REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 250

SUBMITTED PURSUANT TO EXECUTIVE ORDER DATED JULY 15, 2022 ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE NATIONAL CARRIERS' CONFERENCE COMMITTEE OF THE NATIONAL RAILWAY LABOR CONFERENCE, REPRESENTING CLASS I RAILROADS BNSF RAILWAY COMPANY; CSX TRANSPORTATION, INC.; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; NORFOLK SOUTHERN RAILWAY COMPANY; AND UNION PACIFIC RAILROAD COMPANY; AND THE FOLLOWING RAILROADS: ALAMEDA BELT LINE RAILWAY; ALTON & SOUTHERN RAILWAY COMPANY; THE BELT RAILWAY COMPANY OF CHICAGO; BESSEMER AND LAKE ERIE RAILROAD COMPANY d/b/a C.N.; BROWNSVILLE AND MATAMOROS BRIDGE COMPANY; CEDAR RIVER RAILROAD COMPANY; CENTRAL CALIFORNIA TRACTION COMPANY; CONSOLIDATED RAIL CORPORATION; DELAWARE & HUDSON RAILROAD COMPANY d.b.a. C.P.; GARY RAILWAY COMPANY; GRAND TRUNK WESTERN RAILROAD COMPANY d/b/a C.N.; IDAHO & SEDALIA TRANSPORTATION COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY d/b/a C.N.; INDIANA HARBOR BELT RAILROAD COMPANY; KANSAS CITY TERMINAL RAILWAY COMPANY; LONGVIEW SWITCHING COMPANY; LOS ANGELES JUNCTION RAILWAY COMPANY; NEW ORLEANS PUBLIC BELT RAILROAD CORPORATION; NORFOLK & PORTSMOUTH BELT LINE RAILROAD COMPANY; NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION (METRA); NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT; PALMETTO RAILWAYS; PORT TERMINAL RAILROAD ASSOCIATION; PORTLAND TERMINAL RAILROAD COMPANY; SOO LINE RAILROAD COMPANY d.b.a. C.P.; TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS; TEXAS CITY TERMINAL RAILWAY COMPANY; UNION RAILROAD COMPANY; WESTERN FRUIT EXPRESS COMPANY; WICHITA TERMINAL ASSOCIATION; WINSTON-SALEM

SOUTHBOUND RAILWAY COMPANY; AND WISCONSIN CENTRAL LTD. d.b.a. C.N. AND THE COORDINATED BARGAINING COALITION CONSISTING OF: AMERICAN TRAIN DISPATCHERS ASSOCIATION; BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN; BROTHERHOOD OF RAILROAD SIGNALMEN; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, FORGERS AND HELPERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; NATIONAL CONFERENCE OF FIREMEN & OILERS, 32BJ, SEIU; INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS – TRANSPORTATION DIVISION; TRANSPORTATION COMMUNICATIONS UNION/IAM; AND TRANSPORT WORKERS UNION OF AMERICA; AND THE BMWED/SMART-MD COALITION CONSISTING OF: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS; AND INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS – RAILROAD, MECHANICAL AND ENGINEERING DEPARTMENT

AND SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

(National Mediation Board Case Nos. A-13985, A-13986, A-13998,
A-13999, A-14000, A-14001, A-14002, A-14003, A-14004, A-14005
A-14006, A-14007, A-14008)

WASHINGTON, D.C.
August 16, 2022

Washington, D.C.
August 16, 2022

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

Pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order effective July 18, 2022, you established an Emergency Board to investigate a dispute between the National Carriers' Conference Committee of the National Railway Labor Conference representing Class I railroads BNSF Railway Company; CSX Transportation, Inc.; The Kansas City Southern Railway Company; Norfolk Southern Railway Company; and Union Pacific Railroad Company; and the following railroads: Alameda Belt Line Railway; Alton & Southern Railway Company; The Belt Railway Company of Chicago; Bessemer and Lake Erie Railroad Company d.b.a. C.N.; Brownsville and Matamoros Bridge Company; Cedar River Railroad Company; Central California Traction Company; Consolidated Rail Corporation; Delaware & Hudson Railroad Company d.b.a. C.P.; Gary Railway Company; Grand Trunk Western Railroad Company d.b.a C.N.; Idaho & Sedalia Transportation Company; Illinois Central Railroad Company d.b.a C.N.; Indiana Harbor Belt Railroad Company; Kansas City Terminal Railway Company; Longview Switching Company; Los Angeles Junction Railway Company; New Orleans Public Belt Railroad Corporation; Norfolk and Portsmouth Belt Line Railroad Company; Northeast Illinois Regional Commuter Railroad Corporation (Metra); Northern Indiana Commuter Transportation District; Palmetto Railways; Port Terminal Railroad Association; Portland Terminal Railroad Company; Soo Line Railroad Company d.b.a. C.P.; Terminal Railroad Association of St. Louis; Texas City Terminal Railway Company; Union Railroad Company; Western Fruit Express Company; Wichita Terminal Association; Winston-Salem Southbound Railway Company; and Wisconsin Central Ltd. d.b.a. C.N. and the Coordinated Bargaining Coalition consisting of: American Train Dispatchers Association; Brotherhood of Locomotive Engineers and Trainmen; Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Iron Ship Builders, Forgers and Helpers; International Brotherhood of Electrical Workers; National Conference of Firemen & Oilers, Local 32BJ, SEIU; International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division; Transportation Communications Union/IAM; and Transport Workers Union of America; and the BMWED/SMART-MD coalition consisting of: Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters; and International Association of Sheet Metal, Air, Rail and Transportation Workers – Railroad, Mechanical and Engineering Department.

Following its investigation of the issues in dispute, including both hearings and meetings with the parties, the Board now has the honor to submit its Report to you setting forth our recommendations for equitable resolution of the dispute between the parties.

The Board acknowledges with thanks the assistance of John S.F. Gross, Esq. and Eileen M. Hennessey, Esq. of the National Mediation Board, who rendered invaluable counsel and aid to the Board throughout the proceedings.

Respectfully submitted,

Ira F. Jaffe, Chairman

Barbara C. Deinhardt, Member

David P. Twomey, Member

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I. CREATION OF THE EMERGENCY BOARD

Presidential Emergency Board No. 250 ("PEB" or "the Board") was established by the President Joseph R. Biden, Jr., pursuant to Section 10 of the Railway Labor Act ("RLA"), as amended, 45 U.S.C. § 151 et seq. including § 160, and by Executive Order dated July 15, 2022. The Board was created to investigate and report its findings and recommendations regarding a dispute between the National Carriers' Conference Committee ("NCCC") of the National Railway Labor Conference representing certain Class I railroads and certain other railroads, and certain of its employees represented by certain organizations. A copy of the Executive Order is attached as Appendix A.

President Biden appointed Ira F. Jaffe, of Potomac, Maryland, as Chairman of the Board, and Barbara C. Deinhardt of Brooklyn, New York, and Professor David P. Twomey of the Boston College Carroll School of Management, Chestnut Hill, Massachusetts, as Members of the Board. The National Mediation Board ("NMB") appointed John S.F. Gross, Esq. and Eileen M. Hennessey, Esq., to serve as Special Counsel to the Board.

II. PARTIES TO THE DISPUTE

NCCC

The NCCC represents all major Class I freight railroads in the United States as well as many smaller freight and passenger lines in national collective bargaining. The Carriers involved in this dispute include Class I railroads BNSF Railway Company ("BNSF"); CSX Transportation, Inc. ("CSXT")[1]; The Kansas City Southern Railway Company ("KCS"); Norfolk

[1] CSXT was initially participating in this round of national handling only on the issue of Health and Welfare, which was the only issue between it and BLET before this Board. The Board was subsequently notified by letter dated August 4, 2022 from NCCC Chairman Brendan Branon and BLET National President Dennis Pierce that CSXT and BLET had agreed to join and participate in the round of national handling before this Board with respect to Wages and Work Rules, in addition to Health and Welfare, and to be bound by any settlement(s) reached through national

Southern Railway Company ("NS"); and Union Pacific Railroad Company ("UP"); and the following railroads: Alameda Belt Line Railway; Alton & Southern Railway Company; The Belt Railway Company of Chicago; Bessemer and Lake Erie Railroad Company d.b.a. C.N.; Brownsville and Matamoros Bridge Company; Cedar River Railroad Company; Central California Traction Company; Consolidated Rail Corporation; Delaware & Hudson Railroad Company d.b.a. C.P.; Gary Railway Company; Grand Trunk Western Railroad Company d.b.a C.N.; Idaho & Sedalia Transportation Company; Illinois Central Railroad Company d.b.a C.N.; Indiana Harbor Belt Railroad Company; Kansas City Terminal Railway Company; Longview Switching Company; Los Angeles Junction Railway Company; New Orleans Public Belt Railroad Corporation; Norfolk and Portsmouth Belt Line Railroad Company; Northeast Illinois Regional Commuter Railroad Corporation (Metra); Northern Indiana Commuter Transportation District; Palmetto Railways; Port Terminal Railroad Association; Portland Terminal Railroad Company; Soo Line Railroad Company d.b.a. C.P.; Terminal Railroad Association of St. Louis; Texas City Terminal Railway Company; Union Railroad Company; Western Fruit Express Company; Wichita Terminal Association; Winston-Salem Southbound Railway Company; and Wisconsin Central Ltd. d.b.a. C.N.

These railroads will be collectively referred to hereinafter as the "Carriers."

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handling under the RLA or other applicable law on the same terms and conditions as the other Class I carrier members of the NCCC engaged in national handling in this round on those issues. The Board was also notified by letter dated August 4, 2022 from Jeff Wall, CSXT's Vice President, Labor Relations, and SMART-TD President Jeremy Ferguson that effective July 15, 2022, CSXT and SMART-TD had agreed to suspend their local bargaining on Wages and Work Rules, participate in all national handling processes, and adopt and be bound by any settlement(s) reached in national bargaining and the processes for adopting any such settlement(s) under the RLA, on the same terms and conditions as other Class I railroads and labor representatives with respect to Wages and Work Rules.

The Labor Organizations

The following labor organizations are bargaining together as the Coordinated Bargaining Coalition ("CBC"): American Train Dispatchers Association ("ATDA") representing Train Dispatchers; Brotherhood of Locomotive Engineers and Trainmen ("BLET") representing Locomotive Engineers; Brotherhood of Railroad Signalmen ("BRS") representing Railroad Signalmen; International Association of Machinists and Aerospace Workers ("IAMAW") representing Machinists; International Brotherhood of Boilermakers, Iron Ship Builders, Forgers and Helpers ("IBB") representing Boilermakers/Blacksmiths; International Brotherhood of Electrical Workers ("IBEW") representing Electrical Workers; National Conference of Firemen & Oilers, 32BJ, SEIU ("NCFO") representing Firemen and Oilers; International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division ("SMART-TD") representing train service employees, including Conductors; Transportation Communications Union/IAM (TCU) representing Clerks and Carmen; and Transport Workers Union of America ("TWU") representing Carmen.

The following labor organizations are bargaining together as the BMWED/SMART-MD coalition: Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters ("BMWED") representing Maintenance of Way employees; and International Association of Sheet Metal, Air, Rail and Transportation Workers – Railroad, Mechanical and Engineering Department ("SMART-MD") representing railroad shopcraft employees.

The Organizations represent 100% of organized rail employees. The organizations in the CBC represent approximately 80,000 employees. The organizations in the BMWED/SMART-

MD coalition represent approximately 22,000 employees. All 12 organizations will be collectively referred to hereinafter as the "Organizations."

III. HISTORY OF THE DISPUTE

Over the period from November 1, 2019 through January 20, 2020, pursuant to Section 6 of the RLA, the NCCC and the Organizations served on each other formal notices for changes in current rates of pay, rules, and working conditions. The Carriers and the Organizations (collectively referred to hereinafter as "the Parties") were unable to resolve the issues in dispute in direct negotiations, and by February 1, 2022, all the Organizations had filed mediation applications with the National Mediation Board ("NMB").

Following the applications for mediation, representatives of all Parties worked with the NMB mediators and with Board Members of the NMB in an effort to reach agreements. Various proposals for settlement were discussed, considered, and rejected. On June 14, 2022, the NMB, in accordance with Section 5, First, of the RLA, urged the NCCC and the Organizations to enter into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). On June 14, 15 and 16, 2022, the Organizations individually declined the NMB's proffer of arbitration. On June 16, 2022, the NCCC accepted the NMB's proffer of arbitration.

On June 17, 2022, the NMB served notices that its services had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., Eastern Daylight Time, on Monday, July 18, 2022.

Following the termination of mediation services, the NMB advised the President, in accordance with Section 10 of the RLA, that in its judgment the disputes threaten substantially to interrupt interstate commerce to a degree that would deprive sections of the country of essential transportation service. The President, in his discretion, issued an Executive Order on July 15, 2022. Effective 12:01 a.m. eastern daylight time on July 18, 2022, the Executive Order created this Board to investigate and report concerning the disputes.

IV. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an organizational meeting by conference call on July 19, 2022 and issued an organizational letter on July 20, 2022, in which the ground rules for the Board's procedures were set forth. Pre-hearing submissions were provided to the Board on July 20, 2022. A hearing on the issues in dispute was held July 24, 25, 26, 27 and 28, 2022, in Washington, District of Columbia. All parties were represented by counsel, and had a full and fair opportunity to present oral and documentary evidence and argument.

On July 29, 2022, the Board met informally with the parties, in Washington, District of Columbia, in an attempt to facilitate a settlement of the dispute. The Board thereafter met in a number of Executive Sessions to finalize this Report.

V. DISCUSSION AND RECOMMENDATIONS

WAGES - COMPENSATION

1) The Carriers' Wage Proposal

The Carriers propose the following general wage increases ("GWIs") during the term of the Agreement:

Date	Increase	Increase (Compounded)
7/1/20	2.0%	1.020
7/1/21	3.0%	1.051
7/1/22	6.0%	1.114
7/1/23	3.0%	1.147
7/1/24	2.0%	1.170
5 years	16.0%	17.00% compounded

The retroactive portion of wage increases that precede the effective date of this Agreement shall be applied to employees who have an employment relationship with one of the Carriers on such effective date or who retired or died subsequent to June 30, 2020. The payment will be made as a single lump sum within 60 days of the effective date consistent with historic practices.

The Carriers also offer a $1,000 signing bonus to be payable to each eligible member of a craft or class upon successful ratification of a Tentative Agreement by the applicable labor organization. Employees who have an employment relationship as of the effective date of this Agreement will be eligible for the bonus, which will be paid as a single lump sum within 60 days of such effective date.

Finally, with respect to SMART-TD only, the Carriers' offer also provides that in the absence of agreement on a final and binding process to achieve changes in train crew size and redeployment of Conductors in PTC-enabled territory, compensation will be adjusted to the extent necessary to mitigate the economic impact of trains operating with more personnel than would be assigned by a railroad based on operational needs. At the hearing in this matter, the Carriers conceded that they were not actually proposing a different wage to be payable to those represented by SMART-TD, but made the alternative wage proposal as a mechanism to have the Board address the Crew Consist issue.

