

CONFIDENTIAL

BEFORE PRESIDENTIAL EMERGENCY BOARD NO. 250

ARBITRATION HEARING IN THE MATTER OF:

AMERICAN TRAIN DISPATCHERS ASSOCIATION; BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN/IBT; BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION/IBT; BROTHERHOOD OF RAILROAD SIGNALMEN; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS MECHANICAL DEPARTMENT; INTERNATIONAL BROTHERHOOD OF BOILERMAKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; NATIONAL CONFERENCE OF FIREMEN & OILERS, LOCAL 32BJ/SEIU; TRANSPORTATION COMMUNICATIONS UNION/IAM; BROTHERHOOD OF RAILWAY CARMEN DIVISION, TCU/IAM; AND TRANSPORT WORKERS UNION OF AMERICA

NMB Case Nos. A-13998 (ATDA), A-13999 (BLET), A-13986 (BMWED), A-14000 (BRS), A-14001 (IAM), A-14005 (SMART-TD), A-13985 (SMART-MD), A-14002 (IBB), A-14003 (IBEW), A-14004 (NCFO), A-14006 (TCU/IAM-Clerical), A-14007 (TCU/IAM-Carmen), and A-14008 (TWU)

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Reported by Misty Klapper, RMR, CRR

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<p>PRESIDENTIAL EMERGENCY BOARD MEMBERS: CHAIRMAN IRA F. JAFFE BOARD MEMBER BARBARA C. DEINHARDT BOARD MEMBER DAVID P. TWOMEY COUNSEL ON BEHALF OF NATIONAL CARRIERS CONFERENCE COMMITTEE (NCCC):</p> <p>DONALD J. MUNRO, ESQUIRE JONES DAY 51 Louisiana Avenue, N.W. Washington, D.C. 20001-2113 (202) 879-3939</p> <p>COUNSEL ON BEHALF OF ALL OF THE UNIONS BEFORE THE BOARD: ELIZABETH A. ROMA, ESQUIRE GUERRIERI, BARTOS & ROMA, P.C. 1900 M Street, N.W., Suite 700 Washington, D.C. 20036 (202) 624-7420</p> <p>COUNSEL ON BEHALF OF BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN:</p> <p>JOSHUA McINERNEY, ESQUIRE WENTZ, McINERNEY, PEIFER & PETROFF, LLC 3311 Bear Pointe Circle Powell, Ohio 43065 (614) 756-5566</p> <p>COUNSEL ON BEHALF OF SMART TRANSPORTATION DIVISION:</p> <p>ERIKA DIEHL-GIBBONS, ESQUIRE ASSOCIATE GENERAL COUNSEL SMART TRANSPORTATION DIVISION UNITED TRANSPORTATION UNION 24950 Country Club Boulevard, Suite 340 North Olmstead, Ohio 44070 (216) 228-9400</p>	<p>TABLE OF CONTENTS</p> <p>PAGE:</p> <p>Opening statement on behalf of Carriers 10</p> <p>Opening statement on behalf of Unions 57</p>
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<p>CONFIDENTIAL PROCEEDINGS</p> <p>CHAIRPERSON JAFFE: On the record, please.</p> <p>Good afternoon, everyone. This is a hearing before Presidential Emergency Board 250, which was created effective Monday, July 18th 2022, by Executive Order issued by President Joseph Biden.</p> <p>My name is Ira Jaffe. I was appointed to serve as chair of the board. I'd like to introduce the other members of the board appointed in this matter by the President.</p> <p>Seated to my right is Barbara Deinhardt and to my left is Professor David Twomey. Both are seasoned professionals with decades each of neutral experience and expertise. I look forward to working with them and all three of us are looking forward to working with the parties in an effort to find an appropriate resolution of the matters in</p>	<p>1 dispute.</p> <p>2 At the table to my left are John</p> <p>3 Gross and Eileen Hennessey as counsel for</p> <p>4 the NMB and serving as special counsel to</p> <p>5 the Board. Before asking counsel to</p> <p>6 introduce themselves for the record, a few</p> <p>7 preliminary items should be noted.</p> <p>8 First, these hearings are not</p> <p>9 public. Attendance is limited to those</p> <p>10 invited by the parties. Accordingly, I</p> <p>11 must ask any individuals not invited by</p> <p>12 the parties to attend, including any</p> <p>13 members of the public or the press that</p> <p>14 may be present, to please stand and leave</p> <p>15 at this time.</p> <p>16 Second, the only authorized</p> <p>17 recording of the proceedings is that being</p> <p>18 made by the court reporter. All other</p> <p>19 recordings are prohibited.</p> <p>20 Third, all cell phones, PDAs or</p> <p>21 similar devices should be turned off or in</p> <p>22 airplane or silent mode.</p>

<p style="text-align: right;">Page 6</p> <p>1 And we ask that attendees refrain 2 from texting or mailing in the hearing 3 room while we're in session. 4 We've also implemented a number of 5 protocols as a result of COVID. We take 6 everyone's safety seriously and do not 7 want to be another superspreader event. 8 Everyone is to remain masked while in the 9 hearing room, with the exception of 10 counsel while they're speaking and any 11 witness while they're testifying. 12 We have masks available for anyone 13 who may need one. We've arranged to have 14 the seating arranged to provide greater 15 than usual distancing and ask that 16 appropriate social distancing be 17 maintained while in the room. 18 We've arranged for water today and 19 water and coffee throughout the rest of 20 the week outside the room itself. But we 21 ask that no eating or drinking take place 22 in the room so that we can maintain</p>	<p style="text-align: right;">Page 7</p> <p>1 masking protocols. 2 We have an ambitious schedule for 3 the week, and that's the reason we agreed 4 to begin on Sunday afternoon. We thank 5 everyone for their flexibility in agreeing 6 to a schedule that will afford ample 7 opportunity for all parties to make their 8 appropriate cases in the available hearing 9 time. 10 The parties have provided to the 11 board, both electronically and paper, a 12 vast array of materials, including 13 submissions, exhibits, reports, appendices 14 and other background and support 15 information. For the benefit of the court 16 reporter, all of the items offered are 17 accepted as part of the record and we will 18 provide you, if you haven't been provided 19 already, with both electronic copies and 20 an appropriate list. 21 Similarly, anything new that may be 22 offered by the parties is automatically</p>
<p style="text-align: right;">Page 8</p> <p>1 admitted conditionally, subject to any 2 objection that may be sustained. Although 3 frankly, given the nature of the process, 4 we don't anticipate any objections. 5 By prior arrangement, opening 6 statements will be made today with the 7 Carriers proceeding first. Tomorrow at 8 8:00 a.m. we will reconvene and begin with 9 the Carriers' case. By midday on Tuesday, 10 we'll begin the Organizations' case, which 11 should be concluded by the end of 12 Wednesday's proceedings. On Thursday 13 we'll hear the parties' respective 14 rebuttal cases, followed by closing 15 arguments. 16 Counsel, would you please identify 17 yourselves and indicate who you represent 18 in the proceedings. 19 MR. MUNRO: I will not use the 20 microphone to do that, Mr. Chairman. 21 CHAIRPERSON JAFFE: That's fine, 22 Mr. Munro.</p>	<p style="text-align: right;">Page 9</p> <p>1 MR. MUNRO: My name is Don Munro. 2 I'm lead counsel for the National Carriers 3 Conference Committee. I am assisted today 4 by my partners, David Birnbaum and Brian 5 Easley, and I'll also recognize the 6 chairman of the NLRC, Brendan Branon and 7 the vice chair, Jeff Rodgers. 8 Thank you. 9 CHAIRPERSON JAFFE: Ms. Roma? 10 MS. ROMA: Elizabeth Roma with the 11 law firm of Guerrieri, Bartos & Roma here 12 in Washington, D.C. and with me to my 13 immediate left is Rich Edelman -- 14 CHAIRPERSON JAFFE: Does your mic 15 have a switch too? It may do what 16 happened to Mr. Munro, so I guess I can't 17 vouch for it. 18 MS. ROMA: Elizabeth Roma with the 19 law firm of Guerrieri, Bartos & Roma here 20 in Washington, D.C. 21 MR. EDELMAN: Rich Edelman with 22 Mooney, Green, Saindon, Murphy & Welch.</p>

<p style="text-align: right;">Page 10</p> <p>1 MS. DIEHL-GIBBONS: Erika 2 Diehl-Gibbons with SMART Transportation 3 Division. 4 MR. MCKINLEY: Shawn McKinley, also 5 with SMART Transportation Division. 6 MR. AUBREY: Lucas Aubrey with 7 Sherman Dunn in Washington, D.C. 8 MR. MCKINLEY: Joshua McInerney, 9 with Wentz, McInerney, Peifer & Petroff, 10 general counsel for BLET. 11 MR. EDELMAN: Aaron Edelman, also 12 with -- Aaron Edelman, also with Mooney, 13 Green, Saindon, Murphy & Welch. 14 MR. GUERRIERI: Joe Guerrieri with 15 Beth Roma. 16 CHAIRPERSON JAFFE: Mr. Munro, are 17 you ready to begin your opening? 18 OPENING STATEMENT ON BEHALF OF CARRIERS 19 MR. MUNRO: Thank you, 20 Mr. Chairman, members of the Board. 21 My purpose this afternoon is to 22 outline the themes, evidence and argument</p>	<p style="text-align: right;">Page 11</p> <p>1 that you will hear from the Carriers over 2 the next two days. At the outset of our 3 case-in-chief tomorrow, the chairman of 4 the National Railway Labor Conference will 5 describe the Carriers' specific proposals, 6 contrast them with the Unions' proposals 7 and provide an overview of our costing 8 methodology. 9 But at a high level, this is a 10 summary of the parties' competing 11 positions. So in one sense, this is the 12 issue before you, this large gap in the 13 parties' positions. In dollars, it's a 14 difference of about 9 billion over a 15 five-year contract term. 16 And because a lot of this is 17 structural, it would add approximately 3 18 billion a year to the Carriers' annual 19 labor costs after that five-year term and 20 essentially forever. So it's a big 21 difference. 22 But at a more fundamental level,</p>
<p style="text-align: right;">Page 12</p> <p>1 this case is about more than just dollars. 2 It's about whether railroad jobs are still 3 honorable, desirable and lucrative. The 4 Unions will tell you that they are not, 5 that in the last few years, railroad jobs 6 have become a dystopian nightmare. 7 In their joint opening submission, 8 the Unions assert that employees are 9 overworked and exhausted, quitting in 10 droves and that the Carriers are unable to 11 hire anyone because the pay, the benefits 12 and the lifestyle have all become 13 substandard. None of that is supported by 14 the facts. 15 The evidence will show, the actual 16 numbers will show, that these remain good 17 jobs with great pay and great benefits, 18 paid and unpaid leave, average hours per 19 week that are the same or better than in 20 the past; that retention of mid-career 21 employees is still very strong and that 22 many people still seek out these jobs,</p>	<p style="text-align: right;">Page 13</p> <p>1 even in today's labor market. 2 The President of the United States 3 himself has noted that rail jobs are good 4 union jobs. And we will show through 5 data, through facts, through evidence that 6 the President is correct. 7 The evidence, Mr. Chairman, will 8 show that there has been no fundamental 9 change in railroad employment; that 10 railroad workers have been treated fairly, 11 are treated fairly and will continue to be 12 treated fairly under the terms proposed by 13 the Carriers for this contract. 14 We know there has been a lot of 15 emotion in this bargaining round. But 16 outrage and emotion and rhetoric are not a 17 sound basis for settlement of this 18 dispute. The facts, the data, the 19 numbers, the evidence, that is what should 20 drive this Board's recommendations. 21 So what does that evidence show? 22 Well, I've organized our evidentiary</p>

