the long haul have
 8 been reduced substantially. This, of course, is a
 9 function, labor costs would be a function of the
 10 cost of labor, and the cost of labor and the and
 11 output, or the volume of output, ton miles in this
 12 instance. So, if you take, if you look at chart
 13 29, which I refer to, you can see that in terms
 14 over the long haul, and terms of freight tone
 15 miles, they've risen 153 percent. Labor costs,
 16 however, have only gone up by 16 percent. What
 17 that does is reduce the unit labor cost by 38
 18 percent over this period of time. Now the red
 19 line, as you can see, has actually flattened out
 20 in '01 and has crept up marginally, over this
 21 period, still far below where we were in 1982.
 22 However, it has moved in the other direction as

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1 the.as the.as reduction in employment and man
 2 hours have subsided, in terms of their rate of
 3 change. So, for the Class One carriers, unit labor
 4 cost was slowly but steadily for years up to a
 5 peak of 1982, and afterwards, the costs fell by 49
 6 percent, resulting in a net decline of 38 percent
 7 by 2009. That's what that shows. Now, the other
 8 half of the equation deals with the revenue
 9 margin, track 30, by the way, we can skip over
 10 that. That's unit labor cost change, both in
 11 constant and.both in constant dollars. Unit labor
 12 costs also can be put in perspective when you're
 13 looking at the rest of the US business. That's
 14 chart 31, that's simply demonstrates to the board
 15 that this experience that we've had in the
 16 railroad industry, with respect to unit labor cost
 17 is pretty extraordinary compared to the rest of
 18 the world. And that brings me to a more important
 19 analysis, which begins in chart 32, and this is
 20 the.what has happened to yields, or average prices
 21 per unit of output over this period. There was a
 22 time, a 20 year period, in fact, between 1982, and

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1 2001, where stiff competition, freight weight
 2 compression, and which is a.results in lower
 3 average prices because of changes in the mix of
 4 the commodities that are transported by the
 5 railroad, for those reasons, we've had, actually a
 6 decline in the gross average rail prices, the
 7 yields. And you can see that reflected in chart
 8 32. So, what has happened, what has been a major
 9 contributor to the increase in revenue margin and
 10 the employer's profitability is a reversal of that
 11 trend. For all of the.for the reasons I've
 12 explained earlier this morning, regarding the
 13 capital investments that were made and the
 14 improved in efficiencies and services, and in the
 15 growth of the inert-modal sector, for example,
 16 they are able now to gain this price authority, as
 17 the analysts refer to it. And since 19.since 2001,
 18 the average prices have gone up by 39 percent,
 19 reversing this 20-year experience. And that's the
 20 unusual.I should say that's not unusual, that's
 21 the product of all of the.of the turnaround that
 22 had been ongoing since deregulation by the

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1 railroads, but it is a point of departure and a
 2 part of the story and explanation for how we got
 3 in 2010 to this record-producing profitability
 4 error. The revenue margin is illustrated for you
 5 in chart 43, and what this is, is the difference
 6 between the unit cost and the unit revenue, so you
 7 hear the revenue can go up in one or two ways or
 8 both, increasing volume, increasing prices. I'm
 9 sorry, and your unit revenue goes up only if, on
 10 the margin, goes up only if your prices are
 11 rising. Your costs, including labor costs, divided
 12 by your unit of output, your ton miles, is your
 13 unit cost, which, as you can see, that's reflected
 14 by the yellow portion in total, and that has
 15 remained fairly flat over the entire 31-year
 16 period. What has grown because of this new pricing
 17 authority, is the yield, and when the yield goes
 18 up, the revenue margin has climbed accordingly.
 19 What is also added here, by the way, to what we
 20 haven't seen before is, kind of comparison between
 21 labor costs and non-labor costs in the expense
 22 structure. What this demonstrates is that while

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1 unit labor costs have fallen over this period, all
 2 other costs, that is to say, the non-labor
 3 components of the railroad's cost structure have
 4 not gone done. They have fallen, they fell through
 5 1999, but have since climbed rather markedly. So,
 6 again, to the extent that over this period,
 7 there's been any pressure put on the revenue
 8 margin, it certainly cannot be laid at the feet of
 9 rail labor whose unit costs have continued to fall
 10 for the duration or remained flat, relative to the
 11 non-labor expenses. Now, another way to look at
 12 the role of this newfound price authority is to
 13 examine the costlier gap. In past negotiations and
 14 before PEBs and interest arbitration boards, the
 15 carriers have invariably focused on the cost yield
 16 gap as a prominent indicator of their financial
 17 position. As we discussed, earlier, between '81
 18 and 2004, the average prices were actually and
 19 slowly declining in the face of the competition
 20 from the trucks and what I call freight rate
 21 compression. So, as this occurred, when you
 22 compared these declining prices to the escalating

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1 cost of doing business, in terms of the, rail,
 2 which is reflected here by the railroad cost
 3 recovery index, that's simply a.I think of it as a
 4 producer's price index, if you will. What it has
 5 in it are all the components of cost, including
 6 fuel and labor, and benefits and other materials
 7 and supplies and other components of the expense
 8 structure, and what the AAR does is construct an
 9 index to reflect the changing rates, changing
 10 costs in the rates of those elements of the.of
 11 cost, and so as the cost of recovery index rose
 12 and revenue per ton mile, which is the green line
 13 on chart 34, remained flat or slowly falling, you
 14 can see that what occurred was a cost yield gap.
 15 This was a.this is a slide, this is a table that
 16 was again, produced and developed by the carriers,
 17 in all the recent cases, all cases since
 18 deregulation, as a matter of fact, in describing
 19 their problem. So, what I wanted to do is simply
 20 update it while producing chart 35, which brings
 21 us forward, remember the prior chart 34, stops at
 22 2004, so let's go from the base year of 2004, to

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1 the current period, by looking at chart 45, which
 2 is on page 46 of the chart book. So, this is
 3 what's happened over the course of the last
 4 agreement. Revenue per ton mile are continuing to
 5 climb, that's the blue line, that would be 41.5
 6 percent over the term that we're looking, and the
 7 yield went up.I'm sorry, I got the reverse. I
 8 misspoke. The red line is the railroad cost as
 9 reflected by the cost recovery index, and the blue
 10 line is the revenue, the yield, average price, if
 11 you will. So, now what we have is the.is railroad
 12 costs going up at a slower rate than revenue per
 13 ton mile, indicating a total reversal of the
 14 situation as it was presented to Baltimore Board,
 15 for example, or the other PEBs over the course of
 16 the last few years. So, again, another indicator,
 17 one that is cited by the carriers, one that they
 18 insist upon, we are looking at, that has now
 19 turned on its head, in terms of its measuring of
 20 fiscal distress. It is now an indicator that words
 21 to support the union's proposition that things are
 22 turned around and that going forward we can be

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1 very optimistic about future financial performance
 2 of the industry. I should also note that
 3 you're.we're going to talk a little bit more about
 4 what happened in 2009, during the Great Recession,
 5 you can see on chart 35 where costs went and where
 6 prices went. This was also during the period where
 7 under our last collective bargaining agreement, we
 8 got the benefit of the back end loaded general
 9 wage increases that Mr. Gradia referred to, it was
 10 a 4 and 4.5 percent increase, so there were
 11 general wage increases in those years that were
 12 fully absorbed, if you will, by increases in the
 13 prices charts by the railroads. Okay, I want to
 14 look now, to move away and answer some questions
 15 about the role of labor costs. I'll move forward.
 16 CHAIRMAN JAFFE: We're fine, thank you.
 17 THOMAS R. ROTH: Okay, and this would not.the chart
 18 book printed tells the story in a very clean way,
 19 so it's not going to take a lot more work than to
 20 review the chart book, beginning on chart 36. It
 21 is simply recording the fact that the total return
 22 to shareholders has been very strong over the past

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1 couple agreements, and particularly over the last
 2 agreement, not only in an absolute sense, but also
 3 relative to the rest of the market. What you have
 4 on chart 36 spans the last two labor agreements
 5 under the organization's national rail contracts,
 6 and as you can see, with regard to the, let me
 7 see, regard to the UP, and the UP, I'm trying
 8 to.looks like the UP and CSX, I say, okay, that
 9 would be the green line and the red line, they're
 10 up over 350 percent over this 10-year period. The
 11 market, as you can see, is flat. That's the blue
 12 line at the bottom. If you put \$100 into the stock
 13 market, indexed to the S&P 500 you might have
 14 \$1.05, or what you get \$1.02 or something like
 15 that today. If you put it into a CSX, or UP stock
 16 you'd be doing pretty well. We wrote that the BNSF
 17 line stops at the acquisition by Berkshire. We
 18 didn't try to imbed in here what has happened to
 19 the Hathaway, Hathaway Brookshire Hathaway stock
 20 over this period. It would not be particularly
 21 instructive. If you look at the blue line, that's
 22 the.not the bottom blue line, but the NS line,

<p style="text-align: right;">Page 142</p> <p>1 that's up over 250 percent over this period of 2 time. Chart 37 also goes to the stock price issue. 3 This is somewhat redundant because we've already 4 looked at some of these numbers, but these are the 5 figures for the big three corporations combined. 6 This is our composite stock price. When I say 7 composite, by the way, it would be as though you 8 had a mutual fund of these three railroads where 9 you put your investment in. It's weighted by the 10 number of, not only the stock price but the number 11 of the shares in circulation, so that's what I 12 mean by composite price. So, over past year, it's 13 up 35 percent and that comes off of four prior 14 years with pretty strong performances indicated. 15 Next one, as I say, during the recession, it took 16 somewhat of a beating, not like the general 17 market, but fell from 5325 to 4280 but then 18 bounced back almost immediately then hit the 19 historic levels as the CEOs have described, that 20 in 2010. Beginning in table 9, which is on page 49 21 in the chart table book, and continuing, actually 22 pages 9, 10, 11, and 12, those four tables are</p>	<p style="text-align: right;">Page 144</p> <p>1 agreement, 23 percent per year, if you look at a 2 10-year look, this will be like 6.6 percent. 3 Following the time, sometime in 2011, there was a 4 stock split on CSX and so you're going to see some 5 numbers later on that may show smaller dollar 6 amounts per share but there was a stock split. 7 This is an apples to apples look. Stocks, if I 8 didn't already say so, the, anytime there was a 9 stock split, that was taken into account in 10 adjusting the shares and the dividend, dividend 11 yields that are shown earlier in the chronology. 12 I. (audio interruption) .some of these next again. 13 I don't have to read these numbers at you. You can 14 see them almost as quite impressive. Table 13, 15 which is on page 53 of the chart book, this is 16 record page 2234. This is very updated 17 information. When this statement was put together, 18 I don't know, it was in October, or late.early 19 October, or late September, we looked back and 20 produced the, as of.for the five-year period 21 ending September 14, 2011, what Dow Jones was 22 identifying as the 10 best industries based on</p>
<p style="text-align: right;">Page 143</p> <p>1 constructed in a similar fashion and perform for 2 you a build up of total return to shareholders 3 something that I will do at the office internally. 4 This other company published information, but what 5 it does for you is trace both the cash dividends 6 per share as well as the stock price over this 7 period of time. In a lot of instances in four 8 years we're looking at the year-end figure. When 9 you put those two together you get total 10 shareholder return because this is assuming that 11 I'm taking those dividends and reinvesting them 12 into stock, so I'm buying more stock with my 13 dividends and that's how I get a total shareholder 14 return that exceeds the independent look at either 15 one of those. Short story here is that over the 16 past, over the contract that we have just 17 concluded, the equity performance for the UP has 18 gone up by, really, 20 percent per year, pretty 19 good return. And over the past two contracts, 10.4 20 percent. If you flip page to page 50, table 10, 21 same kind of look for the.for CSX. Their annual 22 rate of increase over the past (inaudible)</p>	<p style="text-align: right;">Page 145</p> <p>1 stock performance. And there are 150 industrial 2 sectors including this Dow Jones analysis. And as 3 you can see, the railroads did pretty well in this 4 listing. They're all within the top 10, and in 5 fact, the UPCSX would be number three on the list, 6 three and four, respectively, and the railroads as 7 a whole would be number three as an industrial 8 sector by itself, so again, kind of reinforcing 9 the notion that railroads are doing very well, not 10 only in an absolute sense, or by way of historical 11 performance but also against the rest of the 12 market. The big three, you can also look at 13 dividends, per share, and how they have grown, 14 that's chart 38, page 54 of the chart book, it's 15 the dividends to shareholders have gone up 175 16 percent since 2004, over the course of the last 17 four year, national rail freighted minutes, and 18 last year lone, up 12.7 percent. Chart 39 gives 19 you another look at the dividends. This is from 20 the yearly perspective, and short story here is 21 that yields have tripled over the past five years. 22 That brings me to another indicator that has often</p>

37 (Pages 142 to 145)

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1 been raised by the carriers and that's bond
 2 radiance. You might, at this point in the record,
 3 Mr. Chairman, or other Board members, reflect back
 4 on the text again, and this is on page 30, of our
 5 exhibit number 86, and the record page number
 6 would be 2106, but I'm not going to read this at
 7 you, but I have an opinion about how truly
 8 valuable these investment, these ratings are,
 9 under circumstances where most experts agree that
 10 if you, as long as you are in the investment grade
 11 category of your bond rating, it's not going to
 12 have, within that, category, you will have the
 13 (inaudible) perceptible differences in the cost of
 14 borrowing money. That's the upshot, and that's
 15 kind of generally demonstrated by looking at the
 16 securities that the investment grade corporations
 17 provide or compete for. All right, the next, I
 18 guess, the next piece of this the one from the
 19 shareholder's perspectives would be the earnings
 20 per share, this is chart 41 on page 57 of the
 21 chart book, and as we know, the earnings per share
 22 is a function of the share price in the, I'm

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1 sorry, profits or net income and the number of
 2 shares in circulation, so we've increased the EPS
 3 and in one of two ways, or in this instance, both
 4 ways, by earning more profit, or by buying back
 5 stock. In this instance, the carriers have done
 6 both. And so you can see this enormous
 7 appreciation in the earnings per share out of a
 8 metric that outside investors look to, not only to
 9 look to gauge the current circumstance but the
 10 prospects for future appreciation in the stocks
 11 that they buy in the real sector. So, short story
 12 here is that the earnings per share for the big
 13 three railroads, publicly traded, have gone up 227
 14 percent since 2004, and last year, up 39 percent,
 15 pretty impressive. I want to take a brief look at
 16 executive compensation. President Scardelletti
 17 made reference to this in his opening this morning
 18 and I just want to provide some numbers that
 19 support the numbers that he had accorded and
 20 introduced. What table 14, page 58 in the chart
 21 book does, is go to form 13A, excuse me, required
 22 of the FCC, by publicly traded companies, is

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1 generally known as this proxy statement, and we've
 2 collected those for UPCSX and the NSC for the
 3 years shown and simply laid out the various
 4 components of their compensation structure, and
 5 this is for the top five executives, which, as the
 6 Board knows, are the limits of the disclosure
 7 required of the corporation. I should (inaudible)
 8 by one footnote that what this dos not include are
 9 the values of their retirement plans. The SECC
 10 has.the statutes now require them to report on the
 11 values of their pension programs, but that
 12 had.that requirement was installed during the
 13 period between 2004 and 2010 and it is currently,
 14 of course, reflected in their proxy statements,
 15 but when you take a historical look, I couldn't do
 16 an apples to apples if I included it, so I
 17 excluded that element of compensation, which
 18 predictably, is not unsubstantial, that's why they
 19 are required to disclose those amounts today, but
 20 if you exclude pension, here are the numbers, and
 21 again, they indicate for the top five executives,
 22 their overall pay, total pay was up 76 percent

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1 over 2005, and for the CEOs alone, it's up 50
 2 percent. And the reason why we do this analysis is
 3 not to kind of point to the level of compensation,
 4 and there might be some other forum where real
 5 labor or unions generally would want to complain
 6 about the level of compensation. In fact, there
 7 are the forums where shareholders want to complain
 8 about the level of executive compensation. But
 9 that's not here, and that's not why we raised the
 10 issue. I'm more interested in looking to those
 11 numbers to trace the effect that the performance,
 12 the financial performance that the corporations
 13 had on executive compensation, because as we know,
 14 the.if you look at the.I have a distribution here,
 15 of total current compensation, and over the.over
 16 the years, the executives have relied in great
 17 deal on performance-based compensation, variable
 18 compensation, if you will. I think the number in
 19 2010 is 83 percent, some 83 percent of their
 20 compensation is performance based. Now, the
 21 significance of that is their income will go up
 22 when performance goes up, as measured by metrics

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1 for financial performance that are important to
 2 the corporation. And guess what? They're the same
 3 ones that you're looking at. They're the same ones
 4 that I have shown you earlier in my testimony.
 5 They include the operating ratio. They include a
 6 shareholder return, they include return on
 7 invested capital. So, these are improvement in
 8 those numbers, as improvement in that financial
 9 position as measured by those metrics. It will
 10 enable executives to make more money, so to the
 11 extent that the pay goes up, it's because of
 12 financial performance in large measure. I have
 13 often.so, again, just in conclusion, it's just
 14 another indicator of how well they're doing, it's
 15 as simple as that. I have heard, in this record, I
 16 think a couple times, and I've heard it outside
 17 the room, that comments regarding the union's
 18 appetite for variable compensation and performance
 19 based compensation. That again, I think the
 20 argument goes if we are confident in the future
 21 performance of the corporation, then why is it
 22 that we would resist, devoting some compensation

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1 to performance based pay? Well, this is the.over
 2 the years, I have been engaged by the
 3 organizations to examine this question fairly
 4 carefully. Of course, I'm not here, I'm not
 5 authorized to negotiate on behalf of my clients,
 6 but I can report to you that elsewhere and during
 7 other rounds of bargaining, they have explored the
 8 possibility of expanding their compensation
 9 structure so as to include some profit sharing or
 10 some other variable form of compensation. I have
 11 sat at the table with them and the carriers on
 12 this question, on occasion, and I can report that
 13 the reason way this breaks down is because of the
 14 carriers' insistence that all of the changes in
 15 pay be devoted to the performance based element.
 16 Now, this is the reality of life, at the
 17 bargaining table. We represent persons whose
 18 straight time pay is \$25.83. On a straight time
 19 basis, that's about \$53,700 a year, okay, so the
 20 general wage increases that, under the union's
 21 proposal, that's our proposal, all right? For the
 22 general wage increases over the next five years,

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1 will produce \$32,151 for the average employee over
 2 that five-year period. So, that's \$6,432 per year
 3 per man. Now, once you suck out of that your
 4 income tax, because this is marginal pay, okay,
 5 I'm not paying my health and welfare on this
 6 amount because I've already paid it. But
 7 marginally, and incrementally, I'm paying my
 8 payroll taxes and I'm paying income tax, and if
 9 I'm left with \$3,700, \$3,800 out of that amount,
 10 that's a lot of money. The.it would not be
 11 prudent, to put it mildly, for an employee to
 12 invest his \$3,700 in one stroke. There's no
 13 financial advisor that would suggest that you
 14 should not diversify. There's no financial advisor
 15 that would suggest that you should take all of
 16 your incremental money and put it aside or put it
 17 at risk, and therefore bar you from being able to
 18 finance increases in the cost of food, increases
 19 in the cost of rent, increases in the cost of
 20 tuition for your family over the next five years.
 21 So, this is a different set of circumstances than
 22 the one faced by executives or others who, by the