2) <u>The Organizations' Wage Proposal</u>

The Organizations propose the following GWIs during the term of the Agreement:

Date	Increase	Increase (Compounded)
1/1/20	6.0%	1.060
1/1/21	6.0%	1.124
1/1/22	8.0%	1.213
1/1/23	4.0%	1.262
1/1/24	4.0%	1.313
5 years	28.0%	31.3% compounded

3) <u>Overview of the Positions of the Parties</u>

This case differs from many of the prior PEBs addressing disputes in national handling in a number of respects. This is the first case in which all of the Organizations are involved in the PEB. There have been no other settlements that either Party asserts should be treated as a pattern or even as a lead settlement. The resolution of the wage issue will thus need to focus upon traditional standards utilized in interest arbitrations and PEBs over the years. The Parties present conflicting evidence and arguments concerning the following factors, some of which are acknowledged to be relevant by both sides, but as to which they have very differing positions concerning weight and application, and others of which are the subject of dispute as to whether they should be considered at all in the determination of what constitutes a fair and appropriate wage adjustment in this case.

The Parties are in agreement that: 1) the duration of the Agreement would be five years and cover the period January 1, 2020 through December 31, 2024; and 2) with the exception of any craft-specific proposals of monetary significance that might be recommended by the Board, the Organizations would all be treated the same in terms of percentage adjustments to straight-time wage rates and any cash payments. The Parties take opposing positions on almost everything else relevant to resolution of the wage dispute, as reflected by the wide divergence of proposals, both in percentage terms and in absolute dollar terms. When one considers all of the proposals that had significant monetary effect and which are capable of being costed, the Parties' proposals in this proceeding are separated by more than $9 billion.

The Parties principally focused in their wage presentations on the following areas (a number of which admittedly overlap):

1) the prior history of negotiated wage changes between the Parties;

2) changes in the cost-of-living during 2020-24 and previously;

3) other current wage settlements and trends;

4) the claimed "wage premium" enjoyed by freight rail workers, currently and historically;

5) issues surrounding recruitment and retention and the current labor market;

6) issues related to the effect on working conditions of the pandemic, the shift to Precision Scheduled Railroading ("PSR"), and reductions in the working force;

7) issues related to the profitability of the Carriers;

8) issues related to productivity;

9) projections as to the future economic state of the freight rail industry; and

10) the interplay of wages and health benefits.

The Parties provided the Board with tens of thousands of pages of information concerning the various issues in dispute, as well as testimony from expert witnesses on both sides, from representatives of the Carriers and the NCCC, and from representatives of the Organizations and their coalitions. At most, in this Report we can only provide what is tantamount to an abbreviated summary of the most significant assertions of the Parties with respect to each of the factors listed above. It should be underscored that the Board has carefully considered and weighed all of the Parties' evidence and arguments in the performance of its responsibilities, whether or not that evidence has been specifically referenced herein.

History of Prior Settlements by the Parties

A summary of overall wage data was introduced with respect to the term wage agreements reached by the Parties since 1946. The Carriers focus principally on the seven sets of agreements reached since the 1985 bargaining round. The Organizations focus on the entire period since 1946.

The structure of bargaining under the RLA is such that it is not uncommon for the next round of agreements not to be reached until several years after the amendable dates of the prior cycle of agreements. In some cases, the agreements were reached after reports from Presidential Emergency Boards. In others, the Parties were able to reach agreements without the need to resort to that process. In one instance, following the issuance of PEB 219, the Parties still were unable to reach agreement. After that PEB, there was a brief 17-hour strike, following which Congress enacted Public Law 102-29 which imposed the terms recommended by PEB 219. PEB 219 resulted in a number of changes, including a three-year wage freeze, changes to the Railroad Employees National Health and Welfare Plan ("National Plan"), increases in the operating crafts' basic day mileage, expanding the incidental work rules for the shop crafts, restructuring of wages and salaries for the TCU-represented employees resulting in significant reductions in pay, changes in the way that maintenance of way employees could be assigned work, and significant changes in crew consist. The Organizations assert that the effect of PEB 219 and the resulting agreements was to reduce overall real wages (after taking into account the impact of changes in the cost of living) by 12.5%.

The Carriers stress that, since the 1985 bargaining round, wage settlements have averaged approximately 2.4% per year; that the three rounds since 2005 have averaged 2.85% per year; and that the range of settlements over the life of each agreement have been between 6% and 17%, with the lower percentage adjustments often accompanied by either a lump sum ratification bonus or other payments or with cost-of-living adjustments ("COLAs"), some of which were later incorporated into the wage base and others of which were not. The Carriers argue that their proposal for 16.0% plus a $1,000 lump sum is at the higher end of the historical range and should be treated by the Board as fair and appropriate in this round. The Carriers urge that the Board should not give significant weight to the settlements that took place prior to 1980 when the Staggers Act was passed, resulting in the deregulation of the freight rail industry. The Carriers maintain that wage settlements reached in the context of a regulated environment should not be treated as necessarily reflective of settlements that were reached after regulation ended. Review of the data indicates periods of significant nominal and real wage growth during the period from 1946 to 1980, but with significant variations among different agreements in that regard; nominal annual wage growth varied from a high of 11.7% to a low of 0.7% in the agreements reached prior to 1980 and real wage growth ranged from (-7.8%) to 8.3% per year during those same agreements.

The Organizations assert that, even prior to taking into account the Carriers' proposed cost-shifting relative to health and welfare, which will have the effect of reducing the Carriers' wage proposal to approximately 10.0% nominally over the five-year term, the Carriers' proposal would result in the worst contract since PEB 219 and would produce a **reduction** in real pay of 7.0% over the life of the agreement, or 1.4% annually. This is based upon the projection that inflation will rise by 25.8% over the life of the agreement. It has already risen by 16.8% during the first 30 months of the agreement – a period for which the Carriers' proposal would provide only 5.0% in GWIs – and is projected to continue to rise significantly during the remaining 30 months. The Organizations' proposal, by contrast, will result over the entire term in modest real wage growth (4.4% over term or 0.9% per year, on average), even if it is less than historical norms. Over the last 25 rounds of bargaining, 20 of the Parties' agreements resulted in real wage increases averaging 2.7% per year. Over the last seven rounds of bargaining, the negotiated changes in wage rates, when compared to changes in the CPI-W, showed the following real wage growth:

Bargaining Round	Total GWIs	CPI-W Increase	Real Wage Change Over Term
1985	11.4%	13.5%	(-2.0%)
1990	10.0%	26.2%	(-12.8%)
1995	17.7%	12.1%	5.0%

2000	13.7%	12.7%	0.9%
2005	17.0%	13.8%	2.8%
2010	15.6%	8.6%	6.4%
2015	12.5%	8.9%	3.3%
2020 (Carriers' Proposal)	16.0%	25.8% (Projected)	(-7.0%)
2020 (Organizations' Proposal)	31.3%	25.8% (Projected)	4.4%

Given the present circumstances, many of which are discussed below, the Organizations maintain that there simply is no reason to recommend wage adjustments that would result in real wage loss as urged by the Carriers.

Changes in the Cost of Living - Inflation

The Parties acknowledge that inflation presently is at a 42-year high, but disagree concerning the appropriate measure for measuring changes in the cost of living (i.e., inflation) both for the period 2020-24 and historically.

The Organizations argue in support of use of the CPI-W (Consumer Price Index – Urban Wage Earners and Clerical Workers) which is published by the Bureau of Labor Statistics ("BLS") within the U.S. Department of Labor ("DOL"). The reasons that the Organizations assert in support of the use of this measure of inflation include: 1) the fact that the CPI-W was used historically by the Parties when they had cost of living adjustment ("COLA") provisions in their national and local agreements (a period that spanned 56 years from 1951 to 2007) and was also used by the Parties to index payments under various local agreements; 2) the fact that the CPI-W is used in many collective bargaining agreements in other industries to index pay or allowances that is subject to periodic adjustment; 3) the use of the CPI-W generally in labor contracts and in interest arbitrations has long been considered a proxy for changes to the cost of living; despite some criticism, the DOL reports that the CPI is "the most widely used measure of inflation"; 4) the use of the CPI-W in calculating adjustments to Social Security benefits, federal civil service pension benefits, the federal food stamp program, and others, attests to the appropriateness of that benchmark in this case; and 5) the Carriers' use of the CPI-W as a proxy for inflation took place as recently as PEB 243 in 2011 without any suggestion in that proceeding that the Personal Consumption Expenditures ("PCE") price index, an index published by the Bureau of Economic Affairs ("BEA") within the U.S. Department of Commerce, or some other index needed to be considered.

The Parties also discussed possible use of the CPI-U (Consumer Price Index – All Urban Consumers), which also is published by the BLS. If the Board is persuaded to rely upon the CPI, then the Carriers advocate use of the CPI-U rather than the use of the CPI-W.

The Carriers strongly urge, however, that the Board decline to rely on the CPI at all and, instead, use the PCE as a measure of changes in the cost of living. The differences among the CPI indices and the PCE include the following: a) the PCE weights change based upon assumptions that people can substitute away from some goods or services and towards others as prices change; thus, if the price of red meat goes up, the PCE assumes less consumption of red meat and more consumption of alternate foods, such as chicken or fish; b) the data for the CPI is data from individual households whereas the PCE uses data from gross domestic product reports and from suppliers; the PCE thus does not rely on data from individual consumers or families; c) the CPI-U (which was created in 1978) includes almost all residents of urban or metropolitan areas, including professionals, the self-employed, the unemployed, and retired employees while the CPI-W (which was created in 1913) is based on expenditures of households in which a majority of the household's income comes from clerical or wage occupations for at least 37 weeks in the prior 12 months; d) the CPI addresses out-of-pocket expenditures, but excludes items such as health insurance paid for by employer-provided or government-provided programs, while the PCE includes those items; and e) the CPI indices weight heavily items such as energy (including gasoline) and food, both of which have increased significantly recently – the Parties dispute whether these increases are likely to moderate (and to what degree) based upon the factors that have contributed to those increases (including the war in the Ukraine and supply chain issues – while the PCE is designed to smooth such significant price swings and can be adjusted for items other than the seasonal factors that the CPI uses to adjust.

The Carriers further request that, to the extent that the Board relies on whatever measure of inflation it ultimately chooses to adopt, appropriate consideration be given to the fact that the CPIs measure pricing in households located in urban areas and a large majority of railroad employees reside in more rural, lower priced areas. No analysis was presented concerning the rates of change reflected in CPIs from less populous localities closer to where large numbers of rail employees reside to determine whether the urban/non-urban factor affects the rate of change in the index and, if there is a difference, whether the rate of change is higher in urban or in non-urban areas.

Additionally, the Carriers assert that core inflation (which excludes the prices of both energy and food) was not as high as overall inflation and was likely to, and had already begun to, diminish, particularly with respect to energy prices. The Carriers also disagree with the Organizations' argument that the Parties (or collective bargaining parties generally) have historically bargained for "real wage increases" rather than simply bargaining for the amount of the GWIs themselves, noting that in most cases the actual inflation numbers (regardless of which index was used) would not be known in advance. Moreover, examination of the real wage growth calculations revealed little or no correlation between the inflation rate and the amounts of GWI negotiated. The Carriers also assert that, both historically and during the current inflationary environment, negotiated wage increases have simply not kept pace, with GWIs that were less than the actual amount of inflation supplemented by cash bonuses that were not part of the underlying wage rates themselves – coinciding with a wage trend seen currently in many other recently bargained collective bargaining agreements.

The changes in the CPI-W, CPI-U, and PCE during the period starting January 1, 2020, and projected forward after the date of this Report, are as follows[2]:

Date	CPI-W	CPI-U	PCE
2020	1.2%	1.2%	1.2%
2021	5.3%	4.7%	3.9%
2022 [January through July]	6.7%	6.3%	6.8%
[August through December]*	4.0%	4.0%	4.0%
Composite Annual	8.4%	8.0%	8.5%
2023*	3.1-3.6%	3.1-3.6%	3.1-3.6%
2024*	2.4-2.9%	2.4-2.9%	2.4-2.9%

[2] The projected estimates for 2023 and 2024 are based on Congressional Budget Office ("CBO") forecasts which represent the low end of the range; the high end of the range represented adjustments of an additional 0.5% based upon testimony from all experts at the hearings that such an adjustment was appropriate if the Board believed that inflation was not abating soon. The projections for August through December were set at 4.0% [annual rate], or an additional 1.7% for August through December, based upon the Board's consideration of the testimony from the Parties' expert witnesses on that matter. The CPI-W and CPI-U figures were taken from the BLS web site for 2020, 2021, and 2022 (January through July). The trend line for 2022 shows monthly inflation numbers trending upward and peaking in June at a year over year rate of 9.8% (CPI-W) and 9.1% (CPI-U), but flat in month over month (July over June). The 6.7% figure in the above table for the CPI-W represents the increase in July 2022 over the price index from December 2021. One needs to add a projection for the period August through December 2022 to arrive at an appropriate 2022 overall inflation number which will be the composite the known inflation over the period January through July and the projected inflation from August through December. The same method was used for the 6.3% CPI-U figure for the first portion of 2022. The PCE number for 2022 was reported as of June, but reflects a one-year look-back; in that regard it is most comparable to the 9.8% CPI-W and 9.1% CPI-U figures. The PCE figures for 2020 and 2021 were taken from the materials included with Carriers' presentations. The PCE data for the first half of 2022 was taken from the BEA website and included the most recent data point for June 2022 which was not published until after the conclusion of the hearings. The July 2022 CPI-W and CPI-U data also were published after the conclusion of the hearings.

[* Projected]

The Carriers argue that current levels of inflation, once determined, are not an appropriate basis for setting wage and compensation increases in this case for several reasons. First, many forecasts and market prices of securities reflect a general expectation that the rate of inflation is likely to fall and that the current rates are temporary. It would be inappropriate, particularly with the potential for a recession on the horizon, to grant large increases in wage rates based on current inflation rates. Second, the current rates are being exacerbated by negative forces that are not structural and are likely to end soon, such as the war in the Ukraine (which is adversely affecting energy and food prices), lockdowns in China, COVID-related supply chain disruptions, and government programs sending large amounts of money to people. According to the Carriers, setting extraordinary permanent wage increases in response to short-term, temporary spikes in inflation simply exacerbates the inflationary cycle by changing expectations more broadly. One of the Carriers' expert witnesses testified that a significant portion of inflation currently was due to energy and that has been declining in price since February; he focused on what was labeled the "core" inflation numbers (which exclude both energy and food), rather than the total inflation numbers. Another of the Carriers' expert witnesses indicated that the changes in the CPI have been trending at the 5% level.

The Organizations, however, note that even if the rate of inflation declined tomorrow to zero, in the absence of significant deflation, the increased costs reflected in the current environment will continue (albeit without further significant increase). At a minimum, according to the Organizations, the inflation rate that is known as of today should be reflected in the determination of the appropriate wage rates, including analysis of the desire to achieve real wage gain. The Organizations note that the CPI-W is 16.8% higher as of June 2022 than it was in

December 2019. According to the Organizations, even if the Board were to recommend adopting the Organizations' wage proposal in its entirety, it would result in only modest real wage growth. If one uses the CPI-W as the measure of inflation and assumes annual inflation rates for the last six months of 2022 of 6.0% and inflation rates of 3.1% for 2023 and 2.4% for 2024 (the CBO rates for 2023 and 2024), then the real wage increase over the first three years would be 1.9% (0.6% annually) and the real wage increase for all five years would be 4.4% (0.9% annually). If one changes the assumptions for the second half of 2022 to a 5.0% annual rate and the rates for 2023 and 2024 to 4.0% and 3.0% respectively, real wage growth under the Organizations' proposals would decline to 2.4% over the 5-year period (0.5% annually). If one were to further change the assumptions for the second half of 2022 to a 6.0% annual rate and the rates for 2023 and 2024 to 5.0% and 4.0% respectively, then real wage growth under the Organizations' proposals would decline to (-0.1%) over the 5-year period (0.0% annually).