<p style="text-align: right;">Page 14</p> <p>1 presentations around these six core 2 themes. Three are affirmative and three 3 are responsive. None of this should 4 surprise anyone in the room. These are 5 all very similar to topics that we've 6 debated in past proceedings. 7 On the affirmative side, we will 8 demonstrate that our position is justified 9 by the past, meaning the history of 10 bargaining; the present, meaning existing 11 compensation, the current labor market and 12 the course of this bargaining round; and 13 the future, by which I mean both industry 14 competitiveness and growth, as well as 15 employee quality of life. 16 On the responsive side we will show 17 that the Unions' position is not justified 18 by profits, by inflation, actual or 19 projected, or by productivity. 20 Our lead economist, Kevin Murphy, 21 will synthesize all of this at the outset 22 of our case, setting out the Carriers'</p>	<p style="text-align: right;">Page 15</p> <p>1 view of how compensation and labor markets 2 actually work in the real world and how 3 that should inform what is and is not 4 relevant in collective bargaining. 5 Then our other witnesses will apply 6 that view to the facts and evidence in 7 this case. And at the outset of our 8 case-in-chief tomorrow morning, I'll 9 provide a more complete roadmap of that 10 presentation, including the witnesses who 11 will walk you through not just 12 compensation, but also health care and the 13 Unions' multiple rules and supplemental 14 compensation proposals. 15 Right now what I'd like to do is 16 just briefly highlight each one of these 17 key themes, previewing the evidence that 18 you'll see in our case-in-chief. 19 So let's start with the past, the 20 history of railroad collective bargaining. 21 We've been at this for a very long time. 22 There are a lot of guideposts to draw on</p>
<p style="text-align: right;">Page 16</p> <p>1 in order to assess where the parties 2 should end up in the current negotiations. 3 And I should emphasize that this is 4 something that both sides have referenced 5 in our submissions to the Board. We agree 6 that history matters. Our view of the 7 history will be provided by former 8 National Railway Labor Conference 9 chairman, Ken Brady. He has participated 10 in every round of national handling since 11 1985, which was the first full round after 12 deregulation of the industry. 13 And the details of that history are 14 set out in Carriers Submission Number 2 at 15 pages 5 through 10. But at a high level, 16 this is the historical pattern of 17 settlements with respect to wages. 18 There are four notable things about 19 this summary: 20 First, the range of structural 21 increases, increases that are rolled into 22 the wage base and persist forever, cap out</p>	<p style="text-align: right;">Page 17</p> <p>1 at 17.7 percent. 2 So over a 40-year period of 3 bargaining where we've had all kind of 4 different inflation and industry results 5 and other factors at play, no matter what, 6 that's the range of expectation, not 28 7 percent, not 25, not 20. 17.7 percent is 8 as high as it gets when you're talking 9 about the structural increase, the 10 permanent increase in the wage base. 11 Long-term average, 3 percent per 12 year, and the Carriers are offering more 13 than that in the current round. 14 Second, there isn't any correlation 15 between those agreed upon changes and 16 industry performance. This example uses 17 Union Pacific revenue over the last 18 several years as an example, but you can 19 use any measure you want. 20 And this is hardly surprising, 21 because unless we expressly link pay to 22 performance, put it at risk of downturn,</p>

<p style="text-align: right;">Page 18</p> <p>1 you would not expect a correlation between 2 industry performance and pay. 3 Third, there isn't any correlation 4 between these historical agreed upon 5 changes and inflation. And that's 6 illustrated by this round. Sometimes the 7 increases are above inflation. Sometimes 8 they're below. But there's been no 9 attempt, we will demonstrate, to link 10 those increases to inflation. And I'll 11 get into this a bit more when I address 12 the Unions' inflation arguments 13 specifically. 14 Finally, it's worth noting that the 15 parties have had a history of adding in 16 lump sums and lump-sum COLAs. That's 17 illustrated by the rounds that are circled 18 there in the black box. But they've 19 gotten away from that approach in modern 20 times, the most recent history indicated 21 by the red box. 22 Now, the Unions have decided they</p>	<p style="text-align: right;">Page 19</p> <p>1 don't like COLAs because they aren't 2 guaranteed and so reflect some degree of 3 risk. In the 1985 round, for example, 4 they bargained for a COLA and then 5 produced almost nothing. And presumably 6 that's why they haven't asked for a COLA 7 in this round, despite their heavy 8 reliance on continued inflation 9 predictions. 10 And that's fine. It's fine to 11 prefer certainty. We're okay with that. 12 But a guaranteed rate of return is never 13 going to be as high as a variable rate. 14 If you don't take any risk, you can't 15 expect the same return. 16 That's the historical summary -- 17 historical story on wages. But there's 18 something to learn from history about the 19 other elements at issue in this case as 20 well. 21 With respect to health care, there 22 is a historical pattern there too.</p>
<p style="text-align: right;">Page 20</p> <p>1 Beginning with the 2005 round, the parties 2 have made consistent efforts to address 3 the problem of controlling health care 4 costs through cost-sharing, the theory 5 being that employees who have some skin in 6 the game are more likely to make 7 considered decisions about their health 8 care spending. And as our witnesses will 9 show in detail, this historical trend 10 should continue. 11 With respect to work rules, the 12 modern history is of so-called skinny 13 deals that included few, if any, work rule 14 changes. This is one of the contracts 15 from 2017, from the last bargaining round. 16 But there's been several rounds where this 17 has been the pattern. 18 The history also shows with respect 19 to work rules that if you come to a 20 Presidential Emergency Board with a whole 21 range of work rule demands, the typical 22 recommendation is that they should be</p>	<p style="text-align: right;">Page 21</p> <p>1 withdrawn. And that's because the parties 2 are supposed to narrow the issues. 3 If a party wants to push the 4 bargaining to a Presidential Emergency 5 Board for resolution, it cannot do so and 6 still expect to sustain demands on more 7 than a dozen unrelated issues, as we have 8 here. That does not work. 9 Finally, with respect to the 10 Carriers' alternative wage proposal, there 11 is again a settled history. And that 12 history shows that the alternative wage 13 proposal that the Carriers have made in 14 this round allows an emergency board to 15 make a recommendation for a process to 16 resolve disputes over crew size, which, as 17 we will explain, is one of the most 18 important priorities for the Carriers in 19 this round. And that history further 20 shows that the proper process to recommend 21 is local handling, but with an arbitration 22 backstop.</p>

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<p>1 Now, I can probably predict what</p> <p>2 the Unions will say in response to this</p> <p>3 historical argument that I've just</p> <p>4 offered.</p> <p>5 First, they will tell you pay no</p> <p>6 attention to that history because this</p> <p>7 round is like no other. There has never</p> <p>8 been, they will say, a round where</p> <p>9 industry profits were so high, where</p> <p>10 inflation was at such a peak, where the</p> <p>11 employees were so unhappy.</p> <p>12 Well, the problem is that's a</p> <p>13 version of what they always say. As this</p> <p>14 slide reflects, the Unions have told past</p> <p>15 PEB some version of this every single</p> <p>16 time, in 1990, in 1996, in 2011. It's</p> <p>17 always the same, record profits, inflation</p> <p>18 is a risk, it's going up.</p> <p>19 But their response misses the</p> <p>20 point. Our argument is not this round is</p> <p>21 identical to what has happened in the</p> <p>22 past, so just give us the same CBA terms.</p>	<p>1 No, not at all.</p> <p>2 Of course there are differences</p> <p>3 round to round. The argument is that over</p> <p>4 the course of the parties' entire history,</p> <p>5 regardless of the details, good times, bad</p> <p>6 times, high inflation, whatever, the</p> <p>7 outcomes of bargaining fall within a</p> <p>8 certain range and that should inform what</p> <p>9 happens now.</p> <p>10 They will also tell you, I predict,</p> <p>11 that the historic pattern is one of real</p> <p>12 wage growth and that that is what this</p> <p>13 Board should recommend.</p> <p>14 The Unions' expert, at page 58 of</p> <p>15 his report, says that the last three</p> <p>16 rounds were specifically designed to</p> <p>17 produce real wage growth of 1 percent per</p> <p>18 year.</p> <p>19 Well, we will demonstrate that is</p> <p>20 just not so. As I said, there is zero</p> <p>21 correlation between GWIs and inflation.</p> <p>22 Most of the real wage growth that has</p>
Page 24	Page 25
<p>1 happened with the last three rounds</p> <p>2 occurred in two years, 2009 and 2015, when</p> <p>3 inflation was unexpectedly low.</p> <p>4 No one on either side is</p> <p>5 prognosticating inflation year to year as</p> <p>6 part of the bargaining process. We can't.</p> <p>7 We don't even agree on what inflation is.</p> <p>8 The historic pattern is to provide</p> <p>9 increases that average around 3 percent a</p> <p>10 year, with the knowledge that over the</p> <p>11 long term that will produce real wage</p> <p>12 growth.</p> <p>13 Okay. So that's the history.</p> <p>14 Let's review the present. How do current</p> <p>15 circumstances inform the result here?</p> <p>16 There are four factors that we</p> <p>17 suggest the Board should consider: current</p> <p>18 compensation, current labor markets, the</p> <p>19 current round of bargaining and current</p> <p>20 health care status.</p> <p>21 First, on compensation, we will</p> <p>22 demonstrate that there is a longstanding</p>	<p>1 premium for railroad workers, as indicated</p> <p>2 on this slide. We will demonstrate that</p> <p>3 from any angle, any way you look at it,</p> <p>4 whether you look at comparable industries,</p> <p>5 comparable occupations, comparable</p> <p>6 demographics, railroad workers earn more</p> <p>7 than their peers for comparable work.</p> <p>8 It's also true for each component</p> <p>9 of total compensation, on wages, for</p> <p>10 example. And it's true from a benefit</p> <p>11 perspective, as indicated here. Railroad</p> <p>12 health care benefits are above market in</p> <p>13 terms of actuarial value and in terms of</p> <p>14 cost share. That was true when we were</p> <p>15 here before Presidential Emergency Board</p> <p>16 243 and it is still true today.</p> <p>17 In fact, as this slide shows, the</p> <p>18 gap has widened. So what this indicates</p> <p>19 is that railroad employees already have,</p> <p>20 before any increase is applied in this</p> <p>21 round, really good pay and great benefits.</p> <p>22 Now, I recognize that we've been at</p>