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1 way, have base compensation, guaranteed cash
 2 compensation that exceeds \$2M a year. If I had \$2M
 3 a year that I could guarantee, I might play in the
 4 market a bit. If I have.if I'm making \$50,000,
 5 \$60,000, I'm in a wholly different set of
 6 circumstances, and the notion of devoting my
 7 incremental increases on those amounts by
 8 diverting them or putting them at risk under a
 9 performance based program, would just not be
 10 prudent, would not be smart. And it certainly
 11 isn't comparable to what we're seeing for the.for
 12 management and executives in this world. I want to
 13 say a few words about, in fact, this is perhaps a
 14 bit a section of my testimony that's maybe more of
 15 interest to the board than some of these areas
 16 we've been covering, because after all, if we look
 17 back at where we are today, I don't sense a great
 18 deal of controversy between the parties in
 19 acknowledging that the financial position of the
 20 companies are strong. They understate how good it
 21 is, and they understate how long and how good it
 22 is historically, but the fact of the matter is

<p style="text-align: right;">Page 154</p> <p>1 there is no disputing the facts as to where we are 2 in 2010. The reason why I have gone through this 3 kind of painful build up of how we got to 2010, 4 was to help the board understand that the 5 fundamentals of the industry have changed to the 6 better, that the economic condition today in going 7 forward, is predicated on what investments have 8 been made in the past. Both by labor and by 9 shareholders and by management. So, the whole, 10 again, framework for going forward, has now been 11 changed. This didn't happen overnight, it happened 12 over a long period of time, and I tried to give 13 you in my presentation, some of the reasons why 14 these fundamental changes have occurred, because 15 that will give you guidance as to.in judging 16 whether or not they will continue to sustain the 17 profitability levels of the corporations. So, 18 let's stalk about future expectations, which is 19 the last segment of this.second last segment of 20 this part of the.of the presentation. The first 21 thing I want to point you to are the outside 22 analyst's expectations and forecast. Now, why is</p>	<p style="text-align: right;">Page 156</p> <p>1 at and this isn't going to take long, because I 2 think the chart book itself speaks volumes. Chart 3 43, which is on page 60 of the chart book gives 4 you the first of these. This is Morgan Stanley. I 5 can go to any one of these analysis, by the way. 6 I've just give you a selected group, selected not 7 because they are forecasting big change in the 8 positive direction, but because it would otherwise 9 fill up this volume. If you look at Morgan 10 Stanley, this is what, we're reporting on 11 everything that they have projected. The first one 12 is earnings per share and that's for the big three 13 and you can see what's going on. They're all 14 projecting big change, big improvement, 44 percent 15 for UP, about 32 percent for Norfolk Southern and 16 37 percent for CSX. Here's, by the way, where, the 17 first time where you will see a CSX with the 18 smaller numbers because of the stocks play. Okay, 19 but the relative change is obviously, the trend 20 line is still very significant. Chart 44, page 61, 21 this is Citibank and they have a resource 22 department, they actually put out a pretty big</p>
<p style="text-align: right;">Page 155</p> <p>1 this important? This is leading edge. The analysts 2 that follow the railroad sector advice 3 shareholders on.and creditors, it's not just 4 shareholders but creditors, on investments in the 5 railroad industry by looking on a forward basis. 6 They knew that 2010 was good, they know that 2010 7 were record breaking years across the board by 8 almost every indicator. But that's yesterday. 9 They're interested in what's going to happen next 10 year and the year after that. In advising clients 11 to make investments. After all, if you're just 12 putting money into a railroad today, you have 13 foregone the appreciation that all other 14 shareholders and investors have pocketed in the 15 last four or five years that we've been looking 16 at. So, it's important for the board to understand 17 what the rest of the world is saying. Forget about 18 Tom Roth, forget about any other expert that 19 appears before you in this case. This is 20 independent outside calculations and analysis of 21 the expectations on the future performance of the 22 railroads. And the first one we're going to look</p>	<p style="text-align: right;">Page 157</p> <p>1 piece that's called, this time is different rail 2 out performance, atypical for recessions, and this 3 is from Citi Investment Research and Analysis. 4 Now, all this, by the way, is the most recent such 5 publication. Now, this isn't one of these. This is 6 the newest means we could gather prior to this 7 hearing. 8 CHAIRMAN JAFFE: Why are the 2010 figures different 9 if these are September 6, 2011 information? 10 Wouldn't the 2010 numbers whatever they were, have 11 already been locked in by that point? 12 MR. ROTH: That's, yeah, the 2010 says actual, 2011 13 is a. 14 CHAIRMAN JAFFE: Because they differ from chart 30, 15 32, to 43. 16 MR. ROTH: They're going to vary because of the 17 definitions of the various analysts used for 18 income, and what they regard as non-recurring 19 events. 20 CHAIRMAN JAFFE: Thank you. 21 MR. ROTH: By known recurring expenses. And so now 22 we've had a little bit different methodology in</p>

40 (Pages 154 to 157)

<p style="text-align: right;">Page 158</p> <p>1 arriving at these numbers. 2 CHAIRMAN JAFFE: Okay. 3 MR. ROTH: And so what I tend to do is not compare 4 one against the other, but compare them internally 5 as they publish the (inaudible). 6 CHAIRMAN JAFFE: I'm fine. I just needed to 7 understand why it was different when it went by 8 the historical. 9 MR. ROTH: Right, I've asked that question a number 10 of times myself. 11 CHAIRMAN JAFFE: Okay, thank you. 12 MR. ROTH: Citibank information, we can see EPS 13 projections very strong. This has taken us through 14 four years, by the way, of our proposed collective 15 bargaining agreement, which, remember, starts in 16 2010. We already know the first year, actually, we 17 know the first two years, for all intents and 18 purposes of financial performance in this 19 industry, two out of the five years that are, that 20 we're asking you to make recommendations over. 21 This one takes you through the first four years, 22 and as you can see, the arrows are pointed up in a</p>	<p style="text-align: right;">Page 160</p> <p>1 chart 48, page 65, these are projected dividend 2 yields, as of September 2nd, so these are hot off 3 the press, dividend yields, expected to climb. The 4 function of increasing stock prices and probably 5 in recognition of the stock repurchase programs 6 that are being planned. In the text I have a 7 summary of what the Wall Street is saying, with 8 respect to the rail industry, this comes from 9 still another source that we haven't seen, this is 10 the S&P Industry Outlook. This was just published 11 last month and when you look at the projections 12 for margins and for EPS, the explanation for that 13 lies in this summary paragraph that I have 14 recorded on page 33 of the summary statement, 15 exhibit no. 86, and I feel we should take a moment 16 to reflect on it. What S&P said in its industry 17 outlook, it was just published last month, was 18 that, and I quote, "Our longer term outlook for 19 railroads is favorable due to the industry's later 20 fuel efficiency and smaller environmental 21 footprint relative to other transportation modes. 22 These factors, along with highway congestion,</p>
<p style="text-align: right;">Page 159</p> <p>1 very distinct direction. Citi also reported on the 2 author expectations and operating ratios, and you 3 can see they're falling from what's been described 4 as record levels in 2010 to even better levels for 5 going forward. By the way, the way the analyst 6 works, when they publish something in August, it 7 reflects actuals for part of the year, obviously, 8 and then they're forecasting the balance of the 9 year, so the numbers for 2011, are pretty, pretty 10 solid. Profit margins, Morgan Stanley reported on 11 profit margins for two years, and this just tells 12 us that they're thinking 2012 is going to be 13 pretty darn good. We're at record levels in 2010. 14 Those.2011 promises to be even better, and 2012 is 15 up from there. Track 47 is the next page, and 16 please interrupt me if there is some ambiguity to 17 these charts, but I think they're fairly clear. 18 This is back to Citi again, and these are profit 19 margins and while each group of analysts may have 20 a slightly different method in producing a profit 21 margin, it's nonetheless net income divided by 22 revenues in some form or fashion. Morgan Stanley,</p>	<p style="text-align: right;">Page 161</p> <p>1 driver availability will drive more industrial and 2 inter-modal shipments to rail in our view." Again, 3 part of why you're seeing these optimistic views 4 quantified in terms of the EPS profit margins and 5 the rest. Now, another reason for the analysts' 6 optimism for rail in what is otherwise a weak 7 economy, because remember, Board members, we just 8 pick u the newspaper in the morning and we'll see 9 in the public, in the popular pres that this 10 economy is struggling still, everybody not behind 11 the full recovery everybody hoped for. So, one 12 reason why you have in the face of this, external 13 developments and weak economy, optimism in the 14 future of rail, is that analysts have discovered 15 that rail managements have become very nimble in 16 dealing with a downturn in demand. They have 17 learned, specifically, that labor and fuel can be 18 treated as variable expenses. And they become 19 very, I think nimble is a good word, they become 20 quick and reacting to changes in the marketplace. 21 And I ask you to turn to table 15, which is on 22 page 66 of the chart book, to ill.I have an</p>

41 (Pages 158 to 161)

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1 illustration of how this worked over the course of
 2 the last recession. And I call this piece managing
 3 the recession, and the recession itself, in
 4 technical terms, started December 2007, and was
 5 over in June, 2009. For freight railroads it's
 6 actually, it started before that. Because they saw
 7 a decline in their car loadings much earlier than
 8 December of 2007, particularly in a inter-modal
 9 side, which is a more direct reflection of what's
 10 happening in the general freight marketplace
 11 because of the commodity mix that is transported
 12 by that mode. So, in any case, what happened is
 13 that demand begins to slack and fall in the middle
 14 of 2007, and I'm going to what I'm the
 15 measurements that I'm making here is for 2007 to
 16 2009, so it's 2009 over 2007. Capturing the
 17 general period of the recession. So, what happens
 18 is that demand slackens, volumes fall. Revenue ton
 19 miles declined by 13.5 percent, car loads go down
 20 by 17.3 percent. So, what does managing do? Well,
 21 they stay ahead of the curve. The race to true
 22 capacity as quickly as demand falls and they were

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1 very good at that. Employment declines by 9.2
 2 percent, they park locomotives, train miles
 3 decline by 19.7 percent, they cut train hours
 4 back, again, parking cars, parking locomotives,
 5 down 27.9 percent. So, consequently, over the same
 6 period of time, during the period I think was
 7 called the teeth of the recession, labor costs are
 8 cut by 8.2 percent, now labor costs decline by
 9 15.3. So, your total cost of doing business shrank
 10 at a rate and at a pace greater than your cut in
 11 demand. So, what happens is that the operation
 12 ratio holds. The operating ratio is the
 13 relationship between expenses and revenue. So,
 14 while operating revenue declines by 12.4 percent,
 15 operating expenses actually decline by more. That
 16 actually improve the operating margin, just by a
 17 tad. But the fact that they were able to hold what
 18 I describe here as holding the operating ratio
 19 constant, was an enormous feat, the consequence of
 20 all this, when you climb down the income statement
 21 to the bottom line. Again, remember, operating
 22 ratios are at the top of the income statement, the

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1 net income and profit margin is down at the
 2 bottom. You see that revenue margin improved from
 3 .58, or 58 cents, rather, for the per ton mile to
 4 59 cents, and net income improved from these are
 5 margins, so this is the profit margin, the net
 6 income margin, actually improved from 12.5 to 13.4
 7 percent. Now, this is remarkable. This is good
 8 management. I mean, if you're as long as you're
 9 not an employee, this is what the shareholders
 10 certainly wanted to see. And this scenario was
 11 played out on every railroad and every department,
 12 and in every rail yard. And as I said, it was a
 13 race to trim capacity and reduce costs quicker
 14 than value changed. And the management was able to
 15 accomplish this. They not only survived the Great
 16 Recession. They not only absorbed I think what's
 17 been called our general wage increases during the
 18 teeth of this period, but they improved their
 19 financial metrics. It's very impressive. Now let
 20 us look at most of everything that we have been
 21 looking at oh, by the way, I did not I failed to
 22 tell you this, but there is we are kind of in

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1 this mixed debate about the role of labor and its
 2 contribution to these financial position and this
 3 improvement. "What does labor have to do with
 4 this," they say. This is what I say During this
 5 recession, we lost 15,300 jobs, and the average
 6 straight-time rate of \$25.83, which is like \$1.6
 7 million over two years. Where did that money go?
 8 Where did that money come from? It came out of the
 9 pockets of the people who had furloughed and are
 10 still out there looking for work, because they
 11 have not yet been returned to the railroad rules
 12 (ph). Railroads are slow to recall because they
 13 are figuring out ways to do as much with fewer
 14 people productivity. So labor not only
 15 contributed; they contributed in a real way the
 16 dollars-and-cents way. Most everything that I have
 17 been talking about is kind of 2010. We will get
 18 some projections by the analysts, but there is
 19 some other hard evidence that we can look at to
 20 measure what is going on currently. Um, Table 16,
 21 which is on Page 67 of the chart book, toward the
 22 end here, gives you the actual data from the Form

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1 10-Qs for the Big Three Railroads. I might have
 2 Big yeah, it is just the Big Three at this point
 3 for the first half of 2010 and the first half of
 4 2011. So we almost so we already figured out that
 5 we have that we have oops, excuse me pardon me
 6 we have already have have learned that 2010 was
 7 a remarkable year, a historic year, but now we are
 8 going to see that 2011 is expected to be even
 9 better. And so when we do a six-month over six-
 10 month look and it is Table 16 Doscrow (ph) CSX
 11 you can see that their operating ratio well,
 12 operation ratio is actually go up in this
 13 instance. The profit, however its margin is going
 14 up by 25 profits are going up by 25.3 percent,
 15 and the net income margin, which was your profit
 16 margin, is going up by 150 basis points. So they
 17 are still doing very well. Earnings per share is
 18 going to be is 31.7 percent higher than the six
 19 months in first half of 2010, reflecting in part a
 20 draw-down on the shares in circulation of 4.8
 21 percent. Debt-to-capital ratio continues to fall.
 22 Some information from Norfolk Southern Again, the

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1 operating ratio has taken up a bit, but the
 2 earnings-per-share of 42.3 percent, profit margins
 3 rising from 13.9 to 16.1 in the second half of
 4 2011. European is in Table 18, Page 69 of the
 5 chart book. Same indication, same trend line. So a
 6 third reason, apart from this the structural
 7 changes that have been made, apart from the
 8 repricing authority that analysts recognize has
 9 exists, still, in the marketplace for railroads. A
 10 third reason to be optimistic about the rest of
 11 the period covering the contract that is now under
 12 consideration is that we have got the momentum.
 13 You just cannot you we are already, really, two
 14 years into the collective bargaining agreement
 15 that you have been determining. You do not have to
 16 guess about 2011; you know it is going to be a
 17 historically good year. There is a piece that I
 18 have in here in the text, Mr. Chairman, that I
 19 will not read to you. But I ask you to consider it
 20 in connection with the new pricing authority, and
 21 that has to do with the so-called legacy contracts
 22 that will be expiring. The analysts are seeing

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1 this. They report on it frequently, and they track
 2 it because it has to do with the renewal of these
 3 commercial shipper contracts that the railroads
 4 have, that have been that are underpriced. And
 5 the railroads claim, when they are brought in line
 6 with current prices, this would be a spike in
 7 their in their core pricing and their average
 8 yields. OK, I let us I will try to move quicker
 9 at a quicker pace here or we will run out of time.
 10 But part of, uh part of this optimism in the
 11 analysts' views is predicated on the story that
 12 has flown flowed from the Berkshire Hathaway
 13 acquisition. On Page 38 and continuing for a few
 14 pages I have recorded for you several important
 15 quotations from Berkshire Hathaway sources,
 16 including from the from Warren Buffett himself,
 17 which summarizes the reasons why he thinks that it
 18 was important and, uh it was a good decision, if
 19 you will, to invest in BNSF. That is more than an
 20 investment; he bought the whole thing. The on
 21 February 12, 2010, Berkshire Hathaway purchased
 22 77.5 percent of the Burlington Northern Santa Fe

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1 Corporation, and that was the remaining piece that
 2 he did not already own. The transaction is valued
 3 at \$26.5 billion and, again, one of the largest
 4 acquisitions in Warren Buffett's career. In any
 5 case, the language is there for you to read. I am
 6 not going to read it at you. It is, again, all
 7 upbeat. It all just kind of reiterates some of the
 8 reasons that we have been talking about as to why
 9 we should be optimistic about the future of the
 10 industry. I have a piece, as well, in here on the
 11 legislative risks. You heard some of that from, I
 12 think, some some of the carrier witnesses, saying
 13 that, "While we you know, you never what is going
 14 to happen. They might re-regulate us." That is -
 15 in the current Congress, that really does not have
 16 a ghost chance, but that is my opinion. The other
 17 facts that bear on that subject are recorded for
 18 you in Pages 41 through 43 of the Summation. Next
 19 to follow, we again, we are, you know, looking at
 20 2010 performance and the optimism that is
 21 expressed by the analysts. You can also go
 22 internally and quote the corporate view of where

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1 they think they are and where they think they are
 2 going. And we have that for you on Pages 43, 44
 3 some quotes from the CEOs in their messages to
 4 shareholders. So I ask urge you to take a look at
 5 that, at the appropriate time. I am not going to
 6 read those at you. They are predictably a very,
 7 you know, rosy picture of what is going to happen
 8 over the course of the collective bargaining
 9 agreement that is now under discussion. OK, that
 10 brings me to the last, uh last piece, last
 11 section, if you will, of this of this topic of
 12 financial performance. I call this, in the Summary
 13 Statement, which begins on Page 46 of our Exhibit
 14 Number 86, which is record reference Page 2122. I
 15 call this the "Collective Bargaining Perspective
 16 on Sharing the Wealth." Um, the [turns pages] The
 17 point I want to emphasize here, Mr. Chairman and
 18 Board members, is that this panel is in a very
 19 unique position. Um, in fact, there has never been
 20 a time in railroad history where a Presidential
 21 Emergency Board had an opportunity to reflect on a
 22 environment economic and financial that was as

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1 strong as it is today for the railroad industry.
 2 Now, that is a big statement unless because, you
 3 know, never is a long time, and we are dealing
 4 here with, uh with a period of time that goes
 5 back to 1926. But the fact is that this can be
 6 done. What I have done for you this will be an
 7 important table and chart in our materials. This
 8 is Chart 49, Page 70 of the chart book, and I ask
 9 that you take a look at it. And what I have done
 10 here is I have gone back to the wage and rules
 11 movements that are national in scope, that have
 12 occurred since the passage of the Railroad Labor
 13 Act in 1926. Now, note that I am using as a kind
 14 of a proxy for the experience of all the non-
 15 operating organizations the specific experience of
 16 the BMW because my records are very strong for
 17 that craft, number one. But, secondly, when you go
 18 back in time, before the 1970s, when moratoriums
 19 were less common, you will find that there were
 20 it has difficult to define a wage and rules
 21 movement because the organizations were filing
 22 Section 6s all the time. You know, they might file