Other Wage Settlements and Trends

There was no demonstrated correlation between the GWIs bargained by the Carriers and Organizations historically and one or more other non-rail parties or industries over the years. The Carriers assert, however, that if one examines the period from 2005-19 cumulatively, then the GWIs for freight rail employees averaged 3.0% per year and cumulatively were 44.87%. The Carriers note that these gains compared to GWIs for private non-manufacturing employers over that same time frame of 3.0% per year, 44.83% cumulatively, and GWIs of 2.7% per year, 39.93% cumulatively, for all industries. This 15-year time frame included three rounds of rail bargaining, but on average a larger number of rounds of negotiation for the private non-manufacturing employers and all industries since agreements bargained under the National Labor Relations Act are of shorter average duration.

The Carriers cite to the all settlements and private non-manufacturing settlement data from Bloomberg Bureau of National Affairs ("BNA") which indicates the following annual wage increases for the period 2020-24:

	2020	2021	2022	2023	2024	Total
All Settlements (BNA)	3.0%	2.8%	3.3%	3.0%	3.2%	15.3%
Private Non-Manufacturing (BNA)	3.3%	3.5%	4.2%	3.8%	3.8%	18.6%

The settlements represented in the above-table were bargained at different points in time and had a variety of durations. The 2020 aggregated data thus reflects agreements bargained in 2020, but also the 2020 rates of wage increases contained in collective bargaining agreements negotiated in other years.

A number of other anecdotal settlements were cited by the Parties and in recent weeks have been reported in the press. As noted at the hearing by the Parties' experts, they are consistent with a trend suggesting upward pressure on annual wage increases (into the range of 4% to 5% per year, augmented by lump sum payments). While it is clear that the current inflationary environment has resulted in richer settlements than in the recent past, it is also clear that those increases fall short of what would be needed to provide real wage growth based upon the current high rates of inflation (as measured by any of the indices noted above).

There also is no question that the COVID pandemic delayed the negotiation of a number of collective bargaining agreements. While current settlements have clearly been higher than pre-pandemic norms, several witnesses cautioned that while the labor market is clearly a tight one in terms of being able to retain and recruit, there are also signs of a possible recession in 2023.

The Claim of a Freight Railroad Workers' "Wage Premium"

The Carriers have long maintained that freight railroad workers receive a significant wage and compensation "premium" over workers performing comparable jobs in other industries. The Carriers assert that they have no incentive to set total compensation lower than what is required by the market because, if they did so, then they would be deprived of the skilled workforce needed to effectively operate. Conversely, however, they maintain that if wage rates are set excessively high, then it will result in the number of employees being further reduced and replaced with other alternatives and will have the effect of diverting resources that otherwise could be available for capital investment.

The Carriers' expert witnesses projected that the pay for freight rail employees over and above the rates paid to workers that are claimed to work in comparable occupations in comparable industry categories ("wage premium") ranges from 6.5% to 49.4%. Using the same method of comparison, the Carriers assert that the benefits for freight rail workers are 59% to 114% above similar benefits for "comparable" workers. When total compensation is considered, the Carriers assert that this "compensation premium" is between 21% and 53% of compensation.

The Organizations deny that there is any "wage premium" and maintain that the comparator jobs and industries underpinning that analysis are not, in fact, truly comparable. They argue that it is inconceivable that the Carriers would overpay for labor for decades as the Carriers insist is the case. Additionally, the Organizations observe that virtually identical claims were made before PEB 243 and were dismissed by that Board as unsubstantiated. The Board in that case noted that:

> No point would be served by any extended discussion of the Carriers' assertions that employees represented by the Organizations in this case should receive lower wage increases due to the existence of a "wage premium." While wages in the rail industry in recent years have been higher than wages paid to many who work in the same named job title in other industries, we cannot ignore the facts that: 1) despite this claimed "premium," the Carriers are proposing to increase

> wages at rates beyond those being negotiated in other industries generally and at a time when the economy is still struggling; 2) the Carriers negotiated substantial wage increases with the UTU and the BLET whose employees are similarly asserted to be "overpaid" based upon the same type of economic comparison and analysis; and 3) this wage differential has continued for some years, suggesting that there are a variety of legitimate and compelling reasons for the continuation of those differentials, including but not limited to, differences in skill and responsibility and work environment and the impossibility as a practical matter of replacing large numbers of these highly trained (and in some cases certified) employees if they failed to report for work for whatever reason.

(Report of PEB 243, at 20 n.9).

Considerations of Recruitment and Retention and the Current Labor Market

The Organizations assert that the Carriers have been having difficulty hiring and retaining new employees at the current contractual wage rates and, as a result, severe staff shortages and resultant service problems have developed.

The Organizations also point to the following statement by the Chair of the Surface Transportation Board ("STB"), Martin Oberman, in hearings held on April 26 and 27, 2022, that:

> I have raised concerns about the primacy Class I railroads have placed on lowering their operating ratios and satisfying their shareholders even at the cost of their customers. Part of that strategy has involved cutting their work force to the bare bones in order to reduce costs. Over the last six years, the Class Is collectively have reduced their work force by 29% – that is about 45,000 employees cut from the payrolls.
>
> In my view, all of this has directly contributed to where we are today – rail users experiencing serious deteriorations in rail service because, on too many parts of their networks, the railroads simply do not have a sufficient number of employees.

According to the Organizations, in the course of those hearings, the Carriers represented to the STB that they were engaged in hiring additional employees, but were having some difficulty doing so.

The Organizations also assert that unprecedented numbers of rail workers were quitting mid-career and that furloughed employees were refusing recalls.

The staffing shortages and hiring problems have become so acute that the Carriers have resorted to offering significant incentives (such as hiring bonuses and relocation expenses) and, at CSXT, recently agreed to hire new Conductors at the full job rate and immediately escalate the wages of recently hired employees who were still in progression, with the result that hiring rates increased by approximately 25%. The Carriers do not dispute that they have undertaken these actions, but maintain that these hiring incentives have been isolated and focused, rather than implemented across the board, and have been in response to particular local labor markets in which it has been more difficult to hire new employees due to very low levels of local unemployment.

The Carriers presented data concerning the number of applicants per vacancy and assert that while that ratio is down, it is within historic ranges. Further, the Carriers note that, even at present rates, there were an average of 79.3 applicants for each vacancy announced in 2020 and 42.5 applicants for each vacancy announced in 2021. The Carriers compare that to the JOLTS data – which is a national ratio of the total people seeking work divided by the total number of job vacancies in the economy and was not an effort to match any applicants to any particular vacancy – which was 2.1 applicants per position in 2020 and 0.9 applicants per position in 2021, respectively, and argue that the much higher ratios for freight rail vacancies demonstrate that there is no hiring problem at current wage levels.

With respect to quit rates, the Carriers assert that the majority of quits were recent hires who likely discovered that they were not well-suited to life as a railroad employee. As compared to JOLTS data showing comparative quit rates of 25% to 35%, the quit rates for BNSF, CSXT, NS, UP, CN, and KCS for 2020 and 2021 were in the 4% to 8% range (slightly higher for all carriers in 2021).

With respect to acceptance rates for those recalled from furlough, the Carriers assert that the data fails to reveal any differences in the post-2019 period from earlier periods. The data indicates that the single most important predictor of whether someone would accept recall from furlough was the length of time that the employee was on furlough, with acceptance rates of 70.10% among BNSF operating employees if they were furloughed for 12 months or less, but much lower acceptance rates following longer periods of time on furlough (culminating with a 25.10% acceptance rate for those on furlough more than 24 months).

In response to the allegation of the Organizations that the rate of employees leaving the industry, particularly mid-career quits, is unusually high, the Carriers assert that are many reasons why workers opt to leave positions and that compensation is only one such factor. According to the Carriers, there has been no proof that the current issues concerning recruitment and retention are the result in any large degree of insufficient compensation levels, rather than a reflection of broader labor market considerations.

<u>The Effects on Working Conditions of the Pandemic, the Shift to PSR, and Reductions in the Working Force</u>

There was no dispute that freight rail workers were generally classified as essential employees who were required to work throughout the pandemic. After initial significant reductions in both operations and the size of the working force, freight rail volume rebounded quickly and many, but not all, of the furloughed workers were offered recall. Some accepted. Others did not.

Since the amendable date of the Agreements, and just prior, the working conditions of railroad employees have been impacted by a combination of events. One was the pandemic itself, which required employees to report to work in circumstances that exposed them to the risk of contracting COVID-19, both prior to vaccines becoming available, and thereafter. A second major factor that impacted working conditions during this time frame resulted from the adoption of PSR, which had been implemented at Class I carriers beginning in or about 2017.

PSR resulted in a number of changes in the design of the freight rail system. Traffic was commingled and specialty trains were reduced in number. Trains also increased in length from about 7,000 feet on average to 9,500 feet on average. The Carriers operated 25%-30% fewer trains, resulting in fewer switches in the yards and a decreased need for Mechanics. Train schedules also changed, directly impacting the operating crafts. Freight rail employment declined overall by about 30% from 2016 to date. The resulting changes included changes in shipper rates and charges for demurrage, reduced aggregate labor costs, lower operating ratios, and higher profits. Profits were also bolstered by, among other things, tax cuts.

According to the Organizations, by December 2021, the Carriers were moving more than 97% of their pre-pandemic freight tonnage with only 81% of the pre-pandemic workforce. The Organizations assert that employment had declined from an average of approximately 116,700 in 2019 (an average for the year) to approximately 102,000 as of the start of the hearings in this matter – a decrease of 12.6% in a matter of two and one-half years. The Organizations maintain that this situation forced many of those who continued to have jobs to suffer poorer working conditions, including increased hours of work and availability and inabilities to obtain work schedules that provided for reliable time off to plan and to accommodate various life events, fatigue, and stress. The Organizations assert that, rather than recall or hire adequate numbers of workers, the Carriers opted instead to impose attendance programs that had the effect of coercing employees who were too fatigued to work or had other compelling reasons not to report for work to do so anyway. The Organizations allege that even authorized contractual leave or similar time off was being routinely denied to those who requested its use.

The Carriers' witnesses paint a very different picture of continued employment at the railroads after the pandemic. The Carriers maintain that hours of work records do not show inordinate amounts of overtime being worked on average. They claim that the rates of employees marking off were highly elevated on Fridays, Saturdays, Sundays, holidays, and other "high impact" days which coincided with other events such as major football games, concerts, and the like.

There was no dispute that freight rail employees sacrificed in order to keep the railroads operating, reporting to work at heightened personal risk during the pandemic. The Carriers repeatedly recognized that service and commitment during the presentations to the Board. Where the Parties' claims factually diverge is with respect to whether there is widespread frustration and dissatisfaction among railroad workers related to the demands of the job (including scheduling and an inability to get sufficient time off).

The Carriers represent that the average hours that a TYE employee (train, yard and engine service employee) works per week is: 34.3 hours (2020); 35.5 hours (2021); and 33.0 hours (2022 to date) and that the average hours that non-operations employees work per week is: 43.4 hours (2020); 40.7 hours (2021); and 42.2 hours (2022). From that data, the Carriers argue that employees are not overworked and should not be fatigued. For a number of crafts, including particularly the operating employees, the number of average hours worked may mask the impact of the large numbers of hours on call, waiting for assignment, or on layover.

The Profitability of the Carriers

The Organizations argue that the phenomenal profitability of the Carriers[3] must be considered when determining an appropriate and reasonable wage increase. In support of their

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[3] These figures are consolidated for NS, CSXT, and UP. BNSF was not included due to the fact that its stock is not separately traded and is wholly owned by its parent, Berkshire Hathaway. Although not included in these figures, there is no dispute that Berkshire Hathaway has reported that BNSF has been highly profitable during this period and there also is no dispute that Berkshire Hathaway has engaged in significant stock repurchase programs in addition to its other acquisitions and, as of the 2Q 2022, was reported to have cash on hand in excess of $100 billion.

position, the Organizations note that:

• Carriers' profits increased 676% since 2004 to $22.5 billion in 2021;

• Carriers' stock prices increased 1250% from 2004 to 2021, vastly in excess of the financial markets overall, and dividends increased 1038% during that same period;

• No new Carrier equity offerings were made in recent years, reflecting a lack of any need to raise capital in that manner; the operations were generating profits sufficiently high that it funded all reinvestments in technology and infrastructure;

• Decline in the debt to capital ratio to .135 in 2020 – the lowest since 1980 with the exception of 2017;

• Between 2007 and 2020, NS, CSXT, and UP repurchased a total of $72 billion of their own stock; $41.5 billion of those stock purchases took place during the period 2016-20;

• Operating ratios, a measure of financial success highly valued by the equity markets, have steadily been declining and recently reached 62.0, the best since 1942, and a significant reduction from 86.6 in 2004;

• Executive compensation has been high; from 2018-21, the CEOs of NS, CSXT, and UP received a total of $183,000,000 in compensation; by contrast, during the 2015-19 Agreement, employee compensation increased by 13.8% and CEO compensation increased by 111%; and

• Future earnings are projected to remain high; Morningstar projects a 36.6% increase in earnings from 2021 to 2024, with the following projections: 2021(actual): $4.21 per share; 2022: $4.79 (13.8% increase over 2021); 2023: $531 (10% increase over 2022); and 2024: $5.75 (8.3% increase over 2023).

The Organizations point out that no PEB has ever considered the question of the appropriateness of an increase in compensation against such a robust backdrop of profits and other indicators of financial success.

The Organizations also maintain that the Carriers retain significant pricing authority due to their monopoly and duopoly status with respect to many routes, such that any increases in compensation costs can be passed onto shippers (no differently than increases due to spikes in the cost of energy) if they choose not to fund those improvements out of profits.

The Organizations assert that profitability should be considered in this case for several reasons. First, they argue that when business conditions are poor, the claimed lack of ability to pay is always cited as one basis to limit improvements in compensation and, in fact, were a substantial part of the reason that PEB 219 recommended to freeze wages. Second, they argue that labor has contributed towards these profits and is entitled to its fair share alongside shareholders and other stakeholders. Third, they reject the notion that employees have no risk or had no rewardable contributions towards profitability, noting that it was the efforts of the employees that allowed the Carriers to operate during the pandemic and further noting that many were furloughed and headcount was permanently reduced.

The Carriers acknowledge the significant growth of profits in recent years and do not assert an inability to pay in this case. They argue, however, that their profitability should not be considered in the recommendation as to the appropriate compensation rates, which should be governed by the relevant labor market considerations.

The Carriers stress that a large amount of revenues has been reinvested into technological improvements. Spending on infrastructure was $30.3 billion in 2015 alone and remains significant years later. In 2020, investment in infrastructure by the Carriers was $22.0 billion.

The Carrier also note that they have reinvested 40% of their total revenue dollars into infrastructure improvements over the past 40 years.