<p style="text-align: right;">Page 26</p> <p>1 odds with the Unions about this premium 2 point for many years. They don't really 3 deny the data or the numbers, but there 4 are two more philosophical disagreements 5 that I think we have. 6 First, they will say you can't 7 really compare railroad workers to anyone 8 else. The work and the working conditions 9 are just different. Railroads are 10 special. That's why our employees are 11 paid more. They say it again in their 12 most recent submissions to this Board. 13 Well, it's just not so. We are not 14 making up these comparisons and we are not 15 comparing railroad workers to Walmart. As 16 our expert will show, every comparison 17 underlying a premium analysis is based on 18 Bureau of Labor Statistics occupational 19 classifications. 20 And if you think the BLS is wrong, 21 well, you could compare the underlying 22 skills, responsibilities and tasks of</p>	<p style="text-align: right;">Page 27</p> <p>1 these jobs. 2 A diesel mechanic in the railroad 3 industry is doing fundamentally the same 4 work as a diesel mechanic in a 5 manufacturing facility. Likewise, the 6 operating crafts are comparable to other 7 workers who actually move freight. 8 The fact is that railroads are no 9 longer the largest and most important 10 industry in America. I wish it were so, 11 but it just isn't. This is a cover of one 12 of my favorite railroad books about the 13 history of the industry. And it is true 14 that it used to be there was nothing like 15 it in the world. Railroads were unique. 16 But now we are just one among many. 17 We have to compete in the market 18 just like everyone else. Now, the Unions 19 will say your argument is still 20 nonsensical because why would railroad 21 negotiators agree to above-market rates 22 for 100 years. It makes no sense.</p>
<p style="text-align: right;">Page 28</p> <p>1 Well, the answer was provided by, 2 among others, the former chairman of the 3 NRLC, Chuck Hopkins, as far back as 4 PEB 219. And what he told that panel is 5 still true today. Those premiums were 6 created back when this was a regulated 7 industry and could pass through its costs 8 to its customers. So it's hardly 9 surprising. 10 And that brings me to the other 11 philosophical debate we have. The Unions 12 want to characterize our showing of a 13 premium as an insult, that we are saying, 14 in effect, that railroad employees are 15 overpaid or that they should take a wage 16 cut. 17 Let me be absolutely clear about 18 this. That is not what we are saying. No 19 one is suggesting that railroad employees 20 don't deserve their compensation or that 21 they shouldn't get fair increases. We are 22 not trying to do away with the premium.</p>	<p style="text-align: right;">Page 29</p> <p>1 We're not even trying to narrow the gap. 2 The point is there isn't a problem 3 with compensation that needs to be fixed. 4 Railroad workers do not need above-market 5 increases to keep up. They are already 6 ahead and there is no basis for widening 7 the gap with their peers. 8 Instead, what we need are 9 market-based increases, ones that allow 10 the railroads to compete for labor with 11 other industries. 12 And what does the labor market tell 13 us? Well, the data confirm that current 14 railroad pay and benefits are more than 15 adequate to compete for labor, to recruit 16 and retain employees. 17 As this slide indicates, there are 18 plenty of people that want to work for the 19 railroads, even before any increases are 20 applied in this round. Look, is this a 21 tough labor market for employers? Of 22 course. As these Carriers told the STB in</p>

<p style="text-align: right;">Page 30</p> <p>1 a recent hearing, it is more difficult now 2 relative to our history. It's harder than 3 it used to be. 4 But as we will show, the hiring 5 challenges that the railroads face are, 6 number one, far less than other employers, 7 as shown here; two, not driven by 8 compensation; and, three, location 9 specific, where all employees are finding 10 it harder to hire. 11 Moreover, the data just do not 12 support the Unions' claim that workers are 13 leaving the industry in droves. To the 14 contrary, we will show that retention 15 rates are still way, way above average. 16 Again, this was something that we 17 proved back in 2011 before PEB 243. It is 18 still true now, even in the current labor 19 market. 20 So what this shows is that we don't 21 need more than a market level increase in 22 compensation in order to recruit and</p>	<p style="text-align: right;">Page 31</p> <p>1 retain and that the Unions' 2 characterizations and draconian policies 3 and intolerable burdens of the jobs are, 4 perhaps, overstated. 5 As I said at the outset, these are 6 good jobs and it's not just the President 7 who says so. The labor market says so. 8 So what else does the labor market 9 tell us about the proper outcome here? 10 Well, you can look to benchmark 11 settlements in other industries. We will 12 present evidence through our expert, Jerry 13 Glass, that recent GWI settlements support 14 the Carriers' offer and do not support the 15 Unions' demand. 16 The evidence is that we are at 17 market with our current offer. And this 18 is, again, the unionized market and we are 19 keeping up. 20 Another aspect of the current round 21 that the Board should consider is the 22 bargaining or the lack of it, especially</p>
<p style="text-align: right;">Page 32</p> <p>1 with respect to work rules. It is a 2 subtle, historic principle applied by 3 multiple PEBs that proposals that have not 4 been the subject of intensive bargaining 5 should be withdrawn. And in this round, 6 we will demonstrate that many of the 7 topics before you, other than core wages 8 and benefits and the crew size-related 9 issues have not been the subject of 10 bargaining, not just a lack of intensive 11 bargaining, any bargaining. 12 That is especially true for rules. 13 Aside from the Railroads' work rule 14 proposals, there were no detailed 15 discussions, no exchange of contract 16 language, no give and take, no quid pro 17 quos for any of the items that the Unions 18 are demanding. 19 And that is especially problematic 20 when you have demands that are so extreme 21 or radical as the ones at issue in this 22 proceeding.</p>	<p style="text-align: right;">Page 33</p> <p>1 With respect to attendance 2 policies, scheduling and leave in 3 particular, the Unions are asking to 4 essentially rip up and throw out the very 5 foundation of Carrier operations, our 6 ability to call employees to work when the 7 work needs to be done. 8 That is not reasonable. It is not 9 measured. It is not incremental. Our 10 witnesses will show that their proposals 11 on attendance and leave are utterly 12 incompatible with modern railroad 13 operations. Even apart from the added 14 expense, it would be impossible to sustain 15 24/7 operations under a model that allows 16 employees to effectively decide whether 17 and when they want to come to work. 18 The Unions argue in their 19 submission at page 26 that PEBs have 20 uniformly denied requests for new terms 21 that are radical or unprecedented. And 22 that's certainly true of these proposals.</p>

<p style="text-align: right;">Page 34</p> <p>1 But it is especially unreasonable given 2 the lack of detailed bargaining. 3 As our witnesses will show, there 4 are dozens of details about the Unions' 5 proposals that we had never seen until we 6 read their submissions to this Board four 7 days ago. 8 PEB 243 explained what to do when 9 you have big detailed issues that haven't 10 been discussed. The proper course is to 11 refer those issues to a non-RLA process 12 that generates either a vocal exchange of 13 quid pro quos or a sufficiently detailed 14 record to allow the matter to be addressed 15 in the next round of national handling. 16 These Unions were on notice that 17 this is what they needed to do. They 18 didn't do it. They did not do it on 19 attendance policies or paid leave or 20 expenses away from home or on scope or any 21 of their supplemental compensation 22 proposals.</p>	<p style="text-align: right;">Page 35</p> <p>1 The other evidence regarding the 2 present day that we will present concerns 3 health care. And in contrast to the 4 Unions' work rule demands, we will show 5 that the Carriers put detailed language in 6 front of the Unions on multiple occasions. 7 And I've already mentioned that 8 present benefits are above market. So 9 plan design changes are warranted, but 10 that's not the whole story. 11 This slide indicates what's 12 happened over the course of the current 13 round. The cost share that the railroads 14 negotiated in the last round is being 15 eaten away by the continued spiral in 16 health care costs. This is the problem of 17 erosion. 18 And so it explains why the Carriers 19 are seeking a recommendation on indexing. 20 We are also going to show, based on 21 current plan data, that the kind of 22 changes the Carriers are proposing do not</p>
<p style="text-align: right;">Page 36</p> <p>1 lead to worse health care outcomes, 2 contrary to what the Unions' experts say. 3 This is not some theory. Our expert will 4 show that our own plan experience 5 validates this conclusion. 6 We're also going to show the Board 7 that current employee contribution schemes 8 make no sense. They encourage 9 oversubscription, as indicated here, 55 10 percent versus the survey results. 11 And so we need to have tiers for 12 individual and family to address this 13 problem. We'll also show that the current 14 plans need reform in various other 15 respects as well, including with respect 16 to pharmacy, specific benefit programs and 17 planned administrative practices. These 18 are modest changes and current market 19 conditions and trends fully justify each 20 element of the Carriers' proposals. 21 So that's the past and the present. 22 The final theme you will hear from us is</p>	<p style="text-align: right;">Page 37</p> <p>1 about the future. 2 Our witnesses, including the CEO of 3 Union Pacific, will explain that the 4 industry is well positioned to compete for 5 a share of a growing transportation market 6 in the United States. 7 But you will also hear that that 8 growth will be challenging. Especially 9 for traffic like intermodal, it's going to 10 require discipline and prudence, 11 especially in labor spending, to remain 12 competitive. 13 And as you will hear from our 14 experts, labor has to compete too. It is 15 in competition with capital. Making labor 16 more expensive is not just employees win 17 and Carriers lose. If you make labor too 18 expensive, you will just accelerate the 19 substitution of capital for labor. 20 And, in fact, this industry is 21 arguably a perfect case study of that 22 phenomenon. Over the same period that</p>

<p style="text-align: right;">Page 38</p> <p>1 railroad employees have widened the 2 compensation premium, the decline in head 3 count has accelerated. And while the 4 Unions complain bitterly about that 5 decline in head count, they are here once 6 again asking to exacerbate it through yet 7 another round of above-market increases. 8 Let me be clear about this. 9 Neither our experts nor I are going to 10 argue to the Board that if you just 11 moderate the rate of compensation 12 increase, head count decline will stop or 13 that it will reverse. But we will argue 14 that what they are asking for will make it 15 go faster. It's just Economics 101. If 16 you make labor more expensive, the 17 railroads will use less of it. 18 The other question about the future 19 is employee quality of life and how to 20 make it better. And you'll hear a lot 21 from the other side about uncertain 22 schedules, the pressure of constant</p>	<p style="text-align: right;">Page 39</p> <p>1 availability and so forth. 2 And it's worth noting that those 3 are primarily, if not entirely, operating 4 craft issues and for only a fraction of 5 those jobs as well. And we think they 6 exaggerate a fair amount on those points. 7 But nevertheless, we did not just 8 say no in bargaining. As you will hear 9 from our witnesses, we have offered 10 measured, reasonable changes that address 11 the Unions' concerns and are proven to 12 work in the real world. This is the 13 primary justification for the Carriers' 14 work rule proposals, including automated 15 bid, self-supporting pools and pool 16 regulation. You'll hear the details of 17 those ideas on Tuesday. 18 But the headline point is that they 19 offer a far more workable solution than 20 what the Unions have demanded and have 21 demanded without offering anything in 22 return.</p>
<p style="text-align: right;">Page 40</p> <p>1 And while this Board is not being 2 asked to recommend anything on crew size 3 other than a process for resolving the 4 issue, we will explain how the Carriers' 5 vision for conductor redeployment will 6 enhance quality of life for people in 7 those jobs, allowing many of them to work 8 a set schedule and to go home at night. 9 I should emphasize that, as you 10 will hear from our witnesses, this is an 11 absolutely critical priority for the 12 Carriers. It is framed as a process 13 question because the merits of crew size, 14 which are, as you can tell from this 15 slide, extremely dense and complicated, 16 those merits are in local hands. But we 17 have to have a pathway to get this 18 resolved. It's critical to the future of 19 the industry. 20 Now, when we put all of this 21 together, the Board should come away with 22 the conclusion that the Carriers' proposal</p>	<p style="text-align: right;">Page 41</p> <p>1 is justified by historical results, 2 current labor market conditions and the 3 parties' shared need for a future in this 4 industry. 5 As this slide shows, our proposal 6 is consistent with inflation, with 7 benchmark settlements and with our own 8 historical experience. The Unions' 9 proposal is not justified by any of those 10 considerations and that's why they rely on 11 a different set of themes. 12 So let me just turn briefly to what 13 their arguments are. And the first is 14 profitability. I feel safe in predicting 15 that we will hear a presentation on how 16 Carrier profits have never been higher and 17 that there is so much money that we could 18 easily afford the Unions' above-market 19 demands. 20 Their argument is simple: You have 21 the money, give us more. But, you know, 22 as H.L. Mencken once said, for every</p>

