

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)

Held at: Grand Hyatt Washington
1000 H Street, N.W.
Washington, D.C. 20001

VOLUME IV
Wednesday, July 27, 2022

8:08 a.m. EST to 5:53 p.m. EST

Reported by: Okeemah S. Henderson, LSR

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<p>PRESIDENTIAL EMERGENCY BOARD MEMBERS: CHAIRMAN IRA F. JAFFE BOARD MEMBER BARBARA C. DEINHARDT BOARD MEMBER DAVID P. TWOMEY</p> <p>COUNSEL ON BEHALF OF NATIONAL CARRIERS CONFERENCE COMMITTEE (NCCC): 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: 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: ERIKA DIEHL-GIBBONS, ESQUIRE ASSOCIATE GENERAL COUNSEL SMART TRANSPORTATION DIVISION UNITED TRANSPORTATION UNION 24950 Country Club Boulevard, Suite 340 21 North Olmstead, Ohio 44070 (216) 228-9400</p>	<p>TABLE OF CONTENTS</p> <table border="0"> <thead> <tr> <th style="text-align: left;">WITNESS</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr><td>DAN COOK</td><td style="text-align: right;">1053</td></tr> <tr><td>KAREN MALLET</td><td style="text-align: right;">1053</td></tr> <tr><td>GAELE GRAVOT</td><td style="text-align: right;">1053</td></tr> <tr><td>JEREMY FERGUSON</td><td style="text-align: right;">1235</td></tr> <tr><td>SHAWN MCKINLEY</td><td style="text-align: right;">1278</td></tr> <tr><td>BRENT LEONARD</td><td style="text-align: right;">1304</td></tr> <tr><td>JEREMY FERGUSON (YARDMASTERS)</td><td style="text-align: right;">1318</td></tr> <tr><td>JEREMY FERGUSON (ATTENDANCE)</td><td style="text-align: right;">1333</td></tr> <tr><td>DENNIS PIERCE</td><td style="text-align: right;">1357</td></tr> <tr><td>JEREMY FERGUSON (SCHEDULING)</td><td style="text-align: right;">1393</td></tr> <tr><td>PETER KENNEDY</td><td style="text-align: right;">1403</td></tr> <tr><td>AL RUSSO</td><td style="text-align: right;">1443</td></tr> <tr><td>MICHAEL BALDWIN</td><td style="text-align: right;">1465</td></tr> <tr><td>DEAN DEVITA</td><td style="text-align: right;">1533</td></tr> </tbody> </table>	WITNESS	PAGE	DAN COOK	1053	KAREN MALLET	1053	GAELE GRAVOT	1053	JEREMY FERGUSON	1235	SHAWN MCKINLEY	1278	BRENT LEONARD	1304	JEREMY FERGUSON (YARDMASTERS)	1318	JEREMY FERGUSON (ATTENDANCE)	1333	DENNIS PIERCE	1357	JEREMY FERGUSON (SCHEDULING)	1393	PETER KENNEDY	1403	AL RUSSO	1443	MICHAEL BALDWIN	1465	DEAN DEVITA	1533
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<p>MORNING SESSION (8:08 a.m.) CONFIDENTIAL PROCEEDINGS</p> <p>CHAIRPERSON JAFFE: At your convenience, Ms. Roma.</p> <p>MS. ROMA: Thank you, Mr. Chairman, Board members. This morning, the Union's plan for their affirmative case to go over their health and welfare presentation. I note that I'm going to have a slight scheduling change. My intent was to hammer through the first 3 hours, I think that might be ill advised. So, we're going to plan on going about an hour, maybe take a 15-minute break and then go on to our next witness.</p> <p>And our witnesses this morning will Dan Cook and representatives from Cheiron. Mr. Cook will be presenting first, and then the representatives from Cheiron.</p> <p>Our thought was to have them present as a panel so they could answer</p>	<p>1 your questions more full and maybe have 2 them all sworn in together. 3 CHAIRPERSON JAFFE: That sounds 4 fine. Are you ready to have the witnesses 5 sworn in or do you want to make any 6 additional remarks before then? 7 MS. ROMA: I'll just introduce them 8 and then we can swear them in, that's 9 fine. 10 CHAIRPERSON JAFFE: Thank you. 11 MS. ROMA: So, our first witness 12 this morning is Dan Cook. 13 Mr. Cook is the director of 14 benefits for the Brotherhood of Locomotive 15 Engineers and Trainmen. He is also the 16 administrator for the Cooperating Railway 17 Labor Organization, also known as the 18 CRLO. The CRLO is an umbrella 19 organization made up of all of the Unions 20 before this Board and is tasked with 21 handling health and welfare issues on 22 behalf of the Unions, including the</p>																														

<p>Page 1051</p> <p>1 jointly administered Railroad Employees 2 National Health and Welfare Plan also 3 known as the National Plan. 4 After Mr. Cook speaks, we'll be 5 relying on expert testimony from principal 6 consulting actuaries from Cheiron, Karen 7 Mallet and Gaelle Gravot. 8 Cheiron is nationally recognized 9 benefits consulting firm specializing in 10 employee benefits issues including pension 11 and health care plans. 12 Ms. Mallet in the vice president 13 and co-founder of Cheiron. She's a member 14 of the American Academy of Actuaries and a 15 fellow in the Society of Actuaries. Ms. 16 Mallet has 35 years of actuarial 17 experience in employee benefits, as well 18 as group and individual insurance plans. 19 Ms. Mallet has extensive 20 experiencing assisting parties in 21 collective bargaining over health and 22 welfare issues and has worked with various</p>	<p>Page 1052</p> <p>1 rail labor groups on the railroads for the 2 plan since 2005. She was a witness before 3 Presidential Emergency Board 243 as well. 4 Gaelle Gravot is a principal 5 actuary with Cheiron. She is a fellow of 6 the Society of Actuaries and a member of 7 the American Academy of Actuaries. She 8 has 24 years' experience working in health 9 care plans, including both self-and-fully- 10 insured plans and in providing collective 11 bargaining support for the same. 12 And with that, I'll turn it over to 13 the witnesses. 14 CHAIRPERSON JAFFE: Thank you, Ms. 15 Roma. May I ask the reporter to please 16 swear in the witnesses. 17 18 19 20 21 22</p>
<p>Page 1053</p> <p>1 THEREUPON: 2 DAN COOK 3 KAREN MALLET 4 (and) 5 GAELLE GRAVOT 6 were called for examination, and, after 7 being duly sworn, testified as follows: 8 MR. COOK: Good morning, Mr. 9 Chairman, and other esteemed members of 10 the Board. As Ms. Roma said, my name is 11 Dan Cook. By way of background 12 information, I'm not only a locomotive 13 engineer by trade, but I'm also a fourth- 14 generation locomotive engineer as well. 15 I'm proud to say that I was raised 16 by Gandy Dancer. My father was in the 17 track department from 1976 until moving 18 into the transportation department in 1994 19 and becoming an engineer. My grandfather 20 was a Firemen for several years, and two 21 of his brothers, along with his father, my 22 great-grandfather were locomotive</p>	<p>Page 1054</p> <p>1 engineers. 2 I don't tell you all of this to 3 bore you with my personal family history, 4 but instead to demonstrate the basis for 5 my next very important point. You see, 6 unlike many of the individuals this Board 7 has previously heard testimony from and 8 the parties they represent, I've either 9 been personally covered by or directly 10 represented those that are currently 11 covered by the plans that are being 12 discussed before this Board for the 13 entirety of my life. 14 I speak here today humbled and a 15 bit sad, both of which I will get to at a 16 later point, but at the outset, I do want 17 to say that I very much thank you, the 18 Board, for this opportunity to speak. 19 During my time before you, I plan 20 to provide a brief summary of the current 21 health and welfare plans and the parties' 22 bargaining history over same, including</p>

<p style="text-align: right;">Page 1055</p> <p>1 the current round. I will then provide an 2 overview of the Union's health care 3 welfare proposal before this Board, and 4 finally, I will comment on the Carrier's 5 proposal. 6 I'm happy to answer any questions 7 the Board may have either during or at the 8 conclusion of my remarks, so please feel 9 free to stop me at any point if you should 10 have a question. 11 As background, the parties have 12 negotiated two health care plans through 13 the collective bargaining process; one, 14 the National Plan; and 2, the NRCUTU Plan. 15 Because the plans are currently offer the 16 same level of benefits, my remarks here 17 today will apply to both plans. 18 My primary responsibilities involve 19 handling administrative and sponsor issues 20 related to the National Plan. I also play 21 the liaison between the union membership 22 and the insurance companies whenever a</p>	<p style="text-align: right;">Page 1056</p> <p>1 member has an issue with their coverage or 2 a claim. 3 The National Plan is jointly 4 sponsored and jointly administered by the 5 joint plan committee, the two members of 6 which are currently Dennis Pierce, 7 National President of the BLET and CRLO 8 chairman, and Mr. Brendan Branon, chairman 9 of the NRLC. 10 While I've only served as the CRLO 11 administrator since 2020, I have been the 12 BLET labor representative on the CRLO 13 health and welfare subcommittee since 2007 14 when I became a full-time employee of the 15 of BLET national division. Previous to 16 that I served my organization in a number 17 of capacities at both the local and 18 general committee levels while also 19 working as a full-time locomotive 20 engineer. 21 A detailed summary of the plans is 22 provided in the unit's prehearing</p>
<p style="text-align: right;">Page 1057</p> <p>1 submission. The plans are the direct 2 product of collective bargaining over the 3 past 7 decades under the major dispute 4 process outlined in the RLA. These rail 5 health care plans are unique in many 6 respects. 7 I'm unaware of any other health and 8 welfare plans that are similar in design 9 and governance to our plans. While I have 10 found many plans that are owned solely by 11 management or by labor or where the two do 12 have some entwined interactions regarding 13 benefits, I have yet to find anyone 14 outside of our circle who has even ever 15 heard of a plan that both labor and 16 management jointly sponsor and jointly 17 administer as we do. 18 The plans have their origin in the 19 1955 National Agreements, which created an 20 initial health insurance policy covering 21 most rail workers. Today, the plans are 22 self-insured which enables the parties to</p>	<p style="text-align: right;">Page 1058</p> <p>1 customize the plans down to the smallest 2 detail to meet the specific health care 3 needs of railroaders as opposed to 4 purchasing an off the shelf or out of the 5 box insurance policy. 6 This enabled the parties to address 7 demographics and health trends that are 8 unique to railroad workers when compared 9 to the rest of the American population. 10 Changes were made through the normal give- 11 and-take of bargaining. Plan enhancements 12 are only given in exchange for something 13 of value from the Unions or when mandated 14 by federal law. 15 Strong and affordable health care 16 is important to rail workers and came at 17 the cost and sacrifice of great 18 contractual improvements over the years. 19 I speak to you from first-hand experience. 20 As I said before, not only have several 21 generations of my family been covered by 22 these same benefits but so have I.</p>

<p style="text-align: right;">Page 1059</p> <p>1 As this Board is already well 2 aware, the railroad industry is unique in 3 many ways. This is especially true when 4 it comes to our health and welfare needs 5 and benefits. Railroad work is both 6 mentally and physically demanding. The 7 majority of employees travel away from 8 home, either for long periods of time on a 9 cyclical short-term basis, as part of 10 their normal job duties and many have odd 11 or irregular schedules. 12 For these crafts who are governed 13 by federal regulations for work/rest 14 periods -- for those crafts -- excuse me, 15 governed by federal regulations for 16 work/rest periods our lives are measured 17 in hours, not in days, as days of the week 18 have no real bearing on what we do in this 19 industry. 20 This is particularly relevant now 21 given the railroads' self-induced labor 22 shortage crisis, which leaves the</p>	<p style="text-align: right;">Page 1060</p> <p>1 remaining employees having to work harder 2 and longer hours to fill the enormous 3 gaps. To be clear, railroad work is not a 4 9 to 5 desk job, and combined with strict 5 work rules such as harsh attendance 6 policies, it is harder for rail employees 7 to do what other people may take for 8 granted, such as annual checkups or other 9 preventive or basic care. Because of 10 this, many railroaders don't actually see 11 a doctor until they are forced to which of 12 course leads to generally worse conditions 13 and outcomes. 14 Additionally, the work itself can 15 be dangerous, and many workers are exposed 16 to occupational hazards which impact their 17 overall health. Couple this with their 18 general work/life/rest balance or lack 19 thereof and these effects cannot only be 20 seen in the employees themselves but also 21 their families. 22 Not surprisingly, railroad</p>
<p style="text-align: right;">Page 1061</p> <p>1 employees and their families are 2 statistically at greater risk of certain 3 health issues than workers in other 4 industries. The plans have evolved over 5 nearly 70 years of collective bargaining 6 and are designed to meet the specific 7 needs of railroad workers. 8 Over the years, the Unions have 9 agreed to give up items of value in 10 bargaining as quid pro quo including 11 accepting lower wage increases or less 12 favorable work rules in order to achieve 13 and maintain the current design of health 14 care benefits. 15 Generally, and historically 16 speaking, the railroads do not part with 17 anything that increases their bottom line 18 without the prospect of some type of hefty 19 return. I can assure you that as a whole, 20 the railroads fully adopt the same 21 philosophy when it comes to managing their 22 workforce. If this wasn't the case, we</p>	<p style="text-align: right;">Page 1062</p> <p>1 wouldn't be almost 3 years into this 2 process in the middle of a labor shortage 3 and with the carriers bringing in record 4 profits, with the carriers continued line 5 of doubling down on health care 6 concessions. 7 A summary of the Plans' design is 8 provided in our opening submission and was 9 discussed in depth by the Carriers during 10 their previous remarks. I don't believe 11 we need to go into these details again, 12 but we'll certainly be happy to if the 13 Board so desires. 14 From 1995 until the 2003 agreements 15 or for nearly 50 years, the plan had no 16 regular monthly employee cost-sharing 17 payment deducted from the employees 18 paychecks. To be clear, this was not due 19 to the Carriers generosity or gratitude 20 for our hard work. It was because the 21 Union's feverously defended those benefits 22 and prioritized health care at the expense</p>

<p style="text-align: right;">Page 1063</p> <p>1 of other issues.</p> <p>2 The Unions agreed in bargaining for</p> <p>3 the first time to introduce monthly</p> <p>4 employee cost-sharing payment in the 2003</p> <p>5 agreements, the figures of which varied</p> <p>6 greatly by union. In our short history of</p> <p>7 monthly contributions, while sometimes</p> <p>8 contributions rates have been set at 15</p> <p>9 percent, more often they have not.</p> <p>10 For example, for the last 6 years</p> <p>11 the bargained-for contribution has been a</p> <p>12 flat rate of \$228.89. Today, that \$228.89</p> <p>13 represents approximately 11.9 percent of</p> <p>14 the employer's cost of monthly premiums.</p> <p>15 To answer a previous question that</p> <p>16 you, Mr. Chairman, asked the Carriers,</p> <p>17 currently 15 percent of the monthly</p> <p>18 premiums would be \$287.46. A more</p> <p>19 detailed summary of the parties'</p> <p>20 bargaining history this round can be found</p> <p>21 in our submission. So put it bluntly,</p> <p>22 bargaining this round was unproductive and</p>	<p style="text-align: right;">Page 1064</p> <p>1 seemed to be generally an exercise in</p> <p>2 futility.</p> <p>3 It took two years for the Carriers</p> <p>4 to formulate a comprehensive but still</p> <p>5 vague proposal. When they did, it was not</p> <p>6 only completely over-reaching and all-</p> <p>7 inclusive of the most outlandish concepts</p> <p>8 that they had ever pondered, but as you</p> <p>9 can guess, they made it far from</p> <p>10 acceptable to the Unions.</p> <p>11 The Carriers seemed oblivious to</p> <p>12 the fact that they were dealing with</p> <p>13 employees who carried them through a</p> <p>14 pandemic and brought them record profits</p> <p>15 while doing so. Moreover, at a time where</p> <p>16 other employers are offering or agreeing</p> <p>17 to significant benefit improvements and</p> <p>18 lowering cost sharing as partial</p> <p>19 recognition for their employees sacrifice,</p> <p>20 the Carriers seemed to think it was the</p> <p>21 right time and the right idea to seek</p> <p>22 unprecedented and substantial health care</p>
<p style="text-align: right;">Page 1065</p> <p>1 concessions.</p> <p>2 Among numerous other plan design</p> <p>3 changes, the Carriers sought to</p> <p>4 significantly increase cost sharing both</p> <p>5 in terms of monthly cost-sharing</p> <p>6 contributions and other point of service</p> <p>7 increases such as copays, deductibles, co-</p> <p>8 insurance, et cetera.</p> <p>9 They also proposed, as they did</p> <p>10 last round, that these contributions be</p> <p>11 uncapped and adjusted or what they called</p> <p>12 indexed annually to mirror health care</p> <p>13 inflation. In support, they claim that</p> <p>14 over time they lost their so-called</p> <p>15 bargained-for rates.</p> <p>16 First, this is simply not true.</p> <p>17 They did not bargain for percentages, they</p> <p>18 bargained for fixed figures and that was</p> <p>19 actually what both parties agreed to.</p> <p>20 They have not lost anything. Further</p> <p>21 uncapped and indexing of health and</p> <p>22 welfare costs, for which employees have no</p>	<p style="text-align: right;">Page 1066</p> <p>1 real general control over or ability to</p> <p>2 predict, are two issues that have always</p> <p>3 been, and always will be nonstarters for</p> <p>4 Unions. Never mind the fact that the</p> <p>5 Carriers' proposal was generally insulting</p> <p>6 both in nature and in stature, but it was</p> <p>7 not tied to any real general wage</p> <p>8 increases, which meant real wages would</p> <p>9 ultimately go down over time.</p> <p>10 As previously mentioned, strong and</p> <p>11 affordable health care benefits for rail</p> <p>12 workers and their families had always been</p> <p>13 a bargaining priority for rail labor. The</p> <p>14 current Plans' design came at a great cost</p> <p>15 to labor, both in monetary terms and in</p> <p>16 quality-of-life issues, over the years</p> <p>17 that we perpetually feel the impact of.</p> <p>18 As I said before, the railroads</p> <p>19 don't generally give us things for free.</p> <p>20 Just look at the National Vacation</p> <p>21 Agreements which haven't been updated</p> <p>22 since the 1940s.</p>

<p style="text-align: right;">Page 1067</p> <p>1 The Unions would never, and I 2 emphasize never agree to voluntarily give 3 up cost-sharing in bargaining by agreeing 4 to automatic and uncapped increases. This 5 has never been truer than in the wake of a 6 pandemic, where railroad employees and 7 their families relied on their health care 8 coverage to insulate them from the 9 inherent and unavoidable risks of being 10 deemed essential and forced to fulfill all 11 of their regular duties and in some 12 instances more duties because of the 13 current state of the industry and the 14 country as a whole. 15 Similarly, over the years, the 16 Carriers have talked about introducing a 17 multi-teared contribution structure. 18 These efforts have also been rejected by 19 rail labor, who have instead prioritized 20 distributing cost equally among the work 21 force rather than penalizing employees 22 most in need of health care, such as those</p>	<p style="text-align: right;">Page 1068</p> <p>1 who have or want to start families. 2 Throughout bargaining and 3 mediation, the Carriers never moved off 4 their generally outlandish and 5 unreasonable demands or seem to wake up to 6 reality of the current state of the world. 7 Instead of engaging in meaningful and 8 realistic bargaining, they repeatedly 9 moved the deck furniture around what I can 10 only characterize as a sad attempt to make 11 it look like there was movement at the 12 bargaining table, but they never ventured 13 away from significant cost-shifting 14 concessions. 15 As I testify here before you today, 16 I remain convinced that the Carriers 17 either can't or don't want to have a firm 18 grasp on what the term concessionary 19 bargaining really means. Notably, the 20 Carriers' never argued that they could not 21 continue to pay their current health care 22 and welfare costs. Instead, their</p>
<p style="text-align: right;">Page 1069</p> <p>1 position was -- as it has been my entire 2 railroad career and still is today -- that 3 they simply don't want to and should not 4 have to pay these costs. 5 Again, against the backdrop of 6 record profits, combined with a strain on 7 the existing workforce caused by severe 8 job cuts in an unprecedented pandemic, not 9 surprisingly the Unions were not fooled by 10 the Carriers' shell games, nor were we 11 interested in agreeing to the Carriers' 12 significant health care concessions. 13 I would like to take a moment to 14 elaborate on two important issues this 15 round. First is the COVID-19 pandemic. 16 Second in the significant labor shortage 17 issues currently bringing experience by 18 the Carriers and its impact on the 19 workplace. What I will say in short, is 20 our members were hit hard by the COVID-19 21 pandemic and as essential workers, they 22 were ordered to show up for work every day</p>	<p style="text-align: right;">Page 1070</p> <p>1 at great risk to both themselves and their 2 families. 3 No one in this room needs to be 4 reminded of the strain that COVID-19 took 5 on everyone, particularly essential 6 workers. Something that seems to be 7 forgotten is that unlike the majority of 8 the people in this room today railroad 9 workers could not work from home or seal 10 themselves into bunkers to wait out the 11 pandemic. 12 Instead, they went to work under 13 strained conditions for them and their 14 families. They didn't this day in and day 15 out, because that is what we are required 16 to do to keep the Nation running, pandemic 17 or not. The Carriers were publicly 18 applauding their employees for our 19 sacrifices during the pandemic, but at the 20 same time seeking such broad and sweeping 21 health care concessions was and still is 22 simply unconscionable.</p>

<p style="text-align: right;">Page 1071</p> <p>1 Meanwhile, other employers across 2 the country are offering hardship bonuses 3 and more generous compensation and benefit 4 packages to attract and retain workers. 5 Not the Nation's Rail Carriers. 6 The essential workers that are our 7 Unions represent are tired, upset and feel 8 generally scorned in a way that no other 9 employer, not even the railroads, have 10 exceeded in modern history. The record- 11 breaking voluntary resignations we 12 experienced throughout the pandemic which 13 are still happening are evidence of that. 14 In fact, while working on this 15 testimony I received a call from a member, 16 who was also a local chairman, wanting to 17 know his options for insurance as he was 18 sure that he would be terminated due to 19 the carriers' most recent unilaterally 20 imposed attendance policy, due to the 21 needs of his sick child. His comments to 22 me were simply that he had done 20 years</p>	<p style="text-align: right;">Page 1072</p> <p>1 in the railroad, and he just couldn't do 2 10 more years under the current 3 conditions. This is a guy who is a great 4 worker and a good employee. I know him. 5 Due to the railroad's poor treatment, he 6 sought a job outside of the rail industry 7 and is willing to walk away and forego the 8 benefits afforded under railroad 9 retirement. This was not a new hire or 10 someone that did not understand the job. 11 This was a seasoned and skilled employee 12 that the railroad should have valued and 13 treated him with value. 14 I will have 25 years on the 15 railroad as of next year. I've heard just 16 as many stories of people leaving the 17 industry from my hiring generation, people 18 that I know, as I have from those who have 19 come after, and that is not something 20 that's historically characteristic of this 21 industry. In fact, it was in this very 22 hotel that I sat and listened to the</p>
<p style="text-align: right;">Page 1073</p> <p>1 Carriers' witness testify during PEB 243 2 that the railroad jobs were good jobs with 3 good benefits, and they knew it because 4 they had applicants lined up out the door 5 and down the block trying to get a job on 6 the railroad for just this very reason. 7 I can assure you that this is not 8 the case today, and for those prospective 9 employees who are attracted to the current 10 level of pay and benefits, that attraction 11 quickly wears off when they experience the 12 current morale and working conditions. 13 The Carriers should be doing more 14 now, not less for their workers. Of 15 course, the unions would not and could not 16 agree to the Carriers' demands in this 17 current climate. And I don't think anyone 18 in this room would have done it any 19 differently if they were in our shoes. 20 More importantly, such concessions would 21 never be ratified by our tired and 22 overworked members, not when their</p>	<p style="text-align: right;">Page 1074</p> <p>1 employers are raking in all-time record- 2 breaking profits at their expense and 3 openly bragging about it to their 4 investors. 5 The same braggadocios pieces of the 6 Carriers' release to Wallstreet and their 7 stockholders are the same publicized 8 pieces that railroad workers read to. And 9 to be clear, we as employees of the 10 railroad are all too excited to see our 11 employers doing well, but you can 12 understand why railroad employees were not 13 interested in health care concessions. 14 While the Unions initially sought 15 significant cost reductions and benefit 16 improvements to the current plans this 17 round understanding the role of the 18 Presidential Emergency Board at this stage 19 in a major dispute process, the Union's 20 health and welfare proposal before this 21 Board is simple. The Union's propose 22 simply maintaining the status quo on the</p>

<p style="text-align: right;">Page 1075</p> <p>1 current plans including the current 2 monthly employee cost-sharing 3 contributions and the current level of 4 point of service costs. 5 There are only two minor exceptions 6 involving benefit improvements and those 7 are for individuals with autism spectrum 8 and speech disorders, and modest hearing 9 benefits improvements 10 A detailed discussion of the 11 Union's proposal on these benefits can be 12 found in the joint submission, the Union's 13 joint submission. I will leave the 14 technical aspect of the Union's proposal 15 to our health and welfare experts from 16 Cheiron. 17 For the purpose of my remarks here 18 today, I will focus on giving overview of 19 the proposal and discussing the impact of 20 these benefits or the lack thereof as on 21 our membership. Please bear in mind that 22 when I speak to these issues, I'm not</p>	<p style="text-align: right;">Page 1076</p> <p>1 doing so as an outsider, but rather the 2 person that our members rely on when they 3 have an issue with our benefits or claim. 4 It is me, not the Carriers, that 5 they call when they have a problem with 6 their benefits. The Union's firmly 7 believe that the equities are in our favor 8 for our status que health and welfare 9 proposal. First, as explained by Mr. Roth 10 and Mr. Edelman previously, the Carriers 11 can clearly afford to continue the current 12 level of benefits. Their unprecedented 13 and sustained profit levels and clear 14 expectations of continued profitability 15 disprove any alleged needs for health care 16 concessions. 17 Further, any per-employee increases 18 in health care costs in recent years has 19 been more than offset by the severe 20 headcount reductions imposed by the 21 Carriers leading up to and throughout the 22 pandemic as our health care experts at</p>
<p style="text-align: right;">Page 1077</p> <p>1 Cheiron will explain. 2 Second, as already stated, the 3 current employees are severely taxed as a 4 result of the Carriers' poor staffing 5 choices, and as a result of the 6 mismanagement leading up to and throughout 7 the pandemic. The fact that the supply 8 chain issues aren't much worse than they 9 are is quite frankly a testament to our 10 hard-working members who have been 11 repeatedly asked by the Carriers to 12 perform miracles with next to nothing, and 13 not even so much as a general wage 14 increase since 2019. 15 Moreover, to the extent that the 16 Carriers have been able to save on overall 17 health care costs in recent years, due to 18 their massive furloughs and headcount 19 reductions, it has been at the expense of 20 the remaining employees who should not be 21 further penalized here by being asked to 22 make even more sacrifices.</p>	<p style="text-align: right;">Page 1078</p> <p>1 Third, it is well documented that 2 the Carriers are currently failing to 3 attract, recall and retain qualified 4 workers, as the vast majority of 5 prospective and newly hired employees view 6 their employers efforts to provide a 7 decent career and a decent living as 8 meager at best; a conclusion that veterans 9 employees have already reached, which is 10 why they are walking away from the 11 industry at an unprecedented rate. 12 The Carrier should be doing more 13 for their employees, not less. 14 Maintaining the status quo on health care, 15 which they can clearly afford to do is the 16 bear minimum the Carriers should be doing 17 here in order to remain competitive. The 18 Carriers make several arguments against 19 the Union's status quo proposal. 20 First, is the truly misleading 21 argument that the plans are not consistent 22 with industry norms. In doing so, they</p>

<p style="text-align: right;">Page 1079</p> <p>1 are treating the Plans as if they 2 represent one employer rather than thirty 3 different rail carrier employers, 4 including all 7 of the Class 1s across the 5 entire United States freight rail 6 industry. The Plan themselves are the 7 industry norm. 8 Additionally, everyone in this room 9 knows that railroad work, and the railroad 10 industry in particular is unique and 11 unlike any other industry. Even 12 comparisons to other employers in the 13 transportation industry can be misleading. 14 For example, the Railway Labor Act covers 15 both the air and rail industries, but the 16 two industries are completely different in 17 terms of bargaining methods, demographics, 18 and experiences. 19 If you quit one major airline and 20 go to work for another major airline you 21 will not be going into the same benefit 22 plan that you had under your previous</p>	<p style="text-align: right;">Page 1080</p> <p>1 employer, unlike the Class 1 railroads who 2 all participate in the same National 3 Health and Welfare Plan. There's no such 4 thing -- there's no such notion as 5 national handling on the airline side, nor 6 industry-wide health care plans, much less 7 one jointly sponsored and managed by both 8 labor and management. 9 Also misplaced is the reliance on 10 data that considers health care benefits 11 provided by nonunionized employers. It is 12 no secret that the unionized workplaces 13 provide better wages and benefits. Health 14 care benefits are one of the key reasons 15 skilled and hardworking employees seek to 16 join union jobs. And it's why we have 17 been essential to protecting railroad 18 employees for more than a century. 19 Further, unlike in other sectors, 20 the overwhelming majority of the rail 21 industry is unionized. The parties' 70- 22 year bargaining history over health and</p>
<p style="text-align: right;">Page 1081</p> <p>1 welfare benefits is precisely why railroad 2 workers enjoy good health care benefits. 3 Moreover, holding the status quo on 4 health and welfare, particularly cost- 5 sharing is standard in the post pandemic 6 railroads outside of national handling. 7 For example, unions before this Board have 8 reached status quo agreements on health 9 and welfare this round with all of the 10 major commuters including the LACMTA, 11 SEPTA, Long Island Railroad, Metro-North 12 Railroad, New Jersey Transit, and Staten 13 Island Rapid Transit. 14 Notably, these commuters maintained 15 the status quo on health and welfare even 16 though the commuter roads, which very much 17 unlike the freight railroads, were 18 severely impacted by ridership numbers due 19 to the COVID-19 pandemic and post pandemic 20 public commuter changes. 21 Status quo health and welfare deals 22 have also been reached on numerous other</p>	<p style="text-align: right;">Page 1082</p> <p>1 freight rail properties as explained in 2 our submission. The relevant portion of 3 these agreements are included in Exhibit 4 8. If the Board would like a full 5 agreements, we would be happy to provide 6 them for you. 7 These agreements also demonstrate 8 the results of bargaining led by the 9 Unions that are before the Board, and our 10 members have set their expectations 11 accordingly. To clarify something the 12 Carriers' said during their previous 13 testimony, we're not saying that we should 14 be comparing ourselves to the public 15 commuter plans. As stated in our 16 submission, the national railroad plans 17 are unique in that the plan themselves 18 represent what is standard in the 19 industry. 20 What we are saying is that should 21 the Board choose to look to see what is 22 happening elsewhere, the public computers</p>

<p style="text-align: center;">Page 1083</p> <p>1 and other railroads are better fit for 2 comparison because they show what is 3 actually happening elsewhere in the rail 4 industry. 5 The Carriers try to dismiss the 6 public commuter plans because they're as 7 good if not more generous in many cases 8 than our plans. 9 The public commuter plans are 10 certainly a much better match than the 11 generic surveys the Carriers rely on 12 representing plans and demographics 13 nothing like ours. They also undermine 14 Carriers' claim that our claims are too 15 generous, which is more than likely why 16 they don't want to talk about them. 17 The Unions only propose two minor 18 and uncontroversial changes to the current 19 plans, both of which are offered by the 20 Carriers as well. The first change is for 21 increased benefits for autism spectrum 22 disorders. While the plans currently</p>	<p style="text-align: center;">Page 1084</p> <p>1 offer some coverage that pertain to 2 autism, many of these benefits are limited 3 under the plans. 4 For example, speech therapy is 5 limited to dependents under the age of 6 three even though the average age of 7 diagnosis for autism spectrum disorders is 8 shortly after age 3. The Unions propose 9 here that this age restriction be removed. 10 The Unions also propose the plans include 11 coverage for Applied Behavior Analysis or 12 ABA coverage as it is commonly referred to 13 and this should be done without age or 14 dollar limits. While autism may impact a 15 relatively small number of members in the 16 Plans, for those that are impacted I can 17 assure you that that impact to their child 18 and the family is enormous. 19 United Healthcare now requires ABA 20 coverage in all of its fully insured Plans 21 without any age or dollar limits and 22 strongly encourages it's self-insured</p>
<p style="text-align: center;">Page 1085</p> <p>1 plans (including ours) to adopt such 2 coverage with more than 90 percent of 3 United Healthcare's self-insured plans now 4 providing ABA coverage. 5 As explained in our pre-hearing 6 submission, both the courts and the United 7 States Department of Labor have taken the 8 position that coverage is likely required 9 under the Mental Health Parity Act. Both 10 the courts and the Department of Labor had 11 found that although a plan is not required 12 to provide any autism coverage if it does 13 -- as our does, ABA benefits are required 14 under the Parity Act to ensure parity with 15 other medical and surgical benefits. 16 The second minor plan design change 17 proposed by a Unions is to increase the 18 hearing benefits offered under the plan 19 from \$600.00 annually to \$2,000.00 20 annually. These benefits were first 21 introduced in the 2003 national agreements 22 and have not been updated since their</p>	<p style="text-align: center;">Page 1086</p> <p>1 inception. I can speak from personal 2 experience that railroaders unquestionably 3 deal with hearing loss issues. In fact, I 4 feel over time in attending a multitude of 5 union meetings and functions the most 6 common word at these event is huh. 7 It should come as no surprise to 8 people in this room today that railroaders 9 are inevitably and unavoidably exposed to 10 high levels of noise and are as a result 11 at a higher-than-normal risk of hearing 12 loss. On average hearing aids cost 13 between \$1,500 and \$2,000.00 per hearing- 14 impaired ear and of course can be much 15 more expensive than that. 16 Bearing in mind that our current 17 annual benefit level of \$600.00 is not 18 enough to handle the actual cost of the 19 hearing aids, that same \$600.00 annual 20 benefit is also the only coverage we have 21 for the cost of hearing testing. For 22 these reasons, we believe this Board</p>

11 (Pages 1083 to 1086)

<p style="text-align: right;">Page 1087</p> <p>1 should recommend the Plan's current 2 hearing period benefit be increased to 3 \$2,000.00 annually. 4 Turning now, I would like to 5 briefly address some of the issues raised 6 by the Carriers in their pre-hearing 7 submission. In preparing for this Board, 8 the Union's debated long and hard about 9 the appropriate proposal to put before the 10 Board. We recognize the difficulty and 11 time constraints that this Board has been 12 tasked with at this stage in the process 13 and the need to narrow down the issues 14 substantially. 15 Towards this goal, the Unions took 16 a significant step towards the middle in 17 their final proposal before this Board. 18 The Carriers, however, took a step back 19 words. The Carriers' proposal is eight 20 pages, single spaced. No less than four 21 of those pages are devoted to their health 22 and welfare wish list. As Ms. Roma said</p>	<p style="text-align: right;">Page 1088</p> <p>1 during her opening, it's a classic what's 2 theirs is theirs and what's ours is theirs 3 too. 4 In true Carrier form, to fully 5 understand the proposal you must read all 6 of the attachments, footnotes, passing 7 comments and fine print. As stated in 8 our written submission, their proposal 9 represents a moving target with high level 10 concepts lacking in many substantive 11 details. They don't seem to even know 12 themselves as they stated repeatedly 13 throughout their previous presentation to 14 this Board. We haven't thought of that 15 part yet or I'm not sure when asked about 16 specific details. 17 The reason they don't know is 18 because we never bargained over any of 19 these proposals much less to quite the 20 Carriers' attorneys during their remarks 21 to this Board the intensive bargaining 22 required of proposals coming before a PEB.</p>
<p style="text-align: right;">Page 1089</p> <p>1 There was no discussion, no give or take, 2 no quid pro quo, none of the usual 3 referral to a subcommittee that we see 4 during normal bargaining process. None of 5 it. The only thing the Carrier discussed 6 was an increasing cost sharing for 7 employees. 8 They had a fixed number in mind 9 based on their AV methodology and health 10 and welfare bargaining never went beyond 11 that. Sure, some of these programs and 12 ideas can be found in the fine print of 13 the Carriers' bargaining PowerPoint 14 proposals, but no substantive details were 15 exchanged. There was no effort to engage 16 in meaningful discussions over these 17 proposals. 18 To further quote the Carriers' 19 attorneys from these proceedings, not 20 having "a meaningful discussion on these 21 proposals makes it difficult to understand 22 their impact."</p>	<p style="text-align: right;">Page 1090</p> <p>1 Apparently, we are not alone. The 2 Carriers don't seem to understand their 3 proposals either. This is precisely why 4 Mr. Scofield couldn't directly answer any 5 of the questions posed about them. To 6 further quote Carriers' attorneys from 7 yesterday, the role of the PEB is "to 8 reach a conclusion to this process not to 9 facilitate the beginning of it." This 10 alone is reason for this Board to reject 11 in the Carriers' words these "high value, 12 little thought proposals." 13 For example, yesterday Board Member 14 Deinhardt asked about the Carriers' copay 15 assistance proposal. I agree that the 16 name alone sounds good, but I have no in- 17 depth idea of what this proposal involves 18 because it just wasn't discussed. One 19 thing I've learned over the years in 20 working with the Carriers is that they 21 usually -- there's usually a catch, and 22 I'm sure this is no exception.</p>

<p style="text-align: center;">Page 1091</p> <p>1 In their written submission, the 2 Carriers' outrageously claim they're 3 seeking steady and slow gradual reform and 4 incremental changes to the existing plans, 5 but then go on to say that their proposal 6 would make the plans have a more modern 7 design pharmacy rules and administrative 8 practices and a cost-sharing structure 9 that encourages better consumerism and 10 efficiency. 11 Regarding just their prescription 12 drug plan design changes alone, they refer 13 to comprehensive utilization management 14 changes. That doesn't sound like 15 incremental change, and I can most 16 assuredly tell you that it's not. After 17 hours of studying the Carriers' proposal, 18 a few things remain clear. First and 19 foremost, they are seeking to impose 20 tremendous unnecessary and unwarranted 21 cost shifting onto employees and their 22 families. This comes in multiple forms.</p>	<p style="text-align: center;">Page 1092</p> <p>1 Increased monthly cost-sharing payments 2 for everyone by adopting a fixed 3 percentage of premium with no caps for 4 employees' cost sharing. Introduction of 5 new two-tiered system, which would 6 increase monthly cost-sharing payments for 7 families immediately by over 70 percent. 8 As stated by the Carriers during 9 the presentation, this would impact 75 10 percent of the employees who have spouses 11 in the plan. Increase copays by 20 to 25 12 percent and add new penalty copays for 13 certain services. Increase ER copays by 14 100 percent, increase deductibles across 15 the board by 43 percent, increase 16 coinsurance by 10 percent, increase out of 17 pocket maximums by 75 percent for most 18 members, and increase prescription drug 19 copays by 50 to 225 percent. 20 Those are just to name a few, and 21 that's just for the year of 2023. They 22 don't seek to stop there. Their proposal</p>
<p style="text-align: center;">Page 1093</p> <p>1 increases these costs every year 2 indefinitely well beyond the life of the 3 agreement. The Carriers seek to make 4 monthly contributions a fixed, uncapped 5 percentage of cost sharing which would be 6 adjusted annually. Additionally, as best 7 I can tell, this appears to be another 8 half-baked proposal they haven't fully 9 thought through because they explained to 10 the Board during the remarks, they're not 11 entirely sure how this will operate or 12 what the rules will be. First, they state 13 everyone will have monthly contributions 14 increased to 15 percent uncapped. 15 Then they show us a slide with a 16 chart applying this 15 percent, sort of, 17 to their new two-tiered system. In that 18 chart, they keep the \$228.89 flat rate for 19 those without spouses in the plan. During 20 their presentation, they state the 15 21 percent doesn't apply to those in the 22 first tier, but it is unclear if the flat</p>	<p style="text-align: center;">Page 1094</p> <p>1 rate continues for this tier or really how 2 it works. 3 And if that be the case, then those 4 without spouses would not be paying 15 5 percent as they previously told us because 6 as I said before, the \$228.89 represents 7 11.9 percent of monthly premiums, not 15 8 percent. 9 Conversely if we assume without 10 spouses in the plans -- those without 11 spouses in the plans go to the 15 percent 12 level of contribution and those with 13 spouses go to some level higher than 15 14 percent contributions, then again, not 15 everyone is going to be paying a 15 16 percent contribution level as the Carriers 17 previously told us. 18 Another unsolved mystery with the 19 Carriers' two-tiered approach is how it 20 would actually be put in place so 21 employees could make an informed annual 22 decision on which tier they wanted to</p>

<p style="text-align: right;">Page 1095</p> <p>1 elect. For example, our rate setting for 2 next plan year is done in late October or 3 early November each year. Open enrollment 4 for the plans is held during the month of 5 October. 6 Accordingly, contribution numbers 7 would not even be known, much less 8 communicated to the employees before their 9 election enrollment window was closed. 10 This just seems to be another thing the 11 Carriers haven't thought through 12 This all seems to be about as clear 13 as mud to me. What is clear however is 14 that for some reason the Carriers seem 15 steadfast in their request to monetarily 16 punish those with families as employees 17 with spouses currently represent as I said 18 before 71 percent of our population. Not 19 to be forgotten is that this is 20 particularly punitive to those families 21 who do not have another health care option 22 which is not an uncommon issue in this</p>	<p style="text-align: right;">Page 1096</p> <p>1 industry. 2 Something that I find particularly 3 ironic in all of this is that we have all 4 sat here through a few days of testimony 5 from the Carriers and their many, many, 6 many so-called experts and have repeatedly 7 heard about why inflation has no role in 8 determining our compensation. 9 But then somehow according to the 10 Carriers, inflation has everything to do 11 with determining our health care costs. 12 So much so that we should build in annual 13 indexing to avoid claimed injustices on 14 the Carriers' bottom line by repeatedly 15 pushing greater costs onto the employees, 16 particularly those employees with 17 families. 18 It just seems peculiar to me that 19 while inflation hits many, many areas 20 according to the Carriers, it does not 21 seem to hit these two areas in that same 22 manner. They also seek to automatically</p>
<p style="text-align: right;">Page 1097</p> <p>1 index all employee cost-sharing categories 2 annually as well. They want this Board to 3 adopt the recommendation of a new upper 4 limit for the value of this based on their 5 proposed A/V rating system, which would 6 require the parties to revisit plan design 7 changes every single year to ensure that 8 their proposed ratings remain the same. 9 In short, the parties would be in 10 perpetual bargaining over health and 11 welfare. 12 In doing so, the Carriers ask this 13 Board to deviate from how bargaining has 14 both been done in the past and would be 15 done forever into the future of the rail 16 industry. Additionally, the Carriers seek 17 to add significant restrictions on current 18 benefit levels through the adoption of new 19 prescription drug restrictions prior 20 authorization and point of service 21 restrictions. 22 They also seek to remove certain</p>	<p style="text-align: right;">Page 1098</p> <p>1 topics from bargaining now and into the 2 future such as bargaining over 3 prescription drug benefit changes and 4 collectively bargained network design. 5 They seek to deal with these issues on an 6 ongoing basis as part of the plan's 7 administrative process rather than decide 8 these issues at the bargaining table. 9 If the Unions don't agree to the 10 Carriers' proposed changes, they would be 11 submitted to the administrative deadlock 12 neutral and could be imposed on the 13 employees without our consent or even the 14 general members' input or vote. These are 15 not appropriate topics for plan 16 administration as explained in our 17 submission. 18 Finally, while the Carriers' offer 19 minor benefits enhancements to the Plans 20 in exchange for these deep concessions, 21 the Unions, to be clear, are not willing 22 to pay the exceedingly high price tag</p>

<p style="text-align: right;">Page 1099</p> <p>1 attached by the Carriers in exchange for 2 these minor benefit improvements. 3 Regardless of the fact that they are long 4 overdue. 5 While the plans should be improved, 6 we are not willing to pay the Carriers' 7 exorbitant price tag of trading \$100s of 8 millions of dollars in cost shifting for 9 only \$100s of dollars in benefit 10 improvements, and in many cases much less. 11 My historical understanding is that 12 the PEBs are tasked with reaching 13 proposals that could have been achieved at 14 the bargaining table and rejecting 15 proposals that seek drastic changes for 16 deviation from the parties existing 17 agreements in bargaining history. 18 To be clear, the Carriers proposal 19 reflect such a drastic change, both to the 20 parties existing agreements and in their 21 bargaining history for the better part of 22 the last century. The Carriers are asking</p>	<p style="text-align: right;">Page 1100</p> <p>1 the Board to adopt changes with far- 2 reaching implications which Inions never, 3 I repeat never, would have agreed to at 4 the bargaining table which is exactly how 5 we ended up here. 6 Their efforts to do so here should 7 be firmly rejected by this Board. Before 8 I conclude in my remarks here today, I 9 would like to briefly address a few 10 additional points raised by the Carriers 11 in their written submission in no 12 particular order. 13 First, is the completely 14 unsupported claim that the Unions are 15 obstructionists when it comes to managing 16 the plan. In short, they complain that we 17 stop them from doing whatever they want. 18 First, this is simply untrue. Labor and 19 management for years have effectively 20 managed the health care Plans, both as 21 Plans sponsors and Plan administrators. 22 What they are really complaining</p>
<p style="text-align: right;">Page 1101</p> <p>1 about is that they have to deal with us at 2 all. They cannot just railroad their 3 ideas through whenever they feel like it. 4 That however is simply a product of being 5 a unionized workforce under the Railway 6 Labor Act and cuts both ways, as I can 7 assure you that they are no gem of a dance 8 partner either. 9 Moreover, our history is replete 10 with examples of parties making decisions 11 both inside and outside of bargaining for 12 the good of the employees and for the good 13 of the plan. Serving the plan is 14 essentially my full-time job, and I talk 15 to my counterparts at the NCCC on a 16 frequent on ongoing basis. 17 While the Carriers claim they are 18 somehow losing the value of the agreement 19 terms due to the passage of time, this is 20 simply the product of bargaining under the 21 RLA and the fact that collective 22 bargaining agreements remain in effect</p>	<p style="text-align: right;">Page 1102</p> <p>1 unless and until changed in accordance 2 with the statute. This holds true for 3 both sides. 4 If anything, it's supposed to be an 5 incentive to get the parties to meet in 6 the middle to get to the deal faster. 7 Second, is their one-sided reliance on AV 8 ratings, or the completely outrageous 9 claim that the parties have established a 10 consistent pattern of addressing problems 11 with the Plan's AV and Total-Cost Sharing 12 through collective bargaining which is at 13 the Carriers submission at 23. 14 This statement is completely untrue 15 and unsupported by the record. There are 16 two things that should be noted about the 17 Carriers' love affair with the concept of 18 actuarial rate. The first is that they 19 seem to act as though the concept of AV 20 has been around forever in rail 21 bargaining. I can tell you from 22 experience that this is a falsehood and</p>

<p style="text-align: center;">Page 1103</p> <p>1 the first time we even heard of actuarial 2 value was in the last round of bargaining 3 and even then, we had to go look up what 4 it even meant. 5 The Unions are not the ones 6 bargaining over AV. We are bargaining 7 over real benefits. This is most 8 certainly the case because nowhere in our 9 agreements will you find the words 10 actuarial value. The other thing of note 11 is that during this round of bargaining, 12 the Carriers valued one point of AV, one 13 point of actuarial value for our plans as 14 being equal to somewhere between \$22 and 15 \$25 million. So, in their eyes one point 16 of AV equals somewhere again between \$22 17 and \$25 million dollars. 18 At the time, the Carriers were 19 seeking to go from a 92 percent AV to an 20 86 percent AV or in real dollars shift 21 over \$100 million dollars currently paid 22 annually by the plans to being paid by the</p>	<p style="text-align: center;">Page 1104</p> <p>1 employees and their families. 2 Further, that the parties may have 3 adopted cost sharing and minor increases 4 the same in the last couple of rounds 5 hardly indicates that the employee somehow 6 owe the Carriers further healthcare 7 concessions in this round. 8 Third, is their ridiculous 9 arguments that the Carriers always make 10 which is a theory that increased cost 11 sharing is somehow necessary to make their 12 employees better consumers of benefits and 13 really is in fact good for them. 14 Expecting that Carriers would make this 15 argument as they always do, the Union's 16 hired health care experts to debunk this 17 idea in an expert report which can be 18 found at Union's Exhibit 21. 19 All increases cost-sharing does is 20 push additional health care costs onto 21 sick employees who, by the way, are 22 usually the least informed and least</p>
<p style="text-align: center;">Page 1105</p> <p>1 educated on the subject of health care. 2 And it discourages them from utilizing 3 those benefits for regular checkups and 4 preventative care. Remember just because 5 you shift cost share doesn't mean it comes 6 with a manual or education on how to use 7 it. It has no impact on the quality of 8 decisions they make as they rarely know 9 that they have done something, wrong, 10 until after it has already happened, and 11 the only reason they did it that way in 12 the first place is to directly address the 13 health care need that they were dealing 14 with. 15 It is just another form of cost 16 shifting from employers onto employees, 17 nothing more. And this absurd idea that 18 if they narrow the providers that a person 19 can go to, it will make it better for 20 everyone is silly at best. I'm not sure 21 if any of you on the Board have tried to 22 get any sort of medical appointments</p>	<p style="text-align: center;">Page 1106</p> <p>1 lately, but with the current strain on the 2 health care provider industry, limiting 3 one's ability to only go to certain 4 facilities just prolongs the railroader's 5 ability to get care or forces them to pay 6 more to get the care that is actually 7 available when it is needed. We should be 8 expanding options in this area, not 9 limiting them. 10 Fourth, is the Carriers' reliance 11 on UHG and Optum's Health Activation 12 Index. This reliance is flawed in several 13 regards. First, this system only 14 measures data from UHC and Optum and 15 leaves out all of our membership covered 16 by Aetna or Highmark. 17 Second, the data is skewed because 18 the figures are pulled using the traffic 19 that visits myuhc.com, which is UHCs 20 website. The National Plan population 21 uses a completely different website which 22 is yourtracktohealth.com because, much to</p>

<p style="text-align: right;">Page 1107</p> <p>1 my previous point, not all of our 2 population gets their medical coverage 3 from United Healthcare. United 4 Healthcare's comparators were their 5 airline clients which operate under very 6 different work rules and conditions than 7 the railroads. 8 Further, when factoring in the 9 unique aspects of the railroad industry, 10 including schedules, work hours, and the 11 Carrier restricted attendance policies, it 12 was not surprising that members may have 13 been lacking as they said in areas such as 14 site and care, prevention use of available 15 resources and management of chronic 16 conditions. 17 According to UHC, total value comes 18 from better choices, not cost shifting, 19 and they further recommend better 20 incentives or rewards to improve the 21 health activation index scores. According 22 to our expert's reports studies have shown</p>	<p style="text-align: right;">Page 1108</p> <p>1 that if you really want to incentivize 2 people to make better health care 3 decisions you should do so through 4 carrots, not the Carriers' sticks. 5 As already stated, members are not 6 so-called rational consumers of health 7 care benefits. Cost shifting is just a 8 penalty, nothing more, nothing less. 9 However, offering incentives to encourage 10 employees to make better health care 11 choices is more effective. 12 For example, if you want to 13 encourage spouses to get on to their own 14 employers plan or employees to get on 15 their spouses employer's plan, assuming 16 they have one available, the Carriers 17 could agree to offer them more of a final 18 incentive to do so. Again, the Carriers' 19 proposal offers nothing but sticks. 20 As a final point, I would like to 21 say that the Carriers have not shown that 22 they have, and again to quote them, met</p>
<p style="text-align: right;">Page 1109</p> <p>1 the high burden of showing a compelling 2 need for radical health care changes they 3 seek here. Therefore, their proposal 4 should be rejected by this Board. 5 I feel like this is an appropriate 6 time to circle back to something I said at 7 the beginning of my remarks. I testify 8 here before you today both humbled and a 9 bit saddened. I'm humbled that the rail 10 family I've been a part of for the 11 entirety of my life has entrusted me to 12 testify before you today. 13 All of the things that I've talked 14 about with you are things that I have 15 experienced personally through my direct 16 exposure to the membership and these 17 Plans. Changing gears, however, the part 18 about all of this that makes me a bit sad 19 is that it took a global pandemic for the 20 world to realize that the person who 21 delivers your packages stocks the shelves, 22 even bags your groceries are, in fact, and</p>	<p style="text-align: right;">Page 1110</p> <p>1 always have been, for that matter, 2 essential workers. 3 The part that saddens me even more 4 is that we as railroad workers have to 5 stand here in front of a President 6 Emergency Board not with demands of jewels 7 and riches, but with the ask that our 8 population keep what they currently have 9 and add two meager benefit improvements, 10 both of which most other working members 11 of our society not only already enjoy but 12 could barely fathom that an industry as 13 lucrative as the railroad does not. 14 Thank you for allowing me to speak 15 on these very important issues to rail 16 labor. We urge this Board to adopt the 17 Union's health and welfare proposal and 18 reject the Carriers' proposal to shift 19 further health and welfare cost-sharing 20 onto the backs of an exhausted and 21 strained work force. 22 I'm happy to answer any questions</p>

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1 the Board may have at this time. Thank
 2 you for your time.
 3 **CHAIRPERSON JAFFE:** Thank you, Mr.
 4 Cook. I think what we'd prefer to do is
 5 pose the questions together since the
 6 three of you were sworn in with that
 7 model, Mr. Cook. So, we will address some
 8 but at a later point. Thank you very
 9 much.
 10 **MR. COOK:** Absolutely.
 11 **MS. ROMA:** Mr. Chairman, if it
 12 pleases the Board, I think this is a good
 13 time for a 15-minute break.
 14 **CHAIRPERSON JAFFE:** Sounds fine.
 15 Off the record, please.
 16 (Thereupon, a brief recess was
 17 taken.)
 18 **MS. ROMA:** May it please the Board.
 19 The Union is ready to continue with its
 20 affirmative health and welfare case. I
 21 turn it over to Ms. Mallet and Ms. Gravat
 22 from Cheiron.

