Mooney, Green, Saindon, Murphy & Welch, P.C.

INTERNET: www.mooneygreen.com

SUITE 400
1920 L STREET, N.W.
WASHINGTON, DC 20036

TELEPHONE (202) 783-0010
FACSIMILE (202) 783-6088

February 23, 2022

Gerald Fauth, III, Chairman
Linda Puchala, Member
Deirdre Hamilton, Member
National Mediation Board
1301 K Street, NW, Suite 250 East
Washington, DC 20005-7011

Dear Chairman Fauth and Members Puchala and Hamilton:

I am writing as counsel for the Brotherhood of Maintenance of Way Employes Division/IBT and International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division, and as chief spokesperson for the two unions in their bargaining and mediation with the National Carriers Conference Committee. BMWED and SMART MD submit that negotiations between these unions and the carriers represented by NCCC are at impasse and that further mediation is not likely to result in agreement.

Among other things, the unions note that they made a comprehensive settlement proposal to the NCCC in June of 2021, and the NCCC has never responded with a comprehensive proposal of its own. NCCC has not even made a wage proposal to BMWED and SMART MD; NCCC has refused to even offer a proposal on compensation despite surging inflation and the lack of a pay increase for employees of the carriers for over two years. However, the carriers have made proposals for changes in the National Health and Welfare plan that would constitute employee concessions, after concessions on health and welfare benefits were made in the three prior rounds of bargaining. The current proposed concessions would be much more significant than the concessions in prior rounds; and the changes sought would substantially diminish any increase in compensation. Furthermore, the proposal is unjustifiable because health and welfare benefits are a small component of carrier costs; and, contrary to the contentions of the NCCC, the National Health and Welfare Plan is not out of the so-called "mainstream"; it is consistent with plans of other private sector unionized employers. In addition to those facts, and information known to the Board because of its role in mediation between these parties, the unions support their contention that the parties are at impasse with a summary of the state of the parties' negotiations prepared by NCCC, and the unions' response to that summary, that were exchanged by the parties in December of 2021. Copies of those documents are attached to this letter; they objectively demonstrate how far apart the parties were at that time. The next mediation session on January 28, 2022 produced no movement and offered no basis for concluding that continuing mediation would facilitate an agreement.

As further context for the Board to consider, the unions provide the following information regarding rail industry economics and rail worker compensation over the last several bargaining cycles, and since the last national agreement.

Between 2004 and 2020 (the period covering the last 3 bargaining cycles and following completion of the big rail mergers), profits for the Class I railroads have increased by 536%. Rail productivity has increased 28% since 2004; and profit per employee has increased by 736%. Between 2004 and 2020, stock prices for the three publicly traded Class I's have increased 1046%; shareholder return on investment has increased 1374%. In that same period, wages have increased only 56% (14% adjusted for inflation), and total labor costs have increased just 9% over the 16 years. Since 2007 the publicly traded carriers have spent over $72 billion for stock buy-backs.

Since the start of the pandemic, profits have increased while wages have been stagnant; and thousands of employees have been furloughed. Comparing the first nine months of 2021 to the first nine months of 2019, railroad operating income increased 7.8%, profits were up 4.8%, share prices for the publicly traded Class I's were up 29.8%. Since 2019, Class I employment is down nearly 20%, while carloadings are down only about 3% (80% of the pre-pandemic work force is responsible for moving 97% of pre-pandemic carloads); operating revenue is down by 2.7% but operating expenses are down by 9% and profits are up 7.7%. Rail worker wages have not increased since July 1, 2019, while the cost-of-living has increased 9.7% since then. The Class I railroads' profit margins hit record highs in 2020. The carriers' position in the current round of bargaining obdurately disregards these facts; as a result, the parties are at impasse.

BMWED and SMART MD therefore respectfully request that the Board determine that its "efforts to bring about an amicable settlement" of the current dispute between the two unions and the NCCC have been "unsuccessful" within the meaning of Section 5 First of the Railway Labor Act; and that the Board proffer arbitration of the parties' dispute under Section 5 First (thereby releasing the parties from mediation).

Respectfully,

/s/ Richard S. Edelman
Richard S. Edelman

cc: John Livingood, Senior Mediator
Patricia Sims, Director, Office of Mediation Services

Brendan Branon (NCCC)