The Carriers maintain that capital investment and risk are the reasons for their profits, not any contributions by labor. The Carriers further argue that there is no correlation historically between high profits and higher compensation, either in the freight rail industry or more generally. To the contrary, one of the Carriers' experts maintained that the most profitable companies are not those whose compensation is the highest. The Carriers assert that since employees have been fairly and adequately paid for their efforts and do not share in the downside risks if the operations are less profitable, then they have no claim to share in the upside either.

Increases in Productivity

The Organizations note that for some years the freight ton-miles per man-hour, a traditional measure of productivity, has increased significantly. Since the passage of the Staggers Act deregulating the freight rail industry in 1980, there has been a 75.8% decrease in man hours, but freight-tons per man-hour has increased by 602%. The Organizations note that while employment has declined significantly, traffic has increased.

The Organizations argue that it is common for increases in productivity to be cited by bargaining parties in support of increases in compensation.

The Carriers respond by asserting that in this case the increases in productivity were largely the product of other circumstances independent of the contributions of rail labor, including changes in the size of trains and the lengths of their runs and investment in modern and often labor-saving technologies. They urge that the Board not give any weight to this factor in determining its recommendations in this case with respect to wages and compensation.

Projections for the Future Economic State of the Freight Rail Industry

The projections set forth in the record regarding the future economic state of the freight rail industry are positive. This is reflected in a number of facts, including the projections regarding steadily increasing volume shipped over the next 20 years, environmental and other considerations that provide freight rail with a very favorable comparison to trucking and other modes of transportation, and the projections of Carrier earnings. While not a major factor in our analysis, the record fails to suggest that there are known or likely negative indicators that would urge caution with respect to the ability of the Carriers to meet the costs associated with our recommendations.

The Interplay between Wages and Health and Welfare Benefits

Money is money. The recommendations concerning payment for health and welfare benefits are directly related to the recommendations concerning base wages in that each form a part of overall compensation. As they have in the past, per capita health care costs are projected to increase much faster than wage costs during the term of this Agreement. A recommendation that significant cost-shifting take place in the design of the Health Plans to shift costs from the Carriers to the employees and their family members would need to be balanced by an even higher wage recommendation. Conversely, the lack of any recommendation to that effect must be considered as well when addressing the propriety of particular wage adjustments.

We are not suggesting dollar for dollar linkage. We simply recognize that package considerations are important when gauging the adequacy of overall compensation and recommendations for changes in that compensation as well as in the subparts of that compensation.

4) The Recommendations of the Board

After careful consideration of the entire record, we recommend the following wage increases as fair and appropriate in this case:

Date	Increase	Compounded
7-1-20	3.0% GWI	1.030
12-1-20	$1,000.00 service recognition bonus	
7-1-21	3.5% GWI	1.066
12-1-21	$1,000.00 service recognition bonus	
7-1-22	7.0% GWI	1.141
12-1-22	$1,000.00 service recognition bonus	
7-1-23	4.0% GWI	1.186
12-1-23	$1,000.00 service recognition bonus	
7-1-24	4.5% GWI	1.240
12-1-24	$1,000.00 service recognition bonus	

This represents a 22.0% nominal wage increase during the term, a 24.0% compounded increase during the term, plus an additional $5,000.00 in service recognition bonus payments. During the term of the Agreement, the service recognition bonus payments are equivalent in value to an additional 0.9% GWI in the first year if carried over into the following years.

Any wage recommendation must also take into account the other significant items in the package, both monetary and non-monetary. We are also recommending the following items for inclusion in the Agreement that affect its overall fairness, appropriateness, and value:

1) One additional day of paid leave, which has both economic value (equivalent to approximately 0.5% GWI in cost) and non-economic value in that it provides additional scheduled paid time off and personal flexibility for employees;

2) A continuation of the existing Health and Welfare Plan with modest improvements in benefits, but no reductions in benefits or shift in cost-sharing other than the uncapping of the previously agreed-to 15% monthly employee contributions. This is a difficult benefit to value in GWI terms, but there is no dispute that it represents significant and increasing value, both monetarily and non-monetarily, to the Organizations and their members who have historically placed a high priority on maintaining a much richer health plan than most other workers enjoy. These important benefits continue to be provided and received in a tax-free form, rather than shifting costs to employees that would be need to be paid out of after-tax dollars. The maintenance of the existing benefit design also helps to maintain health. It is difficult to put a price on one's own health or the health of family members.

3) Appropriate adjustments are recommended to the travel reimbursements for BMWED-represented employees working on traveling gangs. This is an item of fairness and quality of life, but also a significant monetary item, equivalent in value to a GWI of 0.7% to all employees.

4) We remand for further negotiation both the Carriers' requests regarding automated bidding and scheduling, self-supporting pools, pool regulations, and extra boards, and those of the BLET and SMART-TD relative to the issues of scheduling (including the scheduling of scheduled days off for unassigned road service). If no agreement can be reached, those disputes are to proceed to binding arbitration. The Board hopes that this may prove to be a "win-win" in which the Carriers obtain a more efficient and reliable system for manning the locomotives, with both operational benefits and cost savings, and employees will obtain preferred schedules with

more control over their personal lives when not otherwise scheduled. This, too, is difficult to quantify in terms of GWI equivalence, but is a "plus" when viewed in the context of the overall package.

When one adds the value of those items in the package that can readily be determined, the wage package is worth 22.0%/24.0% compounded and the remaining items in the package that may be readily costed have a combined additional value of 2.1% GWI.

We recognize that there are any number of possible agreements that may in combination serve as a fair and appropriate resolution of the instant dispute. Our responsibility in this matter is to act as honest brokers and to recommend terms for an Agreement that are fair and reasonable, both in the aggregate and to each significant term, given all of the relevant current circumstances. We believe that our proposed resolution mirrors outcomes that could have been reached through good faith, arms' length collective bargaining and that will prove to be acceptable to all Parties and their respective constituents. We hope that our recommendation meets all of these criteria and that it may form the basis for the Parties to adopt it or, failing adoption, to engage in additional discussions that ultimately result in agreements that are approved and ratified.

A number of factors have been considered that, in combination, have led us to the particular recommendation set forth above. An overview of the rationale for the wage portion of our recommendation follows. The rationale for the other portions of our recommendation will be set forth in later sections of this Report when the merits of those items are discussed.

It bears some repetition that in this case there are no clear patterns that would arguably control the outcome with respect to a wage recommendation. The factors suggested by the Parties have been set forth and discussed earlier. The factors that we found most significant in terms of our analysis of the wage issues in this case were the following: 1) wage settlements and trends, both those currently being negotiated in the present environment of high inflation and a tight labor market, and the history of wage settlements between these Parties over the years; 2) the current and projected rates of change in the cost of living; 3) the levels of current and projected future profitability of the Carriers at least during the remaining term of this Agreement and the near-term thereafter; 4) the current tight labor market with low unemployment and new challenges in the areas of recruitment and retention in many of the geographic areas in which rail employees work and live; 5) the unique demands made of freight rail employees when compared with their closest counterparts in other industries; and 6) the remaining portions of our recommended package since not only must each component of the package be fair and appropriate, but compensation also must also be viewed as a whole; the existence and continuation of generous and valuable benefits must be appropriately considered when determining the appropriate wage component of total compensation.

A brief discussion of how these factors have been considered by us and how they inform the reasons for our recommendation follows.

Wage settlements of other employers and unions entered into during the same inflationary environment and in the same tight labor market are instructive in terms of the appropriate way of addressing these factors in arms' length collective bargaining. The record does not contain a sufficient volume of collective bargaining agreements reached by large unionized employers with a skilled workforce earning relatively high wage rates to provide a clear indicator or pattern in this case. It appears, however, from the available data and from the testimony of the expert witnesses who discussed this issue at the hearings that collective bargaining agreements being reached currently have generally been trending in the 4% to 5% per year range on wages, frequently accompanied by lump sum payment(s). The prior recent settlements between the Parties would suggest a pattern of 3% to 4% per year, but most of those settlements took place in an inflationary and work environment that was materially different than the current situation.

While we agree with the Carriers that these Parties (and for that matter most parties) do not attempt to negotiate real wage increases, that does not mean that prior and projected future changes in the cost of living are unimportant to reaching agreement in collective bargaining over wages. Inflation affects wages in the same way that it affects other items. Workers are both producers and consumers. It is true that, historically, wage increases have been related to, but often did not track precisely, increases in the cost of living, particularly during periods like the present when those increases were outliers from the historical normative levels of inflation. The Parties disagree concerning the most appropriate measure of changes to the cost of living in this case. We agree that the CPI-W may tend to overstate somewhat the effects of inflation on individual workers to the extent that it fails to take into account substitution of lower priced commodities for those whose prices have spiked even further, but find nonetheless that the CPI-W has been and remains the most appropriate standard by which to measure the effects of inflation with respect to wage determinations. A number of reasons nevertheless support the use of the CPI-W as the appropriate barometer for measuring the amount of inflation, including particularly the Parties' use of that measure over an extended period of time when they have agreed to index one or more pay related items and in connection with the calculation of COLAs when they were part of the Parties' wage structure. The index is also the most widely used index to measure inflation and the CPI, regardless of the precise variant, is what is most frequently captured in the media and portrayed to the public as the inflation rate. The fact that collective bargaining agreements often do not translate the full amount of short-term spikes in the CPI into GWIs is a question of the weight to be given to the CPI, not whether the CPI remains the best available indicator of the extent of inflation. The PCE, in addition to not having been used for this purpose historically, is based on aggregate data different from the individualized household data that underlies the CPI and is intentionally designed to smooth the changes in the cost of living due to the uses made of the PCE.

Our recommended GWI for 2020 is significantly higher than the rate of inflation in that year. The recommended GWIs for 2021 and 2022 are slightly below, but not significantly so, particularly when the service recognition bonus amounts and the real wage growth granted in 2020 (which is continued thereafter in subsequent years of the Agreement) are considered. Our recommendations for 2023 and 2024 are slightly higher than the projected amounts of inflation contained in our record, even before consideration of the bonus payments in those years or the other items in the package that have significant monetary value. In sum, consideration of inflation militates in favor of our chosen recommendation in this case even though inflation has not typically been, nor should it be, applied in a mathematically precise fashion (particularly during periods of spikes) to arrive at the appropriate wage bargain.

The next factor influencing our judgment is the profitability of the Carriers. The Board cannot ignore the fact that profits are at record levels and are likely to remain robust through the end of 2024 and beyond. We are not saying that high profits in and of themselves support some sharing of those revenues with the employees in the form of GWIs. What we are saying, however, is that the high levels of profits and projected profits – which were made possible in part by the services of the freight rail workforce – enable us to recommend a full package that recognizes all of the relevant factors in this case, without having to ratchet back those recommendations based upon concerns of unaffordability.

The tight labor market is also a factor that is reflected in many current wage bargains, is also reflected in the wages paid to non-represented employees, and is a factor that should be reflected in the overall determination of wage rates in this case. It is not necessary to resolve herein the differing positions of the Parties concerning recruitment and retention issues. It is sufficient to observe that the labor market as a whole offers the freight rail employees many attractive alternatives, despite their current levels of compensation, and that compensation is at least one factor in the ability to recruit and retain the talented employees needed to properly perform many of the jobs involved in this proceeding. Notwithstanding the Carriers' claims that their efforts are precisely targeted, the fact remains that despite the current level of wage rates the Carriers have found it necessary to resort to elimination of the progression steps to boost initial rates of pay, provide substantial hiring bonuses, and offer relocation expenses, all evidence that additional compensation incentives are believed to be necessary in order to be competitive and attract the right candidates for these challenging jobs. In short, these factors support reliance upon the 4% to 5% current trend for GWIs plus appropriate bonus payments and the setting of the GWIs in this case toward the upper end of that range.

The next factor informing our decision in this case is the unique demands of freight rail jobs, which have become even more demanding during the term of this Agreement as a result of the pandemic, the introduction and expansion of PSR, and other factors. The rail employees before us have provided essential service to the customers, to the Carriers that employ them, and to the U.S. economy as a whole. Railroad work has never been easy. But, during the period from 2020 onward, it has been even more demanding in many ways. Employees were forced, even prior to vaccinations being available, to report to work and interact with others in ways that exposed them, and secondarily their families, to heightened potential of contracting COVID. They remained physically at work due to the nature of the jobs. Railroad jobs cannot be performed remotely. Changes related to the introduction and application of PSR resulted in operating craft employees being required to work and to be held over more frequently and with lessened opportunities for time off work that was sufficiently certain to remain the employees' own time to be used for pre-planned events. Cutbacks in the numbers of available employees affected all of the crafts and classes in some way increasing what they were expected to contribute. Imposition and revision of attendance programs exacerbated some of these burdens.

The degree to which the above factors affected individual employees varied and the Parties dispute how many individuals were significantly impacted. It is not necessary to resolve those differences herein. For purposes of the wage determination, these factors rate as a "plus," but not as a primary reason to recommend the wage adjustments that are set forth herein. They do, however, provide additional support for the service recognition bonuses, both retroactively to 2020 and continuing through 2024.

The final significant factor relative to our wage recommendation is one that considers the remaining pieces of the package. As noted, and as will be discussed in detail later in this Report, we are recommending no changes in plan design with respect to the Health Plans that would shift responsibility for covered expenses further onto the shoulders of employees and their families. We appreciate that lifting the current cap on the agreed upon 15% level of employee monthly contributions will have the effect of increasing employee payments towards their receipt of health care. We believe that the time for those caps has ended, however, for reasons discussed in the next portion of this Report, and further believe that the GWIs and the service recognition bonus payments are sufficient to permit the increase in contributions to take place without unduly burdening anyone. Our package recommendation includes the additional "pluses" of the additional day of paid time off and the adjustment to the BMWED travel reimbursements for those working on traveling gangs.

Finally, we recommend that the wage proposal be applied with full retroactivity, calculated and paid in accordance with the usual practices of the Parties.

Crew Consist

The Carriers confirmed at the hearings in this matter that they were not urging the Board to recommend any wage-related actions with respect to the Parties' ongoing dispute over Crew Consist and no affirmative case for any such action was made. Both Parties further recognize that the merits of the dispute over Crew Consist (i.e., whether trains would be operated with both an Engineer and a Conductor on board or only with an Engineer on board) is being addressed in local handling and appropriately belongs in that process, not in national handling.

The Carriers explained that the reason for their wage proposal is to provide the Board in this case with a jurisdictional anchor to address the Carriers' real request – i.e., that the Board direct the Parties to adopt procedures that would mandate that the Crew Consist question to be sent to binding arbitration if agreements on that dispute are not able to be reached in local Section 6 negotiations. Stated differently, the Carriers wished to provide that any disputes be resolved by binding arbitration, rather than through the traditional more open-ended RLA process, asserting that such a process was necessary to create an effective path forward.

The Organizations strenuously objected to such an approach, citing to a variety of rulings that made clear that Crew Consist is a matter for local handling, and maintaining both that the Board lacks the authority to make any recommendations on Crew Consist and, alternatively, that even if it has the authority to do so, it should not make any such recommendations and instead simply allow the RLA processes for dispute resolution to proceed.