<p style="text-align: right;">Page 42</p> <p>1 complex problem there is an answer that is 2 clear, simple and wrong. And with the 3 Unions' profitability argument, there are 4 at least three things that they get wrong. 5 First, profits are not 6 determinative in setting compensation and 7 never have been. And the irony of this is 8 that as this slide shows, the Unions 9 themselves used to spin a very different 10 story on this, arguing that Carrier 11 finances weren't really relevant or were 12 at least of secondary significance. And 13 they were right, at least in the sense 14 that structural employee compensation 15 change has not been tied to the financial 16 condition of the industry. 17 As the Unions' expert argued, the 18 timing and pace of negotiated wage change 19 has absolutely no relationship to 20 financial performance. 21 The only exception to that is if 22 they're willing to accept</p>	<p style="text-align: right;">Page 43</p> <p>1 performance-based compensation, which they 2 are not. And they're not because they 3 want the upside but not the downside. 4 They don't want to accept any risk. 5 Second, as usual, the Unions 6 overstate current financial performance. 7 Look, there is no debate that compared to 8 our history, the railroad industry is in 9 much gettier shape. But for all that, 10 their finances are no better than average, 11 as this slide shows and as our experts 12 will testify. They remain very 13 capital-intensive, very exposed to 14 macroeconomic trends. And as I indicated 15 earlier and our expert will explain, 16 growth is going to be hard. 17 This is a forecast of growth in the 18 rail transportation market. And, as you 19 can see, it's not going up very fast. 20 And that flows into my third point. 21 The Unions just assume that current 22 profitability will continue forever. But</p>
<p style="text-align: right;">Page 44</p> <p>1 it is not guaranteed. 2 As shown here, there are dozens of 3 risks out there. Some are short-term and 4 simply cause variability. Others are 5 longer term and more existential. 6 In fact, if anything is guaranteed, 7 it is that a downturn is inevitable. No 8 industry does well forever. And as shown 9 here, it may be coming sooner, rather than 10 later. The current economic climate is 11 uncertain, to say the least. There are 12 warning signs flashing. 13 And I cannot predict a recession 14 any more than the Unions can tell you that 15 the economy is certain to continue to run 16 hot. But one of the things that any 17 reputable economist will tell you is 18 beware of recency bias, the idea that what 19 is currently happening is certain to 20 continue. 21 And that is certainly true with 22 respect to the Unions' next core argument</p>	<p style="text-align: right;">Page 45</p> <p>1 on inflation. It's unsurprising that they 2 point to the recent news about highest 3 inflation in 40 years. They assume it 4 will continue and then argue that railroad 5 employees are not keeping up and will see 6 a cut in real pay. 7 Well, we've acknowledged that there 8 is a short-term spike in inflation, which 9 is why there's a 6 percent GWI proposed 10 for this year and an 11 percent total 11 increase payable upon ratification and an 12 average annual total increase of 3.3 13 percent total compensation after compound. 14 But the idea that this proposal 15 inevitably produces a cut in real wages is 16 simply not true. Again, there are several 17 points of difference between the parties 18 on this, beginning with the very 19 definition of inflation. 20 As usual, the Unions reach for the 21 measure that produces the highest possible 22 estimate, which is the CPI-W. But as our</p>

<p style="text-align: right;">Page 46</p> <p>1 experts will demonstrate, any version of 2 the CPI, let alone the CPI-W, has been 3 discredited as an appropriate yardstick in 4 this context. 5 And you don't have to take our 6 experts' word for it. You can see what 7 PEB 233 had to say about it. And there's 8 a pretty good summary of the problems with 9 CPI in this context. 10 As you will hear from our expert, 11 PCE, personal consumption expenditures, is 12 the better standard, because it is not 13 limited to urban consumers. It's a better 14 match with the demographics of the 15 railroad employee base and it accounts for 16 substitution by consumers. 17 But let's set aside that debate for 18 a moment, because even if we look at both 19 measures, it's not clear that we agree on 20 what the numbers are. 21 This table summarizes actual plus 22 CBO projected inflation. And as you'll</p>	<p style="text-align: right;">Page 47</p> <p>1 see, our compensation proposal comes in 2 just above PCE and just below CPI for this 3 full five-year period. And the Unions' 4 proposal doesn't bear any relationship to 5 either one. It's way above, both in 6 individual years and in the aggregate. 7 And our experts will discuss this 8 in greater detail, but there's just a 9 couple of things I'd like to highlight at 10 the outset. 11 First, there's been a lot of recent 12 press, and it's mentioned in the Unions' 13 submission, about 9 percent inflation. 14 But even CPI for this calendar year is not 15 9 percent. That's the year over year 16 figure. 17 Second, you may ask why are the 18 Carriers using a forecast for 2022 when 19 the year is half over. And the answer is 20 that actual total inflation for the year 21 could go up or it could go down. 22 So, for example, for the first half</p>
<p style="text-align: right;">Page 48</p> <p>1 of the year through June, actual CPI-U is 2 5.2 percent. But the Federal Reserve has 3 now engaged a monetary policy for the 4 express purpose of bringing down that 5 number. 6 And as shown in this chart, there 7 are signs it may already be working. The 8 lines at the bottom of this graph are core 9 inflation. And those are leading 10 indicators. They tell you what the 11 direction of inflation is likely to be in 12 the future. And so the numbers for 2022 13 could very well come in less than the CBO 14 estimate. 15 But in any event, there's no basis 16 to speculate upon a different calendar 17 year total at this point. And it's also 18 worth noting, by the way, that half of 19 this recent spike in inflation that you 20 see here is coming from gas prices, from 21 the energy sector. 22 And the idea that the railroads</p>	<p style="text-align: right;">Page 49</p> <p>1 would be forced to adopt a permanent 2 increase in the wage base as a result of 3 fluctuations in gas prices, which could 4 easily be half of what they are now a year 5 from now, is odd at best. 6 That brings me to the last point I 7 wanted to mention about inflation, and 8 that is the Unions' assumption that it 9 will continue unabated. 10 On this point, the White House has 11 a couple of interesting historical charts 12 up on its blog about inflation. And this 13 first one illustrates how, when there have 14 been inflationary spikes in the past, it 15 is typically reverted back to the norm 16 within two years or less. And that is 17 especially so when you're talking about 18 inflationary episodes resulting from 19 supply chain disruptions and suppressed 20 demand. 21 And as this chart shows from the 22 White House, over the long term, inflation</p>

<p style="text-align: right;">Page 50</p> <p>1 expectations average between 2 and 2 2.5 percent, even if you use CPI. And so 3 the average railroad wage increases around 4 3 percent, the employees will, over the 5 long term, continue to stay ahead of 6 inflation. 7 Now, the last of the parties' 8 themes that I want to address is 9 productivity. We had an extensive debate 10 about this when we were here before, 11 PEB 243, and it looks like we're going to 12 be reprising that debate again. 13 The Unions continue to point to 14 what they call labor productivity. And 15 they assert that the increase in that 16 productivity measure justifies 17 extraordinary compensation increases. 18 The problems with their argument 19 that we discussed at 243 still exist, 20 however, and in fact, their argument has 21 gotten worse. There are again three 22 specific problems.</p>	<p style="text-align: right;">Page 51</p> <p>1 The first concerns the definition 2 of productivity. They speak in terms of 3 increases in labor productivity, which 4 they define in terms of freight ton-miles 5 per man-hour. And that's the top line on 6 this graph, the blue bar. 7 But productivity change is actually 8 a function of investments, technology, 9 increased density, product mix, 10 abandonments, mergers and a variety of 11 other factors. That's the bottom line, 12 multifactor productivity. And those are 13 changes that ironically labor has often 14 opposed, yet now they want to take credit 15 for it. 16 Now, my recollection is that before 17 PEB 243, labor admitted that productivity 18 change does implicate these other 19 considerations, but they argue that the 20 consequence of all those changes has been 21 a huge reduction in head count, meaning 22 that labor's share of revenue has</p>
<p style="text-align: right;">Page 52</p> <p>1 declined. 2 That's not an answer. They never 3 explain why labor is owed for declining 4 head count. The reason head count has 5 declined is because of the Carrier 6 investments and changes I just outlined. 7 So the idea that the compensation paid to 8 former employees is now owed to the 9 remaining workforce just because fewer 10 employees are needed and there is less 11 work to perform, it makes no sense. 12 In fact, if you control for head 13 count change, as shown here on Slide 54, 14 you can look at labor share on a per 15 capita basis. Now, this is just a rough 16 approximation that we use average 17 compensation divided by total revenue. 18 But what it shows is that each employee is 19 still earning roughly the same fraction of 20 industry revenue that they have for 21 decades. It's stayed within this same 22 range.</p>	<p style="text-align: right;">Page 53</p> <p>1 And what this suggests is that the 2 Unions' grievance is really about the 3 decline in head count itself, not about 4 labor share or labor productivity at all. 5 Second, as this graph shows, 6 productivity increases have basically 7 stopped and in some respects have 8 declined, starting in about 2008. There 9 isn't some extraordinary increase that the 10 Unions can cite as a basis for 11 above-market compensation. 12 And as our experts will explain, 13 further productivity growth is going to 14 require work rule change, massive capital 15 investment or both. 16 Third, at least a part of what the 17 Unions are really saying when they talk 18 about productivity is something akin to a 19 grievance about workload. They argue that 20 the workforce has been cut so much that 21 the demands on the remaining employees 22 have gotten so extreme that employees</p>