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1 expertise what the impact would be on both
 2 management and on labor.
 3 In today's presentation, we talk
 4 about the Union Rail Freight workers and
 5 the critical role they served in the
 6 safety of the rail traffic industry across
 7 the country. These workers are essential
 8 workers as we all know and we're --
 9 they're grateful and thankful as everyone,
 10 I'm sure, in this room is.
 11 Not just for what they did during
 12 the pandemic but what they have done for
 13 hundreds of years. This presentation is
 14 intended to be factual and objective on
 15 the working conditions, the health status
 16 and the designs that will be cost
 17 competitive and maximize the health status
 18 of those covered.
 19 We will get into the details. We
 20 will do a detailed example of how these
 21 changes will impact a family in the rail
 22 industry, a hypothetical family. Today we

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1 **CHAIRPERSON JAFFE:** Thank you, Ms.
 2 Roma.
 3 **MS. MALLET:** Good morning. Just
 4 checking the sound. It's an honor and a
 5 privilege for Gail and I to be here today
 6 to present for the distinguished Board and
 7 on behalf of the entire Freight Rail labor
 8 side. So, thank you for that honor.
 9 And with that I want to share with
 10 you that Gail and I are health and welfare
 11 actuaries, which means that we specialize
 12 in understanding and developing plan
 13 designs, pricing plan designs and plan
 14 benefits, understanding selecting vendors
 15 in this have industry.
 16 We also straight experts at
 17 determining the impact of a change in a
 18 plan design or benefit program and how
 19 it'd impact both management and the labor
 20 union members. So, we're going to take
 21 that expertise and we're going to explain
 22 to you from our prospective and our

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1 have developed six topics to discuss. The
 2 first one is to lay the background about
 3 concepts and definitions.
 4 There's been a lot of different
 5 loosely used terms. And we just want to
 6 share with you how we're going to be using
 7 these terms in our presentation and they
 8 may differ from what you've heard before.
 9 Then we want to go on and look at -
 10 - Gail will be presenting the historical
 11 trends in the Carrier's cost and the
 12 member's cost. The third section will be
 13 on how the railroad plans compare to
 14 comparative plans in the rail and
 15 transportation industry.
 16 In addition, we will talk about the
 17 surveys that have been used by the
 18 Carriers in their presentation.
 19 The fourth section that Gail will
 20 also be presenting on is the working
 21 conditions that are -- that the Union
 22 members endure. And we will show how

<p style="text-align: center;">Page 1115</p> <p>1 these are not mainstream or typical 2 working conditions that other average 3 workers in the United States endure. 4 The last two sections will be going 5 forward on the future. We will be talking 6 about consumerism and incentives and the 7 importance in plan design and in 8 developing a plan for a path to go forward 9 that promotes effective -- cost effective 10 use of the health care system and 11 affordable care for the membership as well 12 as keeps their morbidity, their health 13 status under control. 14 Lastly, we will review in detail 15 the Union's versus the Carrier's health 16 and welfare proposal. 17 Going on to the first section on 18 definitions, page 4. In a report we are 19 going to have the four key sections that I 20 just went over, all four will focus on the 21 workers, but it will also focus on the 22 Carriers. And throughout our presentation</p>	<p style="text-align: center;">Page 1116</p> <p>1 we will dispel the Carrier's theory about 2 averages and benchmarks and focus on 3 specific characteristics in the care needs 4 of freight rail worker and their families. 5 Starting with the health key 6 concepts. We understand that the concepts 7 and definitions are important for a solid 8 foundation for this discussion, and its 9 complex, even confusing. Their terms are 10 mixed and matched and that makes it more 11 confusing, may sound similar, averages, 12 actual values, cost sharing, cost 13 shifting, consumerism, incentives, 14 penalties. We're going to put together 15 how they all work. We'll start with an 16 overview of these concepts. 17 Averages. Averages, in our 18 opinion, hide the uniqueness of the rail 19 freight industry and the reality of the 20 proposed changes on the workers and their 21 families. We will accurately describe how 22 the overall changes trickle down to the</p>
<p style="text-align: center;">Page 1117</p> <p>1 worker with real examples. 2 Top-down vantage points. We will 3 look at the top-down vantage points 4 because while it may not always seem like 5 the Unions don't care about the management 6 and their well-being, they very much care 7 about the management side and their well- 8 being. They recognize the importance of 9 their role. And that's why they hire 10 actuaries like Cheiron to come up with 11 aggregate figures and the impact on 12 management. That's why they hire Mr. Roth 13 and his company to determine whether or 14 not the management can afford the benefits 15 that they feel the workers need. 16 So, we will take into consideration 17 their prospective, but we don't want to 18 miss what really happens on the ground to 19 the vulnerable worker's group's needs. 20 And I think Professor Goldman explained 21 what a vulnerable worker was quite well. 22 A simple example of averages, we're</p>	<p style="text-align: center;">Page 1118</p> <p>1 going to talk about actual values. Actual 2 values are really averages. They're 3 averages of different perspectives that 4 each individual worker has. So, for 5 example, a worker that has no claims has 6 zero actual value. A work that has a 7 million dollars in claims, because of the 8 Affordable Care Act and the caps out of 9 network claims, their actual value, no 10 matter what (inaudible) is going to be 11 close to one. So those are the two 12 extremes. 13 And then between are all the other 14 members. In this example, we show six 15 different. People. And we have six 16 different numbers. They aren't 17 necessarily actual values because 1.2 18 would not be an actual value. But they 19 average out to .92 and we're going to 20 modify them to be .86. 21 The percentage difference between 22 92 and 86 is .06 so the percentage</p>

<p style="text-align: right;">Page 1119</p> <p>1 difference is that. The percentage 2 difference 7 percent. So, they're 3 slightly different because one is 4 subtracting, and one is dividing. But if 5 we look at the individuals, you will see 6 that for the first and second one their 7 benefits or the services were cut 1 8 percent and for the last two, they had no 9 impact at all.</p> <p>10 But for the middle two, they had a 11 20 percent. So, you can see that 7 12 percent, the average, is not 13 representative. And I believe that almost 14 every single expert came up here, said 15 clearly within these averages there was a 16 wide distribution, a wide variance of what 17 was happening.</p> <p>18 Cost shifting. Cost shifting 19 impacts some vulnerable members who does 20 not have a choice about how to use their 21 health care. Cost shifting does not 22 impact someone who doesn't need health</p>	<p style="text-align: right;">Page 1120</p> <p>1 care at all. So, if you change the 2 deductible from 500 to a thousand dollars 3 or \$2 to \$10, they don't care because 4 they're not using the health care system.</p> <p>5 The people that use it the most, 6 the sickest people, those are the people 7 that would be impacted the most. And 8 that's what our second bullet says. The 9 people who are truly impacted are those 10 with chronic conditions, those that have a 11 family member with health needs that are 12 from either an injury or an illness and 13 those with cancer, serious COVID illness, 14 liver failure -- they need to transplant - 15 - those are the people that are impacted.</p> <p>16 Cost shifting merely pushes the 17 burden of health care inflation to the 18 workers who have no ability to influence 19 it. This plan has very limited ability to 20 influence the trend in the health system 21 in this country. You've heard that from 22 other experts. I believe it was Professor</p>
<p style="text-align: right;">Page 1121</p> <p>1 Goldman.</p> <p>2 Even though it's a large plan, the 3 health care system in the United States 4 has limited influence by any single plan. 5 It's a unit all into itself. So, to think 6 that you can change that is beyond the 7 scope of what anyone can do.</p> <p>8 Other key concepts. Cost shifting 9 is not the same as consumerism. Health 10 care concepts are complex and important. 11 Some confusion in terminology exist. For 12 this presentation, again, I'm going to say 13 is going to talk about it.</p> <p>14 Incentives remove the barriers to 15 cure to incent an individual to take a 16 certain path. So you're trying to incent 17 them to modify their behavior. So, you're 18 not trying punish them for a current 19 behavior they have, but you want them to 20 do something new. You're trying to incent 21 them.</p> <p>22 So, recall that the Affordable Care</p>	<p style="text-align: right;">Page 1122</p> <p>1 Act made preventative care services 2 available to all at no cost. They wanted 3 to incent people to use the preventative 4 care. Other examples are coverage of 5 incentives or no cost to patients for 6 generic drugs. We have several plans that 7 do that. It works great. They have a 8 very high generic dispensing rate.</p> <p>9 Also having no-cost copays for 10 primary care services, especially a 11 primary care locations that have been 12 identified as low cost/high value. So the 13 primary care doctor's excellent in 14 directing members to cost-effective care.</p> <p>15 Consumerism assumes that purchaser 16 of the service has information. That's a 17 key thing. Has information and has time 18 to find that information. They have the 19 knowledge to select. They have the 20 ability to choose and modify their 21 decision based on price and quality. So, 22 you if don't have a choice between two</p>

<p style="text-align: right;">Page 1123</p> <p>1 products there's no need for consumerism 2 you only have one product to choose from, 3 which for our members in some of these 4 rural areas is the situation. For others 5 in more populous areas, they do have some 6 choices. 7 Comparing these key concepts cost 8 shifting has fewer no choices, no 9 consumerism, and moves the cost from 10 Carriers to the workers. It increases the 11 workers cost sharing. Penalties are 12 basically saying if you do this you will 13 get hit with a penalty. 14 The purpose of a penalty is 15 typically to change someone's existing 16 behavior. So, something that they're 17 purposely doing bad. It's very difficult 18 for me to understand in a very complex 19 health care system how anyone can be doing 20 something bad. People don't intentionally 21 go to the doctor. We don't like it. We 22 don't want to be sick. It's not a fun</p>	<p style="text-align: right;">Page 1124</p> <p>1 thing to do so that's not behavior that 2 needs to be modified for the vast 3 majority. I mean, perhaps you can find 4 one or two people like that but not enough 5 people to design a plan over it. 6 Consumerism, choices with different 7 prices, knowledge, and time to make those 8 choices. It's not restricted to whether 9 you have care or no care, it's also about 10 access to care. I want to give you an 11 example. I've talked anecdotally to many 12 people that have -- are in the lower 13 income. Some of them, many of them 14 actually are Union workers. And the 15 reason they tell me why they don't go to 16 get their annual physical or to the doctor 17 -- and again, this is anecdotal -- is 18 because they don't want to hear what's 19 wrong with them. The doctor's just 20 going to say something's wrong, and you 21 need to go to the specialist, and then 22 it's going to cost them way too much. And</p>
<p style="text-align: right;">Page 1125</p> <p>1 the issue of do I go and listen to my 2 doctor or do I not really weigh on their 3 mind. So, they'd rather not know at all 4 then to go and get their annual exam. 5 So, this is an issue with plans 6 that have too high of deductibles, too 7 much cost sharing for especially the union 8 workers in this country. 9 Incentives, plans designed that 10 promote approaches to lower or no costs. 11 So, they reward people by having zero 12 copays or a hundred percent coverage. 13 Cost sharing on the other hand, refers to 14 both the premiums the workers enroll in, 15 and the plan design features, deductibles, 16 copays, and out of pocket maximums. That 17 being said, we're going to focus in on 18 what has been discussed a lot, benchmarks. 19 We've spent a lot of time talking 20 about what benchmark is appropriate. I 21 want to just provide you Webster's 22 definition. A benchmark is something that</p>	<p style="text-align: right;">Page 1126</p> <p>1 serves as a standard by which others may 2 be measured or judged. 3 Now I want to shift the topic a 4 little bit to goal. A goal is the end 5 toward which an effort is directed. In 6 listening to the Carriers and in working 7 with the Unions it is very clear to me 8 that they have different goals. So, since 9 they have different goals their 10 benchmarks, of course, are going to be 11 different. 12 In particular, the triple C on page 13 3 of Mr. Branon's opening remarks, he 14 stated -- and he has written two of these 15 -- that they will encourage efficient use 16 of the benefits. We don't believe the 17 proposal does that, and we will try to 18 demonstrate that in this presentation -- 19 we actually will demonstrate it in this 20 presentation. 21 Lower trends. We do not believe 22 that their approach, their proposal, will</p>

<p style="text-align: right;">Page 1127</p> <p>1 lower trends.</p> <p>2 Conserve plan resources. We</p> <p>3 absolutely believe that they will save</p> <p>4 money with their proposal. They don't say</p> <p>5 but their proposal suggests and their</p> <p>6 presentations over and over, again,</p> <p>7 suggest the key goal is to have average</p> <p>8 benefits. And by average benefits they</p> <p>9 don't mean average benefits that a</p> <p>10 competitor can steal their employees away</p> <p>11 from. They mean average benefits by</p> <p>12 everyone in the whole United States.</p> <p>13 So, whether they're an actuary or</p> <p>14 they're working as a grocery store clerk</p> <p>15 or working on Wall Street, they want just</p> <p>16 the average of all that. And that is the</p> <p>17 goal, and that's why we feel they're using</p> <p>18 these broad-based surveys as their</p> <p>19 quote/unquote "benchmark."</p> <p>20 Cheiron, myself, Gail, and the rest</p> <p>21 of our team, in designing plans we don't</p> <p>22 recommend using surveys. What we</p>	<p style="text-align: right;">Page 1128</p> <p>1 recommend is doing best practices. And by</p> <p>2 best practices we focus on how to incent</p> <p>3 not penalize but incent workers to go to</p> <p>4 the most cost-effective care. And we</p> <p>5 think that's important.</p> <p>6 The Union's proposal that's being</p> <p>7 presented to you to choose amongst is a</p> <p>8 compromise of all the health and welfare</p> <p>9 proposals. Again, as Council Wilma</p> <p>10 pointed out, they work together to try</p> <p>11 develop a compromise. They had different</p> <p>12 interest in different requirements that</p> <p>13 their members wanted in the health and</p> <p>14 welfare practice. But instead of trying</p> <p>15 to separate apart they came together, and</p> <p>16 this was their compromise position.</p> <p>17 A little bit about surveys before I</p> <p>18 turn it over to Gail to talk about the</p> <p>19 trends. Surveys are similarly averages of</p> <p>20 how selected employers answered</p> <p>21 questionnaires on what they did last year.</p> <p>22 They vary greatly, as I've said and as</p>
<p style="text-align: right;">Page 1129</p> <p>1 everyone else in this room has said, but</p> <p>2 they also look in the rearview mirror.</p> <p>3 They're not telling you what you should</p> <p>4 do. They're not telling you what's going</p> <p>5 to happen in the future. They're telling</p> <p>6 you what happened in the past year</p> <p>7 typically.</p> <p>8 So, the other third thing that's</p> <p>9 very important is the purpose of a survey.</p> <p>10 Why is it being used? What the point?</p> <p>11 What are they trying to accomplish? Are</p> <p>12 they trying to tell you what the average</p> <p>13 benefit is in the whole United States?</p> <p>14 Are they trying to tell you what the</p> <p>15 average benefit is in this industry? Are</p> <p>16 they trying to tell you the impact on the</p> <p>17 member or on the impact on plan? What is</p> <p>18 the survey trying to accomplish?</p> <p>19 Typically, the survey for Cheiron</p> <p>20 we recommend that they're really good</p> <p>21 recruiting tools if you're trying to have</p> <p>22 a plan that promotes cost-effective care.</p>	<p style="text-align: right;">Page 1130</p> <p>1 Then you're going to have some very rich</p> <p>2 benefits in the words of the Carriers. I</p> <p>3 would actually call them appropriate</p> <p>4 benefits designs, and you're going to</p> <p>5 compare favorably to those surveys.</p> <p>6 They do not indicate best</p> <p>7 practices. They do not indicate what an</p> <p>8 ideal plan would look like. And that</p> <p>9 completes my comments on the survey. I</p> <p>10 don't think I said this, and if I did, I</p> <p>11 apologize for repeating, our presentation</p> <p>12 is very long. So, at any time feel free</p> <p>13 to interrupt us or you can wait and save</p> <p>14 your questions for the end.</p> <p>15 CHAIRPERSON JAFFE: Thank you for</p> <p>16 the offer.</p> <p>17 MS. GRAVOT: Mr. Chairman, and</p> <p>18 members of the Board, thank you for giving</p> <p>19 us the opportunity to perform this</p> <p>20 presentation.</p> <p>21 So, before we start running down</p> <p>22 the historical trend, we first want to</p>

<p style="text-align: center;">Page 1131</p> <p>1 look at the financial impact of the health 2 and welfare expenses on the Carriers 3 workers. So, on Monday during the 4 testimony Mr. Scofield wondered why we 5 were showing Carriers' health and welfare 6 expenses as a total dollar amount as 7 opposed to a pro capita basis. 8 Well, it happens that most of the 9 time, actually when we work with employers 10 and when they look at their health and 11 welfare expenses, they looked at it in 12 aggregate. They're not interested in 13 knowing how does it cost me per member. 14 They want to know what's going to be the 15 line on their financial statement. And 16 typically, maybe one, maybe two lines on 17 the financial statement. Not one line per 18 employee. So, this is why each time we 19 will be talking about the Carriers health 20 and welfare cost we will show you total 21 dollars amount as opposed to per capita 22 amounts.</p>	<p style="text-align: center;">Page 1132</p> <p>1 So, on Slide 15, the pie chart here 2 shows you the breakdown of the Carriers 3 2020 operating revenue between operating 4 expenses and profit and reinvestment. In 5 that little red sliver is the current 6 health and welfare cost that \$1.8 billion 7 and it's actually part of the overall 8 operating expenses. 9 And to put things in perspective, 10 and this is about .1 percent of the 1.4 11 trillion dollars in revenue for 2020 or 12 2.8 percent of their 63.4 billion in 13 operating revenue, 4.1 percent of 42.6 14 billion in operating expense and 1/12 of 15 the twenty billion in profit reinvestment. 16 Looking at the employee side when 17 we talk about the employee's financial 18 statement, we're actually talking about 19 payroll. And we'll skip to slide 20 seventeen for a second and go back to 21 slide 16. 22 So, when we look at the health and</p>
<p style="text-align: center;">Page 1133</p> <p>1 welfare expense for workers, they all 2 experience different expenses. In this 3 graph here, we show you the percentage of 4 annual gross straight-time pay under two 5 scenarios, for an employee that actually 6 did not have any claims. In which case 7 they're only paying \$2,747 for the year. 8 And that amount corresponds to their 9 contribution, the \$228.89 per month. 10 In our graph here, we're showing 11 \$27,047 or almost 40 percent of their 12 gross annual straight-pay time spent 13 towards health and welfare expenses. So 14 how do we come up with that \$27,047. So 15 any members under the MMCP plan when they 16 use their in-network benefits will have 17 their out-of-pocket expenses related to 18 coinsurance, and coinsurance only, limited 19 to \$4,000 per family. 20 Once they hit the \$4,000 limit, 21 they no longer have to pay any 22 coinsurance. However, they still have to</p>	<p style="text-align: center;">Page 1134</p> <p>1 pay copays. So, if they go to the doctor, 2 they still pay the copays. When they go 3 to the pharmacy, fill those scripts, they 4 still pay the copays. And they will still 5 pay the copays up until they hit their ACA 6 limit for in-network benefits. 7 In 2020 that limit was 16,300 for a 8 family. So, in our 2747 is \$16,300 for 9 in-network expenses. For the MMCP plan 10 also has an out-of-network component and 11 the ACA does not cap any out-of-network 12 benefit -- or not benefit, sorry -- out- 13 of-pocket expenses. On the other hand, 14 the plan design itself has an out-of- 15 pocket limit at \$8,000 for family for out- 16 of-pocket expenses. So, if we sum up that 17 16,300 plus the 8,000, we get to 24,300 18 and then we add back the contribution of 19 2747 and we get the 27047. 20 One thing I want to note is we use 21 \$8,000 in out-of-pocket expenses for out- 22 of-network care same as for in network</p>

<p style="text-align: right;">Page 1135</p> <p>1 actually. That out-of-pocket max is only 2 for co-insurance, and it actually does not 3 include the deductible. The deductible 4 for the family, the out-of-network is 5 \$1400. So technically like the maximum 6 payment would be an extra \$1400 on top of 7 the 2747 so something up to 28447. 8 So, in our example here, we see 9 that a sick family can pay up to ten times 10 as much as the healthy worker who ended up 11 having no claim that year. And they're 12 spending almost, like, 40 percent of their 13 straight time pay towards health and 14 welfare expenses. 15 And to link it to the Carrier's 16 cost of contribution, and to link it in a 17 way that is comparable this time we are 18 actually looking at the Carrier cost on a 19 per qualified a basis and for 2020 that 20 cost was \$16,611. So, in our example here 21 that sick family pays 63 percent more than 22 the Carrier had paid towards the health</p>	<p style="text-align: right;">Page 1136</p> <p>1 and welfare expenses for one qualified 2 employee. 3 So going back to Slide 16. So, 4 what do we have these wide variation 5 between the first example with the person 6 with no claim in the rich family -- not 7 the rich family -- I'm sorry, the family 8 with a lot of expenses? 9 Well, health care is not an average 10 business and when we show here on the 11 graph the distribution of the cumulative 12 cost and expenses, we see that 18 percent 13 of the railroad household account for 50 14 percent of the national plans and the 15 patient so typically what we called 16 allowed expenses under the National Plan. 17 These are your sickest working families. 18 These are ones that will be hit the most 19 with any cost-sharing increases. 20 MS. MALLET: Why don't you explain 21 the graph a little bit; how it works. 22 MS. GRAVOT: On the Y-axis here, we</p>
<p style="text-align: right;">Page 1137</p> <p>1 show you the percentage of the group total 2 aggregate transfer percentage of allowed 3 spend, patient pay, and the plan expense. 4 And across on the X-axis we have the 5 cumulative percentage of the population. 6 So in here, for instance, when we are at 7 the 10 percent on the X-axis, what we're 8 saying is 10 percent of the population 9 does not have any claims. When we get to 10 the 50 percent level -- 11 MS. MALLET: This is actually not 12 the population of the house codes. We're 13 combining all of their claims together and 14 it's the actual 2018 data on the Railroad 15 National Plan for medical, RX, and 16 behavioral health. This is real data. 17 CHAIRPERSON JAFFE: So, on this 18 graph the 50 percent would represent 50 19 percent of the employees whether they were 20 individual or whether they were family or 21 any of the other categories. And you're 22 saying that if you took half of those</p>	<p style="text-align: right;">Page 1138</p> <p>1 people who were covered, they accounted 2 for roughly 15 percent of the aggregate 3 cost that the plans for? 4 MS. MALLET: Correct. 5 CHAIRPERSON JAFFE: Fair enough. 6 MS. GRAVOT: So, on Slide 19 we 7 show you the cumulative change in the 8 Carrier's cost on the Y-axis from 2001 9 through 2021. And the top dotted-red line 10 is showing the raw changes. So, no 11 adjustment for inflation. The purple- 12 solid line shows you the same information 13 but adjusted for general inflation. And 14 the dash-green line shows you the same 15 information but adjusted for medical 16 inflation. 17 CHAIRPERSON JAFFE: The cost line 18 that were aggregate costs? 19 MS. GRAVOT: They're aggregate 20 costs, correct. 21 CHAIRPERSON JAFFE: So, the 22 downturn is reflected of a drop in covered</p>

<p style="text-align: right;">Page 1139</p> <p>1 lives to a degree?</p> <p>2 MS. GRAVOT: Correct.</p> <p>3 CHAIRPERSON JAFFE: Thank you.</p> <p>4 MS. GRAVOT: So, both the green and</p> <p>5 the purple line ends in 2021 below the</p> <p>6 zero percent level from the Y-axis. On</p> <p>7 slide 20 we show you the actual dollar</p> <p>8 amounts for 2011 through 2021. With 2011</p> <p>9 being around \$2 billion. So, this is also</p> <p>10 the total Carrier's costs. And by 2021</p> <p>11 that cost is about 1.77 billion or 22</p> <p>12 percent reduction from the 2017 level</p> <p>13 which was around 2.4, 2.2, 2.4.</p> <p>14 BOARD MEMBER DEINHARDT: Do you</p> <p>15 have this data in per capita terms rather</p> <p>16 than aggregate terms?</p> <p>17 MS. GRAVOT: We don't show them in</p> <p>18 per capita, but we can give them to you</p> <p>19 per capita.</p> <p>20 MS. MALLET: In our rebuttal.</p> <p>21 MS. GRAVOT: Yeah. Thank you.</p> <p>22 MS. MALLET: I'm writing a note</p>	<p style="text-align: right;">Page 1140</p> <p>1 right now. And when you say per capita,</p> <p>2 do you want -- let me ask the question.</p> <p>3 BOARD MEMBER DEINHARDT: Well, the</p> <p>4 aggregate is in part due to the fact that</p> <p>5 there's a lower head count with fewer</p> <p>6 people being covered.</p> <p>7 MS. MALLET: Right. But this plan</p> <p>8 is complicated. So, they have what is</p> <p>9 called qualified employees and that's what</p> <p>10 the employers pay their contributions on.</p> <p>11 They have actual households being covered</p> <p>12 that include furloughed people and COBRA</p> <p>13 people so that's a different number. So,</p> <p>14 it's like 98000 of qualified employees and</p> <p>15 then 105,000 are -- include the furloughs.</p> <p>16 And then they have actual active</p> <p>17 employees that would tell an employer how</p> <p>18 much more does it cost to -- if I hire</p> <p>19 another employee for the health care. So,</p> <p>20 when you say that, do you want all three</p> <p>21 numbers, or do you want the qualified</p> <p>22 employees? The numbers in the plan or do</p>
<p style="text-align: right;">Page 1141</p> <p>1 you want --</p> <p>2 BOARD MEMBER DEINHARDT: At this</p> <p>3 point, I don't know enough to know what I</p> <p>4 want.</p> <p>5 MS. MALLET: We'll give you all</p> <p>6 three.</p> <p>7 CHAIRPERSON JAFFE: Yeah. If I can</p> <p>8 suggest maybe breaking the COBRA people</p> <p>9 out differently because it's my</p> <p>10 understanding, they have very different</p> <p>11 claims experience generally.</p> <p>12 MS. MALLET: Unfortunately, I don't</p> <p>13 have the data to do that.</p> <p>14 CHAIRPERSON JAFFE: Fair enough.</p> <p>15 MS. MALLET: I would love to, and I</p> <p>16 typically do in a plan that I'm the</p> <p>17 regular consultant on. But I'm -- I do</p> <p>18 this only for negotiations for this group.</p> <p>19 CHAIRPERSON JAFFE: That's fine.</p> <p>20 But you can break out the difference</p> <p>21 between single and then children and then</p> <p>22 spouse and family, right.</p>	<p style="text-align: right;">Page 1142</p> <p>1 MS. MALLET: For the National Plan</p> <p>2 only.</p> <p>3 CHAIRPERSON JAFFE: That's fine.</p> <p>4 MS. MALLET: You say you want the</p> <p>5 difference between?</p> <p>6 CHAIRPERSON JAFFE: If we're</p> <p>7 tracking the trends on actual costs, it</p> <p>8 seems that given the issues that are in</p> <p>9 play, we at least ought to get the data if</p> <p>10 you have it readily available by the</p> <p>11 various segments. What we do with it is</p> <p>12 something else.</p> <p>13 MS. MALLET: Okay. The only</p> <p>14 individual claims -- we have segmented</p> <p>15 individual claims data that we can split</p> <p>16 up. So, we have only like the 2018-year,</p> <p>17 2017 year.</p> <p>18 CHAIRPERSON JAFFE: That's fine.</p> <p>19 MS. MALLET: We have those two</p> <p>20 years, or we have aggregate reports that</p> <p>21 we can pull from the aggregate data.</p> <p>22 We'll do our best. I want to make sure</p>

<p style="text-align: right;">Page 1143</p> <p>1 I'm understanding. You want it split up 2 as much as you can. 3 CHAIRPERSON JAFFE: And that's 4 fine. All I was doing is piggybacking on 5 Member Deinhardt's question and that's 6 fine. 7 MS. GRAVOT: On the next slide we 8 show the work force has declined from 2021 9 -- sorry -- 2001 through 2022. And we do 10 largely attribute the decreasing the 11 contribution the Carrier's cost basically 12 due to that work force declining. And we 13 see that the decline has actually 14 accelerated starting in 2015. And since 15 then, have averaged about 5.6 percent on a 16 per year basis. 17 And when we show you the enrollment 18 in here, so these are the QE counts, these 19 like qualified employees, the teal bar 20 represent the nonhospital association 21 participant. And so, these are the ones 22 that are in the railroad plans. The dark</p>	<p style="text-align: right;">Page 1144</p> <p>1 blue on top is the participant in the 2 hospital association plan. These are only 3 employees, there's no dependents in the 4 hospital association. 5 Any dependents of an employee that 6 is in the hospital association plan is in 7 the nonhospital association plan. So will 8 be basically in the railroad plan. And we 9 also show you opt outs which is that 10 little red sliver at the bottom. There 11 was actually no opt outs prior to 2005, or 12 no visible opt out prior to 2005. So, our 13 confusion, fewer workers lowers the 14 Carrier's cost and which in return helps 15 the company's financial position. 16 So back to the members on slide 22. 17 We we're showing information here that 18 actually are very similar to what we're 19 showing on slide 17. If you remember on 20 slide 17, we have just the case of an 21 employee that has no claim and one that 22 has many claims that hit that ACA limit</p>
<p style="text-align: right;">Page 1145</p> <p>1 and used up all the out-of-network benefit 2 or used up as much of the out-of-pocket 3 max. 4 In here we're basically running you 5 through the same scenario adding the 6 average cost -- the cost for the average 7 worker, but we're showing you the numbers 8 for 2021. 9 So of course, the numbers are the 10 same for the person with no claims, but 11 the contribution is still the same amount 12 at 2747, representing about 3.9 percent of 13 their straight-pay time. For the average 14 worker we have a total spent, so 15 contribution plus their cost share, at 16 \$4,987 representing 7.1 percent of their 17 straight-pay time. 18 And our maximum worker's cost share 19 here comes out the same way or using the 20 same analogy as on 17, shows a maximum 21 worker's cost share of \$25,100 or \$800 22 more than it was for 2020. For a total of</p>	<p style="text-align: right;">Page 1146</p> <p>1 \$27,847 or almost 40 percent of their 2 straight-pay time. And the reason why 3 that amount has gone up is because the ACA 4 limit has gone up. 5 So, the members cost share even if 6 the plan cost share don't change or the 7 high-cost payment will hit their maximum 8 out of pocket, these members are subject 9 to inflation and the cost share increases 10 year after year as the ACA limit 11 increases. On slide 43 we show you the -- 12 BOARD MEMBER DEINHARDT: Can I just 13 ask -- 14 MS. GRAVOT: Sure. 15 BOARD MEMBER DEINHARDT: I 16 understand your explanation of the so- 17 called maximum worker. Do you have any 18 data on what percentage of the insured 19 population, the railroad plan insured 20 population, would fall into that category? 21 MS. GRAVOT: We do not have for 2021 22 but we can look at it for 2018.</p>

<p style="text-align: right;">Page 1147</p> <p>1 MS. MALLET: It's going to be really 2 small. It's going to be these people up 3 here, the very top. 4 BOARD MEMBER DEINHARDT: Yeah. 5 MS. MALLET: You can see it's going 6 to be really small, but we'll get it 7 between. 8 MS. GRAVOT: Next slide on slide 9 23, we show the cumulative increase in the 10 workers medical-cost share and the plan- 11 cost share from 2010 through 2021. And we 12 also show you the medical inflation, this 13 is your red-dotted line. And so, we show 14 these numbers on a peremptory per year 15 basis, so we regroup all expenses for 16 family basically within the employee. 17 So, you can see that starting in 20 18 - 2012 here, the cost share for employers 19 have increased and that basically 20 corresponds to the increased in the cost 21 share that was implemented gradually in 22 2012 through 2014 after PEB 243.</p>	<p style="text-align: right;">Page 1148</p> <p>1 MS. MALLET: Gail, I think, you 2 meant employee or worker, right? Not 3 employer. 4 MS. GRAVOT: Yeah, I meant employee, 5 workers. Sorry. After the cost share 6 were implemented if you look at the graph, 7 like the slow actually slows down between 8 2014 and 2017 and this is where the member 9 is only getting inflation is no longer 10 subject to the cost share increase. 11 And then in 2018 we have the last 12 contract being implemented with additional 13 cost share being set in place effective 14 2018 and then more cost share being 15 implemented and effective 2019, in which 16 case, the increase in the workers cost 17 share goes up faster than medical 18 inflation. 19 So, between 2010 and 2021 overall 20 the increase in the worker's cost share is 21 175 percent. I will also point out 2020 22 that is it dipped in here, but this is</p>
<p style="text-align: right;">Page 1149</p> <p>1 kind of weird COVID pandemic effect of 2 having restricted access to health care 3 services. 4 The members can't get their care; 5 they may have access still to the doctors 6 or limited access so they're not going to 7 doctors as much. They're not going to 8 hospital as much. They're not using the 9 system as much and deductible is the first 10 dollar expense for them. And so that is 11 why you're seeing that on the per employee 12 per year basis their expenses are down in 13 2020 and so are the expenses of the plan. 14 On slide 24 we're showing the 15 cumulative change in the Carrier's cost 16 operating revenue and operating expenses 17 from 20-2010 to 2021 and as pointed by Tom 18 Roth the gap between the operating expense 19 and the operating revenue is widening 20 looking at the No. 1 versus No. 2. 21 On slide 25 this is just a 22 different representation of the Carrier's</p>	<p style="text-align: right;">Page 1150</p> <p>1 cost and operating revenue. The gray bars 2 are the Carrier's cost as a personal page 3 of operating revenue. The green-dash line 4 shows the operating revenue. And the 5 purple-solid line that is at the bottom, 6 sometimes easy to miss, is basically 7 showing you the Carrier's cost 8 Come back to workers on slide 26. 9 We just added a few more scenarios. We're 10 depicting three parallel situation and 11 we're showing four different scenarios 12 still using 2021 out-of-pocket costs and 13 average costs. And we're showing for the 14 first -- the first scenario is still our 15 member with no claim. The -- and that's 16 the top one, and we see that basically on 17 depending on their pay, the average 18 straight pay they can spend from 2.9 19 percent in the middle up to 4.3 of their 20 straight pay towards health and welfare. 21 The green bar shows you the 22 expenses for an average worker or a worker</p>

<p style="text-align: center;">Page 1151</p> <p>1 having average health care expenses. And 2 in that case, they're spending will vary 3 between 5.3 and 7.8 percent. 4 We added one more scenario in here 5 where we're defining that sick family as 6 the family that has half of the expenses 7 of the sicker family that we were defining 8 before, in which case they can spend 9 anywhere between 16.2 percent to 23.9 10 percent of their annual-straight pay 11 towards health care. And we still have 12 our sick family spending anyway between 13 29.5 to 43.6 percent in that case of their 14 straight time pay towards health care. 15 On 27 this information is pretty 16 much the same as like what we have on 17 slide 15. So, for interest of time, I'll 18 skip it. 28 the top chart is the same as 19 what we have on slide 15. But what we 20 added to 28 is, like, two scenarios, two 21 illustrations that are not related to any 22 of the proposals and representative of</p>	<p style="text-align: center;">Page 1152</p> <p>1 anything that is negotiated but just 2 saying, like, you know, if we were to 3 eliminate the contribution on the employee 4 side, so basically, like, the Carriers pay 5 100 percent of the funding that goes into 6 the railroad plan. Or if the Carriers 7 were to reduce their cost by about 280 8 million the difference on their financial 9 is virtually unnoticeable from the 10 standpoint of looking at these graphs, 11 which is basically .5 percent difference 12 shift on the overall split for the -- for 13 the Carrier cost of the health care. 14 So now we're moving to second or 15 third section. And on this section, we'll 16 show you that the current railroad plan 17 are, in fact, mainstream when we compare 18 them to the rail and transportation 19 industry, which is, in our opinion, a 20 better more appropriate comparison than 21 the one presented in the service, selected 22 service.</p>
<p style="text-align: center;">Page 1153</p> <p>1 So, we'll first go through a few 2 clarification points when we get to the 3 railroad actual value. Then we'll review 4 the CBCs January 2022 statement on actual 5 value. And then finally we'll move on to 6 the comparison to all the plans pointing 7 out what we view as problematic with the 8 NCCC service referenced and showing you 9 what we believe is a better comparison for 10 the railroad plan. 11 So, one thing I want to mention 12 also, which is actually a little different 13 than -- but very specific to the railroad 14 plan -- earlier when we were looking at 15 the enrollment, I was breaking down the 16 non-hospitalized association plan versus 17 the hospitalized association plan and 18 pointed out that hospitalized association 19 plan was only for employees and any 20 dependent will be covered under the non- 21 association plan -- non-hospitalized 22 association plan.</p>	<p style="text-align: center;">Page 1154</p> <p>1 And so, this cause exactly the 2 family size for the railroad plan to be 3 overstated and the top graph here with the 4 red box shows you an extract from the UHC 5 2021 claim-experience detail report you 6 achieving like one of the medical network 7 vender for the plans. 8 And they're stating that the 9 average side is overstated. And why is it 10 overstated? And the bottom I try to give 11 you a very simple example. Let's say we 12 only have two employees; one is covered 13 under the hospitalized association plan 14 and their wife is covered under the non- 15 hospitalized association plan. And we 16 have employee B being in a non- 17 hospitalized association plan covered with 18 their wife. 19 So, we have four people total, two 20 employees. But there's only three people 21 in the railroad nonhospital association 22 plan. So UHC will basically calculate the</p>

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1 average family size for the plan to be
 2 three. The ratio of the three people to
 3 one employee. Any other plan that would
 4 not have put the -- or would not have had
 5 the categorization of employee that is not
 6 in the hospitalized association -- sorry -
 7 - any other employer would not separate
 8 the spouse from the employee plan would
 9 have basically counted the contract size
 10 as two.
 11 **CHAIRPERSON JAFFE:** What's the
 12 magnitude of that difference if you
 13 combined the two sets so that you had an
 14 overall set size of both employee and
 15 family member, so we got accurate data on
 16 coverage by the funds? What would it look
 17 like ? Is that in your materials?
 18 **MS. GRAVOT:** I can give you the
 19 information. Yes, I will give it to you
 20 in rebuttal.
 21 **CHAIRPERSON JAFFE:** That's fine as
 22 well. Thank you.

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1 comfortable sharing because we believe
 2 that the claims that we have are not --
 3 have some issues in them in terms of what
 4 is listed as a COB claim because compared
 5 to the reports we've received from the
 6 vendor, and we have not reconciled that.
 7 So not that we would want to share with
 8 you because we're concern that it's not
 9 accurate.
 10 **BOARD MEMBER DEINHARDT:** But you
 11 feel like the 5.6 percent is accurate?
 12 **MS. MALLET:** Absolutely. Because
 13 that's done by the vendors, and they do it
 14 every single year. So, they have the
 15 data. They know the codes in their plans.
 16 So, I can't give you the number that
 17 actually have it in by tomorrow.
 18 I mean, we could find it out, but
 19 we can't do it by tomorrow because the
 20 data we have is not accurate.
 21 **BOARD MEMBER DEINHARDT:** Okay.
 22 Thank you.