There are multiple reasons why the Board is unpersuaded that it should grant the Carriers' request in this case. First, there are significant questions about whether the Board has the authority to address Crew Consist process at all. The matter is clearly one that, while of great importance, has time and time again been recognized to be a local issue under the RLA. Second, no persuasive basis has been shown to supplant the customary RLA process. Under the RLA, the NMB is responsible for determining when parties engaged in Section 6 negotiations are to be released from that process. The negotiations are currently in active mediation under the direction of the NMB and further mediation sessions have been scheduled. Those discussions at the local level were described during the hearings as ongoing, detailed, and robust. No reason exists for this Board to make a recommendation that would alter the statutory process by mandating binding arbitration. Under the RLA, the Parties have the ability to agree or to decline to agree to binding arbitration at the time of release by the NMB. It is not necessary to discuss why the Board in PEB 219 chose to establish a process ending in binding arbitration with respect to the particular Crew Consist dispute that existed at the time. It is sufficient to note that the situation existing today is wholly unlike that which existed at the time that the Board issued its Report and Recommendations in PEB 219 and no valid justification for such an extraordinary recommendation exists in this case.

The Board recommends that the Carriers withdraw their proposal with respect to Crew Consist. The Board further recommends that the moratorium in a new national agreement should not apply to bar or terminate the Carriers' separate local Section 6 notices concerning crew consist and the Parties' ongoing negotiations on that issue at the local level, where the

Organizations agree that it must be handled and resolved. As noted, these local negotiations are currently in mediation under the direction of the NMB, and we expect that statutory process to continue its course.

HEALTH AND WELFARE

The bargaining unit employees covered by this proceeding participate in one of two multiemployer health and welfare plans – the Railroad Employees National Health and Welfare Plan ("National Plan") or the National Railway Carriers and United Transportation Union Health and Welfare Plan ("UTU Plan"). The National Plan and the UTU Plan will be referred to collectively hereinafter simply as "the Plans." The National Plan was founded in 1955. The UTU Plan was created following bargaining between the Carriers and the UTU in 1998 and 1999 following a dispute over the networks used to provide medical benefits to participants. Although they enjoy separate administration, the National Plan and the UTU Plan currently are virtually identical in terms of plan design. Both Plans have Joint Committees that have equal representation between the Carriers and the Organizations and have an arbitration process to resolve any deadlocks that may arise. Plan design issues have generally been determined in collective bargaining, rather than in the Joint Committee process. The proposals of the Parties regarding health care apply identically to both the National Plan and UTU Plan.

Medical and prescription drug programs in the Plans consist of: 1) a Managed Medical Care Program ("MMCP") that has provisions applicable to in-network ("IN") and out-of-network ("ON") care; the MMCP is based upon a Preferred Provider Organization ("PPO") model; the Plans currently use three network providers – United Healthcare, Aetna, and Highmark Blue Cross/Blue Shield; 2) a Comprehensive Health Care Benefit program ("CHCB"), that is based on a traditional indemnity model and was designed to be used principally in areas where the network of preferred providers is deemed insufficient; 3) a Mental Health and Substance Abuse Care Benefit program ("MHSA"); and 4) a Managed Pharmacy Services Benefit ("MPSB") which is administered by a Pharmacy Benefits Manager ("PBM"), currently Express Scripts ("ESI"). The Plans also provide dental, vision, and life/accidental death and dismemberment benefits.

The 2000-04 Agreement made a number of significant changes to the Plans including: 1) providing for employee premium contributions, effective as of July 1, 2001, that increased annually pursuant to a complex formula contained in the 2000-04 Agreement based upon the increase in Carriers' costs, changes in the cost of living allowance, and average straight times earnings hours worked; 2) changing the MMCP out-of-network ("MMCP-ON") deductibles; 3) changing the ability to elect and the costs of electing CHCB program benefits; 4) changing co-payments under the MPSB; and 5) implementing a variety of other changes, including creating an Opt-Out Option that compensated employees who were qualified to and chose to opt out of National Plan benefits.

The 2005-09 Agreement made a number of additional significant changes to the National Plan including: 1) increasing the employee monthly contribution rate to 15% of the Carriers' Monthly Payment Rate for 2007, 2008, and 2009 (without caps) and then capping the employee monthly contribution rate for 2010 at the greater of the 2009 employee contribution rate or $200); 2) increasing co-payments for office visits and Emergency Room visits and increasing the deductible and out-of-pocket maximums ("OOPs") for out-of-network services under the MMCP; 3) introducing a three-tier benefit design under the MPSB (generic, brand non-formulary, and brand formulary, with different copays for each and different copays for retail and mail order prescriptions); 4) changing the definition of eligible dependents; 5) limiting employee ability to choose the CHCB to areas where the MMCP is not offered; and 6) making selections of Blue Cross Blue Shield programs under the MMCP and under the CHCB more available. Retroactive increases in the employee monthly contribution were offset against retroactive wage payments.

As of 2011, prior to PEB 243 and the Company's agreement with the UTU, the MMCP-IN benefits program contained no annual deductible or employee coinsurance. The MMCP-IN program had modest copays per visit for primary care physicians ("PCPs"), specialists, urgent care visits, and emergency room ("ER") visits. Prior to 2012, the CHCB similarly required no annual deductible, but did require employee coinsurance at the rate of 10%.

Following recommendations made by PEB 243, the 2010-14 Agreement of the Parties made a number of changes to the National Plan. (These changes mirrored changes that had been negotiated by the UTU and the Carriers with respect to the UTU Plan prior to PEB 243.) The changes included: 1) creation of annual deductibles of $200 (individual)/$400 (family) for both the MMCP-IN and CHCB programs; 2) increases in the coinsurance under the CHCB from 10% to 15% and the addition of coinsurance for the first time to the MMCP (5%); 3) addition of OOPs of $1,000/$2,000 (MMCP-IN, individual/family) and $2,000/$4,000 (CHCB, individual/family); 4) changes to the MMCP-IN copays – some of which increased, some of which decreased, and still others of which remained unchanged; the copay modifications were designed to affect utilization as well as to shift some cost; and 5) changes to the MPSB provisions increasing the copays on branded prescription drugs and reducing those for generic drugs, changes that were designed to both shift cost and to affect utilization. The Parties also imposed dollar limits for the term of the 2010-14 Agreement with respect to the 15% monthly employee contribution amount as recommended by PEB 243.

The Parties reached agreement in bargaining during 2018 to implement certain changes to the Plans, including incremental increases in the annual deductible and OOP for both the MMCP-IN and CHCB programs; an increase in coinsurance (MMCP-IN increasing to 10% and CHCB increasing to 20%); and an increase to certain copays under the MMCP-IN and the copays under the MPSB (but maintaining the three-tier structure). Employee monthly contributions to the Plans were frozen for the term of the 2015-19 Agreement at $228.29. That amount continues unchanged to the present.

As has been the case historically under these Plans, the employee monthly contribution rate was determined and assessed at a single, consolidated amount that was applicable to all covered employees. Thus, individual employees, employees and spouses, employees and children, and families are all charged the same employee monthly contribution rate, with the Carriers being responsible for the remainder of the costs of the Plans, despite the costs of providing benefits to those respective groups being significantly different. (This was also referred to as a single tier contribution rate.). At times in the past, the contribution rates were at an uncapped 15%. During those periods, the employees had "skin in the game" in the sense that if the overall costs of providing benefits under the Plans increased, then employee monthly contribution amounts similarly increased proportionately, moderating the increase in costs payable from the Carriers and providing incentives for the Plans to be operated in an appropriate and cost-effective manner. During the periods when monthly employee contributions were capped, however, 100% of the risks and costs under the Plans were borne by the Carriers. Whenever the employee monthly contribution rates are capped, there is no monetary incentive on the part of the Organizations to agree to any cost-saving changes, even changes that had no material adverse impact on benefits.

There is no question that the Carriers' share of the costs of the Plans, on a pro rata basis, has increased over time – something that the Carriers labeled in these proceedings as "erosion." Health care costs, both generally and under the Plans, have historically been rising on a per capita basis at rates that were higher than changes in the overall cost of living. The per capita costs are a function of both utilization and the underlying cost of the provided services.

Additionally, there is no dispute that, although the per capita costs have been increasing, the aggregate costs to the Carriers have been decreasing due to the significant reductions in employee headcount that took place during and preceding the term of the 2015-19 Agreement. The Parties disagree as to the propriety of focusing upon the aggregate costs, as opposed to the per capita costs, in connection with evaluating the Parties' proposals regarding Health and Welfare.

Finally, by way of background, the Parties have always provided for benefit changes as part of the exercise of their roles as settlors under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Thus, the only changes in plan design that have taken place historically have been as a result of changes adopted in the collective bargaining process, either in full Section 6 negotiations, or otherwise by mutual agreement. The Parties have differing legal positions as to whether the Joint Committees are empowered to make plan design changes and whether the Plans' deadlock neutral is similarly able to make plan design changes in the event of a deadlock. The Plans have a permanent neutral to rule on any deadlocked matters. Those provisions have been invoked only once since 1955 – in a recent arbitration proceeding before Arbitrator Joshua M. Javits which addressed whether proposed changes in the network vendors were arbitrable issues of plan administration or were plan design issues that were not arbitrable and were required to be addressed, if at all, in collective bargaining. Specifically, in an award dated October 20, 2021, it was found that the choice of network providers is an administrative issue that could be addressed initially by the Joint Committees and in the event of deadlock, by the deadlock neutral. Although it was found that the Plan administrators could select which network vendors would be available in particular geographic areas since those decisions could be made consistent with the terms of the Plans, if the proposal resulted in only a single network vendor being made available for Plan members in a particular geographic area, then such a proposal would conflict with the provisions of the Plans and be beyond the authority of the deadlock neutral to resolve. Those latter types of matters were held reserved for collective bargaining. Arbitrator Javits' award implied that nothing barred the Joint Committee from adopting changes, including certain issues that arguably had plan design implications, by mutual agreement.

1) The Carriers' Proposal

1. Medical/pharmacy/mental health substance abuse benefits

A. Identify and implement changes to benefit design cost sharing features (deductible, copays, coinsurance, and member out-of-pocket maximum) to achieve:

i. An Actuarial Value ("AV") in 2023 of 88%[4], and

[4] The "actuarial value" of the Plans, also referred to by some as "adequacy of benefits" is the "percentage paid by a health plan of the percentage of the total allowed costs of benefits." 42 C.F.R. § 156.20. Thus, if the total allowed annual costs of benefits is $2,000,000,000 and the Plans pay $1,800,000,000 of that cost and members in the aggregate assume $200,000,000 in costs for those benefits through such plan design features as deductibles, copays, and coinsurance, then the Plans would have an AV of 90%. The higher the Actuarial Value, the more generous the plan of benefits in the aggregate. The Affordable Care Act categorizes Plans based upon their Actuarial Value – Bronze Plans have an AV of at least 60%; Silver Plans have an AV of at least 70%; Gold Plans have an AV of at least 80%; and Platinum Plans have an AV of at least 90%. The per capita, premium equivalent, costs of the plans increase as the AV increases. For plan years prior to 2023, there is an allowable variation in the AV of a health plan that does not result in a material difference in the true dollar value of the plan of minus 4/plus 2 percentage points so that a Platinum Plan could potentially retain that designation with an AV as low as 86%. Beginning in 2023, the allowable variation will shrink to minus 2/plus 2 percentage points. 42 C.F.R. § 156.140(c).

ii. Identify and implement further changes annually to maintain an Actuarial Value of 88% in 2024 and each year thereafter.

B. Update medical Plan monthly employee cost sharing as follows:

i. Re-establish and maintain 15% employee contribution cost sharing using the historic medical, dental, vision, and life formula (without caps); and

ii. Introduce two-tier member contribution structure: (a) employee + any dependents other than spouse; and (b) employee + spouse + any dependents.

C. Introduce medical benefit site of care design differentiations and prior authorization programs to encourage the use of free-standing facilities or office settings (and discourage the use of outpatient hospital care) for certain surgeries, diagnostic tests, pathology, and dialysis.

D. Make the following changes to implement items 1.A.-C. in 2023:

i. Increase deductibles/copays/coinsurance/OOPs:

	Existing Benefits				Proposed 2023 Benefits			
Medical	MMCP IN	MMCP-ON	CHCB		MMCP-IN	MMCP-ON	CHCB	
Individual Deductible	$350	$700	$350		$500	$1000	$500	
Family Deductible	$700	$1,400	$700		$1,000	$2,000	$1,000	
Coinsurance	10%	30%	20%		20%	40%	30%	
Individual OOP Maximum	$2,000	$4,000	$3,000		$3,500	$7,000	$4,500	
Family OOP Maximum	$4,000	$8,000	$6,000		$7,000	$14,000	$9,000	
Convenient Clinic Copay	$10	NA	NA		$10	NA	NA	
Primary Care Physician Copay	$25	NA	NA		$30	NA	NA	
Specialist Copay	$40	NA	NA		$50	NA	NA	

Urgent Care Copay	$20	NA	NA		$30	NA	NA	
Emergency Room Copay	$100	NA	NA		$200	NA	NA	
Certain Outpatient Procedures	NA	NA	NA		Site of Care (see ii below	Site of Care (see ii below)	Site of Care (see ii below)	
Pharmacy								
Retail – Pharmacy	$10 Generic	$30 Brand Formulary	$60 Brand Non-Formulary	NA	$10 Generic	$45 Brand Formulary	$90 Brand Non-Formulary	$135 Specialty
Mail Order - Pharmacy	$10 Generic	$60 Brand Formulary	$120 Brand Non-Formulary	NA	$10 Generic	$90 Brand Formulary	$180 Brand Non-Formulary	$270 Specialty

ii. Site of Care Plan Design Changes

Outpatient surgery, radiology, and pathology services will be changed as follows:

a. Prior Authorization will apply (administered by the medical vendors)

b. Copays in addition to applicable deductible and coinsurance amounts will apply if member elects to have procedure performed in outpatient hospital setting rather than a free-standing facility or office setting as follows: $300 surgery copay, $200 high-tech radiology copay, $25 pathology copay

Note that this additional copay provision will not apply to inpatient or emergency room procedures and will not apply if member does not have reasonable access to a free-standing facility or office setting (exception process will be available).

The Carriers indicate that they were willing to discuss adoption of different plan design changes so long as they achieve the result of changing the AV of the program of benefits from the present level of approximately 92% to 88%.[5]

[5] The Plans' current AV is approximately 92%, meaning that the Plans pay, on average, 92% of the cost of benefits at point-of-service, whereas Plan participants directly pay 8% of the combined cost of medical, dental, vision, and prescription drug benefits in the form of deductibles, copays, and coinsurance. After taking into account monthly employee contributions, which are at the current "capped" $228.89 composite rate, the Carriers were responsible in

2. Introduce additional pharmacy rules and programs through the PBM, including:

A. Additional available Advanced Utilization Management ("AUM"):

i. Step Therapy;

ii. Prior Authorization; and

iii. Drug Quantity Management.

B. Advance Opioid Management ("AOM"), a program that monitors more closely opioid use and quantity.

C. Copay Assistance, a program that would reduce the cost to some participants of a number of otherwise high-cost drugs based upon crediting back to participants various rebates available to the PBM from drug manufacturers.

The Carriers further propose that, on an ongoing basis, the Plans will continue to revise existing rules and adopt new pharmacy rules and programs as recommended by the PBM.

3. Require the Plans to competitively re-bid and select vendors upon request of either Joint Plan Committee or Governing Plan Committee Co-Chair, provided that a re-bid may not be required for any particular vendor service more than once in any standard contract period (e.g., three or five years depending on the vendor). Any disputes regarding vendor selection will be resolved by the applicable Plan's neutral. To the extent necessary, Summary Plan Descriptions ("SPDs") will be modified as necessary to reflect the foregoing.