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<p>1 can't get any rest and they're all 2 overworked. That's the foundation for 3 many of their proposals, including the 4 scheduling, attendance, leave proposals I 5 mentioned, as well as their compensation 6 demands.</p> <p>7 The data do not support those 8 anecdotal claims. This chart is a summary 9 of TY&E operating craft work hours for the 10 last three years where it exists. There's 11 no evidence in these data of a systemic 12 problem of overworked.</p> <p>13 In fact, if you look back further, 14 the numbers are in the same range that 15 they've always been. Employees are not 16 working harder, not by historical 17 standards, nor by any external benchmark. 18 There's just less work.</p> <p>19 Now, look, we can quibble about the 20 details here. I mean, these numbers do 21 not include, for example, on call time, 22 the need to be available. But</p>	<p>1 availability and working are two different 2 things. The Unions just conflate the two.</p> <p>3 But in any event, that all misses 4 the point. Regardless of how you view the 5 numbers, there is not a crisis of overwork 6 in the railroads caused by chronic 7 understaffing, just as the data do not 8 support their claims of mass exodus or 9 inability to hire.</p> <p>10 So that brings me to the end. And 11 I'll just conclude by noting that no one 12 denies that railroad employees work hard. 13 They deserve fair compensation. And the 14 average total compensation under the 15 Carriers' proposal will be \$158,000 per 16 year. The highest paid Union employees 17 will be receiving as much as \$180,000. 18 And every employee represented by the 19 Coalitions will be making at least 20 \$100,000, six figures, in total 21 compensation. 22 And as I said at the outset, even</p>
Page 56	Page 57
<p>1 before these increases, these were good 2 jobs with great pay and great benefits. 3 It's been that way for a very long time 4 and nothing radical or fundamental has 5 changed in the last 10 years. In fact, 6 these jobs have gotten safer and better in 7 almost every way.</p> <p>8 That's what the evidence will show. 9 And as I said at the outset, it's the 10 evidence, the data, the numbers, the facts 11 that should drive this Board's 12 recommendations.</p> <p>13 Thank you for your attention.</p> <p>14 CHAIRPERSON JAFFE: Thank you, Mr. 15 Munro.</p> <p>16 Off the record, please. 17 (Thereupon, a brief recess was 18 taken.)</p> <p>19 CHAIRPERSON JAFFE: At your 20 convenience, Ms. Roma. 21 OPENING STATEMENT ON BEHALF OF UNIONS 22 MS. ROMA: Good afternoon. My name</p>	<p>1 is Elizabeth Roma, and I'm with the law 2 firm of Guerrieri, Bartos & Roma, P.C. I 3 am counsel to the TCU, IAM District 4 Lodge 19 and the Cooperating Railway Labor 5 Organization, or CRLO, an umbrella labor 6 organization comprised of all the Unions 7 before this Board. I am making this joint 8 presentation this afternoon on behalf of 9 all of the rail labor organizations here 10 today.</p> <p>11 There are 12 unions in total before 12 this Emergency Board, representing 13 100 percent of unionized rail labor. This 14 is the first time in history that 15 100 percent of rail labor has been united 16 in coming before a Presidential Emergency 17 Board, which should highlight the 18 importance of this matter to labor.</p> <p>19 The Unions here today include the 20 American Train Dispatchers Association, 21 the Brotherhood of Locomotive Engineers 22 and Trainmen, the Brotherhood of</p>

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<p>1 Maintenance of Way Division, the</p> <p>2 Brotherhood of Railway Signalmen, the</p> <p>3 International Association of Machinists</p> <p>4 and Aerospace Workers, the International</p> <p>5 Brotherhood of Boilermakers, the</p> <p>6 International Brotherhood of Electrical</p> <p>7 Workers, the Mechanical Department of the</p> <p>8 International Association of Sheet Metal,</p> <p>9 Air, Rail, and Transportation Workers, the</p> <p>10 National Conference of Firemen & Oilers,</p> <p>11 the Transportation Communications Union,</p> <p>12 including its Brotherhood of Railway</p> <p>13 Carmen Division, the Transportation</p> <p>14 Division of the International Association</p> <p>15 of Sheet Metal, Air, Rail and</p> <p>16 Transportation Workers and the Transport</p> <p>17 Workers Union of America.</p> <p>18 I list all of the Unions at the</p> <p>19 outset in part because just giving their</p> <p>20 names conveys the sense of great diversity</p> <p>21 amongst the Organizations before this</p> <p>22 Board and the crafts that they represent.</p>	<p>1 We have both operating crafts, such as</p> <p>2 conductors, engineers and trainmen, and</p> <p>3 non-operating crafts.</p> <p>4 Among the non-operating crafts</p> <p>5 there are crafts in the engineering</p> <p>6 departments, such as maintenance of way</p> <p>7 and signalmen, along with shopcrafts,</p> <p>8 dispatchers and clerical crafts, all of</p> <p>9 which encompass a wide variety of</p> <p>10 positions.</p> <p>11 A more detailed description of the</p> <p>12 work performed by these various crafts or</p> <p>13 classes can be found in Appendix A of the</p> <p>14 Unions' joint submission.</p> <p>15 Given this diversity, the fact that</p> <p>16 all of the Rail Unions come before you</p> <p>17 united under the banner of this joint</p> <p>18 proposal is really quite remarkable.</p> <p>19 At the outset and on behalf of all</p> <p>20 the Unions, we would like to thank the</p> <p>21 Board members for agreeing to serve in</p> <p>22 these proceedings. Among the many unique</p>
Page 60	Page 61
<p>1 and somewhat odd features of the Railway</p> <p>2 Labor Act is the PEB process.</p> <p>3 Almost always under the Railway</p> <p>4 Labor Act the parties negotiate for a</p> <p>5 considerable amount of time both in direct</p> <p>6 and mediated bargaining, but once those</p> <p>7 proceedings are done, in contrast to the</p> <p>8 leisurely pace of negotiation, once a</p> <p>9 release happens, matters suddenly move at</p> <p>10 warp speed. So we thank you for making</p> <p>11 yourselves available. I know there was</p> <p>12 considerable juggling in your schedules in</p> <p>13 order to be here today and we appreciate</p> <p>14 it. And we also thank you for taking on</p> <p>15 the demand of a proceeding such as this</p> <p>16 which is made all the more permissible by</p> <p>17 the compressed time schedule dictated by</p> <p>18 the statute. So please let us know if</p> <p>19 there's anything we can do to make your</p> <p>20 work easier during this week.</p> <p>21 At the outset I would like to</p> <p>22 briefly review the Unions' joint proposal,</p>	<p>1 a copy of which was recently handed to the</p> <p>2 Board for your ease of reference. In a</p> <p>3 nutshell, our proposal is as follows:</p> <p>4 First, wages. The Unions propose a</p> <p>5 28 percent increase in general wages,</p> <p>6 31.2 percent compounded over a five-year</p> <p>7 period. This allows the Unions to</p> <p>8 preserve their real wages, accounting for</p> <p>9 inflation, which we all know has been out</p> <p>10 of control recently, and allow for</p> <p>11 moderate wage growth consistent with the</p> <p>12 parties' bargaining history. It also</p> <p>13 ensures that the wages are sufficiently</p> <p>14 competitive to help attract and retain</p> <p>15 critically needed workers during an</p> <p>16 unprecedented labor shortage.</p> <p>17 Second is health and welfare. To</p> <p>18 be clear, the Unions before this Board</p> <p>19 categorically reject the Carriers' notion</p> <p>20 that during a period of sustained record</p> <p>21 profits that their employees should be</p> <p>22 further burdened with paying substantially</p>

<p style="text-align: right;">Page 62</p> <p>1 more for their health care.</p> <p>2 While we believe the Carriers</p> <p>3 should be providing significant benefit</p> <p>4 improvements for employees this round,</p> <p>5 given the current climate, in an effort to</p> <p>6 move forward here, the Unions essentially</p> <p>7 propose maintenance of the status quo in</p> <p>8 terms of health and welfare, including the</p> <p>9 current monthly contribution rates of</p> <p>10 228.89 and maintenance of the current</p> <p>11 cost-sharing features.</p> <p>12 We are requesting only two minor</p> <p>13 exceptions to our status quo proposal,</p> <p>14 both of which are being offered by the</p> <p>15 Carriers here.</p> <p>16 The first involves benefits for</p> <p>17 those with autism spectrum disorders.</p> <p>18 Here, the Unions propose the removal of</p> <p>19 age limits on speech therapy services,</p> <p>20 which currently are only provided until</p> <p>21 the age of three, even though the majority</p> <p>22 of those with autism spectrum disorders</p>	<p style="text-align: right;">Page 63</p> <p>1 aren't diagnosed until age three or older.</p> <p>2 The Unions also propose the</p> <p>3 addition of applied behavioral analysis</p> <p>4 services for those with autism. These</p> <p>5 benefits are currently excluded under the</p> <p>6 plan, even though they are the most common</p> <p>7 form of treatment for those with autism</p> <p>8 spectrum disorders.</p> <p>9 These benefits are not only long</p> <p>10 overdue, as the Unions will explain in our</p> <p>11 presentation, but they are also likely</p> <p>12 required by the Mental Health Parity Act.</p> <p>13 Second, the Unions propose</p> <p>14 increasing hearing benefits under the</p> <p>15 plans from \$600 annually to \$2,000</p> <p>16 annually. Given that most hearing aids</p> <p>17 cost between \$1,500 to \$2,000 each, \$3,000</p> <p>18 to \$4,000 for both ears, and railroad</p> <p>19 employees are statistically at higher risk</p> <p>20 for hearing loss due to occupational noise</p> <p>21 exposure, we believe these minor increases</p> <p>22 are appropriate here.</p>
<p style="text-align: right;">Page 64</p> <p>1 Third is sick leave and other --</p> <p>2 and holidays, which I've categorized as</p> <p>3 paid time off. With the exception of only</p> <p>4 a small percentage of clerical and</p> <p>5 dispatcher employees, no other employees</p> <p>6 before this Board have any protected sick</p> <p>7 leave, not one day.</p> <p>8 The COVID-19 pandemic, combined</p> <p>9 with the Carriers' strict attendance</p> <p>10 policies, placed a glaring spotlight on in</p> <p>11 inequity. Accordingly, the Unions jointly</p> <p>12 propose a provision of up to 15 days of</p> <p>13 paid sick leave per year for those crafts</p> <p>14 or classes who don't have any or who</p> <p>15 currently have less.</p> <p>16 The Unions also propose the</p> <p>17 addition of three new holidays: Martin</p> <p>18 Luther King, Juneteenth and Veterans Day.</p> <p>19 Many rail employees are minorities or</p> <p>20 veterans and the Carriers have publicly</p> <p>21 stated a commitment to promoting diversity</p> <p>22 and inclusion in the workplace and hiring</p>	<p style="text-align: right;">Page 65</p> <p>1 veterans.</p> <p>2 We believe that the additional paid</p> <p>3 holidays are appropriate under the</p> <p>4 circumstances and for those Unions that</p> <p>5 are not provided paid time off for</p> <p>6 holidays, these additional holidays would</p> <p>7 be treated as other holidays under the</p> <p>8 agreement.</p> <p>9 Finally, a savings clause. The</p> <p>10 Unions also propose a savings clause</p> <p>11 because there would be more favorable</p> <p>12 terms that may exist or be negotiated on a</p> <p>13 local basis.</p> <p>14 And the last common joint proposal</p> <p>15 term is duration. The Unions, like the</p> <p>16 Carriers here, also propose a five-year</p> <p>17 contract duration from January 1, 2020</p> <p>18 through December 31, 2024. This may be</p> <p>19 the only thing we agree on.</p> <p>20 All the Unions are united in this</p> <p>21 proposal. Sitting behind me today are the</p> <p>22 leadership of the 12 different labor</p>