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1 **MS. MALLET:** I got it.
 2 **MS. GRAVOT:** Thank you. Next
 3 slide, we all heard and said that the
 4 actual value of the plan is 91.5 percent,
 5 but in reality, 95.1 percent is not the
 6 percentage of total expenses that the
 7 railroad plan is paying because you have a
 8 fair amount of spouses that are covered by
 9 their own insurance, in which case the
 10 plan comes up as secondary payer and about
 11 5.6 percent of the expenses are paid by
 12 other insurance. And the net plan paid
 13 ends up being lower at 85.9 percent. Just
 14 pointing this out.
 15 **BOARD MEMBER DEINHARDT:** What is
 16 the statistic about the -- I see you see
 17 that 5.6 percent of the costs are paid by
 18 other insurers. Do you have any idea
 19 about what percentage of the covered
 20 households have this dual coverage through
 21 the employee and the spouse?
 22 **MS. MALLET:** Not that we feel

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1 **CHAIRPERSON JAFFE:** May I piggyback
 2 on that? Just in terms of order of
 3 magnitude rather than precise data, would
 4 you be able to advise us as to what
 5 proportion of participants who have either
 6 employee and spouse or family coverage,
 7 that would include spouse, have other
 8 insurers that would be one measure?
 9 **MS. MALLET:** No.
 10 **CHAIRPERSON JAFFE:** No.
 11 **MS. MALLET:** Again, we're not
 12 interpreting the data our individual
 13 claimed data in a way that matches with
 14 the report which means --
 15 **CHAIRPERSON JAFFE:** Okay.
 16 **MS. MALLET:** -- we would need to
 17 reconcile.
 18 **CHAIRPERSON JAFFE:** Fair enough.
 19 Thank you.
 20 **MR. COOK:** Mr. Chairman, if I may.
 21 We can check with the insurance vendors to
 22 see if we can get -- Dan Cook for the

<p style="text-align: right;">Page 1159</p> <p>1 record. We can check with the insurance 2 company to see if they keep individual 3 numbers because to your point, it's a 4 coordination of benefits. They've got 5 claims information to show that. But if 6 you're looking for actual, is it sixty- 7 five people or what the number is, we can 8 check and see if the vendors have that 9 readily available.</p> <p>10 CHAIRPERSON JAFFE: Thank you. 11 MS. GRAVOT: Before we get into your 12 next topic, we wanted to address Mr. 13 Scofield's statement or comment that the 14 CBC Group who presented 86.5 percent was 15 the Union benchmark during negotiation.</p> <p>16 So typically, when any actual 17 presentation and report -- in any actual 18 representation and report you will find a 19 disclaimer that sets the terms of use for 20 the material that is presented, such as 21 the disclaimer that is here on the slide. 22 That disclaimer is meant to avoid</p>	<p style="text-align: right;">Page 1160</p> <p>1 having information taken out of context 2 and also misrepresented or misinterpreted. 3 Yesterday we reached out to the CBC's 4 actuary regarding the 86.5 percent AV that 5 Mr. Scofield portrayed as being presented 6 by the CBC as the Union benchmark during 7 negotiation on slide 11 of his 8 presentation.</p> <p>9 She confirmed that Mr. Scofield 10 misinterpreted her analysis. And she's 11 worried that further misrepresentation of 12 her analysis be done. So, she asked us 13 not to share any of her slides in our 14 presentation with the exception of this 15 one.</p> <p>16 But she authorized us to read to 17 you, Mr. Chairman, and members of the 18 Board, the two conclusions that were 19 included in her presentation. And so, if 20 I may I will start reading these ones. 21 First one, "We have shown that relative 22 value are within about 2.5 percent in the</p>
<p style="text-align: right;">Page 1161</p> <p>1 dollar-based PPO contribution (\$210 2 monthly composite across all family tiers) 3 are 8 percent lower for unionized 4 transportation employees then for the 5 National Railroad Plan (\$228.89 monthly).</p> <p>6 Second bullet, "As a result current 7 PPO benefits and contribution for the 8 National Railroad Plans are mainstream 9 relative to more appropriate population." 10 MS. MALLET: She also authorized us 11 to tell you and to confirm that our 12 understanding of what her slide says was 13 accurate. She was showing multiple 14 different surveys. And the point of the 15 slide was, as Gail just read, to say that 16 the current plan is -- that has the 17 appropriate actual value for within the 18 rail and transportation industry.</p> <p>19 And this 86.5 that he's referring 20 to is one survey that doesn't take into 21 consideration the cost sharing the members 22 pay. And it doesn't take into</p>	<p style="text-align: right;">Page 1162</p> <p>1 consideration the rail and transportation 2 industry. It was all Unions including 3 service unions, all kinds of different 4 Unions. She didn't have available what 5 unions were actually in that that she 6 could give us yesterday.</p> <p>7 But her conclusion was that this 8 plan's current actual value is the 9 appropriate one for comparing it to other 10 similar industry actual value.</p> <p>11 MS. GRAVOT: So, surveys are a like 12 a melting pot, they combine a lot of 13 information from different group and that 14 may or may not be related, may or may not 15 be similar. And so sometimes very -- you 16 know, drawing conclusions from surveys can 17 be dangerous if we don't understand or if 18 don't pay attention to what the 19 information is or what is included.</p> <p>20 And the conclusion that are drawn 21 can be very -- I mean the service can be 22 very misleading. I would say that one</p>

<p style="text-align: right;">Page 1163</p> <p>1 size does not fit all, and results will 2 vary greatly by industry wages and which 3 level for size when we look at the 4 different surveys. 5 So, the unions do not want to model 6 their plan after a nonunion plan. And so, 7 they're not interested in looking at 8 survey that is wide enough where basically 9 it actually will present a majority of 10 nonunion plans, or it would present some 11 non-transportation industries. 12 On slide 35, we have nine surveys 13 listed from the appendices of the 14 Interpolces submission. Four of them do 15 not have any mention of union statistics. 16 The other five we reviewed on slide 36 and 17 on the right column of slide 36, we 18 actually listing our concern, or the 19 unions concern with regards to the 20 appropriateness of these surveys. 21 And we find that these surveys 22 underrepresent Unions or underrepresent</p>	<p style="text-align: right;">Page 1164</p> <p>1 transportation industry. And so, we do 2 find that they're not appropriate for 3 comparison to the railroad plan. 4 We think it is very important to 5 compare the railroad plan to relatable 6 plans from relatable industries because 7 these are the industries that the Carriers 8 will actually compete against when trying 9 to get -- when looking for work force. 10 And for union members and railroaders, 11 these are the benefits that they're 12 looking at that will make them stay or 13 make them go work for a different 14 employer. 15 So, on slide 38 we do find that the 16 most appropriate comparison will be to 17 compare a railroad plan to the freight 18 rail plans but, unfortunately, they are 19 basically the rail freight plan and 20 there's no other rail freight plans to 21 compare to. 22 So that we actually expand our</p>
<p style="text-align: right;">Page 1165</p> <p>1 horizon and basically include what is the 2 next best thing and that we concern is the 3 comparison to the other rail industry 4 plans, so broadening our rate to include 5 the transport, rail transport industry. 6 On slide 39, so we gathered 7 information for about 11 rail systems, and 8 some offer several plans could be HMO, it 9 could be PPO. We use the PPO when 10 possible. We also use that, like, which 11 plan was the most -- had the most 12 employees when they have five, six, seven 13 plans offered. Typically there might be 14 like one plan where you find a majority of 15 workers. So, we try to take the one that 16 will have the majority of workers in that 17 case. 18 And then we calculated the actual 19 value for all these plans for plan year 20 2023. And here on the table we're showing 21 the ranking of the 12 plans, so the 11 we 22 picked plus the railroad plans. And the</p>	<p style="text-align: right;">Page 1166</p> <p>1 railroad plans rank No. 8 in our table. 2 The top plan is the LA County MTA 3 with a 99 percent actual value. And this 4 is actually the Kaiser Permanente HMO 5 plan. And the Kaiser Permanente plan is a 6 leader in the industry when it comes to 7 quality of care and cost efficiency. This 8 is the type of plan that when we go and we 9 recommend to our clients to do best 10 practice, we look at the Kaiser plan. 11 MS. MALLET: I want to mention why 12 we used it. We're very proud of the work 13 force in Los Angeles County. 70 percent 14 of them take the Kaiser plan. It is the 15 number one utilized plan in LA. We would 16 have done more of these had we had time to 17 do as many plans, as Mr. Scofield pointed 18 out, that many of them have multiple 19 plans. And I think we have a list in our 20 report that shows that. 21 So, we weren't trying to hide it or 22 anything. But we only had enough time to</p>

<p style="text-align: right;">Page 1167</p> <p>1 do the ones that were the most populous 2 for most of them. So for some of them 3 like Amtrak, AmPlan, Amtrak, we were able 4 to rate them all together. 5 And I also do want to mention going 6 back on this slide we -- Gail misspoke 7 when she said unfortunate, we actually 8 think it's very fortunate that all of the 9 freight -- the true indicator of the 10 industry is the freight plans. They are 11 at their benchmark because for the 12 Carriers they should be thrilled with it 13 because they're not going to have to 14 compete against each other for having a 15 work force. 16 The most common worker is going to 17 switch between the different Carriers, and 18 they don't have to have different plans. 19 So it's actually a big advantage for them 20 to have that as their benchmark. And it's 21 also a big advantage for the union side 22 because they're very proud of their</p>	<p style="text-align: right;">Page 1168</p> <p>1 slogan, all for one, one for all. So we 2 think it's a great thing that that's the 3 true benchmark in the rail freight 4 industry. 5 Gail, you want to go back. 6 MS. GRAVOT: On slide 40, we 7 compare from like 14 different properties. 8 And some of these properties were 9 mentioned by Mr. Cook earlier in his 10 statement, in his testimony. We compare 11 the employee contribution to the railroad 12 plan, and we do find that the \$229.89 is 13 not out of line compared to all of those 14 other properties. And one thing that we 15 notice also is this is not the only plan 16 that has a single-tier employee 17 contribution. On slide -- 18 BOARD MEMBER DEINHARDT: Which of 19 these plans have single-tier 20 contributions? 21 MS. GRAVOT: I'm sorry. Can you 22 repeat your question?</p>
<p style="text-align: right;">Page 1169</p> <p>1 BOARD MEMBER DEINHARDT: You said 2 that the Carrier's plan is not the only 3 plan that just has a single-tier 4 contribution. Which of these other ones 5 have that? 6 MS. MALLET: Well, for instance, 7 the Del Ray Connecting plan has a \$230 8 employee contribution. 9 BOARD MEMBER DEINHARDT: So anyone 10 that just has a single number -- 11 MS. GRAVOT: Correct, yes. 12 BOARD MEMBER DEINHARDT: -- as an 13 employee contribution. 14 MS. GRAVOT: Yes. 15 BOARD MEMBER DEINHARDT: Okay. 16 MS. MALLET: I do want to point 17 out, it's really important, in the Kaiser 18 Family Foundation that they're relying on, 19 over 23 percent of their plans have no 20 contribution, which means their single 21 contribution is zero. 22 So if we're going to look at</p>	<p style="text-align: right;">Page 1170</p> <p>1 nationwide, there are plenty of employers 2 out there that are not requiring 3 contributions at all. 4 MS. GRAVOT: So slide 41 shows you 5 the 14 properties that were actually in 6 the previous slide. And these 14 7 properties have elected status quo when it 8 comes to the health and welfare benefits 9 for their last agreement. And these were 10 some of them, some of the properties that 11 Mr. Cook was mentioning during his -- 12 In this section we'll go and talk 13 about working conditions of the railroad 14 employees and workers. And so that these 15 working condition are not mainstream. 16 So we reach out to all 12 unions 17 labor leaders, and we ask them to indicate 18 whether their craft was subject to 19 different conditions when working. There 20 was 22 conditions that were listed in 21 total. And they're all listed in our 22 appendix C in our report.</p>

<p style="text-align: right;">Page 1171</p> <p>1 For this report what we did is we</p> <p>2 regrouped some of the conditions, such as</p> <p>3 diesel and chemical fuel exposure. If you</p> <p>4 look at appendix C you will see one column</p> <p>5 for each. Here they are both in the same</p> <p>6 column. And it's just so that we can save</p> <p>7 space on the slide. Basically, we just</p> <p>8 regrouped some of the conditions there.</p> <p>9 So you have on each row, the</p> <p>10 responses from each leader basically with</p> <p>11 regard to the Unions. And each columns</p> <p>12 shows you a grouping of condition. For</p> <p>13 chemical diesel fume expose, all craft are</p> <p>14 exposed to these. For led expose, the</p> <p>15 majority of craft are exposed to these</p> <p>16 only SMART-TD, PLET-IVT, ATDA, and TW said</p> <p>17 that they actually had no exposure to</p> <p>18 lead.</p> <p>19 Cadmium and carbon dust exposure</p> <p>20 was for all except ATDA. Bird dropping</p> <p>21 exposures were for most of them with the</p> <p>22 exception of ATDA and SMART-TD and BLET-</p>	<p style="text-align: right;">Page 1172</p> <p>1 IVT indicated that they are rarely or</p> <p>2 never exposed to bird droppings. Human</p> <p>3 waste, animal part waste all but ATDA are</p> <p>4 exposed. Carcinogens including oil</p> <p>5 exposure all but ATDA.</p> <p>6 Nonstandard work hours all</p> <p>7 indicated they are exposed to nonstandard</p> <p>8 work hours with the slight caveat that</p> <p>9 SMART-TD and BLET said that most of time</p> <p>10 they are outdoor work or work condition</p> <p>11 where you have no AC. Most are or all,</p> <p>12 but TCUIM and ATDA stated that they were</p> <p>13 exposed to outdoor work or work indoor</p> <p>14 that is in an environment that doesn't</p> <p>15 have any AC.</p> <p>16 For TCUIM most of time, they work</p> <p>17 outdoor or in an environment that is not</p> <p>18 ventilated properly. And ATDA said that</p> <p>19 it was a nonissue for them. Loud noise,</p> <p>20 all of them are exposed to loud noise with</p> <p>21 TCUIM being exposed most of time.</p> <p>22 Heavy lifting and physical work,</p>
<p style="text-align: right;">Page 1173</p> <p>1 all but ATDA are exposed to heavy lifting</p> <p>2 and physical work, and all have repetitive</p> <p>3 movements.</p> <p>4 MS. MALLET: I do want to mention</p> <p>5 before we move to slide 44. The order of</p> <p>6 these Unions is not random. It is done by</p> <p>7 who has the biggest membership on top, and</p> <p>8 then the smallest membership on bottom.</p> <p>9 MS. GRAVOT: The surveys are</p> <p>10 supposed to be a reputation of multiple</p> <p>11 industry, not just one. And the working</p> <p>12 condition as such, can vary greatly for</p> <p>13 the rail industry, the working condition</p> <p>14 are very different than we'll be pointing</p> <p>15 out through this section.</p> <p>16 So here we pulled the chart from</p> <p>17 the Kaiser family foundation. And as you</p> <p>18 can see the majority of the industry</p> <p>19 represented service jobs, health care, and</p> <p>20 retail job, which account for like 66.8</p> <p>21 percent of them have, like, indoor jobs.</p> <p>22 These are like indoor jobs with maybe,</p>	<p style="text-align: right;">Page 1174</p> <p>1 like, 9 to 5 regular schedule. Other have</p> <p>2 mix of indoor and outdoor, but hardly any</p> <p>3 of them would have the same exposure to</p> <p>4 diesel fuel, chemical fuel, animal waste,</p> <p>5 and the compound of all these different</p> <p>6 physically working condition as the rail</p> <p>7 workers have. And in That survey, the</p> <p>8 transportation combined with communication</p> <p>9 and utility will represent only 3.9</p> <p>10 percent of the total survey plan. So the</p> <p>11 railroad worker's condition are hardly</p> <p>12 represented or may not be properly</p> <p>13 represented in that Kaiser family</p> <p>14 foundation.</p> <p>15 So in the next slide -- well, and a</p> <p>16 few more slides we'll just go through all</p> <p>17 the different conditions that were on</p> <p>18 slide 44 -- 43, sorry. So, diesel</p> <p>19 exposures we have -- due to diesel</p> <p>20 exposures basically there is, like, risk</p> <p>21 of increasing COPD mortality of 2.5</p> <p>22 percent per year. So for a worker that</p>

<p style="text-align: right;">Page 1175</p> <p>1 have been working 20 years, it's a 50 2 percent increase in COPD mortality. COPD 3 is chronic obstructive pulmonary disease. 4 On slide 46 lead exposure, anything that 5 is above 5 microgram per deciliter is 6 considered above normal with regard to 7 lead exposure. A 2015 review found that 8 the mean blood lead concentration of 9 railway workers ranged between 28 and 86 10 microgram by deciliter. So way above what 11 is considered normal. The consequences of 12 lead exposure are anemia, weakness, damage 13 -- kidney damage, and brain damage. 14 Cadmium exposure. Cadmium is a cancer- 15 causing agent and -- per OSHA, acute 16 inhalation exposure to cadmium can damage 17 health status. Typical consequences are 18 flu like symptoms, or chronic exposure 19 that would result in kidney, bone, or lung 20 disease. Carbon dust, chronic inhalation 21 of carbon dust can cause health issues. 22 Will impact the lung, decrease lung</p>	<p style="text-align: right;">Page 1176</p> <p>1 function, heart damage, skin cancer, 2 cough, fatigue, chest pain, and headaches 3 being consequences. Bird droppings. Bird 4 droppings can contain fungal spores which 5 people can breathe and breathe in when 6 they work nearby and so these will cause 7 some acute symptoms such as fever, chills, 8 headache, muscle aches, dry cough, chest 9 pain, fatigue, or chronic symptoms 10 including weight loss and bloody cough. 11 Animal carcass and waste is a very -- 12 variety of bacteria's, viruses, and 13 parasites that can be found in animal 14 carcasses and feces. Exposure to these 15 will result in; infection, diarrhea, eye 16 pain, and some other symptoms can be an 17 indication of infection due to exposure to 18 the carcass or feces. Nonstandard hours 19 or workers have different conditions but 20 often would find 10 percent of our day 21 either, day shift, night shift, rotation 22 shift, being gone away from home, like,</p>
<p style="text-align: right;">Page 1177</p> <p>1 days at a time. And the consequences of 2 these nonstandard hours are actually, 3 like, short sleep duration, obesity, 4 cardiovascular disease, and strokes. 5 Lots of workers are on call 6 assignments and they have to be available 7 when employers call them. They have to go 8 and that makes it very difficult for them 9 to schedule doctor's appointments and 10 stick to the schedule in that case go and 11 see their doctor's appointment. That 12 creates some lack of continuing with 13 regard to care and increase the chance of 14 chronic condition to worsen. Climate 15 change -- climate change and outdoor 16 workers. So a health hazard for outdoor 17 workers, increase heat and solar radiation 18 exposure, poor air quality, which is also 19 the balance for anybody working inside 20 with no AC and temperatures extreme. So 21 health consequences are cardiovascular 22 disease, respiratory disease, mental</p>	<p style="text-align: right;">Page 1178</p> <p>1 health, and stress related disorders, 2 infectious disease, cancer, chronic kidney 3 disease of nontraditional origin. 4 Loud noise. Long-term noise 5 exposure can cause damage. Exposure to a 6 single loud noise can cause damage also, 7 and so the health consequences are hearing 8 loss, tinnitus, bell's palsy, acoustic 9 neuroma, all crafts are -- have reported 10 to be exposed to noise, and loud noise. 11 Many workers are suffering for, like, from 12 hearing loss and so this is why the 13 Union's included the request of increasing 14 the hearing benefit in their proposal. 15 Heavy lifting. In 2019 a study showed 16 that heavy lifting at work has negative 17 health effect causing, high cholesterol, 18 high blood pressure, and other 19 cardiovascular disease. Repetitive 20 movement, common people affected including 21 workers with physical demanding role and 22 workers who often sit at a desk and use a</p>

<p style="text-align: right;">Page 1179</p> <p>1 computer. This is not specific 2 necessarily to the railroad works, but 3 they do go through repetitive movement and 4 we -- I'm sure that everybody know 5 somebody complained about carpal tunnel 6 syndrome. This is a consequence of 7 basically repetitive movement and the 8 repetitive strain injury that we'll find 9 are tendinitis, carpal tunnel syndrome, 10 trigger finger, back pain, shin splints, 11 et cetera. And for all workers what we 12 see is more of knee pain, hip pain, 13 shoulder pain, back -- as well as the back 14 pain. 15 Biomechanical work. These type of 16 work would cause like whole body 17 vibration. And so when you put this -- 18 this is linked to repetitive pushing, 19 pulling, or bending and these will cause 20 neck, lower back pain, and knee pain. 21 Sciatica when your nerves -- lower back 22 will get pinched and get pain in the leg,</p>	<p style="text-align: right;">Page 1180</p> <p>1 or the carpal tunnel syndrome as well. So 2 when we take into consideration all these 3 different conditions the thing is not one 4 condition is worse than all the other 5 conditions than any workers can have. 6 It's the fact that there's so many 7 different conditions and you combine them 8 together it compounds with effect on their 9 health. And here are lists of chronic 10 condition -- conditions that you have that 11 are affected by some of the working 12 conditions that the railroad workers are 13 experiencing. Chronic renal disease is 14 caused by working outdoors, exposure to 15 lead. Ischemic heart disease is basically 16 caused by working outdoors, nonstandard 17 hours, exposure to diesel fumes, heavy 18 lifting, so when we combine this, you're 19 increasing the risk of these disease. 20 Diabetes is also caused by nonstandard 21 work hours, hypertension, nonstandard work 22 hours, working outdoors, exposure to</p>
<p style="text-align: right;">Page 1181</p> <p>1 diesel fumes, heavy lifting, hyperemia, 2 exposure to diesel fuel, heavy lifting but 3 basically, nonstandard hours. So 4 everything contributes to basically make 5 the worker more susceptible to using what 6 you are needing the health care to 7 maintain their health and stay healthy. 8 CHAIRMAN JAFFE: Have you done any 9 analysis as to the actual health status of 10 the participant and their families in the 11 plan to determine whether in fact there 12 are elevated likely hood of diabetes, 13 renal -- any of the kind of things that 14 are listed on slide 58? 15 MS. MALLET: They are in the 16 reports for United Healthcare. They do 17 list some of these in terms of the 18 conditions. We have done -- years ago 19 some studies -- let us get back to you on 20 rebuttal on how it links in with the 21 report. 22 CHAIRPERSON JAFFE: Of course. I</p>	<p style="text-align: right;">Page 1182</p> <p>1 was just simply trying to find out whether 2 it was predictive based on the work 3 conditions or whether it had been 4 confirmed by way of actual experience with 5 respect to the participants. That's all. 6 MS. MALLET: It's a great question. 7 CHAIRPERSON JAFFE: Thank you. 8 MS. MALLET: With that it completes 9 our section on, sort of, looking backwards 10 of what has happened and now we want to go 11 forward. We're very short on time and on 12 the consumerism and incentive section, 13 which is very important, and it's been a 14 key disconnect on whether or not this 15 proposals are going to cost harm to the 16 members or not. We are doing additional 17 analysis right now that we were planning 18 on presenting in the rebuttal anyway. 19 Given the time frame, I would like to skip 20 the entire section and go on to a very 21 important section on the comparison and 22 proposal. Because we have a lot of data</p>

<p style="text-align: right;">Page 1183</p> <p>1 in that section.</p> <p>2 Skip right ahead to the Union's</p> <p>3 proposal versus the Carrier's proposal.</p> <p>4 On slide 78, the Union's health and</p> <p>5 welfare proposal. Update hearing benefits</p> <p>6 limited to \$600 per year to \$2000. United</p> <p>7 Healthcare price set at \$2.6 million. 2</p> <p>8 and 3 for the removing the cap for speech</p> <p>9 therapy, the age cap, and adding in</p> <p>10 applied behavior and analytics, which is</p> <p>11 the prescribed standard of care for</p> <p>12 children with autism and which 1 out of 44</p> <p>13 children have autism per the CDC. Those</p> <p>14 two combined would cost to plan</p> <p>15 approximately, 9.2 million per year, total</p> <p>16 cost is 11.8 million or .5 percent less</p> <p>17 than the revel plans cost.</p> <p>18 Going to the Carriers proposal,</p> <p>19 I've got two slides on this. I'm going to</p> <p>20 go through the aggregate costs first</p> <p>21 before I get to the aggregate plan impact</p> <p>22 for -- and the Carrier's impact. Then</p>	<p style="text-align: right;">Page 1184</p> <p>1 we'll get into the details of the member</p> <p>2 impact. On the first one, maintaining an</p> <p>3 actual value of 88 percent, or actually,</p> <p>4 just starting actual value of 88 percent.</p> <p>5 They provide a very specific plan design,</p> <p>6 and they have to share those with you.</p> <p>7 There are 20 different coverage levels</p> <p>8 that they are changing for 2023 and then,</p> <p>9 I'm not quite sure I got lost -- I thought</p> <p>10 there was eight coverages that were</p> <p>11 changing every year. Just the \$50</p> <p>12 deductible and the \$500 of pocket limit.</p> <p>13 But honestly, when you, Mr. Chairman,</p> <p>14 asked them if that applied to someone else</p> <p>15 to say that it was different than those</p> <p>16 two items. I was confused what the</p> <p>17 response was. So I'm not 100 percent</p> <p>18 positive of that.</p> <p>19 Anyway, if you do that United</p> <p>20 Healthcare has priced it at \$108 million</p> <p>21 savings for the plan in 2023 dollars.</p> <p>22 Workers' contributions, they are uncertain</p>
<p style="text-align: right;">Page 1185</p> <p>1 of the definition of the payment rate</p> <p>2 because they say historically. So we did</p> <p>3 what we think is historical, but it would</p> <p>4 have been nice had they list what was</p> <p>5 included in the payment rate. The spouse</p> <p>6 is surcharged, I want to say, is against</p> <p>7 the Union philosophy of "all for one, one</p> <p>8 for all."</p> <p>9 All the increases go to the spouse</p> <p>10 surcharge which has a great desk spiral.</p> <p>11 And I think you picked up on that and</p> <p>12 we're going to go through some very</p> <p>13 detailed information on that issue later</p> <p>14 on in the presentation.</p> <p>15 BOARD MEMBER DEINHARDT: What do</p> <p>16 you mean by worker contribution increases</p> <p>17 with all hundred percent going to spousal</p> <p>18 surcharge? I don't understand what that</p> <p>19 means.</p> <p>20 MS. MALLET: Our understanding of</p> <p>21 the proposal and Mr. Cook can explain how</p> <p>22 we're not 100 percent sure that our</p>	<p style="text-align: right;">Page 1186</p> <p>1 understanding is correct. Is that the</p> <p>2 22889 for employee-only coverage and</p> <p>3 employee plus child coverage will stay</p> <p>4 fixed.</p> <p>5 BOARD MEMBER DEINHARDT: I</p> <p>6 understand what you're saying.</p> <p>7 MS. MALLET: It will not increase.</p> <p>8 And then, so any inflation or any adverse</p> <p>9 reaction, or any positive reaction, or</p> <p>10 experience will all fall on whatever</p> <p>11 spouses still remaining in the plan.</p> <p>12 BOARD MEMBER DEINHARDT: Or</p> <p>13 whatever employees.</p> <p>14 MS. MALLET: Choose to cover their</p> <p>15 spouse.</p> <p>16 BOARD MEMBER DEINHARDT: Choose to</p> <p>17 cover their spouse.</p> <p>18 MS. MALLET: Yes.</p> <p>19 BOARD MEMBER DEINHARDT: Okay.</p> <p>20 MS. MALLET: So that savings we</p> <p>21 estimate at \$776.2 million. Based again</p> <p>22 on very -- assumptions that could very</p>

<p style="text-align: right;">Page 1187</p> <p>1 well not come true. So it could be 2 significantly more. Site penalties and 3 shift in medical management, United 4 Healthcare priced that at 19 million 5 dollars. 6 Now, I need to take a few minutes 7 to talk about this one. We find this very 8 problematic. United Healthcare in their 9 e-mail to me on July 15th, provided 10 information where they're very confused 11 about this as well. So they say that the 12 price that using a book of business is 19 13 million dollars, and this is extra on top 14 of the benefit changes. 15 To add prior authorization, core 16 medical necessity would then need to be 17 included in the SPD language and would 18 also need to be included. And the SP 19 language would also need to be changed. 20 There would need to be a significantly 21 time to implement this program. so we're 22 not sure that they can even implement on</p>	<p style="text-align: right;">Page 1188</p> <p>1 1123 according to United Healthcare. They 2 go on to say, they would need all these 3 questions answered. They would need to 4 know what the exception process would be 5 for the railroad population who did not 6 have access to free-standing facilities or 7 provider's offices and related vendor 8 staffing to administrators. They would 9 need to know how in-network providers who 10 don't have admitting privileges to 11 facilities, which was one of your 12 questions, would be handled. 13 They would need know about these 14 new copays. It would have to be on the 15 member ID card. So because of the 16 consolidated appropriations have to 17 require these things to be on the copay. 18 They would also need to do mental health 19 pairing testing. In addition to what Mr. 20 Scofield pointed out, he doesn't know how 21 many people even have access. We find 22 that very troubling that you're going to</p>
<p style="text-align: right;">Page 1189</p> <p>1 implement such a program without knowing 2 how many people it will impact and knowing 3 what the true plan cost is. He said his 4 estimate was 25 million dollars. United 5 Healthcare is giving 19 million so there's 6 a lot of issues. One of my personal big, 7 big, big, issue is provider contracts 8 right now, for in-network providers they 9 have requirements that they must need to 10 meet -- to meet what was called medical 11 necessity. I have seen this before in my 12 experience. When you start taking prior 13 authorization and you put it on the back 14 of the workers and say, hey you have no 15 clinical expertise are supposed to know 16 you have to go and call United Healthcare 17 or Aetna or Highmark and get prior 18 authorization to have that service. I 19 don't know what services it is. I don't 20 have my list of services. So if I'm a 21 member, I don't know if I need to call 22 prior authorization for an X-ray, or an</p>	<p style="text-align: right;">Page 1190</p> <p>1 MRI, or what my whole list of services 2 are. So I'm really confused, and I can 3 easily just not call. 4 So what happens if you put this in 5 place, and the member just doesn't call 6 because they didn't know about it, or they 7 thought that service was one they didn't 8 have to call for? What's in the provider 9 contract, that provider contract no longer 10 applies because the prior authorization 11 falls on the member first. And United 12 Healthcare automatically charges the 13 penalty, but that's my understanding. I 14 haven't talked it through with United 15 Healthcare, so I don't know that that's 16 factual and I haven't talked it through 17 with Aetna and I haven't talked it through 18 with Highmark. It's just something that I 19 have seen happen and it will concern me, 20 and I would want to actually talk to each 21 of the vendors to make sure it didn't 22 happen, see what their process was for if</p>

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1 members that didn't realize that service
 2 was supposed to have a prior authorization
 3 and didn't call. There's so many
 4 components of this that are problematic
 5 and without fleshing those out it's just
 6 one of those items that I personally think
 7 is the nonstarter and it's very difficult.
 8 **CHAIRMAN JAFFE:** The item we've
 9 been looking at looks at both, site of
 10 care and prior authorization together; is
 11 that correct? As you've been discussing
 12 it?
 13 **MS. MALLET:** It's how they've been
 14 discussed.
 15 **CHAIRMAN JAFFE:** Is site of care
 16 something that would be approached
 17 differently if you use an incentive
 18 approach as you've described generally,
 19 rather than a penalty approach?
 20 **MS. MALLET:** Yes.
 21 **CHAIRMAN JAFFE:** And would that net
 22 cost savings, if you know?

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1 that got updated, they did almost
 2 everything that ESI recommended but not
 3 all of them, because the pharmacy
 4 consulted with the plan higher and didn't
 5 recommend them. Which goes to the point
 6 directly in their proposal they're saying
 7 let ESI determine the future of what
 8 programs get implemented. We do not feel
 9 it's a good concept to have essentially,
 10 the fox guarding the chicken coop, to use
 11 that as a cliché. And think one of best
 12 examples is the opioid management program.
 13 I personally don't even understand why the
 14 Carriers want to -- it cost the plan
 15 money, it puts the members through all
 16 kinds of protocols that have to -- you
 17 know, hoops to get these drugs that they
 18 need. Typically it's cancer patients that
 19 use these or temporarily people that have
 20 back or knee pains or surgeries that are
 21 on these type of opioid drugs. And we've
 22 looked at ESI program and I don't know the

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1 **MS. MALLET:** We believe so.
 2 Because we did look at proposal in the
 3 bargaining section that was accepted in
 4 '17, '18 and it did net savings.
 5 **CHAIRPERSON JAFFE:** And were they
 6 substantial.
 7 **MS. MALLET:** I don't recall but I
 8 can look that up and get back to you.
 9 **CHAIRMAN JAFFE:** I'm just trying to
 10 -- thank you.
 11 **MS. MALLET:** Yeah. I can
 12 definitely look up the estimate. Going on
 13 to the RX management. Advanced
 14 utilization programs. I think Dan
 15 described what that issue was. But I want
 16 to -- I just want to highlight -- I'm
 17 pretty sure you said that -- the pattern
 18 that I see for this plan is that it does
 19 get updated every bargaining time. The
 20 problem that we're having for this issue I
 21 think Mr. Scofield explained himself.
 22 When he said the last bargaining session

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1 exact program because ESI does do special
 2 programs for certain clients. And this
 3 client big enough they can have a unique
 4 special program done. I don't know the
 5 details, but we have not recommended any
 6 of our client's ESI's program. We have
 7 for other PBL. We've recommended CVS's
 8 for example, but just not ESI. So we
 9 don't feel this program is lose, lose, and
 10 because they don't have an independent
 11 consultant consulting on this they're not
 12 -- they're thinking it's okay because
 13 we're relying on ESI.
 14 **BOARD MEMBER DEINHARDT:** So you're
 15 saying that in past bargaining each of
 16 these drugs -- each of these ESI proposals
 17 has been examined individually and give a
 18 yay or nay.
 19 **MS. MALLET:** I would like Mr. Cook
 20 to answer that question.
 21 **MR. COOK:** Once upon a time that
 22 was -- because it was as expansive as it

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1 is today. You can go -- they're smart
 2 rules. You can go smart rule by smart
 3 rule because it was not as widely known or
 4 understood and quite frankly you didn't
 5 have the amount or number of drugs that
 6 you have today. And in those, because
 7 we've historically bargained this down to
 8 the tenth degree we went drug by drug or
 9 rule by rule. They're attachments to our
 10 agreement that say, what drugs have prior
 11 authorization, what drugs have step
 12 therapy. That's -- that's the way we've
 13 historically done it. That is correct.

BOARD MEMBER DEINHARDT: How are
 14 drugs that arise for the first time during
 15 the course of the period between when you
 16 left, addressed this, and when you're next
 17 going to be able to address it, handled?

MR. COOK: If there's two yeses
 18 they're handled. If there's a no in that
 19 then they're not handled. We can do that
 20 through other means.
 21
 22

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1 about ESI to know why that's true. Where
 2 are the conflicts of interest? Where and
 3 what way would ESI be influenced in its
 4 decision-making in a way that the
 5 organizations would find -- take issue
 6 with.

MS. MALLET: So PBM contracts are
 7 extremely complex. They -- the PBM, the
 8 pharmacy manufacturer which is what PSI is
 9 and what CVS is and what OptumRx is. They
 10 are the administrator of the drugs that
 11 get dispensed. They have contracts with
 12 both the pharmacies that dispense them,
 13 and they have contracts with the pharmacy
 14 manufacturers that make the drugs. The
 15 way that most contracts the done and I
 16 don't know how this contract is done, but
 17 most contracts are done this way. For
 18 every single drug that gets dispensed,
 19 they make a certain amount of money. And
 20 some drugs they make a lot more money and
 21 some drugs they make a lot less money. So
 22

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1 **BOARD MEMBER DEINHARDT:** You have
 2 been doing it, is what you're saying?
 3 **MR. COOK:** Yes. The problem with
 4 adopting an AOM program where ESI just
 5 puts in whatever rules they appeal to the
 6 PNT committee takes it out of our hand and
 7 quite frankly takes it out of our ability
 8 to fully understand all of it.

BOARD MEMBER DEINHARDT: Thank you.
 9 **MS. MALLET:** We do recommend to our
 10 clients that they look at the rules of the
 11 PBM recommend because, again, they are
 12 for-profit companies. Going on to slide
 13 81. Selection of this is --
 14 **BOARD MEMBER DEINHARDT:** I'm sorry.
 15 Can I interrupt you?
 16 **MS. MALLET:** Sure.
 17 **BOARD MEMBER DEINHARDT:** You
 18 characterize having ESI have full
 19 discretion to set these rules -- these
 20 management rules as being the fox guarding
 21 the chicken coop. I don't know enough
 22

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1 them having these programs allows them to
 2 direct certain drugs to get used by the
 3 patient. And they can make deals with the
 4 pharmacy manufacturer to -- by having this
 5 program get paid more. Because the
 6 politics in nature of pharmacy industry.
 7 It's extremely complex and its actually in
 8 my opinion very sad.

BOARD MEMBER DEINHARDT: Is there
 9 any entity that does this -- provide this
 10 kind of services kind of expertise that
 11 does not have skin in the game.
 12 **MS. MALLET:** Yes. There are
 13 pharmaceutical experts that plans can
 14 hire. You can also -- you hire -- one of
 15 my clients hires one to be on staff,
 16 another one of our plans hired an outside
 17 vendor to do it. Some of them also rely
 18 on consultants like, Cheiron we have a
 19 clinical expert, Sigal has a clinical
 20 expert, Towers probably does. So they
 21 rely on the consultant and the consult --
 22

<p style="text-align: right;">Page 1199</p> <p>1 the pharmacist that do this type of 2 service they don't get paid by the drug, 3 they get paid by the plan. So they get 4 paid for advice. And that's just because 5 it's been done in the past. 6 MR. COOK: And to be clear, we are 7 talking about -- we're not talking about 8 the drugs themselves with the smart rules, 9 we're talking about how they're dispensed 10 and how you arrive at which drug would be 11 described or quality of duration limit. 12 So there's two different things here. 13 One's how they arrive at the drugs 14 themselves and the other thing is how 15 they're dispensed. 16 BOARD MEMBER DEINHARDT: Thank you. 17 CHAIRPERSON JAFFE: The BBM's also 18 provide price benefits for the consumers 19 as well, participants on the plans, right? 20 Because of the mass buying power, because 21 of various rebates and the like. So 22 Gencin then as it were simply to go to</p>	<p style="text-align: right;">Page 1200</p> <p>1 somebody with no conflict of interest 2 probably would not be prudent either, 3 right? 4 MS. MALLET: But no conflict of 5 interest was additional person. You have 6 to still have a PBM to do it. But instead 7 of having the -- you get an expert to 8 advise you whether or not to be in the 9 program as opposed to the proposal status 10 that you -- that ESI gets decide. Now, 11 it's possible that the Carriers will say 12 no, or Union's will say no and that they 13 go to mediation, is my interpretation, 14 right Dan? 15 MR. COOK: I thought that's what I 16 understood. Yes. 17 MS. MALLET: The implicit item is, 18 you can sigh either Union or the Carrier 19 could hire their own consultant to say, 20 yes or no to these programs. 21 CHAIRPERSON JAFFE: They speed it 22 up for the room's benefit. Fair enough.</p>
<p style="text-align: right;">Page 1201</p> <p>1 Thank you. 2 MS. MALLET: Going on to slide 81. 3 The selection of business partners, we are 4 not going to talk about that, based on the 5 fact that's a legal issue and so legal 6 counsel can talk about it. The annual 7 dental coverage from \$1500 to \$2000. The 8 cost came by as a dental provider was \$1.5 9 million. They told me that about 10,000 10 people would be helped per year. The 11 lifetime orthodontist coverage was 12 increased from \$1000 to \$2000 the price. 13 The increase in glass frames was priced by 14 I-med at \$1.1 million. And increase in 15 contact lenses was priced by iMed at \$1 16 million. Before I go on, I just want to 17 mention, my understanding is that the 18 Unions will be happy to do all of these 19 improvements, but the interpretation and I 20 believe what has been said by the Carrier 21 is they come with what's on the other 22 page, all of these costs. And that cost-</p>	<p style="text-align: right;">Page 1202</p> <p>1 benefit analysis is not what their members 2 want. With the exception, they really 3 want the ABA, which is down here with 4 speech therapy as well as, the hearing 5 aid. 6 So let me do the hearing aid. The 7 hearing aid benefit is very similar 8 between the Carrier's proposal and the 9 Union's proposal. With the exception of 10 the Carrier's wanting to limit it to the 11 hearing aid to one aid per every 3 years, 12 per ear. So they want to put a cap on, 13 you can only get a hearing aid every 3 14 years and that's generally fine, and 15 that's what's going to happen under both 16 proposals. United Healthcare doesn't have 17 really good data, but they price it as a 18 \$400,000 difference. And what is that 19 \$400,000 do? Since hearing aids have 20 warranties for over 3 or more years most 21 people aren't going to get a second 22 hearing aid in 3 years. It only impacts</p>

<p style="text-align: right;">Page 1203</p> <p>1 the people who lose their hearing aid, or 2 their hearing aids drops while they're 3 working in one of these yards and gets 4 damaged and then they have to have another 5 one. So it's damaged or it's lost and 6 that's really the only difference. 7 Especially given the working 8 conditions, we recommend the Union's 9 proposal because we're not expecting 10 people to go out and want to get a new 11 hearing aid every year. There's very 12 little utilization in hearing aids in an 13 active plant anyway. This one has more 14 utilization I think our reports play that 15 out but it's less. We think the Union 16 proposal given the working conditions is 17 much more in line with keeping people 18 safe. Hospice, I don't even understand 19 why the hospice benefit has cap, this is a 20 truly win, win. And United Healthcare 21 priced it as \$0. I said, isn't their 22 savings in this? They said, likely, but</p>	<p style="text-align: right;">Page 1204</p> <p>1 we don't have the data to price it or the 2 time to price it. So all you have to do 3 for hospice is get a person out of 4 hospital for half a day -- not even a half 5 day, a few hours and it's you have saved 6 more than \$3,000 and \$6,000. Almost all 7 of my plans -- in fact, I can't think of a 8 single plan that has a cap on this. They 9 are all implicitly capped with medical 10 necessity. People are not allowed to go 11 in hospice unless they have 6 months or 12 less to live. So hospice allows them to 13 go home. They stop some of the treatment 14 and it saves the plan a lot of money. And 15 I asked United Healthcare wouldn't this 16 extra counseling cap be a cost and they 17 said, no it would be far more than saved 18 by getting people of the hospital sooner. 19 And I asked them, so under the current 20 plan, where they only have a few thousand- 21 dollar limit what is happening when 22 someone wants go to hospice and they don't</p>
<p style="text-align: right;">Page 1205</p> <p>1 have enough money to do it. They said 2 indeed they will stay in the hospital. 3 It's costing the plan money to not do it, 4 and it's making the patients upset. This 5 is a true win, win and I would recommend 6 doing this benefit but not even having the 7 suggesting have it be unlimited and be 8 covered by the definition of medical 9 necessity. Going on, in total the impact 10 is that the Carrier will save \$375 million 11 and \$18 million from these extra benefits. 12 \$6.6 million were from improvements they 13 were not requested by the Union. 14 Breaking it down on slide 82. The 15 direct cost dollars are \$108 million. The 16 direct cost premiums -- so this is from 17 that extra charge on the people that 18 select spouses to have coverage, is \$76.2 19 million. The indirect inconvenience 20 dollars is \$109.5 million. These are all 21 the rules that we were talking about back 22 up here, these rules right here in 90 --</p>	<p style="text-align: right;">Page 1206</p> <p>1 109.5. Total cost \$375, 275.7. Looking 2 at the pictures from the Carrier's 3 perspective, what is \$275.7 million going 4 to do? We don't have the revenue -- 5 operating revenue that operates except for 6 the year 2020. So we looked at it even 7 though that's '23 number and this is a 8 2020 number, we looked at I the pro 9 revenue time and operating revenue and the 10 operating expenses. Per revenue time 11 they're going to save less than .02 12 percent, it's not going to make a 13 difference. In terms of operating 14 revenue, its less than half percent. For 15 operating expenses, its less than 26.5 16 percent. So from the Carrier's 17 perspective the pain that they're 18 reflecting on the workers will not really 19 improve their financial situation by 20 single percentage points. But it will 21 cost health care -- this seems like 22 nonsense to us too, put so much pain on</p>

<p style="text-align: center;">Page 1207</p> <p>1 members for such a little gain to them. 2 Let's look at what the risks are in terms 3 of health fit. In other words, how many 4 can inflation be that caused that \$2 5 billion a year to go up? Because it's 6 possible to go into high inflation and 7 sometimes low. What we did is we looked 8 at data over the last 20 years and we 9 created a statistic model and run 10 thousands of simulators to see what the 11 variants would be. If you look at the 12 very bottom result, you see that in 2024 13 only one year out, the various is only 14 going to be plus or minus 13 percent. And 15 why is that? That's because they have a 16 law of large numbers. They've got all the 17 people combined and the people that are 18 going to be really sick are offset by the 19 people that are going to be not sick at 20 all. So the large numbers really help 21 them. 22 If we look at two years to 2025, so</p>	<p style="text-align: center;">Page 1208</p> <p>1 we got extra time built and extra 2 inflation, the variance is only plus or 3 minus 17 percent. So the risk -- 4 especially when we look at -- compared to 5 the Union members those we are told could 6 be ten times between the members is 7 relatively small for Carriers. 8 Going on to the impact of workers. 9 We're putting direct dollars and we're 10 saying the direct plan is going to cost 11 per worker these are the 105,000 families. 12 Now, that's greater than the 98,000 13 qualified employees. I already explained 14 that uniqueness in this plan. And you see 15 with the directive premiums that surcharge 16 we're estimating per cost of \$775 on 17 average for all 98,000. I won't be that 18 way; it will be much higher for those, and 19 nothing goes without that. For the direct 20 claims it will be -- we are estimating 21 \$1,025 per year, it won't be that way, it 22 will be \$0 for the people that have no</p>
<p style="text-align: center;">Page 1209</p> <p>1 claims, and it will be thousands of 2 dollars for the people that do have 3 claims. Direct claims and claims 4 improvement, these are the \$18 million of 5 the benefits. We're estimating a savings 6 to the workers of \$168 per year. Again, 7 it won't be that way, depends on who uses 8 the benefit. The inconvenience or 9 estimating of cost of \$1,036. In 10 aggregate, indirect it would be \$15- 11 \$1,600 with without direct and with 12 indirect would be \$2,600. These are 13 averages, the averages have problems. The 14 average worker that's 3.7 percent if the 15 current straight time pay. Which is less 16 than .6 percent savings. This slide is a 17 really important slide, it's going to tell 18 you about the actual cost to a group of 19 people. We're going to look -- just like 20 we look at the variant for Carrier's now 21 we're going to look at the variant of the 22 workers. I'm speaking a little fast, but</p>	<p style="text-align: center;">Page 1210</p> <p>1 I apologize. I was looking at time. I'm 2 going to slow down for a little bit 3 because this really important slide. On 4 average, the increase is \$1,838 we're 5 excluding the dental and vision here 6 because we didn't have a claims put on 7 distribution, so that's why it's different 8 here. And that the number is slightly 9 different in the prior page. 6 percent of 10 workers would pay the average increase for 11 just \$775. We don't know which ones are - 12 - have employee-only coverage and 13 employee-plus spouse coverage, so we're 14 just putting the average in. That's 57.9 15 percent less than the average cost. 16 That's for 6 percent of the people. Going 17 up to the top end, the top of 36 people 18 would have either 34 percent -- again, 19 within this group, I'm averaging it. So 20 someone would be significantly more when 21 we get to the individual example you can 22 see that. The top 9 percent on average</p>

<p style="text-align: right;">Page 1211</p> <p>1 for the top 9 percent, they would spend 2 \$4,321. That's 135 percent bigger than 3 average. The second group, the 27 4 percent, would spend 34.63 percent more 5 than average. Again, averaging within the 6 subsections. I once watched a movie and 7 it said, "a mother is only as happy as her 8 saddest child." And it reminded me 9 immediately of the Union. These Union 10 leaders they get to hear what's going on 11 with their status members. And they have 12 that -- that's why they have the "all for 13 one, one for all." The people that are 14 the 6 percent, the people that are in the 15 36 percent, all of them have probably been 16 around when they passed the hat to collect 17 money to help their brother or sister or 18 other person collect money to pay for 19 their medical bills because they couldn't 20 afford it. So health care is so, so, so, 21 important to these members and it scares 22 them so much to have these additional</p>	<p style="text-align: right;">Page 1212</p> <p>1 increases. 2 Now, I want to walk through an 3 example of a hypothetical family. And I 4 think it's worth the time to take. I know 5 I'm over and I'll try to do it this as 6 fast as I can. These -- this family is 7 going to be less healthy than average, but 8 it's not a catastrophic family that I'm 9 going to provide you. They didn't all get 10 this a car accident. The story I'm going 11 to tell is not about that. It's going to 12 be a story that every single one of these 13 Unions leaders will tell you 5, 10, 100 14 times over. We're going to start with the 15 workers cost, Armstrong. Armstrong has a 16 bad hip, he has high blood pressure, is 17 allergic to some binding agents in some 18 generic medications, he takes anti-anxiety 19 medication due to stress from the leaving 20 his child to his wife. We will get to the 21 children you'll understand more about 22 that. He has a muscular-skeletal issue</p>
<p style="text-align: right;">Page 1213</p> <p>1 from work, which lead him to need a hip 2 replacement. 3 So let's looked at what his cost of 4 increase under the proposal for one year 5 in this example. Primary care provider, 6 copay goes from \$25 to \$30, he has one 7 visit instead of paying \$25 he pays \$30. 8 I have to digress on this one. This is a 9 really bad idea. You want people to go to 10 a primary care provider. Is it a low 11 cost, high value. The average cost of a 12 primary care provider is \$80. You want 13 them to establish a relationship with the 14 provider, you don't want them to call 15 telemedicine, you don't want them to go to 16 a community clinic, you want them to go to 17 their primary care provider and get the 18 advice of that provide to direct the care. 19 So increasing the cost-sharing, not 20 a good concept on this benefit. He needs 21 the surgery, so the primary care provider 22 tells him to go visit an in-network</p>	<p style="text-align: right;">Page 1214</p> <p>1 surgeon. Instead of paying \$40 he has to 2 pay \$50, but then he hears of a different 3 type of surgery that has much better 4 outcomes. And I'm talking about this 5 because, I have personal experience. My 6 husband had a hip replacement and he 7 decided to do what's called anterior 8 surgery instead of the traditional. You 9 have significantly faster recovery, 10 significantly less time not hospital. But 11 here in the Washington, D.C. area where 12 everyone -- there's so many providers, the 13 first time he did this in 2013. I could 14 not find an in-network provider, I can 15 only find one doctor at that time that was 16 doing this surgery. Now, nine years 17 later, he had it again, I could find in- 18 network providers. But my point is, this 19 is a very big area. If you start going 20 into these rural areas sometimes members 21 have to go to out-of-network providers. 22 So we can't just say, oh, they don't need</p>

<p style="text-align: center;">Page 1215</p> <p>1 worry about the out-of-network benefit. 2 We need to worry about the out-of-network 3 benefit for these members because they're 4 not all in New York, or Los Angeles, or 5 even Washington, D.C. where this problem 6 that I'm giving would be a very unique 7 problem and only shortly lived. But it 8 will be big -- and I'll tell you from 9 working in New York, and LA, it's still an 10 extent to go to for some very specific 11 specialists. 12 He's going go with this surgeon 13 because he wants to have better outcome 14 get back to work, help with his childcare 15 issues, and so he decided he's going to 16 pay the out-of-pocket. We're assuming 17 he's going to increase that full out-of- 18 pocket max. So his provider, the 19 deductible, the out-of-pocket, and the 20 surgery itself, they're all going to be 21 included in the copay max. So the cost 22 goes from \$4,700 and I let go -- we did</p>	<p style="text-align: center;">Page 1216</p> <p>1 this wrong, we thought the deductible was 2 included in the co-insurance should have 3 been \$8,700, but for this example its 4 \$8,000. The hospital is in-network so 5 he's going to go and he's going to have 6 that surgery done, and currently he's 7 going to hit the deductible and the co- 8 insurance out-of-pocket max. And so he's 9 going to have to pay \$2,350 and the 10 current plan and \$4,000 under the new 11 plan. He takes generic drugs, luckily, 12 they didn't increase. It was smart that 13 at least they didn't increase the generic 14 copay. Ideally, they would have decreased 15 it to encourage more GDR, but they didn't, 16 at least they didn't increase it, no 17 change. Blood pressure medicine, again, 18 generic, no change. But for the anxiety 19 medicine because of his binding agents he 20 does have to pay the extra cost and that's 21 going to be -- instead of paying \$210, 22 he's going to pay \$315. In total for this</p>
<p style="text-align: center;">Page 1217</p> <p>1 example, he's going to pay an extra \$5,000 2 just for him. So now let's look at his 3 wife. After the birth of their daughter, 4 Lucy, she suffered from extended 5 postpartum, currently she's taking 3 6 brand-name medications for anxiety and 7 depression. 8 She spends time with her two other 9 children, and she has a very sick child 10 from the birth that we'll get into. So 11 she's changed from being a teacher to a 12 stay-at-home mom. Her cost, not so bad 13 \$485. But remember the average worker 14 they make, straight time, so Armstrong 15 can't work overtime. Straight time pay 16 not time benefit, \$70,000 right now. 17 After taxes that's like, \$52,000 maybe, if 18 you take 25 percent for state and federal 19 taxes. So the take-home pay is only 20 52,000 for a family of 4, not a lot of 21 money. So \$400 is a big deal to them. 22 Going on to Jack, now, unfortunately, Jack</p>	<p style="text-align: center;">Page 1218</p> <p>1 got bit by tick, and they didn't realize 2 it, the tick fell off by itself. So, he 3 had fatigue, severe headache, neck aches, 4 a facial. We use this example because 5 Gail's actually the experience anecdotally 6 with a situation like this happening, not 7 personally but she knew someone, and it 8 took them two years to diagnose this Lyme 9 disease. So the difference in the copays, 10 again, since we're rushing through time, 11 I'm not going to go through each one of 12 these examples, but we have it listed of 13 what the additional cost is. I will talk 14 about the testing costs. So now, we have 15 a \$350 deductible with 10 percent 16 coinsurance. The proposal of \$500 with 20 17 percent co-insurance. So the testing cost 18 is going to go up from \$415 to \$600. The 19 grand copay that are putting him on is 20 going to increase from \$180 to \$360. 21 Again, the grand copay because they have 22 no other medication to treat him once they</p>

<p style="text-align: right;">Page 1219</p> <p>1 discovered what the illness is. The 2 generic is no problem, stays the same. 3 Physical therapy, he has to have this, but 4 the co-insurance goes up. We're assuming 5 it's a \$70 cost per session, it still goes 6 up. His total cost goes up \$546, that's 7 on top of the \$5,000 and the \$485. The 3- 8 year-old has -- was born with cystic 9 fibrosis. We're going to talk-- I'm not 10 going to go through this example, but her 11 cost is \$2,900. In total their cost in 12 this example, hypothetical as it is, it's 13 \$9,000 more. 80 percent more in this 14 example. These aren't people who got in 15 car accidents, this just a family that had 16 bad conditions. Before I conclude I 17 really need to talk about what's going to 18 happen with their contributions. Clearly 19 this family has to have spouse coverage. 20 Mary has to stay home with the children 21 she doesn't want to she wants to be a 22 teacher, but she can't. So they have to</p>	<p style="text-align: right;">Page 1220</p> <p>1 have the spouse coverage. So what are 2 they doing? We already talked -- we're 3 going to focus on that even though it has 4 all kinds of other problems, but in the 5 interest of time I'm way over. In fact of 6 death file, what happens? Fewer spouses - 7 - you have a contribution; the monthly 8 contribution surcharge begins right here. 9 Spouses opt out, spouses with the lowest 10 cost lead first, fewer spouses to divide 11 over and the contribution goes up. It's 12 just a bad desk spiral and as an actuary 13 we it as very problematic. 14 CHAIRPERSON JAFFE: I'm sorry for 15 interrupting with the question given the 16 time. Is the desk spiral that you 17 described something that is universal 18 among plans that have multi-tiered 19 contribution systems and have spousal 20 coverage or something that you believe is 21 unique to the plans we're looking at 22 because it's in the initial introduction</p>
<p style="text-align: right;">Page 1221</p> <p>1 faze or something else? 2 MS. MALLET: Something else. The 3 something else is the way they have 4 structured it. Very few plans -- I can't 5 think of a single one would put all of the 6 contribution increases on the spouse. The 7 way most plans do the four-tier, they 8 increase both of them at the same time. 9 They would increase -- if they're going to 10 increase the contribution, they would 11 increase the employee contribution, and 12 then the employee -- the employee plus 13 child and then the employee plus spouse. 14 CHAIRPERSON JAFFE: Last question 15 for today, in the multi-tiered 16 contribution system, if there's a fixed 17 percentage do they apply that to the 18 actual projected costs of each group or do 19 they simply artificially place an 20 additional amount for family so that it 21 all totals out in the aggregate? 22 MS. MALLET: It depends on plan.</p>	<p style="text-align: right;">Page 1222</p> <p>1 There's rules on how you can do 2 contributions. Plans can do contributions 3 however they want. We do not recommend 4 they separate out the tiers. We recommend 5 they use actual values if they're going to 6 do tiering factors, as they would be 7 called, and keep those tiering factors 8 constant. Maybe every five years they 9 evaluate to see if they want to tweak 10 those tiering factors. 11 BOARD MEMBER DEINHARDT: Can you 12 say more about that? I don't understand 13 what you're saying. 14 MS. MALLET: So -- okay. Let me -- 15 you're going to have an employee cost and 16 you're going to have a family cost. Say 17 you got employee on the first one and then 18 this family, on average let's say, for 19 simplicity, you have got to employee, a 20 spouse, and two children. Well, children 21 don't cost as much as adults. So keeping 22 it really simple you would say, the kids</p>

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1 only cost 25 percent of adults. So the
 2 two adults plus the two kids would be 2.25
 3 versus 1. So you would expect your family
 4 cost to be 2.25 times. So if you're
 5 charged \$100 for the employee-only
 6 coverage you would expect to charge \$225
 7 for family coverage. Now, let's say you
 8 increase the cost -- honestly most of my
 9 plans -- we only have a handful increased
 10 on an anal basis and we do it during
 11 collective bargaining. But let's say you
 12 increase the cost, then you keep that same
 13 factor. So it's for simplicity, because
 14 it's easier math, let's say you double it.
 15 So \$100 and \$225, they would go to \$200
 16 and \$450. You wouldn't -- but as Chairman
 17 Jaffe said, you could say, okay well, I'll
 18 just look at experience in this group and
 19 I'll increase that cost just based on
 20 their experience, and I'll just look at --
 21 2.5 -- my math was off I did I quickly.
 22 **BOARD MEMBER DEINHARDT:** I know.