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1 one on wages and then, six months later, file one
 2 on health and welfare, and so on. So it is it is
 3 hard to define exactly what the Wage and Rules
 4 Movement was. But I am confident that I have done
 5 a fairly good job in corralling that issue and
 6 problem in my production of Chart 49. And I had
 7 identified 27 of these 27 wage and rules
 8 movements going back to 1926. Now, note that the
 9 first one is in 1936. So question is, "What
 10 happened between '26 and '36." Well, for the non-
 11 operating craft, the story is this: And perhaps I
 12 have to add a column because there was a wage
 13 movement, but it was not made by the
 14 organizations. It was made by the carriers, and it
 15 was for a 15-percent pay cut during the Great
 16 Recession Great Depression. I am sorry Great
 17 Depression. And that was bargained over
 18 ultimately, with some board of inquiry; I do not
 19 recall, but it was not a PEB. And, long story
 20 short, the wages were cut by agreement, by ten
 21 percent. I think somebody said on this record in
 22 the brief in the in one of the in a brief that

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1 railroad workers never had a pay cut based on
 2 ability to pay. That, of course, is not true. I
 3 mean, it has happened a couple of times. And, you
 4 know, I do not expect people to know what happened
 5 in 1936, necessarily, but I know. It was a pay cut
 6 of in 1931, it was for ten percent, and it was
 7 restored in 1934. But for non-operating millions
 8 (ph), the wage rates prior to the movement in 1936
 9 were exactly the same as they were in 1926 because
 10 the snap back restored the rates exactly to those
 11 levels. So, in effect, there was no change from a
 12 decade in non-operator rates of pay, basic rates
 13 of pay. In any case, the BMW (wrote rules) (ph)
 14 for wages and rule improvements in sometime in 19
 15 before 1940. And what you see on this table this
 16 Chart 49, rather are the profit margins for the
 17 five years preceding each amendable date. So, in
 18 other words, if you look at the far right-hand
 19 side, that is that is your (ph) perspective. This
 20 Board Number 243 is reflecting on a five-year
 21 period, which is which repre is represented by
 22 that last blue bar, where the average profit

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1 margin over the preceding five years is 12.4
 2 percent. I should note that we did this quite
 3 literally, so this excludes 2010. It excludes the
 4 banner year that we can really know (ph) what is
 5 happening in 2010 and most of 2011, which are well
 6 above this, uh this blue-line indicator. But just
 7 if you if you do this literally for each of these
 8 wage and rules movements, you can see how your
 9 frame of reference with respect to the financial
 10 condition of the industry is different than any
 11 other board that ever sat. That is significant. If
 12 you look back for example, we have a we have in
 13 this record people quoting PEBs for all sorts of
 14 reasons because many of those boards
 15 185, for example 186 and 187 185, 186, 187, 188
 16 all of those boards were
 17 hearing cases in the period between '72 and '80
 18 where that was their frame of reference. They were
 19 looking at profit margins that were in the twos,
 20 not in the twelves. You know, expectations were
 21 different. And if you give any way to the
 22 carriers' case regarding ability to pay, those

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1 expectations should have been different. Two, uh
 2 for example, 219 that would have been out of the
 3 1994 amenable date. That is the realm from July
 4 1988 through 1995. So 219 that is represented by
 5 the five-year period preceding it, where the
 6 averaged profit margin would be 6.2 percent. So
 7 that is how this is read. And, of course, you can
 8 do that with every round of bargaining, with every
 9 contract period going from amendable date to
 10 moratorium, and you can identify the PEBs that
 11 participated in those wage and rule movements.
 12 Once again, when you go back a long way, you are
 13 going to get different dates for different
 14 organizations. This is based upon the BMW rule
 15 experience, which I think is fairly reflective of
 16 the non-op experience. There is a I think I added
 17 a companion piece to Chart 49, which is the very
 18 last in this chart book. It is Chart 54 that
 19 actually gives you the background information that
 20 is used to construct Chart 49. So if you want to
 21 look at the year-by-year margins from 1911 to
 22 2010, they would be on Chart 54. This is the

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1 source of my comment on this being the best since
 2 for 94 years, since 1916. It will go back a long
 3 time. And the years in which is that we well,
 4 labor took pay cuts would be ref would be on or
 5 around the Great Depression, where you see those
 6 negatives. So the conclusion here is that this
 7 Board views a record with respect to railroad
 8 profitability and general financial performance,
 9 which is far superior to that seen by any prior
 10 Presidential Emergency Board. And this is not by a
 11 small margin; it is by a large margin. Now, I
 12 would go on to say that it is imperative for the
 13 Board to understand that the meaningful,
 14 significant improvement in the Carrier's position
 15 today is attributable, in major part, to
 16 diminished labor cost. The unit labor cost trend,
 17 as I said before, is a function not only of the
 18 massive job abolishment but also in the relative
 19 moderation of compensation increases; the two work
 20 together. The former, that is to say moderate
 21 changes in compensation, cause of reduction in
 22 rail labor's living standard, at least since from

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1 at least since deregulation, principally because
 2 of the effects of the 219 recommendations And, by
 3 the way, that is another story. The 219
 4 recommendations were never accepted by anybody;
 5 they were legisl they were statutorily imposed.
 6 The latter contribution simply creates job
 7 instability. I mean, the number of jobs that are
 8 abolished over this period of time to get us to
 9 where we were are today are enormous. That is
 10 real money. That is real pay to somebody. Um, one
 11 indicator of rail labor's contribution is shown on
 12 Page 49. It is actually the 49 of the text, but it
 13 is also, I Chart 52. This is net income. This is
 14 profit-per-employee - I am going to put this in
 15 perspective of where we are today as opposed to
 16 where we were back in the year before
 17 deregulation. Every for every employee on the
 18 property, in combination, on all Class One
 19 railroads, the carriers made \$60,983 in profit.
 20 That compares with \$18,862 (ph) back in 1979. The
 21 rail operating revenue itself, which is Chart 51
 22 in the previous page - \$53 per \$53,000 excuse me

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1 per employee back in 1979, and \$385,000 today.
 2 [Turns pages] So I guess, in summary, I would say
 3 that, when it comes to a fair recommendation, the
 4 Board should take into account the life of the
 5 industry and its distribution of that wealth among
 6 all of the stakeholders. The stakeholders, of
 7 course, include, in addition to the general
 8 public, shippers and shareholders, and even the
 9 management. Now, with regard to the shippers, we
 10 know that they have done very well since
 11 deregulation. It has been pointed out by the
 12 carriers in this record, and I confirm it that in
 13 my materials, that adjusted-for-inflation average
 14 freight rates actually fell between you know, by
 15 51 percent from 1981 to 2010. Now, that is
 16 reversing itself in the current period that we are
 17 in, and likely to move in the opposite direction
 18 going forward as the rail rates become more
 19 realistic in the competitive trucking climate
 20 trucking competition climate. But, nevertheless,
 21 the WAR has reported that U.S. freight rates today
 22 are the lowest in the world. Lowest in the world

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1 wow, that is pretty that is pretty big, which
 2 makes American business more competitive in the
 3 global marketplace. So shippers have done fairly
 4 well. Shareholders, as we have learned, have done
 5 very well, as well, not only in the current period
 6 but since deregulation. I do not have to go
 7 through all of those numbers again, but you know
 8 what they are. With it, management has done well
 9 as far as we can calculate it. We can we are
 10 limited to the data that is produced by SEC
 11 reports, but we think that the that having a 76-
 12 percent increase in your compensation since 2004,
 13 the last agreement, gave you a third chunk and
 14 fair share of the railroads' performance and
 15 wealth. And, of course, there is the public
 16 interest, which we kind of ascribed for you in our
 17 Summary Statement on Page 50. It even has several
 18 elements to it, not the least of which is having
 19 an enterprise, an industry that actually makes
 20 investment in its own infrastructure without
 21 subsidies from by and large some subsidies, but
 22 by and large from the general taxpayer. And as

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1 that sector grows, and railroads become more
 2 successful and carry more freight, as we hope and
 3 intend they will, the public benefits from energy
 4 conservation and environmental control and
 5 regulation. What we say against this as the next,
 6 as I say, stakeholder is that, when while labor
 7 has just not fared as well. I mean, we have we
 8 have lost more pay, depending on how you measure
 9 that; we will get to that shortly. But we have
 10 lost real pay, certainly since deregulation
 11 period, which means the standard of living is
 12 lower - I do not think that is disputed since
 13 deregulation. And we have lost just some 322,000
 14 full-time jobs have been abolished since 1979.
 15 That is almost \$16 billion-worth of compensation
 16 that was lost to rail labor. And I think in order
 17 to crystallize this contribution that I keep
 18 referring to, by rail labor, we should reflect
 19 back again on this current recession because I
 20 think that is the perfect illustration. From the
 21 face of slack demand, the Class One carriers
 22 really adjusted costs by lopping off its

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1 workforce, laying off nine percent; some carriers
 2 were more than that. Nine percent and saving some
 3 \$1.1 billion in labor expense over the two-year
 4 period spanning the Great Recession. These 15,300
 5 layoffs, by the way, are only recently being
 6 recalled. Some of the carriers have already
 7 announced that they do not intend to recall
 8 anybody. But during that same two-year period and
 9 the same two-year stretch that I am talking about,
 10 shareholder returns were up 12.3 percent. Class
 11 One carriers spent over \$20 billion in cap ex
 12 programs. The CEOs were well over the 25-percent
 13 increase in their realized cash compensation. You
 14 know, I was struck when I read the UP's 2009
 15 Annual Report and how they described the
 16 shareholders, how they handled the Recession. And
 17 I report that for you on Page 52 of our Summary
 18 Statement. It is worth reflecting on: According to
 19 the UP Management, in response to economic
 20 conditions and lower revenue in 2009, we
 21 implemented productivity initiatives to improve
 22 efficiency and reduce costs. In addition to

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1 adjusting our resources to reflect lower demand,
 2 although varying throughout the year, our resource
 3 deductions included removing from service
 4 approximately 26 percent of our road locomotives
 5 and 18 percent of our freight car inventory by
 6 year-end. We also reduced ship levels at most rail
 7 facilities and closed or significantly reduced
 8 operations in 30 of our 114 principal rail yards.
 9 These demand-driven resource adjustments and our
 10 productivity initiatives combined to reduce our
 11 workforce by 10 percent, while a 16-percent
 12 reduction in volume drove 17-percent decrease in
 13 operating income. Core pricing gains improved
 14 productivity. Cost savings and demand-driven
 15 resource adjustments translate into all-time
 16 record operating ratio of 76 percent for 2009,
 17 outpacing
 18 outpacing our previous record of 77.3 percent set
 19 in 2002.
 20 It is a quote. And I thanks for indulging my
 21 reading that at you, but it is important. You
 22 know, in the day, a "demand-driven resources" are

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1 called employees. Then, of course, we evolved from
 2 calling them "employees" to calling them "human
 3 resources." Now, they they "human" part has been
 4 eliminated, and now they are just "demand-driven
 5 resources." When you read this corporate speak,
 6 which I find really amusing, the "demand-driven
 7 resources" they are talking about are reducing
 8 ship levels. That is laying people off from the
 9 shops. Parking trains that is, laying off train
 10 engineers. That is the "demand-driven resource."
 11 It is a beautiful thing. For us, it is people. To
 12 some persons, some people, it may be you know, it
 13 is "asset utilization." For employees, it is the
 14 pink slip. It is the contribution that they make
 15 when demand slackens. And, you know, I think, as I
 16 said earlier, if unless you are an employee, this
 17 is good management, and it is one of the reasons
 18 why the outsiders outside analysts are so
 19 optimistic about the future of the industry,
 20 because management does has become, you know,
 21 very ruthless in this regard, and they know what
 22 to do with demand-driven resources when demand

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1 slacks. And, as I said, the conclusion here on
 2 that point would be that the UP laid off 4,400
 3 employees. They have not yet been recalled, and
 4 their loss meant a \$406,000 I am sorry - \$406
 5 million in annual compensation, which was
 6 contributed to the corporate coffers that got them
 7 through the Recession. Now, tell me again about
 8 how rail labor does not make a contribution to the
 9 financial health of the industry. We ready to move
 10 on?
 11 CHAIRMAN JAFFE: Is this a good time for a break,
 12 or were you heading towards the end?
 13 MR. ROTH: I no, I, regrettably, will not be on.
 14 [Crosstalk]
 15 CHAIRMAN JAFFE: (inaudible at 28:39)
 16 MR. ROTH: I have another [clears throat] another
 17 chart book, but this should not take as long.
 18 [clears throat]
 19 CHAIRMAN JAFFE: I will tell you what why don't we
 20 take 15? MR. ROTH: OK.
 21 CHAIRMAN JAFFE: We convene at about three, off the
 22 record. (audio interruption)

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1 UNIDENTIFIED MALE SPEAKER: Mm-hmm.
 2 UNIDENTIFIED MALE SPEAKER: Someday, I might
 3 graduate to a spot in a hearing (inaudible) state.
 4 CHAIRMAN JAFFE: At your conve back on, please,
 5 and at your convenience, Mr. Roth.
 6 MR. ROTH: [Clears throat] I am all ready, Mr.
 7 Chairman. And I would like to direct the Board's
 8 attention to Part Two of the Summary Statement,
 9 which begins our discussion of the general wage
 10 adjustment issue. And it is at record Page Number
 11 2142 in the Union's materials. The first thing we
 12 need to do, of course, is just lay out the central
 13 ingredients to the Organization's wage proposal.
 14 And if you were to turn to Table 21, which was
 15 Page 81 in the chart book, you will find the
 16 table, where we simply lay out the chronology of
 17 wage change under the Organization's proposal. It
 18 is pretty simple, as indicated. We are asking for
 19 a four-percent increase in the first year of the
 20 contract, which commences January 1, 2010; three
 21 and a half percent in the second year; four
 22 percent in the third; 3.5 percent in the fourth

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1 year; and, in the fifth years, a four-percent
 2 raise, each of those effective on the first day of
 3 each contract year. The chronology of wage change
 4 over the period is shown in the right-hand column.
 5 It is a it brings the average rate from \$25.82 up
 6 to \$31.11. The kind of a source of the \$25.82 is
 7 in earlier materials might be actually, in
 8 Exhibit Number 19 and 20, we need to review those
 9 numbers. You may find, by the way, that there are
 10 differences between the carriers and myself with
 11 respect to the kind of calculation of the average
 12 straight-time hourly rate. I do not know that
 13 those are significant to begin with, but where
 14 they vary, it is generally accounted for by the
 15 our kind of differences in identifying which
 16 reporting divisions of the ICC Report are assigned
 17 to which of the organizations. So there is some,
 18 maybe, inconsistencies between us on that subject,
 19 but they are not material. The \$25.82 is probably
 20 close to what they have calculated. On over a
 21 course of the agreement, as I have indicated,
 22 wages will go up by 20.5 percent compounded. That

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1 is an annual rate of increase of 3.8 percent per
 2 year. And if you were to on a to calculate the
 3 dollars in my pocket, incrementally, over the
 4 status quo for the average coalition person, that
 5 would be \$32,151 on a straight-time basis. This,
 6 by definition, excludes any overtime, of course,
 7 which varies widely among organizations and even
 8 among the classifications within any one
 9 organization. So that is a straight-time
 10 calculation. What follows in the chart book are a
 11 series of wage chronologies, which we are not
 12 going to review. What I wanted to impress upon you
 13 at this point is that, in our characterizations of
 14 wage change, I am very careful to to use the
 15 actual negotiated general wage increases under
 16 each of the organizations' contracts. They vary
 17 slightly over the years, as the chronologies
 18 indicate. It is important of a lesson, in my view,
 19 to look to those contract changes when you are
 20 measuring wage rate change, per se, as opposed to
 21 a calculation year over year of average straight-
 22 time hourly earnings, which does not necessarily

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1 reflect wage general wage rate change because you
 2 have a change in the mix of the classifications
 3 from one year to the next. And even within the
 4 same reporting division, you will find a change in
 5 the mix between the high high-skilled and lower-
 6 skilled individuals, which may cause a creeping of
 7 average straight-time hourly rates where no
 8 general wage change has been made. Secondly, by
 9 way of, you know, measurement here, I am using
 10 several of the organizations' wage histories to
 11 kind of characterize what has gone on for the for
 12 the participants, the in this case before you.
 13 They are not all here. For example, I do not have
 14 a chronology for the BLE. I may have missing a
 15 shop craft or two in this chronology, but what I
 16 do have and what I have examined is the BMW, the
 17 TCU, several other shop crafts including the IAM
 18 and, I believe, the IBW. I have the BRS. So I have
 19 a good cross-section of the organizations that are
 20 involved in this case. And I think you will find
 21 that, end-to-end, while there may be some
 22 variations over the course of this 30-year period

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1 that we are tracking, there might be some
 2 differences year over year, here and there. But,
 3 by and large, when we characterize the wage change
 4 as being lagging or being or increasing at a
 5 certain rate or to a certain degree year over
 6 year, it is generally a comment that is applicable
 7 across the non-operating craft group and for the
 8 BLE, too, for that matter. So, with that
 9 introduction, I think that we can dispense of
 10 having to examine or look at any of these
 11 chronologies individually. I would direct your
 12 attention to the our review of the cost of living
 13 and rising real wages, which begins at Page Four
 14 of the Summary on wage adjustments. That is record
 15 Page 2145, and it will involve the series of
 16 charts that well, that commence Chart 60 and
 17 others of similar kind. And, as I have said, you
 18 do not we do not you do not even look at them
 19 all in order to draw the proper conclusion because
 20 they track one another; they look pretty much the
 21 same. Now let us see if we cannot describe the
 22 differences that we have with the carriers in

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1 making these calculations. I think both parties
 2 are using the Consumer Pricing Index Year for the
 3 representing the change in in the excuse me, the
 4 that is not right. I am using CPIUU, and they are
 5 using the CPIU. That is one small difference
 6 between us and how we measure inflation,
 7 historically. I will get to how we are measuring
 8 inflation prospectively in a minute. The other
 9 observation that I heard them the carriers make
 10 regarding change in in real pay is our selected
 11 base state. I am going back to the contract in
 12 effect at the time of regulation. So the contract
 13 commencing January of 1977 is reflecting all of
 14 the wage change experienced by the organizations
 15 since deregulation. So it is the last contract
 16 negotiated prior to deregulation, so it becomes
 17 the base for measuring wage change prospectively.
 18 Now, there is when you are looking at real wages
 19 and I am looking at Chart you can look at Chart
 20 61, for instance. This is the one that is tracing
 21 the BMW's real wage change. You can see that the
 22 red line is pretty flat. This is indicative of the

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1 reality that real wages have been flat-lined for
 2 30 years. There has been no real improvement over
 3 this period of time in real wages. Now, this if
 4 we were to look at the wage chronology itself,
 5 which is represented by the green line, you can
 6 see where the problem lies. It was during the the
 7 negotiation/mediation/Presidential Emergency
 8 Board/statutory imposition/period, which resulted
 9 in the 1988 agreements where we or where we
 10 forced crossed the line on changes in eh CPIW,
 11 which is really the cause, if you will, of the
 12 real wage lag that has that exists today. I the
 13 slope of the curves since that point are fairly
 14 are in parallel for a fair amount, neither any
 15 gain nor loss since that contract, fairly flat-
 16 lined. But the period of time governing the 1988
 17 contract, which was, in essence, I want to say
 18 10.5 percent over six and a half years it is in
 19 the text. But it was a two-year wage freeze plus
 20 minor or marginal wage general wage increases
 21 thereafter over an extended period of time. That
 22 was the general wage increase piece of the 1980