<p style="text-align: right;">Page 66</p> <p>1 Organizations before this Board. They are 2 strong, independent leaders who work hard 3 to represent their membership. 4 I can tell you -- can personally 5 tell you throughout this process they 6 didn't always agree. A quick glance at 7 their Section 6 notices found in Union 8 Exhibit 2 reveals that each of these 9 Unions had very different goals in 10 bargaining this round. 11 Given the Carriers' strong and 12 well-publicized profit levels, it's not 13 surprising that many of the Unions sought 14 significant improvements this round, 15 including on wages, health and welfare and 16 work rules. 17 Nearly three years later, direct 18 and mediated bargaining with the Carriers 19 have failed and we are before this 20 Presidential Emergency Board. 21 In the meantime, workers' wages 22 remain stagnant since 2019, while</p>	<p style="text-align: right;">Page 67</p> <p>1 inflation has been rampant. And as every 2 one in this world knows, the world is very 3 different today than it was in 2019. 4 While our proposal looks simple and 5 straightforward, it was through hard work 6 and even harder decisions that the Unions 7 were able to agree on joint proposal 8 terms. That is a testament to the men and 9 women behind me and their willingness to 10 make compromises for the greater good of 11 all rail labor, particularly at this stage 12 in the dispute process where statutory 13 timelines are tight and the issues must be 14 significantly narrowed. 15 The Unions' proposal represents a 16 fair settlement of this dispute. Our 17 demands are fully justified, as we are 18 prepared to demonstrate through Union and 19 expert testimony during the course of 20 these proceedings. 21 Now I would like to give a brief 22 summary of the presentation we intend to</p>
<p style="text-align: right;">Page 68</p> <p>1 make to the Board this week. The case for 2 a joint proposal will be supported by the 3 testimony of several witnesses. 4 BLET President Dennis Pierce will 5 give introductory remarks on behalf of all 6 the Unions, including an overview of the 7 Unions' proposal and bargaining this 8 round. 9 President Pierce will be followed 10 by longtime labor attorney and bargaining 11 representative for the BMWED and SMART-MD, 12 Richard Edelman, who will testify about 13 historical changes in the railroad 14 industry and the justifications for the 15 Unions' wage proposal in light of rail 16 industries' robust financial returns and 17 labor's contributions to the Carriers' 18 prosperity. 19 Both witnesses will also offer 20 testimony about the impact of Carriers' 21 brutal slashing of head counts over the 22 last decade pursuant to a bare-bones</p>	<p style="text-align: right;">Page 69</p> <p>1 staffing model known as Precision 2 Scheduled Railroading, or PSR, the 3 COVID-19 pandemic, an unprecedented, but 4 very real, labor shortages on the industry 5 and the human toll it has taken on rail 6 employees. 7 Both witnesses will also respond to 8 the Carriers' proposal and explain why its 9 terms do not even begin to meet the needs 10 of our members and are therefore 11 unacceptable. 12 We will next turn to the testimony 13 of Tom Roth with The Labor Bureau. 14 Mr. Roth is well-known to the members of 15 this Board as a labor economist with 16 particular expertise in rail labor issues. 17 Over the decades he has appeared and been 18 accepted as an expert before numerous past 19 PEBs in freight, commuter and passenger 20 rail disputes. 21 Among the various topics he will 22 discuss is the current financial</p>

Page 70	<p>1 conditions in the rail industry with</p> <p>2 emphasis on the fundamental changes that</p> <p>3 have allowed the Carriers to produce</p> <p>4 record-breaking financial terms in recent</p> <p>5 years.</p> <p>6 In addition, he will analyze the</p> <p>7 Unions' joint proposal in terms of wage</p> <p>8 trends, overall costs and the Carriers'</p> <p>9 ability to pay the proposal. He will also</p> <p>10 compare the value of the Unions' proposal</p> <p>11 to the proposal offered by the Carriers.</p> <p>12 With respect to health and welfare</p> <p>13 issues, Dan Cook, BLET Director of</p> <p>14 Benefits and CRLO Administrator, will</p> <p>15 testify regarding the development of the</p> <p>16 national railroad health plans and to suit</p> <p>17 the particular needs of railroad</p> <p>18 employees. He will also discuss how</p> <p>19 health and welfare issues relate more</p> <p>20 generally to the Union proposal and the</p> <p>21 Carriers' proposal as well.</p> <p>22 Next we will rely on the testimony</p>	Page 71	<p>1 from Karen Mallet and Gaelle Gravot,</p> <p>2 principal consulting actuaries with</p> <p>3 Cheiron, a nationally recognized benefits</p> <p>4 consulting firm. Cheiron will discuss the</p> <p>5 costs of the railroad plans and relevant</p> <p>6 market comparisons. They will also</p> <p>7 discuss the impact of the great exodus of</p> <p>8 rail labor in recent years on the</p> <p>9 Carriers' overall health care costs.</p> <p>10 Spoiler alert, they went down.</p> <p>11 They will also address the effects</p> <p>12 of the Carriers' proposal on participants,</p> <p>13 as well as the impact of the Carriers'</p> <p>14 finances on the two plans.</p> <p>15 In the Unions' written materials at</p> <p>16 Union Exhibit 21, we have provided an</p> <p>17 expert witness report from health care</p> <p>18 experts Jonathan Kolstad and Zarek</p> <p>19 Brot-Goldberg.</p> <p>20 Mr. Kolstad is an associate</p> <p>21 professor at the Haas School of Business</p> <p>22 in the economics department at UC Berkeley</p>
Page 72	<p>1 and a research associate at the National</p> <p>2 Bureau of Economic Research.</p> <p>3 Mr. Brot-Goldberg is an assistant</p> <p>4 professor at the Harris School of Public</p> <p>5 Policy at the University of Chicago.</p> <p>6 Their report discusses the impact</p> <p>7 of increased health and welfare</p> <p>8 cost-sharing on employees. It counters a</p> <p>9 long out-of-date theory from half a</p> <p>10 century ago touted by the Carriers that</p> <p>11 falsely asserts that increased cost</p> <p>12 sharing does not impact employee health,</p> <p>13 it just makes them better, quote/unquote,</p> <p>14 consumers of health care services.</p> <p>15 To the contrary, this report</p> <p>16 concludes that increased cost-sharing does</p> <p>17 not improve the quality of health care</p> <p>18 choices made by employees at all. It has</p> <p>19 a negative impact on health outcomes. The</p> <p>20 conclusion reached is all health --</p> <p>21 increased health sharing does is shift the</p> <p>22 cost of health care from employers onto</p>	Page 73	<p>1 employees. As a result, rather than</p> <p>2 better utilizing plan benefits, employees</p> <p>3 instead forego critical care that can</p> <p>4 result in the worsening of medical</p> <p>5 conditions and ultimately increase health</p> <p>6 care costs in the long run.</p> <p>7 The Unions' joint sick leave</p> <p>8 proposal will be addressed by Jeremy</p> <p>9 Ferguson, SMART-TD president. President</p> <p>10 Ferguson will discuss the lack of paid</p> <p>11 sick leave for rail workers, which leaves</p> <p>12 those who are ill or injured with the</p> <p>13 Hobson's choice of staying home, losing</p> <p>14 pay and potentially their jobs or going to</p> <p>15 work risking illness or injury to</p> <p>16 themselves and others.</p> <p>17 He will further discuss how the</p> <p>18 COVID-19 pandemic and the Carriers' strict</p> <p>19 attendance policies have made this issue a</p> <p>20 priority for all employees. President</p> <p>21 Ferguson will also discuss the Unions'</p> <p>22 paid holiday proposal.</p>

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<p>1 Further, SMART-TD President 2 Ferguson will address the Carriers' 3 outrageous attempt to force the issue of 4 crew consist, or one-man crew, in national 5 handling through their back door, 6 so-called alternative wage proposal, 7 despite the fact that it is well-settled 8 that this is a matter for local handling 9 and the Carriers admit is being handled in 10 local handling today.</p> <p>11 Following the witness testimony 12 regarding the Unions' joint proposal 13 terms, each union will offer oral or 14 written testimony related to their 15 craft-specific proposals. We will 16 introduce those witnesses to you later in 17 conjunction with their presentation.</p> <p>18 There are two overarching issues in 19 this case that I intend to spend my 20 remaining time here today discussing. The 21 first is what I refer to as the financial 22 or economic case. The second is the</p>	<p>1 impact of significant labor shortages on 2 the employees, the Carriers' operations 3 and its role in the national supply chain 4 crisis.</p> <p>5 As its heart, our financial case 6 rests upon basic notions of fairness and 7 equity. As simply stated by PEB 226, 8 where a Carrier is, quote, a thriving 9 enterprise, it is, quote, proper that the 10 Carrier shares this success with its 11 employees. PEB 226 Report at 12.</p> <p>12 Profitability, usually described as 13 ability to pay, is nearly always a factor 14 considered in PEB proceedings or in 15 interest arbitrations more generally. For 16 the Carriers to argue otherwise is to swim 17 against a strong tied. And we know 18 because we have tried.</p> <p>19 Moreover, in some cases ability to 20 pay is not just one factor among many, but 21 becomes a central focus when in the past a 22 Carrier claims it is failing financially.</p>
Page 76	Page 77
<p>1 We submit that ability to pay should 2 likewise be a central focus when Carriers 3 are booking record profits, as is the case 4 here.</p> <p>5 And it is beyond dispute that the 6 Carriers before this Board are extremely 7 profitable. In fact, their financial 8 performance is so robust that it is 9 difficult not to sound somewhat hyperbolic 10 in describing it, which is why we have 11 largely decided to let the financial 12 numbers speak for themselves. The 13 essential financial metrics are summarized 14 in our opening submission and our 15 economist Mr. Roth will walk the Board 16 through these metrics and show that by 17 every accepted measure, the Carriers' 18 strong financial health is unparalleled.</p> <p>19 I did, however, want to highlight 20 one industrial financial trend that really 21 stands out to me, which is the stock 22 buybacks. A stock repurchase involves</p>	<p>1 buying back from shareholders -- buying 2 back shares from stockholders, thereby 3 decreasing the number of shares in the 4 market in circulation and driving up the 5 price per share. Stock repurchases a 6 something that cash-rich companies do. It 7 gives stock prices at least a short-term 8 boost and often signals that management 9 believes the company is being undervalued.</p> <p>10 During 2021 alone, the Big-3 11 railroads spent \$13.6 billion -- 12 billion -- on stock repurchase programs. 13 To put this in perspective, they spent a 14 total of 9.2 billion, or 4 billion less on 15 their entire employee benefits. All told, 16 the three Carriers spent 30.9 billion over 17 the last three years on stock buybacks, 18 which were, again, billions more than they 19 spent on their total labor bill during 20 that same period.</p> <p>21 The trend has no sign of abating. 22 For example, CSX spent 1 billion in</p>