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1 bargaining cycle. He's basically kicking
 2 the problem down the road, that's just
 3 that, because thought most people would
 4 still stay in. So this 71 percent that
 5 has spouses, he thinks that they would pay
 6 that extra -- nearly \$100. It was \$321
 7 versus the \$228. He thinks they would pay
 8 the extra \$100. Based on the total cost
 9 of coverage that we looked at for people.
 10 Just stocks, we're looking at stocks the
 11 prior one you show like this, it had
 12 family, this just has spouses. We're
 13 saying that 20 percent of the spouses make
 14 up 1 percent of the cost and you get to 15
 15 percent of the spouses, right here they
 16 make up, 50 percent of the cost.
 17 Roughly speaking, a change from 71
 18 percent of the workers to 25 percent of
 19 the workers. So you're going to go, I'm
 20 going to get rid of 65 percent of the
 21 people. Right here, I'm going to get rid
 22 of them, all these people are going to opt

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1 It doesn't matter we got it.
 2 **MS. MALLET:** Thank you.
 3 **BOARD MEMBER DEINHARDT:** We got it.
 4 **MS. MALLET:** But that's concept.
 5 You can't it either way. The plans who do
 6 it based on their own experience they
 7 often get in trouble like this.
 8 **BOARD MEMBER DEINHARDT:** Thank you.
 9 What happened.
 10 **MS. MALLET:** It's important to
 11 know, we're not recommending this. We
 12 don't recommend contributions.
 13 **BOARD MEMBER DEINHARDT:** I
 14 understand.
 15 **MS. MALLET:** For this plan at all.
 16 We would love it if they just went away.
 17 Now, let's talk a little bit about the
 18 number of spouses impacted. Mr. Scofield
 19 didn't seem to have done analysis of how
 20 many spouses this were and how many might
 21 drop out. He said that he didn't think
 22 this would be a problem at least for this

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1 out. So that probably is not going to
 2 happen in the first bargaining period, but
 3 I very much could happen. You're going to
 4 keep all these expensive ones. Then
 5 what's going to happen is the spouses are
 6 actually going to remove over 16.5 -- a
 7 little over \$16.5 million on this one. In
 8 2025 dollars and 2023 dollars. In 2025
 9 dollars it's \$19 million. So what would
 10 happen is, in addition to getting those
 11 extra premiums they get a savings on the
 12 claim side. Mr. Scofield nor members have
 13 built in that savings. The reason why
 14 they didn't -- we didn't build it in is
 15 because we don't know what the true
 16 benefits are. But both Mr. Scofield and -
 17 - what I'm going to show you on the next
 18 page, built in the entire package for the
 19 Carriers. So we didn't feel a need to
 20 build in extra savings. We have a model,
 21 and I can do many scenarios for you, but
 22 these are the scenarios that I just did to

<p style="text-align: right;">Page 1227</p> <p>1 give you a better sense of what's going on 2 and to answer one of your questions that 3 you asked Mr. Scofield. We are using a 4 6.8 percent trend, 71 percent are spouses, 5 the 2025 rate would be \$368, this is 6 consistent with Mr. Scofield's \$366 that 7 he showed, and 61 percent increase. Go 8 out to 2027, its \$435, a 90 percent 9 increase over the \$228. But what happens 10 the -- you have 10 percent inflation? 11 What happens then? Is instead of having 12 all the inflation for the spouses -- this 13 is just the inflation, no one has dropped 14 out yet. The cost instead of being \$368 15 is \$400. The cost in 2027 instead of \$425 16 is \$507. Now, let's take it to that 17 extreme where you only have 25 percent of 18 stocks left. In that situation in 2025 19 the rate would be \$619 on the remaining 20 spouses. So you still have \$228 but here 21 we are only 3 years from now and you can 22 have a cost of \$619 assuming that</p>	<p style="text-align: right;">Page 1228</p> <p>1 inflation is still under control 3 years 2 from now. And that none of the providers 3 decide that they need to make up for the 4 inflation that's happening right now in 5 the next contract. If it goes to 10 6 percent, then its \$705. These are huge 7 increases too families like our 8 hypothetical one where they have no 9 choice. I am going to skip over the 10 actual value consequences and I'm going to 11 put together the impact for the family. 12 So you see the family cost share for the 13 Union proposal would be for that example, 14 would be from 2023 to 2025, would be 15 \$14,133 and for the (inaudible) interposed 16 proposal it would be with the added 17 contribution and assuming, again, no one 18 dropped out \$25,239, a little over \$10,000 19 more than it is for the Union's proposal. 20 It's a big deal for our members. Again, 21 35 percent of them are going to have way 22 more than the average cost, which is</p>
<p style="text-align: right;">Page 1229</p> <p>1 \$2,000 per member. \$2,000 per member for 2 someone who makes \$52,000 take-home pay is 3 a lot of money. It's a lot of money. So 4 I'm going to conclude now because I'm way 5 over time. Let me see if there's anything 6 they need to say. I said that and -- yes. 7 These are conclusions, let me go over them 8 really quickly. The Carrier cost have 9 decreases on their balance sheets largely 10 due because of workforce reductions. The 11 NCCC proposals would make the railroad 12 plans below what we consider mainstream in 13 the rail and transportation industry. The 14 working conditions contribute to higher 15 health care, we're going to get you more 16 direct information about that in the 17 rebuttal. And the new evidence -- we'll 18 get to this last point in rebuttal too. 19 The proposal, several administrative 20 problems, they have items that include 21 lose, lose positions. It does not follow 22 the pattern for pharmacy rules, it does</p>	<p style="text-align: right;">Page 1230</p> <p>1 not promote efficient use of health care. 2 I point out a cup of examples of how they 3 shouldn't be lowering the primary care 4 provider copay at all. If anything you 5 should be lowering it, I would actually 6 recommend that. But, again, the Unions 7 compromising position and the proposal 8 they put forth has a status quo among all 9 of the rail freight needs. That current 10 proposal is status quo with the two 11 additional -- three additional benefits 12 hearing aids, removal of speech therapy, 13 and ADA -- sorry for the overrun but I'm 14 going to conclude. 15 BOARD MEMBER DEINHARDT: I hesitate 16 to ask questions given time but, you did 17 not mention the Carrier's proposal on 18 vendor bidding. 19 MS. MALLET: I did. I said it was 20 a legal issue. 21 BOARD MEMBER DEINHARDT: Oh, okay. 22 That's what that referenced to.</p>

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1 **MS. MALLET:** Yeah. So I'm not an
 2 attorney so I can't speak to it. But our
 3 plan counsel can talk to it, or they can
 4 answer if you want right now, or you can
 5 do it later.
 6 **BOARD MEMBER DEINHARDT:** No that's
 7 all right.
 8 **CHAIRPERSON JAFFE:** Can I plant
 9 just two for you to potentially address in
 10 rebuttal. I'm not asking for answers or
 11 to extend the time frame we've already
 12 have taken Ms. Roma's schedule frankly and
 13 thrown it out of wack significantly. One
 14 is, if you can get us at least your costs
 15 on if a two-tier contribution was adopted
 16 and unfrozen on the 15 percent for the
 17 both the lower category and the higher
 18 category. Just so we have the numbers I'm
 19 not suggesting anything else beyond that.
 20 **MS. MALLET:** Okay.
 21 **CHAIRPERSON JAFFE:** And secondly,
 22 if there is any significant impact on the

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1 cost relative to either COVID or Cobra
 2 with retraction and employment or both,
 3 perhaps some indication of ballpark
 4 magnitude and whether that's expected to
 5 be short term, long term something else,
 6 right.
 7 **MS. MALLET:** Okay.
 8 **CHAIRPERSON JAFFE:** That was it and
 9 I apologize for the need to extend very
 10 briefly. Does anybody have anything else
 11 or are we good?
 12 **BOARD MEMBER DEINHARDT:** A couple
 13 of other things that you said you were get
 14 back to us on would be, you said you made
 15 a proposal during bargaining about
 16 incentives for using nonhospital
 17 facilities.
 18 **MS. MALLET:** That was not this
 19 bargaining, but I did -- I would say let
 20 me get back to the costing of site manager
 21 being positive instead of negative. That
 22 was not for this period. But I will share

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1 with you what we did the last bargaining
 2 period. Yeah. They had per capita
 3 costing, the number of people that hit the
 4 maximum, the family size, and the --
 5 **BOARD MEMBER DEINHARDT:** And then
 6 Mr. Cook, was going to try to get
 7 information on how many households have
 8 double coverage.
 9 **MR. COOK:** Correct. For benefits
 10 absolutely.
 11 **CHAIRPERSON JAFFE:** Thank you all
 12 very much.
 13 **MR. COOK:** Thank you.
 14 **UNIDENTIFIED PERSON:** Put the Board
 15 and everyone else in the room at ease I am
 16 right on schedule. So, we are not behind
 17 schedule at all. I would propose that we
 18 take a 15-minute break return with one
 19 more witness for lunch and that would put
 20 our lunch of around 12:30.
 21 **CHAIRPERSON JAFFE:** That's fine.
 22 We're off the record.

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1 (Thereupon, a brief recess was
 2 taken.)
 3 **CHAIRPERSON JAFFE:** On the record,
 4 please. At your convenience , Ms. Roma.
 5 **MS. ROMA:** Mr. Chairman for the
 6 Union's next witness, we have SMART-TD
 7 President Jeremy Ferguson, who will be
 8 discussing the Union's sick leave
 9 proposal.
 10 To introduce Mr. Ferguson will be
 11 Erika Diehl-Gibbons, SMART-TD Counsel.
 12 **CHAIRPERSON JAFFE:** Thank you.
 13 Welcome, Ms. Gibbons.
 14 **MS. DIEHL-GIBBONS:** Good afternoon.
 15 I would like to introduce President
 16 Ferguson. He's currently the president of
 17 SMART Transportation Division, formerly
 18 United Transportation Union. He hired out
 19 on CSX as a conductor in 1994 and has
 20 served in various Union Officer positions
 21 since 1995, including local legislative
 22 representative, local chairperson, and

<p style="text-align: right;">Page 1235</p> <p>1 Secretary, and Vice President to the 2 General Committee of Adjustment. He 3 became an International Vice President in 4 2014 and held that position until he was 5 elected to the to his current position, 6 the President in 2019.</p> <p>7 CHAIRPERSON JAFFE: Welcome 8 President Ferguson. Could I ask the 9 reporter to please swear him in?</p> <p>10 THEREUPON: 11 JEREMY FERGUSON 12 was called for examination, and, after 13 being duly sworn, testified as follows: 14 MR. FERGUSON: Good morning. Thank 15 you to the Board for your time and 16 dedication to our issues here this week. 17 I don't have a fancy PowerPoint here today 18 and I know we're getting a little pressed 19 on time, but please bear with me. Like 20 Erica said, I've worked in the industry 21 for twenty-eight years. During that time, 22 we often joke that the Carrier's mentality</p>	<p style="text-align: right;">Page 1236</p> <p>1 was best depicted with the adage, the 2 beatings will continue until morale 3 improves. Never my 28-year career has 4 that been more accurate than the present.</p> <p>5 Initially, I wanted to clear up a 6 misconception that I saw in the 7 submissions and heard from the Carriers. 8 We all saw a graph of the time spent on 9 negotiating sick leave. They claim it was 10 limited to forty minutes. I did not 11 personally observe any stopwatch, but, you 12 know, I did hear a resounding no every 13 time we tried to engage in meaningful 14 discussions about the Union's proposals. 15 Further, it appears the Carriers are 16 wholly ignoring the time spent by the 17 working subgroups, where the entire 18 purpose of the parties' discussions were 19 limited to fatigue abatement and work-life 20 balance, which includes paid sick leave. 21 Not surprisingly, various forms of 22 paid leave have been requested for</p>
<p style="text-align: right;">Page 1237</p> <p>1 decades. So what changed in this round of 2 bargaining where all crafts are demanding 3 up to fifteen days of sick leave at 4 employees regular rate of pay? 5 Everything.</p> <p>6 Bargaining commenced with the 7 exchange of Section 6 Notices in late 8 2019, early 2020. Then, in March 2020, 9 the world stopped. Borders were closed, a 10 global crisis shuttered the world. Those 11 who could work remotely did so. Rail 12 workers, however, did not have that 13 luxury. Given the unprecedented times the 14 nation found itself in, Congress took 15 action. The Families First Coronavirus 16 Response Act, FFCRA, required certain 17 employers to provide employees with paid 18 sick leave or expanded family and medical 19 leave for specified reasons related to 20 COVID-19, which applied from the effective 21 date through December 31st, 2020. 22 Generally, the Act provided that</p>	<p style="text-align: right;">Page 1238</p> <p>1 employees of covered employees -- 2 employers, excuse me, were eligible for up 3 to two weeks, or eighty hours, of paid 4 sick leave at the employee's regular rate 5 of pay where the employee is unable to 6 work because they are quarantined and/or 7 experiencing COVID-19 symptoms and seeking 8 a medical diagnosis. The Act additionally 9 provided two weeks, or eighty hours, of 10 paid sick leave at two-thirds of the 11 employee's regular rate of pay because an 12 employee is caring for an individual 13 subject to quarantine, or to care for a 14 child whose school or childcare provider 15 is closed or unavailable for reasons 16 related to COVID-19.</p> <p>17 However, the Class I carriers were 18 exempt from the Act's paid leave 19 requirements because they have more than 20 five hundred employees. What was left for 21 railroad employees was a mixed bag at the 22 Carriers' sole discretion. Some offered</p>

<p style="text-align: right;">Page 1239</p> <p>1 paid leave for virus-related absences, 2 while others did not. 3 For example, initially BNSF's 4 policy compensated employees for the first 5 four workdays that they are on leave. T&E 6 Crafts were compensated one fifty-second 7 of their daily rate; whereas Engineering, 8 Mechanical, and Clerical crafts and ATDA- 9 represented employees were compensated at 10 their daily rate of service. If employees 11 needed more than four days of leave, the 12 policies stated that they will be allowed 13 to utilize unused vacation, personal leave 14 days, sick, or other paid time off granted 15 to them in their CBA. 16 NS' policy initially provided 17 payment for NS employees directed to 18 quarantine by NS due to potential exposure 19 in the workplace. Under NS' policy, any 20 employee required to be quarantined as a 21 result of work-related exposure would be 22 entitled to ten basic days' pay, less the</p>	<p style="text-align: right;">Page 1240</p> <p>1 RUIA sickness benefit to which the 2 employee is entitled, for a fourteen-day 3 quarantine period. 4 Prior to vaccines, Canadian 5 National offered paid leave if an employee 6 was quarantined as a result of work- 7 related exposure. 8 Regardless of whether the Carriers 9 were offering paid leave for COVID-related 10 illnesses at the outset of the pandemic, 11 my understanding is that those programs 12 have all been abandoned at this point. 13 Rail workers currently have no 14 access, no access, to protected sick 15 leave. They have no ability to take off 16 work without fear of discipline, 17 harassment, or retaliation from the 18 Carrier. They cannot take a paid day off 19 of work without penalty to get a mammogram 20 or colonoscopy, let alone if they have an 21 unexpected event, like waking up with 22 vomiting or diarrhea. They cannot take a</p>
<p style="text-align: right;">Page 1241</p> <p>1 paid day off of work with no penalty for 2 severe abdominal pain, for routine medical 3 or dental work, for fever and chills. The 4 list goes on. 5 And let's not forget, we are still 6 in the midst of a pandemic. That threat 7 is still out there, despite best efforts 8 to take necessary precautions. This room 9 is evidence of that. Everyone in this 10 room is masked except for whoever is 11 speaking at this podium. Despite the 12 risks to their own health and the health 13 of their families, our members have been 14 and continue to work tirelessly throughout 15 this public health crisis. 16 I want to simply state that I, as 17 President of SMART Transportation Division 18 lost fifty-four members. Speaking with 19 President of the TUC, Arthur Maratea, his 20 union lost 103 members that passed away. 21 Those were likely in the line of duty, out 22 here working. Contact with a plumber or</p>	<p style="text-align: right;">Page 1242</p> <p>1 whatever it took. Those are just the 2 members that died. Those aren't the 3 members that are going to have the long 4 haul and everything else that's going to 5 accompany it that did get sick, and they 6 have family members that are in the same 7 condition. 8 The lack of access to sick leave 9 puts our members at odds with the rest of 10 labor, and at risk of further illness or 11 injury to themselves, their co-workers, 12 and their families. Rail workers need 13 this time to keep freight moving for this 14 country, which would only be undermined by 15 the spread of infections, while the 16 pandemic continues to loom. 17 Now the Carriers stand here, just 18 as they did before the STB, and state how 19 appreciative they are of their employees. 20 They say the right things before 21 government regulators, frankly before this 22 honorable Board, but their words -- are</p>

<p style="text-align: right;">Page 1243</p> <p>1 their words consistent with what is 2 happening on the ground? 3 You are going to hear some of these 4 firsthand accounts by members recounted in 5 my testimony here today who contradict the 6 Carriers' empty narrative. Now, the 7 Carriers may try to dismiss these accounts 8 as anecdotal, but these are representative 9 examples from the very employees off of 10 whose backs the Carriers profits are 11 reaped. 12 Left with no compensated and 13 protected sick leave, what choice do 14 employees have? The Carriers may point to 15 existing vacation days and/or personal 16 leave days. But, as you will hear, that 17 is not consistent with what is actually 18 happening on the ground. 19 I should note that in the rail 20 industry, vacations are generally required 21 to be taken in one-week increments that 22 must be scheduled one year in advance.</p>	<p style="text-align: right;">Page 1244</p> <p>1 So, employees are not able to simply use a 2 vacation day in some instances. Some 3 crafts do have single-use vacation and 4 personal leave days. However, the 5 Carriers have the sole discretion to deny 6 employees' requests to use such leave, 7 which they often do citing manpower 8 issues. In addition, not all crafts, and 9 even certain positions within a craft, 10 receive personal leave days and single 11 vacation days. For example, within the 12 train service craft, yard service 13 employees do not receive personal leave 14 days, whereas road service employees do. 15 So what choice do railroad 16 employees, our members, have? Well, they 17 can stay home, lose pay, and potentially 18 risking injury and/or illness and 19 potentially death to themselves and 20 others. 21 22 The Carriers may point to many</p>
<p style="text-align: right;">Page 1245</p> <p>1 things that offer protection for our 2 members, including under federal law, such 3 as the FMLA, Railroad Unemployment 4 Insurance Act, and negotiated items, 5 supplemental sickness benefits, vacation, 6 and personal leave. But each of these 7 ring hollow, none of them are targeted 8 towards this immediate need of protected 9 and compensated leave for short-term 10 illnesses and injuries. 11 First, the FMLA does not cover 12 short-term illness and injuries, including 13 COVID-19, the flu, or a stomach virus. 14 Instead, it provides employees with up to 15 twelve weeks of unpaid leave for serious 16 health conditions. Serious health 17 conditions are specifically defined as an 18 illness, injury, impairment, or physical 19 or mental condition that involves 20 inpatient care or continuing treatment by 21 a health care provider. I understand that 22 there are specific definitions for each of</p>	<p style="text-align: right;">Page 1246</p> <p>1 these elements in order to reserve this 2 leave for conditions of longer duration. 3 Further, not everyone qualifies for 4 FMLA, including new hires, and those who 5 have been furloughed and do not have 6 sufficient hours worked in the year prior. 7 Even if an employee qualifies, unpaid FMLA 8 is not a substitute for paid sick leave 9 days nor do the Carriers respect their 10 duties under that Act, in some cases. In 11 fact, I am aware of countless instances of 12 the Carriers harassing employees for 13 taking FMLA leave, even going as far as 14 hiring private investigators to tail them. 15 Now, they may say that this is necessary 16 to combat what they believe is fraud and 17 abuse, but it seems more like a consistent 18 effort to discourage the use of even 19 unpaid protected leave. 20 While it would cover them, the sick 21 leave sought by the Unions is not designed 22 to be limited to serious medical</p>

<p style="text-align: right;">Page 1247</p> <p>1 conditions. It is intended to offer 2 compensated leave for unexpected illness 3 and injuries so that employees can get the 4 care they need, whether it be much needed 5 rest and recovery, seeing a doctor for a 6 diagnosis and treatment, and/or attending 7 routine medical appointments and follow-up 8 testing. As it stands today, 9 approximately eighty percent of employees 10 working in the operating craft work on- 11 call and cannot even reasonably schedule 12 routine and follow-up medical testing, 13 such as mammograms, colonoscopies, and 14 even dental work.</p> <p>15 What's sometimes hard to understand 16 in the operating crafts and road service, 17 which I come from, you may have an 18 appointment on one day, say a Wednesday, 19 but the way our schedules and the way our 20 trips can be so long and our time away 21 from home terminal, you may have to take 22 three days off in order to show up for a</p>	<p style="text-align: right;">Page 1248</p> <p>1 one-hour exam. Because Monday morning, if 2 you took a trip to go from your home 3 terminal to the away home terminal, you 4 may not be home to Wednesday night. So 5 not only do we lose the one day we mark 6 off for the appointment itself. But we 7 have other days that we have to worry 8 about and then the attendance policies can 9 kick in on top of that with points.</p> <p>10 So next along is the Railroad 11 Unemployment Insurance Act, or RUIA. The 12 RUIA provides partial pay for rail workers 13 after satisfying a seven-day waiting 14 period and suffering four consecutive days 15 of sickness. For the first several days 16 of any illness or injury, these workers 17 have no compensation. If they are sick 18 enough to get past that four and seven-day 19 mark, then they will receive \$85 a day. 20 Some of the fancy charts paraded by the 21 Carriers show the average wage is \$60 and 22 hour. Well, I think that number is likely</p>
<p style="text-align: right;">Page 1249</p> <p>1 inflated as it includes employment taxes 2 and benefits, \$60 and hour, or \$480 a day, 3 is a far cry from the \$85 a day that the 4 RUIA provides.</p> <p>5 Even using the average daily rates 6 of \$260, the RUIA at thirty-one percent of 7 the daily rate of pay is not considered a 8 serious substitute, nor are supplemental 9 sickness benefits, which some, not all, 10 crafts have to supplement the deficient 11 RUIA benefits. And it is very important 12 to note that both RUIA and supplemental 13 sickness benefits are similar to short- 14 term disability insurance, where they are 15 intended to supplement lost income for 16 long-term illnesses and injuries, and not 17 the short, unexpected sickness and routine 18 medical and dental appointments. In fact, 19 where states have tried to provide 20 railroad employees with short-term 21 protected sick leave, they have been 22 foreclosed from doing so, as state sick</p>	<p style="text-align: right;">Page 1250</p> <p>1 leave laws have been found to be preempted 2 by the RUIA.</p> <p>3 Before I get into the specific 4 accounts of my members, I think it is 5 important to note exactly what duties and 6 responsibilities these employees perform.</p> <p>7 Train service employees are 8 required to get on and off of rail cars, 9 uncouple and recouple equipment, manually 10 apply and release hand brakes, work on and 11 around live tracks that can be occupied by 12 moving equipment at any given time, be 13 constantly aware of known fixed and moving 14 close clearances and obstacles near 15 tracks. They can be constantly looking 16 out for unknown variable objects and 17 obstacles. Walk sometimes for several 18 miles in inclement weather conditions, at 19 night, and on poorly maintained walking 20 surfaces. Lift heavy, up to ninety 21 pounds, of equipment to perform basic 22 repair of equipment, and occasionally</p>

<p style="text-align: center;">Page 1251</p> <p>1 interact with the general public, 2 including at grade crossings, trespassers, 3 and vagrants illegally riding on rail 4 equipment. 5 Other crafts have other heavy and 6 dangerous aspects that's specific to each 7 of their crafts, as you heard about some 8 of earlier today. Now, I've heard many 9 stories of strife facing our members, as 10 President, and I've lived it as an 11 employee on the ground. But the carriers 12 have gotten much worse in recent years, as 13 they have slashed the numbers of employees 14 to levels never before seen. So, I wanted 15 to ask the members specifically, in real 16 time, what would fifteen sick days mean to 17 you? The response I received was 18 overwhelming. I don't have the time to 19 mention them all, and I know you don't 20 either. I certainly wish I could, but I 21 wanted to relay a representative example 22 of just why protected sick leave is</p>	<p style="text-align: center;">Page 1252</p> <p>1 absolutely vital for our membership. 2 From a Canadian National employee, 3 he states, about a month and half after 4 returning to work following a 45-day 5 suspension from a mainline violation, I 6 fell sick. I worked a 6-on, 3-off pool. 7 First trip down, I felt fine. The return 8 trip, I didn't at all; something was off. 9 Middle trip I marked off sick, giving me 10 two days off. Third trip, I attempted to 11 work in pain. When I was about to return 12 home on the final day, I decided to 13 finally seek medical help, something was 14 still off. I asked the trainmaster to get 15 me home. I was afraid if I didn't take a 16 train, I would be punished or fired. I 17 asked for clear signals home. It's only a 18 90-mile run. I made it halfway then got 19 put in a siding for six hours straight. 20 It took every nerve of me not to tone 911 21 on the radio. 22 When I finally made it to my home</p>
<p style="text-align: center;">Page 1253</p> <p>1 terminal, I called the yard asking for a 2 recrew. My body had went through to a 3 different level. I was experiencing high 4 pain cramps in my abdomen, and I'm a big 5 guy, 6'3, 330 pounds. No one's carrying 6 me off a train engine. The management 7 came and got me finally. I spent the next 8 hour in ER on pain meds before pain 9 started ceasing. 10 I ended up being put on life 11 support for multiple days. My colon had 12 ruptured and was leaking into my body for 13 five days. My body went septic on the 14 train. I had numerous surgeries, I spent 15 ten days in the hospital, half of it in 16 the ICU. I'm lucky I'm still alive and 17 have two beautiful children to this day. 18 The railroad never called me once to ask 19 how I was doing. I woke up with a 20 colostomy bag, it took me about eight 21 weeks to recover. I was thirty years old 22 at the time.</p>	<p style="text-align: center;">Page 1254</p> <p>1 Not surprisingly, I have heard from 2 many BNSF employees. One gave the 3 following account: 4 I was sick coming back from 5 Winslow, Arizona for work, took one day 6 off with 101.5 temp and dizziness. I 7 couldn't afford to use more points 8 especially the higher number points 9 required for Friday or weekend. I have to 10 keep as many points as possible because in 11 two weeks my first born will enter the 12 world, and due to excess furlough times, I 13 don't qualify for FMLA, which mandates 14 1,250 hours worked within twelve months. 15 So, I'm forced to work sick with dizziness 16 and headaches. I will barely make it back 17 -- it back to a complete refill of points 18 before the child is born as is, because 19 appointments prior. Plus, it's too time 20 consuming in gaining back decent amounts 21 of points. 22 Another individual from BNSF said,</p>

<p style="text-align: right;">Page 1255</p> <p>1 I had COVID in June and went out for work 2 for ten days. After ten days, I marked 3 up, but didn't feel a hundred percent and 4 laid off. I was then hit with extra 5 conjunction points for Hi-Viz. I've been 6 on the railroad for three and a half years 7 and have been furloughed more than I've 8 worked. This year, I've had no vacation, 9 only two paid leave days for the entire 10 year, along with a new strict attendance 11 policy. I felt like I was being punished 12 for being sick during a pandemic. Newer 13 or furloughed employees could greatly 14 benefit from having paid sick days and I 15 believe would help with employee 16 retention. 17 That member even clarified his 18 receipt of points with BNSF, and they 19 confirmed that he was charged correctly. 20 An employee from Union Pacific 21 informed me that he caught COVID from a 22 manager after being in the same vehicle</p>	<p style="text-align: right;">Page 1256</p> <p>1 with him five days after his initial 2 infection. Despite its policy that it 3 would COVID sick pay where an employee 4 suffers a sick-related [sic] exposure, 5 Union Pacific stopped doing so. So, he 6 went to work, writing, I could not afford 7 to miss work. 8 Another from BNSF. 9 I am a conductor with the BNSF with 10 28 years of service. In this time, I have 11 experienced many changes. The recent Hi- 12 Viz point system has been the most drastic 13 change in my career. Also, the manpower 14 shortage we are currently experiencing. 15 My story is not one of being punished for 16 layoffs, mine is one of not laying off for 17 fear of punishment. Also, the increased 18 work schedule for lack of manpower and to 19 circumvent the effects of no wage increase 20 and the rise in the cost in living -- of 21 living. 22 Now in my mid-fifties, I cannot</p>
<p style="text-align: right;">Page 1257</p> <p>1 afford to spend points on simple doctor 2 visits, minor colds, allergy flare ups, 3 etcetera. I must save my points for the 4 possibility of more serious illnesses or 5 injury. I know that these situations at 6 my age may take longer to recover from. I 7 need my points. And in the current 8 economic climate, I cannot be placed on an 9 unpaid absence, first for the illness, and 10 then again as punishment for becoming ill. 11 I do not have sick days or personal days, 12 my only way to be off is vacation, unpaid 13 personal, of which is rarely granted, and 14 lay off sick, also unpaid. So, my current 15 situation is this, if I'm not on my 16 literal death bed, go to work, all DR -- 17 all doctor visits are scheduled for 18 Saturday or rescheduled for -- for 19 vacation periods. 20 I'm going to skip a few of these 21 because I know we're getting short on 22 time.</p>	<p style="text-align: right;">Page 1258</p> <p>1 This is a prime example of why 2 these draconian attendance policies like 3 Hi-Viz and the lack of paid and protected 4 sick leave days is not acceptable. 5 Here's another -- an isolated 6 incident. Another engineer out of 7 Lincoln, Nebraska also went into work not 8 feeling good because he didn't want to 9 accrue points under Hi-Viz and lose pay. 10 The conductor could tell something was 11 wrong with the man, so he stopped the 12 train and turned it in. The engineer was 13 actually having a stroke and by taking the 14 action he did, the conductor saved the 15 man's life. Unfortunately, the damage was 16 done, and the Engineer will never be able 17 to work at the railroad again. 18 For my last story, just happened 19 two weeks ago, and this was one of my 20 members. An employee working on an 21 assigned pool went to work on July 10h, 22 despite not feeling well and having a</p>

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<p>1 dentist appointment on July 12. He was 2 hoping to make it back in time for the 3 appointment. He went to work and 4 progressively got -- feeling worse 5 throughout the shift but was able to 6 finish the shift. He was still feeling so 7 bad at the end that the engineer had to 8 tie the brakes on the cars because he 9 couldn't. After they tied up, they went 10 to try to find an urgent care, but they 11 were closed for the evening. He then went 12 to the hotel at the away from home 13 terminal, hoping rest was all he needed. 14 The next day, they railroad called him for 15 an on-duty call, they were unable to get a 16 hold of them. The hotel had to break into 17 his room to find him deceased. 18 Now, would that have been prevented 19 with a paid sick day? We don't know for 20 sure, we never will. But the point is the 21 employee kept working. Maybe he should 22 have stayed home to get care, maybe he</p>	<p>1 would have if he had the ability to - to 2 get paid or sick day or two without any 3 repercussions. 4 So, here's a couple instances from 5 CSX. 6 I spent two weeks in the hospital 7 for -- by neglecting my health for fear of 8 being fired for acquiring points against 9 my attendance. I seriously thought I 10 could just work through it and wait till I 11 was on vacation and recover. 12 Unfortunately, I spent all of my four 13 weeks of my vacation with developing 14 pneumonia in a subsequent two weeks in 15 January in the hospital. I then spent an 16 additional five months in HP status 17 recovering from this ailment. I still 18 have a persistent cough and don't know 19 when that will go away. Now, when they 20 work us on our rest at both ends of the 21 road because they aren't willing to add to 22 the Boards. I get rundown and more</p>
Page 1261	Page 1262
<p>1 susceptible to another bout of illness. 2 Now, the constant fear for us. Not only 3 did I lose all my vacation to this 4 illness, but five months of pay as well. 5 The threat of being fired to take care of 6 your own health or that of your family is 7 draconian at best, all because of the 8 attendance policy. 9 Another newly marked up conductor 10 employed by CSX since September of 2021 11 advised that after noticing red spots on 12 his feet and hands during the road trip. 13 He took Benadryl and went sleep, however, 14 on his returned trip he noticed the spots 15 began to welt, he then went back out on 16 another trip ten hours later. This time, 17 however, the welts became extremely 18 painful while at the way from home 19 terminal. He relayed thinking that he 20 could go to the doctor when he returned 21 home but was called back out for a local 22 job at his ten hours rest at home.</p>	<p>1 At that point, the swelling had 2 started in his feet, and the pain 3 continued to grow when he spent all day 4 walking on the ballast rock. He did not 5 have any paid leave because he was a new 6 hire and would have six points assessed 7 under CSX' CAPS policy. By the time he 8 was able to finally go to the doctor, he 9 was diagnosed with hives from an allergy - 10 - an allergic reaction. His doctor wanted 11 him to get an allergy test, but he 12 couldn't do so because he was still on 13 call. 14 He wrote, so I have an allergy to 15 something that I have no idea what it is, 16 I don't have the time to be able to make 17 an appointment to schedule any type of 18 test. Maybe in 2023 when I finally have 19 personal vacation days, I can find out 20 what I'm allergic to. 21 These stories aren't just from 22 Class Is. On South Carolina Public</p>

<p style="text-align: right;">Page 1263</p> <p>1 Railway, which is a party to national 2 handling as well, I receive the following: 3 During the first couple weeks of 4 January 2022, I got COVID. I marked off 5 sick for the first three days of the half. 6 Because I unfortunately got COVID in 7 January I only had one personal day to use 8 because I must earn them before I can use 9 them, and January only has one recognized 10 paid holiday, New Year's Day. So, I ended 11 up missing two days of pay. I didn't feel 12 any better by the fourth day but couldn't 13 afford to lose any more money, so I marked 14 back up and returned to work. Management 15 didn't mind because, unfortunately for me, 16 by January of 2022, there was no more 17 federal paid leave for COVID, so most 18 people who would get it would end up 19 coming to work anyway. 20 I have been with the company for 21 nine years and prior to COVID I had a 22 claim engineer job. When COVID came, the</p>	<p style="text-align: right;">Page 1264</p> <p>1 company eliminated two jobs and I was 2 bumped back down to the ground. I didn't 3 complain but instead looked at it as a 4 moment to step up and do my part. Never 5 marked off sick for more than a day or two 6 a year for my entire time with the company 7 but when I finally got COVID after two 8 years I had one paid day. 9 Here is another from BNSF. 10 I took my call from Point A to 11 Point B feeling fine. It wasn't until we 12 began to pull out of the terminal that I 13 began to feel sick. I didn't want to 14 receive any attendance points for laying 15 off after call or any manager retribution 16 for delaying a train in the terminal, so I 17 stayed on board. I vomited the whole way 18 to Point B. They held us out of town for 19 four hours even though I called the 20 dispatcher and asked if they could get us 21 moving so I could get off the train. When 22 I arrived at the away from home terminal I</p>
<p style="text-align: right;">Page 1265</p> <p>1 talked to the local management and the 2 corridor manager. Both managers told me 3 that I could lay off sick away from home, 4 but it would cost the same attendance 5 points as laying off after call, which is 6 fifteen points, half of the thirty. The 7 corridor also told me that I was to 8 provide my own ride home and I was not 9 allowed on property or on a Z-train to go 10 home. 11 So, I went to the hotel and spent 12 twelve hours in the bathroom being sick. 13 I didn't get any sleep. And I couldn't 14 keep any food down. I spent the entire 15 stay at the hotel having diarrhea and 16 vomiting. I was still sick when I was 17 called back to work. I took my train from 18 Point B to Point A with the same symptoms 19 as in the hotel. I spent thirty-six hours 20 away from home while having these issues. 21 I didn't get any sleep and couldn't eat 22 for the entire duration. I didn't lay off</p>	<p style="text-align: right;">Page 1266</p> <p>1 because I'm afraid of accruing attendance 2 points and the management had zero 3 sympathy. 4 Another from UP. 5 I had scheduled a colonoscopy and 6 called the UP nurse three months in 7 advance of my appointment that I was going 8 to need to lay off to see if she could lay 9 me off HP so I wouldn't get dinged and get 10 points. Of course, she couldn't, and told 11 me it had to be at least four days before 12 she could, and that she -- she would get 13 in trouble if she did. Then, I talked to 14 one of my managers and he said he would 15 talk to a CMS manager and see if there was 16 something that could be done. I never 17 heard another word and had to lay off sick 18 and was assessed eight points. It takes 19 ninety days before those points fall off. 20 These are just a fraction of the 21 thousands of accounts that I, and my 22 fellow Union Officers, have heard from our</p>

<p style="text-align: right;">Page 1267</p> <p>1 members. The others similarly tell of 2 employees coming to work with high fever, 3 nausea, and weakness. One employee comes 4 to work unable to speak because he had 5 such a severe illness. Tell me, how is a 6 conductor, who calls out signals to their 7 engineer running the engine, able to 8 safely perform their job when they are so 9 under the weather they cannot even speak. 10 Another employee that had attempted to use 11 his current time to take off for his 12 scheduled marriage counseling sessions. 13 However, the Carrier denied his request to 14 layoff. 15 Is it any surprise that people are 16 resigning in droves? I have provided 17 copies of additional statements for this 18 Board's ready reference along with a 19 written copy of this testimony. 20 Our members are highly skilled and 21 absolutely vital to this nation's economy 22 and national security. And yet, in</p>	<p style="text-align: right;">Page 1268</p> <p>1 contrast to the rest of this country's 2 workers, the majority of crafts the unions 3 represent have no sick leave. They have 4 no ability to call in and take a day off 5 of work because they are sick, or injured, 6 or have a doctor's appointment or 7 treatment scheduled. I hear the Carriers' 8 claims that people can mark off if they 9 need to, but, in most cases, while it 10 sounds nice, it simply isn't true. Either 11 they are out of touch with what is 12 actually happening on the ground, or 13 something more nefarious. If they have a 14 scheduled doctor appointment, and they 15 need to use a personal day, the Carrier 16 has unfettered discretion, and does in 17 fact, deny the employees' request. 18 It's a vicious cycle controlled by 19 the Carriers. The Carriers do not have 20 sufficient manpower due in part to their 21 iron fist management style and deplorable 22 working conditions, and cannot retain</p>
<p style="text-align: right;">Page 1269</p> <p>1 employees, and then deny employees the 2 ability to mark off, even unpaid. Where 3 employees do so anyway, they are assessed 4 points. Is it any surprise that it is 5 getting more and more difficult for 6 railroads to retain employees? 7 So how much time are we seeking? 8 The Unions are requesting up to 9 fifteen days of paid sick leave annually, 10 every January 1st, anywhere that such 11 leave is not currently provided. I say up 12 to because, as we know, sick leave is for 13 sick leave. Many employees take no sick 14 leave. Some take only one or two days. 15 Others may be more ill and take the full 16 amount. We are requesting that that leave 17 be prorated for employees' first year of 18 employment, when they otherwise have no 19 leave. We ask that employees be allowed 20 to carryover any unused sick days with no 21 limits on accrual, and that no penalty 22 points under any carriers' attendance</p>	<p style="text-align: right;">Page 1270</p> <p>1 policies be assessed for taking sick 2 leave. 3 Finally, but importantly, we 4 request that the Carrier cannot deny the 5 employee's from taking these days. 6 Affording the basic right to sick leave 7 days to employees will go a long way to 8 improving morale. We have the opportunity 9 to offer a reprieve to that cycle. 10 I know -- you know, fifteen days 11 seems excessive to some people. I heard 12 it called it would be an additional two 13 weeks of vacation. Well, five days a week 14 in a normal, you know, industry would be 15 three weeks. But we work 24/7, 365 days a 16 year. Some of these crafts have no rest 17 days. We've heard that they you get two 18 days off guaranteed under the RSA. Well, 19 they have to work six consecutive days to 20 get to that point. And consecutive is the 21 key word. Working by dead heading or 22 laying in a hotel at the away from home</p>

<p style="text-align: center;">Page 1271</p> <p>1 terminal is not considered a consecutive 2 day of work in order to qualify for those 3 six consecutive days. Those are just for 4 our crafts. 5 So, we may work five days on a 6 train, the sixth day, we dead head or we 7 lay in a hotel getting held away for 8 twenty-four hours and we get to go another 9 five -- five consecutive days and hope 10 we're going to hit that sixth day again. 11 So, we don't have rest days to knock down 12 our starts just to give us a break. And 13 that cycle can keep going and going. We 14 don't consider twenty-four hours in the 15 hotel a day off. We don't consider 16 fourteen hours on a train dead heading, 17 not being a crew under the hours of 18 service, technically, as having time off. 19 But to care for our -- our own personal 20 health, whether we are getting sick or the 21 appointments. All the crafts feel that 22 the way our industry is, nonstop, 24/7,</p>	<p style="text-align: center;">Page 1272</p> <p>1 365, this is a fair number for the 2 employees to have available. 3 I don't want to see the abuse 4 either. We understand we got to move the 5 freight. I testified in front of the SCB 6 how important it is to have our customers 7 and to keep this country moving. We're 8 not looking to -- to get any advantage. 9 But we are looking for reprieve for the 10 employees that are getting burnout, the 11 ones that are sick, the ones that do need 12 the help. Even some of the soldiers that 13 the carriers have hired that need to go to 14 counseling every other week for their 15 PTSD. I've heard stories about that. 16 They go to their PTSD every other week, 17 which is every 14 days, they never hit two 18 consecutive weeks, stay in continuously 19 marked up to earn points by and yet 20 they're getting points for going to their 21 counseling. So, they get into a never- 22 ending cycle that they're headed down the</p>
<p style="text-align: center;">Page 1273</p> <p>1 drain that they are about to be -- could 2 be dismissed. 3 So, I can go on, but I know we're 4 getting late. And real quickly, I'm going 5 to move over into the holidays. I -- that 6 -- luckily this one is short, but -- yeah. 7 In addition to paid and protected 8 sick leave days, the Unions are also 9 requesting three holidays, which were 10 carefully selected as those that are very 11 important to our membership. 12 Veterans Day has been observed as a 13 national holiday for nearly a century to 14 honor the bravery and sacrifice of 15 military veterans. Martin Luther King Day 16 has been recognized as a federal holiday 17 since 1989 and Juneteenth since 2021. We 18 have been trying for decades to get 19 Veterans Day and Martin Luther King Day 20 added as holidays but have been rebuffed 21 time and time again at the bargaining 22 table. This round was no different.</p>	<p style="text-align: center;">Page 1274</p> <p>1 I personally served this country as 2 a member of the Armed Forces for three 3 years, and now am a proud United States 4 Air Force veteran. The Carriers 5 repeatedly pledge their commitment to 6 hiring veterans, and yet, do not even 7 offer this day as a paid holiday. They 8 even tout their awards, including the Best 9 Employer for Military Spouse Friendly 10 Employers and Top 10 Military Friendly 11 Employers, before this Board. 12 It's time to recognize Veterans Day 13 as a paid holiday or the paid equivalent 14 thereof for those crafts, like ATDA and 15 road crews. In addition, Martin Luther 16 King Day and Juneteenth are consistent 17 with the Carriers' pledges to promote 18 diversity and inclusion. Similarly, the 19 Carriers paint locomotives and parade them 20 around, showing how committed they are to 21 diversity and inclusion, but refuse to 22 recognize MLK Day and Juneteenth as paid</p>

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<p>1 holidays.</p> <p>2 It's one thing for the Carriers to</p> <p>3 say that they appreciate employees; that</p> <p>4 they value diversity, inclusion and hiring</p> <p>5 veterans. It's another thing to put that</p> <p>6 hollow talk in action. The time has come</p> <p>7 for the carriers to walk the talk.</p> <p>8 I would like to thank the Board for</p> <p>9 their -- for their time. And I'm</p> <p>10 available if you have any questions.</p> <p>11 Do you have any questions? I know,</p> <p>12 you probably want to get to lunch like the</p> <p>13 rest of us.</p> <p>14 CHAIRPERSON JAFFE: Thank you,</p> <p>15 President Ferguson.</p> <p>16 Thank you for your remarks. I can</p> <p>17 assure you we will read the examples that</p> <p>18 due to time you managed to skip over but</p> <p>19 you provided to us.</p> <p>20 MR. FERGUSON: Thank you, Mr.</p> <p>21 Chairman.</p> <p>22 CHAIRPERSON JAFFE: Thank you.</p>	<p>1 Off the record, please.</p> <p>2 (Thereupon, at 12:30 p.m., a lunch</p> <p>3 recess was taken.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
Page 1277	Page 1278
<p>1 AFTERNOON SESSION (1:42 p.m.)</p> <p>2 CHAIRPERSON JAFFE: Back on the</p> <p>3 record, please.</p> <p>4 MS. ROMA: Good afternoon I hope</p> <p>5 everyone enjoyed their well-deserved lunch</p> <p>6 break. For the second half of our day</p> <p>7 today we'll be focusing on Union-specific</p> <p>8 issues. And with that, I'm going to turn</p> <p>9 it over to Ms. Diehl-Gibbons.</p> <p>10 CHAIRPERSON JAFFE: Good afternoon.</p> <p>11 MS. DIEHL-GIBBONS: Good afternoon.</p> <p>12 And I'm actually going to turn it over to</p> <p>13 my colleague, Sean McKinley, who's the</p> <p>14 Assistant General Counsel with SMART-TD to</p> <p>15 discuss the crew consist and an</p> <p>16 alternative wage proposal.</p> <p>17 CHAIRPERSON JAFFE: Given his</p> <p>18 status as Counsel, nonetheless, is this a</p> <p>19 witness that we need to have sworn in or</p> <p>20 are we in agreement to pass?</p> <p>21 Passing is fine from the head nods.</p> <p>22 I mean no disrespect, I just wanted to</p>	<p>1 make certain that we needed to do what we</p> <p>2 needed to do.</p> <p>3 MR. MCKINLEY: I was just looking</p> <p>4 to see what Don was gonna say.</p> <p>5 THEREUPON:</p> <p>6 SHAWN MCKINLEY</p> <p>7 was called for examination, and, after</p> <p>8 being duly sworn, testified as follows:</p> <p>9 MR. MCKINLEY: Good afternoon, my</p> <p>10 name is Shawn McKinley, and I am Assistant</p> <p>11 General Counsel with SMART-TD. I want to</p> <p>12 take some time today to discuss the</p> <p>13 Carriers' alternative wage proposal and</p> <p>14 what actions this Board should take with</p> <p>15 respect to the issue of crew consist. Our</p> <p>16 General Counsel, Kevin Brodar, who was</p> <p>17 initially scheduled to provide testimony</p> <p>18 on this matter, but he is unable to be</p> <p>19 here due to a medical issue, so I will do</p> <p>20 my best in his stead.</p> <p>21 Like Mr. Munro yesterday, I am here</p> <p>22 because this testimony includes elements</p>