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1 agreement that was recommended by the PEB 219 and
 2 ultimately imposed on the on the unions. So we do
 3 not apologize for as we look back over the period
 4 of deregulation for an adjustment that reflects
 5 now, in the good times, a catch-up for the lost
 6 real wages that occurred under that agreement.
 7 Apparently, the carriers are critical of using
 8 that as a base state, but that is the whole
 9 purpose, and I do not back off the notion of
 10 including that period of time in generating what I
 11 regard as a real wage lag over the regulated
 12 period. So it is what it is, and it is as I say it
 13 is in terms of the real wage loss occurring over
 14 that period of time. For the individual
 15 organizations that have that are accounted for in
 16 our wage chronologies, the summary of that real
 17 wage loss is on Page Six of the Summary Statement,
 18 which is record Page 2147. As you can see,
 19 depending on the organization, raises of between
 20 three percent and five percent would be required
 21 on Day One of this contract, simply to restore the
 22 purchasing power of the wage rates that prevailed

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1 back in 1977. And that, of course, is without
 2 regard to any real wage improvement, which we
 3 believe we that rail unions are entitled to. Now,
 4 let's I am going to focus on the chart that it
 5 is Chart 67, because I think this is a represents
 6 a point of departure between the carriers'
 7 position and our own regarding the impact of our
 8 proposal on real wage real wages. And, also, this
 9 will bear on the implications of adopting a
 10 pattern with general wage increases similar to the
 11 UTUs on real wages. So I think if you turn to
 12 Chart 67, which is let me find that for you 67
 13 is on Page 120 of the chart book 120. It is
 14 record Page Number 2301 in the Union's case. Let's
 15 I am going to sort out what the factual
 16 differences are in this
 17 presentation that we made on the prospects of
 18 maintaining real pay under the Unions proposal. To
 19 begin with, the heavy blue line reflects the
 20 actual known change in the Consumer Price Index
 21 for the first 20 months of this agreement. One of
 22 the differences between the carriers' presentation

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1 of these numbers and my own is that they are using
 2 projections for 2010 and '11, which have already
 3 been determined to be invalid. Why would you use a
 4 projected consumer change in a Consumer Price
 5 Index, published by the Congressional Budget
 6 Office, for a period of time under this contract
 7 where the CPI is increases have already been
 8 known? So what I am representing here is that the
 9 heavy blue line is the actual CPI. The what is
 10 regarded here, what is stated as a projection it
 11 is not a prediction. What I am saying here is that
 12 it would take a 2.8-percent increase in the CPI
 13 for the balance of the collective bargaining
 14 agreement, in order for the unions to break even
 15 under their proposed changes in general wages. Let
 16 me say that again another way If the Panel if the
 17 Board were to recommend and the parties were to
 18 adopt the Union's proposed general wage increases,
 19 our wages would escalate by the 20.5 percent, as
 20 reflected over the course of the five-year
 21 agreement, represented by the red line on Chart
 22 67. If the CPI were to increase at a rate of 2.8

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1 percent per year from the last know CPI to the end
 2 of the contract, we would break even with changes
 3 in the CPI. It would be a break-even contract. If
 4 the Consumer Price Index rises by more than a rate
 5 of 2.8 percent for the balance of this contract,
 6 our real pay will diminish. If if it increases by
 7 less than 2.8 percent, there will be a measure of
 8 real wage increase over the course of the
 9 agreement. Now, as my text, I thought, made clear
 10 but, obviously, the carriers were not reading it
 11 this way I am not forecasting or predicting the
 12 2.8 percent; I am saying that that is what the
 13 break-even point is. The fact of the matter is
 14 that the CPI is currently running at a rate, which
 15 greatly exceeds that. Let me back up a moment. If
 16 you look at the blue line, which is the rate of
 17 CPI change over the first 20 months of this
 18 agreement, the Consumer Price Index is going up by
 19 a rate of 3.3 percent. If that were to continue,
 20 then, obviously, we would have a diminution in
 21 real pay even under the Union's proposal. If you
 22 look at the actual change in the Consumer Price

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1 Index on a trailing 12-month basis, it has been
 2 going up by 4.3 percent. That is the annual rate
 3 of inflation that we are currently experiencing
 4 over on a 12-month actual 12-month basis 4.3
 5 percent. If you were to do that same calculation
 6 over a trailing six months, the figure is 5.4
 7 percent. The moral of the story is that the cost
 8 of living is currently running at a pace which
 9 exceeds the 2.8 percent that it that is required
 10 to break even. Our carriers, when they perform
 11 this exercise, are mistaken in several respects.
 12 First of all, they are arguing and it is in their
 13 brief, and it is in, I think, Dr. Evans's
 14 presentation. It is Exhibit Number Six. Page 33
 15 would be your reference. But you will note there
 16 that what is going in is a conclusion that the
 17 projected CPI growth over the course of the
 18 agreement is 9.1 percent. That is end to end. That
 19 is based upon, as I read the footnote, on the
 20 Congressional Budget Office projections, which
 21 were made for fiscal years 2011 to 2021. OK, and
 22 they were issued in January 2011. Now, this

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1 analysis is flawed in two respects. Number one, he
 2 leaves out the first view of the collective
 3 bargaining agreement and begins the forecast for
 4 inflation by ignoring the actual change in
 5 inflation that occurred over the first 12 months
 6 of the proposed agreement. All right, look at Page
 7 43. Look at his exhibit when you get a chance. You
 8 may not do it now. But there was no projected
 9 increase for the first year of the collective
 10 bargaining agreement. A man adopting the CBO
 11 projection of 2.9 in 2011 and 1.5 thereafter, it
 12 ignores the fact that the that the CBO projection
 13 is wrong because it is for a year which is now
 14 almost gone and will be known (ph) that the
 15 increase in the CPI is going to be more than 2.9
 16 percent. So one way to to make certain that the
 17 CPI is going to go up by less than what I am
 18 saying is to look at a period a projection that
 19 was made in a period before the actual known CPIs
 20 were published. They and every year, at a much
 21 smaller rate than what the CBO expected. So you
 22 are going to get the real answer if you do not if

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1 you use a projection that ignores the actual
 2 increases. Secondly, you are not going to have the
 3 proper analysis if you are not looking at the same
 4 five-year period that we that the bullet is
 5 looking at. You are determining wages over 2000
 6 from '09 is the base 2010, '11, '12, '13, '14. It
 7 does not make any sense to adopt forecasts in 2015
 8 and beyond. Why not use the actual numbers of the
 9 first 20 months that you know are sound, and then
 10 projections, if you wish, for the balance of the
 11 contract period? So this will motion that, you
 12 know, our proposal is going to cause some
 13 extraordinary increases in real pay or,
 14 alternatively, if the increases proposed by the
 15 carriers were layered on this chronology that it,
 16 too, would maintain real pay is is dependent on a
 17 forecast in inflation that is half the current
 18 rate and less than half of the trailing 12 months,
 19 less than half of the trailing six months. The CPI
 20 will come out on Wednesday. I will give you that
 21 number if we return. But you can bet we are not
 22 we this 2.8-percent number is probably going to

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1 have going to change when we know another month
 2 of the CPI. But I will tell you one thing the
 3 Congressional Budget Office numbers are wrong and
 4 will be wrong for 2011. The next subject should
 5 not take that long. This is our comparison with
 6 the ECI with the Employment Cost Index. And I
 7 know that the that the Board members have seen
 8 this data before and are familiar with its
 9 construct. The ECI, as you know, is a is the BLS
 10 version of the CPI for wages and compensation
 11 where they hold constant the changing mix of
 12 occupations and industry much the same way as they
 13 hold the market basket constant when they produce
 14 the Consumer Price Index. So it is the it is
 15 agreed among all analysts that, in measuring
 16 changes in wages and salaries, per se as well as
 17 total compensation, which they also produce - or
 18 the best measure is the Employment Cost Index
 19 because, unlike changes in averaged hourly
 20 earnings or averaged straight-time hourly
 21 earnings, you do not have to deal with a with
 22 wage drift as it is associated with ele with the

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1 changing mix from low-paid persons to high-paid
 2 persons, or the reverse. Sometimes, the changes in
 3 the average straight-time hourly rate can go up at
 4 a slower rate than general wage increases because
 5 you are just hiring cheaper persons. So we are
 6 losing using the ECI. We are suggesting that
 7 there has been a 14.1-percent wage lag against the
 8 rest of the private industry. And it would
 9 demonstrate, as well, that that is pretty much
 10 accounted for by the 6.5-year contract, which
 11 commenced in 1988. That pretty much caused the
 12 problem that we are bringing to your attention
 13 now. And once again, when you read 219 and you
 14 understand how those recommendations were arrived
 15 at, in what role the kind of the financial
 16 position of the industry played in that decision,
 17 then it is my view that you would you would
 18 ultimately reach the conclusion that, now that the
 19 reverse of those circumstances prevail today, that
 20 rail labor is entitled to recover that 14.1
 21 percent. The next piece in here is total
 22 compensation. I think several of the carrier

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1 experts have testified that that, really, what
 2 you want to look at when you are tracing you
 3 know, when you are tracing this these data for
 4 reflecting the experience of the workers is to
 5 look at total compensation because, obviously, in
 6 this in this real world, benefits are a very
 7 important ingredient in total compensation and
 8 that, over the years, in this industry and
 9 elsewhere, there has been, you know, a shift, if
 10 you will, from increases in general wage
 11 increases and toward benefits to enhance total
 12 compensation for the workforce. So we understand
 13 that. I do not disagree with that at all. And I
 14 would also encourage the Panel to look at total
 15 compensation when you when you assess the
 16 progress that rail workers have attained over the
 17 years. When you read through that, we nevertheless
 18 find that there is a significant wage lag. In
 19 fact, the rate that - the lag on compensation is
 20 larger than the lag on wages alone, and that is
 21 reflected in the Chart 75 excuse me, it begins
 22 with 76 76, 77, 78 that series, which and the

<p style="text-align: right;">Page 202</p> <p>1 only differences between those, if it is not 2 already obvious, is they are I am looking at the 3 wage chronologies and the compensation changes for 4 the different organizations. But the slope of 5 those curve those the slope of those lines are 6 appear to be similar in all respects. It is about 7 a 14-percent compensation gap developed by 2009. 8 The this only and I can apologize for the small 9 print, but if you look at Page 140 of the chart 10 book and this is Table 36 this is record Page 11 2311 in the Union's case these are the kind of 12 the build-ups of the total compensation that form 13 the basis of the charts that you find associated 14 with the numbers. And they are principally small. 15 If you want a bigger version of this, [chuckle] I 16 can give it to you. This is all I could fit on one 17 page. So if you cannot read it, I understand; I 18 can hardly read it myself. But it is what it is, 19 is it takes - from a bottoms-up basis, it builds 20 up total compensation for the railroad worker 21 given their given our compensation structure. And 22 then, what I do, is I convert this to a BLS format</p>	<p style="text-align: right;">Page 204</p> <p>1 the fact that much energy has been spent at the 2 bargaining table on maintaining and, in some 3 cases, improving the Health and Welfare Program. 4 So what I say in the text, and I think and the 5 numbers bear this out is that rail negotiators 6 have devoted a fair amount of effort at the 7 bargaining table on preserving what is a quality 8 health and welfare program. That is made evident 9 in our changes in in the Health and Welfare piece 10 of Total Compensation, which has escalated at a 11 rate which far exceeds the rate of change and 12 other elements of compensation. But what the Board 13 has to take away from this discussion is that, 14 when you add all the benefits together, including 15 Health and Welfare and including the rapid pace of 16 change in a high-quality health and welfare 17 program, you nevertheless have an increase in the 18 railroad benefit costs, which are below what other 19 employers in the economy have experienced for 20 their benefit costs. And that is a very important 21 point. This employer at this industry does not 22 have a health and welfare problem. OK? It does not</p>
<p style="text-align: right;">Page 203</p> <p>1 to make is compatible with comparisons made 2 against the Employment Cost Index. This is a 3 useful exercise, not only to demonstrate the pace 4 of our compensation change, historically, but it 5 also enables the Board to isolate certain changes 6 in compensation because, clearly, they have not 7 all moved at the same pace. If you look at and, 8 this, I begin to discuss at Page 11 of the Summary 9 Statement. And it actually is based upon Table 36 10 and others similarly constructed. OK, but let us 11 turn to Chart 80, which is on Page 137 of the 12 chart book. And, there, you can see some evidence 13 of what I have been talking about. Wages have gone 14 up by at a certain rate. We saw that 15 independently. What Chart 80 does, and similar 16 ones constructed, is trace changes in benefits 17 only. So even if you look at benefits by 18 themselves, there still is a lag behind the 19 private sector for railroad workers at some 10.2 20 percent. And that is because there has been very 21 little effort in recent years devoted to 22 improvement in our benefit levels. Notwithstanding</p>	<p style="text-align: right;">Page 205</p> <p>1 have a health and welfare problem that this board 2 has to attend to in this round of bargaining. The 3 changes in total benefits, changes in total 4 compensation have lagged behind the private sector 5 notwithstanding the party's insistence that a 6 quality health and welfare program be maintained, 7 and that those costs continue to be absorbed in 8 major part by the employer. All of that is 9 reflected in these numbers. After all, we are 10 looking at the total cost of compensation for the 11 railroad worker versus the rest of the world. 12 CHAIRMAN JAFFE: Mr. Roth, could we go back to Page 13 39, which I assume relates to at least the 14 structure of how one defines benefits on Chart 80? 15 I think it is the prior page. 16 UNIDENTIFIED MALE: One forty-six. 17 MR. ROTH: Oh, thank you 146. Got it. Sorry, I 18 have it. 19 CHAIRMAN JAFFE: Two quick questions Are the total 20 benefits in Chart 80 and then in (your analysis) 21 (ph) the same total benefits that are listed on 22 Table 39? That is the first question.</p>

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1 MR. ROTH: Yes, Chart 80 is a graph of the data on
 2 Table 39, in part, from for total benefits.
 3 CHAIRMAN JAFFE: And if you look, obviously, the
 4 "Health" line has gone up roughly sevenfold from
 5 '85 to 2009, right?
 6 MR. ROTH: Yeah.
 7 CHAIRMAN JAFFE: Some of the others have gone up
 8 significantly less than that.
 9 MR. ROTH: Yeah.
 10 CHAIRMAN JAFFE: So look at "Retirement and
 11 Savings." It looks like it has actually gone down
 12 as compared to the years in between. Is there a
 13 an obvious explanation for that?
 14 MR. ROTH: Yeah, the contribution rates have fallen
 15 for the carriers. CHAIRMAN JAFFE: OK.
 16 MR. ROTH: .Over that period of time. And what we
 17 the cost of the railroad retirement is, for this
 18 purpose, is represented by their contribution
 19 rate, percent of payroll, which has fallen over
 20 this period of time.
 21 CHAIRMAN JAFFE: Got it. Thank you for the
 22 clarification.

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1 MR. ROTH: So as you kind of page through the
 2 illustrations, we have one for the BMW, one for
 3 the BRC, the Carmen (ph), one for the TCU clerks
 4 (ph). In each case, you will find that And, again,
 5 I I emphasize that that is representative of what
 6 is going on here with the rest of the rail
 7 organizations, that there has been a a focus on
 8 the health and welfare subject at the bargaining
 9 table. They have insisted that the carriers
 10 continue to pay for a quality health and welfare
 11 program. That results in that element of
 12 compensation going up in cost, numbers that you
 13 have already seen from the carrier in this record.
 14 But what I am reporting is that those those
 15 increases in costs for health and welfare have
 16 been more than offset by building moderate change
 17 in the other elements of compensation, and
 18 moderation in wage change, such that, when you add
 19 it altogether, total compensation lags behind the
 20 rest of the private sector since deregulation. And
 21 even if you use base points in between of course,
 22 since I give you a time series, you can use any

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1 base state you like to make to draw conclusions
 2 as to how this has behaved all over other periods
 3 of time. But you will find that there was no
 4 evidence that the carriers have been asked to
 5 absorb excessive increases in their benefit costs
 6 or total compensation because of our insistence
 7 that they pay for health and welfare. The other
 8 way to look at this is on Chart 84 because this is
 9 these are labeled ratios. Just like we did when
 10 we were looking at the big picture of the role of
 11 labor costs on in railroads, and will have
 12 reported to you that total that about 25 cents of
 13 every revenue dollar goes to labor. And when we
 14 look back at the '79 and earlier years, that
 15 number was 51. I think I indicated to you that, if
 16 I if you take that number, that labor ratio back
 17 40 years before deregulation, it would have been
 18 in the 50-percent range for many, many years. It
 19 was not until after deregulation where it
 20 collapsed, and now it is 25 cents on the revenue
 21 dollar. So what I have done here with Chart 84
 22 and to kind of address further this health and

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1 welfare issue is to break out the "Health and
 2 Welfare" piece. The green line on Chart 84, which
 3 is on Page 141 of our chart book, represents total
 4 benefits. So we can see that I am sorry, not
 5 total benefits; it is total wages wages are 17
 6 cents out of every revenue dollar. The rest the
 7 difference between 17 cents and 25 cents are your
 8 total benefits. But what we add here is a breakout
 9 of the health and welfare piece. First and
 10 foremost, look at the footnote. The data does not
 11 allow us to subtract from health and welfare the
 12 employers' contributions or costs of nine railroad
 13 retirement private pension plans. For some that
 14 has never been available; it has never been part
 15 of the I-1 distribution of labor expenses, so I am
 16 not able to carve it out. It is not even clear to
 17 me to whom that cost would be subscribed. The
 18 organizations, by and large, have not separate
 19 private pensions, [clears throat] so I do not
 20 know. That must be non-contract persons, but I do
 21 not even know that. I mean, I know I there might
 22 be a maybe it is a 401-K contribution, or it may

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1 be a certain train and engine employee somewhere
 2 that rolls into that; I am not sure, but it is a
 3 small number in any event. Health and welfare is
 4 clearly the bulk of that expense. And when we look
 5 at these numbers that line across the bottom of
 6 the page I refine that, for every regular dollar,
 7 four cents goes to health and welfare. Those big
 8 numbers that have been put on the record regarding
 9 the cost of this plan it is four cents on your
 10 revenue dollar. And, remarkably, that is a four
 11 (ph) marginally; it is about the same as it was in
 12 1984 - in fact, it is the same as it was in 1984
 13 and only a tick higher than it was at the time of
 14 deregulation, where it was 32, 33 cents. Thirty-
 15 two third I am sorry, 3.2 or 3.3 cents on the
 16 revenue dollar. So this is not this is not a
 17 problem that has that the management has not been
 18 able to manage through escalating productivity and
 19 collapse of the uniclause (ph) that lie behind
 20 these changes in labor ratios. Once again, I
 21 reiterate the employer does not have a health and
 22 welfare problem that you need to attend to in this