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<p>1 buybacks during just the first three 2 months of this year alone. Norfolk 3 Southern announced in April a new 4 10 billion stock repurchase program. And 5 Union Pacific approved in February a 6 schedule to buy up to 100 million more of 7 its common shares over the next few years. 8 Having engaged in a truly 9 ostentatious series of stock buybacks with 10 plans for more of the same, the Carriers 11 still insist that labor is demanding too 12 much. But as a key point of comparison 13 for all the Carriers before this Board, 14 the total impact of our joint proposal is 15 an increased cost of 10.4 billion over the 16 entire five-year term. 17 Thus, we are asking for 18 10.4 billion for labor over a five-year 19 period, as compared to 58 billion and 20 counting in stock buybacks during the very 21 same period. How can they say with a 22 straight face that we are asking for too</p>	<p>1 much here? 2 The Carriers cannot and do not try 3 to deny the obvious fact that they are 4 very, very profitable companies. Instead, 5 they resort to asserting that recent gains 6 are, quote, fragile, and that the future 7 is clouded with uncertainty and risks. 8 As an aside, if the Carriers' 9 position is fragile, then pouring billions 10 in cash into stock buybacks with more 11 planned in the foreseeable future would be 12 ill-advised to say the least. In any 13 event, as we explain in our written 14 submission, the Carriers' current 15 performance is no mere flash in the pan. 16 Instead, their current health is 17 attributable to deep structural changes in 18 the industry, including deregulation of 19 most rate setting under the Staggers Act, 20 massive abandonment of unprofitable lines, 21 both before and after deregulation, waves 22 of consolidations have left only a few</p>
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<p>1 major railroads, and a variety of 2 technical advances in recent years. And, 3 of course, the implementation of their 4 bare-bones PSR staffing model, which has 5 cut Carriers' operating revenues 6 significantly in recent years and, despite 7 what they say, has left our members 8 working harder than ever to fill the gaps. 9 These fundamental changes have set 10 the table for their current fortunes. No 11 one is forecasting that these industry 12 fundamentals will suddenly deteriorate. 13 And as for their laundry list of vague 14 potential risks that are in Carriers' 15 summary position on page 35-37 and which 16 we've heard earlier today, none of these 17 future possibilities are unknown to the 18 markets. Nevertheless, investors continue 19 to view rail equities as stocks to buy and 20 hold forever. 21 Confronted before this Board with 22 the inconvenient truth of double-digit</p>	<p>1 profits, the Carriers resort to arguing 2 that profits simply do not matter. As 3 stated in their summary of position 4 on page 32, there is, quote, no logical 5 reason why profitability and labor 6 compensation should be related, end quote. 7 This is quite an extreme position to stake 8 out, particularly when you're raking in 9 profits, can't meet your customers' needs 10 and can't keep employees. 11 Suffice it to say it's not a view 12 that we believe that most labor relations 13 professionals would agree with and it 14 certainly lacks support in past PEB 15 decisions. No board issues a decision in 16 a vacuum, and we expect that this Board 17 will be no exception. 18 The Carriers next argue that 19 profits should only matter in leaner times 20 when demanding employee pay cuts. Even 21 accepting as true the notion that 22 sacrifices are required to share in</p>

<p style="text-align: right;">Page 82</p> <p>1 financial good times, the employees before 2 this Board have sacrificed. 3 In PEB 219, the Carriers argued 4 vigorously that their financial position 5 was precarious and deep cuts were required 6 from labor. Unfortunately, they were 7 believed, which led to two-year wage 8 freeze increases, dramatic changes to 9 health and welfare benefits which directly 10 targeted employees' take-home pay, as well 11 as very substantial work rule concessions. 12 As Tom Roth will explain, rail 13 employees have never fully recovered from 14 PEB 219. In addition, the structural 15 changes in industry have exacted a heavy 16 and long-lasting toll on Union members, 17 including job losses, displacements and 18 the demand of technology, to name a few. 19 Thus, if past sacrifice is required to 20 claim a share of the Carriers' current era 21 of profitability, then consider that box 22 checked.</p>	<p style="text-align: right;">Page 83</p> <p>1 The second theme of my remarks here 2 this morning is focused on the impact, 3 again, of the very real labor shortage on 4 the national supply chain crisis. And to 5 be clear, despite what the Carriers may 6 claim, the labor shortages are again very 7 real, as you'll hear throughout our 8 presentation this week. 9 Starting in 2016 the Carriers 10 started adopting a business model of 11 staffing known as Precision Scheduled 12 Railroading or PSR. As stated, this model 13 relies on bare-bones staffing to meet the 14 Carriers' projected business needs. As a 15 result, after remaining relatively stable 16 for 25 years, between November 2018 and 17 December 2020 alone, the Carriers lost 18 over 40,000 employees. 19 During the COVID-19 pandemic, the 20 Carriers also furloughed a significant 21 number of workers following an initial 22 decline in traffic. Those who remained</p>
<p style="text-align: right;">Page 84</p> <p>1 worked through the pandemic and were 2 lauded as essential workers and heroes, 3 but their workload increased because this 4 were fewer workers employed. 5 During this time of risk and extra 6 workload, employees had no pay increases. 7 As traffic returned, the railroads made 8 the ill-advised decision to not recall 9 furloughed workers, choosing simply 10 instead to place this additional burden on 11 the shoulders of the existing workforce. 12 Quite simply, the remaining workers had to 13 do more with less and under very trying 14 circumstances. 15 During this entire time period, the 16 Carriers' profits increased 17 notwithstanding the pandemic. Meanwhile, 18 rail workers are working harder than ever 19 to keep the American economy moving. To 20 quote CSX, quote, Rails and roads don't 21 move freight, people do. No matter how 22 hard they worked, however, it simply</p>	<p style="text-align: right;">Page 85</p> <p>1 wasn't enough. 2 The Carriers' labor cuts were too 3 deep. They were tired and overworked. 4 Despite their self-proclaimed, very 5 generous compensation packages, the 6 Carriers couldn't keep the employees they 7 had or attract new workers to fill the 8 vacancies. And even when they did hire, 9 the new hires soon quit, unwilling to work 10 under the present conditions. 11 Furloughed employees for the first 12 time ever rejected recall in droves. 13 Seasoned workers began to walk away from 14 their career -- mid-career, choosing 15 instead to find more attractive employment 16 with better pay and benefits and more 17 stable lifestyles elsewhere. 18 Shippers began to complain. They 19 complained of poor service, missed 20 switches, late deliveries and pickups, 21 trains not operating or not operating as 22 scheduled, due to insufficient train crews</p>

<p style="text-align: right;">Page 86</p> <p>1 and insufficient locomotive fleets. 2 The railroads acknowledged that 3 their service was not adequate. They 4 cited difficulties in retaining and hiring 5 employees and compared themselves to other 6 employers who were having difficulty 7 reaching proper staffing levels. Those 8 employers, however, had not gone on a 9 major job-cutting spree prior to the 10 pandemic. 11 In response to shipper complaints, 12 the Surface Transportation Board, an 13 independent government agency charged with 14 the oversight of the freight rail 15 industry, held hearings in April of this 16 year concerning persistent increases in 17 rail service problems. The STB ordered 18 representatives from BNSF, CSX, Norfolk 19 Southern and Union Pacific to appear at 20 the hearing. 21 In calling these hearings, the 22 chairman of the STB said, quote, I have</p>	<p style="text-align: right;">Page 87</p> <p>1 raised concerns about the primacy Class I 2 railroads have placed on lowering their 3 operating ratios and satisfying their 4 shareholders even at the cost of their 5 customer. Part of that strategy has 6 involved cutting their workforce to the 7 bare bones in order to reduce costs. 8 The chairman on the STB went on to 9 say, Over the last six years, the Class Is 10 collectively have reduced their workforce 11 by 29 percent. That is about 45,000 12 employees cut from the payrolls. In my 13 view, all of this has directly contributed 14 to where we are today, rail users 15 experiencing serious deterioration in rail 16 service because, on too many parts of 17 their networks, the railroads simply do 18 not have a sufficient number of employees. 19 Again, this is the Surface 20 Transportation Board, an independent 21 government agency. 22 During this hearing, rail labor</p>
<p style="text-align: right;">Page 88</p> <p>1 representatives, including several in this 2 room today, explained that the Carriers 3 had excessively cut the workforces and 4 that the remaining workers were so 5 overwhelmed and pressured to cut corners 6 because of the furloughs on their 7 coworkers. 8 Their representatives also reported 9 the unprecedented numbers of rail workers 10 were quitting mid-career and that 11 furloughed employees were refusing recall 12 because working conditions had 13 deteriorated and pay had not increased 14 since 2019. 15 The railroads acknowledged their 16 failures to the Surface Transportation 17 Board just a few months ago. They said 18 that while they're trying to hire new 19 workers, they admitted that they were 20 unable to reach their goals. The 21 railroads claimed to have plans and 22 programs to retain their skilled and</p>	<p style="text-align: right;">Page 89</p> <p>1 experienced employees and to hire new 2 workers. Remarkably, their plan did not 3 include any real wage increases. Despite 4 their claimed efforts to increase 5 employment, the total number of employees 6 remains stagnant. 7 Notwithstanding their statements to 8 the Surface Transportation Board, the 9 Carriers claim here with a straight face 10 to this Board that the Unions have 11 overstated the labor shortage issue, 12 including current attrition rates. 13 To dismiss the employees' 14 complaints as mere rhetoric and lacking in 15 any, quote, substance is insulting to the 16 Carriers' employees and everyone behind 17 you on the left side of the room. It is 18 also simply not true, as the Carriers 19 themselves has publicly acknowledged on 20 multiple occasions. 21 For example, in December of 2021, 22 Norfolk Southern president Alan Shaw wrote</p>

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<p>1 to the Surface Transportation Board</p> <p>2 stating that, quote, We recognize that our</p> <p>3 current service levels do not meet our</p> <p>4 customers' or our expectations.</p> <p>5 He went on to say that, quote,</p> <p>6 Norfolk Southern is currently experiencing</p> <p>7 meaningful workforce shortfalls in</p> <p>8 critical portions on our network. He then</p> <p>9 stated that these workforce shortfalls are</p> <p>10 causing -- are caused by, quote,</p> <p>11 unexpectedly high attrition rates, end</p> <p>12 quote, and, quote, hiring challenges, as,</p> <p>13 quote, the entire transportation industry</p> <p>14 faces an unusually tight and rapidly</p> <p>15 evolving labor market.</p> <p>16 Carriers state to this Board that</p> <p>17 there is less work to perform and that's</p> <p>18 why there are fewer employees. Again,</p> <p>19 these statements revealed that that is</p> <p>20 simply not true.</p> <p>21 Just a few days ago, on July 20th,</p> <p>22 during a second quarter 2022 earnings</p>	<p>1 call, CSX CEO Jim Foote said, quote, What</p> <p>2 remains constant is that right now as we</p> <p>3 have seen this entire year, there is more</p> <p>4 demand for rail service than we are able</p> <p>5 to satisfy.</p> <p>6 Mr. Foote went on to state, Our</p> <p>7 ability to hire and retain new workers,</p> <p>8 which is vital to improving our service</p> <p>9 and growing the business, remains</p> <p>10 challenged. We are not alone in facing</p> <p>11 this problem. The labor market is tight,</p> <p>12 prospective recruits have many job</p> <p>13 options, and the pandemic has had a</p> <p>14 profound effect on employees' work and</p> <p>15 lifestyle preferences.</p> <p>16 Mr. Foote then acknowledged the</p> <p>17 issue with attrition rates, which the</p> <p>18 Carriers deny exist here today.</p> <p>19 Particularly with new hires, Mr. Foote</p> <p>20 said, quote, It's been somewhat of a</p> <p>21 surprise to all of us, the number of</p> <p>22 people that have been dropping out after</p>
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<p>1 going through all the classroom training,</p> <p>2 all of the on-the-job training and then</p> <p>3 working a few months and deciding that</p> <p>4 they don't like railroading as a</p> <p>5 profession.</p> <p>6 It cannot be disputed that the</p> <p>7 Carriers still don't have enough workers</p> <p>8 to do the work, and the faith of their</p> <p>9 overworked and underpaid employees that</p> <p>10 their conditions will improve has reached</p> <p>11 its breaking point.</p> <p>12 As you will hear from the Unions</p> <p>13 this week, workers in all crafts complain</p> <p>14 of being required to work consecutive days</p> <p>15 of mandatory overtime, sometimes with full</p> <p>16 double shifts of 16 hours in duration.</p> <p>17 You will also hear how many</p> <p>18 Carriers -- how many Carriers have adopted</p> <p>19 strict attendance policies to discourage</p> <p>20 employees from taking days off when sick</p> <p>21 or injured. In this regards, I totally</p> <p>22 agree with the Carriers that allowing</p>	<p>1 people to take days off for being sick</p> <p>2 would be, quote, utterly incompatible with</p> <p>3 modern railroad operations.</p> <p>4 Moreover, employees are now</p> <p>5 routinely being denied single-day vacation</p> <p>6 or other paid leave day requests.</p> <p>7 Employers with enough employees do not</p> <p>8 take these actions.</p> <p>9 Additionally, the staffing</p> <p>10 shortages have become so severe that</p> <p>11 railroads are now offering to buy back</p> <p>12 employee vacation for the rest of this</p> <p>13 year. BNSF and other Carriers are asking</p> <p>14 employees to forego their scheduled</p> <p>15 vacations now through the end of this year</p> <p>16 to receive their regular wages plus what</p> <p>17 they would have earned while they were on</p> <p>18 vacation plus a \$2,500 bonus per week.</p> <p>19 Other Carriers are resorting to similarly</p> <p>20 desperate measures. Employers with enough</p> <p>21 employees do not take these actions.</p> <p>22 Employees are also being offered</p>