4. Dental Benefits

A. Increase the annual maximum dental benefit per person from $1,500 to $2,000.

2021 for approximately 79.4% of the cost of the total medical, dental, vision, and prescription drug costs of covered participants and the participants were responsible for the remaining 20.6% of those costs through the combination of monthly contributions, deductibles, copays, and coinsurance. If one were to ignore the out-of-pocket expenses of participants and focus solely on the medical, dental, vision, and drug costs payable by the Plans, then in 2021 the Carriers paid 86.9% of that cost and employees (through employee contributions) paid the remaining 13.1% of Fund costs.

B. Increase the lifetime maximum orthodontia benefit from $1,000 to $2,000.

5. Vision Benefits

A. Increase frame allowance from $115 to $150.

B. Increase contact lens allowance from $105 to $150.

6. Hospice Benefits

A. Increase maximum payment per course of care for room, board, care, and treatment charged by Hospice from $3,000 to $6,000.

B. Increase maximum payment for counseling with a social worker or pastor and counseling for bereavement up to 15 visits for patient's immediate family from $1,000 to $2,000.

7. Hearing Benefits

A. Increase the annual benefit limit from $600 to $2,000 when using an approved provider, with a maximum of 1 hearing aid per hearing-impaired ear every 3 years.

8. Benefits for Members with Autism

A. Remove speech therapy age limits.

B. Provide coverage of approved Applied Behavioral Analysis ("ABA") services with no annual dollar limits.

C. Provide autism services with no age restriction.

D. Autism coverage subject to utilization management and overall plan design (e.g., copayments, deductibles, etc.).

The Carriers note that their proposals are without prejudice to their existing rights to present administrative proposals to the Plan committees and with respect to any position they may assert in any future arbitration proceeding regarding the scope of the deadlock neutral's authority.

2) The Organizations' Proposals

The Organizations propose maintaining the status quo, including maintenance of the capped composite monthly employee contribution rate of $228.89, with the following limited changes:

1) Hearing Benefits: Increase the annual benefit limit to $2,000.

2) Autism Spectrum Disorder Benefits: Remove age limits on speech therapy and provide coverage for ABA without age or dollar limits.

3) Overview of the Positions of the Carriers

The Carriers maintain that, absent adoption of the changes they propose, their share of responsibility for health care costs will continue to increase. The proposal to annually reset the plan design to yield an AV of 88% would still have the Plans classified for purposes of the Affordable Care Act ("ACA") as Platinum level plans, the highest level of plans recognized under that statute. If something is not done to control costs, the Carriers project that their share of Plan costs will continue to increase from the current 92% - the top of the Platinum range – to 94% in 2026. Absent adoption of the Carriers' proposals, if the amount of employee monthly contributions remains frozen, then the Carriers' per employee contribution, which was $17,141 in 2020, is projected to grow to $27,804 in 2026, and the employee contribution rate will decline from 13.8% in 2020 to 9.0% in 2026.[6]

The Carriers assert that the Plans' cost-sharing is out of step with the norms for employer-sponsored health benefit programs in the United States. Most plans contain provisions that shift much greater responsibility onto covered employees and the trends are to continue to do so. The current 92% AV far exceeds the broader survey average of an 86% AV and the

[6] This projection assumes annual rates of increase in medical costs of 6.5%, in dental costs of 4.0%, and no increases in cost in vision and life/accidental death and dismemberment.

survey of plans sponsored by unionized employers whose average AV is 86.5%. The broadly based surveys cited by the Carriers consisted of the Kaiser Family Foundation 2021 Employer Health Benefits Annual Survey; the Price Waterhouse Cooper 2021 Health and Well-being Touchstone Survey; the Willis Towers Watson 2021 Healthcare Financial Benchmarks report; the 2021 Milliman Medical Index; the Gallagher 2021 National Benefits Survey; the Aon Hewitt 2021 Health Value Index; and the Bureau of Labor Statistics National Compensation Survey (March 2021). Four of those sources were also cited by the Organizations with respect to benchmark data. The Plans presently are very generous health plans with much more modest cost sharing than comparator plans.

The Carriers also assert that the broad survey average showed member contributions towards dental and vision benefits that averaged 48% and that 9% offered no vision coverage, 32% offered some employer subsidization of vision coverage, and 59% provided vision coverage that was paid 100% by employees. These represent additional areas in which the Plans provide coverage that greatly exceeds health care provided more generally by employers.

A comparison of existing deductibles with the broad survey showed that the Plans were significantly lower (with the exception of the federal health program which had deductibles identical to those of the MMCP-IN). Similarly, with respect to coinsurance, the average rate in the broad survey was 20% and the average rates for unionized employers and for the federal health program was 15% - rates that were significantly higher than the MMCP-IN rates. The OOPs for the Plans were also much lower than the broad survey average, excluding the federal health program ($3,413/$6,300 for single/family), lower than the unionized employers ($2,754/$5,703 for single/family), and much lower than the federal health program ($6,000/$12,000 for single/family).

The Carriers observe that, given the richness of the benefits provided by the Plans and the high AV, it is not surprising that the Carriers' costs for providing health and welfare benefits are so high. The Carriers further argue that, unless their proposals are adopted, the future costs of providing those benefits will continue to disproportionately increase.

Adoption of the Carriers' proposal is consistent with the trend in recent rounds of bargaining of making modest changes to plan design to incorporate design features that mirror those provided by union health plans bargained in other industries in the United States and by other large employers for their workforces. There was no evidence that the rather modest changes sought herein by the Carriers will lead to worsened health outcomes. The Plan will remain Platinum with a low employee monthly contribution.

Current monthly contributions for railroad employees to the Plans are equivalent to an approximate 12.6% rate and, if not uncapped, that contribution rate is projected to decline to the equivalent of 9.4% in 2026 even while the AV of the Plans increases to 94%. The broad survey average of employer-sponsored plans provides for 22% employee contributions, the average for unionized employers is 18%, and the federal government requires a 30% employee contribution rate.

According to the Carriers, the single-tier nature of the employee monthly contributions to the Plans is both highly unusual and problematic. None of the plans in the broad surveys used a single-tier composite contribution rate. A large majority (77%) used a four-tier structure of employee contributions with $150 to $200 per month of additional contributions over individual coverage required for spousal coverage and $300 to $350 per month of additional contributions over individual coverage required for family coverage being the norm. The result of the composite rate is that there is no incremental cost for covering dependents. Without any additional cost to obtaining that coverage, the Plans are forced to underwrite the cost of providing health care to spouses who could have obtained health care through their own employers, but who decline that coverage, opting instead for "free" coverage under the Plans. This is significant given the high utilization of benefits by spouses and the large number of railroad employees who enroll with dependents (83% of all employees enrolled in the Plans). 55% of the employees are enrolled with family coverage. 16% are enrolled as employee plus spouse. The remainder (12%) consists of employees enrolled as employee with children.

This stands in contrast with the broad survey data indicating that only 29% of covered employees generally enroll with family coverage and only 17% enroll as employee plus spouse. The comparable data for unionized employers is 37% family and 17% employee plus spouse – numbers markedly lower than the 71% of employees in the Plans who opt for spousal coverage.

The Carriers propose to change the employee contribution rates to a two-tier formulation, with the expectation that if obtaining spousal coverage costs employees more money per month than forgoing such coverages, fewer employees will opt for family or employee plus spouse coverage. The Carriers urge that the existing composite capped rate of $228.89 per month (which was based upon a 15% employee contribution rate in 2016) would continue capped and at that rate for the duration of the Agreement for the employee only and employee plus children categories of coverage. The full amounts needed to maintain 15% employee cost sharing in the aggregate would then be reverse engineered into a second tier contribution rate which would apply to employees enrolled as employee plus spouse or as a family. For 2023, 2024, and 2025, after including estimated increases in overall plan costs, the monthly contribution rates would be respectively $321.00, $340.00, and $366.00 for tier 2 (employee and spouse or family). If the monthly employee contributions were uncapped and set at 15% and maintained in a single-tier, composite manner, and if the current benefit design remains unchanged otherwise, then monthly contributions from employees for 2023, 2024, and 2025, based upon projected increases in costs, would be $295.00 (2023), $308.00 (2024), $326.00 (2025), and $366.00 (2026). The Carriers assert that adoption of the two-tier contribution recommendations should lead to a more appropriate level of spousal enrollment and reduce improper shifting of health care costs with respect to spouses who decline coverage from their own employers.

The Carriers maintain that annual reindexing of benefits has the additional advantages of maintaining comparability with other employer-sponsored plans and avoiding less gradual and more abrupt changes in plan design than would otherwise need to be implemented at approximately five-year intervals when those matters could next be addressed during the next cycle of national handling. The Carriers assert that their proposal is the only effective way to ensure that plan benefits remain at appropriate levels of reimbursement and coverage on an ongoing basis.

According to the Carriers, the existing MPSB is both ineffective and inefficient. The AUM proposals of the Carriers regarding changes to the prescription drug program do little more than incorporate programs that are widely adopted – they are currently being used by 80% of the Express Script's national account client base. They will promote member safety and also save the Plans money. Prior authorization can help avoid adverse drug interactions and avoid off-label use of drugs for unapproved conditions. Presently 200 such rules are in place and the Carriers' proposal, if adopted, would add an additional 200 rules presently being utilized by ESI.

Step therapy would require that less costly medications be tried prior to starting treatment with higher cost, often newer medications. If the initial medication is not sufficiently effective, then matters progress to more expensive next step medications. There are already 35 rules in place and the Carriers' proposal, if adopted, would add another 90 rules.

Drug quantity management also ensures that drugs are dispensed at appropriate quantities. There are presently 10 rules in place and the Carriers' proposal, if adopted, would add an additional 50 such rules. An exception process is always available if the patient or the treating physician so requests. The goal is to bring new rules on line when available rather than waiting years to consider whether or not to adopt them. The current Utilization Management program reflects the old Medco program (ESI's predecessor) and thus fails to target medications developed since 2012. Five of the top ten drugs measured by spending represent 10% of the total prescription drug costs and the AUM has recommended rules that could save significant monies without adversely affecting patient well-being, but the Plans have been unable to adopt those rules because of opposition from the Organizations. New drugs and new uses for existing branded or specialty drugs are also being approved constantly, often with very high pricing.

The Carriers also urge that their site management proposal be recommended. It encourages members to have certain procedures performed in an alternative site (e.g., a clinic or physician-owned surgical center) rather than in a hospital on an outpatient basis. The proposal contains two levers to encourage more efficient care – prior authorization and additional copays if an outpatient hospital is used when another appropriate site is available. The increased copays would be $300 for outpatient surgery, $200 for high-tech radiology performed in the hospital instead of at another site, and $25 for lab or pathology done outpatient at a hospital when another site was available. No additional copays or additional pre-authorizations are needed for care performed in an inpatient hospital setting or in the ER or when the member lacks reasonable access to an appropriate free-standing facility.

The cost savings of this proposal are substantial. Hospital outpatient procedures cost the

Plans, on average, $6,954 whereas procedures performed at a free-standing facility cost, on average, only $2,747; the Plans cover approximately 24,000 outpatient procedures a year that are performed in hospitals. The savings would be similar for high-tech radiological procedures (average cost of $1,802 when performed outpatient in hospitals versus average cost of $488 when done in free-standing facilities; 23,000 such procedures, on average, covered annually) and for lab/pathology work (average cost of $587 when performed outpatient in hospitals versus average cost of $58 when done in free-standing facilities; 150,000 such procedures, on average, covered annually).

The Carriers also ask that their proposal for mandatory periodic rebids from vendors be recommended. Such rebids are asserted to be an essential part of ensuring that the vendors who provide services remain competitive. Given the opposition of the Organizations to any changes in plan structure or design, the Carriers also ask that the Board recommend that any disputes over competitive vendor bidding be resolved using the Plans' deadlock neutral process. This, like the other changes sought herein, are little more than prudent fiduciary acts designed to ensure the long-term appropriateness of the Plans' design.

The assertions of the Organizations that these changes will adversely impact employee or dependent health outcomes should be rejected. The expert witnesses who testified on behalf of the Carriers explained that widely-regarded studies have concluded that the effects of these types of plan design decisions are to motivate employees to be better consumers of health care and that the effects are more efficiently provided health care with no demonstrated adverse effects on health.

The Organizations' claims that the employee population is exposed inordinately to various risk factors on the job that explain higher utilization and support the need for a plan of benefits different than those provided by employers generally should be rejected as speculative and unproven. The studies relied upon in that regard by the Organizations were underwritten by them, contained fundamental methodological flaws in design (e.g., the studies failed to adjust for demographic differences between the BMWED group and the general male population on such issues as age, smoking, and diseases that were not shown to have any known links to workplace conditions; they also included selection bias in the fashion in which employees were included for comparison with the general population), and were not shown to support the positions of the Organizations with regard to the health outcomes of maintenance of way employees as claimed. The Board should, instead, look to the studies cited by the Carriers, which found no adverse health outcomes in the aggregate from the imposition of greater employee overall cost sharing in the forms of deductibles, copays, coinsurance, and the like.

The Carriers recommend adoption of a number of benefit improvements as well. Specifically, they propose expanded autism coverage, increases in hospice maximums, increases to hearing benefit limits, a pharmacy copay assistance program designed to reduce member costs to zero and to take full advantage of drug manufacturer rebate and copay assistance programs, increase the annual maximum benefit for dental benefits and the lifetime maximum benefit for orthodontia, and increase the frame allowance and contact lens allowance with respect to vision benefits.

When the combination of recommended changes is adopted, it will help transform the Plans, allowing the members to more efficiently and more safely receive health care benefits. The Plans will remain very high value in structure and continue to be in the Platinum range.

The Organizations' assertions that the Carriers' aggregate costs in dollars have declined over the years is misleading. The decline in total cost is a function of the more severe reductions in the number of covered employees. When health care is viewed on a per employee basis, as it must, it is clear that the Carriers' costs have skyrocketed over the years and, unless checked, will continue to do so.

At the time that the Parties negotiated modest changes in deductibles and other matters effective in 2016, the Carriers indicated that the design changes were intended to achieve an AV of 90% for the Plans. The Organizations denied that they agreed to that rationale, but did agree to the proposed changes. The indexing in this case is something that the Carriers believe is simply maintaining what they had bargained for previously.

4) Overview of the Position of the Organizations

There are multiple reasons why the Board should not recommend the health care proposals of the Carriers and should adopt the proposals of the Organizations.

For the last almost 70 years, since the Plans were created in 1955, the Carriers and the Organizations have bargained plan design in national handling. The Carriers' proposals would attempt to fundamentally alter that structure without compelling practical or legal reasons and would focus exclusively on costs, ignoring the special characteristics and care needs of employees in the freight rail industry and their families.

A focus on "averages" masks the health care needs of individual workers and their family members and most harm those who are the least able to bear the increased costs – those with chronic conditions and those who sustain a significant injury or suffer a major adverse health event with resulting need to consume large amounts of health care. Cost-shifting merely places the burden on workers who have no ability to influence it. The proposed increases in deductibles, copays, coinsurance, out of pocket maximums, and premiums will most adversely affect a relatively modest number of the plan participants and are clearly not reasonable.

Employee costs will, on average, increase for 2023 by 60% over those in effect in 2022 if the Carriers' proposals are adopted. For employees with high utilization, that percentage will increase even more. This is in addition to the substantial increases in employee monthly contribution rates that are part of the Carriers' proposal.