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1 round of bargaining. This is not what this case
 2 should be about. Another look at I mentioned
 3 labor costs a second ago, and here on Chart 85 is
 4 a similar breakout. We have already seen some of
 5 these numbers at the high level, where we are
 6 looking at total unit costs and total labor costs.
 7 This is an interesting chart because you can see
 8 that, since deregulation, total unit costs have
 9 gone up from about 1. a \$1.25 per ton mile to
 10 \$1.70. Now, if you broke that up, you will see
 11 that unit labor costs, however, have fallen from
 12 19 from 0.79 to, say, 97 (ph), and then pretty
 13 much a flat line since that point, but certainly
 14 not escalating the way you would the way that
 15 non-labor expenses have. With respect to the
 16 "Health and Welfare" piece, that is currently a
 17 fraction of a penny in 2010. It is 0.138 cents,
 18 and that is marginally above the 0.083 cents that
 19 existed back at the time of deregulation. And you
 20 can see that that red line across the bottom is
 21 not moving radically one way or the other; it is
 22 pretty much flat-lined. Again, just another

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1 indication of how the health and welfare component
 2 of unit labor costs have not contributed to a any
 3 kind of escalation in the carriers' cost of doing
 4 business. We have Chart 86 adds just it does not
 5 add much at this point. It is this is the change
 6 in labor expense and non-labor expense that I
 7 referred to earlier. This is pretty obvious. OK,
 8 Mr. Chairman, unless there are some questions
 9 about the the role that the health and welfare
 10 has played in this expense structure and how it
 11 has been managed over time, I am going to proceed
 12 to the next section of our presentation, and that
 13 is a look at the carriers' proposal to us as I
 14 understand it. And I am going to compare that,
 15 ultimately, to the proposal that we have given
 16 given you. OK, Table 40 Page 144 of the chart
 17 book lays out the change in the straight-time
 18 hourly rate for the coalition members under the
 19 carriers' proposal as I understand it. And I think
 20 this corresponds with the way they have described
 21 it in this record. We have general wage increases
 22 under their proposal that began July 1, 2010. That

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1 is two percent. It goes to 2.5 percent, to three,
 2 to three, 3.5, and three over six years. At the
 3 time, this analysis was prepared, I was not aware
 4 of any willingness on part of the carriers to
 5 accommodate the Organization's proposal for a
 6 five-year term, but have since heard on this
 7 record that that may be a possibility. So but
 8 this is a six-year analysis. So, on a compound
 9 annual compounded basis, this is going up by 18.2
 10 percent over time, to 0.83 percent per year of
 11 contract term. I the model of mine, which enables
 12 us to track changes in the wage chronology it is
 13 actually used at the bargaining table to to
 14 illustrate for the negotiators the movement of the
 15 average straight-time hourly rate and the net rate
 16 as proposals are made. And so this has a
 17 placeholder for monthly health insurance
 18 contributions because it is my view and I think
 19 it is probably everybody's view that an increase
 20 in your health insurance contribution is is
 21 nothing more than a cash compensation issue, and
 22 it it subtracts from a general wage increases in

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1 the same manner that a wage increase increases
 2 that compensation. So it a it is nothing more
 3 than a wage cut under circumstances where the
 4 employee is asked to pay more to his health
 5 insurance plan. Since the proposal to the unions
 6 does not have an increase that occurs during the
 7 course of this six-year period, those are all
 8 zeroes OK? so that the gross wage change is the
 9 same as the net wage change. So I so I apologize
 10 for having all this noise in here, all these
 11 columns because they are somewhat that is, those
 12 central columns are are unnecessary, but it
 13 simply is, as I said, a placeholder for analyzing
 14 proposals that are made by the respective parties
 15 for changes in health insurance contributions. So
 16 that brings us down to the increase per year on a
 17 net basis, which is 2.83 percent a year. The next
 18 entry here is on the the value of the special
 19 adjustment because, as you recall, in addition to
 20 the general wage increases, the carriers' proposal
 21 to the Organization includes a special adjustment
 22 of 0.5 percent, which I I included here. It is a

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1 general wage equivalent of that amount, and it is
 2 - it can be and it is rolled into the when
 3 paid, rolled into the wage chronology that you see
 4 above. So, by the way, just by way of preview,
 5 when I value the dollars in my pocket over the
 6 course of the agreement, I am taking into account
 7 the fact that the half a percent is rolled into
 8 wages and produces more cash by compounding over
 9 the course of the agreement. By way of
 10 presentation here, I wanted to separate it and
 11 show it down below because it is described by the
 12 carriers as a special adjustment and not part of
 13 the general wage increase scheme. If you add that
 14 back in, that is a 2.9 two percent per year of
 15 contract term. Next, we have the since we are
 16 dealing with the net value to the employee and
 17 this is a look from the employees' perspective,
 18 obviously, not a this is not an overall cost
 19 analysis to the employer this is a view from the
 20 employees' level the cost to the employee for
 21 design changes and that is that accounts for the
 22 our carriers' proposal to change health and

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1 welfare design. And there is a whole series of
 2 such changes that have been described to you by
 3 the carriers and their affirmative case. And,
 4 tomorrow, we will hear from witnesses on the
 5 Organization's side that will go through those
 6 changes. For our purposes now you need only know
 7 that, of the total reduction in employer costs to
 8 that plan, resulting from the changes proposed by
 9 the carriers, I estimate that that value would be
 10 \$79, approximately, per month, per employee. In
 11 other words, the employer costs to finance the
 12 Health and Welfare Program would be cut by \$79 a
 13 month. However, for our purposes here, I am
 14 creating a de cost-shifting portion of that
 15 proposal to be valued at \$58. So this would be the
 16 amount the amount of the total savings that is
 17 shifted to the employee that also who, on
 18 average, would pay an additional monthly contri
 19 monthly amount of \$58 by virtue of the cost
 20 shifting that occurs under the carriers' proposal
 21 for such things as establishing a deductible for
 22 increasing the co-insurance factors. So, in that

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1 respect, there might be some debate over that we
 2 will hear more about regarding the effects that
 3 the overall proposal has on the pocketbook of the
 4 employee. I am giving the carrier the benefit of
 5 the doubt here, and valuing the concession out-
 6 of-pocket concession piece as being \$58. That may
 7 be understated. In any event, if it were \$58, that
 8 would represent the wage increase equivalent cut
 9 in pay of about 1.3 percent. Now, I hasten to add
 10 that we are not talking about a concession that is
 11 uniformly absorbed by the population. Obviously,
 12 that would be the average concession value. It is
 13 not distributed equally across the population;
 14 that, of course, depends on your health record and
 15 your utilization of the plan. It could be cost
 16 the impact could be much greater on persons who
 17 have higher use and lower for those who have less
 18 use. But that is the average if you spread it
 19 across the population. That cuts the annual rate
 20 of increase under their proposal to 2.7 percent
 21 per year. At this point, Mr. Chairman and Board
 22 members, I should direct you to the table that is

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1 prepared in the Summary Statement. It is way at
 2 the end Page 14. If you could go because that -
 3 this is not reproduced in the chart book, and it
 4 may be something that you need to focus on at this
 5 point. It is rather important in looking at the
 6 various positions that the parties have staked out
 7 here. You will note that, when I am descri as I
 8 describe and value on Table 40 the carriers'
 9 proposal, the next ingredient that I am looking at
 10 is the certification pay. The val the special
 11 adjustment is in there at \$1,300 over the course
 12 of the agreement. That, of course, takes into
 13 account the fact that it is will be effective
 14 June 30, 2011, and then paid for my straight-time
 15 pay hours for the balance of the contract; that
 16 way, it would be worth \$1,300. The next line item
 17 is "Wage Progression across the System." Now, wage
 18 progression has been proposed as an element of the
 19 carriers' position. In the wage progression piece
 20 that I am referring to on my Table 40 is that
 21 proposal to eliminate the fifth year of a hiring
 22 wage progression for those organizations that have

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1 five years. Well, when you look at the
 2 participating 11 rulings (ph) before you, you will
 3 find that there are only two organizations that
 4 have five-year progressions; one of them is the
 5 dispatchers, and the other one is the are the
 6 engineers. And so when I if I were to assume,
 7 literally, that that change was applied to the 11
 8 organizations, it would, on average, have little
 9 value; it would be washed out. It would have
 10 value, obviously and I want to emphasize this it
 11 has value to the engineers because they have
 12 persons in a five-year progression. It has value
 13 to the dispatchers because they have some persons
 14 in a five-year progression. I should also add that
 15 they have far fewer persons in progression than
 16 does the UTU, where the value would be much
 17 greater. The reason for that is quite obvious
 18 the UTU is a portal position. That is where the
 19 engineers are hired until the
 20 are promoted to engineers. And when you look at
 21 the service distributions that the carriers have
 22 furnished, you will find that there are very few

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1 engineers in within their five-year progression
 2 relative to the UTU, which had almost had more
 3 than almost a third of their membership in a
 4 five-year progression. So. (audio interruption) is
 5 valued out. It turns out to be of no value to the
 6 average coalition participant and so you find a
 7 zero there. Now the other change proposed by the
 8 carriers has to do with lump sum. If you look at
 9 the table on Page 14, you'll see that there is an
 10 entry number eight for the entry rate lump sum. So
 11 what is this proposal to the organizations? If you
 12 have someone in a five year progression you're
 13 entitled to a lump sum. Those individuals are
 14 entitled to a lump sum. If you are, however,
 15 subject to a progression of less than five years
 16 in duration, then you're entitled to a lower lump
 17 sum. When the carriers - When I look at the
 18 service distributions for the coalition
 19 participants and I assume that anybody and
 20 everybody who is in a five year progression, in
 21 other words there are no local rules that would
 22 mitigate that, I apply and I value the lump sum to

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1 all of those persons. That would apply, of course,
 2 to the BLE and the dispatchers. The TCU has a
 3 three year progression. And, again, assuming that
 4 there are no local rules that might mitigate that
 5 based on the service distribution I have assumed
 6 that they're all in a hiring progression. That may
 7 not be true. They might have better local rules.
 8 But assuming that they all have a three year
 9 progression, I added up all those heads and gave
 10 them the lower lump sum that is being suggested by
 11 the carrier. The BMW E has a two year progression
 12 under their national rules, and they too will
 13 assume to have no local rules that would better
 14 that. And so for all the persons in the BMW E craft
 15 that had at least - that had under three years of
 16 service, I gave them the lump sum. Now I know that
 17 one is overstated in value because the progression
 18 for the BMW E craft is applicable only to certain
 19 unskilled classifications. It's not uniformly
 20 applied across their classification system. So I
 21 had no way given the data sources that I had to
 22 determine how many of the persons with less than

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1 three years of service were actually subject to a
 2 two year progression so I assumed they all would
 3 get it. So when you average this out across all
 4 the population, this would come up to
 5 approximately \$48.00. I think it's far less than
 6 that actually. I think it's less than that because
 7 of the treatment of the BMW folks, number one,
 8 and others. Now you might inquire well what do the
 9 shop crafts do? What does the BRS do by way of
 10 hiring progressions? Well they by in large do not
 11 have them. They do have apprenticeship programs
 12 where you hire into the craft as an apprentice and
 13 then you work your way up. There's various
 14 apprentice programs depending on the local rules.
 15 They range in duration. The BRS, I think, is
 16 commonly has maybe a two year progression. I'm not
 17 sure. I'm not the expert on that. But the point is
 18 that if you literally apply the carrier proposal
 19 to the organizations who have apprenticeship
 20 programs, which carry separate rates and are
 21 separate classifications under their rules, they
 22 would not be entitled to this entry rate bonus.

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1 And all I can go by is, of course, what the
 2 carriers have proposed. That's all I know about.
 3 So I think it's probably in the range of maybe its
 4 \$40.00 a head. When you spread it out it's a
 5 pretty minor piece.
 6 CHAIRMAN JAFFE: Can I interrupt you? Excuse me.
 7 MR. ROTH: Sure.
 8 CHAIRMAN JAFFE: You've got evaluation of .3
 9 percent GWI equivalent. Unless I missed it I'm not
 10 sure that the record contains the precise figure
 11 that you're using for a one percent GWI. Do you
 12 have that handy or is that something that would
 13 need some research to clarify?
 14 MR. ROTH: I'm sorry. I'm not following you.
 15 CHAIRMAN JAFFE: I assume there's a dollar number
 16 that equates to a one percent GWI on average
 17 across the coalition; with an S?
 18 MR. ROTH: Yes. This is eliminating the top step.
 19 There's actually a whole methodology to this and
 20 I'd be happy to furnish it to you.
 21 CHAIRMAN JAFFE: At some point. I don't want to
 22 interrupt your presentation.

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1 MR. ROTH: Okay. What I have in my possession, Mr.
 2 Chairman, are service distributions for all buy
 3 organization for the 11 groups organizations, and
 4 the UTU for that matter and the Yard Masters. So I
 5 had them for all 13 organizations.
 6 CHAIRMAN JAFFE: Okay.
 7 MR. ROTH: From that you are able, or I was able to
 8 estimate the turnover or the hiring rate if you
 9 will. In the UTU craft, for example, if you look
 10 at the average number of heads within the five
 11 year progression is almost 2,000 employees. The
 12 average number of persons in the BLE five year
 13 progression was more in the nature of I can't
 14 recall now. I'll get you the numbers. But it's
 15 like 30 people. It's a fraction of what the UTU
 16 would be because they are not hiring from the
 17 street in the BLE craft as a rule. So using that
 18 the average number of employees within progression
 19 as a proxy for the affect of eliminating the fifth
 20 step that ultimately results in a five percent
 21 increase for those persons who would move from the
 22 fourth year to the fifth year. When they graduated

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1 out of the fifth year into the sixth year, they
 2 under status quo, they would go to 100 percent
 3 anyway. So the incremental improvement by
 4 eliminating the fifth step is to give those
 5 persons who would move from year four to year five
 6 an extra five percent. So when I modeled that out,
 7 and give those folks that extra five percent, and
 8 average it all together doing that for the
 9 coalition members vanishes in terms of value. And,
 10 again, that's not to say that it doesn't have
 11 value for the BLE or the. But when you look at it
 12 on an average coalition basis it washes away. It's
 13 decimal dust.
 14 CHAIRMAN JAFFE: Actually the question was a little
 15 different, but I'll be happy to hold it. It's
 16 fine.
 17 MR. ROTH: I'll get you whatever. I've got the
 18 analysis that I can provide.
 19 CHAIRMAN JAFFE: There are a variety of cost
 20 numbers throughout the presentation, both yours
 21 and then some that are yet to come, and some that
 22 we had already from the carriers, and I don't know

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1 that anyone has at least pointed to a particular
 2 dollar equivalent; X million dollars, whatever
 3 that may be that corresponds to a one percent
 4 general wage increase for the group of
 5 organizations as a whole at least at the starting
 6 point of the new agreement.
 7 MR. ROTH: Oh, I understand.
 8 CHAIRMAN JAFFE: And I apologize if my question was
 9 poor.
 10 MR. ROTH: No, I actually can do that. I mean based
 11 upon. We're almost there but I've got a pressing
 12 model that I've developed which again, this looks
 13 at it from the employee perspective. It's straight
 14 time only. The number you'd want would have to
 15 include all of the payouts and other constructive
 16 allowances that are subject to - that are variable
 17 with general wage increases so it's a more
 18 sophisticated compilation.
 19 CHAIRMAN JAFFE: It is and I.
 20 MR. ROTH: It's a bigger number than what I'm
 21 showing.
 22 CHAIRMAN JAFFE: It is and I didn't feel

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1 comfortable taking the numbers and doing my own
 2 estimate. I'd rather get it from you. Thank you.
 3 MR. ROTH: I'd rather you get it from me too. So we
 4 were looking at Table 40 on Page 144 of the chart
 5 book and comparing to the elements that you see in
 6 the central column of the table that is on Page
 7 14. That's the - I'm putting numbers, if you will,
 8 on these eight elements of the management's
 9 proposal to the coalition that we are describing
 10 here. Again, by way of clarification I should also
 11 make it clear that these summary values that you
 12 see on Table 40, Page 14 of the text, include what
 13 I have regarded as kind of the wage and wage
 14 related. They are the elements that we identified,
 15 but I do not have vacation costs in here or values
 16 in here. I don't have any of the rule changes and
 17 their values that are associated with the
 18 individual crafts. And that's why you see in the
 19 left-hand column when I describe the coalition's
 20 proposal that it specifically excludes cert pay,
 21 for example, or special adjustments that are being
 22 sought by the individual organizations. I'm

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1 looking at the bigger picture, if you will, and
 2 the major ingredients in the respective proposals
 3 of the parties. And I just want to make sure that
 4 this is not comprehensive of all of the changes
 5 that are being sought by the parties. To finish
 6 this exercise let's go to Table 41. Table 41 is,
 7 again, a look from the employees' perspective.
 8 This one is the analysis of the UTU settlement.
 9 While the carriers' proposals seems to track, in
 10 their words, the UTU settlement certainly the
 11 values that they have subscribed to the UTU deal
 12 would not be applicable if applied to the
 13 coalition principally because the certification
 14 pay is worth a whole lot more to the UTU than it
 15 is to coalition members number one. The cert pay
 16 equivalent that they are proposing is a half a
 17 percent. There is no doubt that it's of far more
 18 valuable to the UTU. Now let me clarify and make
 19 specific exactly what I'm talking about with this
 20 cert pay calculation because you note that the
 21 first pieces of the carriers' proposal do track
 22 the UTU settlement. The duration of contract is

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1 the same. That's line item number one on our table
 2 on Page 14. The GWI's 18.2 percent over six. It's
 3 actually 18.4 percent over six of the UTU deal and
 4 that has to deal with if you look at Table 41 it
 5 has to do with a \$0.03 payment that was a health
 6 and welfare offset that they had retained so it's
 7 an extra \$0.03. It was paid. They kept it. It's
 8 not a big deal but it does change the result only
 9 slightly. The bigger change, obviously, and the
 10 bigger values are on the GWI equivalent to cert
 11 pay. And I think that - I have calculated that
 12 that's worth 1.3 percent, but I think that's
 13 understated and I'm going to tell you why. The
 14 rail labor, and we in particular, are kind of a
 15 hostage to a representation made by the carriers
 16 as to what this value is. They have produced a
 17 letter from counsel, it's not an analysis, that
 18 doesn't give you anything except for their
 19 conclusion that the UTU will receive this \$5.00
 20 cert pay for an average of 140 starts per year per
 21 member when spread across the UTU population.
 22 That's the assumption that's embedded in my

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1 calculation of the wage equivalent of value of
 2 cert pay. Now I am advised, and again there is no
 3 way that I can either confirm or challenge the 140
 4 start assumption that the carriers' using. They
 5 have not furnished us with any other information
 6 concerning that. If ever it were to become
 7 important in these negotiations, I would hope that
 8 the board would require the carrier to produce the
 9 basis for that assumption. But in any event at
 10 this point I'm stuck with the 1.3 percent
 11 calculation. But nevertheless it is nearly three
 12 times as valuable for the UTU as it would be if we
 13 accepted their special adjustment here. So, again,
 14 I think it's obvious that they're not offering to
 15 the coalition the values that the UTU realized in
 16 its agreement notwithstanding that the language
 17 that they propose may be comparable. This is true
 18 for the reasons I've alluded to earlier with
 19 regard to the wage progression and the entry rate
 20 amounts. It disappears in value when applied to
 21 the 11 organizations but does have greater value
 22 for the UTU because they have a big portion of