<p style="text-align: right;">Page 94</p> <p>1 transfer incentives and the Carriers are 2 now mandating or taking volunteers for 3 mobile deployment units to send workers to 4 the areas in most need. Employers with 5 enough employees do not take these 6 actions. 7 Similarly, the Carriers are also 8 offering hiring bonuses to new employees. 9 For example, Union Pacific is now offering 10 \$10,000 in hiring bonuses for Chicago area 11 train conductors and engineers and 15,000 12 for diesel technicians, while BNSF has 13 advertised a \$20,000 incentive for diesel 14 technicians -- technician jobs in the 15 Chicago area as well. Employers with 16 enough employees do not take these 17 actions. 18 Additionally, CSX just voluntarily 19 got rid of their entry rate progression. 20 Now all employees on day one will be 21 starting at 100 percent of the rate of 22 pay. They did this voluntarily.</p>	<p style="text-align: right;">Page 95</p> <p>1 Employers with enough employees do not 2 take these actions. Meanwhile, the 3 existing workforce who has to train these 4 new hires have not had wage increases 5 since 2019. 6 These little efforts are simply not 7 enough, particularly when a rail employee 8 could leave today and make six figures 9 driving as a first-year driver in 10 Walmart's fleet, and Walmart is certainly 11 no friend of labor. 12 In short, there are simply not 13 enough employees to do the work, which 14 industry experts and independent 15 government agencies have found is greatly 16 contributing to the nation's ongoing 17 supply chain crisis and the Carriers' 18 ability to meet their common Carrier 19 obligations. This situation will only get 20 worse if something doesn't give. 21 Quite frankly, as the labor leaders 22 here this week will testify, the remaining</p>
<p style="text-align: right;">Page 96</p> <p>1 workers have told us that they are 2 awaiting the outcome of this dispute to 3 decide whether they should stay or leave 4 railroad employment completely. Against 5 this harsh landscape, the parties are 6 seeking a path forward from this PEB. 7 In my final time here today, I 8 would like to take a brief moment to 9 comment on the role of a Presidential 10 Emergency Board. As past PEBs have 11 explained, the role of an emergency board 12 is to make recommendations that conform 13 the basis of a voluntary settlement 14 between the parties, thereby avoiding 15 interruptions to commerce caused by a 16 strike or lockout or the possibility of 17 Congressional legislation imposing 18 contract terms. In other words, this 19 Board should recommend a settlement that 20 the parties could have made voluntarily if 21 bargaining had been successful. 22 As part of formulating a settlement</p>	<p style="text-align: right;">Page 97</p> <p>1 that can lead to a voluntary agreement, 2 past PEBs have placed great emphasis on 3 the acceptability of settlement terms to 4 the parties. In determining 5 acceptability, a key component is the 6 reasonable expectations of the parties 7 based upon considerations such as past 8 bargaining history, the historical 9 relationship to other employees and 10 current rail industry trends. On this the 11 parties seem to agree. 12 In striving to achieve 13 acceptability, past PEBs have generally 14 rejected proposals from either side that 15 represent significant departures from 16 current contract terms or industry norms. 17 In the normal course of bargaining, 18 changes in agreements are usually 19 incremental and proposals to radically 20 alter the status quo are rarely deemed 21 acceptable. 22 As PEB 242 observed, proposals</p>

<p style="text-align: right;">Page 98</p> <p>1 tantamount to a, quote, compete -- 2 complete capitulation in several areas 3 could not be reasonably expected. 4 Therefore, in the past when parties have 5 sought recommendation for terms of 6 employment that are unprecedented on the 7 property or in the industry, PEBs have 8 uniformly denied such requests. 9 It is with these basic principles 10 in mind that the Unions have fashioned 11 their proposal to this Board. Our 12 proposal represents the kind of fair 13 settlement that the parties should have 14 been able to reach on their own, 15 particularly given the Carriers' financial 16 health and their severe labor shortage 17 issues. It represents a giant leap 18 towards the middle, as required by the 19 parties during an emergency board process. 20 The Union proposal reflects those 21 criterias that the parties have relied on 22 in the past to reach agreement and in</p>	<p style="text-align: right;">Page 99</p> <p>1 doing so preserves established 2 relationships and avoids destabilizing 3 departures from industry norms. 4 The Carriers' proposal will be 5 addressed fully by our witnesses this week 6 and in our rebuttal materials. However, I 7 would like to make two brief observations 8 about their proposal in my remarks here 9 today. 10 First, rather than represent a move 11 towards the middle, as we have done, the 12 Carriers' proposal has taken strides 13 backwards. Frankly, theirs is an 14 everything and the kitchen sink wish list 15 in which what's theirs is theirs and 16 what's ours is theirs too. 17 To be clear, the Carriers' proposal 18 is not even close to a deal that could 19 have been reached by the parties in 20 bargaining and that could have been 21 ratified by the membership. Carriers 22 drastically overreach here. Rather than</p>
<p style="text-align: right;">Page 100</p> <p>1 take measured steps, their proposal 2 reflects an attempt to fundamentally alter 3 the parties' bargaining relationship and 4 is particularly overreaching in their 5 laundry list of health and welfare 6 concessionary demands and their demands 7 over crew consist. 8 Second, the Carriers are completely 9 tone deaf to the needs of their 10 overburdened and underappreciated rail 11 workers. They have failed to show their 12 employees that they care about the weight 13 they are shouldering. They don't even 14 acknowledge they're carrying that weight 15 due to this acute shortage of workers 16 which has been exacerbated -- which has 17 only exacerbated the ongoing supply chain 18 issues. 19 Quite simply put, there are not 20 enough rail workers to do the work, 21 causing them and the entire American 22 economy to suffer.</p>	<p style="text-align: right;">Page 101</p> <p>1 Several of the people in this room 2 were here during PEB 243, including 3 yourself, Chairman Jaffe. And during 4 PEB 243 I sat before a similar board and 5 listened to the Carriers argue that their 6 proposal before the Board was fair. In 7 doing so, the Carriers said, it all boils 8 down to supply and demand. They argued 9 that their jobs were competitively priced, 10 as evidenced by the fact that they had 11 tens of thousands of more job applicants 12 than jobs available at that time. As 13 evidence, they put up a picture of a job 14 fair with potential job applicants lined 15 up around the block. 16 Well, we are a far, far, far cry 17 from those days. Even when they do new 18 hire workers, they simply can't get them 19 to stay under the present working 20 conditions. 21 Applying the Carriers' same 22 arguments of basic supply and demand, I</p>

<p style="text-align: right;">Page 102</p> <p>1 would argue that rail work is not 2 competitively priced by the fact that the 3 Carriers cannot attract qualified job 4 applicants, cannot recall furloughed 5 workers and cannot retain the workers, 6 both old and new, that they already have. 7 As a result, the workers here are 8 suffering. And as found by the STB during 9 its recent hearings, the Carriers' clients 10 are suffering and the American public is 11 suffering. Like every other employer in 12 the country, the Carriers need to catch on 13 that they need to do more to attract and 14 retain employees, not less. This is just 15 the nature of the world we live in today. 16 To quote the Carriers, quote, You have to 17 compete in the market just like everyone 18 else. 19 I want to share one final point. 20 The railroads are, in fact, and still are, 21 a world of their own. They have the 22 Railway Labor Act and the National</p>	<p style="text-align: right;">Page 103</p> <p>1 Mediation Board, which they share only 2 with the airlines. And the airlines, as 3 many in this room know, are nothing like 4 the rails, as most industry, like I said. 5 Excuse me. 6 There is an entirely separate 7 federal retirement program for rail 8 employees in lieu of Social Security. 9 There is also a separate unemployment 10 insurance program for railroad workers. 11 They are governed by federal agencies 12 devoted solely to the industry, including 13 the Surface Transportation Board as we 14 discussed, the Federal Railroad 15 Administration and the National Railroad 16 Adjustment Board. 17 And now the railroads have set 18 themselves apart in an additional respect. 19 They are able to make and maintain 20 record-breaking profits despite the 21 COVID-19 pandemic and outperform the rest 22 of the American industry in terms of every</p>
<p style="text-align: right;">Page 104</p> <p>1 commonly used financial metric. 2 So the Carriers present their 3 parade of experts who will seek to compare 4 our jobs to those of workers in other 5 industries and claim that our wages are 6 too high and that our health care benefits 7 are too generous. 8 We urge you to keep in mind this 9 simple truth: The railroads are and 10 always have been a world apart. Railroad 11 employees deserve a settlement that 12 reflects the unique circumstances of this 13 world, including all the things discussed 14 during my remarks today. The Unions' 15 proposal begins to accomplish this. We 16 submit that the Board should recommend its 17 terms. 18 In closing, to paraphrase CSX 19 executive vice president of operations, 20 Jamie Boychuk, in a recent press release, 21 these are trying times and rail employees 22 are suffering from broader economic</p>	<p style="text-align: right;">Page 105</p> <p>challenges. Rail employees have delivered for the customers, communities and the nation through the pandemic, ongoing supply chain disruptions and higher housing, food and fuel prices. It's time the Carriers recognize their efforts and the difficult circumstances they and their families are facing by providing some relief through these fair and rightly earned compensation packages. The Unions' proposal is a step towards this recognition and we submit that the Board should recommend its terms. Thank you for the opportunity to speak today. That concludes my remarks and I look forward to working with the Board this week. CHAIRPERSON JAFFE: Thank you, Ms. Roma. With that, we will stand in adjournment until 8:00 a.m. tomorrow morning.</p>

<p style="text-align: right;">Page 106</p> <p>Off the record, please. (Thereupon, at 4:29 p.m., the proceedings were adjourned, to be reconvened at 8:00 a.m. on Monday, July 25, 2022.)</p>	<p style="text-align: right;">Page 107</p> <p>CERTIFICATE OF REPORTER I, MISTY KLAPPER, the officer before whom the foregoing arbitration was taken, do hereby certify that the proceedings which appear in the foregoing arbitration was duly taken by me in shorthand and thereafter reduced to typewriting by me; that said arbitration is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this arbitration was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.</p> <p style="text-align: center;">_____ Misty Klapper, RMR, CRR</p>

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