The Carriers' focus on AV masks the fact that, between the employee monthly contributions and the employees bearing direct responsibility for health care costs due to the impact of deductibles, copays, and coinsurance, the total proportion of health care costs borne by employees, in the aggregate, was 22.4% in 2020 and 20.6% in 2021. Employees, on average, were responsible for $1,992 in costs in 2021 over and above their monthly contribution payments. The Organizations recognize that the Carriers pay a significant amount of money towards funding the Plans which are admittedly first-class programs. The Organizations strongly support continuation of the existing programs (with only two very minor changes, one of which is likely legally required) as a matter of bargaining priority.

Contrary to the Carriers' assertions, their proposals, if adopted, would not further their stated key goals of encouraging efficient use of benefits. Rather, the real goal appears to be one of cutting benefits until they become average. Health care, however, is not an "average" business. 18% of the covered households accounted for 50% of the Plans' and patients' costs in 2018. (The record did not reveal how many of those high utilization households were members with chronic conditions and how many of those households simply suffered unusual needs for health services in 2018.) If implemented, the Carriers' proposals could result in high claims experience families being required to pay as much as 40% of their straight-time pay in health costs. Even under the present program, the amount of costs incurred per worker has grown significantly in recent years while the Carriers' profits have soared.

The Carriers are more than able to continue to fund the costs of the Plans as presently designed, the Organizations argue. The Carriers' total contributions to the Funds in 2020 constituted less than 0.1% of their revenue ton-miles, less than 2.8% of their Operating Revenue, less than 4.1% of their Operating Expenses, and less than 1/12th of their profit and reinvestments and these proposals only address a claim to reduce a portion of those total contributions. Moreover, in absolute dollar terms, their costs each year have been shrinking as a result of the continued reductions in the size of the workforce.

The most appropriate health care plan comparison is not to industry generally, but to work on the railroads. Such comparisons are impossible since the Plans in this case cover all of the freight rail operations domestically. The surveys relied upon by the Carriers, such as the Kaiser Family Foundation Employer Health Benefit survey, are heavily weighted towards service jobs, health care jobs, and retail jobs, which make up two-thirds of the KFF sample survey. Most railroad workers do not work in indoor jobs free from exposure to dangerous chemicals and fumes. To the contrary, unlike workers generally, railroad workers are typically exposed in the work environment to a variety of substances that are associated with the development or exacerbation of health problems. Many of the crafts have jobs that involve exposure to various substances that often lead to increased health problems (e.g., diesel, lead, cadmium and carbon dust, chemical fumes, and bird droppings), and also involve non-standard working hours, outdoor work, exposure to loud noise, heavy lifting or similar physical work, and repetitive movement. The most apt comparison is to the freight rail industry itself. Given the fact that the Plans cover the vast majority of employees in that industry, that is not possible. To the extent, however, that the health plans of other industries/employers are material, the Board should examine a number of commuter rail plans, a number of which have AVs that equal or exceed that of the Plans. Specifically, health plans for the LACMTA (Los Angeles), SEPTA (Philadelphia), NYCTA (New York), New Jersey Transit, LIRR (Long Island), AmPlan 1-3 (weighted) (Amtrak), and Seattle (King County) all exceed the AV of the Plans, with AVs ranging from 93% to 99%. Other rail health plans whose AVs equal or exceed the Carriers' proposal of an 88% AV include the plans of the MBTA (Boston), CTA (Chicago), PAL (Louisville), and SFMTA (San Francisco). The existing capped contributions are also in line with many broader rail and transportation plans, many of which contain caps and/or lower contribution levels, such as those plans that provided for employee monthly contributions of 2% of straight-time earnings (a much lower contribution amount than the present $228.89 per month). Many of these properties have recently renegotiated agreements that have maintained the status quo for both health care plan designs and contribution amounts.

The Organizations urge rejection of the Carriers' assertion that raising prices on health care simply makes people better consumers and does not adversely impact patient health outcomes. Use of such theories and strategies is controversial and there is a real possibility that patients will simply forgo medical care that is necessary, but is viewed as too expensive, both leading to poor outcomes and creating situations that will ultimately cost the Plans even more to address, particularly among those participants who are the most vulnerable. Moreover, patients often lack sufficient information about both the costs of certain care, the benefits of that care, and the potential costs of forgoing that care. In sum, there is a substantial risk of judgment errors arising from higher cost-sharing. Recent research revealed that, to the extent that increased cost-sharing lowers health care utilization, it does so at the risk of damaging enrollee health. Patients often lack the meaningful capacity to target their cutbacks to medically unnecessary care and, even when they do, frequently make decisions that are not rational.

The Organizations appreciate that the Carriers have proposed certain plan improvements, including those that the Organizations have proposed, but note that the Carriers have indicated their willingness to make these important improvements only if accompanied by a large, unwarranted reduction in other benefits.

The cost of the improvements sought by the Organizations – improving the hearing benefit limit from $600 (a figure last updated in 2003) to $2,000 per year and allowing coverage for speech therapy after age three and applying ABA care for autism – is projected by United HealthCare to have a combined cost of only $11.8 million for 2023. These items are only about 0.5% of the Plans' overall costs. The Carriers' proposal would add an additional restriction with respect to hearing benefits that is not part of the Organizations' proposal and is not warranted. The limit on covering hearing aids to every three years is not appropriate for a group of employees who perform extensive physical labor and work in a hearing damaging environment. The potential for damage in ways that would void the warranty or loss is a real one. Further, the newly proposed cap produces only minimal additional savings ($400,000 annually). Additionally, the changes to autism benefits may well be legally required by the Mental Health Parity and Addiction Equity Act ("MHPAEA").

By contrast, argue the Organizations, the reductions in benefits proposed by the Carriers would total about $300 million annually, with the changes associated with reducing the AV projected to shift $108 million in costs in 2023, the increase in contributions associated with uncapping the employee contribution rate amounting to a $76.2 million shift in 2023, the site of care proposal amounting to additional costs of $19 million in 2023, and the adoption of AUM resulting in $90.5 million in lessened reimbursements to participants for drugs in 2023. The proposed improvements by the Carriers would cost approximately $18.0 million in 2023, of which $6.6 million would be costs to fund improvements not requested by the Organizations. These costs that would be shifted to employees are equivalent to 3.7% of straight-time pay, but is only a fraction of a percent of revenue per ton-mile, operating revenue, operating expenses, or profits.

The site of care proposal would create confusion by employees who may not be familiar with the need to question their physician's recommendation that a particular procedure be performed in the hospital to comply with complex rules in order to obtain care that will be treated as fully covered. Whether there is an appropriately located site is also likely to be an issue in many cases. It can create issues if the employee's physician or if no in-network provider has privileges to use the free-standing sites. New copays would need to be noted on member's identification cards and could violate MHPAEA restrictions. To the extent that this is considered at all, an incentive program rather than one that increases costs to employees and penalizes them through inappropriate cost shifting should be considered.

The Organizations also oppose the AUM program proposed by the Carrier. They will put the worker in the middle between their treating medical professionals and the PBM. Requiring that employees violate their doctor's directives and use less effective medication(s) or go through periods with no medications at all when the PBM declines to approve the prescribed drug and the matter is under review is inappropriate. The basis for rejection would be solely an issue of price. The Organizations are supportive of some programs and a number of prescription drug utilization programs are already in place. The requested expansion, however, is opposed by the Organizations, as is the idea that the PBM would be empowered to adopt new rules that would be binding upon the Plans.

The Organizations maintain that the Advanced Opioid Management program is not cost effective. When netted out from application of the existing Utilization Management rules, the cost savings would be only $625,000, but the additional cost to the Plans of opting for that program would be over $1.3 million annually. Making workers jump through hoops to get their medication is inappropriate, particularly when this program would simply increase the profits of ESI and increase costs to the Plans. Paying $1.3 million to save less than half that amount and burdening covered employees and their dependents is not a proposal that should be recommended by this Board.

The Copay Assistance program could save the Plans some money, but is linked to a treatment of specialty drugs generally that will result in many employees being forced to pay significantly more for their medications since a new specialty drug tier with copays 450% higher than the highest present levels of drug copays would be associated with this program.

The Organizations also oppose allowing Joint Committee chairs to select vendors or initiate the process of going out to bid for any service. That role should remain with the bargaining parties, as it has historically. The problem is not the bid, but rather what happens after bids have been received and whether this is yet another attempt by the Carriers to implement changes in networks.

The Organizations have no objection to the increase in dental annual maximum or improving the vision benefits, but the price sought by the Carriers for those improvements in terms of other plan design changes are disproportionate and too high.

The Organizations have no objection to the proposed change in hospice benefits. The savings to the Plans of having the member's care moved from an inpatient hospital setting should more than offset the additional spending due to increasing the dollar allowance. It would also move the Plans towards a best practice; many plans have no caps at all on hospice benefits.

The Organizations urge that the single-tier monthly contribution rate be maintained. If the increase in employee monthly contribution rate is sufficient to dissuade certain employees from covering their spouses, then the result will be adverse selection, with only the spouses likely to need the most care opting for continued coverage. If, as the Carriers propose, the lower tier rate remains capped, all of the increases to meet the 15% formula will be placed on the second-tier rate for those with enrolled spouses, causing that rate disparity to grow further to the point where one projection results in a tripling of today's rates for family coverage in only five years. What will occur is a "death spiral" causing the highest utilization spouses to remain and AVs to increase, forcing additional basic benefit adjustments under the Carriers' indexing proposal and depriving healthier spouses of the benefits of spreading the risk of their health care among the larger pool of employees and dependents.

In addition to these objections, the Organizations oppose the legality of the Carriers' proposal. The Carriers and the Organizations are the settlors to the Plans and they are the only entities that may make changes to the design of the Plans. The Parties have bargained changes to the Plans in term negotiations over the years. To accept the Carriers' proposal to annually reindex the design of the Plans to maintain an AV of 88% would require the Joint Committee members to function as settlors – something beyond their legal authority to perform. Moreover, for the Parties to re-index benefits directly would require mid-term bargaining on a virtually continuous basis over changes in the design of the Plans. Nothing in the structure of the RLA requires that the Organizations agree to such a proposal.

<u>5) Recommendations of the Board</u>

After careful consideration of the record and the Parties' positions, we recommend that:

1) the Carriers withdraw their Health and Welfare proposals, with the exception of the

proposal that the cap on employee monthly contributions be removed and such contributions be reset, on the existing single tier basis, to a full 15% rate effective January 1, 2023, and with the exception of our recommendation that the Joint Committees design and implement a rebid process designed to determine if services are currently being provided at appropriate cost; and

2) the Organizations' proposals to increase the annual limit for hearing benefits to $2,000 and to remove age limits on speech therapy and provide coverage for Advanced Behavioral Analysis without age or dollar limits for participants with autism spectrum disorder be incorporated into the design of the Plans.

There are multiple reasons why the Board is not persuaded to recommend the adoption, in this round of bargaining, of the very significant plan design changes sought by the Carriers. The Board agrees with the Carriers that the design of the Plans is such that it provides benefits far more comprehensive and generous than most employer-sponsored health programs, including those that are bargained for by unions and that cover large employers. Further, the level of employee contributions, deductibles, copayments, and coinsurance is much less than those typically found in other employer-sponsored health programs, including those that are bargained for by unions and that cover large employers. The out-of-pocket maximums are also lower in the Plans than those typically found in those other employer-sponsored health programs.

As a result of these plan design components and as a result of utilization by the covered employees and family members, the costs per covered employee of providing health care benefits are high, both in terms of actual dollars to maintain coverage and in terms of the per capita costs per employee. To the Carriers, the combination of generous, comprehensive coverage and high employer costs suggests a need to change a number of plan design features in order to shift a greater portion of the overall health care costs onto the covered employees themselves, particularly in light of the history of making modest inroads in those areas in many, but not all, of the recent rounds of national bargaining.

The fact that the Plans provide higher levels of health coverage at lower cost to employees than most other employer-sponsored health plans in the United States is not a recent phenomenon. It has been the case for many years. The clear trend in the rest of the nation is to shift greater costs to employees and, when necessary in order to achieve certain needed cost savings as part of the overall bargain or for other reasons, the Parties have made modest changes to the design of the Plans. The most significant of the changes in recent years took place in the 2010-14 round of negotiations and followed recommendations from PEB 243.

The recommendations in PEB 243 were different in nature than those sought herein by the Carriers and were adopted in a climate that is materially different from the one that exists today. The recommendations in PEB 243 were very measured in nature, were ad hoc, did not seek to shift responsibility for plan design decisions from the negotiating parties to the Joint Committees, and were recommended in the context of the Carriers and the UTU having already agreed to adopt similar changes with respect to the UTU Plan. Additionally, the recommendations were motivated, at least in part, to ensure that the Carriers would avoid a situation in which, absent such plan design modifications, the obligation to pay significant excise taxes would have been triggered under the then effective, but subsequently repealed, “Cadillac tax” provisions of the ACA. In this case, there are no excise tax concerns since the ACA has been amended to eliminate those provisions. There also is no other very relevant freight rail settlement that serves as a model for adopting changes to the National Plan. The plan design changes sought by the Carriers would be far more significant in terms of shifting health care costs onto the shoulders of employees than the changes recommended in PEB 243. Moreover, the proposal for indexing would establish a framework where similar, significant changes in plan design would be automatically imposed on an annual basis thereafter.

The Carriers' proposals represent a dramatic and fundamental change from the way that plan design determinations have been made historically with respect to the Plans. The magnitude of the changes needed in 2023 to adopt an AV of 88% for the Plans is also significantly greater than the much more incremental and modest changes that were adopted on ad hoc bases in recent bargaining cycles. By setting a goal of an AV of 88% and then providing for annual reindexing, the Carriers' proposal would require either: 1) a delegation by the negotiating Parties to the Joint Committees of the discretion to select and to implement plan design changes so long as they result in the maintenance or reattainment of an AV of 88%; as settlor decisions, they likely would not even need to comply with the requirements of ERISA governing decisions by plan fiduciaries; or 2) virtually continuous bargaining over changes to the design of the Plans. No compelling basis to recommend either of these approaches has been demonstrated and it is not reasonable to believe that, even if recommended, it would be agreed to and ratified by the Organizations who, historically, have placed great priority on the maintenance of this stellar health care program.

The record failed to substantiate the argument of the Carriers that it had already bargained for an AV of 88% and that its proposal was necessary simply to provide it with the benefit of their bargain. At most, the record indicated that the Carriers had articulated maintenance of an AV of 90% as a basis for explaining the rather modest changes made to the Plans that the Carriers requested, and the Organizations agreed to, in the last round of bargaining. There was no showing, however, that the Organizations ever agreed that consenting to the particular ad hoc changes represented some long-term agreement to reduce Plan benefit levels whenever an AV of 90% was exceeded. There certainly was nothing in the record that supports a finding that there was some prior agreement to limit the Plans' benefit program to an AV of 88% or even to design the Plans with a goal of achieving and maintaining an AV of 88%.

The fact that the Plans provide a level of benefits richer than many is not a basis to reduce the benefits by shifting additional significant costs associated with the provision of covered health care services onto the shoulders of employees (where they will be paying for those services with after-tax dollars). There is no financial crisis on the part of the Carriers that might motivate consideration of such a change. To the contrary, the Carriers have earned record profits in recent years and, as expensive as the Carriers' contributions to the Plans are, they are plainly affordable. Nor did the Carriers show that competitive concerns required such significant action. This differential in the quality and cost of health and welfare benefits is longstanding and there was no showing of changes that would warrant moving to reduce or to eliminate that differential.