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1 their membership in a five year progression. And
 2 eventually those persons who are now at step three
 3 are going to go to step four and four to five and
 4 there's going to be a chunk of persons eligible
 5 for a five percent raise under their service curve
 6 that would otherwise not be present when you make
 7 the same analysis for the coalition members. I
 8 estimate that to be .3 percent for them. The plan
 9 design and using the same assumptions there it's
 10 \$58.00 based upon - I'm assuming that the changes
 11 that are proposed to the coalition are the same
 12 changes in design that were a part in our part of
 13 the UTU agreement. So when you look at Line six of
 14 the table on Page 14 of our summary statement, the
 15 difference between the two positions, the UTU
 16 settlement which was 20 percent over six years
 17 net/net and this is including certification pay,
 18 special adjustments, and wage progression and that
 19 same number would be 18.8 percent of the carriers'
 20 proposal to us. Again, I think I'm underestimating
 21 the value of the UTU settlement to the UTU, but
 22 I'm constrained by the data sources that I

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1 currently have. If you net out the total the
 2 increase in the health care concessions, you end
 3 up with 18.7 over six for them, the UTU, and 17.5
 4 under the proposal to us. It is an annual rate of
 5 increase of 2.9 percent per year versus 2.7. Now
 6 let's look over to the far left-hand column. This
 7 is the proposal of the organizations which you saw
 8 the central ingredients of a moment ago. It's 20.5
 9 percent over five years or 3.8 percent per year.
 10 And we have no specific in the across the board
 11 general increase area, we have no certification
 12 pay or special adjustment. Those would be craft
 13 specific. And so to know we have no proposal to
 14 change the length of wage progressions or entry
 15 rates except as those that might be in the
 16 dispatchers and BLE local rule changes. We are, of
 17 course, proposing status quo on health and welfare
 18 design. So there is there no concession there and
 19 no value to it. So that if you look at item six we
 20 are proposing 3.8 percent per year over the
 21 contract. Under the UTU deal it's about 3.1
 22 percent. If you net out health insurance it's 2.9

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1 percent per year for the UTU and about the same
 2 3.8 percent for us. That's net. The terms of lump
 3 sums I mean you've already heard me regarding the
 4 value of lump sums to the UTU versus what it would
 5 be worth to the coalitions given the fact that we
 6 don't have a lot of five year progression. So the
 7 total rep values from the employees' perspective
 8 are those that are shown in line item nine. And
 9 trying to get this to an apples to apples because
 10 one is a six year calculation, which is obviously
 11 higher, and one is a five year. So I've expressed
 12 it in the last line as a per capita annual value,
 13 \$6,430.00 under our proposal \$4,700.00 under
 14 theirs. The organizations have taken a position
 15 which I describe for you in the balance of my
 16 summary statement. That the carriers' proposal is
 17 deficient. And it is deficient in certain
 18 respects. And first and foremost is of course that
 19 as we have developed in detail and at length this
 20 morning, the proposals, the proposed settlement
 21 does not begin to compensate employees in a manner
 22 that is consistent with the financial prosperity

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1 of the industry. That is number one. Number two,
 2 we believe, and I believe in particular, that the
 3 proposal will not enable employees to keep pace
 4 with inflation let alone increase real pay which
 5 we think we are entitled to. Now the reasons for
 6 this is outlined in our Table 43 which is on Page
 7 147 of the chart book. So let's look at a couple
 8 of numbers here, some of which I referred to
 9 earlier. We were comparing our proposal going
 10 forward. Now I'm looking at their proposal going
 11 forward in terms of the ability to maintain real
 12 pay. Table 42 by the way, on Page 146 of the chart
 13 book is simply a reproduction of the consumer
 14 price indexes that we have today. And this is the
 15 source of my comments regarding the trailing 12
 16 months period, and the trailing 6 month period,
 17 and just recording of the reality that the
 18 inflation is heating up and it has been running at
 19 a rate that far exceeds what the carriers are
 20 assuming it to be . Table 43 is more instructive.
 21 These are the inflation rates necessary to break
 22 even, and the inflation rate necessary to match

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1 the 2005 agreement under the Intra . (ph) proposal
 2 to us. So let me take a minute to describe what
 3 we're talking about here. Looking at the first
 4 portion of the table on Page 147, this is Table
 5 43. It is record page number 23-28 (ph) in the
 6 employees case. You see that I calculate what I
 7 call a breakeven target. The December '09 CPI is
 8 211.703. That is known. The August 11 CPI, the
 9 last known CPI before the next one comes out
 10 Wednesday, was 223.3. So we have 20 months under
 11 the current agreement. Now over 20 months, the
 12 annual inflation rate has been going up at a pace
 13 of 3.3 percent a year. Now this is just a given.
 14 You can assume anything else you want as the
 15 carriers have. They are assuming that it wouldn't
 16 go up, but it actually did. So this is the real
 17 number, 3.3 percent. So if you take the increase
 18 over the term, including the special adjustment
 19 that they proposed to us, and you net out the
 20 health and welfare design change, you get 17.5
 21 percent. That is the number that I have developed
 22 in the prior table that reflects the net increase

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1 or return to the employee. If the CPI on December
 2 2015, which is the day before our amendable date
 3 under a proposed 6-year term, would be 248.751 in
 4 order to break even. In other words, if the CPI
 5 reaches that level, then we will have it will
 6 have risen 17.5 percent over the term and we will
 7 have broken even. So over the next 52 months of
 8 this 72 month period the annual inflation rate
 9 would have to be 2.5 percent or less in order for
 10 us to. Or 2.5 percent to break even. To gain real
 11 pay, it would have to be less 2.5 percent. To lose
 12 real pay, it would be more than 2.5 percent. So a
 13 couple of things are going on here that
 14 distinguish my calculations and my conclusions
 15 regarding this from that of the carrier. Number
 16 one I'm asking the board to take into account
 17 total cash compensation, including the concession
 18 on health and welfare. I mean we were lectured
 19 last week on how total compensation is the only
 20 way to measure this. And yet when they do their
 21 real wage analysis they are looking at changes in
 22 the wage rate only. It seems to me you have got to

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1 net out the concession on health insurance, which
 2 is cash compensation to the employee. It is cost
 3 shifting. Now let's look at the non-op (ph)
 4 agreement under the last round of bargaining. And
 5 these are all hard numbers. These aren't all new
 6 numbers. The December '04 CPI which is the month
 7 before the amendable date under the last round of
 8 bargaining, the CPI is 186. It goes up 13.82
 9 percent. The general wage increases net of health
 10 insurance concessions under that agreement were
 11 18.5 percent. So real wage increases over the term
 12 were 2.4 percent. Now this goes to support what
 13 President Scardelletti was referring to when he
 14 said; this is not even as good, this offer of
 15 theirs is not even as good as the agreement that
 16 we made in the last round when their financial
 17 condition was not nearly as strong. He is
 18 absolutely correct about that because even after
 19 taking the health insurance concessions on health
 20 care contributions into account, we still made out
 21 on the last agreement with real wage improvement
 22 of 2.4 percent. If we were to replicate that

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1 experience under these recommendations that you
 2 are making, inflation would have to be 1.96
 3 percent or . I'm sorry. Yeah 1.96 percent for the
 4 balance of these three years. Now these are under
 5 circumstances where it is currently running at a
 6 3.3 percent rate or greater. Again, it is my
 7 judgment that under their proposal, and given
 8 their insistence that we concede cash compensation
 9 in the form of healthcare cost shifting, that we
 10 can't even break even over the course of this
 11 agreement, let alone do as well as we did under
 12 the last contract. Clearly, there is no apology
 13 here for insisting on real wage advancement,
 14 particularly under circumstances where they are
 15 doing so well financially and where under the
 16 circumstances of before PEB 219 the same analysis
 17 produced the opposite result for real labor, which
 18 created this real wage lag that we now suffer
 19 under going into this next contract. Lastly Mr.
 20 Chairman, I want to talk about my development on
 21 the model which is an effort to price out our
 22 proposal. But more than that, it will evaluate the

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1 impact of this proposal on the financial
 2 fundamentals of the railroads going forward. Now
 3 what I'm reporting to you on pages 44, 45 and the
 4 balance of the chart book regarding the costing,
 5 are kind of the report pages, if you will, for a
 6 pricing model that goes on in detail with a lot of
 7 ingredients in it. And I don't know how much time
 8 you want me to take at this point to explain the
 9 methodology. I think that at this late hour I will
 10 not. But obviously if any of the board members
 11 want to inquire as to the precise methodology here
 12 I'll be glad to respond. But let me tell you
 13 what's in here. For the years of our contract, the
 14 cost of our proposal is on Table 44. And as you
 15 can see, we are dealing here with 5 years. 2010,
 16 2011, 12, 13, 14 and 15. 2010 being the . I'm
 17 sorry. I've modeled out six years because I wanted
 18 the model to be sufficiently flexible to deal with
 19 the carriers' proposal as well. Which predictably
 20 I also have valued. So the model goes out six
 21 years, but the analysis I'm presenting to you is
 22 confined to the impact that the organization's

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1 proposal has to the P&L's of the carriers, not the
 2 employers. Not at this point. So what we have here
 3 is the cost of our proposal. And the principle
 4 ingredients here as you can see are the general
 5 wage increases, and the vacation change. Alright?
 6 Those are the two across-the-board economic
 7 proposals that will cost all the reorganization,
 8 with the exceptions of supplemental sickness,
 9 which is also on my radar as a general proposal I
 10 could also value. But we regard that as being non-
 11 cost in the sense that it is simply an updating of
 12 an obligation that the carriers have committed to
 13 before. But I'll get to that when we get to this
 14 supplemental sickness case. So what you have
 15 before you are the changes in the base case, which
 16 is total labor cost under status quo going
 17 forward. And the total labor cost as proposed
 18 going forward. The difference between the base
 19 case and the proposed line, obviously is the
 20 incremental cost of our proposal. And these
 21 numbers that you see, they are big numbers, they
 22 are not in millions or anything they are the

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1 actual numbers. So we are dealing with a payroll
 2 base for the coalition proposals of a labor cost
 3 base, I should say, of \$311 million. And this is
 4 total
 5 I'm sorry. That is the cost of the GWI. That is
 6 the wage increase cost base
 7 which I think you were looking for before.
 8 MALE PARTICIPANT: Percent. Got it.
 9 SPEAKER: Exactly. So when you get to the bottom,
 10 I'm rolling up not only the payroll-based
 11 compensation, but also the rest of the labor cost
 12 structure, including all of the benefits. So that
 13 is how you get to the total labor cost line at the
 14 bottom there. So total in terms of total labor
 15 cost, our base is like \$9.6 billion incremental to
 16 that would be the \$311 million GWI that we
 17 proposed for the first year of the agreement. Okay
 18 now it is necessary for me because I'm looking at
 19 this from a carrier-wide aspect, a carrier-wide
 20 point of view, to include in the analysis the
 21 costs of the UTU agreement for the UTU. Because
 22 obviously that is going to apply to a certain

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1 proportion of the railroad's workforce. So those
 2 pieces are on Table 45. The general wage
 3 increases. The plan design savings, which are
 4 valued at \$79. The yardmaster half percent. The
 5 lump entry rate, which we are told by the carriers
 6 will be \$711 per person. And the certification
 7 allowance, again predicated on 144 starts in the
 8 \$700 per person that we received from the carrier.
 9 On page 46, moving forward, we put all these
 10 ingredients together. That is to say the UTU
 11 tentative agreement, and the proposal by the 11
 12 organizations into the overall 2010 base case
 13 which includes total labor costs for all of the
 14 organizations on all Class 1 railroads. It is a
 15 number of about \$13.9 billion. The first part of
 16 it is the base case, first three lines. And then
 17 the next three lines are the total labor costs
 18 under both the proposal of the coalition and of
 19 the UTU Yardmaster agreement. And then all added
 20 together would be total union. And so this would
 21 be the total incremental cost under our proposal
 22 to all the carriers, would be that \$346.3 million

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1 number. Now what I would want to do next is say;
 2 okay what if you, if you absorb these increases in
 3 your labor costs, what will be the impact on the
 4 carriers fundamentals? By that I mean those
 5 financial metrics that we've been exploring all
 6 morning. And in particular the operating ratio,
 7 the labor ratios and the revenue margin. Those are
 8 the principle ones. All of which will help explain
 9 whether or not there is a sustainable level of
 10 profitability for the carriers under the proposal
 11 of the coalition. So this is what is called the
 12 static case. This means that there was no growth,
 13 no change in freight revenue ton miles. No
 14 increases in volume. Freight revenue per ton mile,
 15 which is average prices they remain flat. There is
 16 no non-labor expense inflation. There is no
 17 employment change, so there is really, there is no
 18 increase in productivity. And what is embedded in
 19 here by way of changes in labor costs going
 20 forward is simply the inflation and health and
 21 welfare. Which is 7.5 percent beyond 2012. We
 22 actually know what those rates are in 10 and 11.

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1 So they are just embedded in there at their actual
 2 cost. The ARMA (ph) which is our health insurance
 3 for retired population, will go up by 8.9 percent
 4 under this assumption. Dental inflation will be 3
 5 percent per year. The vision care inflation is at
 6 zero. And the supplemental sickness insurance
 7 benefits will also be zero, under this assumption.
 8 So this is the status case. Now let us look at the
 9 yellow portion of the table, if you will. If
 10 nothing else happens to those drivers of
 11 productivity, of yield and of volumes, then the
 12 operating ratio in 2010 which is actual at 17.31
 13 percent would have to climb. Because obviously my
 14 expenses are going up, my revenue is flat. So it
 15 would climb from 73.1 to 78 percent. The labor
 16 ratio which is let's look at the labor revenue
 17 ratio because that is what I've been focusing on
 18 in my earlier testimony. It is presently at 23.8
 19 percent. That is a little different than the
 20 number you saw earlier. About the 25 cents on the
 21 revenue dollar. That is because this is just a
 22 coalition and it would exclude non-contract

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1 people. Okay? This is simply the unionized portion
 2 of railroad employment. So it is going to be a
 3 smaller number. So it is 24 cents on a dollar and
 4 that will creep up to around 29 cents by 2014 with
 5 no growth under the static case. The revenue
 6 margin, which again is going to dictate what is
 7 left over for profit, is going to climb from. I'm
 8 sorry, shrink from the 93 cents down to 76 cents
 9 under this scenario. And that of course is because
 10 my revenue is flat-lined. My prices are flat. And
 11 there is no growth in traffic. No growth in
 12 productivity. This is what happens if the world
 13 stops, and our proposal is adopted. I haven't done
 14 this exercise yet, but if you look at 2011 under
 15 the absolute worst case scenario, the numbers are
 16 still better than they were in most of all of the
 17 railroad history. But that is not a realistic
 18 picture because it is not going to be flat-lined
 19 Let's go to Scenario A. Scenario A is represented
 20 by Table 46. And this simply adopts our proposal
 21 as written for vacations and general wage
 22 increases. As well as the increases under the UTU

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1 agreement for that portion of the population, and
 2 this is what happens. By the way, Mr. Chairman, if
 3 I haven't made this clear, on page 18 of the
 4 summary statement which is record page number
 5 2159, I have a summary of all of this. So it may
 6 be actually easier to follow than what I'm tracing
 7 through now. But if under Scenario A. Scenario A
 8 incorporates the actual experience over the past
 9 six years, which is over the course of our last
 10 collective bargaining agreement. From 2004 through
 11 2005. In other words it is the five years
 12 commencing in 5, but year over year, 2004 is the
 13 base. So what if freight revenue ton miles went up
 14 at that same pace? That would be 3/10 of a
 15 percent. Because remember we saw earlier that the
 16 traffic was fairly constant over this period. That
 17 wasn't really the source of their high rates of
 18 profitability. They were living through the
 19 recession. There was actually a constrained demand
 20 over the last six years. However freight revenue
 21 per ton mile, which is the average price, went up
 22 at a rate of 6 percent per year. Now that is

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1 pretty strong. Non-labor expense inflation was 4
 2 percent, and that is actual. And they still had an
 3 employment change of 0.6 percent. So if you were
 4 to realize those actual changes going forward,
 5 then what you would see in terms of the impact of
 6 our proposal on the P&L's would be shown at the
 7 bottom of Table 47. The operating ratio would
 8 continue to fall. The labor revenue ratio would
 9 be, would fall as well to 22 cents on the revenue
 10 dollar. And the revenue margin would climb
 11 significantly from 93 cents to \$1.44. So what this
 12 is telling you is if we adopted the unions
 13 proposal and they experienced the rate of growth
 14 and performance that we had over the past six
 15 years, there is no doubt that the prosperity of
 16 the railroads would continue at this terrific pace
 17 that we've been seeing. It is argued and I think
 18 reasonably so that there is no basis to assume
 19 that we're going to do as well in the next three
 20 years as we have done three or four years, as we
 21 have done over the past six years. So let's back
 22 off some of those better performances and look at

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1 the last ten years. That last ten years of course
 2 included a big period of time where the
 3 competition was stiffer, where we had less of an
 4 increase in prices, traffic crept along. It
 5 includes the great recession of course, as did the
 6 last six years. But let's see we only do as well
 7 as we did in the last ten years. Now I've got an
 8 increase in ton miles of 1.4 percent, my revenue
 9 is going up by, my prices are going up by 4
 10 percent per year. My non-labor expense is going up
 11 by 4.8 percent and my employment is actually
 12 declining by 1 percent per year. So I have a
 13 bigger boost in productivity. Under those
 14 circumstances, again, the operating ratio falls,
 15 the revenue ratio is about the same area, 23
 16 percent, 22 percent. And the revenue margins go
 17 up. Scenario C is projections made by at least one
 18 of the analysts. I can pick from a number of them,
 19 but as we learned, the outside analysts are
 20 predicting big and good things for the railroads.
 21 So I asked myself, well what if city projections
 22 are correct? City projections for pricing and

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1 volume? They're projecting 4 percent in volume and
 2 pricing to go up by 3.1 percent per year. I've
 3 plugged in 5 percent inflation rate for non-labor
 4 expenses and also added an employment change of 2
 5 percent per year. So we're going to grow. We're
 6 going to grow to meet this extra volume. And even
 7 under these circumstances, the operating ratio
 8 falls, the labor ratios are constant at 23 percent
 9 and the revenue margin climbs, fully indicative of
 10 ability to finance and to pay for our proposal in
 11 full under expectations of the outside analysts.
 12 Now I've got two other scenarios in here, and of
 13 course this could go on forever. You can call for
 14 any scenario you'd like to see, but this is one
 15 for 2.5 percent growth, so I'm going to have a 2.5
 16 percent growth in revenue ton miles. 2.5 percent
 17 increase in prices and 2.5 percent increase in
 18 non-labor expenses and no change in employment.
 19 Okay, so I'm going to have a productivity increase
 20 of here of some slight amount. And again, as you
 21 can see, revenue margins up, operating ratio is
 22 down, labor revenue, as a ratio, flat lined at