<p style="text-align: right;">Page 1279</p> <p>1 of law, and I have personally been 2 involved in some of the legal issues that 3 I will be discussing here. 4 The issue of crew consist goes back 5 to the earliest days of railroading. 6 Carriers have, over the years, sought 7 alterations to crew consist, which is 8 simply the number of employees on a train. 9 The basis for these proposed changes to 10 crew consist has invariably been what the 11 Carriers describe as the development of 12 new technologies that render certain 13 employees obsolete. It is no surprise 14 that these proposals have been met with 15 resistance by the Unions representing 16 these employees, and were then and remain 17 now, the most contentious issue in rail 18 bargaining. 19 For our purposes here, the most 20 important consideration for this Board is 21 the distinction between national and local 22 handling. This Board is certainly aware</p>	<p style="text-align: right;">Page 1280</p> <p>1 that negotiations occur at both the 2 national and local level. Obviously, we 3 are here this week to discuss the 4 resolution of issues in national handling. 5 On the other hand, local handling, 6 of course, involves the negotiation of 7 topics that are particular to local 8 concerns. On SMART-TD's side, these 9 issues are negotiated by general 10 committees of adjustment, who are the sole 11 union body that has the authority to enter 12 into agreements on local matters, unless 13 those committees to agree to grant the 14 President of SMART-TD with the authority 15 to make changes or enter into local 16 agreements. 17 This distinction between national 18 and local is critical because crew consist 19 has always been a subject for local 20 handling. There may be some disagreement 21 as to the amounts, but there are at least 22 dozens if not hundreds of crew consist</p>
<p style="text-align: right;">Page 1281</p> <p>1 agreements currently in existence that are 2 not uniform in nature, but rather apply to 3 the unique characteristics of operations 4 in each territory where the agreement 5 applies. 6 Of course, over time, Carriers have 7 taken great umbrage with the lack of a 8 national agreement on crew consist. As a 9 result, the issue has been repeatedly 10 litigated and debated in courts and before 11 PEBs over the decades. Uniformly, it has 12 been found time and time again that crew 13 consist is an issue for local handling. 14 At least since the 1960s, courts have been 15 asked to intervene in disputes over the 16 proper handling of crew consist. 17 In Brotherhood of Railway Trainmen 18 vs. Atlantic Coast Line, the union had 19 served approximately eighty identical 20 local Section 6 notices with respect to 21 crew consist. As it is probably apparent 22 due to the sheer number, these eighty</p>	<p style="text-align: right;">Page 1282</p> <p>1 notices were local. The Carriers argued 2 to the Court that because of the nature of 3 the coordinated effort to negotiate the 4 issue amongst many local properties, the 5 matter was proper for national handling. 6 The district court even agreed with the 7 Carriers' demand that crew consist be 8 handled at the national level based on the 9 methodology used by the union in serving 10 its notices. However, on appeal, the DC 11 Circuit Court of Appeals reversed. That 12 court noted that crew consist has never 13 been an issue for national handling. The 14 Court also stated that there have been 15 thousands of crew consist agreements 16 negotiated over the years and that a 17 national rule would be, and I quote, 18 "wholly unrealistic." 19 In order to get -- in order to 20 avoid getting into a lengthy historical 21 discussion of the matter, which is 22 discussed fully in our written submission,</p>

<p style="text-align: right;">Page 1283</p> <p>1 it suffices to say that since Atlantic 2 Coast Line there has been no change to the 3 fact that crew consist is not proper for 4 national handling absent the agreement of 5 the parties. I do not believe that the 6 Carriers even raise an argument that crew 7 consist, on its own, is a purely local 8 issue. 9 While crew consist is a local issue 10 as a matter of law, we are still here, 11 right now, discussing with the Board the 12 matter. This is so because of the 13 Carriers' alternative wage proposal, which 14 they now finally admit was merely a 15 vehicle to get crew consist discussed in 16 national handling and before this Board. 17 On October 3rd, 2019, Chairman 18 Brannon sent a letter to SMART-TD 19 President Jeremy Ferguson demanding that 20 the Union negotiate crew consist in 21 national handling or the Carriers would 22 propose a wage reduction for employees</p>	<p style="text-align: right;">Page 1284</p> <p>1 that the Carriers, in their discretion, 2 determine are superfluous to rail 3 operations. This so-called "alternative 4 wage proposal" is not a new concept and 5 has been pushed by Carriers before in 6 attempts to bootstrap crew consist into 7 national handling. 8 In response to the Carriers' 9 letter, President Ferguson stated that 10 crew consist was subject to local handling 11 and no general committee of adjustment had 12 granted him authority to negotiate on 13 their behalf in national handling in the 14 upcoming round of bargaining, with respect 15 to crew consist. 16 At the same time, they sent this 17 letter to President Ferguson, the Carriers 18 had already filed a lawsuit in the 19 Northern District of Texas against SMART- 20 TD. This suit requested injunctive relief 21 in the form of an order requiring the 22 Unions to negotiate crew consist pending</p>
<p style="text-align: right;">Page 1285</p> <p>1 the arbitration of moratorium provisions 2 tied to previous crew consist agreements. 3 The district court granted the Carriers' 4 motion but noted that handling was local 5 and not national. Then, on appeal, the 6 district court was reversed to the extent 7 that SMART-TD was not required to bargain 8 pending arbitration on the moratoria 9 issue. 10 At arbitration, then, the neutral 11 determined that most of the moratoria 12 contained in existing crew consist 13 agreements did not forbid the service of 14 Section 6 notices by Carriers. 15 Accordingly, the parties, which had been 16 engaged in negotiations locally following 17 the Northern District of Texas's initial 18 decision and then stopped following the 19 Fifth Circuit's reversal, resumed 20 negotiations of crew consist at the local 21 level. 22 Now, in a past life, I was a</p>	<p style="text-align: right;">Page 1286</p> <p>1 history teacher before I made the mistake 2 of going to law school, so I apologize for 3 the history lesson, but it is important to 4 understand both crew consist handling on a 5 macro level and where the parties are now 6 in order to properly engage with the 7 Carriers' proposals. 8 The first matter that must be 9 addressed is the Carriers' alternative 10 wage proposal. 11 Looking back, the Carriers' Section 12 6 notice contained a special provision for 13 SMART-TD, wherein if the Union declined to 14 negotiate crew consist on a multi-carrier 15 basis or failed to reach an agreement on 16 crew consist, the Carriers sought a 17 reduction of wages whenever a train 18 operates with more personnel than what the 19 Carrier would assign based on operational 20 needs alone. Put simply, if in the sole 21 discretion of the Carriers', they 22 determine that a conductor is unnecessary</p>

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<p>1 but are still required to use one by an</p> <p>2 existing agreement, that conductor's rate</p> <p>3 of pay should be reduced. No exact</p> <p>4 figures were included in the proposal.</p> <p>5 The Carriers in their submission,</p> <p>6 and in their testimony yesterday, insist</p> <p>7 that crew consist is proper before this</p> <p>8 Board because of this alternative wage</p> <p>9 proposal. This is not true. In fact, the</p> <p>10 Carriers have admitted to this Board that</p> <p>11 there is really no alternative wage</p> <p>12 proposal.</p> <p>13 Despite this, they continue to push</p> <p>14 for a recommendation from this Board,</p> <p>15 relying particularly on press -- legal</p> <p>16 precedent established in UTU vs. Alton and</p> <p>17 Southern Railway Company. In the events</p> <p>18 proceeding that litigation, as now, the</p> <p>19 NCCC put forth an alternative wage</p> <p>20 proposal tied to crew consist.</p> <p>21 Specifically, the Carriers sought</p> <p>22 consolidation of positions and an</p>	<p>1 agreement that crew size should be based</p> <p>2 on the operational needs of the Carriers.</p> <p>3 Absent an agreement on these issues, the</p> <p>4 Carriers sought reductions in</p> <p>5 compensation. This proposal is</p> <p>6 essentially identical to the one the</p> <p>7 Carriers made in their Section 6 notice in</p> <p>8 this round of bargaining. In Alton and</p> <p>9 Southern, UTU sought injunctive relief to</p> <p>10 prevent the Carriers from forcing the</p> <p>11 union to bargain nationally with respect</p> <p>12 to the Carriers' proposal.</p> <p>13 The Court agreed with SMART-TD's</p> <p>14 predecessor, finding that crew size and</p> <p>15 consolidation of positions were both</p> <p>16 actually simply crew consist issues and</p> <p>17 subject exclusively to local handling, no</p> <p>18 matter how the Carriers tried to</p> <p>19 characterize them. The Court did permit</p> <p>20 the alternative wage proposal to continue</p> <p>21 in national handling, but only stated that</p> <p>22 it would not enjoin bargaining on wages</p>
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<p>1 pending resolution of crew consist issues</p> <p>2 locally. The essential holding of Alton</p> <p>3 and Southern, for our purposes, is that</p> <p>4 crew consist is a local issue, and an</p> <p>5 alternative wage proposal or dressing up</p> <p>6 crew consist proposals does not change</p> <p>7 this fact.</p> <p>8 Now, before yesterday's testimony,</p> <p>9 I had planned to note that the Carriers</p> <p>10 had not seriously put forth an alternative</p> <p>11 wage proposal in national bargaining or</p> <p>12 before this Board, and that no Board has</p> <p>13 ever actually recommended such a proposal</p> <p>14 be adopted. I had further planned to</p> <p>15 submit to this Board that the introduction</p> <p>16 of these proposals is merely a gimmick to</p> <p>17 try to put crew consist into national</p> <p>18 handling, which should be rejected. But</p> <p>19 yesterday, Mr. Munro conceded this is the</p> <p>20 case. Following this admission, there is</p> <p>21 no need for further consideration on</p> <p>22 alternative wages, and crew consist should</p>	<p>1 be what it always has been, a local issue.</p> <p>2 With the Carriers' admission that</p> <p>3 crew consist is only before this board</p> <p>4 because they have used this so-called</p> <p>5 alternative wage proposal as a device to</p> <p>6 try to put it here, the Board should not</p> <p>7 make any recommendations on crew consist.</p> <p>8 This conclusion is further supported by</p> <p>9 the fact that right now, the Carriers' and</p> <p>10 SMART-TD are engaged in local handling on</p> <p>11 that issue. The parties have been</p> <p>12 regularly meeting and the parties are now</p> <p>13 in mediation under the Railway Labor Act's</p> <p>14 Section 6 process. Sessions have recently</p> <p>15 occurred, as depicted by the chart shown</p> <p>16 by the Carriers, and further sessions are</p> <p>17 scheduled in the near future. In fact,</p> <p>18 both Mr. Branon and Mr. Fritz have spoken</p> <p>19 positively of developments in local</p> <p>20 handling.</p> <p>21 It is therefore confusing why the</p> <p>22 Carriers are asking for a recommendation</p>

<p style="text-align: center;">Page 1291</p> <p>1 on a process to resolve the crew consist 2 question. Again, I had planned in this 3 testimony to discuss with the Board that 4 there is already a process in place for 5 the resolution of the crew consist issue. 6 My plan was to inform the Board that the 7 respective General 8 Under the RLA, either party can 9 request release from mediation, over which 10 the NMB has the sole discretion and 11 authority. At that point, the NMB will 12 proffer binding arbitration, which one or 13 both parties has a right to decline under 14 Section 5 of the Act. If both parties 15 agree to binding arbitration, that is 16 where the dispute will go. However, if 17 either or both parties reject our -- 18 binding arbitration, as is their right, 19 then a 30-day cooling off period begins, 20 during which the President may appoint a 21 PEB. I'm sure you have some familiarity 22 with the process.</p>	<p style="text-align: center;">Page 1292</p> <p>1 But based on Mr. Munro's testimony 2 yesterday, it seems we are in agreement. 3 The process for resolving the issue of 4 crew consist is, if necessary, the 5 establishment of a PEB. Mr. Munro has 6 acknowledged such. I understand that over 7 thirty years ago, PEB 219, the members of 8 whom were appointed by President George 9 H.W. Bush in 1991 while the industry was 10 in crisis, issued a recommendation of 11 arbitration to resolve outstanding crew 12 consist issues. But the facts here are 13 different, and these are different times. 14 Any recommendation on crew consist 15 or the alternative wage proposal, other 16 than rejection, would be premature. As 17 stated before, the parties are in 18 mediation before the NMB. The Section 6 19 process is underway. Further, the 20 Carriers are not in financially precarious 21 positions such that this is a matter 22 warranting immediate resolution. In fact,</p>
<p style="text-align: center;">Page 1293</p> <p>1 quite the opposite is true. 2 To the extent that this Board may 3 have some concern, if any, with leaving a 4 matter for another potential Board to 5 consider, fear not. Should the parties 6 fully exhaust the Section 6 process on 7 matters related to crew consist, a future 8 Board dedicated solely to that topic would 9 be well positioned to fully explore the 10 parties' positions. That Board could then 11 make recommendations on changes, if any, 12 to existing crew consist agreements. In 13 the alternative, that Board could 14 recommend a process for the resolution of 15 outstanding issues with respect to crew 16 size, such as binding arbitration, which 17 the Carriers now prematurely seek. 18 In sum, while the parties are 19 engaged in the mediation process that, by 20 even the account of the Carriers, is 21 proceeding in a productive manner and in 22 good faith, there is no need for this</p>	<p style="text-align: center;">Page 1294</p> <p>1 Board to put forth any recommendation that 2 a process is necessary to resolve the 3 matter. Put simply, the Carriers' 4 expressed concerns are unfounded. 5 I want to spend the rest of my time 6 briefly discussing some other matters 7 raised by the Carriers' presentations to 8 this Board. 9 While both parties seem to agree 10 that crew consist is not proper for 11 national handling, I cannot let their 12 testimony go unanswered with respect to 13 the merits of the issue. For example, Mr. 14 Branon put forth a bare bones outline of 15 what the Carriers are proposing. SMART-TD 16 Vice President Brent Leonard, who has been 17 assisting general committees in these 18 negotiations, will appear after me and 19 will briefly discuss some of the concerns 20 SMART-TD has had with the Carriers' 21 proposals. But, before we get to that, I 22 need to first correct the record in</p>

<p style="text-align: right;">Page 1295</p> <p>1 response to some of Mr. Branon and Mr. 2 Munro's statements with respect to safety 3 issues of one person crews from a legal 4 perspective. 5 In 2016, the FRA issued a notice of 6 proposed rulemaking with respect to crew 7 size to examine potential rules to be 8 instituted with respect to the size of 9 train crews. The NPRM expressed the 10 position of the FRA that safety concerns 11 warranted the consideration of codifying 12 rules with regard to crew size. To put it 13 succinctly, the FRA laid out a number of 14 concerns about train safety and one person 15 crew operations in particular. To spare 16 the detail of the 50-page NPRM, it is 17 enough to say that it would have 18 established a baseline rule of two person 19 crews where currently being used with 20 limited exceptions -- excuse me -- would 21 have established a baseline rule of two 22 person crews where currently being used</p>	<p style="text-align: right;">Page 1296</p> <p>1 with limited subject to FRA oversight. 2 Comments were collected from 3 stakeholders in the industry, including 4 the AAR and labor organizations, as well 5 as the public. The matter then sat for 6 several years. Then, on May 29th, 2019, I 7 was at a wedding, the FRA issued an order 8 wherein it rescinded the NPRM and 9 determined that no regulation of crew size 10 was necessary. Not only that, the FRA 11 also stated affirmatively that it intended 12 for its Order to preempt any state laws 13 establishing minimum crew sizes. This is 14 of particular concern -- or of importance 15 because a number of states have their own 16 laws establishing minimum crew sizes for 17 trains operating within their borders. 18 Only a few months after this Order, the 19 Carriers served their Section 6 notice on 20 SMART-TD demanding changes to crew consist 21 or that employees must agree to take a pay 22 cut.</p>
<p style="text-align: right;">Page 1297</p> <p>1 Now, The Carriers quoted this 2 order, rescinding the rulemaking, in 3 their PowerPoint yesterday to suggest 4 that, according to the FRA, it is settled 5 that no regulation of train crew size is 6 necessary. What was not discussed in any 7 detail was that SMART-TD and BLET 8 challenged the FRA's action in withdrawing 9 the rulemaking in the Ninth Circuit Court 10 of Appeals. Joining the Unions were the 11 states of Washington, Nevada, and 12 California. All three states have crew 13 consist laws that mandate certain crews on 14 all trains within their borders. To no 15 one's surprise, the FRA argued in favor of 16 its decision and was joined by the AAR as 17 a party. 18 In issuing its decision vacating 19 the FRA's withdrawal of the NPRM, the 20 Ninth Circuit eviscerated both the FRA and 21 the Carriers' arguments with respect to 22 the validity of the FRA's decision. The</p>	<p style="text-align: right;">Page 1298</p> <p>1 Court first took issue with what 2 essentially amounts to the process 3 utilized by the FRA in coming to its 4 decision. I do not want to wade into too 5 much detail of that aspect of the decision 6 of that aspect of the decision, but the 7 Court found that the complete rescission of 8 the rulemaking and order that state laws 9 were to be preempted was not consistent 10 with the procedures required of the 11 Administrative Procedure Act. 12 But side from process concerns, and 13 more important to my point here, the Ninth 14 Circuit referred to the FRA and AAR's 15 conclusions that one person crews are just 16 as safe as two person crews and are 17 necessary for the future innovation of the 18 industry to be "problematic" and lacking a 19 "sound factual basis." 20 Here, the Carriers have cited 21 frequently to the study by Oliver Wyman 22 with respect to single person operations,</p>

<p style="text-align: right;">Page 1299</p> <p>1 which supports the proposition that one 2 person crews are as safe or safer than two 3 person crews. 4 But the Ninth Circuit rejected 5 this, noting that a single study based on 6 the operations of one smaller railroad 7 that one person crews "appear as safe" as 8 two person is a "thin reed on which to 9 base a national rule." The Court also 10 pointed out that the FRA's own studies 11 note that crew fatigue is a critical 12 component of the safety-related reasons 13 for regulating crew size, and that the FRA 14 entirely failed to address this issue. 15 The Court further found that the FRA also 16 ignored the thousands of comments in 17 support of a rule establishing a minimum 18 two-person train crew size, many of which 19 were submitted by individuals who worked 20 in the industry and related stories where 21 a second person in the engine not only 22 enhanced safety but saved lives.</p>	<p style="text-align: right;">Page 1300</p> <p>1 I raise the foregoing not to engage 2 in a battle with the merits of the 3 Carriers' position with respect to crew 4 size. I'm not suggesting that this Board 5 need weigh in on who has the right 6 approach to handling the extremely complex 7 and highly localized issues that are 8 raised by crew consist. In fact, as I 9 said before, I think it is best that the 10 local process continue, and any resolution 11 need occur through that process. I just 12 think it is necessary to counter the 13 narrative of the Carriers that the safety 14 of one-person operations that they are 15 proposing is somehow settled. In reality, 16 the situation is very fluid. 17 And I apologize now, because I have 18 to deviate a little bit from my submitted 19 testimony from last night. That's how 20 fluid the situation is. 21 I had initially planned to say 22 that, like Mr. Munro, I'm aware that the</p>
<p style="text-align: right;">Page 1301</p> <p>1 FRA may be initiating rulemaking on crew 2 size again. Well, this morning, the FRA 3 published their inspection, a Notice of 4 Proposed Rulemaking entitled Train Crew 5 Size Safety Requirements. As anticipated, 6 the FRA is looking to establish a 7 regulatory scheme with respect to crew 8 size. I have not been able to review the 9 entire NPRM. If you have ever had the 10 distinct pain of reading one, you know 11 why. And this one is nearly two hundred 12 pages. But from what I've been able to 13 gather so far, the proposed regulations 14 would set a baseline a of two person 15 operations with some exceptions. 16 I'm sure Mr. Munro will say that 17 the NPRM is a regulating and a -- is a 18 regulation issue and not a labor issue. 19 He may also say that there are limited 20 carve outs in the NPRM for one person 21 operations, and therefore, they still have 22 the right of way when it comes to</p>	<p style="text-align: right;">Page 1302</p> <p>1 negotiating the topic. The fact is that 2 he and I both would be engaging in 3 speculation on what a final rule would be, 4 and how they fit into the Carrier's 5 proposals regarding crew consist that 6 exist at this time. 7 This is further evidence that, in 8 addition to my previous testimony, that 9 there is no need for a recommendation from 10 this Board on bind -- of binding 11 arbitration at this time. Rather, it is 12 best to continue the local handling 13 process as the parties have been in order 14 to give these matters the full exploration 15 that they warrant in accordance with 16 Section 6 of the Act. 17 To sum things up, the Carriers 18 alternative wage proposal is just a ploy 19 to try to get crew consist into national 20 handling and should be rejected. They 21 have admitted this was just a backdoor 22 trick to get the issue before the Board.</p>

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1 Further, any recommendation on binding
 2 arbitration or, as the Carriers have
 3 referred to it, a process for resolving
 4 the crew consist issue, is not necessary
 5 at this time. The parties are actively
 6 engaged in mediation and if in the event
 7 an agreement is not reached or the
 8 Carriers' proposal is not withdrawn, there
 9 is a process to resolve the dispute there.
 10 That process is set forth in the Railroad
 11 Labor Act itself. If necessary, a future
 12 PEB would be well positioned to hear the
 13 full depth of the Carriers' and the
 14 Unions' positions with respect to crew
 15 consist and issue recommendations at that
 16 time.
 17 Thank you. And I'll take any
 18 questions.
 19 **CHAIRPERSON JAFFE:** Thank you, Mr.
 20 McKinley.
 21 We're in good shape. Thank you
 22 very much.

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1 **CHAIRPERSON JAFFE:** Thank you, sir.
 2 And if you'd wait just literally 30
 3 seconds so Court Reporter can get back to
 4 her machine. We'll then be happy to take
 5 down your testimony. Thank you.
 6 **MR. LEONARD:** Okay.
 7 **CHAIRPERSON JAFFE:** We're ready.
 8 Thank you, sir.
 9 **MR. LEONARD:** Thank you Board
 10 Members for hearing my testimony by video
 11 today. Unfortunately matters beyond my
 12 control and prevented me from being in
 13 person with you.
 14 My name is Brent Leonard; I am a
 15 Vice President of SMART-TD. Among my
 16 current job duties, I am assigned to the
 17 crew consist Section 6 process
 18 negotiations that are ongoing with BNSF,
 19 UP and NS Railroads. This Section 6
 20 process has been occurring at the local
 21 level, following resolution of disputes
 22 over the proper timing and method of

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1 **MR. MCKINLEY:** Thank you.
 2 **MS. ROMA:** And now we'd like to
 3 turn things over to SMART-TD Vice
 4 President Brent Leonard who's going to be
 5 appearing via Zoom.
 6 Brent.
 7 **MR. LEONARD:** Am I on screen and
 8 the audio coming through?
 9 **MS. ROMA:** Yes, you are.
 10 **MR. LEONARD:** Okay.
 11 **CHAIRPERSON JAFFE:** May I just --
 12 just -- can he see us or is -- okay.
 13 **MR. LEONARD:** No. No, I cannot.
 14 **CHAIRPERSON JAFFE:** We have been
 15 swearing and witnesses, can I ask that the
 16 Court Reporter swear in, Mr. Leonard?
 17 **MR. LEONARD:** Yep.
 18 **CHAIRPERSON JAFFE:** Great.
 19 THEREUPON:
 20 BRENT LEONARD
 21 was called for examination, and, after
 22 being duly sworn, testified as follows:

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1 handling. I, along with the various
 2 General Chairpersons have been engaged in
 3 Section 6 negotiations involving crew
 4 consist, or simply put, the number of
 5 persons on a train crew. I have been
 6 working with these individual general
 7 committees in order to assist them in
 8 these negotiations.
 9 I refer the Board to the testimony
 10 of Mr. McKinley with respect to the
 11 Carriers' alternative wage proposal and
 12 suggested recommendations related to crew
 13 consist. But I hope to be able to provide
 14 some insight to the Board from the Union's
 15 perspective with respect to local handling
 16 of crew consist.
 17 Unfortunately, as part of their
 18 presentation, the Carriers have put forth
 19 information regarding crew consist which,
 20 as I noted, is being handled locally.
 21 While this Board should not consider
 22 recommendations on this topic with respect

<p style="text-align: right;">Page 1307</p> <p>1 to the Carriers' proposals regarding a 2 resolution of the issue as Mr. McKinley 3 stated, we do feel that you should not go 4 away from this hearing believing that the 5 Carriers are correct in all that they say 6 regarding crew size. 7 The crew size negotiations have 8 been ongoing on for more than a year on 9 twelve individual bargaining units, or 10 General Committees, and all twelve are 11 currently in mediation before the NMB; 12 that process is not finished. Mediator 13 Michael Kelliher from the NMB has been 14 working diligently with the parties. And 15 we have a number of additional in-person 16 and video mediation sessions currently 17 scheduled with the parties through the end 18 of the fiscal funding year. 19 The issues being discussed at the 20 crew consist bargaining table are complex 21 and extensive and require detailed and in- 22 depth discussion. Certainly, the</p>	<p style="text-align: right;">Page 1308</p> <p>1 Carriers' proposals raise multiple 2 concerns regarding such a new operation. 3 For instance, operationally, the Carriers' 4 proposal with respect to crew consist will 5 fundamental redesign the current operating 6 model and change the way the railroad and 7 its distribution network operate. Any 8 sort of resolution with respect to the 9 Carriers' proposals can only be done in a 10 thoughtful and gradual process to prevent 11 further service disruptions to the supply 12 chain and distribution networks. 13 This model, as the railroads 14 present it, eliminates the on-board 15 conductor, and redeploys a limited number 16 to truck based position. This new 17 operating structure is entirely 18 theoretical. It is not and has not been 19 performed on any Class I US Railroad. As 20 such, there is no reasonable operating 21 model to base this on. The Carriers 22 assertion that a Class III Railroad's</p>
<p style="text-align: right;">Page 1309</p> <p>1 operations are evidence of this model's 2 viability is suspect to say the least. It 3 is not possible to compare a Class III 4 operation to the complex and long-distance 5 routes of a Class I operation. 6 Further, Carriers assert that 7 European models are single operator and 8 are therefore proof of the viability of 9 single person operations. Again, the 10 comparisons are not equivalent. For 11 instance, European trains are largely 12 passenger only and operate on scheduled, 13 short runs. Additionally, European trains 14 are much shorter, lighter, and do not 15 operate the distances US based trains do. 16 Trackside signaling that exists in the US 17 does not exist in Europe. Any reasonable 18 mind should not conclude that a European 19 model or US Class III operation can be 20 directly applied in the US and have it 21 operate properly. 22 To evolve into a system that the</p>	<p style="text-align: right;">Page 1310</p> <p>1 railroads envision, numerous items need to 2 be addressed. For example, if a train 3 becomes disabled at a location, in which 4 the "mobile conductor" is assisting , and 5 another train some 40-miles away also 6 becomes disabled, how does the railroad 7 keep all other train traffic flowing? 8 Also, how do you address mobile conductors 9 utilizing rural roads to access trains 10 where many areas are simply inaccessible? 11 Even where roads may exist, how does a 12 mobile ground-based conductor in the 13 middle of winter in Buffalo, New York, 14 when there is four feet of snow on the 15 ground travel to other areas? 16 These are just a couple of the 17 multitude of issues that demand thoughtful 18 examination. 19 Safety. Safety is also a major 20 concern. How safe is a single operator or 21 autonomous system monitors? There has to 22 be -- there has been ample academic</p>

Page 1311	<p>1 studies done regarding autonomous and</p> <p>2 semi-autonomous transportation,</p> <p>3 particularly in aviation. One of the most</p> <p>4 robust centers of academia studying this</p> <p>5 issue is Duke University's Humans and</p> <p>6 Autonomy Laboratory. Other centers of</p> <p>7 study include MIT and other prestigious</p> <p>8 Universities.</p> <p>9 One of the significant safety</p> <p>10 issues currently being addressed by the</p> <p>11 General Committees and the railroads is</p> <p>12 mental fatigue and incapacitation. One</p> <p>13 such study titled, "Boredom and</p> <p>14 Distraction in Multiple Unmanned Vehicle</p> <p>15 Supervisory Control," conducted by a Dr.</p> <p>16 M.L. Cummings at the Massachusetts</p> <p>17 Institute of Technology, recognizes</p> <p>18 profound mental degradation amongst</p> <p>19 operators of semi-autonomous and</p> <p>20 autonomous systems. The question then</p> <p>21 becomes, how does removing the conductor</p> <p>22 from the locomotive and redeploing them</p>	Page 1312	<p>1 on the ground help with this issue that</p> <p>2 raises concerns both with respect to</p> <p>3 individual safety but also the safety of</p> <p>4 the public where trains are transporting</p> <p>5 heavy and dangerous cargo.</p> <p>6 These are the types of difficult</p> <p>7 problem-solving issues currently being</p> <p>8 handled at the Crew Consist Section 6</p> <p>9 table.</p> <p>10 As you have seen, the Carriers are</p> <p>11 asserting that new technologies within the</p> <p>12 industry, or more specifically, PTC,</p> <p>13 allows or even mandates that a redesign of</p> <p>14 the operating structure occur. The</p> <p>15 Carriers' state that the PTC eliminates</p> <p>16 any remaining rationale for having a</p> <p>17 second crew member in the cab of a</p> <p>18 locomotive. This is just not true. The</p> <p>19 railroads themselves acknowledge that</p> <p>20 there are many routes and trains that will</p> <p>21 have to continue to operate with an on-</p> <p>22 board conductor for the foreseeable</p>
Page 1313	<p>1 future.</p> <p>2 Additionally, the Carriers'</p> <p>3 repeatedly cite their Oliver Wyman study</p> <p>4 as support for eliminating on-board</p> <p>5 conductors. It needs to be pointed out</p> <p>6 that the Carriers' study is an industry</p> <p>7 funded study. One could say the Carriers</p> <p>8 study is reminiscent of the former tobacco</p> <p>9 industry funded studies claiming that</p> <p>10 smoking was non-harmful or even healthy.</p> <p>11 The Wyman study very adeptly presents a</p> <p>12 rationale for the predetermined</p> <p>13 conclusions that the railroads seek.</p> <p>14 Conversely, there are many other</p> <p>15 studies that have been conducted by non-</p> <p>16 biased entities that form different</p> <p>17 conclusions, such as the Volpe study</p> <p>18 completed by the Federal Railroad</p> <p>19 Administration, which found that the</p> <p>20 second crew member positively contributes</p> <p>21 to immediate problem solving and job</p> <p>22 briefing that a computer or the PTC</p>	Page 1314	<p>1 cannot. There simply is far too much to</p> <p>2 be considered before any recommendation to</p> <p>3 reduce crew size is taken.</p> <p>4 The railroads are trying to</p> <p>5 convince this Board that the competitive</p> <p>6 necessity exists to make this change.</p> <p>7 First, we agree that the railroads</p> <p>8 must remain competitive with other modes</p> <p>9 of transportation, such as trucking. But</p> <p>10 how have the railroads utilized these new</p> <p>11 technologies and the PTC to better compete</p> <p>12 with the more expedient and on-time</p> <p>13 advantage trucks have over railroads?</p> <p>14 Well, they haven't. SMART-TD has been an</p> <p>15 adamant proponent for the railroads to</p> <p>16 utilize this technology to increase</p> <p>17 network velocity with scheduled trains and</p> <p>18 train predictability models. To date, the</p> <p>19 railroads refuse to make any real effort</p> <p>20 to do that. They merely go straight to</p> <p>21 eliminating staffing as their only means</p> <p>22 to compete. The Carriers assertion that</p>

<p style="text-align: right;">Page 1315</p> <p>1 eliminating conductors will ensure, and I 2 quote, "adequate or better response times" 3 is ludicrous. If anything, eliminating 4 conductors will harm response time. How 5 does the railroad know it may improve 6 response times? They don't. This model 7 or proposal is entirely theoretical. 8 Further, the PTC and other 9 technologies are not perfected. These 10 systems fail hundreds of times a day on 11 every railroad. Under the railroads 12 proposal, if the PTC system effectively 13 replaces the conductor, well, what do you 14 do when the PTC fails enroute? Now that 15 there is no conductor to perform critical 16 tasks. Does the train stop and wait for a 17 conductor to be bussed to the train? 18 Again, these are not issues that 19 are before this Board. This is merely to 20 note that there are complex issues that 21 need examination and discussion, and that 22 the Carriers' presentation does not touch</p>	<p style="text-align: right;">Page 1316</p> <p>1 on items that don't fit their narrative. 2 These issues are being fully explored and 3 discussed in local handling and that is 4 where they must remain while that process 5 plays out. 6 Now, with respect to the Carriers' 7 reliance on PEB 219 and support for a 8 recommendation. As Mr. McKinley stated, 9 it is important to remember that PEB 219 10 was conducted when many railroads were in 11 financial peril. Many financially 12 insolvent railroads had already entered 13 into voluntary crew size reduction 14 agreements with labor in order to attempt 15 to stave off bankruptcy. So, in essence, 16 there was a dire need and already a 17 pattern in the industry that called for 18 action from that Board. Not to mention, 19 PEB 219 did not fundamentally redesign the 20 entire railroad operating system as this 21 proposal does by creating an entirely new 22 position and a new operation that does not</p>
<p style="text-align: right;">Page 1317</p> <p>1 currently exist. 2 Board, I thank you for your time in 3 allowing me to provide this testimony and 4 will be happy to answer any questions you 5 may have with respect to local handling of 6 crew consist issues. 7 CHAIRPERSON JAFFE: Thank you, Mr. 8 Leonard. 9 We are in good shape but thank you 10 very much for joining us remotely. 11 MR. LEONARD: Thank you. 12 MS. ROMA: At this point, we'd like 13 to turn things back over to Jeremy 14 Ferguson. We're going to start getting 15 into the craft specific issues and he is 16 going to discuss yardmaster's proposal 17 CHAIRPERSON JAFFE: We don't have 18 to swear you in again. I will remind you, 19 you're still under oath, President 20 Ferguson. 21 MR. FERGUSON: Yes, sir. 22</p>	<p style="text-align: right;">Page 1318</p> <p>1 THEREUPON: 2 JEREMY FERGUSON 3 was called for examination, and, having 4 been previously duly sworn, testified as 5 follows: 6 MR. FERGUSON: Thank you. 7 Hey, before break I briefly just 8 want to touch on some Yardmaster issues. 9 Yardmasters are a very important part of 10 our union. If you look at our previous 11 national agreements, you will always see 12 their agreement attached as Document B. 13 The train service and some engine service 14 employees are in there as A, but our 15 yardmasters are B. Not that one is more 16 important than the other. 17 But at one time, there was 18 approximately 11,000 individuals employed 19 by Rail Carriers in the craft or class of 20 yardmaster. Now, there are currently 21 approximately six hundred total Yardmaster 22 is represented by SMART-TD nationwide, not</p>

<p style="text-align: right;">Page 1319</p> <p>1 because they left to go to another union 2 or anything like that, but that has just 3 been job reductions by the Carriers. 4 This craft represents a relatively 5 small portion of my membership, and they 6 account for an even smaller portion of 7 railroad employees as a whole. However, 8 their role in maintaining safe and timely 9 railroad operations remains vitally 10 important. While railroading may not be 11 quite as dangerous as it once was in the 12 early days, great risk of serious bodily 13 injury and death remains. 14 I would like to take -- a take a 15 moment, if I could, have a moment of 16 personal privilege, to ask for a moment of 17 silence. My counterparts in the 18 Brotherhood of Locomotive Engineers just 19 lost a member here a few hours ago, in a 20 tragic accident in the band on the Pacific 21 Railroad, and I have two members that are 22 in the hospital, in the operation right</p>	<p style="text-align: right;">Page 1320</p> <p>1 now. It's very serious condition, not 2 knowing their outcome. So, I asked for a 3 moment of silence. 4 (Thereupon, a moment of silence was 5 taken.) 6 MR. FERGUSON: Thank you. 7 Yardmasters are a crucial component 8 to safe operation within the yard so that 9 everyone can go home to their families 10 after their shifts. Generally speaking, 11 their responsibilities include instructing 12 and supervising all crews occupying or 13 following trackage under their respective 14 jurisdictions. 15 Maintaining an accurate inventory 16 of cars within rail yards or within 17 designated sections of a rail yard, 18 including tracking location of hazardous 19 and/or restricted commodity shipments. 20 Ensuring the proper blocking of train 21 consists and the proper placement of 22 hazardous material shipments within train</p>
<p style="text-align: right;">Page 1321</p> <p>1 consists to meet local, state, and federal 2 guidelines. 3 Preparing and executing switch 4 lists for yard crews and work reports for 5 road crews, coordinating with dispatchers 6 and local management to efficiently and 7 safely move trains into and out of rail 8 yard. Issuing instructions to over the 9 road crews pertaining to their work. 10 Issuing detailed switching instructions to 11 all yard crews, coordinating crew changes 12 and shift changes of all road and yard 13 crews reporting for duty within their 14 assigned jurisdiction. 15 Monitoring several radio 16 frequencies including these -- those, 17 excuse me, utilized by remote control 18 operators for broadcasting emergency man 19 down alerts. That -- sometimes we have 20 single man remote operations in a yard and 21 that is the only hope an individual has if 22 he -- if he or she becomes injured or</p>	<p style="text-align: right;">Page 1322</p> <p>1 incapacitated, because when they fall 2 down, the vest that they're wearing, the 3 device will automatically signal an 4 emergency alarm that requires a yardmaster 5 to be listening on the proper radio 6 frequency. And if they can't get a 7 response, it's their duty to call 911 and 8 get help as fast as possible. Sometimes 9 the yardmaster is the only lifeline. 10 Communicating with local railroad 11 customers regarding the timing status of 12 their shipments is also another duty, 13 along with reporting suspicious activity 14 and emergencies to local authorities, 15 servicing internal customers, such as the 16 carmen's craft. Protecting the general 17 public in case of hazmat leak or train 18 derailment, coordinating the movement of 19 passenger rail, including Amtrak and other 20 commuter lines, and communicating with 21 shop crafts to scheduled time and 22 coordinate inspection and repair of</p>

<p style="text-align: right;">Page 1323</p> <p>1 rolling stock and locking out tracks in 2 order to protect shop and maintenance away 3 personnel while they perform repairs and 4 inspections in, around, and under the 5 equipment. 6 Despite their critical function 7 though, few on-property yardmasters 8 collective bargaining agreements provide 9 rules that specifically assign these 10 duties and/or clearly define the scope of 11 their work. In situations where scope 12 rules do exist, they are often general in 13 nature, and do not provide clear 14 definition of all these boundaries. For 15 decades this framework sufficed because 16 the scope of work was generally accepted 17 and understood to include those I just 18 mentioned. However, beginning in the 19 early 2000s, the nation's railroads began 20 exploiting gray areas in the On-Property 21 Yardmaster Agreements and they started 22 combining localized yardmaster positions.</p>	<p style="text-align: right;">Page 1324</p> <p>1 Where single terminals might have had two 2 or three yardmasters on duty to oversee 3 specific operations. For example, east 4 and west end of the yard, north and south 5 end of the yard, intermodal operations 6 versus freight versus passenger etcetera. 7 The Carrier's consolidated these positions 8 often into a single assignment, leading up 9 to the advent of the so called PSR. The 10 Carrier's began pushing the limits of 11 technology, such as remote-controlled 12 surveillance cameras and radio repeaters 13 to further consolidate these positions. 14 Yardmasters were often ordered to 15 supervise outlying switching points and 16 terminals. During this time, the Carriers 17 also began signing some of the clerical 18 and administrative tasks traditionally 19 assigned yardmasters. The other crafts, 20 mostly to T&E operating craft employees, 21 and also the dispatchers. That has only 22 picked up steam in recent years. Not</p>
<p style="text-align: right;">Page 1325</p> <p>1 unlike the issues we have raised with 2 other crafts so called PSR has devastated 3 the yardmaster operations. 4 It is not uncommon for a single 5 yardmaster to now oversee five or more 6 locations, sometimes spanning distances of 7 hundreds of miles. For example, up until 8 approximately 2015 on Canadian Pacific, 9 three yardmasters per shift cover on five 10 different locations: Glenwood, Minnesota, 11 Superior, Wisconsin, Duluth, Minnesota, 12 Minneapolis, Minnesota and Milwaukee, 13 Wisconsin. 14 In 2015, CP abolished the 15 yardmaster positions in Duluth, Superior, 16 and consolidated those positions in the 17 Minneapolis. In July 2020 CPE abolish the 18 remaining yardmaster positions at the 19 remaining locations and consolidated those 20 into one position in St. Paul, Minnesota. 21 That one yardmaster position now is 22 responsible for all locations, governing</p>	<p style="text-align: right;">Page 1326</p> <p>1 both states, some being 465 miles apart. 2 Similarly, on CSX, three 3 yardmasters per shift previously covered 4 for major terminal spanning from 5 Cleveland, Ohio, to Erie, Pennsylvania. 6 CSX abolished those positions and 7 consolidated them into one position in 8 Cleveland, where the remaining yardmasters 9 responsible for yards covering a span of 10 seven hundred mile. 11 Those remaining yardmasters are 12 expected to monitor dozens of radio 13 frequencies simultaneously. This is in 14 addition to their other duties, which 15 include answering phone calls, and 16 communicating with railroad customers 17 regarding the status and coordination of 18 their deliveries. As a result, it is 19 common for crews and rail customers alike 20 to experience delays with vital and 21 sometimes safety sensitive yardmaster 22 communications. This adds to all the</p>

<p style="text-align: right;">Page 1327</p> <p>1 shipper delays and supply chain clean -- 2 supply chain issues you have heard about 3 this week and likely experienced yourself 4 over the last couple of years. 5 Throughout this time, the Carriers 6 have steadfastly refused to negotiate 7 clear and reasonable scope rules that 8 define the limits and duties of those 9 yardmasters, instead, exploiting the 10 existing language and bending it to their 11 will. In addition, they refuse to 12 negotiate any changes to -- to the 13 vacation provisions applicable to 14 yardmaster. Even when the Union has 15 included proposed changes in its 16 presentations in this round, the Carriers 17 have declined to entertain such and have 18 declined to engage in any meaningful 19 dialogue. Rather, they have simply 20 responded, no. They cannot sit on their 21 hands in bargaining and then attempt to 22 use their aloofness against the Union.</p>	<p style="text-align: right;">Page 1328</p> <p>1 Therefore, our requested changes 2 are properly before this Board. And it's 3 to recommend a national scope rule that 4 clearly defines the duties of yardmasters 5 and the territory they manage and curtail 6 the Carrier's from exploiting ambiguities 7 contained in existing agreement language. 8 Now that language is included in 9 our submission. I know you three are well 10 versed on the contract language. So, I'm 11 obviously not going to read that for you. 12 It is somewhat in-depth, and we are not 13 asking for us, you know, clarification to 14 get out of work, these yardmasters are 15 asking for this work, that they wish to 16 capture and make sure that it is theirs, 17 and they do their duties as they 18 professionally always have. 19 Now, in addition to the revisions 20 to the existing scope rule, the 21 yardmasters are also seeking changes to 22 the vacation agreement that they have.</p>
<p style="text-align: right;">Page 1329</p> <p>1 Changes sought would bring the craft in 2 line with brothers and sisters in the 3 train service and in the service crafts, 4 some of which are also, of course, train 5 service represented by us, SMART-TD. And 6 which -- most yardmasters generally have 7 seniority in the tradesmen crafts and in 8 the engine crafts. Now, indeed, 9 yardmasters historically have been 10 promoted from the ranks of the -- of the 11 train service craft, and that's due in 12 large part to all the Carrier-led 13 consolidations. Some yardmasters are now 14 exercising their train service seniority 15 back to the crafts because there's been so 16 many consolidations. 17 But what I'm getting at is, the 18 yardmasters are asking for their vacation 19 pay to be paid at 1/52 of their annual 20 earnings for the basic minimum of a daily 21 rate, or weekly rate if -- if they don't 22 meet that basic minimum. That is directly</p>	<p style="text-align: right;">Page 1330</p> <p>1 in line with what the train service and 2 engine service agreements have. It is a 3 simple calculation, but what you see is 4 the -- they are going back and forth 5 between the crafts. Some are part time 6 yardmasters, some are being promoted up 7 halfway through the year or they're being 8 demoted back, depending on what's going on 9 with a service, and it's making not only 10 calculations for the Carrier side, but is 11 making calculations and payments for the 12 yardmasters at a loss. They seem to be 13 losing out on what there -- what they 14 should be because if they're calculated 15 the wrong way from one craft versus 16 another, they drastically lose. 17 So, they're asking for that to be 18 refined. And in addition to one other 19 aspect that the trainmen do have, 20 following the '95 agreement, Arbitration 21 Board 559, which is to allow vacations as 22 a yardmaster to be given at any time and -</p>

<p style="text-align: right;">Page 1331</p> <p>1 - in the anniversary year that an increase 2 is allowed by the CBA. So, what's that -- 3 what that means is basically, when you hit 4 your seventeenth year, you get your fourth 5 week of vacation. 6 Prior to '95, we had to wait. If 7 you hired out in November, you couldn't 8 take that fourth week of vacation until 9 you got to November. If you were 10 fortunate enough to be hired out in 11 January okay, you could obviously gonna 12 get it anywhere within the anniversary 13 year. But it's of no cost to the Carrier 14 to allow it to be taken. It is a benefit 15 to the Carrier's to allow it to be 16 scheduled when they do all the rest of the 17 scheduling instead of waiting until that 18 anniversary date and then having to push 19 it into a schedule somewhere where there's 20 a vacancy. We do it all the time at 21 training engine service, it should not be 22 a burden by any means. And it -- like I</p>	<p style="text-align: right;">Page 1332</p> <p>1 said, of no cost. 2 So, that is the wishes and the 3 needs of my yardmaster craft, and I thank 4 you for the opportunity to speak on their 5 behalf. And if there are any questions, 6 I'd be more than happy to answer those at 7 this time. 8 CHAIRPERSON JAFFE: Thank you, 9 President Ferguson. 10 I think we're in good shape at the 11 moment but thank you very much -- 12 MR. FERGUSON: Thank you. 13 CHAIRPERSON JAFFE: -- again 14 MS. ROMA: Mr. Chairman; Board. 15 The Union's proposed just a brief break, 16 perhaps ten minutes, if possible, just to 17 kind of switch up some of the witnesses 18 CHAIRPERSON JAFFE: Sure. 19 We're off the record. 20 (Thereupon, a brief recess was 21 taken.) 22 CHAIRPERSON JAFFE: Back on, then,</p>
<p style="text-align: right;">Page 1333</p> <p>1 please. 2 Mr. McInerney. 3 MR. MCINERNEY: Good afternoon. 4 The union will continue its case. The 5 next presentation will be the crack -- 6 will be SMART-TD and BLET craft-specific 7 proposals. 8 We will begin with SMART-TD 9 President Jeremy Ferguson addressing the 10 attendance proposal. 11 CHAIRPERSON JAFFE: And I need to 12 remind you, you're still under oath. But 13 welcome back, Mr. Ferguson. 14 THEREUPON: 15 JEREMY FERGUSON 16 was called for examination, and, having 17 been previously duly sworn, testified as 18 follows: 19 MR. FERGUSON: Sure, thank you. 20 On April 30th, 2022, employees of 21 BNSF represented by SMART-TD and BLET, 22 their families, and union officials,</p>	<p style="text-align: right;">Page 1334</p> <p>1 picketed in the rain outside of Berkshire 2 Hathaway's annual meeting in Omaha, 3 Nebraska. The convergence of these 4 demonstrators at this meeting was a 5 culmination of years of mistreatment by 6 BNSF of its employees, where they have 7 been pushed to the brink of collapse all 8 in the name of the bottom line. While 9 many factors were in play, including years 10 with no raises despite record profits for 11 BNSF and record inflation for its 12 employees, the paramount reason for this 13 demonstration was the attendance policy, 14 which as I will explain, puts increased 15 pressure on an already depleted and 16 demoralized workforce. 17 Yesterday, I heard Judy Cater, 18 BNSF's Chief Human Resources Officer, 19 claim she had spoken to one engineer who 20 told her there was nothing wrong with Hi- 21 Viz. Well, I can tell you, I've heard 22 from hundreds of my members at BNSF who</p>