<p style="text-align: right;">Page 250</p> <p>1 23.8 in year one, 23.5 going out. And I back the 2 2.5 percent off and look at a 2 percent growth 3 rate. Same results. Operating ratio is improved, 4 the labor ratio to revenue is 24 percent in 2010, 5 it goes up to 24.5 percent, no big deal, the 6 revenue margin expands. The point of the exercise 7 is quite apparent. The board can recommend and the 8 parties can adopt the union's proposed general 9 wage increases without having any interruption in 10 the progress that the carriers have made over the 11 past several years. In fact we would predict that 12 under any reasonable, credible scenario that this 13 prosperity would continue. Any questions? 14 CHAIRMAN JAFFE: I think we're in good shape at the 15 moment. Obviously if we have something else, 16 you'll be on tomorrow as well, will you not? MALE 17 SPEAKER 1: I'll be back. 18 CHAIRMAN JAFFE: That's what I figured. MALE 19 SPEAKER 1: It's hard to get rid of me. 20 CHAIRMAN JAFFE: Sounds fine. 21 UNIDENTIFIED FEMALE SPEAKER: I think we need to 22 move on and take care of vacation today if we can.</p>	<p style="text-align: right;">Page 252</p> <p>1 note, although he won't be speaking, the union's 2 economist, Tom Roth, will be available to answer 3 any questions the board may have. Our first 4 speaker is Bill BohnH. After serving in the navy 5 as an electronic technician, Mr. BohnH, in 1974, 6 at the age of 22, started working as an 7 electrician for Penn Central Transportation 8 Company. At that time he became a member of IBEW 9 local 2270, based in Wilmington, Delaware. He 10 spent the next 19 years working as an electrician, 11 17 of those with Amtrak. He was elected and served 12 as the president of his local from 1980 until 13 1993. He then became the assistant general 14 chairman of railroad system council 7 located in 15 Philadelphia. He served in various capacities for 16 the system council before being appointed in 2002 17 by IBEW International president Edwin D. Hill to 18 serve as an international representative in the 19 IBEW's railroad department. In 2004 he was 20 appointed to director of personnel for the IBEW 21 and in January 2006 he was appointed to his 22 current position as director of the IBEW's</p>
<p style="text-align: right;">Page 251</p> <p>1 I think our estimate is pretty good on the time of 2 that, though we may run, obviously, a little over 3 five at this point, if that's acceptable. But I 4 think if we get through that piece we'll be in 5 good shape for tomorrow. 6 CHAIRMAN JAFFE: Sounds fine. Off the record for a 7 moment. - At your convenience. Is Ms. Parcelli 8 here? Oh, you're there, that's fine. I'm sorry. 9 BETH ROMA: She got delegated to the back. 10 CHAIRMAN JAFFE: That works. 11 BETH ROMA: Good afternoon, my name is Beth Roma 12 and I am one of the attorneys for the coalition of 13 rail unions. Speaking today in support of the 14 union's proposal to increase outdated vacation 15 benefits and to provide a more equitable prorata 16 system of benefit allocations is William BohnH, a 17 37 year member of the International Brotherhood of 18 Electrical Workers and current director of the 19 IBEW's railroad department. Speaking with Mr. 20 BohnH today is Dennis Pierce, a 31-year member of 21 the International Brotherhood of Engineers and 22 Trainmen and the BLET's current president. I also</p>	<p style="text-align: right;">Page 253</p> <p>1 railroad department where he continues to serve in 2 that capacity today. And with that I'll turn the 3 floor over to Mr. BohnH. 4 CHAIRMAN JAFFE: Good afternoon. If I could ask the 5 court reporter to please swear in Mr. BohnH. 6 WILLIAM BOHN): Thank you, thank you Mr. Chairman. 7 Thank you for that break. I needed that before I 8 got up here. As Beth said, thank you for the 9 eloquent introduction, my name is Bill BohnH and 10 I'm the director of the IBEW railroad department. 11 The IBEW represents approximately 5300 highly 12 skilled and hardworking electricians employed with 13 the nations rail carriers. Our members work on all 14 of the extensive electrical components associated 15 with freight railroads, including but not limited 16 to locomotives and associated electrical 17 components, all other rail machinery, 18 communication and signal equipment in the 19 carriers' facilities and buildings. I would like 20 to thank the board for this opportunity to speak 21 to you today on behalf of the unions and in 22 support of our proposal to make long due changes</p>

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1 to our national vacation agreements. I'm here with
 2 Dennis Pierce as Ms. Roma has already alluded to,
 3 president of the BLET, to speak to you today on
 4 behalf of the more than 90,000 rail employees
 5 represented by the 11 unions in our coalition. And
 6 I must say when my boss asked me what I was going
 7 to testify about, I told him vacations. He said,
 8 well that's appropriate because that's your field
 9 of expertise. But I don't think he was referring
 10 to my knowledge of railroad vacation agreements.
 11 The vacation benefits for these employees are
 12 governed by one of three national agreements
 13 signed decades ago. The first agreement is the
 14 1941 National Vacation Agreement for Non-
 15 operating Employees, which applies to all of the
 16 unions before this board, with the exception of
 17 the ATDA, the train dispatchers union and the
 18 Brotherhood of Locomotive Engineers. The second
 19 agreement is the 1965 Dispatchers National
 20 Vacation Agreement, which applies only to the
 21 ATDA. The third agreement is the 1949 National
 22 Vacation Agreement for Operating Crafts, which

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1 applies to BLET. I will leave the specifics of
 2 that agreement to Dennis Pierce from BLET to
 3 discuss after I am done speaking. With a few minor
 4 exceptions, these agreements provide for
 5 essentially the same amount of vacation benefits.
 6 You know, after what I heard last Thursday and
 7 Friday you would think I have a lot of nerve
 8 standing before you asking for additional vacation
 9 for the employees we represent and maybe I should
 10 be offering to give some vacation back to the
 11 carriers, but don't get your hopes up railroads.
 12 The way the carriers made it sound we are overpaid
 13 and already get too much paid time off. But
 14 nothing could be further from the truth. And
 15 before I address the specifics of the union's
 16 vacation proposals, I would like to briefly
 17 address something the carriers said last week
 18 about the unions' alleged lack of intensive
 19 bargaining over vacation. Contrary to the
 20 carriers' assertions, the unions take their
 21 vacation benefits and our proposed changes to
 22 these benefits very seriously. All of the unions

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1 before the board properly notified the carriers in
 2 our section six notices of these proposed changes.
 3 Moreover, during negotiations we repeatedly
 4 attempted to discuss these proposals with the
 5 carriers, but with little luck as the carriers
 6 freely admitted last week during their
 7 presentation. They unilaterally made the decision
 8 that only their wage and health and welfare
 9 changes would be discussed in bargaining and
 10 adamantly refused to discuss our other proposals
 11 including vacation. And once they reached
 12 agreement with the UTU, they refused to discuss
 13 anything but they are alleging is a pattern and as
 14 you are well aware, the alleged pattern does not
 15 include any additional paid time off. Although
 16 they call it restraint, it was really just a
 17 refusal to negotiate over legitimate subjects of
 18 bargaining. Accordingly, I think it is quite
 19 outrageous for the carriers to now claim that we
 20 have somehow waived our right to submit to this
 21 board the proposals they refused to talk to about
 22 including vacation. Now let me briefly discuss our

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1 vacations proposals. The unions propose two
 2 changes to the national agreements. First, we
 3 propose increasing outdated vacation benefits.
 4 Second, the unions propose doing away with the
 5 harsh all or nothing system that is currently in
 6 place where employees must work a minimum number
 7 of days in the preceding calendar year or lose all
 8 of their vacation for the following year. In its
 9 place, we propose adopting a prorated system of
 10 vacation benefits allotment. Quote, "when you
 11 spend time away from work, you come back refreshed
 12 and with renewed focus." Employees are eligible
 13 for two weeks vacation after one year of service,
 14 three weeks vacation after five years of service,
 15 four weeks vacation after ten years of employment
 16 and five weeks vacation after 20 years of service.
 17 Great vacation benefits right? Yeah, they are.
 18 Well the quote I just used happens to be from the
 19 UP website where they state what benefits are
 20 available to their management employees. The
 21 vacation allowances I just quoted, well they sure
 22 are generous, but they're not for the employees we

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1 represent, they're for the carriers' management
 2 employees on BNSF and UP. These benefits can be
 3 found recited on our union exhibit #43 and Bates
 4 UH64. These benefits are for the people who sit in
 5 the carrier shop offices and the office buildings
 6 across the country, out of the elements, in very
 7 comfortable and safe environments, and make
 8 decisions on how to run the railroads. It's not
 9 that I'm trying to downplay the importance of what
 10 these employees do and their valuable
 11 contributions in making the carrier successful.
 12 Nor do we begrudge them their working
 13 environments. But these are not the vacation
 14 benefits of carrier employees who run the
 15 railroads 24 hours a day, seven days a week, 365
 16 days a year, who work crazy hours, including
 17 holidays, and often in dangerous and extreme
 18 conditions, and who put their lives on the line on
 19 a daily basis, sometimes resulting in injury, and
 20 sometimes, tragically, in death. No, these
 21 employees I just mentioned, our members, we get
 22 the following vacation benefits: One week after

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1 one year, if you are fortunate enough to have the
 2 requisite days during the preceding year, two
 3 weeks after two years, again, if you're lucky
 4 enough to have worked the prerequisite time during
 5 those first two years, three weeks after eight
 6 years, four weeks after 17 years, and finally,
 7 five weeks after 25 years. All contingent upon
 8 working a predetermined amount of time in the
 9 preceding years. Now all that being said, I'd to
 10 address the specifics of our proposal. First I'll
 11 address the increased vacation benefits request.
 12 The unions propose a long overdue increase in
 13 vacation benefits, both by increasing some of the
 14 benefits and lowering the qualifying times for
 15 vacation eligibility. For many employees, the
 16 unions proposed vacation schedule would mean a
 17 one-week increase in vacation benefits. A chart of
 18 our proposed changes can be found on page 75 of
 19 our prehearing submission. As a threshold matter,
 20 vacation benefits should be increased because the
 21 current benefits are woefully outdated. The last
 22 time rail employees covered by the 1941 agreement

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1 had any benefit increase was in 1982, nearly 30
 2 years ago. Other benefit entitlements are even
 3 older. For example, individuals with one year of
 4 service are entitled to only one week of vacation.
 5 When this benefit was established, my father was
 6 in the navy fighting in World War II. It has not
 7 been increased in 70 years. This is not to say
 8 that the mere passage of time alone warrants an
 9 increase. But rather these benefits are outdated
 10 because they are deficient, failing to keep pace
 11 with prevailing trends. According to the
 12 company's websites, UP, CSX, BNSF, and Etnas all
 13 provide more generous vacation benefits to their
 14 management employees than they do to their
 15 unionized employees. Benefits which increase at a
 16 much more accelerated rate than those for our
 17 unionized employees. As for unionized employees,
 18 under the 1941 and 1949 agreements, an employee is
 19 entitled to one week of vacation benefits after
 20 his first year. The national average for a
 21 similarly situated employee, however, is two
 22 weeks. Additionally, an employee with five years

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1 of service is only entitled to two weeks of
 2 vacation on the railroad. While the national
 3 average for an employee with five years of service
 4 is three weeks. As is the case with railroad
 5 management employees. Simply put, while the
 6 carriers' vacation policies for the non-union
 7 employees are more in line with the prevailing
 8 trends in this country, the railroads vacation
 9 benefits for unionized employees are not
 10 consistent with national trends. This gap exists
 11 despite the fact that the railroads are
 12 dramatically outperforming other industries in the
 13 United States, not just economically, but also in
 14 productivity gains. This gap is even more
 15 troubling when you consider the unique nature of
 16 railroad work. I speak from personal experience
 17 when I say that railroad work is difficult and
 18 dangerous. The railroads run 24 hours a day, seven
 19 days a week, 365 days a year operations, working
 20 nights, weekends and holidays. Accordingly, our
 21 members' schedules can be unpredictable with
 22 mandatory overtime, night and weekend work, the

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1 norm. Many employees work on an on-call basis
 2 which means they have to be available for work 24
 3 hours a day. And some day work remotely, spending
 4 many nights away from their homes and families.
 5 Much of the work is physically demanding with many
 6 of our workers expected to do heavy lifting,
 7 climbing, bending, kneeling and sometimes even
 8 crawling. Much of the work is outside, whether
 9 there's subzero temperatures and driving snow or
 10 110 degrees in the full sun, the work must get
 11 done. And even work done inside in the extreme
 12 heat of the summer or the bitter cold of the
 13 winter, is often done under difficult conditions
 14 in facilities lacking air conditioning and sparse
 15 on heat. Of course, all this work must be
 16 performed with the utmost attention to safety at
 17 all times. Under these demanding conditions it is
 18 not surprising that vacation time off is cherished
 19 by rail workers who rely on their vacation to take
 20 much needed breaks from work to rest and catch up
 21 with their families. But what is even more
 22 troubling is that railroad employees are working

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1 harder than ever to make the carriers profitable,
 2 and railway productivity on class 1 railroads has
 3 risen at a dramatic rate, nearly double the
 4 national average annual rate, and I don't have to
 5 tell you what railroad profits have done. Despite
 6 this performance, vacation benefits have remained
 7 stagnant for 30 years. While our economist, Tom
 8 Roth, has covered the details, the bottom line is
 9 that while railroad workers are significantly
 10 outperforming their counterparts, in other
 11 industries vacation benefits are seriously
 12 lacking. At the same time, these highly profitable
 13 carriers can well afford to provide their
 14 hardworking employees with long overdue
 15 improvements on vacation benefits. The unions'
 16 proposal will bring the railroads' vacation
 17 benefits more in line not just with national
 18 trends, but also in line with what is going on on
 19 all the railroads in this country. As two
 20 examples, I cite Metro North Railroad in New York
 21 and the Port Authority Railroad of New York and
 22 New Jersey, two railroads that afford my members

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1 significantly higher wages along with richer
 2 vacation benefits in line with national trends.
 3 And our proposal also continued to recognize and
 4 reward the most senior employees who have provided
 5 many years of valuable service to the carriers. To
 6 be sure, as the carriers point out, vacation is
 7 not the only form of paid leave, but the purpose
 8 of other types of leave is quite different. Now,
 9 don't let the carriers' exhibits in this area fool
 10 you for what they have provided you as to the
 11 holidays we get is, to say the least, quite
 12 misleading. And I'm referring to Carriers'
 13 Submission 6, page 41, or Bates C-796. Agreement
 14 employees are entitled to 11 paid holidays per
 15 year, such as Thanksgiving and Christmas, which is
 16 consistent with national averages and what the
 17 carriers provide to their management employees. As
 18 to personal leave days, agreement employees are
 19 entitled to one or two per year, depending on
 20 length of service. These personal leave days were
 21 established to provide employees some flexibility
 22 to attend to such matters as doctors' appointments

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1 or parent-teacher conferences. Now back to the
 2 holidays for a minute. These holidays aren't
 3 necessarily paid time off from work, as the
 4 carriers would like you - would like you to
 5 believe. As stated earlier, these railroads
 6 operate 24 hours a day, 7 days a week, 365 days a
 7 year and on holidays, and who the hell do they
 8 think are running these railroads on these
 9 holidays? Our agreement employees, our members;
 10 that's who's running the railroads on the
 11 holidays. So while they would like you to believe
 12 that in addition to a vacation time off, the
 13 employees we represent also get holidays off, when
 14 nothing could be further from the truth, as many
 15 employees, most likely a majority, are required to
 16 work on the holidays. Two more points in this vein
 17 and I'll move on. It is important to keep in mind
 18 that vacation days for our members are allotted
 19 differently than vacation days in most other
 20 industries. Generally speaking, vacation must be
 21 taken in a minimum of one-week blocks with a
 22 vacation scheduled determined well in advanced

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1 based on a complicated bidding system, and usually
 2 they start in September or October to ask you what
 3 vacation you want next year. Furthermore, vacation
 4 time off is granted consist with the railroad's
 5 requirements of service. In other words, if their
 6 business needs dictate that they cannot release an
 7 employee from work during a requested time period,
 8 then the vacation is not granted. They decide you
 9 can't - they can't lay you off, you ain't getting
 10 that vacation. And some railroad facilities even
 11 shut down during certain times of the year,
 12 forcing employees to choose between using their
 13 vacation time during the shutdowns or taking
 14 unpaid leave, something our members generally
 15 cannot afford to do. And last but not least, I
 16 will address vacation as it relates to our members
 17 becoming ill. As opposed to a benefit afforded
 18 management employees, most of the employees in our
 19 coalition get no paid sick days. As such, when
 20 sick, our members have to take the few single day
 21 vacation days they're provided so that they do not
 22 lose pay, pay most important to our members that

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1 our members cannot afford to lose. Now from a
 2 personal perspective; I'm 59 years old, quite a
 3 bit older probably than most of the people in this
 4 room. I worked on the railroad for only 20 years,
 5 and I say "only" because most of the members we
 6 represent have worked quite a bit more than that.
 7 This work took a toll on my body, working with
 8 miserable conditions inside and out, walking,
 9 crawling, and laying on concrete or dirt and
 10 ballast all day, climbing up and down equipment,
 11 kneeling, bending, lifting, banging, using
 12 screwdrivers and wrenches, and even a couple of
 13 times getting shocked. It took a toll on me to the
 14 point that I don't even know if I could go back
 15 there today and do the work that many railroad
 16 workers my age are presently doing. Vacation time
 17 is valuable to them, and they need improvements
 18 both for their mental and physical rest and
 19 restoration. In view of the foregoing, this Board
 20 should adopt the union's vacation schedule. Now
 21 I'll talk about pro rata vacation, or prorated,
 22 qualifying times. The unions' second vacation

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1 proposal is to do away with the current arbitrary
 2 all-or-nothing system, where all employees,
 3 depending on their length of service, must work
 4 five months or more in the preceding calendar year
 5 in order to earn any vacation for the following
 6 year. Under the agreements for non-operating
 7 employees and ATDA, employees must work 120 days,
 8 about six months, to qualify for a vacation. Over
 9 the years, this requirement is eventually reduced
 10 to 100 days or about five months. If an employee
 11 has failed to work these minimum amounts before
 12 December 31st of a given year, he or she is not
 13 entitled to take any vacation the following year.
 14 This applies no matter how long the employee's
 15 length of service, or even if he or she falls
 16 short of his requirements by only one day. The
 17 result of this arbitrary rule is that employees
 18 are denied their rightfully earned vacation. One
 19 example of the unfairness of this rule is seen in
 20 the case of a new employee hired midyear or later.
 21 For example, the employer hires a shop craft
 22 employee in late June and only works 119 days

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1 before the end of the year. Under the current
 2 agreement, this employee is not entitled to take
 3 any vacation the following calendar year. The
 4 earliest he would be eligible for vacation would
 5 be the start of the year after that, a full year
 6 and a half after he was hired or the beginning of
 7 his third year of employment. Other employees who
 8 are also potentially hurt by this arbitrary all-
 9 or-nothing rule include furloughed employees,
 10 employees who are out on extended sick leave, or
 11 employees who retire prior to the end of the year
 12 and thus lose all their vacation earned during the
 13 previous year. The unions' proposal to adopt the
 14 prorated system remedies this problem. To be
 15 clear, we're not asking that employees earn
 16 vacation time for time not worked, not at all. To
 17 the contrary, the unions are proposing that
 18 vacation benefits be directly tied to the amount
 19 of time worked. If an employee works 90 percent of
 20 the required qualifying time, that employee should
 21 be entitled to 90 percent of the vacation benefits
 22 the following year. Prorating benefits is a fair

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1 remedy - remedy to an unfair rule. Indeed, Union
 2 Pacific provides a prorated system of vacation
 3 benefits through their new nonunion employees
 4 based on the number of months remaining after the
 5 employee is hired. And according to CSX web site,
 6 their nonunion employees are eligible for vacation
 7 as of their date of hire. Let me finish up by
 8 offering you this one last example of unfairness
 9 to consider. A dedicated railroad employee with 45
 10 years of service and an unblemished record
 11 unfortunately is involved in an automobile
 12 accident and sustains serious injuries. The
 13 accident happens to occur on April 2nd, well
 14 before he obtains his 100 qualifying days for a
 15 vacation for the following year. Due to the
 16 serious of his injuries, the employee is not able
 17 to work, is not able to return to work until
 18 January 1st of the following year. In accordance
 19 with the current rules in effect, this employee
 20 would not be entitled to any vacation in the year
 21 in which he returns to work following his
 22 accident. So this dedicated 35-year employee,

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1 somewhere between his mid-50s and mid-60s, an
 2 employee who will undoubtedly spend his remaining
 3 working years dedicating his body and soul to the
 4 railroad he has known to - he has come to know and
 5 love over the past 35 years, he has to go an
 6 entire 365 days after returning to work before
 7 being entitled to any vacation. Can this be
 8 considered fair? Is this any way to treat an
 9 employee? We say not. In the interest of fairness,
 10 we hope you agree. Accordingly, the carriers
 11 cannot claim that this prorated system is not a
 12 fair request. In conclusion, I offer the
 13 following: Railroad employees are working harder
 14 than ever to make the carriers profitable; yet,
 15 their vacation benefits are outdated and lagging
 16 behind the benefits of carriers' managing
 17 employees and national averages. We strongly
 18 believe that our proposal is fair and appropriate
 19 under the circumstances, especially in light of
 20 the economic health of the industry and the
 21 contributions of our workforce. Our workers
 22 deserve these periodic breaks from work to rest

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1 and spend more time with their families so that
 2 they can come back to work refreshed and ready to
 3 make the carriers even more profitable. Remember
 4 this quote from the UP web site: When you spend
 5 time away from work, you come back refreshed and
 6 with renewed focus. This applies to us just as
 7 much - and our members - just as much as it
 8 applies to them, although we need it more and we
 9 deserve no less. This concludes my remarks. Thank
 10 you for your time and indulge. I'll be happy to
 11 answer any questions if you have any, and I'm
 12 ready for a week's vacation.
 13 CHAIRMAN JAFFE: We're in good shape. Thank you,
 14 Mr. BohnI. MICHAEL S. WOLLY, ESQ.: Mr. Chairman,
 15 members of the Board, my name is Michael Wolly.
 16 I'm the General Counsel of the Brotherhood of
 17 Locomotive Engineers and Trainmen. The reporter
 18 asked me if I want to be sworn; if that's
 19 necessary, I will, but I'm not going to tell you
 20 any lies. It's my privilege today to introduce you
 21 to BLET's National Division President and the
 22 President of the Teamster's Rail Conference.

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1 Dennis Pierce has been actively engaged as a
 2 carrier employee and union officer for 34 years.
 3 In his remarks he will describe for you operating
 4 craft vacations and his particular unique
 5 perspective on that as having been employed in
 6 four crafts over that period. Dennis's union
 7 service began when he was a locomotive engineer at
 8 Burlington Northern Railroad and was elected to be
 9 only a Local Chairman in 1991. He moved up to
 10 full-time Vice-General Chairman in 1995 and
 11 General Chairman in 2001. Dennis was elected a
 12 BLET National Division Vice President in 2008 and
 13 become National President in 2010. BLET National
 14 President, Dennis Pierce.
 15 CHAIRMAN JAFFE: Good afternoon. If I could ask the
 16 reporter to please swear in Mr. Pierce.
 17 COURT REPORTER: Raise your right hand, sir. Do you
 18 swear the testimony you're about to give in this
 19 case is the truth, the whole truth, and nothing
 20 but the truth under penalty of law?
 21 DENNIS R. PIERCE: I do.
 22 COURT REPORTER: Thank you.

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1 DENNIS R. PIERCE: Good afternoon, Mr. Chairman,
 2 Board members. I know that I'm the last person to
 3 speak today and I learned a long time ago that
 4 having that dubious honor means you really don't
 5 want to be the guy responsible for keeping people
 6 from their evening functions, so I'm going to try
 7 to be brief. As I understand it, you have my
 8 written remarks. If I leave anything out, please
 9 refer to them. I'll try to move through it and get
 10 to the pertinent pieces as quickly as I can. As
 11 Mike Wolly said, my name is Dennis Pierce. I am
 12 the National President of the BLET. I'm also the
 13 President of the Teamsters' Rail Conference, and
 14 that conference has two organizations represented
 15 here this week: The BMWED and BLET. The BLET
 16 represents approximately 36,000 highly-skilled
 17 locomotive engineers and trainmen employed on the
 18 nation's class 1 railroads. This is a bit of a
 19 unique PEB in that there is a combination of
 20 operating and non-operating employees present;
 21 that has not happened at the national level, as I
 22 understand it, since PEB 219. For that reason, we

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1 thought it was important that you understand some
 2 of the differences between the non-op, as we call
 3 it, vacation rules, and how vacations are
 4 accumulated and the operating rules. Today I'll
 5 try to explain the application of those operating
 6 craft vacation rules. Before I do that, I want to
 7 give you a little bit of why I think I have a
 8 unique perspective on this. I started my railroad
 9 career, as Mr. Wolly said, in 1977 as a
 10 maintenance of way employee and was a member of
 11 the BMWED. Two years later, I transferred and
 12 became a material clerk under the old union BRAC;
 13 that's a predecessor union to the TCU. About a
 14 year and a half later I transferred again. These
 15 were the late '70s, early '80s, when trying to
 16 remain employed full time was my priority. I
 17 transferred to the Operating Department in 1980 as
 18 a locomotive fireman and promoted to an engineer
 19 in 1981, joining the BLE then. I think that the
 20 biggest take-away from that, in the first 36
 21 months that I was employed, I was furloughed for
 22 18 months. And the first eight years that I worked

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1 as a locomotive engineer, I didn't spend more than
 2 three months working at the location where my
 3 family lived because of the railroad's ability to
 4 right-size their operation, as we've discussed
 5 some here this week. And with - and because of the
 6 economy and layoffs and forced assignments, I got
 7 to travel a very large swath of Burlington
 8 Northern. The railroads would have you believe
 9 that the employees do not experience the downside
 10 of railroading, and I'm here to tell you that they
 11 do. The lifestyle of a railroad employee is a
 12 unique lifestyle. It is one that many people do
 13 not understand, nor have they had the opportunity
 14 to experience what it's like to go through what
 15 railroad employees go through. Having worked in
 16 both the non-operating crafts and the operating
 17 craft, the differences are significant when you go
 18 to the operating side. To this day, my extended
 19 family does not really understand why I miss so
 20 many birthdays, holidays, and was unable to even
 21 schedule a doctor's appointment with an unassigned
 22 job like I had with any assurance that I would

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1 actually be there to make it. I don't share that
 2 with you to complain; I share that with you to
 3 explain. That is one of the reasons why vacation
 4 time is as near and dear to railroad employees as
 5 it is. It is the only opportunity that railroad
 6 employees have to step away from their careers, as
 7 Director BohnI said, to come back recharged. But
 8 it's the only opportunity that they have to
 9 actually get the time with their families that
 10 they so sorely need. As Director BohnI explained,
 11 the national agreements got their genesis in the
 12 1940s. The National Operating Craft Agreement was
 13 implemented in 1949. And what I'd like to do is
 14 address in detail our craft-specific presentation
 15 exactly - tomorrow I'll - let me start over there
 16 - tomorrow I'll address in more detail which
 17 carriers we're here to bargain for; I think that's
 18 an important piece for the Board to understand,
 19 especially in light of some of the comments that
 20 were made last week. Today what I'll stick to is
 21 just how the national agreements for operating
 22 craft employees apply, how they've been modified,

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1 and how things stand today. Incremental
 2 modifications have been made to the 49 BLET
 3 national agreement over the years, and as a result
 4 of these modifications, vacation in the operating
 5 crafts is accumulated as shown on the slide.
 6 Although you'll note that the years of service
 7 shown on the slide are the same as a non-
 8 operating crafts, that is where the similarities
 9 end. As Director BohnI said, non-operating craft
 10 employees have to work 100 days in a calendar year
 11 to earn their vacation in a following years.
 12 Engineers and trainmen in an operating service are
 13 required to work 225 basic days in yard service
 14 and 270 basic days in road service. It's important
 15 to understand that it's hard to correlate those
 16 days between the crafts, and that's one of the
 17 things that I had hoped to explain today. There
 18 are two bases of pay for operating employees as a
 19 general rule: Yard service and road service. The
 20 vast majority of our employees are in unscheduled
 21 and unassigned road service and their pay is very
 22 unique. Just to briefly explain how that works,

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1 road assignment employees, as a general rule, the
 2 largest population of them are assigned a rotating
 3 list that work on a first in-first out basis. They
 4 get two hours' notice as a general rule of when
 5 they're going to go to work. There are line-ups
 6 they can refer to approaching that, that they're
 7 often unpredictable, unreliable. And operating
 8 craft employees have to be ready to go to work at
 9 two hours' notice and then be gone anywhere from
 10 24 hours to 48 hours before they return home. In
 11 some cases, operating employees work - are gone
 12 from home more hours in a round trip than the
 13 average American works in their average work week.
 14 And I think that is noteworthy as to the
 15 experience operating employees go through. The pay
 16 structure is also very different. Yard employees
 17 are probably the closest to the non-operating
 18 crafts when it comes to their pay structure.
 19 However, engineers and yard service are still paid
 20 on a mileage basis. That mileage basis is
 21 converted to days and is part of how the
 22 accumulation begins to count days towards

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1 vacation. The written brief here will spell out a
 2 little bit more detail how those are accumulated;
 3 I won't get into those details. I will move to
 4 road service, which is the most complicated. Road
 5 service employees are paid exclusively on a
 6 mileage basis. There is no 40-hour work week.
 7 There is no comparable amount of hours worked when
 8 it comes to accumulating vacation; rather, the
 9 mileage of the run that they make has to be
 10 calculated into - into days and converted into the
 11 prerequisite number of days required to earn a
 12 vacation. What I'd like to do is put up the next
 13 slide. It shows how this even gets more
 14 complicated. Changes in the operation over the
 15 last fifty or sixty years. Things like the change
 16 from the seven-day workweek and yard service to a
 17 five-day operation. Differences in pay between the
 18 basic day mileage and road service and the over
 19 miles. The parties have agreed to multipliers that
 20 have to be applied to the days once they're
 21 accumulated based on the mileage structure. Again,
 22 in yard service, a 100 miles is one day, in road

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1 service, through freight road service, 130 miles
 2 is one day. Those days are then multiplied to come
 3 up with the number that you need to be able to
 4 have earned your vacation. The take-away from this
 5 chart is that in yard service, you can be expected
 6 to work almost six and a half months to earn a
 7 vacation in a calendar year. The worst-case
 8 scenario in road service: an employee would have
 9 to work over nine months to earn a vacation in the
 10 following calendar year. As Director BohnH said,
 11 the railroads have suggested that the other forms
 12 of paid leave that we have should more than
 13 suffice our needs for personal time. We beg to
 14 differ in that regard as well. The board needs to
 15 understand that prior to 1996, the only form of
 16 paid leave that operating craft employees had over
 17 and above their vacation, was the holiday pay. I
 18 won't go into the details of the holiday pay
 19 agreement because I think Director BohnH has
 20 covered those sufficiently, but I do want to make
 21 sure that everyone understands that we concur with
 22 his assessment. The railroad unilaterally decides

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1 which jobs work holidays and which jobs do not.
 2 That is not up to the employees. So in most cases,
 3 the ability to take paid leave, which we're here
 4 to talk about, is severely limited when it comes
 5 to the application of holiday pay. In 1996, for
 6 the first time road service employees, who as a
 7 general rule have never qualified for holiday,
 8 were given personal leave days. We obtained those
 9 through the 1996 National Negotiation. But these
 10 personal leave days are not in addition to holiday
 11 pay. They are in lieu of holiday pay. So road
 12 crews only get those days when they're in road
 13 service. The yard employees get the holidays.
 14 There is no combination of the two in the
 15 aggregate. The slide that's up now shows how those
 16 have to be earned. The take-away on this is that
 17 no employee gets the full compliment of eleven
 18 until they have 20 years of service. Beginning
 19 employees start at three and work through the
 20 progression to even get to the point that they
 21 have access to the eleven personal leave days.
 22 Perhaps the part of this that I think limits the

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1 benefit of the personal leave days in our
 2 perception, they've not proven to provide the paid
 3 time off that the employees seek and here's why:
 4 personal leave days are not demand days off.
 5 Employees do not have the right to choose and pick
 6 when they will they take those days off because
 7 they cannot demand them. Rather they are only
 8 allowed to be taken when approved by the carrier
 9 and that's on a day-by-day basis. These requests
 10 are routinely denied for any number of reasons,
 11 the end result being much like holiday pay in that
 12 the employees do not have the right to have access
 13 to paid leave when they need it. They get paid
 14 leave if and when the carrier decides to give it
 15 to them. That, we think, is one of the
 16 shortcomings in the argument that we have
 17 sufficient paid leave and I think it's important
 18 for the board to understand how that applies in
 19 the operating department. In the end, and I'll
 20 repeat it again, the only true paid leave that
 21 employees can count on in the operating crafts, is
 22 generally their vacation time. There's one other

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1 piece that has changed since the last vacation
 2 changes were made by agreement, which was 1996.
 3 Starting in 1999, the class I carriers started an
 4 aggressive push to require operating employees to
 5 work more, limiting almost all access to their
 6 forms of unpaid leave. They have unilaterally
 7 implemented what are called attendance policies,
 8 absenteeism policies, availability guidelines, the
 9 names go on and on. And these programs have
 10 dramatically limited the operating crafts access
 11 to time off for personal needs. I'm not really
 12 here to pick on one railroad out of the bunch, but
 13 I will discuss briefly the latest version of the
 14 attendance policy on CSX. Under that policy if an
 15 operating employee takes more than one unpaid day
 16 off in a month, these are employees with no
 17 scheduled rest days in many cases, the rotating
 18 schedule that I described earlier, if they take
 19 more than one unpaid day off per month, they are
 20 subjected to discipline. I don't know that there
 21 are many people in America that are confronted
 22 with a situation like this when it comes to how

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1 you're supposed to handle your personal needs.
 2 We've actually had in one case, a divorced member
 3 disciplined for excessive absenteeism for taking
 4 court ordered visitation with his children because
 5 he exceeded the one-day rule. Ironically there are
 6 only two acceptable ways for an employee to avoid
 7 discipline under this policy. One is to take paid
 8 leave and that's why we're here talking about paid
 9 leave. The other is in the case of illness and
 10 it's a bit of a unique exception. The CSX, much
 11 like other class I carriers reserve the right to
 12 charge employees for taking unpaid leave when
 13 they're ill and CSX has given an exception that
 14 we're still, I guess, on the property arguing
 15 about. That's on the screen now as well. The only
 16 way a locomotive engineer can take time off when
 17 he's ill, in an unpaid fashion, is if he's visited
 18 an emergency room. We've tried to get this
 19 understanding relaxed to include some of the
 20 things the carrier shared with you last week. Bill
 21 Hildebrand [ph] will touch a little bit more on
 22 this tomorrow. Urgent care doesn't cut it, your

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1 M.D. doesn't cut it, your dentist doesn't cut it.
 2 You have to go to an emergency room in order to
 3 avoid discipline if you are ill. Again, all of
 4 these things drive us back to the same common
 5 purpose, is that paid leave has become a precious
 6 commodity. For these reasons as well as those
 7 presented by Director BohnH, we ask that this
 8 board recommend adoption of the union's vacation
 9 benefits schedule. I would also like to comment on
 10 the organization's request for pro-rated
 11 vacations, just briefly. As I said before, the
 12 carrier would have you believe that labor never
 13 shares in the downside of railroading and we think
 14 the exact opposite is true. The operating crafts
 15 are usually the first to feel that impact.
 16 Contrary to the carriers' argument that rates of
 17 pay drive hiring practices, in the operating
 18 crafts it's train starts. Train starts drive
 19 hiring, they drive retention and they drive
 20 furloughs. And while our crafts are not the only
 21 crafts they experience furloughs, we are generally
 22 the first crafts that experience furloughs. When

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1 the trains don't run, the crews don't go to work.
 2 There's a direct correlation there. We saw this
 3 firsthand in the great recession that the carriers
 4 spoke of last week. Employees who had earned
 5 vacations for years, lost their vacations due to
 6 be furloughed before they had earned the
 7 prerequisite number of days. Remember that
 8 threshold is as high as nine months for road
 9 employees. The provision in place today that
 10 deprives an employee who has worked almost three
 11 quarters of a qualifying year of any vacation in
 12 the following year, is not only dated, we think it
 13 is horribly punitive in nature. And before I
 14 close, there is just one last thing that I think I
 15 need to touch on before the carriers bring it up
 16 and use as an excuse to try to talk you out of
 17 this. And that is the ebb and flow relationship
 18 between BLET and UTU. We heard some of that last
 19 week when it came to how the two agreements
 20 interact. We're here to make sure that you
 21 understand that there is absolutely no impediment
 22 to BLET represented operating crafts and UTU

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1 represented operating crafts having differing
 2 vacation benefits. This is already the case on two
 3 of the class I's present here. The engineers on
 4 the CSX railroad have a sixth week of vacation,
 5 the engineers on the BNSF have a sixth week of
 6 vacation, the ground service employees do not.
 7 These agreements do interact and they interact
 8 without any complication, so there is no reason to
 9 think that would be any sort of an impediment to
 10 implementing the improvements that the coalitions
 11 have requested. For these reasons as well as those
 12 presented by Director BohnH, we ask that this
 13 board recommend adoption of the union's proposal
 14 for pro-rated vacations. Again I'd like to thank
 15 the board for this opportunity to speak. I'm sorry
 16 for keeping you here this late in the day, but
 17 hopefully we'll wrap this up in short order. I'm
 18 available for any questions that you might have.
 19 CHAIRMAN JAFFE: I think we're in good shape as
 20 well, at least for the moment, but thank you very
 21 much Mr. Pierce.
 22 MR. PIERCE: Thank you.

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1 FEMALE SPEAKER: We do thank the board for staying
 2 a little longer so we at least got through the
 3 vacation piece today. Hopefully we will move in a
 4 spritely fashion tomorrow with health and welfare
 5 still first up. We'll slot supplemental sick and
 6 the information requests in after that. I think
 7 that makes the most sense and I won't delay
 8 anything in further tonight, so thank you again.
 9 See you tomorrow.
 10 CHAIRMAN JAFFE: We'll stand in adjournment then
 11 until 9 o'clock tomorrow morning. Thank you all
 12 very much.
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