<p style="text-align: right;">Page 1335</p> <p>1 are enraged at what BNSF unilaterally 2 implemented and who are quite frankly 3 enraged at us, the Union, for not simply 4 striking over the policy regardless of the 5 Railway Labor Act limits us on strikes. 6 In what is becoming a trend in the 7 industry, BNSF's Hi-Viz policy is a 8 points-based system where employees are 9 penalized for marking off of work for 10 nearly every reason imaginable. An 11 employee is given thirty points for their 12 entire career, and then face deductions 13 for absences caused by their own sickness, 14 a child's sickness, overall fatigue, 15 family emergencies, and among other 16 reasons. The number of points deducted is 17 determined by the type of assignment the 18 employee holds and the day of the week the 19 employee marks off, as we have seen 20 yesterday. 21 Certain days are afforded more 22 weight than others, but the end result is</p>	<p style="text-align: right;">Page 1336</p> <p>1 the same. If an employee misses a single 2 day of work, they begin the inevitable 3 march to discipline up to, and including, 4 dismissal from employment. 5 For a real-life example, I have a 6 member working for BNSF who has child 7 custody two weekends a month. Before the 8 implementation of Hi-Viz, this member 9 could mark off two weekend days a month 10 without issue under BNSF's old policy. 11 Now, this same employee faces a deduction 12 of six to eight points each month for two 13 weekend mark offs if he is in unassigned 14 service, or fourteen points if he is in 15 assigned service. When beginning with 16 thirty points, in short order, this member 17 will enter into the disciplinary process 18 under Hi-Viz. 19 Think about that, just taking two 20 weekend days off per month to take care of 21 his children is going to lead to his 22 employees -- this employees' inevitable</p>
<p style="text-align: right;">Page 1337</p> <p>1 termination under Hi-Viz. I sure wish Ms. 2 Carter had spoken to him or some of the 3 other hundreds of employees in similar 4 situations, but, you know, the employee 5 discontent probably would not fit into the 6 carriers' fantasy of a happy and content 7 work force. But we want to change that; 8 we're trying to. 9 The unilateral implementation of 10 Hi-Viz led to palpable outrage by members 11 of both BLET and SMART-TD. In response to 12 their announcement of Hi-Viz, both unions 13 took preliminary steps towards a potential 14 strike by polling our members. The 15 response was unanimously in favor of going 16 on strike. Unanimously. Nobody voted no. 17 It should be noted that this was 18 not just a one-off issue but is instead 19 indicative of the mood of employees 20 following a culmination of years of 21 mistreatment by the Carriers. As I will 22 explain shortly, unfortunately, the Courts</p>	<p style="text-align: right;">Page 1338</p> <p>1 intervened to halt any strike and 2 employees are currently left with little 3 to no recourse to express their well- 4 founded frustrations, except by taking 5 them to the public. 6 Of course, BNSF is not the only 7 Carrier where controversy over the 8 unilateral implementation of attendance 9 policies has arisen. UP has a similar 10 points-based policy where instead of 11 starting with points and they are then 12 deducted, employees are given points for 13 each mark off which eventually leads to 14 progressive discipline. 15 Another example is NS, which 16 instituted its own new policy that is 17 notable by its vagueness in 2019 at the 18 same time it began widely adopting PSR 19 practices. This policy affords NS with 20 the power to pick and choose what 21 constitutes compliance for employees. The 22 only governing principle is that employees</p>

<p style="text-align: right;">Page 1339</p> <p>1 may be subject to discipline if they 2 engage in what NS considers to be a 3 "frequent" or "pattern of" weekend, 4 holiday, or personal layoffs. What these 5 terms mean is not defined in any way, but 6 by bulletin issued shortly after the 7 implementation of this policy, NS stated 8 that employees who mark off more than 9 three weekdays or more than one weekend 10 day in a 90-day period will be reviewed 11 for handling. Keeping in mind, my members 12 don't have any rest days. For their pools 13 or anything like that. So, that would be 14 the only way to get a day off is to mark 15 off like that. Adding to the confusion, 16 what is meant by "reviewed for handling" 17 is unclear. Employees are unsure of 18 whether an absence will result in 19 discipline or not. 20 SMART-TD and BLET did not sit idly 21 by while these policies were implemented. 22 All three policies were challenged in</p>	<p style="text-align: right;">Page 1340</p> <p>1 federal court as unilateral changes to 2 existing agreements violating the status 3 quo provisions of the Railway Labor Act. 4 Unfortunately, the institution of the 5 policies has been across the board 6 considered to be minor disputes, because 7 Carriers argued that they have 8 historically unilaterally implemented and 9 altered policies without negotiation with 10 the Unions. 11 With no remedy from the courts, the 12 Unions have tried to bring the matter to 13 national handling by proposing a process 14 that will result in fair policies and 15 allow Carriers to meet their manpower 16 needs while also providing employees with 17 more balance between their work and 18 personal lives. The Unions' proposal is 19 simple, currently existing non-negotiated 20 policies would be abolished and Carriers 21 who wish to establish a new policy must 22 serve Section 6 Notices and negotiate with</p>
<p style="text-align: right;">Page 1341</p> <p>1 the Unions in local handling pursuant to 2 the provisions of the RLA. 3 Unfortunately, bargaining with 4 respect to this proposal has gone nowhere. 5 The Carriers before this Board have stated 6 that because this proposal, among other 7 topics, have not been subject to extensive 8 bargaining, the Board should not consider 9 the Unions' proposal. But the issue is 10 that Carriers currently have no incentive 11 to bargain over these policies based on 12 the previously mentioned Court decisions 13 above. Which is why no progress has been 14 made and the Unions are turning to this 15 honorable Board for a recommendation. To 16 be clear, the Unions made every attempt to 17 bargain over these policies and they were 18 told, in no uncertain terms, that the 19 carriers had no interest in doing so. 20 Some of this includes our General 21 Committee on the property. One witness 22 from the railroad yesterday mentioned</p>	<p style="text-align: right;">Page 1342</p> <p>1 attempting to -- to talk about the High- 2 Viz for the past two years and discussing 3 with my General Chairman, it was clarified 4 that, yeah, they approached about talking 5 about the attendance policy while at 6 quarterly meetings, not at specific 7 meetings for attendance, but just at the 8 quarterly normal business meetings that 9 they attend. And the General Chairman had 10 the same position as the Carrier, which 11 was, nobody's going to negotiate on the 12 policy. They just wanted some input 13 maybe. But when it comes to trying to 14 bring it in compliance with the 15 agreements, or some of the issues the 16 members had, that's when the listening and 17 the talking apparently ceased. 18 As it has been explained why the 19 Unions are turning to the Board, the next 20 question is, why should the Board 21 recommend the Unions' proposal? 22 The reasons for this are evidenced</p>

<p style="text-align: right;">Page 1343</p> <p>1 by the current industry-wide crisis. 2 While I do not wish to spend too much time 3 discussing the manpower shortage across 4 the industry, again, as this Board is well 5 aware of the issue, I think it is briefly 6 worth mentioning how these issues are 7 heightened by unilateral attendance 8 policies. 9 Over the last several years, Class 10 I Carriers have engaged in widespread cuts 11 to all freight employees, including the 12 operating crafts . From 2016 to present, 13 Class Is have reduced their work force by 14 twenty-nine percent. These cuts have been 15 across the board among all crafts, 16 including train and engine service 17 employees. 18 But to put this into numbers. 19 Since late 2018, both BNSF and Union 20 Pacific have cut approximately 5,000 T&E 21 employees each. This is more than a 22 twenty-five percent reduction by BNSF and</p>	<p style="text-align: right;">Page 1344</p> <p>1 more than twenty-six percent for UP. Not 2 to be outdone, since 2019, Norfolk 3 Southern has seen a reduction of 3,635 T&E 4 employees according to recent data. This 5 constitutes a more than thirty-one percent 6 in reduction. 7 Lest there be any confusion, these 8 cuts began well before anyone heard of 9 COVID-19. Before the pandemic began, NS 10 had reduced T&E employees by almost 11 twenty-six percent, UP by twenty-one 12 percent, and BNSF by more than nineteen 13 percent. These cuts are not a 14 coincidence, but rather are the result of 15 the widespread adoption of precision 16 scheduled railroading principles. 17 PSR can only be described as a 18 mindless chase of lower operating ratios 19 and higher profits, with little concern 20 for employees or customers, where the 21 shareholder is king, and costs must be 22 reduced using any and all means. There is</p>
<p style="text-align: right;">Page 1345</p> <p>1 no concern with providing a safe and 2 desirable working environment. There also 3 seems to be no concern with the ability of 4 Carriers to perform their essential 5 function, that is, the movement of 6 freight. The only concern is shareholder 7 value, executive pay, and stock buybacks. 8 As a result, we have seen supply chain 9 disruptions where people are paying the 10 price. 11 Not surprisingly, stakeholders have 12 taken notice of these issues. These 13 practices were recently questioned by the 14 STB during a hearing regarding the 15 deteriorating situation with respect to 16 freight service. Stakeholders 17 representing labor, carriers, and shippers 18 provided testimony to the Board. Shippers 19 across the board complained of disastrous 20 service, which has affected their ability 21 to create products and get them to the 22 market. This, of course, has been a huge</p>	<p style="text-align: right;">Page 1346</p> <p>1 driver of inflation, which has gripped the 2 nation and put us on the brink of a 3 recession. 4 During this hearing, labor 5 representatives spoke of deteriorating 6 working conditions, with employees pushed 7 to the limit and being asked to do more 8 and more to make up for the Carriers' 9 business decisions that have led us to 10 where we are now. 11 The Carriers, of course, attempted 12 to deflect the glaring issues and paint a 13 rosier picture. Acknowledging that many 14 of the service issues are tied to 15 available manpower, Carriers pushed the 16 narrative that they are doing everything 17 they can to remedy this problem by 18 implementing broad hiring programs and 19 offering incentives for referrals and new 20 hires. STB Chairman Oberman was not taken 21 in by the assurances of the Carriers. 22 Instead, he accurately pointed out the</p>

<p style="text-align: right;">Page 1347</p> <p>1 drastic reduction in manpower Carriers 2 chose to implement, noting that the 3 workforce has been cut to the "bare bones" 4 due to an emphasis on lowering operating 5 ratios and satisfying shareholders, even 6 at the expense of their customers. 7 I raise these facts because 8 attendance policies are a critical factor 9 in what has become a toxic work 10 environment that is driving employees 11 away, even mid-career, and leading to 12 difficulties hiring that is leaving 13 shippers, consumers, and the country, 14 paying the price. Carriers have found 15 themselves facing a problem of their own 16 making. The elimination of employees has 17 left them with a reduced ability to 18 respond to increases in demand, such as we 19 are seeing now. Of course, as has been 20 discussed at length, this reduction was 21 voluntary, though the effects may not have 22 been anticipated.</p>	<p style="text-align: right;">Page 1348</p> <p>1 CSX CEO Jim Foote recently said in 2 comments to the Midwest Association of 3 Rail Shippers, "If I had the decision to 4 make over again, we would have never laid 5 off an employee. Never. But there was no 6 vision of the future, there was no idea 7 what we expected to encounter." 8 While it is noble to acknowledge 9 the effects these cuts have had, it does 10 little to solve the current problem, which 11 Mr. Foote accurately described as 12 difficulty in hiring and, key word, 13 retaining employees. In those same 14 comments I just mentioned, CEO Foote noted 15 that half of newly hired employees quit 16 within the first six months, with many 17 quitting within the first few days of 18 their employment. In order to retain 19 employees, Mr. Foote stated that Carriers 20 need to provide employees with greater 21 flexibility and that there is a need to 22 change what has become a "frustrating</p>
<p style="text-align: right;">Page 1349</p> <p>1 environment" for their workers. 2 This is an accurate assessment of 3 the problem, though I am sure Mr. Foote, 4 and I may disagree on the solution. 5 Contrary to statements made by Carriers to 6 the STB, that robust hiring plans have 7 been implemented, the issue is not 8 attracting employees with bonuses and 9 increased pay during training, but to 10 correct the overall deteriorating 11 relationship between Carriers and 12 employees that is leading them to walk 13 away as soon as they see how the Carriers 14 treat their employees once fully marked up 15 and working. This is not limited to 16 attracting and retaining new employees, 17 but also to mid-career workers as well. 18 Since implementing Hi-Viz, our 19 numbers indicate that BNSF has seen more 20 than 1,000 operating craft employees flee. 21 I personally know a railroader with 22 twenty-five years of seniority who</p>	<p style="text-align: right;">Page 1350</p> <p>1 recently left the job over working 2 conditions. This is completely unheard of 3 in an industry that once had lifetime 4 employees. One where parents tried to get 5 their children hired into. Where families 6 have third and fourth generation 7 railroaders. Ones like we heard from Dan 8 Cook earlier today. 9 Of course, the Carriers are framing 10 their arguments in support of their 11 proposals by stating that it is great to 12 be a railroader. The wages are the envy 13 of the world, they are provided ample time 14 off, and therefore there is no need to 15 upend the current status quo. 16 The Carriers really want you to 17 believe that employees are just ungrateful 18 and don't know how bad it is elsewhere. 19 But the proof is in the pudding. 20 Employees do not give up their jobs with 21 benefits and an enviable retirement under 22 the Railroad Retirement System unless</p>

<p style="text-align: right;">Page 1351</p> <p>1 something is rotten. 2 A huge driver of the issues I just 3 mentioned is employee availability. Many 4 employees are on-call 24/7 and only get 5 time off when they hit their FRA mandated 6 hours of rest. Current attendance 7 policies make it impossible for employees 8 to take care of basic needs that employees 9 in other industries take for granted. 10 Like I talked about earlier, they force 11 them to work when they are sick, when they 12 have family emergencies, and when they are 13 too fatigued to safely perform their 14 duties. 15 Carriers have argued that employees 16 enjoy extensive personal leave and 17 vacation days that are enviable. Of 18 course, that time off is subject to the 19 discretion of the Carriers, leaving many 20 employees unable to take even 21 contractually earned time off. 22 Recently, I was informed of a BNSF</p>	<p style="text-align: right;">Page 1352</p> <p>1 employee who finished a nearly 16-hour 2 trip and attempted to use a paid day after 3 his return trip due to extreme fatigue. 4 Now, this was on Memorial Day, later in 5 the day on that Monday. So, the employee, 6 aware of BNSF's Hi-Viz policy, checked the 7 allocation for personal leave days and 8 found two open slots, which should have 9 allowed him to take this day off with no 10 issue. His request was denied. 11 When he -- when he questioned why 12 it was denied, he was told by local 13 management that higher ups had locked the 14 allocation and made it impossible for 15 train service crews to use paid time off 16 because it was a holiday. As he was too 17 fatigued to work at the time of his next 18 call, he was left with no choice but to 19 lay off for fatigue, which mandates a 20 point deduction under Hi-Viz. As this was 21 Memorial Day, this member was penalized 22 seven points, as additional points are</p>
<p style="text-align: right;">Page 1353</p> <p>1 deducted for marking off on holidays and 2 other so-called "High Impact Days." Any 3 argument that employees already have 4 enough time off, there is no need to allow 5 employee input into attendance policies is 6 negated by real life examples such as this 7 one. 8 The foregoing explains why the 9 Unions have issued their proposal with 10 respect to attendance policies. It is 11 critical for the future of the industry 12 and to provide relief to current employees 13 that they have a say in one of the most 14 basic terms and conditions of employment 15 there is. The Unions are not saying that 16 Carriers should not have the right to 17 expect employees to perform work when 18 needed. Of course, there must be an 19 expectation that Carriers can service 20 their customers and keep the supply chain 21 moving. The Unions and their members have 22 a vested interest in seeing Carriers</p>	<p style="text-align: right;">Page 1354</p> <p>1 succeed in the marketplace. Historically, 2 if things are bad for the Carriers, it is 3 bad for their employees. 4 But right now, things are good, and 5 in fact, are probably better than they 6 ever have been from an economic 7 standpoint. With the Carriers in a period 8 of economic security, it is appropriate 9 now to address the work/life cycles and 10 balance of employees so that those 11 Carriers can attract and retain high 12 quality employees in order to allow the 13 industry to grow further. The Carriers 14 may describe the Unions' proposal as 15 unreasonable, but what is unreasonable is 16 to allow Carriers to continue dictating 17 from on high attendance policies with no 18 regard on how they actually impact their 19 employees, with their only concern being 20 for the bottom line. All the Unions want 21 is the opportunity to bargain over these 22 policies, and to incentivize the Carriers</p>

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1 to reach reasonable, equitable agreements
 2 that provide consistency and fairness to
 3 employees while meeting Carrier needs.
 4 Thank you for allowing me the
 5 opportunity to discuss the matter with
 6 you. And I'm available if you have any
 7 questions before I turn it over to Mr.
 8 Pierce.
 9 **CHAIRPERSON JAFFE:** Thank you,
 10 President Ferguson.
 11 I have just one if I may, sir.
 12 **MR. FERGUSON:** Yes, sir.
 13 **CHAIRPERSON JAFFE:** There was
 14 reference in the Carrier's presentation to
 15 a lack of any challenge through the
 16 grievance and dispute resolution process
 17 to the policies as a whole as opposed to
 18 individual discipline. Is that accurate
 19 from your end?
 20 **MR. FERGUSON:** No, sir. It's not.
 21 There must be a slight communication issue
 22 on the BNSF-side.

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1 game back and forth that somebody's not
 2 available.
 3 **BOARD MEMBER DENHARDT:** Thank you.
 4 **MR. FERGUSON:** As far as I know,
 5 but I can get one of my General Chairman
 6 or the BLET General Chairman to answer
 7 that question, if need be.
 8 **CHAIRPERSON JAFFE:** Thank you, sir.
 9 Welcome back, President Pierce. I
 10 just need to remind you, you're still
 11 under oath, sir.
 12 **MR. PIERCE:** Thank you.
 13 **CHAIRPERSON JAFFE:** Thank you.
 14 THEREUPON:
 15 DENNIS PIERCE
 16 was called for examination, and, after
 17 being previously duly sworn, testified as
 18 follows:
 19 **MR. PIERCE:** Before I jumped to
 20 work schedules, it has -- we have put in
 21 at the tail end of this presentation --
 22 I'll pick this up -- to address some of

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1 A certified letter was sent on May
 2 6th of this year, from all General
 3 Chairman of both unions, BNSF committees
 4 for BLET and SMART-TD, all of them
 5 signatory to it, advising Mr. Sam
 6 Macedonio that we did have a dispute in
 7 accordance with the Act and we wish to
 8 compensate based on the unreasonableness
 9 of the High-Viz policy. I can give the
 10 Board a copy of that letter, if you would
 11 like.
 12 **CHAIRPERSON JAFFE:** Thank you very
 13 much.
 14 **BOARD MEMBER DENHARDT:** And what
 15 happened after you sent that letter?
 16 **MR. FERGUSON:** Pardon me?
 17 **BOARD MEMBER DENHARDT:** What
 18 happened after you sent that letter?
 19 **MR. FERGUSON:** The -- the
 20 conference has been stalled out and, as
 21 far as I know, they're -- they haven't met
 22 yet. They're keep playing the calendar

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1 the allegations we heard yesterday about
 2 the attendance policy. And not only have
 3 the General Chairman tried to conference a
 4 grievance unsuccessfully, in the
 5 settlement talks at the courthouse over
 6 High-Viz, we suggested that the parties
 7 create an SBA to arbitrate the policy.
 8 And through their Counsel, who's here
 9 today, the railroads refused.
 10 So, this is not for lack of effort.
 11 It is still a work in progress.
 12 **CHAIRPERSON JAFFE:** Got it. Thank
 13 you.
 14 **MR. PIERCE:** Okay, thank you.
 15 I'm going to talk about our
 16 proposal for work schedules.
 17 BLET and SMART-TD request that the
 18 Board recommend that, on the effective
 19 date of the Agreement, BLET and SMART-TD
 20 General Committees of Adjustment, or GCAs,
 21 as we call them, shall have the right to
 22 serve notice on their respective Carriers

<p style="text-align: right;">Page 1359</p> <p>1 invoking mandatory bargaining to provide 2 for voluntary consecutive scheduled days 3 off for all operating craft employees who 4 perform so-called unassigned service. And 5 I think BNSF kind of explained the 6 differences in the service we're talking 7 about. 8 We also include that where the 9 existing agreement is acceptable to the 10 GCA, the Unions shall have the right to 11 retain those agreements. And, as you 12 heard yesterday from Norfolk Southern, 13 Norfolk Southern has implemented 14 collective bargaining agreements with the 15 locomotive engineers giving them rest days 16 and unassigned service. So, this has 17 appeared this week to be a tale of two 18 completely different cities of sorts. 19 BNSF maintains it would shut their 20 operation down; NS says it actually 21 improved that they have fewer attendance 22 violations by giving rest days to their</p>	<p style="text-align: right;">Page 1360</p> <p>1 employees. 2 Before they go away -- before I go 3 any further, I think it's important for 4 the Board to fully understand the 5 lifestyle of the employees that we seek to 6 improve. 7 It's true that the vast majority of 8 the Class I employees represented by BLET 9 and SMART-TD work in what is called 10 unassigned road service. What this means 11 is that they do not have scheduled start 12 times, and in most cases, they do not have 13 scheduled days for their work shifts. In 14 general terms, they are placed at the 15 bottom of a calling list when they arrive 16 home or when they marked up. They then 17 work their way up to being called out 18 again. The predictability of when those 19 calls will occur is currently at an all- 20 time low. 21 For example, employees are 22 routinely predicted to be called at 8:00</p>
<p style="text-align: right;">Page 1361</p> <p>1 a.m. .the next day, only to be called at 2 10:00 p.m. as they lay down to rest the 3 night before. As already explained in our 4 discussion on attendance and availability 5 rules, they either take the call, fatigued 6 or not, or they are assessed points, or 7 lose the ability to earn points under the 8 various Carrier attendance policies. 9 We also have to, I don't know the 10 right word, debunk this theory that these 11 employees are working less than forty 12 hours a week. I think Matt Garland 13 suggested yesterday that the average held 14 away time in a hotel is 16 hours, that's 15 an average, and in many cases, it is much 16 longer. 17 These crew members take up to a 18 two-hour call to report to work with very 19 little predictability. Some may work a 20 twelve hour -- up to a twelve-hour shift 21 and return home. Others work a twelve- 22 hour shift trying to get to a hotel. In</p>	<p style="text-align: right;">Page 1362</p> <p>1 many cases, they run out of time, they 2 work their full tower -- their full twelve 3 hours, they have to be transported to the 4 hotel; it could be longer than twelve 5 hours to get there. They then, even if we 6 use Matt Garland's average, to be -- say 7 you took twelve hours to get there. You 8 sat there sixteen and it took you twelve 9 to get back. In one round trip, these 10 employees are routinely working, gone from 11 home, and that's kind of where the 12 description -- it's always been said that 13 he who keeps the data can make it say 14 anything. 15 These guys are gone forty hours in 16 one round trip, and they make about three 17 of them a week. They can be expected to 18 go back to work with as little as twelve 19 hours off between these trips. So, the 20 converse is actually true, they could be 21 gone up to 120 hours and only home thirty- 22 six in a week. So, we have to be clear on</p>

<p style="text-align: right;">Page 1363</p> <p>1 that. And when these guys get to the 2 hotel, they wait. They wait to be called, 3 they have no predictability there, and 4 it's not always the nicest hotel. 5 Usually, it's the cheapest. While they're 6 sitting in that hotel, they're not home 7 mowing their lawns, they can't go home. 8 So, they're not there for the children's 9 birthdays or graduations. And in many 10 cases, it has become routine to sit for, 11 in excess, of twenty-four hours. 12 When the average American counts 13 their time at work, they generally count 14 the time they are at the beck and call of 15 their employer and that's why that forty 16 hour round trip is so critical in this 17 this equation. And again, you get home 18 you're expected to go back to work in 19 twelve. And if you don't, you could be 20 subjected to an attendance violation. 21 There are no jobs that you can 22 "benchmark" against this lifestyle. This</p>	<p style="text-align: right;">Page 1364</p> <p>1 process continues 7 days per week, 365 2 days a year for these employees, many of 3 the who do not have assigned mandatory or 4 voluntary days off. As such, they lack 5 the simplest of things that most Americans 6 take for granted. Now, we've heard a lot 7 of talk in these negotiations about how 8 real employees should take a keener 9 interest in their health care outcomes. 10 These guys can't even schedule a doctor's 11 appointment without possibly getting 12 punished under an attendance policy, 13 because they don't know when they're going 14 to have time -- a day off to do it. 15 The Carriers also argue that these 16 employees possess sufficient paid leave. 17 I mean, it -- the irony of this is all -- 18 the -- we talked about paid sick leave 19 today. We're not even looking for pay for 20 these days off. This is incredible. But 21 the idea that they have an unpaid leave 22 now to attend to their personal needs is</p>
<p style="text-align: right;">Page 1365</p> <p>1 not accurate. The youngest employees, 2 many of whom have young families have the 3 least amount of paid leave. 4 More importantly, the Carriers 5 routinely refuse employees request to take 6 their paid leave. I believe the question 7 was asked yesterday, what happens if you 8 wake up sick in the morning? I don't 9 think you got the right answer yesterday. 10 What happens is you lay off sick. 11 You are not allowed to take paid leave on 12 that short of a notice. In any given day, 13 you will not find a railroad manager, 14 especially today, when we're holding 15 trains, that's going to agree to allow an 16 additional paid leave to be put on the 17 books when trains are being held. They'll 18 make you lay off sick, and they'll give 19 you attendance points. 20 The need for access to these days 21 off is real and is also part and parcel of 22 why the Carrier's struggled to hire and</p>	<p style="text-align: right;">Page 1366</p> <p>1 retain employees. What other industry 2 forces its employees to be available for 3 unknown calls seven days per week, every 4 week of the year. 5 And I think, in support of our 6 proposal, the Board is reminded that at 7 one point in time, very few, if any 8 operating employees had assigned days off. 9 It was not until the National Agreements 10 in the 1950's, I think 1952 was the first, 11 where yard crews were given a 5-day 12 workweek. Before that it was seven. That 13 was twelve years after the 40-hour 14 workweek was adopted by Congress, in 1940, 15 twelve years later. 16 We believe the natural progression 17 for the agreements between the parties is 18 to now include negotiated voluntary rest 19 days for employees working in this 20 unassigned road service. And it is not a 21 new concept. You heard yesterday from 22 Norfolk Southern. Many of the Carriers in</p>

<p style="text-align: right;">Page 1367</p> <p>1 this room have already agreed to give 2 these days off. Canadian National, also 3 part of these negotiations, has assigned 4 days off. And contrary to what the 5 Carriers have told you, in some cases, it 6 did not require complete restructuring of 7 the operation. It is not an extreme 8 request. And it's not only the employee's 9 quality of life that's improved with 10 access to scheduled days off. There are 11 significant improvements to health and 12 safety, and the public at large that flow 13 from having a schedule. 14 In the late -- do you want to turn 15 that on for me, Judge. 16 Let's see if I can find my clicker. 17 In the late 1990's and early 18 2000's, many railroads, along with the FRA 19 and our Unions participated in joint 20 studies on fatigue, and the steps 21 necessary to ensure that operating 22 employee fatigue was addressed.</p>	<p style="text-align: right;">Page 1368</p> <p>1 My employer, BNSF, long before the 2 current management took over, was one of 3 the industry leaders at the time. We 4 negotiated several on-property agreements 5 to address fatigue, they were called work 6 rest initiatives. 7 One of the most successful of those 8 agreements created days off for the crews 9 that I have been talking about. It's kind 10 of a small print, but I think we've given 11 it to you in the in the deck that we 12 provided today. 13 These agreements created 7 days on, 14 three voluntary days off, you could take 15 any combination of the three, you could 16 work them all. One, two, or three, as 17 long as they were consecutive. Crews 18 could look at a calendar year out and know 19 what days they would have off. That's 20 when they scheduled those doctor's 21 appointments. 22 These agreements were created based</p>
<p style="text-align: right;">Page 1369</p> <p>1 upon scientific data, which was gathered 2 and developed jointly with the railroads, 3 FRA, and the Unions. That data showed 4 that the non-scheduled employees incur a 5 sleep debt when they go to work on an 6 irregular schedule, and they need access 7 to time off to restore that sleep debt 8 In fact, in a 2005 report on 9 fatigue, Dr. Patrick Sherry, who had done 10 much of the research, I won't read it all. 11 But he actually referenced the BNSF 7/3s 12 as one of the optimal ways to restore 13 rest. 14 The key part of this agreement that 15 I would like to turn to, if I can make 16 this work, is Item 4 of the agreement. 17 And for those who can't see it, I'm 18 going to read it, because it ties into 19 what Jeremy was talking about. 20 An employee who marks off 21 completely within his assigned rest 22 cycles, and stays marked up during his</p>	<p style="text-align: right;">Page 1370</p> <p>1 assigned work cycle, will not be 2 considered to be in violation of any 3 attendance guidelines or policies related 4 to attendance then in effect, regardless 5 the number weekend or total days absent. 6 To allow for "emergencies" the employee 7 can take one unpaid layoff in each month, 8 or the employee remains on the overlay 9 board for three consecutive months, three 10 unpaid days during any three-month rolling 11 period. 12 I share that with you because 13 that's negotiated attendance. That's what 14 it looks like. These policies, this one 15 was dated 2005. It was negotiated six 16 years after BNSF imposed its first 17 attendance policy, saying it would never 18 negotiate on attendance. And then they 19 did. But then a strange thing happened. 20 In 2008, the RSA passed, the Rail 21 Safety and Improvement Act. BNSF was not 22 pleased at all, I was at the meeting where</p>

<p style="text-align: right;">Page 1371</p> <p>1 they told us if the law passes, your 2 Boards are all gone. 3 This is the cancellation letter 4 written in 2009. We don't have to read 5 through it, I just want to show you the 6 significance of what happened. The 7 following pages was all of the Boards on 8 BNSF that had a seven and three overlay 9 agreement in place, some of them for close 10 to ten years. 11 Here's the list that got cancelled 12 page one, page two, page three, page four, 13 page five, and page six. 14 This is not a huge lift to 15 negotiate days off. Virtually every crew 16 board on BNSF had access to voluntary days 17 off for years. And we were told when the 18 law passed, you wanted the law that's all 19 you get. When these agreements were 20 cancelled, the involved employees lost all 21 access to predictable days off. Both 22 parties even recognized, much like Norfolk</p>	<p style="text-align: right;">Page 1372</p> <p>1 Southern did yesterday that there were 2 fewer attendance issues when employees had 3 access to days off. It's not really that 4 complicated. You know when you're going 5 to be off, you can plan your wrap -- you 6 can plan your life around it. 7 The BNSF has gone in a different 8 direction, as Jeremy said, instead they've 9 imposed an attendance policy to make 10 people work more instead of giving them 11 the time off they need. And this is not 12 an issue that the Unions and Carriers have 13 failed to bargain on. This is very 14 frustrating in that we met, and we 15 discussed, and we told them what we were 16 seeking on multiple occasions. Refusing 17 to bargain on an issue does not mean it 18 has not been negotiated on. 19 We've even discussed the fact that 20 these agreements would need to be created 21 on a property-specific basis so that they 22 can be tailored to each railroads unique</p>
<p style="text-align: right;">Page 1373</p> <p>1 operations. Now, we also gave Carriers 2 this written proposal, that is in your 3 packet, dated January 19, 2022. That's 4 found at TD/BLET 336. 5 Instead of engaging further, the 6 Carrier's took the position and made it 7 clear that we had to agree to the 8 positions they sought, which they 9 explained to you in their presentation, 10 before they would take any of our 11 proposals seriously. 12 Finally, the Carriers position 13 before this Board, that our issues we're 14 not bargain. It's just patently untrue. 15 We have been unable to motivate meaningful 16 negotiations on this issue in 2020 and we 17 have tried on multiple times. It's clear 18 that the railroads are not interested in 19 this, at least those that are controlling 20 the narrative. As I said, the engineers 21 on NS have rest days, CN has rest days. 22 Certain jobs on CSX have rest days. There</p>	<p style="text-align: right;">Page 1374</p> <p>1 are those that don't, there are those that 2 need a national standard to establish. We 3 see our voluntary resume proposal is a 4 win-win for the industry. As Scott Weaver 5 said yesterday, it improved their 6 attendance violation when they gave folks 7 days off. It would address industry 8 fatigue by giving them predictable days 9 off. 10 Finally, the agreements we seek 11 would improve the Carrier's ability to 12 hire and retain operating employees as 13 well. And as we discussed yesterday, that 14 would also improve supply chain issues and 15 the nation's economy as a whole. 16 For these reasons, BLET and SMART- 17 TD respectfully request that the Board 18 include our joint voluntary rest day 19 proposal in your recommendation. 20 And if there are no questions, I'll 21 turn to our Away-from-Home Meal Allowances 22 proposal.</p>

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<p>1 CHAIRPERSON JAFFE: I think we're</p> <p>2 in good shape at this point. Thank you.</p> <p>3 MR. PIERCE: Okay, thank you.</p> <p>4 The final joint BLET/SMART-TD</p> <p>5 proposal involves our existing agreements</p> <p>6 governing Away-from-Home Terminal Meal</p> <p>7 Allowances. The obligation to provide</p> <p>8 meal allowances to both engineer and</p> <p>9 trainmen road crews at their away-from-</p> <p>10 home-terminal was first established in the</p> <p>11 National Agreement, on June 25, 1964. I</p> <p>12 won't read it all, but it was \$1.50.</p> <p>13 Since then, the national meal</p> <p>14 allowance for engineers and trainmen road</p> <p>15 crews has been changed by National</p> <p>16 Agreements in 1971, 1972, 1978, 1982,</p> <p>17 1986, 1991 and 1994. The current payment</p> <p>18 for locomotive engineers has not been</p> <p>19 adjusted since 1994 and is currently still</p> <p>20 at \$6.00 for the first four hours and an</p> <p>21 additional \$6.00 after twelve for a total</p> <p>22 of \$12. Even if you're there 30 hours.</p>	<p>1 In 2007, CSX agreed to pay its</p> <p>2 engineers an initial meal allowance of \$20</p> <p>3 after four hours, and an additional meal</p> <p>4 allowance of \$10 after that, being held an</p> <p>5 additional 20 hours. After that, an</p> <p>6 additional \$10 is paid every fraction of</p> <p>7 an eight-hour period. That agreement also</p> <p>8 makes the payment subject to COLAs and</p> <p>9 general wage increases eliminating the</p> <p>10 need to revisit the payment in subsequent</p> <p>11 bargaining rounds for that Carrier. That</p> <p>12 agreement also made it unnecessary to</p> <p>13 continually bring cases like this to</p> <p>14 Boards like this because it built in an</p> <p>15 automatic escalator that applied COLAs to</p> <p>16 the payment. The current values I'll get</p> <p>17 to later, but they are in our proposal as</p> <p>18 to what we now propose as the CSX rule to</p> <p>19 be adopted nationwide.</p> <p>20 As for other railroads in 2007,</p> <p>21 BNSF agreed to pay its engineers \$8.00 per</p> <p>22 meal allowance payment. Still the four</p>
Page 1377	Page 1378
<p>1 hours and the twelve-hour rule applying.</p> <p>2 General wage increases were applied to</p> <p>3 that. It's my understanding that is now</p> <p>4 \$10.96 per meal.</p> <p>5 In 2008, Norfolk Southern agreed to</p> <p>6 pay its engineers \$12.00 per meal</p> <p>7 allowance but without any escalator. And</p> <p>8 last increase occurred in 2010 when SMART-</p> <p>9 TD negotiated an increase in the meal</p> <p>10 allowance under its national agreement,</p> <p>11 going from \$6.00 to \$8.00.</p> <p>12 It is a matter of record that Union</p> <p>13 requests to increase employee expense</p> <p>14 payments have long been included in PEB</p> <p>15 recommendations. Over the past three</p> <p>16 decades, PEBs 194, 214, 222, 223, 229 and</p> <p>17 242 have recommended increases for various</p> <p>18 employee expenses, and the specifics of</p> <p>19 those recommendations are included in our</p> <p>20 written submission.</p> <p>21 We feel that it is far past time</p> <p>22 for the away from home meal allowances</p>	<p>1 found in our National Agreements to be</p> <p>2 increased. Like I said, for 28 years, the</p> <p>3 BLET meal allowance national agreement has</p> <p>4 not been changed and SMART-TD since '08.</p> <p>5 It also gives this Board the opportunity</p> <p>6 to put the issue to bed for the</p> <p>7 foreseeable future by recommending the</p> <p>8 organizations' proposal, which includes</p> <p>9 automatic escalators.</p> <p>10 As such, we recommend, or we</p> <p>11 request that you recommend, the inclusion</p> <p>12 in the national agreement the current meal</p> <p>13 allowance provision contained in Article 8</p> <p>14 of the 2016 BLET collective bargaining</p> <p>15 agreement with CSX. I'm not going to read</p> <p>16 the whole agreement, but I'll get to what</p> <p>17 the Dollar values are.</p> <p>18 For the first four hours through 23</p> <p>19 hours and 59 minutes, \$22.60. That 24-</p> <p>20 hour mark, that's when it escalates to</p> <p>21 \$32.26 total. At 24:01, it's \$43.12. And</p> <p>22 between 32:01 and 40 hours, it is \$53.38.</p>

<p style="text-align: right;">Page 1379</p> <p>1 Conversely, that same length of 2 layover would get you \$12 under the BLET 3 national and \$16 under UTU. Given the 4 ongoing concerns about mental acuity and 5 fatigue amongst operating crews, it cannot 6 seriously be suggested that these meal 7 allowances, that actually cannot fully pay 8 for a burrito from Chipotle, are 9 appropriate.</p> <p>10 It is far past the time for the 11 industry to provide locomotive engineers 12 and train men with a realistic and 13 reasonable meal allowance that is tied to 14 a measurable index that will allow it to 15 rise as prices do, again eliminating the 16 need for future negotiations.</p> <p>17 It is also patently untrue that 18 this proposal was not negotiated. In the 19 two proposals that the CBC provided, which 20 are in the deck that you were provided, 21 both include wage -- or proposals, to the 22 detail of even listing the dollar amounts.</p>	<p style="text-align: right;">Page 1380</p> <p>1 I remember on the chart that the railroads 2 put up that said there were zero minutes 3 given to this proposal. I read a little 4 faster than Forrest Gump, but I read it 5 twice. And I don't read that fast. We 6 put time into this. They knew exactly 7 what the proposal was, and they refused to 8 engage on it.</p> <p>9 So, these arguments that these 10 issues are not properly before you have 11 gotten to be rejected.</p> <p>12 For these reasons, BLET/SMART-TD 13 respectfully request that the Board 14 include our away from home terminal meal 15 proposal in your recommendation.</p> <p>16 The final piece that I will be 17 touching if there are no questions on 18 meals, is to address the proposals that 19 you were provided from the railroads 20 earlier in the week, if I might do that.</p> <p>21 CHAIRPERSON JAFFE: Absolutely. 22 MR. PIERCE: Okay.</p>
<p style="text-align: right;">Page 1381</p> <p>1 CHAIRPERSON JAFFE: Thank you. 2 MR. PIERCE: I do think it's 3 important to note how hard we tried in 4 this round. In August of '21, having 5 gotten nowhere very fast, the parties 6 agreed to form an operating subgroup. 7 Initially, we thought that would be a 8 group of -- of each of our teams that 9 would explore ideas; they weren't there to 10 negotiate.</p> <p>11 At the first meeting, Brendan 12 Branon showed up in person, Jeremy and I 13 did not, and they started negotiating. So 14 we went to the next meeting, to make sure 15 that the right people were at the table.</p> <p>16 We met in September of 2021. The 17 first meeting, again, in October, and in 18 December. And we discussed our desires to 19 not only negotiate on our proposals, but 20 what we saw wrong with theirs. And as an 21 evidence of, and again, we kept no 22 stopwatches, we didn't know that that was</p>	<p style="text-align: right;">Page 1382</p> <p>1 a requirement. But we did discuss 2 elimination of attendance policies rest 3 days and meals.</p> <p>4 In January of 2022, we were 5 scheduled to meet in San Diego. We had 6 agreed to get back into both attendance 7 deeper dive into attendance and days off. 8 And as we walked into the meeting, and in 9 the hours before it, BNSF announced its 10 unilaterally imposed High-Viz attendance 11 policy, which could only be viewed as a 12 slap in the face and even more 13 importantly, a resounding no to our 14 request to bargain on attendance. You 15 don't impose a policy when you've agreed 16 to bargain. They're not the same thing.</p> <p>17 Again, you've already heard that 18 there is no truth to the idea that we're 19 not disputing ideas in arbitration. But I 20 think it's the railroads actions that 21 actually compel us to come to you. 22 Everybody gets taught when they started</p>

<p style="text-align: right;">Page 1383</p> <p>1 out in this line of work that in the 2 beginning, the Carrier owned all the 3 rights and the only rights the 4 organization have are the ones they put in 5 their contract. 6 Well, the Judges have said you 7 didn't have it in your contract. 8 Guess why we'd like it in our 9 contract? So, we don't have to go there 10 anymore. The time has come for the 11 attendance policies to become part of the 12 contract. There are, I think, 13 applications in our written submission set 14 that has a negotiated attendance policy, 15 the membership ratified it. There aren't 16 a lot of discipline cases, everybody knows 17 the rules, it's crystal clear. 18 With that, I want to turn to the 19 three proposals that the railroads have 20 presented to you as necessary for their 21 operational needs. 22 The first one I will talk about is</p>	<p style="text-align: right;">Page 1384</p> <p>1 the Norfolk Southern proposal. And we 2 discussed this at our meeting at Kansas 3 City with the subgroup. What Norfolk 4 Southern did not tell you is that although 5 the bidding and bumping weekly adjustment 6 process does put every locomotive engineer 7 on a job for that week, about a year ago 8 and NS ran out of train men and decided 9 they would call engineers to work the 10 ground. A demotion not generally 11 permitted by contract. So, on the one 12 hand, they tell you that it provides the 13 predictability. But in application, it 14 does not. The parties are in court, in 15 the Southern District of Ohio, if I've got 16 that right, litigating this issue on 17 whether that constitutes a major dispute. 18 So, when you are presented with a 19 Carrier proposal that's actually at the 20 courthouse, I would suggest that we maybe 21 reconsider as to this is -- whether or not 22 this is the right model. These engineers</p>
<p style="text-align: right;">Page 1385</p> <p>1 are called with absolutely no warning for 2 these conductors position under the 3 current application of the CBA. Someone 4 is going to get hurt. We are -- they are 5 forcing people to work ground jobs that 6 have not been on the ground for ten years. 7 And if they find them, you've got to go, 8 or you'll -- you'll get terminated. 9 So, the agreement is currently 10 applied, does nothing to improve 11 predictability for the involved engineers. 12 And ironically, it does include days off, 13 we like that part. It's just that it's 14 not being applied in the way it was 15 intended. 16 As for the automated bidding, and 17 bumping agreements -- 18 BOARD MEMBER DENHARDT: And when 19 you refer to the Norfolk Southern 20 proposal, which one was that, in terms of 21 the way they laid them out? Automated 22 bidding, self-regulating pools, and --</p>	<p style="text-align: right;">Page 1386</p> <p>1 MR. PIERCE: That -- that proposal 2 had all of those components, it had self- 3 filling pools, self-vacancies were filled 4 by pool employees in a lot of cases. And 5 it had electronic bidding to go up if you 6 drew a new job; they had to replace you if 7 you were displaced on the way down. And 8 most of those also baked in days off. So, 9 it's kind of a combination package that 10 the engineers negotiated with Norfolk 11 Southern. 12 BOARD MEMBER DENHARDT: Okay. 13 MR. PIERCE: When it comes to just 14 general automated bidding, and bumping 15 these agreements are in place in in many 16 properties across the country. 17 Ironically, they are the result of quid 18 pro quo bargaining at the on-property 19 level. That's how they got there. The 20 example you got from NS was one such 21 agreement. None of those agreements 22 required the assistance of the NCCC, they</p>

<p style="text-align: right;">Page 1387</p> <p>1 did not require the census of a national 2 agreement. 3 As an example, and this should tell 4 you how much this changes, on the former 5 BN portion of BNSF, the engineers had a 6 fully automated bid bunk system, from 1980 7 until 2007. An application, if a job came 8 open that was superior to the job you were 9 on on your bid sheet, they would put you 10 on it. No phone call, you just moved to 11 the new job and were notified. If you got 12 displaced, they looked at your sheet and 13 put you on the most inferior job below 14 that you were on. And you placed to it. 15 No bump time, it was all -- and this was 16 in 2007, before computers. They did it 17 reading paper. 18 In 2007, to systemize, or 19 standardize the system application of 20 these rules after the merger Between the 21 BN and the Santa Fe. It was BNSF 22 suggested that they give those folks a</p>	<p style="text-align: right;">Page 1388</p> <p>1 pump again. So, after 27 years of 2 automated, by reading the selection card, 3 the engineers were given a 24-hour bump. 4 Ironically, we said yes. Now that bump 5 time will get you in trouble for 6 attendance if you take it. The point is 7 it doesn't actually take technology to 8 assign employees using a preference sheet. 9 It is true that every employee, when you 10 use that system will always own a job. 11 They'll not be that 24-hour bump period. 12 However, it does not mean they will 13 own a job that they can work that day. 14 I've worked under both systems, we saw it. 15 If you're read -- if you're put on a job 16 by your sheet and that job is out of town, 17 you're not working, and you may have 18 chosen to go to work had you been given a 19 displacement right. None of these are 20 perfect processes. They're just 21 different. But what the railroads are 22 trying to improve was upon this is</p>
<p style="text-align: right;">Page 1389</p> <p>1 something that only those railroads that 2 haven't obtained it on property are 3 seeking. 4 From the engineers vantage point, I 5 think Union Pacific is one of the only 6 properties that does not have a system 7 wide application of bidding and bumping 8 already in place for engineers. 9 So, the other point about this is 10 when we get into costing these issues, I 11 don't know how they're costing, what these 12 things are worth, but they're not worth 13 anything on the railroads that already 14 have them. And that would include -- 15 whether it's rest days, and those are 16 expensive, or meals that are expensive, or 17 bidding and bumping. 18 The final piece I'm going to talk 19 about is self-supporting pools. We keep 20 talking about our desire to get access to 21 time off. It is a proven fact that a 22 self-supporting pool will elevate,</p>	<p style="text-align: right;">Page 1390</p> <p>1 escalate, make you turn more rapidly. For 2 example, if I'm ten times out on the call 3 list. And under a non-self-supporting 4 pool, three guys lay off, the extra-board 5 fills those jobs. I only moved up by the 6 trains that were called that we're on the 7 lineup. 8 In the self-supporting pool, I move 9 up three spots in the rotation when those 10 three guys lay off. If ten guys lay off, 11 I go from tenth out to first out the 12 minute it happens. It completely defeats 13 the predictability of a train lineup. It 14 doesn't mean some Carriers have not 15 adopted them by agreement, again, on- 16 property. But if you look at the backdrop 17 where Norfolk Southern described them 18 having self-supporting pools, they had 19 rest days. Probably the oldest railroad 20 to have these boards in place was the 21 Santa Fe property, and as part of the quid 22 pro quo over there, the locomotive</p>

<p style="text-align: right;">Page 1391</p> <p>1 engineers can still lay off once they 2 reach a mileage cap. 3 With self-supporting pools, these 4 guys are working so fast and so often that 5 they're hitting that mileage cap in as 6 many as twenty days and, by contract, have 7 the right to lay off miles for the 8 remaining ten days of the month. So, this 9 is not a panacea. It's not a perfect 10 solution. 11 What it does do is it eliminates 12 the reliance on extra-boards that have a 13 guarantee of a wage base. Guaranteed 14 extra-boards came around in the 80s/90s. 15 I think it was an agreement in 1986. Side 16 Letter 20 of the '86 national agreement 17 gave the right to the Carrier to establish 18 extra-boards as long as they guarantee 19 them, they chose the staffing level. That 20 was their request. Now they don't want to 21 pay those guys to sit on a board. So, by 22 pushing the work to a non-guaranteed</p>	<p style="text-align: right;">Page 1392</p> <p>1 source of supply, the pool, you eliminate 2 the reliance on a guaranteed source of 3 supply on the extra-board. 4 In some locations on BNS or BNSF. 5 where that's happened, extra-boards have 6 gone from roughly forty guys to ten 7 because the pool now absorbs that work, 8 the extra-board is not needed. So due to 9 the predictability issues, if this is not 10 negotiated on-property in a way that puts 11 in safety nets, to give people time away 12 from work, we consider them quite risky. 13 We consider them counterintuitive to 14 addressing fatigue, because of the way 15 they make people go to work even more 16 unexpectedly than they do today. 17 With that, if there are no 18 questions for me, Jeremy is going to come 19 back up and close us out. 20 CHAIRPERSON JAFFE: We're in good 21 shape. Thank you. Thank you. 22 MR. PIERCE: Okay. Thank you.</p>
<p style="text-align: right;">Page 1393</p> <p>1 THEREUPON: 2 JEREMY FERGUSON 3 was called for examination, and, having 4 been previously duly sworn, testified as 5 follows: 6 MR. FERGUSON: Real quick, I'm sure 7 we're getting a little tight on time. I 8 just had a couple of points of rebuttal on 9 my own. Just some numbers. From what we 10 heard from the Carriers about how their 11 hiring is going. I wanted to recap from 12 what our research has revealed. 13 Union Pacific Railroad. We heard 14 from Lance Fritz that they've hired two 15 thousand employees this year. We 16 documented it and we sent it to the STB, 17 and in the first six months of this year 18 they netted twenty-six conductors. That's 19 all they've netted and kept at the close 20 out of the end of June. 21 So, as for the BNSF, we heard lower 22 numbers about resignations, but we started</p>	<p style="text-align: right;">Page 1394</p> <p>1 keeping track and we go back and look 2 every month, in their system, not in ours, 3 in their system. Not myself personally, 4 but General Chairman that are on BNSF, 5 they do this research. 6 1,109 resignations as of July 14th. 7 273 retirees. 331 people show as 8 dismissed. We don't know the reason they 9 were dismissed but they have a DIS next to 10 their name, that means they have been 11 dismissed by the Carrier. We have 443 12 people showing us failed recall, meaning 13 they were furloughed, they didn't come 14 back. And that total, like I said runs 15 from January 15th, which is about day one, 16 when we heard the High-Viz was coming. 17 That's why we use that target date. And 18 this is a grand total of 2,156 employees 19 that we are specifically dealing with in 20 train and engine service on the BNSF. 21 So, we also heard a Carrier Member 22 make the comment, we compensate our</p>

<p style="text-align: right;">Page 1395</p> <p>1 employees to be available on holidays. 2 Just so everybody is clear. Only our jobs 3 and some locals district switchers, get 4 holiday pay and are compensated to be 5 available and work on the holidays. Road 6 guys like myself, it's just another day, 7 you could work Christmas day, you could 8 work Thanksgiving, and you got paid the 9 same as if I was working today. There was 10 no additional money, no additional money 11 to be available, and to take a call, it 12 was the same. 13 We also heard that actual data 14 doesn't show a train and engine men 15 working more than 174 days a year. I 16 think that was on Page 11 of their 17 PowerPoint. And with the average of 35 18 hours a week. I do want to say that if 19 you have 174 starch, as a road man, more 20 than likely, you at least have eighty- 21 seven stays, half of that, in the away 22 from home term We heard that that average</p>	<p style="text-align: right;">Page 1396</p> <p>1 was, the average, was 16 hours. So that 2 tells you, it's not just 187 days, like 3 we're working here this week. It's 170 -- 4 oh, excuse me, 174 days, but there is 87 5 downtime in the away from home terminal, 6 which could be minimum of twelve. I've 7 seen personally 48, 52 hours in the hotel. 8 When derailments or adverse weather hits, 9 you could be there for four days. So, God 10 only knows exactly what some of these 11 individuals have. So, the law of 12 averages, I don't want anybody to have a 13 misunderstanding that we don't work that 14 hard. 15 And I do want to clearly state 16 that, I'm sorry to belabor the High-Vis 17 stuff. But we've talked about time off. 18 We've talked about, you know, 19 reasonableness, but what our agreements do 20 say, there is some ambiguity, which is why 21 we have excellent arbitrators from the 22 National Mediation Board. But the</p>
<p style="text-align: right;">Page 1397</p> <p>1 agreements do say the Carriers will have 2 sufficient manpower to allow for 3 reasonable layoff privileges. And the 4 word reasonable is what's going to have to 5 be arbitrary. 6 I do want to quickly quote, which I 7 don't think any -- anybody on the labor 8 side will do very often. But Judge 9 Pittman was the judge that heard the High- 10 Viz case, and he heard our crew Constance 11 case, he's a Judge in the Northern 12 District of Texas. I don't think he has 13 any liking for labor whatsoever, that's 14 why the Carriers usually jump to file down 15 there whenever there's an issue with us, 16 but I've kind of come to like -- like 17 Judge Pittman. Some of his commentary and 18 whatnot in the courtroom is -- can be kind 19 of interesting. I know he's gonna rule 20 against me, so I get over that point when 21 I walk in the door. But my point being, 22 even Judge Pittman, a man that doesn't</p>	<p style="text-align: right;">Page 1398</p> <p>1 like organized labor, and the Union 2 Officers that were in his Court said, you 3 know what, I've read this High-Viz, it's 4 harsh. That's what he put in his 5 decision. It is harsh. So, we are 6 dealing with a harsh, and what I'm gonna 7 say is an unreasonable policy, not only on 8 one railroad, but on a lot of them that 9 have the similar type of situation. 10 So, Dennis did a nice job touching 11 up on the self-supporting pools. I've 12 never worked in one myself. But what 13 scares me the most is the predictability. 14 That's what we strive for when we sit down 15 in negotiations, we want everybody to be 16 able to try to predict when they're going 17 to work, it's not just so they know when 18 they can go to dinner with the wife, or 19 the husband, or when they can go to the 20 kids school function, but it's also to get 21 the rest, so they can be safe. And when 22 you're chasing a train lineup that is not</p>

Page 1399	Page 1400
<p>1 accurate, when you don't know what's going</p> <p>2 happen in front of you, if you're like</p> <p>3 Dennis said, in that pool ten guys out,</p> <p>4 there's nine guys ahead of you,</p> <p>5 everybody's available. But then, there's</p> <p>6 three dead heads that pop up, four guys</p> <p>7 mark off sick because they don't -- they</p> <p>8 don't want to deal with it or whatever.</p> <p>9 And the next thing you know, you're going</p> <p>10 to work at three o'clock in the morning,</p> <p>11 and you just went to bed at midnight,</p> <p>12 because the system kept telling you,</p> <p>13 you're not going to work until four</p> <p>14 o'clock the next afternoon. So, you're</p> <p>15 trying to predict your sleep pattern to be</p> <p>16 in conjunction with that lineup.</p> <p>17 So that's what we strive to do.</p> <p>18 And that's what we wished and wanted to</p> <p>19 negotiate on when we were going into this</p> <p>20 round. We did have in our Section 6</p> <p>21 Notice, asking for a day's pay if we can't</p> <p>22 get an accurate train line and the</p>	<p>1 railroads said, a day's pay, that's</p> <p>2 ridiculous. But the answer was, we're in</p> <p>3 precision scheduled railroading. If you</p> <p>4 run a precision scheduled railroad, why</p> <p>5 can't we have an accurate train line?</p> <p>6 Well, it's just too complicated. We can't</p> <p>7 do it. We just can't do. Well, that's</p> <p>8 not acceptable in today's terms, with all</p> <p>9 the wonderful technology we heard about</p> <p>10 that they're investing in, there's got to</p> <p>11 be a way to get a balance between</p> <p>12 everything we're dealing with here and</p> <p>13 these complicated issues that we brought</p> <p>14 to you.</p> <p>15 So, on that note, I know we got a</p> <p>16 lot more to hear from the other unions.</p> <p>17 And, you know, I just ask that you</p> <p>18 consider everything we put forth. And we</p> <p>19 thank you once again for your time.</p> <p>20 If you got any questions for me,</p> <p>21 otherwise, I'll step down. Thank you.</p> <p>22 CHAIRPERSON JAFFE: We're in good</p>
Page 1401	Page 1402
<p>1 shape at the moment. Thank you again.</p> <p>2 MR. FERGUSON: Thank you.</p> <p>3 Mr. EDELMAN: Good afternoon. Here</p> <p>4 is our plan for the rest of the afternoon.</p> <p>5 We have four more speakers that</p> <p>6 will total about an hour and three</p> <p>7 quarters. We have the BMW, the shop</p> <p>8 crafts, the signalmen, and the firemen</p> <p>9 and oilers. We could go now, to the BMW,</p> <p>10 we anticipate thirty minutes, or if the</p> <p>11 panel prefers, we could take a break now</p> <p>12 and do them all together. Defer to you.</p> <p>13 CHAIRPERSON JAFFE: Give us just</p> <p>14 one moment to talk it over please.</p> <p>15 MR. EDELMAN: Sure.</p> <p>16 (Thereupon, a discussion was had off</p> <p>17 the record.)</p> <p>18 CHAIRPERSON JAFFE: We would be</p> <p>19 happy to take one more witness and then</p> <p>20 take the break.</p> <p>21 MR. EDELMAN: Okay.</p> <p>22 CHAIRPERSON JAFFE: Thank you for</p>	<p>1 asking.</p> <p>2 MR. EDELMAN: Sure. We aim to</p> <p>3 accommodate.</p> <p>4 So, we're going to turn to the</p> <p>5 craft-specific proposals and presentations</p> <p>6 of several non-operating crafts.</p> <p>7 The first thing I want to note is</p> <p>8 that TCU/IAM and ATBA have craft-specific</p> <p>9 proposals, but they are going to rely on</p> <p>10 the written submissions, and they are</p> <p>11 going to forego oral testimony. And so,</p> <p>12 our next presenter will be Peter Kennedy,</p> <p>13 who is Director of Strategic Research and</p> <p>14 Coordination for the Brotherhood of</p> <p>15 Maintenance of Way Employees, Division</p> <p>16 IBT, and we are distributing written</p> <p>17 versions of testimony and some attachments</p> <p>18 from the BMW, the BRS, and NCFO. And the</p> <p>19 -- those attachments are items that are</p> <p>20 already in their submissions, so that --</p> <p>21 it's not any new material.</p> <p>22 CHAIRPERSON JAFFE: May I ask the</p>

<p style="text-align: right;">Page 1403</p> <p>1 reporter to please swear in Mr. Kennedy? 2 THEREUPON: 3 PETER KENNEDY 4 was called for examination, and, after 5 being duly sworn, testified as follows: 6 MR. KENNEDY: Before I get started, 7 I'd like to take a minute to celebrate 8 something small today. Before I bore you 9 with thirty minutes of despair and 10 disputes between the parties. 11 My good friend, Dean DaVita, it's 12 his birthday today and I just want to say 13 happy birthday to him. 14 Now with that being said, my name 15 is Peter Kennedy. I'm the Director of 16 Strategic Coordination and Research for 17 the Brotherhood of Maintenance of Way 18 Employees Division of the International 19 Brotherhood of Teamsters. I'm responsible 20 for assisting and coordinating collective 21 bargaining at the national level as well 22 as on individual Carriers, and I also help</p>	<p style="text-align: right;">Page 1404</p> <p>1 with national plant health and welfare 2 issues. I have approximately nineteen 3 years in the industry. I was hired on as 4 a Trackman -- 5 I apologize This is a very 6 important issue to me. 7 I hired on as a Trackman in 8 September of 2003 with CSX and I worked as 9 a vehicle operator, a machine operator 10 welder helper, welder, welder foreman, 11 track foreman, and bridge and building 12 mechanic. I worked on floating game; I 13 drove over ninety miles one way to hold a 14 job as a -- or as a machine operator. 15 I've done quite a bit of things out there. 16 In fact, I'm so embedded in the railroad, 17 I married my coworkers daughter. So 18 that'll tell you how much I care about the 19 people I work with. 20 March of 2008, I was appointed as a 21 staff assistant in the BMW Arbitration 22 Department. And in June of 2012, I was</p>
<p style="text-align: right;">Page 1405</p> <p>1 appointed a public wallboard advocate, to 2 continue working in that department. Then 3 in June of 2013, I was appointed to the 4 Executive Assistant to the President where 5 I served in that capacity until June of 6 2018, in the capacity I currently serve. 7 This is my second round of national 8 negotiations. 9 So, who are the BMW? Who do we 10 represent? Well, we represent maintenance 11 and way workers. The people that build, 12 inspect, maintain, and repair the railroad 13 tracks, bridges, buildings, and other 14 structures. We have approximately 21,500 15 of them in this round of bargaining. It's 16 an arduous hazardous work in industry, and 17 the work we do is very skill intensive. 18 We typically perform this work in gangs or 19 -- which is just a way of saying teams of 20 people. And there's generally two types 21 of gangs. There's section gangs, or 22 headquarter gangs, as they a referred to,</p>	<p style="text-align: right;">Page 1406</p> <p>1 and then typically traveling gangs are not 2 headquartered gangs. They also have 3 several other monitors, but we won't get 4 into that to try and keep this as simple 5 as possible. 6 But in general, section gangs are 7 smaller gangs that perform routine 8 maintenance work on a designated section 9 of track. And employees that do this type 10 of routine maintenance of way work, they 11 typically commute to and from their home 12 every day. 13 And then with respect to traveling 14 gangs, these are large gangs that are 15 equipped with highly industrialized and 16 mechanized equipment that performs 17 production work. And production work is 18 typically like replacement of continuous 19 welded rail, ties, ballast, track 20 surfacing, those sorts of things. And 21 these employees travel and work across the 22 Carrier seniority districts, regions, or</p>

<p style="text-align: right;">Page 1407</p> <p>1 even their entire systems depending on the 2 type of traveling game you're on. Now, 3 keep in mind, several of these railroads 4 have territories that are extremely 5 massive, okay. 6 When these employees work, they 7 tend to work on what's called an 8 alternative work cycle or compressed work 9 cycle. And they do this because it 10 maximizes productivity for the railroads. 11 They work a little bit longer days 12 followed by a longer rest period. Now in 13 order to employ -- or to perform this 14 work, these employees regularly drive 15 hundreds to thousands of miles roundtrip 16 for each work cycle and it's usually on 17 their rest days in order to report to work 18 on time for these travelling gang 19 positions. 20 Now, prior to PEB 219, section 21 gangs were more prevalent and the work 22 they performed was on much smaller</p>	<p style="text-align: right;">Page 1408</p> <p>1 sections and work territories. But then 2 post PEB 219 seniority districts rapidly 3 expanded, and work territories just grew 4 exponentially. And there was a couple of 5 reasons why. First, and just to 6 reference, in Exhibit 12 of our submission 7 there, the railroads sought make whole 8 changes in the way the industry of 9 maintenance of way work was performed. 10 They sought to combine and realign 11 seniority districts; they sought to use 12 production gangs; they sought to get 13 worksite reporting rather than have their 14 time start from the motel room or the camp 15 car, or when they go out to the job site. 16 They sought to have regional system 17 production gangs to travel across these 18 new consolidated massive territories that 19 they wanted these folks to perform this 20 workout. And of course, they wanted the 21 ability to change their start times. 22 Well, PEB adopted that. And what</p>
<p style="text-align: right;">Page 1409</p> <p>1 that did, in essence, is it turned 2 maintenance of way work upside down on its 3 head in 1991. And it literally just 4 snuffed of like a hundred years of 5 collective bargaining right off the table, 6 throw it right in the rubbish bin. And 7 so, what we have now today, as a byproduct 8 of that -- that change that came about in 9 '91, is that you have travelling gang 10 employees who are traveling clear across 11 the country, again, across these massive 12 territories, thousands of miles, some of 13 these railroads cover twenty-eight states, 14 okay. And they're paying out of their 15 pocket to go to work for the railroad. 16 They're paying for gas, they're paying for 17 their meals, and they're paying for 18 lodging. It's not fully reimbursed. And 19 that's where the issue lies. And it's 20 wide there for about sixty-five years now. 21 So, this all started in about 1957. 22 And that's when maintenance of way served</p>	<p style="text-align: right;">Page 1410</p> <p>1 its first notice on this issue, that I 2 could find, to the Rail Carriers, and 3 interestingly enough, the Rail Carriers 4 didn't want to negotiate over it, and went 5 unaddressed for nearly a decade. And then 6 in a subsequent round of bargaining. The 7 parties were ended up -- they ended up 8 becoming parties to a Board, called Board 9 Number 298. And it's often referred to -- 10 the award that came from that so often 11 referred to as Award 298. 12 Now, what happened at that time, 13 was that there were over two hundred 14 railroads involved, seventy-four of which 15 were Class Is, three Carrier Conference 16 Committees representing those over two 17 hundred railroads, and five rail unions 18 involved in this dispute. And what we're 19 all trying to accomplish at that point in 20 time, with respect to the rail -- the 21 rail unions, was to get a minimum standard 22 of away from home expenses, to cover</p>

<p style="text-align: center;">Page 1411</p> <p>1 working away from home for the railroad 2 when you're sent out on the road. 3 Now, Award 298 rendered a decision 4 that didn't clearly adopt everything rail 5 labor sought, but it also didn't reject or 6 adopt everything that the railroads 7 wanted, which was a total rejection of 8 this proposal. And what they ultimately 9 did, Award 298, was establish a national 10 minimum standard for lodging and meals and 11 certain transportation costs while working 12 at home for the railroad. But the problem 13 was this, there was no escalator 14 established at that point in time. So, in 15 other words, it made the parties bargain 16 over this issue time and time again. 17 Okay. And that's where this history comes 18 in. 19 Since Award 298 was issued, there's 20 been twelve adjustments and six national 21 agreements. And that's been for meals and 22 lodging allowances only. That's Exhibit</p>	<p style="text-align: center;">Page 1412</p> <p>1 10. I provided a supplementary document 2 to that just to illustrate exactly what 3 those percentages were and changes over 4 those twelve -- those twelve changes over 5 time through the six national agreements. 6 But there's all -- there's also been 7 adjustments in some local agreements since 8 1967. But the problem still remains this. 9 It's that all reimbursements or partial 10 reimbursements that do not cover 11 reasonable and actual expenses for these 12 employees who are working away from home. 13 And so, the result is this. As I 14 mentioned earlier, members are paying to 15 work for the railroad because they don't 16 get full reimbursement of expenses. 17 They're driving numerous hours, hundreds 18 of thousands of miles a week or a year, or 19 hundreds to thousands of miles a week in 20 any given week and each work cycle. And 21 they're paying hundreds of thousands of 22 dollars out of their pocket annually to do</p>
<p style="text-align: center;">Page 1413</p> <p>1 this. And they're often living in 2 squalor. 3 We recently conducted a survey to 4 find out exactly how great their 5 circumstances are, how great they're away 6 from home expenses are. 7 I want to read some of these to 8 you. Just to give you a sense of what 9 these folks go through every day, these 10 highly valued employees. 11 I've got a twenty-five year UP 12 member, he's a foreman working seven days 13 on seven, days off. He travels 2,000 14 miles on average per work trip. 15 I'm out of pocket at least \$300 a 16 half for food, travel, and lodging after 17 reimbursement. And it just gets worse. 18 Eat like crap, because I can't afford 19 food. I can't -- I'm sorry, I can't 20 afford to sleep in roach infested hotels 21 to get by. And I hope I don't have to 22 take money away from my family every week.</p>	<p style="text-align: center;">Page 1414</p> <p>1 I should not go -- I should not pay to go 2 to work for a company. 3 I've got another employee. This 4 employee, and I won't read all of it, but 5 the long and short of it is this. 6 He paid \$470 out of his pocket for 7 fuel to travel this long distance and he 8 was reimbursed \$250. He also lays out 9 that, by the way, in 2017, I drove a total 10 of 35,552 miles on my personal vehicle. 11 30,942 of those were exclusively for 12 performing work for Union Pacific 13 Railroad. Only 4,610 of them were for 14 personal use. UP reimbursed me \$3,975. 15 The other 15,042 miles that I worked and 16 use my vehicle for work purposes were not 17 reimbursed. At that time when the tax 18 laws were different. I could write those 19 off. But in 2018, when the tax law 20 changed, I could no longer write those off 21 -- write off those miles. Those costs now 22 come out of my paycheck.</p>

<p style="text-align: right;">Page 1415</p> <p>1 I've got another UP employee. 2 Sixteen years. And I won't get into 3 specifics but the long and short of it is 4 this, another one. By the time he gets 5 all his expenses covered, he's lost \$452 6 and a half. 7 I've got one more, an NS employee, 8 fifteen years a foreman, works four days, 9 on three rest days, he drought -- he 10 drives round trip, on average for each 11 work cycle, nine hundred miles. 12 As high as gas has got and how much 13 food costs, it has made it extremely hard 14 on my family for me to work away from 15 home. We're not reimbursed enough to 16 cover the food and gas and all the wear 17 and tear on our vehicles. It's left many 18 railroaders with no option but to look for 19 another line of work, something closer to 20 home. 21 And I'll read one more to you. 22 BNSF, sixteen-year foreman, and one</p>	<p style="text-align: right;">Page 1416</p> <p>1 of those highly praised employees who is 2 just loved by the BNS family -- the BNSF 3 family. We stay in the cheapest hotels in 4 every city, and we are dealing with 5 bedbugs, and drugs being used in our 6 hotels. Vandalism to our vehicles. BNSF 7 does not reimburse us if our vehicles get 8 vandalized, our property gets stolen, or 9 if we have to throw away our clothes 10 because of the bedbugs, so we don't take 11 them home. As for meal expenses, I would 12 challenge anyone to try and have three 13 decent and halfway healthy meals on \$30 a 14 day. In most towns I have worked, it's 15 hard to buy one meal for under \$25. And 16 that leaves you with \$5 for the rest of 17 the day without having to spend your own 18 money, just so you can eat while you're 19 away from home. Exempt Officers within BN 20 are given travel cards and allowed to 21 fully charge three meals a day with no 22 spending limit, and most are spending over</p>
<p style="text-align: right;">Page 1417</p> <p>1 \$50 a meal, yet they expect the workers on 2 the ground doing all the manual labor to 3 survive off \$30. 4 Well, let me tell you something, I 5 took this brother up on his challenge 6 yesterday. Starbucks coffee and a 7 breakfast wrap. A cheeseburger and a 8 chocolate shake. \$36, I got the receipts 9 right here, you can read them. I 10 guarantee nobody on this side of this room 11 ate that cheap yesterday. 12 Give me a second to get my 13 composure here again. 14 What all these statements 15 illustrate is this maintenance of way 16 workers that work away from home are 17 paying money out of their pocket to work 18 for the railroad, because they're not 19 getting their expenses fully reimbursed. 20 And it's unsustainable, and it's under 21 intolerable work conditions. But we can 22 correct this issue, this Board has the</p>	<p style="text-align: right;">Page 1418</p> <p>1 authority to correct this issue. And the 2 way you do that, is you establish a new 3 minimum standard for travel allowances and 4 away from home expenses with an escalator 5 for maintenance of way workers. You base 6 it off a rational, reasonable, modern 7 proposal. 8 And how do we do that? 9 Well, BMWes proposal is pretty 10 simple. All travel allowances would be 11 amended, Article 14 Travel Allowances, so 12 that all miles are paid at the existing or 13 effective IRS rate for each year. The 14 current rate is \$0.625 cents per mile. 15 All meals would be paid at this 16 special -- at the effective special 17 transportation industry meals and 18 incidental expense allowance. The current 19 rate for that is \$69 per workday, or 20 \$51.75 on any travel day where you don't 21 work. 22 Lodging would be based upon the</p>

<p style="text-align: right;">Page 1419</p> <p>1 CONUS rate of \$96 per night, for each 2 night single occupancy lodging is not 3 provided. In other words, the railroads 4 would have the option to either pay this 5 or provide single occupancy lodging. Just 6 to be very clear, with respect to the 7 lodging rate, we're not asking for the 8 non-standard CONUS rates that are -- that 9 are applied to 319 non-standard areas, 10 we're asking simply for the standard CONUS 11 rate of \$96 per night.</p> <p>12 Now, we believe this is a 13 rationally based proposal, and a 14 rationally based minimum, because it 15 approximates the out-of-pocket costs for 16 our members that they're actually 17 incurring every day. The IRS mileage 18 rate, again, it's based on an annual study 19 of fixed variables and costs to operate an 20 automobile.</p> <p>21 The CONUS lodging rate is used for 22 federal government employees who travel</p>	<p style="text-align: right;">Page 1420</p> <p>1 and work in the Continental US. And of 2 course, the GSA rate is based on a 3 comprehensive study of actual lodging cost 4 to obtain a single room. And it's based 5 on a study of average daily rate of local 6 lodging properties.</p> <p>7 And then lastly, and the best part 8 about this is they're adjusted routinely 9 by not us, the parties that have been in 10 dispute for sixty-five years, but by the 11 GSA and the IRS.</p> <p>12 So, with that being said, the 13 reasons we believe you should adopt this 14 proposal, well, as I said, establish a new 15 minimum standard. Why? It's a changed 16 industry, from 1967, so you have to change 17 the standard for 2022 and going forward. 18 And there was considerations that were 19 made by the Board in 298 and 1967, that I 20 believe are important and pertinent here.</p> <p>21 First, when the Board made its 22 decision, it looked at the economic</p>
<p style="text-align: right;">Page 1421</p> <p>1 performance of the railroads and it 2 recognized this. 1965 and 1966 were a 3 precarious time for the railroads 4 financially. '67, they started 5 rebounding. It was noted by the Board in 6 the -- in their reasoning of the award, 7 but they said this about 1967. They're 8 still not good. So that was one of the 9 considerations.</p> <p>10 Another consideration was this, the 11 multiplicity and complexity of issues. If 12 you read through the transcripts of Award 13 298, one of my favorite parts was when 14 Chuck Hopkins made the comment that I 15 couldn't begin to tell you how complex 16 this is, because I don't even understand 17 it. So, I'll save you the time. That 18 that was literally his words. Well, 19 besides having the multiplicity of issues 20 and the complexity of it, and not 21 understanding how it works on each 22 property, again, that --that's also tied</p>	<p style="text-align: right;">Page 1422</p> <p>1 into this. There were two under 2 railroads, again, seventy-four Class Is, 3 three Carrier Conference Committees 4 representing them, and five rail unions 5 involved, all with their collective 6 bargaining agreements here.</p> <p>7 Of course, at that time, one other 8 aspect, which I touched upon before was 9 that traveling was not as prevalent then. 10 In other words, there were more railroads, 11 there were smaller territories, more 12 section gangs, and less traveling gangs. 13 Camp cars were provided, commercial 14 lodging was not as developed because of 15 that, and of course, the railroads used 16 passenger transportation to get their 17 workers back and forth in the camp cars. 18 There was also a lack of widespread 19 practice at that point in time for 20 employers to provide travel time and 21 mileage.</p> <p>22 Now, what should the Board consider</p>

<p style="text-align: right;">Page 1423</p> <p>1 in 2022? Well, we know that, with respect 2 to financial performance, the railroads 3 are coming off of a decade plus of record 4 profitability. So, they're not still not 5 good. They're really, really great. 6 There's not a multiplicity of 7 issues. There's six Class Is involved in 8 this round of bargaining, one Carrier 9 Conference Committee, and one union, BMWWE, 10 that's it. Yet, the territories now, on 11 these railroads, are much larger, they 12 cover hundreds of thousands of miles. 13 Exhibit 2 up there, that you have, it's 14 within the submission as well. It shows 15 you the map of these territories. There's 16 employees that leave Illinois and go to 17 Las Vegas. Every work cycle. There's 18 employees that go from Kalamazoo, 19 Michigan, all the way down to Tampa, 20 Florida. Every work cycle. Living and 21 working away from home, because that's 22 where their job takes them, that far away.</p>	<p style="text-align: right;">Page 1424</p> <p>1 And the farther you travel, the more it 2 costs to get there. 3 Again, who's doing the work, I said 4 less section gangs, more traveling gangs. 5 And, of course, hotels are used more and 6 more by the railroads now than they were 7 back then compared to the camp cars. 8 Though, I will say this, there was one -- 9 one railroad that still uses camp cars, 10 they've actually migrated away from it for 11 the last two years, since the COVID-19 12 pandemic hit, before PEB 243. They got up 13 here and paraded about how great these 14 campers were, how much they promote 15 teamwork, and how it's part of the company 16 culture. And I just have to laugh because 17 when the pandemic hit, the culture change. 18 And guess what now they're worried that if 19 they get rid of or they go back to the 20 camp cars, it's going to ruin employee 21 morale. Guess what, it will. I can tell 22 you it will, because I've had all the</p>
<p style="text-align: right;">Page 1425</p> <p>1 calls the last month about it. 2 Aside from that, this issue is also 3 about fairness, where the only crafts left 4 under the Award 298 paradigm, or the 5 tapestry, as you may call it. And while 6 other crafts have enjoyed single occupancy 7 lodging, and reimbursement for reasonable 8 and actual expenses. We want a modern 9 rationally based minimum that's reasonable 10 and approximates actual meals and lodging 11 and get reimbursed at the IRS rate. 12 That's all we're asking. That common 13 practice. That's it. And which, by the 14 way, for some employees within the 15 maintenance of way department, depending 16 on your assignment, you already get that. 17 And there's also other employees in this 18 industry that get that too. So, it's not 19 like we're asking for anything outstanding 20 or amazing. 21 There's one other reason, and it's 22 the best reason, I believe, to adopt this.</p>	<p style="text-align: right;">Page 1426</p> <p>1 And it's this is the paraphrase what was 2 wrote from yesterday. We want to avoid 3 further disputes and litigation, and we 4 want finality on this issue. This has 5 been around since at least 1957. We've 6 been fighting over this for sixty-five 7 years. It's time to end the contentious 8 disputes. It's been subject to numerous 9 arbitrations, litigations and even 10 strikes. Okay. That's how important this 11 issue is to us. 12 We believe our proposals rationally 13 based and automatically adjust itself 14 outside of bargaining, again, the GSA and 15 IRS will adjust us. 16 Now, there's a couple other things 17 I want to address here and rebuttal. 18 The first, the Carrier's made 19 comments to the effect of there was no 20 incentive bargaining. We spent fifteen 21 minutes on this issue, we changed our 22 proposal, and we gave them no specific</p>

<p style="text-align: right;">Page 1427</p> <p>1 language. Okay, well, first, the 2 railroads could not get past their 3 proposed health and welfare changes. By 4 the way, not just for this round, but in 5 the round that led up to the 2007 6 agreement, and the round that led up to 7 PEB 243, and the round that was in 2014, 8 leading to Award 608, I believe, I can't 9 remember right offhand right now, and in 10 2018, when BMW settled that way through 11 mandatory arbitration, and in this round 12 as well. They have hijacked this issue 13 every time. So, there was no substantive 14 bargaining over this issue every time they 15 tanked it over health and welfare. Okay. 16 But aside from that, we couldn't 17 even get a copy a comprehensive response 18 from the railroads on our proposals. We 19 gave them proposals, and all we got back 20 were these general ideas and PowerPoints. 21 Even then, our proposals originally 22 included numerous work rules with</p>	<p style="text-align: right;">Page 1428</p> <p>1 compensation and changes, CDL skill 2 differentials, scope of improvements, you 3 name it. And just like other folks in -- 4 on that side of the table said, well, we 5 withdrew several of our proposals before 6 this PEB, we did the same thing. We 7 withdrew several of our proposals, and we 8 amended it, and focus it solely on the 9 most important issue at this moment. And 10 that's away from home work rules and 11 travel allowances. 12 The last point I would make about 13 this is this isn't a new issue. Again, it 14 dates back all the way to 1957. And also, 15 this proposal is consistent with prior 16 rounds in negotiations, very similar to 17 our proposal before PEB 243 with some 18 minor distinctions. 19 In that regard, they made the 20 comment that P -- passports have rejected 21 our proposals referencing PEB 243. Now 22 PEB 243 determined that there was a</p>
<p style="text-align: right;">Page 1429</p> <p>1 pattern, and we agreed that that the PEB 2 did determine that. We don't agree that 3 there was a pattern, but even so, 243 4 recommended BMW withdraw proposals except 5 for engage -- in further negotiations on a 6 national or system wide basis over these 7 very issues, as agreeable between the 8 parties. In other words, it didn't 9 necessarily say don't, it just said, go 10 negotiate some more on this issue? Well, 11 we did that. And guess what happened? We 12 did -- we went at that on a Carrier 13 specific basis. But all the results were 14 still in partial reimbursements. And 15 that's why we're before you hear again, 16 today. We didn't get what we've been 17 seeking for sixty-five years now. 18 So, even then, even if prior PEBs 19 have rejected our proposal, the bargain 20 history shows, before PEB, that there have 21 been twelve adjustments to Award 298 22 through six national agreements. And</p>	<p style="text-align: right;">Page 1430</p> <p>1 before PEB 229, we even got the 2 establishment of the travel allowances in 3 1996. And even before that Board, 4 ironically, the railroads recommended 5 adjustments based on the history of prior 6 adjustments in prior rounds in 7 negotiations. 8 My point here is this, the 9 adjustments weren't adequate. PEB 243 is 10 not controlling before PEB 250. So, we 11 again ask establish a new national minimum 12 standard. 13 They also took the position that 14 proposed changes are not incremental, and 15 the changes would impose excessive costs 16 for no quid pro quo. So, there's no way 17 to verify their calculations, they 18 referenced \$83 million dollars, there's no 19 way to verify their calculations without 20 sitting down and sorting through their 21 methodologies here. But even then, the 22 bigger issue is this. The Carriers are</p>

<p style="text-align: right;">Page 1431</p> <p>1 conflating reimbursement of expenditures 2 for compensation. We're not asking for a 3 windfall. This has not compensation and 4 should not be treated that way, it should 5 not be considered that. This is 6 reimbursement for expenditures to work 7 away from home, and it should not be the 8 subject of quid pro quo bargaining. 9 The only other point I would like 10 to make on this, about the costs, is that 11 the costs already exist. This is the cost 12 of the railroads doing business, the 13 railroad chose they have this operational 14 model. And traveling employees are their 15 most productive employees. They're, -- 16 they're one of the most special groups of 17 employees out there, to quote somebody in 18 this room yesterday. So, if that's how 19 they really feel, and they have this 20 business model, then the railroad should 21 bear the full responsibility to pay for 22 this operational model, not shift the</p>	<p style="text-align: right;">Page 1432</p> <p>1 costs or part of the costs onto the 2 employees backs. And that's what our 3 proposal does. It shifts the cost from 4 maintenance of way workers back on to the 5 rightful owner, which is the railroads. 6 Nothing more, nothing less. 7 The last thing I want to address is 8 this. The railroad said that the local 9 agreements are adequate and working away 10 from home is popular because travel 11 positions are filled by senior employees. 12 Well, first of all, the local agreements 13 are not adequate, and I'll tell you why. 14 Because we're standing before you here 15 today to try and address it again over a 16 65-year history. And PEB 243 had us go 17 back; we took a stab at it; we still 18 didn't get what we wanted and we're back 19 here, again, today. If they were 20 adequate, I wouldn't be standing here 21 talking to you about this. 22 But even then, there's this</p>
<p style="text-align: right;">Page 1433</p> <p>1 implication that we should bargain locally 2 on this again. And here's the reason why 3 you should it, they sued to have us 4 bargained nationally on this issue and 5 '94. And in this round when we served 6 notices on them, on Carrier-specific 7 properties, they sued us again to bargain 8 nationally again. 9 In other words, they're trying to 10 get you to kick this back locally, because 11 they want it locally. But we tried to do 12 it locally originally, and they compelled 13 us to be here. That's not the way this 14 relationship works. They don't always get 15 to get what they want. They can't always 16 force maintenance of way workers to be 17 treated less than other people, other 18 workers out there, because they can decide 19 what venue and they can whipsaw us and 20 beat us down. 21 Even then, the railroads didn't 22 provide any data to substantiate their</p>	<p style="text-align: right;">Page 1434</p> <p>1 position, that senior maintenance of way 2 employees are -- are always holding these 3 travel gang positions. And I would submit 4 this: they work these positions because 5 their options are limited. Within our 6 submission, we put there -- that there was 7 5,100 maintenance of way head cuts from 8 2016 to now, March of this year. 5,100 9 positions. But even aside from all that, 10 that their options are limited. The 11 bigger issue is this. It's a distraction. 12 And here's why. 13 It's because current travel 14 allowances and away from home expenses do 15 not reasonably cover actual out of pocket 16 costs for maintenance of way workers who 17 work away from home, regardless of their 18 seniority. These are not coveted 19 positions. 20 I want to leave you with just a few 21 more statements before I close out. 22 I want highlight how great it is to</p>

<p style="text-align: right;">Page 1435</p> <p>1 be part of the UP family. 25-year 2 employee, a foreman. Seven years -- or 3 seven workdays on seven rest days off. I 4 apologize. I lost my -- my face there. 5 A CSX employee. Ten years. Four 6 days on, he's a machine operator. 7 He says, you should probably ask 8 men in the field before making this survey 9 and the company should be giving us food 10 per diem closer to the federal rates. 11 Most places we traveled, \$69 on average, 12 not the \$28 or so a day we get, which now 13 we can't write off the difference on 14 taxes. And most importantly, the lost 15 time from my family, seventeen years. 16 There's seventeen hours of drive time, 17 nonstop twice a week. Thirty-four to 18 forty hours round trip to get to work and 19 back, a loss of two days unpaid. 20 Over ten years I've been at this 21 company. I've missed all types of 22 holidays, family events, birthday, the</p>	<p style="text-align: right;">Page 1436</p> <p>1 birth of my second child because men don't 2 get maternity leave, deaths of close 3 family members. We only get time off for 4 spouse, parents, and children. I was 5 threatened for using my vacation for my 6 grandmother's death. Forced overtime. 7 Loss of my children growing up. Extreme 8 work environment in rain, snow, and heat. 9 Wondering why so many men quit? The 10 company tries to fire you if you say 11 anything, no sick days, takes nine years 12 to get three weeks' vacation and seventeen 13 for four weeks. Better off working in a 14 bank sitting on our asses moving papers. 15 Pardon my language. But that's an 16 exact quote. And he's got a lot more 17 explicit language in there too. 18 I've got another one. Ten-year 19 employee off UP. This guy goes into how 20 much he spent in gas in a single work 21 cycle and how much he ended up paying out. 22 But this is what I really want to touch on</p>
<p style="text-align: right;">Page 1437</p> <p>1 here. 2 The last several months since gas 3 prices have skyrocketed, I'm skipping 4 meals because food prices are so high. My 5 coworkers and I are also sleeping three to 6 four of us in a single rooms so we can 7 barely break even on our room allowance. 8 There's a gang in Oregon right now, 9 that is working in the area where the 10 motel rooms are over \$1,200 for the week. 11 More than the reimbursement allowance. 12 So, with COVID-19 we are taking the risk 13 that our roommate will not contract the 14 virus during the workweek, exposing the 15 others. There are many guys that are just 16 sleeping in their car every night, so they 17 don't lose more money or have to worry 18 about catching COVID-19. 19 This is insane. 20 We shouldn't have to choose if we 21 sleep in our cars or two to four of us to 22 a motel room so we can try to break even.</p>	<p style="text-align: right;">Page 1438</p> <p>1 I guess UP wants to raise our health 2 insurance benefits but I cannot afford it. 3 My daughter had to go through an 4 emergency surgery recently and it cost me 5 over \$2,000 out of my pocket. A lot of 6 guys, including myself, have stayed out 7 here in these crappy conditions just to be 8 able to pay for such an event. We are 9 proud of the work we do and are grateful 10 for the benefits we do have. But if 11 things keep getting worse, we will not be 12 staying. There are no more corners left 13 in my personal budget that I can cut, 14 every spare penny is saved to live through 15 the next furlough. 16 I need increases to my wages; I 17 need mileage and my motel rooms covered in 18 full. My coworkers and I cannot keep 19 sleeping with three or four coworkers in a 20 single room, hoping none of us contract 21 COVID-19. I need help paying inflation 22 costs for our meals and gas. We need real</p>

<p style="text-align: right;">Page 1439</p> <p>1 common-sense solutions in an ever-evolving 2 workplace environment. 3 And I've got one more that I want 4 to read very quickly. 5 This is another nineteen-year 6 employee off UP. Last sight -- or he said 7 he paid \$130 out of his own pocket for 8 fuel for each worksite. In other words, 9 what he was reimbursed and what he ended 10 up paying. 11 Last cycle. I stayed in two hotels 12 first at the Sunrise Inn and then in the 13 Knights Inn. I had to leave the Sunrise 14 Inn after the first night because I got 15 beat up by bedbugs. They still charge me 16 \$60 for my room that night. I then stayed 17 at the Knights Inn for seven nights for 18 about \$481. This was a nicer place to 19 stay because there are bug beds -- no 20 bedbugs but it was not a Holiday Inn. The 21 only reason why the room cost this low 22 this time was because a coworker and I</p>	<p style="text-align: right;">Page 1440</p> <p>1 shared a room and split the costs. 2 I came out \$7 ahead each night on 3 my per diem by staying in a hotel room 4 with bedbugs or a coworker. Otherwise, I 5 would have lost money every night staying 6 in lodging at a decent hotel. But a bunch 7 of my coworkers are sleeping in their cars 8 because the motel costs are more than a 9 lodging allowance. And one of my 10 coworkers can converted his personal 11 vehicle to a camper van so he could try to 12 get ahead of the rising costs of being on 13 the road. He told me he showers wherever 14 he can, but he usually showers at a 24- 15 hour fitness center. We should not have 16 to sleep with bedbugs, or two to a room to 17 keep our lodging expenses manageable. 18 No one should have to sleep in 19 their car. These are supposed to be the 20 best damn jobs in the country, and we have 21 people sleeping in the car. 22 In their cars. Really? The best</p>
<p style="text-align: right;">Page 1441</p> <p>1 job, huh? 2 We need relief now. We need 3 increases to our travel allowances and 4 away from home expenses to cover actual 5 out of pocket expenses to work for the 6 railroads. 7 In closing, I just want to say a 8 few things. Travel allowances and away 9 from home expenses have been the subject 10 of hot disputes between these parties for 11 sixty-five years, arbitration litigations, 12 PEBs, PEBs before two of these very 13 members right here. 14 Our members statements verify that 15 they're inadequate. They're all partial 16 reimbursements and they it need addressed 17 immediately. They are struggling. 18 They're tired of the thank yous, and 19 attaboys and attagirls from Lance Fritz, 20 Jim Foote, and even Brendan Branon. These 21 thank yous do not reimburse the cost of 22 gas, and motel rooms, and vehicle wear and</p>	<p style="text-align: right;">Page 1442</p> <p>1 tear, and meals for these folks who work 2 away from home and derive so much profit 3 for these employers. But we believe our 4 proposal does. It at least it 5 approximates it. And it's very simple. 6 And it's a great minimum standard for us 7 to get at. 8 We respectfully ask that this Board 9 end sixty-five years of disputes over this 10 issue by recommending our proposal. 11 I thank you for your time today and 12 I'm happy to answer any questions. 13 And I promise I'll try not to cry. 14 CHAIRMAN JAFFE: Thank you, Mr. 15 Kennedy. 16 And I'll pose was just a couple of 17 clarifications , if I may. 18 MR. KENNEDY: Yes. 19 CHAIRMAN JAFFE: You described the 20 effort to go ahead, and bargain post the 21 decision in 243. 22 MR. KENNEDY: Correct.</p>

<p>Page 1443</p> <p>1 CHAIRMAN JAFFE: And I just wanted 2 to understand, were there any agreements 3 that were ultimately reached post 243 with 4 respect to these areas? Or did all of 5 them result in a failure to have reached 6 agreement? Let me start with that. 7 MR. KENNEDY: So, what happened is 8 we were forced to engage in quid pro quo 9 bargaining -- 10 CHAIRMAN JAFFE: Right. 11 MR. KENNEDY: -- because that was 12 the railroads position on the issue, which 13 again, we don't believe it should be the 14 subject of a quid pro quo bargaining. 15 There were agreements reached on 16 CSX, Norfolk Southern, Union Pacific, 17 BNSF, and I believe KCS railroad as well. 18 The problem is, they were all partial 19 reimbursements at the end of the day, and 20 all of them resulted in different results. 21 In other words, for example, Union 22 Pacific, the 1996 Article 14 Travel</p>	<p>Page 1444</p> <p>1 Allowance. It's been \$25 after a hundred 2 miles since that point in time. We got no 3 progress on that in -- after PEB 243 in 4 local negotiations. Some of the 5 properties that we negotiated with, we did 6 get some improvements, but we had to give 7 up work roles and we had to give up work 8 rights. 9 CHAIRMAN JAFFE: Got it. Two more 10 brief ones. 11 MR. KENNEDY: Okay. 12 CHAIRMAN JAFFE: The number of 13 people who are in the traveling gangs, 14 roughly, approximately how much of the 15 overall BMW unit are we talking about? 16 MR. KENNEDY: We estimate 17 approximately fifty percent of our 18 members, 19 CHAIRMAN JAFFE: Okay. 20 And we're gonna leave it at that, 21 Mr. Kennedy. Thanks. I'm gonna leave it 22 at that. But thank you very much.</p>
<p>Page 1445</p> <p>1 MR. KENNEDY: Thank you. 2 CHAIRMAN JAFFE: My Board members 3 good, I assume. Great. Thank you, sir. 4 MR. KENNEDY: Thank you. 5 MR. EDELMAN: So, with that, I 6 believe we're scheduled for a break. 7 We'll start with shop crafts presenter. 8 I do want to -- one thing, Peter 9 referred to Chuck Hopkins. Sometimes, in 10 this world, we all think everybody knows 11 everybody. We're talking to your Chuck 12 Hopkins worked for the NLRC for a very 13 long time, around the time of my mentor 14 Bill Mahoney, anyway. So that when he 15 said Chuck often said it was very 16 complicated, he was a representative. 17 CHAIRMAN JAFFE: Fair enough. 18 Thank you off the record, please. 19 See everybody in about 15 minutes 20 (Thereupon, a brief recess was 21 taken.) 22 CHAIRMAN JAFFE: Are we ready?</p>	<p>Page 1446</p> <p>1 Great. 2 At convenience, Mr. Edelman. 3 MR. EDELMAN: Okay, IBW Counsel 4 Lucas already will introduce our next 5 presenter. 6 MR. AUBREY: Good afternoon. As 7 Rich said, my name is Lucas Aubrey. I'm 8 an attorney at Sherman Dunn here in 9 Washington DC and I represent the 10 International Brotherhood of Electrical 11 Workers. It's my privilege to introduce 12 to you the next speaker, Al Russo. Al 13 will tell you more about himself in a 14 moment. What I'll say by way of 15 introduction is that Al is a passionate 16 labor leader who advocates on behalf of 17 his members and for all -- all of rail 18 labor in every aspect of his life. He's 19 the director of the IBEW Rail Department 20 and he brings that passion to all that he 21 does there, and I know he's going to bring 22 that passion as other speakers today have</p>

<p style="text-align: right;">Page 1447</p> <p>1 brought to his testimony here on behalf of 2 the united seven shop craft unions in 3 support of their proposals out. 4 Al? 5 CHAIRMAN JAFFE: Thank you. 6 MR. RUSSO: Thank you, Mr. 7 Chairman. 8 CHAIRMAN JAFFE: Before we get 9 started, may we swear in Mr. Russo, 10 please. 11 THEREUPON: 12 AL RUSSO 13 was called for examination, and, after 14 being duly sworn, testified as follows: 15 MR. RUSSO: Thank you, Mr. 16 Chairman, Board Members. Good afternoon. 17 My name is Al Russo. I am the proud 18 director of the International Brotherhood 19 of Electrical Workers Railroad Department. 20 The IBEW represents 775,000 active members 21 and retirees, including 4,185 skilled 22 electrical workers employed by the</p>	<p style="text-align: right;">Page 1448</p> <p>1 national freight rail Carriers. 2 I am a second-generation 3 railroader. My father started work with 4 the New York, New Haven, and Hartford 5 Railroad in 1957. My father worked hard 6 for the railroads for bankruptcies and 7 reorganizations until his retirement. 8 After forty-two years of service. I 9 followed in my father's footsteps starting 10 with Amtrak in 1980. I moved to Metro- 11 North in 1999, where I worked as an 12 electrician. While at Metro-North, I 13 serve that my -- as my local unions 14 register, as my local union's Local 15 Chairman from January 2007 to 2008. And 16 as my local union president, and business 17 manager from 2008 to 2013. In 2013, I was 18 asked to serve as the international 19 representative assigned to the IBEW 20 Railroad Department. In 2020, IBEW 21 President Lonnie Stephenson appointed me 22 the Railroad Department Director.</p>
<p style="text-align: right;">Page 1449</p> <p>1 I've been involved in this round of 2 negotiations since they began. The IBEW 3 is one of seven craft unions I'm 4 testifying on behalf of today. The other 5 unions are the Brotherhood of Railway 6 Carmen, the International Association of 7 Machinists and Aerospace Workers, the 8 International Brotherhood of Boilermakers 9 and Blacksmiths, the National Conference 10 of Firemen and Oilers, the Sheetmetal Air 11 Rail and Transportation Union, Mechanical 12 Department, the Transport Workers Union of 13 America. Generally speaking, shop craft 14 employees repair, maintain, and inspect 15 the Carrier's equipment, including 16 locomotives, freight cars, shop and field 17 equipment, and facilities. Our members 18 perform their duties in locomotive 19 maintenance shops and in the field. 20 Today, I'm testifying in support of 21 two proposals jointly submitted by the 22 seven craft unions.</p>	<p style="text-align: right;">Page 1450</p> <p>1 First, the shop craft unions urge 2 the Board to recommend a settlement that 3 provides shop craft workers with a weekend 4 and shift differential of ten percent 5 above normal rates. Second, the shop 6 craft unions are requesting a paid meal 7 period and a \$25 meal allowance for 8 workers required to work more than three 9 hours beyond their bulletin hours. As I 10 will explain, and as we have explained in 11 our written submission, these benefits are 12 just justified by the working conditions 13 for shop craft workers caused by the 14 Carrier's choice to drastically cut the 15 shop craft workforce. In the past several 16 decades, a number of shop craft employees 17 has declined significantly due to 18 furloughs, layoffs, and a lack of hiring. 19 From 1990 to 2019, the total number of 20 Carrier's shop craft work, workers in the 21 United States decreased from 37,222 to 22 23,289.</p>

<p style="text-align: center;">Page 1451</p> <p>1 Since 2019, the number has 2 decreased further around 19,000 shop craft 3 workers. This massive decline has 4 included large decreases within -- within 5 each craft, which have escalated since the 6 implementation of PSR. As an example, my 7 brothers and sisters in the carman craft 8 have seen huge job losses. In 2020 and 9 '21, there was a net loss of 576 carmen on 10 the BNSF from furloughs, terminations, and 11 retirements. This resulted in a twenty- 12 four percent decrease in the overall 13 carmen workforce. 14 Similarly, the number of IBEW- 15 represented employees working for Norfolk 16 Southern has declined by more than half 17 since 2019. From 1,312 and 2019 to 979 in 18 2020, and then only to 665 and 2022. The 19 NCFO and SMART Mechanical have experienced 20 similar large furloughs. The NCFO has 21 seen 248 workers furloughed at Union 22 Pacific, 160 employees on BNSF, twenty-one</p>	<p style="text-align: center;">Page 1452</p> <p>1 on national -- Canadian National, and 2 fifteen on Kansas City Southern. Since 3 2016, the SMART Mechanical representative 4 workers have declined at CSX from 270 to 5 102, Canadian National from eighteen to 6 twelve, Kansas City Southern from four to 7 one, Norfolk Southern from 251 to 76, and 8 at Union Pacific from 247 to 72. 9 My union has seen similar 10 furloughs. At Union Pacific seventy-six 11 IBEW represented workers who were 12 furloughed in 2018. There was a leap from 13 336 furloughs in 2019. The large number 14 of furloughs at Union Pacific continued in 15 2020, with 255 IBEW workers being 16 furloughed. The nearly fifty percent 17 decrease -- decrease in shop craft 18 employees since 1990 has severely impacted 19 workers, quality of life because the 20 Carriers are attempting to squeeze a 21 similar amount of work out of a massively 22 reduced workforce. Furloughs and other</p>
<p style="text-align: center;">Page 1453</p> <p>1 workforce losses mean that Carriers are 2 more likely to require shop craft 3 employees to work weekends and unfavorable 4 shifts, regardless of their seniority. 5 With fewer employees overall, the workers 6 who remain are left to pick up the slack 7 and to work more days and more hours. As 8 Eugene Martinez, an NCL represented 9 mechanical service operator at Union 10 Pacific explains, and I quote, we have to 11 work double duty sometimes triple. My 12 local -- at my local we have four guys 13 trying to do the job of eight guys. 14 Because of the Carriers have insufficient 15 workers the number of overtime shifts each 16 employee works has increased 17 significantly. 18 In 2019, the total percentage of 19 BRC represented carmen and the BNSF 20 working overtime was 7.63%. This 21 percentage increased to 11.37% in 2001, 22 and again to 15.19% in 2022. Over the</p>	<p style="text-align: center;">Page 1454</p> <p>1 recent span of four months, there was one 2 period where 60.7% of BRC-represented CSX 3 car operators were required to work 4 overtime shifts in a single week. The 5 number of overtime hours has also 6 increased. For example, carmen on the 7 BNSF have worked significantly more 8 overtime. In Lincoln, Nebraska carmen 9 went from a total of 740 hours of overtime 10 in 2020 to 1,840 overtime hours in 2021. 11 In the first six months of '22, they have 12 already exceeded that number with 1,844 13 overtime hours. Carmen in Galesburg, 14 Illinois has seen overtime calls increase 15 from 257 calls in 2020 to 1,478 calls in 16 the first six months of 2022. Similarly, 17 in Vancouver, Washington, overtime costs 18 for carmen have increased from 812 in 2019 19 to 1,967 in the first six months of 2022. 20 Because of the increased demand for 21 overtime and the decrease in the size of 22 the workforce, Carriers have forced</p>

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<p>1 individual shop craft employees to work 2 more weekends and otherwise unfavorable 3 shifts. 4 Douglas Bailey, an NCFO laborer on 5 the BNSF has explained, NCO laborers are 6 working more than ever. Members are 7 volunteering for overtime and being away 8 from their families. And when that's not 9 enough, you're being forced to work on 10 their rest days. Mr. Bailey attributes 11 the increase in overtime to the fact that 12 BNSF has lost workers due to termination, 13 resigning, quitting for better 14 opportunities that pay a lot better than 15 the railroads, and that they have a better 16 quality of life. 17 Paul Collier, another NCFO laborer 18 on the Union Pacific Railroad explains 19 that forced overtime has increased because 20 Carriers have switched from utilizing 21 overtime to cover vacancies caused by 22 vacations and medical leaves, to an open</p>	<p>1 format just trying to get as many people 2 as possible to cover the excess work that 3 we don't have enough people to fill. 4 My union members at the 5 (unintelligible) locomotive shop in 6 Norfolk Southern are also routinely forced 7 to work overtime. This year alone out of 8 nine hundred overtime shifts, Norfolk 9 Southern has forced sixty-five of those 10 shifts. Sixty-five. In total, in this 11 single facility, Norfolk Southern has 12 forced IBEW representative employees to 13 work approximately 268 hours of overtime 14 in the middle of July. 15 Shop craft workers are also being 16 forced to work more weekends. In 2022, 17 Nashville, out of fifty-eight carmen -- 18 CSX carmen only thirteen workers have both 19 Saturday and Sunday off. In that 20 location, sixteen carmen have worked at 21 least one day of the weekend, and twenty- 22 nine workers have had no weekends off. At</p>
Page 1457	Page 1458
<p>1 the Chicago Calumet location in Norfolk 2 Southern, 95 percent of the carmen work 3 one or both days of the week -- weekend, 4 including the second shift. In Decatur, 5 eighty-four of the Norfolk Southern carmen 6 work -- I'm sorry, eighty-four percent of 7 the Norfolk carmen work at least one day 8 of the weekend, or, if not, both, and only 9 two carmen at this location have Saturday 10 and Sunday off. 11 Due to the overall decrease of 12 workers shop craft employees are also more 13 often required to work beyond their 14 bulletin shift. In one particular 15 egregious example, CSX employee 16 represented by the BRC in Nashville, 17 Tennessee was required to work an 18 additional eight hours beyond his normal 19 work shift three days in a row, and four 20 days in a six-day period. In unsafe 21 condition reports submitted to CSX, if the 22 employee explained that being forced to</p>	<p>1 work an additional eight-hour shift three 2 times in a row, did not provide them the 3 adequate rest time prior to the start of 4 each day's regularly scheduled shift. The 5 CSX employee attributed the Carriers' need 6 to schedule him for extended shift three 7 days in a row due to the lack of proper 8 manpower. 9 Union Pacific has also resorted to 10 requiring workers to stay on their 11 bulletin hours to complete the necessary 12 tasks. As NCO member Paul Collier 13 explains, when Union Pacific is unable to 14 perform required work using voluntary 15 overtime shifts, the company has begun to 16 force people to stay an additional four 17 hours after their shift has come to an 18 end. In sum, our members are working more 19 shifts over time and weekends than they 20 used to. And based on the available data, 21 SMART Mechanical reports that fifty-two 22 percent of its members are working</p>

104 (Pages 1455 to 1458)

<p style="text-align: right;">Page 1459</p> <p>1 weekends or unfavorable shifts. 2 Members of each shop craft union 3 are experiencing the same net negative 4 consequences of changes the Carriers have 5 made to their operations. The testimony 6 you have heard from the Union shows that 7 the Carriers have adopted a business model 8 that puts profits over people. Their 9 decision to adopt this business model has 10 resulted in a massive shop craft furloughs 11 and a significant decline in the quality 12 of life expected by shop craft workers. 13 Because of their choice to elevate profits 14 over people, the Carrier should provide a 15 weekend shift differential of ten percent 16 over normal rates. The differential will 17 make up for the worker's loss of family 18 and leisure time and the increased number 19 of our workers must endure following the 20 implementation of the Carrier's new 21 business model. The differential will 22 also compensate the workforce for the</p>	<p style="text-align: right;">Page 1460</p> <p>1 Carrier's increased demands. We also hope 2 that the differential will help to 3 convince the Carriers to hire additional 4 workers to reduce the overall strain on 5 their workforces. 6 Additionally, a weakened and shift 7 differential of ten percent over normal 8 rates is not only fair, but it is also in 9 line with other existing agreements in the 10 industry. The IAMs Metro-North agreement 11 includes a differential of ten percent per 12 hour for hours worked on the weekdays 13 starting at 6:01 p.m. through the 14 following day at 5:59 a.m. That agreement 15 also includes a weekend differential of 16 ten percent per hour for all hours worked 17 starting at 6:01 p.m. on Friday night to 18 5:59 a.m. the following Monday. 19 Similarly, the NCFOs agreement with the 20 Long Island Railroad includes a 21 differential of ten percent per hour for 22 hours of work beginning at 6:01 p.m. one</p>
<p style="text-align: right;">Page 1461</p> <p>1 day and ending at 5:59 a.m. on the next 2 day. 3 The Board should also recommend 4 that employees is required to work more 5 than three hours beyond their bulletin 6 hours, working hours, will be allowed a 7 reasonable time off with pay for a meal -- 8 a meal period. The Carrier should further 9 provide a meal allowance of \$25 that will 10 -- that will be received with the 11 employee's regular pay. A meal period and 12 a meal allowance are necessary to offset 13 the physical and mental toll placed on the 14 employees who are required to work more 15 than eleven hours in a day. A meal 16 allowance and a paid meal period for the - 17 - all workers required to work more than 18 three hours beyond their bulletin hours 19 should also be in line with other workers 20 in the industry that they already receive. 21 The IBEW agreement with Metro-North 22 includes a meal period and meal allowance</p>	<p style="text-align: right;">Page 1462</p> <p>1 in language very similar to that proposed 2 by the shop crafts and numerous other 3 existing agreements of food pay meal 4 periods where employees who must work 5 beyond their bulletin time. Selection 6 from each of these agreements are included 7 in the shop craft written submission. 8 Given runaway inflation, and you've heard 9 from about -- other witnesses, other union 10 witnesses, a meal allowance of \$25 is more 11 than fair. 12 I also want to address one -- one 13 additional issue before I conclude my 14 testimony. Individually, and 15 collectively, the shop craft unions have 16 included both proposals I have discussed 17 today and their bargaining materials 18 throughout the round the bargaining. In 19 March 2021, for example, the shop craft 20 unions presented a PowerPoint presentation 21 to the Carriers, and once they provide an 22 information regarding the shift</p>

105 (Pages 1459 to 1462)

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1 differential proposals along with several
 2 other proposals. Since then, we have
 3 significantly narrowed our proposed rule
 4 changes, focusing on shift differential
 5 and meal period and allowance.
 6 I want to thank you for the
 7 opportunity to testify today on behalf of
 8 my brothers and sisters in the shop
 9 unions. These workers have seen a
 10 significant decline in their quality of
 11 life. And I urge the Board to recommend
 12 the proposed shift differential, meal
 13 period, and allowance because these
 14 changes will ensure that the shop craft
 15 employees are being treated fairly and
 16 compensated for the Carrier's additional
 17 demands.
 18 Thank you.
 19 **CHAIRMAN JAFFE:** Thank you, Mr.
 20 Russo. Anything that you wish to pose?
 21 Just one question.
 22 **MR. RUSSO:** Yes, sir.

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1 Baldwin, could have -- can the witness be
 2 sworn in, please?
 3 THEREUPON:
 4 MICHAEL BALDWIN
 5 was called for examination, and, after
 6 being duly sworn, testified as follows:
 7 **MR. BALDWIN:** Good afternoon,
 8 Chairman Jaffe. Good afternoon, Member
 9 Deinhardt and Member Twomey. My name is
 10 Michael Baldwin, and I'm the President of
 11 the Brotherhood of Railroad Signalmen.
 12 Let me pause real quick and tell you that
 13 I am also a signalman and a signal
 14 electronic technician. So, what I'm about
 15 to speak of today, I'm very familiar with
 16 an intimate with. My comments today will
 17 be in connection with you the Union's
 18 Exhibit Number 28.
 19 I come before this Board today
 20 because we have an unresolved craft-
 21 specific issue with the NCCC that has
 22 festered for years, and now must be

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1 **CHAIRMAN JAFFE:** And I don't know
 2 if it's in the record, I apologize if it
 3 is.
 4 **MR. RUSSO:** Yes.
 5 **CHAIRMAN JAFFE:** Is there anything
 6 that lists the actual overtime hours on
 7 average for the shop craft employees'
 8 chart?
 9 **MR. RUSSO:** I'm sorry, could you
 10 say that again?
 11 **CHAIRMAN JAFFE:** Sure. Is there
 12 anything that indicates the average number
 13 of overtime hours for the shop craft
 14 employees, say in 2020, 2021, and 2022?
 15 **MR. RUSSO:** I don't currently have
 16 that, but I can get it to you.
 17 **CHAIRMAN JAFFE:** Okay, fair
 18 enough. Thank you,
 19 **MR. EDELMAN:** Our next presenter is
 20 Michael Baldwin, President of the
 21 Brotherhood of Railroad Signalmen.
 22 **CHAIRMAN JAFFE:** Welcome President

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1 resolved by this Board. The issue was
 2 presented in 2011 to PEB 243, which in
 3 turn recommended that the Union and the
 4 Carriers initiate a joint responsibility
 5 study to determine if the added
 6 responsibility required by positions where
 7 employees performed FRA-mandated testing
 8 warranted extra compensation. Since PEB
 9 243, responsibility has increased
 10 significantly with PTC and new operating
 11 models. And I'm here to share the
 12 concerns that I've heard from BRS members
 13 regarding their jobs, the skill
 14 requirements of those jobs, and the
 15 responsibilities our members have each
 16 day.
 17 Railroad signaling is vital to the
 18 industry for safety and efficiency.
 19 Railroad signal systems prevent trains
 20 from running into each other, they protect
 21 roadway workers, and they protect the
 22 traveling public from being struck by a

<p style="text-align: right;">Page 1467</p> <p>1 train at highway-rail grade crossings. 2 Signal systems in the railroad industry 3 are based on the required distance for a 4 train to stop or braking distance. These 5 complex systems provide constant track 6 conditions, speed, and other indications 7 for crews operating their trains, terrain 8 conditions, for example, flooding, or 9 rockslides, train conditions, for 10 example, dragging equipment or hot 11 journals, dispatchers' ability to safely 12 control the network, and safety for 13 workers on the tracks. 14 I would like to note that in 15 Carrier submission Exhibit Number 3, Table 16 4, Average Wage Per Hour Worked: Railroad 17 Workers versus Comparator Occupation 18 Groups 2020, Dr. Jesse David states, that 19 signalmen making \$35.56 per hour, enjoy a 20 nine percent premium and pay over 21 comparator occupations at \$32.67 per hour. 22 The current national signalmen rate is</p>	<p style="text-align: right;">Page 1468</p> <p>1 \$33.09 an hour, not \$35.56. 2 In Table 19 of the same exhibit, 3 Dr. David states that the comparable 4 occupations to signalmen are 5 telecommunications equipment installers 6 and repairs, except line installers; 7 electrical and electronics installers and 8 repairs, transportation equipment; 9 electrical and electronics repairs, 10 commercial and industrial equipment. 11 These occupations are not comparable to 12 signal, they're not even close. Because 13 of the complexity of these systems being a 14 signalmen comes with an elevated level of 15 duties and responsibilities. Those who 16 are responsible for FRA-mandated tests and 17 inspections have an even greater 18 responsibility. 19 Signalmen play a key role in 20 railroad signal systems and highway-rail 21 grade crossing warning systems safety. 22 Siegelman are responsible for the</p>
<p style="text-align: right;">Page 1469</p> <p>1 installation, maintenance, testing, and 2 proper functioning of railroad signal 3 systems, which keep trains operating at 4 peak efficiency while providing adequate 5 train separation for safety. The systems 6 are very complex, and system safety is 7 dependent on the expertise of many 8 signalmen who work alone and on teams or 9 crews. Signalmen are responsible for the 10 installation, maintenance, testing, and 11 proper functioning of active crossing 12 warning devices that warn drivers of 13 approaching trains that more than 74,000 14 highway-rail grade crossings equipped with 15 active warning systems across the nation. 16 Signalmen install and maintain high- 17 voltage lines that are on the ground as 18 well as aerial. 19 Signalmen working maintenance 20 positions are required to perform 21 federally mandated inspections at 22 locations across their assigned territory.</p>	<p style="text-align: right;">Page 1470</p> <p>1 These inspections are performed on a 2 monthly, quarterly, and yearly basis. 3 These tests are on an automatic scheduler 4 from the date of the last inspection 5 performed. Tardiness of the testing date 6 is almost nonexistent, as timely reports 7 are regulated by law. Most inspections 8 are on mechanical devices that are 9 essential for the integrity of the signal 10 system and highway-rail grade crossings. 11 The tests performed often bring to light 12 defects that must be resolved immediately 13 and repaired in a timely fashion for 14 minimum rail interruptions. 15 In addition to the responsibility 16 of performing federally mandated testing 17 signalmen are also required to be in 18 compliance with the hours-of-service law. 19 Technology in railroad signaling has been 20 ever changing and signalmen have always 21 been up to the challenge. Over the past 22 121 years, signaling has progressed from</p>

<p style="text-align: right;">Page 1471</p> <p>1 flags and colored balls to signal for 2 color position light and color light 3 signals, cab signaling, and positive train 4 control. Signal systems have evolved from 5 relay-based technology to microprocessors. 6 This new technology controls the existing 7 mechanical apparatuses, for example, in 8 tracks which machines for train routing, 9 crossing gates and lights, signal cancel 10 levers, train controlling wayside signals, 11 and defect detectors to include but not 12 limited to, right-side fencing, water 13 detection, and train defect inspection. 14 These mechanical apparatuses are 15 the labor-intensive side of the craft, 16 which signalmen test on a regular basis 17 validating the compliance with regard to 18 regulations. Railroads implemented 19 microprocessor-based signal systems that 20 replaced the relay-based signal systems, 21 increasing the technical aptitude required 22 to maintain the new technology. The newer</p>	<p style="text-align: right;">Page 1472</p> <p>1 technology requires reading and 2 comprehending logs produced by the 3 microprocessors to conclude what the 4 problem might be. Then taking the theory 5 and addressing the problem. It takes more 6 time and knowledge to discern these logs, 7 which are displayed differently from one 8 brand of microprocessor to the next. 9 PTC introduced signalmen to 10 communication equipment that was new to 11 the craft. This equipment was added as an 12 overlay to the current signal system. It 13 requires more advanced technical ability 14 to troubleshoot issues with PTC systems. 15 As if the technology advances were 16 not enough, signal workers have worked 17 tirelessly through the pandemic as 18 essential workers, and experienced a 19 twenty percent decrease in the workforce, 20 which expanded territories and required 21 already overworked employees to do more 22 with less. Maintenance employees are</p>
<p style="text-align: right;">Page 1473</p> <p>1 being stretched to the limit, acquiring 2 more miles and assets and/or covering 3 territories that do not have a signalman 4 assigned. This craft has been decimated 5 with the elimination of jobs of relief 6 maintainers and foremen that would fill in 7 when maintainers for shorthanded. Relief 8 maintainers complete testing when 9 maintainers are on vacation, cover large 10 track projects, and assist in maintenance 11 tasks that require more than one person. 12 Railroads expect maintenance employees to 13 get their mandated testing completed in 14 advance of vacation and in conjunction 15 with other large railroad projects. This 16 creates a juggling act for the employee 17 when managing a heavy testing schedule 18 because of the disruptions. 19 Organization conducted surveys that 20 demonstrated the increased responsibility 21 for single maintenance employees. Those 22 survey summaries can be found in your</p>	<p style="text-align: right;">Page 1474</p> <p>1 organization's Exhibit E, Pages 97 through 2 123. 3 There were 1,158 participants, of 4 which ninety-one percent indicated their 5 responsibility had increased in daily and 6 monthly duties. Ninety-one percent, 7 again, responded that their workload had 8 increased over the last five years as 9 territories were expanded. Additionally, 10 eighty-nine percent indicated that newer 11 technology was installed in the last five 12 years. Our survey responses may be found 13 in the organization's Exhibit F, Pages 125 14 through 207. 15 One of the several questions asked, 16 how has the current level of 17 responsibility changed over the last five 18 years? The answer -- the answers show 19 clear issues including extended 20 territories and/or maintainers being 21 required to cover multiple territories, 22 assisting different departments when their</p>

108 (Pages 1471 to 1474)

<p style="text-align: right;">Page 1475</p> <p>1 work interferes with the normal operation 2 of the signal and highway-rail grade 3 crossing warning systems, while still 4 being required to keep up with regular 5 duties and drastically increased workloads 6 with unrealistic expectations to complete 7 the work. 8 I'm gonna cover a few member 9 statements. Those member statements -- 10 excuse me -- may be found in your 11 organization's Exhibit A and B, Pages 25 12 through 84. 13 BNSF has continued to reduce our 14 single gang manpower. So now, when we 15 have major track or capital projects going 16 on, we are expected to drop everything and 17 be able to assist other departments. They 18 are burning good guys out by making them 19 cover more territory and more assets every 20 year. 21 Additionally, another member 22 expanded on the added responsibility of</p>	<p style="text-align: right;">Page 1476</p> <p>1 more assets, my territory has not 2 increased in miles, but it has increased 3 in unaccounted for assets. Recently, the 4 signal department had taken over 5 responsibility for mechanical detectors. 6 This complex system can detect many 7 different issues with train cars, wheels, 8 bearings, etcetera. There's been very 9 little training on these systems. I have 10 what isn't as a super detector, there are 11 over ten different detectors at this site. 12 These assets were all lumped together as 13 one single asset, making all 30-day, 90- 14 day 180-day and 360-day tests do at the 15 same time. 16 We had several statements regarding 17 territory expansion. This statement from 18 a member recounted the number of miles he 19 maintains, as well as issues with 20 manpower. My territory doubled in the 21 last three years. They add assets without 22 any consideration of the already</p>
<p style="text-align: right;">Page 1477</p> <p>1 overwhelming number of assets assigned and 2 miles to drive. With so few signalmen 3 left and low number of maintainers with 4 large territories, when one takes 5 vacation, or is all for personal reasons, 6 sick, family just normal life, the company 7 does not fill the position. 8 Our initial proposal on PEB 243 was 9 based on the equipment and service at the 10 time. Since then, the need for a 11 differential has increased with the 12 addition of maintaining and testing PTC 13 apparatus. On December 29th, 2020, the 14 FRA announced that PTC technology was 15 operational across 57,536 required freight 16 and passenger rail miles. Maintenance 17 personnel are now required to accept 18 trouble calls and troubleshoot the system 19 when problems occur with little to no 20 training. This added significant 21 responsibility to the workforce, requiring 22 vast knowledge of electronics and</p>	<p style="text-align: right;">Page 1478</p> <p>1 communication technology, with employees 2 being held responsible to self-educate and 3 to coordinate peer to peer training 4 themselves. 5 A member detailed this significant 6 increase in skill requirements. The 7 railroad signal job as a trade job, I went 8 through three years of assistant signalman 9 training after being hired. I also went 10 through two and a half years of advanced 11 training to become a signal tech. So, to 12 be told we are overpaid for our level of 13 education is not accurate. I have spent 14 thirty-two years learning this craft and 15 passing on that knowledge to other 16 employees who are learning the craft. I 17 have never made the wages per year that 18 the railroad claims and I work anywhere 19 from 250 to 400 hours of overtime each 20 year on top of my forty-hour workweek. 21 Another member detailed the 22 increased responsibility taking emergency</p>

109 (Pages 1475 to 1478)

<p style="text-align: right;">Page 1479</p> <p>1 calls outside of working hours. Along 2 with the increase of daily 3 responsibilities, there has been a major 4 increase in trouble calls, both during and 5 after regular working hours. The manpower 6 shortages have increased our hold call 7 responsibilities on most weekends, from a 8 seventy-five-mile radius to up to three 9 hundred miles at times. These expanded 10 hold call territories lead to extreme 11 delays in response time, causing a ripple 12 effect of delays across the system. These 13 long distances also eat into hours of 14 service for available employees, causing a 15 domino effect and manpower shortages. 16 This then causes more overtime calls for 17 employees even farther away. I have 18 personally driven over three hundred miles 19 round trip in the middle of the night for 20 trouble calls multiple times over the past 21 three years. 22 Signal maintainers, signal</p>	<p style="text-align: right;">Page 1480</p> <p>1 maintenance foreman, signal inspectors, 2 and electronic technicians are typically 3 the individuals that are directly 4 responsible for FRA mandated tests, though 5 other job classifications may sometimes 6 perform FRA mandated inspections and 7 testing. The FRA regulations are in place 8 to ensure that the signal system and 9 highway-rail grade crossing warning 10 systems are installed and maintained to a 11 certain level of safety and reliability. 12 Over the past twenty or more years, 13 Carriers have experienced difficulty in 14 filling signal maintenance positions 15 because of the increased skills and 16 responsibilities that do not come with 17 increased compensation. Senior employees 18 no longer want these jobs because there 19 has been no adjustment of compensation 20 associated with the increased job 21 requirements and responsibilities. These 22 jobs are often filled by the signalmen</p>
<p style="text-align: right;">Page 1481</p> <p>1 with the least amount of seniority, and 2 therefore, the least amount of experience. 3 Signal maintainers are regularly placed in 4 situations where good judgment, on the job 5 experience, and proper training is 6 required to prevent catastrophic, deadly 7 events. 8 Signalmen are subjected to civil 9 and criminal penalties in accordance with 10 the Federal Railroad Administration 11 regulations governing tests that are 12 performed at different intervals on signal 13 equipment. Railroads have individualized 14 responsibility for the inspections 15 performed by asserting the employees are 16 culpable for any defect or accident caused 17 by an inspected apparatus, no matter if it 18 fails right after inspection, or fifteen 19 days later. There is no desire to hold 20 these positions with the responsibilities 21 attached to them, compared to a position 22 working in a group environment, performing</p>	<p style="text-align: right;">Page 1482</p> <p>1 construction duties, rather than the 2 mandated testing. 3 Honestly, we've had members end 4 their careers instead of taking 5 maintenance positions. We're talking 6 veterans of the workforce 7 Our organization has attempted to 8 address the increased compensation issue 9 for years. It started prior to PEB 243 in 10 2011, when the organization requested 11 compensation for a maintenance employee 12 differential. The request was directly 13 related to the increased technical 14 requirements of maintenance positions. 15 PEB 243 directed the parties to conduct a 16 responsibility study. 17 Following the recommendations of 18 PEB 243, BRS and the NRLC initiated a 19 study. Interviews were conducted by the 20 BRS and an NRLC across four railroads: 21 BNSF Railway, CSX Transportation, Norfolk 22 Southern Railway, and Union Pacific</p>

<p style="text-align: right;">Page 1483</p> <p>1 Railroad. The parties interviewed 2 eighteen employees: one assistant general 3 supervisor, two electronic technicians, 4 one field trainer, one project engineer, 5 two signal foreman, one signal inspector, 6 six signal maintainers, and four signal 7 supervisors. 8 As the joint committee interviewed 9 the listed individuals, there were several 10 topics that arose. The responsibility 11 study results may be found in the 12 organization's Exhibit D, Pages 91 through 13 95. 14 More pay and training were listed 15 as the top issues, since many younger 16 employees with little experience are 17 forced into maintenance positions. The 18 answers indicated the amount of time to 19 become a good maintainer began at a 20 minimum of two years, some answers 21 indicated five years on up to fifteen 22 years to get a complete grasp on the</p>	<p style="text-align: right;">Page 1484</p> <p>1 numerous systems signalmen work on. 2 The territory is assigned to 3 maintenance employees are too large and 4 have an excess amount of testing. As a 5 result, employees experience issues 6 completing regular preventive maintenance. 7 The responsibility of the position was 8 extremely stressful, and the chance of 9 discipline was greater with all 10 maintenance personnel. The responsibility 11 study revealed that as a result of the 12 added responsibility required of those 13 employees performing FRA mandated testing, 14 more experienced signalmen we're moving 15 away from single maintenance and testing 16 positions and towards single construction 17 positions. 18 Beginning in 2017, the Carrier's 19 implemented cost saving measures, which 20 include a drastic reduction in employees, 21 equipment, and switching yards. Then at 22 the start of the pandemic, the Carriers</p>
<p style="text-align: right;">Page 1485</p> <p>1 further reduced the number of several 2 employees through furloughs and expanding 3 the existing maintenance employee 4 territories to unimaginable sizes -- 5 excuse me -- unmanageable sizes. This 6 resulted in the elimination of critical 7 signal maintenance positions. The 8 workforce reductions are clearly reflected 9 in our membership numbers. 10 In Q1 2016, our membership total 11 for members employed by BNSF, CN, CSXT, 12 KCS, NS, and UP was 9,125. In Q1 of 2022, 13 our membership total for the same 14 railroads was 6,687. This is a twenty-six 15 percent reduction over a six-year period. 16 This practice is the exact opposite of 17 what common sense should lead us to 18 believe. With the installation of PTC, 19 many other railroads throughout the 20 country have added new assets and made 21 territories more complex. This should 22 lead to the addition of jobs, not</p>	<p style="text-align: right;">Page 1486</p> <p>1 workforce reduction. 2 The responsibility study did 3 suggest that the differential was 4 necessary by the rank and file as well as 5 management employees of the Carriers. BRS 6 requested the differential in Section 6 7 Notice served to the Carriers in 2014 and 8 2019. In addition to our Section 6 9 Notices, former BRS president Dan Pickett 10 confirmed he had verbal conversations with 11 former NCCC Spokesman Ken Gradia, during 12 which Mr. Gradia expressed no interest in 13 pursuing the issue. Former President 14 Jerry Bowles (ph.) also confirmed the same 15 result in his verbal communication with 16 current NCCC spokesman, Brendan Branon. 17 Carriers have all but ignored the issue 18 following the responsibility. 19 I'd like to note that yesterday, 20 Jeff Rogers stated that the March 24th, 21 2022, proposal from the organizations to 22 the NCCC did not have the responsibility</p>

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<p style="text-align: right;">Page 1487</p> <p>1 study as a proposed work rule. Well, 2 there's good reason for that. It's not a 3 work rule to pay differential. 4 This is not only a matter of 5 fairness for signalmen, but it is best for 6 the public interest, the economy, and the 7 supply chain. The parties have done the 8 recommended fact finding, which supported 9 the organization's position. Both sides 10 participation in the interviews confirmed 11 the accuracy of the statements made. The 12 Carriers refused to continue in the joint 13 effort, and summarily disregarded the 14 increased level of responsibility these 15 employees perform on a daily basis. The 16 only constant the employees endure is more 17 of responsibility without proper 18 compensation. 19 As if this were not enough, rail 20 workers have also been dealing with the 21 progression of technology with little to 22 no assistance in training and have been</p>	<p style="text-align: right;">Page 1488</p> <p>1 told they are overpaid. The result of 2 this has been unprecedented turnover 3 levels, which presents clear safety and 4 workforce concerns. That decrease in 5 workforce number should be alarming to 6 this Board, as our members are returning 7 routinely asked to do more with less, all 8 while the Carriers have taken the position 9 that their employees are less important 10 than the stakeholders. The men and women 11 doing work, protecting their fellow 12 employees, the traveling public, and the 13 communities where railroads operate are 14 not less important than investors and 15 CEOs. It is imperative to understand that 16 the issues reflected in my testimony 17 affect not only our members, but also the 18 general public, all of rail labor, and the 19 supply chain our nation depends on. 20 Our goal is for employees who are 21 directly responsible for or signatory to 22 FRA mandated testing to receive extra</p>
<p style="text-align: right;">Page 1489</p> <p>1 compensation that directly reflects the 2 added responsibilities for these 3 positions. Additionally, from a safety 4 perspective, it is imperative to keep the 5 most experienced personnel on these 6 maintenance jobs. Because there is no 7 financial incentive to assume the added 8 responsibility for maintenance positions, 9 the best way to overcome this trend is to 10 add a financial incentive for these jobs. 11 BRS therefore, proposes a \$5 per 12 hour skilled differential for these 13 positions. This differential is to be 14 applied before any GWI for maintenance 15 employees and those directly responsible 16 for or signatory to FRA required safety 17 critical repairs, tests, and inspections 18 to account for the increase skill 19 requirements and responsibility. Such a 20 differential is not only fair but will 21 also help the railroads retain and hire 22 signalmen.</p>	<p style="text-align: right;">Page 1490</p> <p>1 All maintenance employees are 2 exhausted from working an enormous number 3 of hours in an attempt to keep up, and 4 literally have no time to worry about 5 training. Senior employees are getting 6 away from maintainer, inspector, and 7 technician positions because, the given 8 the increased responsibilities and burdens 9 associated with these positions, they 10 would prefer to work in signal 11 construction. The railroads need to 12 provide an incentive for senior 13 experienced signalmen to take positions 14 that require the most skill and 15 experience. 16 The stress of accepting trouble 17 calls while otherwise off duty, completing 18 work when territories are too large, and 19 dealing with new technology all justify 20 payment of a maintenance employee 21 differential of \$5 per hour, which equates 22 to about 1/7 of the hourly rate. We feel</p>

<p style="text-align: right;">Page 1491</p> <p>1 this is a reasonable request that 2 represents the increase in responsibility 3 and technical aptitude. 4 Let me close with this, there has 5 been much talk and there have been 6 articles written about what would a strike 7 do to the supply chain in this country? I 8 would like to pose that from a different 9 perspective to you today. 10 What if the recommendation or the 11 settlement that comes out of this round of 12 bargaining creates a situation where 13 twenty percent more of the workforce in 14 this industry leaves? I think that's a 15 serious concern of the supply chain. A 16 strike can be a couple hours and have 17 residual effects for a couple of days. 18 Losing twenty percent of the workforce 19 would decimate the industry and the supply 20 chain. 21 I thank you for your attention 22 today.</p>	<p style="text-align: right;">Page 1492</p> <p>1 CHAIRMAN JAFFE: Thank you, Mr. 2 Baldwin. 3 We're in good shape. Thank you 4 very much. 5 MR. BALDWIN: Thank you. 6 MR. EDELMAN: Good evening, Aaron 7 Edelman will introduce our next and final 8 presenter. 9 CHAIRMAN JAFFE: Thank you. 10 MR. AARON EDELMAN: Chairman Jaffe 11 and Members of the Board. My name is 12 Aaron Edelman, I'm an attorney with the 13 law firm Mooney, Green, 14 Saindon, Murphy and Welch. My firm 15 serves as General Counsel to the National 16 Conference of Firemen and Oilers, also 17 known as NCFO. This union represents shop 18 laborers, stationary engineers, and 19 locomotive hustlers. I'm here to 20 introduce Dean DeVita, the President of 21 the NCFO. 22 President DeVita is going to talk</p>
<p style="text-align: right;">Page 1493</p> <p>1 about NCFOs proposal for supplemental pay 2 for when the Carriers use simple tasks and 3 incidental work rules for two hours each 4 workday to assign work to NCFO members 5 that would otherwise be performed by 6 skilled mechanics at a higher rate of pay. 7 The Union is seeking an adjustment in pay 8 to reflect the increased responsibilities 9 that NCFO's members have taken on in the 10 past few years. 11 CHAIRMAN JAFFE: Welcome President 12 DeVita. Can I ask that he'd be sworn in, 13 please? 14 THEREUPON: 15 DEAN DEVITA 16 was called for examination, and, after 17 being duly sworn, testified as follows: 18 MR. DAVITA: Good afternoon. I 19 know I have two hours; I'll try to do this 20 in a few minutes. 21 I do want to thank the Board for 22 serving on this PEB. I know it must be</p>	<p style="text-align: right;">Page 1494</p> <p>1 very difficult and tough to sit up there 2 for days at a time. So, we really thank 3 you for the work you're doing. I also 4 want to thank the National Mediation 5 Board, and the Court Reporters who have 6 worked here the last couple of days. We 7 really appreciate it. 8 This is important to me and my 9 organization. We want to thank the 10 workers in the hotel who have been 11 cleaning this room and keeping it safe for 12 us. So, we really appreciate their work. 13 Mr. Chairman and members of the 14 Board. The National Conference of \$5 15 million represents shop laborers, 16 stationary engineers, and locomotive 17 hostlers on all Carriers represented by 18 the NCCC. Most of our members work at the 19 lowest basic rate of pay in the mechanical 20 departments of the Carriers. They have 21 always been paid less than the Mechanical 22 Department employees in other shop craft</p>

<p style="text-align: right;">Page 1495</p> <p>1 unions. But this difference in pay now 2 fails to reflect the significant changes 3 in responsibility and the years since 4 route changes from PEB 219 and the 5 widespread adoption of PSR. There has 6 never been an adjustment to their base 7 wage rate to compensate for these increase 8 responsibilities.</p> <p>9 The NCF&O has requested 10 individually that the Emergency Board 11 recommend adoption by the parties of an 12 adjustment between the wages of the shop 13 laborers and the craft mechanics. We 14 accept the retroact to start of this 15 agreement, the base wage rate of the NCF&O 16 represented employees be increased \$1.58 17 per hour. This adjustment would not 18 eliminate the disparity in rates all 19 together, it simply reflects the reality 20 that the shop labor's basic rate of pay of 21 \$27.28, while the mechanics rate of pay is 22 \$33.58. Adjusting the base wage rate of</p>	<p style="text-align: right;">Page 1496</p> <p>1 the NCF&O-represented employees will 2 reduce the gap between paid for NCF&O 3 members and pay that the mechanics earn to 4 account for the proportion of the time our 5 members now spend performing mechanic's 6 duties. For those hours, our members who 7 do mechanics work to deserve to be paid 8 like it. I've been in the industry since 9 1988. There was a term, they would high- 10 rate the firemen's roles to do mechanic's 11 work when needed. They would compensate 12 them. They don't do that no more [sic].</p> <p>13 Before 1991, there was the internal 14 work rule in the Carriers mechanical 15 shops, but it didn't apply to the 16 laborers. It only applied to the 17 mechanics. That rule allowed the 18 railroads to have a mechanic from one 19 craft perform work that otherwise belong 20 exclusivity [sic] to another craft if the 21 work was incentive to the primary task 22 being performed. Because the NCF&O back</p>
<p style="text-align: right;">Page 1497</p> <p>1 then was the IBF&O, they didn't have such 2 a rule. The Carriers couldn't require us 3 to perform the mechanic's work and they 4 couldn't require the mechanics to perform 5 the work of the NCF&O By the same token, 6 our wages were already less because we 7 were considered less skilled than the 8 mechanics.</p> <p>9 In 1988 bargaining rounds, the 10 Carriers proposed that all craft or 11 service lines be dropped, that management 12 be allowed to assign shop craft work to 13 whatever shop craft employee the Carrier 14 believed was qualified to do it. PEB 219 15 changed the craft union existing rules by 16 expanding the work that could be assigned 17 to cross craft lines, and for the first 18 time included the laborers. What this 19 meant was from that point on, shop 20 laborers could be required to perform 21 craft work that previously had been 22 performed at a higher rate of pay by the</p>	<p style="text-align: right;">Page 1498</p> <p>1 employees of other crafts. And the 2 Carriers have taken advantage of that 3 ability, requiring us to do the work at a 4 much cheaper rate.</p> <p>5 Since PEB 219, our members have 6 been covered by a rule that allows the 7 mechanics work to be assigned to shop 8 laborers if their work is incidental to 9 the mechanics main, or if the work 10 involves simple tasks that does not 11 require special training or special tools. 12 The only limitation is that no single shop 13 employee can be assigned to do this work 14 for more than two hours per day. The same 15 rule applies to the assignment of a 16 laborers work to a mechanic. Now, shop 17 laborers can be required to do mechanics 18 work while being paid at the shop laborers 19 is rate of pay and mechanics could be 20 assigned to perform work that was 21 previously assigned to the laborers at the 22 mechanics rate of pay. Not the laborer is</p>

Page 1499	<p>1 ready to pay they still enjoy the premium</p> <p>2 rate of pay.</p> <p>3 The formation of PSR in the past</p> <p>4 few years has substantially increased the</p> <p>5 change in responsibilities. The Carriers</p> <p>6 are intentionally understaffed and</p> <p>7 constantly attempting to fill the gaps in</p> <p>8 the workforce by having crafts fill in</p> <p>9 whenever they can. Before PSR, our</p> <p>10 members responsibility included servicing</p> <p>11 locomotives, fuel, sanitize and cleaning</p> <p>12 of the cabs, supplying cabs for crews, and</p> <p>13 washing locomotives, operating shop</p> <p>14 industrial maintenance equipment, moving</p> <p>15 locomotives in and out of the shops, as</p> <p>16 well as cleaning, disinfecting, and</p> <p>17 organizing shop work areas, offices,</p> <p>18 locker rooms, lavatories, and lunchrooms.</p> <p>19 Our submission today include</p> <p>20 statements from employees, including Jaime</p> <p>21 Gonzalez, Arlyn Wood (ph.), Jeffrey Rutner</p> <p>22 (ph.), and you Eugene Martinez. These</p>	Page 1500	<p>1 employees have decades of experience at UP</p> <p>2 and NS. They describe their duties</p> <p>3 historically involve things like supplying</p> <p>4 ice water, tools, crew packs, trash bags,</p> <p>5 and first aid kits, sweeping cabs, washing</p> <p>6 windows, dumping trash, detailing the</p> <p>7 locomotive cab, operating fork trucks</p> <p>8 [sic], fueling and sanding, supplying, and</p> <p>9 cleaning the toilets, washing and cleaning</p> <p>10 locomotives, getting parts for</p> <p>11 locomotives, operating turntables, and</p> <p>12 moving locomotives around the shop.</p> <p>13 But since PSR, facility maintenance</p> <p>14 shops have been reduced by percent. All</p> <p>15 cut entirely. Because of furloughs, there</p> <p>16 is not enough manpower, and we've been</p> <p>17 hearing that well week to compete --</p> <p>18 complete the mechanical work in the shops,</p> <p>19 which has more than doubled. Shop craft</p> <p>20 work is a frequently assigned tasks of</p> <p>21 other crafts. If a worker is unfamiliar</p> <p>22 with how to do a task, supervisors perform</p>
Page 1501	<p>1 -- force them to perform the work and sign</p> <p>2 off on it regardless of the employee's</p> <p>3 qualification.</p> <p>4 It kind of reminds me of when I</p> <p>5 don't know how to something, and I don't</p> <p>6 know how to do a lot of things, so I go on</p> <p>7 YouTube and learn how to do it. So, I</p> <p>8 made a joke to one of the members, we'll</p> <p>9 use YouTube and figure it out. He goes,</p> <p>10 there's no YouTube for trains, he's like -</p> <p>11 - and I was like, you know, he's right.</p> <p>12 There is no such thing as a YouTube for</p> <p>13 trains.</p> <p>14 But I have a statement from Jay</p> <p>15 McCoy, sixteen years at NS. He found out</p> <p>16 over the past several years things have</p> <p>17 drastically changed. Now, NS uses whoever</p> <p>18 to get the job done as long as the job</p> <p>19 gets done, because that is all that</p> <p>20 matters to management. McCoy's statement</p> <p>21 talks about his new responsibility:</p> <p>22 switching locomotives to build the</p>	Page 1502	<p>1 outbound power consists, putting new air</p> <p>2 hoses on the locomotives, putting radios</p> <p>3 in the cabs, and troubleshooting</p> <p>4 locomotives to find problems. He says we</p> <p>5 have so many locomotives inbound in</p> <p>6 Burlington than what we used to have, so</p> <p>7 we work with half of what we used to work</p> <p>8 with and do even more. We've been hearing</p> <p>9 that all week too, from our side.</p> <p>10 Freddie Hasta (ph.) has been with</p> <p>11 NS for fourteen years, but recently shop</p> <p>12 forces have been reduced to a bare</p> <p>13 minimum. He says it's not just the</p> <p>14 shortage of firemen and oilers, but the</p> <p>15 shortage of electricians, which means</p> <p>16 NCF&O members are doing electrical work</p> <p>17 like PTC departure testing, changing</p> <p>18 headlights on locomotives, and working on</p> <p>19 company vehicles.</p> <p>20 When I was approached by other</p> <p>21 organizations about NCF&O members doing</p> <p>22 their work, I was like you guys are</p>

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<p style="text-align: right;">Page 1503</p> <p>1 journeyman. My members are not trained to 2 do this work. I dismissed it. After I 3 did this research, I was wrong. I can 4 admit that I was wrong. Our members are 5 doing their work. While the shit we've 6 talked about [sic], how shop laborers have 7 to get locomotives service engineer 8 licenses to go outside of shop complexes 9 to pick up units. He now has to hook up 10 air lines and checked air brake 11 operations. He said, I personally have 12 helped build consists with no training. 13 And all these extra duties have been added 14 to us with no extra incentives. Gone are 15 the days that we will high-rate you, throw 16 you a few extra shekels. They don't do 17 that no more [sic]. 18 Dean Huska (ph.) wrote about how he 19 now has to move locomotives and the 20 mechanical limits and yard limits. And 21 hook locomotive consists, take power off 22 the train, and put on to train, cut in the</p>	<p style="text-align: right;">Page 1504</p> <p>1 air. It just goes on and on. You know 2 that these responsibilities require 3 members to have general code of operating 4 rules license. 5 Ralph Wallace wrote about how he 6 now has to set up the lights and 7 headlights and ditch lights, check step 8 lights, and inspect to refill grease 9 sticks on the wheels. 10 John Likens (ph.) an eighteen-year 11 employee says his responsibility now 12 include breaking down consists and hooking 13 up concepts. It goes on and on. If we 14 are responsible to do these things, we 15 should be paid equal pay as the journeyman 16 crafts. 17 Shawn Afla (ph.), a twelve-year 18 employee, he says he installs batteries, 19 changes brake shoes, replaced train and 20 brake lines, fix, and debug electrical 21 system. I don't know what debug is but 22 that's what he says. And operate overhead</p>
<p style="text-align: right;">Page 1505</p> <p>1 cranes in the shop. 2 We have taken on these tasks that 3 other crafts once did, but no training 4 whatsoever. We have learned that these 5 jobs by doing the training themselves, you 6 have been written up by discipline when 7 the job doesn't go right. And when told 8 [sic] supervision that we haven't had any 9 training, the supervisor's response, and 10 it's kind of what I said, but they say a 11 little different. Don't to YouTube, but 12 it says go to the computer, and maybe the 13 computer will tell you how to do the job. 14 Roger Van Doren (ph.), an eighteen- 15 year employee says he now has to check 16 locomotives for proper brakes, headlights, 17 and radios. Take the locomotives out 18 through the main yard and talk to 19 dispatches to make moves to and from the 20 red foot cab track. He has to lace up air 21 hoses and new hoses, and make sure that 22 these consists of locomotives are safe to</p>	<p style="text-align: right;">Page 1506</p> <p>1 move for the transportation employees when 2 they come to get their assigned trains. 3 He says, we spent countless hours daily 4 doing jobs we have never done until this 5 past year or so without any extra 6 incentive. My job went from steady 7 workday to pushing us to the complete 8 limits. We deserve to be paid like we are 9 being worked. 10 So, our proposal is fair. When I 11 asked him for the rates of pay of the 12 journeyman, NCF&O believes that the -- an 13 adjustment is appropriate so that the 14 laborers pay more accurately reflects the 15 kind of work they're performing. Or they 16 are being asked to perform. 17 NCF&O requests the Board recommend 18 an increase of \$1.58 in the laborers basic 19 rate of pay. That figure represents two 20 hours of each workday that the Carriers 21 assign the laborers to perform work that 22 they pay mechanics \$6.30 per hour more to</p>

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<p style="text-align: right;">Page 1507</p> <p>1 do. Two hours of work at the \$6.30 per 2 hour rate \$12.60 per day divided by a -- 3 compensated hours in a day, the \$12.60 4 becomes \$1.58 per hour. Thank you, Tom 5 Roth. NCF&O -- that -- is not asking to 6 raise the laborers rate to the full 7 mechanics rate for the entire day. I 8 would be ridiculous if I came here and 9 insulted yous [sic] and asked you that. 10 Only for the equivalent part of the day 11 when the employees are called on to 12 perform the same work.</p> <p>I do want to take a moment to 14 address the Carrier's arguments against 15 the NCF&O proposals. The Carriers filed 16 and say that while our work is important, 17 does not require the same level of skill 18 as other jobs. And when asked to perform 19 higher skilled work, such as moving 20 locomotives, most utility workers already 21 receive a differential. They're saying 22 this.</p>	<p style="text-align: right;">Page 1508</p> <p>1 The Carrier also said that we are 2 paid more than similarly employed workers 3 in the US. But this similarly employed 4 argument is irrelevant and the similarly 5 employee work is here on mechanics. I'm 6 not talking about what someone's doing on 7 the outside, I'm talking about what's 8 happening in the same shops in the same 9 yards. Similar work that the mechanics 10 are doing for two hours every day. All 11 work requires higher skilled mechanic 12 work. Because it is work that is 13 otherwise done by mechanics on their 14 property. When they do the work, it is at 15 the rate of \$33.58 for the two hours we do 16 the work. We get paid our rate of \$27.28. 17 That's the only comparison you need. The 18 differential for moving locomotives only 19 supports our proposal.</p> <p>The time we spend moving 21 locomotives is separate from simple task 22 incidental work rules. And does that</p>
<p style="text-align: right;">Page 1509</p> <p>1 count towards the two hours? When we do 2 that higher skilled work moving 3 locomotive, we get it differential. 4 They've given us the differential for 5 doing that work. It's the same philosophy 6 that recognizes the increase in 7 responsibilities because they've given us 8 the differential to move that locomotive. 9 On CSX and NS, it's forty-five cents. On 10 UP, CN, BNSF, and KCS, t ranges from \$1 to 11 around \$3.50. So that just shows us we 12 have a precedent to our demand. That we 13 are paid a differential when we do higher 14 skilled work, we are already paid to move 15 the locomotives. It's appropriate to pay 16 us when we move locomotives. It's 17 appropriate to pay us when we take the 18 mechanic responsibilities also. For these 19 reasons, the NCF&O requests that this 20 Board recommend that the base hour rate of 21 NCF&O represented shop employees be 22 increased \$1.58.</p>	<p style="text-align: right;">Page 1510</p> <p>1 We've been hearing that it's about 2 fairness. This is about fairness also. 3 That way, the extra dollar 4 relationship between the shop laborers and 5 the mechanics more accurately reflects the 6 responsibility of the jobs they hold as a 7 result of the significant changes to their 8 responsibility since PSR. Considering the 9 years that the Carriers have benefited 10 from paying these employees and less than 11 the mechanics be able to assign them to 12 identical work. The adjustment we seek is 13 both modest and just.</p> <p>Again, I want to thank you for 15 listening to me because I'm tired of 16 listening to me. And I'd be glad to 17 answer any questions or concerns you may 18 have.</p> <p>CHAIRMAN JAFFE: Thank you, 20 President. I think you've covered it all, 21 sir. Thank you.</p> <p>MR. DAVITA: Well, I appreciate</p>

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your time. Thank you very much.

MR. EDELMAN: So last night, Dean and I were just discussing the different methods of speaking while moving your hands, and I think between Dean and me, you've seen we're both from New York.

That is the end of our presentation of our affirmative case. Again, I do want to remind the panel that the ATDA and TCU/IAM both have written submissions on their craft specific proposals. The ATDA is our Exhibit Number 30. The TCU/IM is our Exhibit Number 29.

With that we thank you for your time unless the Board has anything else to ask us.

CHAIRMAN JAFFE: No. We will stand in recess until 8 a.m. tomorrow morning.

MR. EDELMAN: Thank you very much.

CHAIRMAN JAFFE: Thank you very much. Off the Record please.

(Thereupon, at 5:53 p.m., the

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proceedings were adjourned, to be reconvened at 8:00 a.m. on Thursday, July 28, 2022.)

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CERTIFICATE OF NOTARY

I, OKEEMAH HENDERSON, 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.

Dated this day of. , 2022.

OKEEMAH HENDERSON
Notary Public in and for the
District of Columbia

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