Even apart from the record's failure to support a need to implement a series of annual plan design changes to meet a benchmark of an AV of 88%, the record failed to otherwise support a recommendation that the Parties adopt on an ad hoc basis the far-reaching plan design changes that are part of the Carriers' proposal.

The Carriers' proposal would make significant increases in deductibles (approximately 50%), coinsurance (same), the OOP maximum (a 50-75% increase), and significant increases in some copays (including a 100% increase in the ER copay), but not all. The changes to the pharmacy program would create an entire additional tier for specialty drugs and charge very significant copays for members who need to use those specialty drugs (up to $270 for mail order). The net impact would be to increase average employee costs that are being shouldered directly for health care by approximately 60%. The record simply does not warrant this type of radical redesign of the Plans.

The record in this case failed to establish that the proposed site of care provisions, in their current form, should be implemented. To the extent that the goal is to change member behavior, there was no showing as to why that goal could not be obtained equally well by means of incentives for the use of a facility other than a hospital without impairing the benefits of employees who for legitimate reasons prefer to use a hospital on an outpatient basis to have the care provided.

The Board does not believe that the record supports our recommending inclusion of the Carriers' proposal regarding adoption of Express Scripts' Advanced Utilization Management program, Advance Opioid Management program, and/or Copay Assistance program, as part of the Parties' Agreement. With respect to the AUM, the Board does not believe that it is appropriate to bind the Parties based upon the preferences and protocols developed by ESI. The Organizations need not essentially grant ESI blanket authorization to create new rules or modify existing rules and then apply those rules to member requests for prescription medications. There is little doubt that any rules concerning utilization developed by ESI, based upon its own extensive experience, should be seriously considered by the Joint Committees and evaluated for possible adoption. Treating the existing rules in place as frozen until the resolution of the next round of national handling does not seem appropriate. The pharmaceutical area is constantly changing, both with new medications and with new approved uses for existing medications. The most appropriate rules for addressing those situations may not be able to be foreseen in advance. There is a big difference, however, between requiring that the Parties be bound by the judgments of ESI as to the appropriate rules, as sought by the Carriers' proposal, and encouraging the Joint Committees to carefully and critically examine proposed new or modified utilization management rules on their merits in light of the particular situation in the Plans and deciding on a case-by-case basis whether to accept the recommended new rule, reject the new rule, or adopt a modification of the proposed new rule. The Board expects that the Parties will address situations of new or modified utilization management rules when they arise, in good faith, based upon the particular rules and drugs at issue. The record suggests that the Joint Committee process is being used effectively to do precisely that in many cases. The one area of potential dispute relates to whether, if there is disagreement over adoption of a new or revised utilization management rule, that is a matter that is presently arbitrable under the deadlock resolution provisions of the Plans as a matter of plan administration or is more appropriately an issue of plan design that may not be arbitrated.

It may not be feasible, as a practical matter, to delineate in advance whether a particular proposed change is one of plan administration, on the one hand, or plan design, on the other. Certainly, to the extent that resolution of the matter would require an amendment to the terms of the plan documents to effectuate, it would appear to be a question of plan design. On the other hand, relatively minor issues that do not change the overall structure or value of the Plans and that are not prohibited by language in the plan documents, should normally be treated as part of routine plan administration. We do not recommend a change in the overall structure of the Plans in which plan design decisions are left to the negotiators; we do, however, believe that there should be a way for the bargaining parties to acknowledge (and perhaps even circumscribe that authority if there are concerns) the discretion enjoyed by the Joint Committees to study and implement appropriate controls with respect to the delivery and approval or denial of plan benefits. We do not understand our unwillingness to recommend adoption of the Carriers' AUM and site of care proposals to operate to prevent the Joint Committees from undertaking appropriate actions that are prudent, that do not adversely affect the overall levels of benefits, that are in the overall best interests of the plan participants and beneficiaries, and that may also be in the best overall interests of the Parties.

The record does not make a sufficiently compelling case for recommending the adoption of either the AUM program or the Copay Assistance program as presently constituted and described. Each program will add cost and/or potentially significant other burdens without a showing of sufficient gain. Additionally, the Copay Assistance program would apparently require the imposition of higher new specialty drug copays and would cost many members who did not qualify for Copay Assistance significant additional monies to obtain their needed medications beyond the copays required under the current plan design.

The Board recommends partial adoption of the Carriers' proposal regarding vendor bidding. It became clear from the presentation of the issue that the Organizations' concerns rest not with requesting rebids, but with the possible uses of that information after the bid process has finished (e.g., selection of a bidder that would result in significant changes in the networks). We recommend only that the Joint Committees formulate an appropriate rebid to ensure that the current pricing of services to the Plans is competitive and at appropriate levels. No recommendation is made as to what changes, if any, the Joint Committees should (or could) make after obtaining the results of those rebids.

No reason was shown to recommend the adoption of modest plan improvements to dental and vision benefits that were offered by the Carriers, but only as part of a proposal to obtain acceptance of other plan design modifications whose adoption is not being recommended herein. We decline to attempt to separate those improvements from the total package in which it was offered; additionally, these benefit improvements were not even included as part of the

Organizations' proposals in this case. Nor was a compelling case made for improving those benefits at this time.

The proposal to improve hospice benefits by doubling the maximum payment per course of treatment and by increasing the maximum payment for counseling does not appear to have any cost and may even be one that saves the Plans money while simultaneously improving the treatment of those in the last stages of life. Nevertheless, the record failed to include many details of the impact of the proposal and it was not asked for by the Organizations (even though they did not oppose it). The Board suggests that the Parties and/or the Joint Committees examine the proposal and determine whether there is consensus to modify those benefits, either as proposed or on some other basis.

The Board proposes that the Parties agree to the two modest plan design modifications contained in the Organizations' proposals – increasing the annual benefit limit for hearing benefits from $600 to $2,000 and also removing the age limits on speech therapy and providing coverage for Applied Behavioral Analysis, without age or dollar limits, for those who are diagnosed with autism spectrum disorder. The benefit improvements for those with autism spectrum disorder may well be legally required by the MHPAEA and were not opposed by the Carriers, whose proposal includes an identical proposal to adjust those benefits. The hearing benefit limit is one that both Parties proposed to increase as well. The only difference related to whether there would be a new limitation imposed with respect to payment for hearing aids and the record failed to reveal either a current problem that needed to be addressed by such a limitation or substantial cost savings associated with such a new limitation. Accordingly, the Board recommends adoption of the increase in the annual benefit limit for hearing benefits without inclusion of the proposed new limitation on hearing aid coverage.

The final issues remaining relative to the Parties' health care proposals concern the monthly employee contribution rate. While the Board is unpersuaded that the Parties mutually agreed to design the Plans on the basis of an AV benchmark of 88%, the Parties had previously agreed to set the level of monthly employee contributions at the 15% rate. For a number of reasons, that rate has been capped for some years in bargaining, but we are persuaded that the time has come to remove that cap and allow the Carriers to receive the full benefits of a 15% monthly contribution rate, which will vary in dollar amounts proportionately as the Plans' overall costs change. First, and foremost, doing so will restore the situation where employees will share proportionately in the burdens associated with increases in the costs of providing covered benefits. Second, the wage package being recommended in this case is sufficient to allow employees to resume that shared obligation without undue burden. Third, these contribution increases, while substantial, are proportionate to the increased benefits that employees and their dependents are receiving from the Plans. Fourth, there is no compelling reason to continue to limit the 15% employee contribution rate, which remains one that is at the lower end of negotiated employee contribution rates for plans of this type.

The Carriers propose to create a second tier of contribution rates for the employee plus spouse and family rates. While somewhat unusual, the Plans have had a single consolidated employee monthly contribution rate for the entire approximately 20-year period that the Plans have had employee monthly contributions as part of their overall plan design. The Carriers maintain that one of the effects of this method of determining the amount of employee monthly contributions is to increase the number of spouses who participate because of the lack of any incremental additional cost resulting from their participation in the Plans.

The Carriers are undoubtedly correct in that regard. They ask that the Board impose a two-tier contribution structure in place of the existing single-tier structure to induce spouses who do not need the coverage and who are able to obtain independent coverage from their own employers to do so. If a spouse elected coverage available from the spouse's own employer, then the other coverage would be primary and additional benefits would be payable from the Plans only pursuant to coordination of benefits rules. Enrollment of spouses in the Plans in situations where they could have obtained their own coverage through work, but declined that coverage, unfairly dumps responsibilities for spousal health care onto the Plans in lieu of primary responsibility for that care being covered by the spouse's employer's plan. The proposal of the Carrier, however, with respect to two-tier contributions is not one that is focused on that precise problem. A spousal surcharge would seem to be better targeted to that precise situation, but both Parties indicated in hearings that adoption of a spousal surcharge was neither desirable nor believed to be workable as a practical matter since it depended largely on self-reporting of the fact that an enrolled spouse could have obtained coverage through work, but declined that coverage.

We conclude that the approach embedded in the Carrier's proposed response to this concern paints with too broad a brush. It affects equally the spouses who could elect health coverage from their employer, but who decline that coverage (the target audience); those spouses who elect their own work coverage and have their benefits coordinated, but who wish to maintain secondary coverage under the Plans; and those spouses who don't have an opportunity to obtain employer-provided coverage at all. If the additional amount payable by those in the second-tier is not sufficiently larger than the monthly contribution amount for those in the first-tier, one would not expect the additional contribution amount to change the decision of many employees as to whether or not to enroll their spouses. If the additional amount payable by those in the second-tier is sufficiently larger than the monthly contribution amount for those in the first-tier, then it will operate to discourage spousal enrollment, but will have that effect equally upon spouses who are participating in the Plan currently, but who have not opted out of coverage by another employer. Moreover, the record contains no data from which to estimate the number of "innocent" spouses who will be deprived of coverage and/or required to pay more for that coverage, on the one hand, and the number of spouses who have abused the present arrangement so as to improperly shift costs onto the Plans that should more appropriately be borne by their own employers. That lack of data means that the precise cost savings to the Plans from implementing a two-tier contribution cannot be estimated and the harm to existing participants who are legitimately receiving spousal coverage also cannot be estimated.

To the extent that the proposed second-tier higher monthly contribution rates do not result in many employees dropping coverage for their spouses, a change to a two-tier contribution model will not save the Carriers any money. Given the manner in which the two contribution tiers are to be determined, the Carriers will receive the same 15% in the aggregate from all of those who are enrolled employees whether a single tier or two-tier contribution formula is used. What will change is simply the responsibility within the employee group as to who will be responsible for more (those with enrolled spouses) or less (those without enrolled spouses) of that 15% share. The Organizations assert that as a matter of general principle, they have a strong preference to treat all of their members equally in terms of the level of monthly contributions needed to participate in the Plans. No reason has been shown to change that longstanding approach in light of the flaws inherent in the Carriers' two-tier request in this matter.

In sum, we recommend that the status quo be maintained, with the 15% monthly contribution to proceed, effective January 1, 2023, without any maximum or cap, with the limited improvements to the hearing benefit and to the benefits to those diagnosed as suffering from autism spectrum disorder, and further recommend that the Joint Committees proceed to design and undertake a rebid process to ensure that services being provided are cost-appropriate.

HOLIDAYS

The current Agreements provide for 11 paid holidays – New Year's Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, Christmas Day, and New Year's Eve Day.

The Organizations propose to add three additional paid holidays – Martin Luther King, Jr. Day ("MLK Day"), Juneteenth, and Veteran's Day – for a total of 14 paid holidays. The Organizations further propose that equivalent pay be provided to employees who do not receive holiday leave and that operating craft road crews be provided equivalent Annual Leave Days ("ALDs")/Personal Leave Days ("PLDs") consistent with the current treatment of holidays for those employees.

The Organizations explain that Veteran's Day is an important holiday to include in the Agreement because a significant number of employees are veterans, because of the efforts made by many of the Carriers to recruit and hire new employees from among those who have served, and out of a desire to respect the sacrifices made by veterans. The Carriers do not disagree with those goals, but note that, prior to 1983, Veteran's Day was a contractual holiday that was then exchanged by the Organizations for the New Year's Eve Day holiday.

With respect to the request to add the MLK Day and Juneteenth holidays, the Organizations note that there was a desire to recognize those dates particularly in light of the increasingly diverse employee base in the industry. The Carriers do not disagree, but assert that while they are willing to permit the Organizations to swap one or more of the existing holidays for MLK Day and/or Juneteenth, they remain opposed to expanding the total number of holidays beyond the 11 paid holidays currently included in the Agreement which, they assert, is greater than the number of paid holidays provided generally by private sector employers, even those that are unionized.

The Carriers costed the Organizations' proposal at $147,000,000 annually, which is equivalent to a 1.4% GWI provided to all employees. In the context of a partial quid pro quo for agreement to its proposal concerning bidding, pools, and extra boards for the operating crafts, the Carriers offer to provide, effective January 1, 2023, one additional paid day off to each employee annually in a manner to be determined by each individual Carrier and Organization. In the absence of agreement, the Carriers propose that the additional paid day off will be applied as a holiday to be determined by the individual Carrier (or for crafts that receive personal leave days in lieu of holidays, an additional personal leave day). The cost of the Carriers' holiday/personal leave proposal is equivalent to an approximate 0.5% GWI for all employees.

We recommend withdrawal of the Organizations' proposal on holidays. The existing number of paid holidays is generous when compared to the holiday benefits offered by other private employers. The BLS data shows that Union-represented employees receive, on average, nine paid holidays a year and other transportation industry workers average seven paid holidays a year. No basis exists to recommend adding to the current complement of paid holidays or to divert wages from the Board's recommended wage and compensation package so as to provide these additional paid days off work. It is our understanding that the Organizations can accept the Carriers' offer to exchange one or more of the existing contractual holidays for Veterans' Day, MLK Day, and/or Juneteenth, if preferred by the Organizations.

We also recommend that, effective January 1, 2023, employees be provided with one additional day of paid off in the form of a personal leave day or equivalent. Although we have recommended adoption of the Carriers' work rules proposal to the extent that it sends the proposal back for further bargaining, we nonetheless make our recommendation for an additional personal day unlinked to our treatment of the Carriers' work rules proposal. We note that the addition of an additional paid leave day will permit recognition by employees of Veterans' Day, MLK Day, or Juneteenth if desired, or provide those employees with an additional paid day off for employees for absences due to sickness, fatigue, or personal reasons.

PAID SICK LEAVE

The Organizations propose that the Carriers provide employees with 15 days of paid sick leave annually where no sick leave is currently provided and increase the number of days of paid sick leave annually to 15 days where less than 15 days of paid annual sick leave is provided. Additionally, the proposal would allow annual carryover of any unused days of sick leave without limit. A savings provision is included that would not replace any more generous sick leave agreements in place. Finally, the Organizations propose that employees will not accrue any penalty points under any Carriers' attendance policies for taking sick leave and that days requested may be taken on demand and cannot be denied.

The Organizations argue that paid sick leave is commonplace and that it is long past due to provide paid sick leave to rail employees. They further maintain that the need for paid sick leave is particularly acute at present, given the sharp reductions in employee headcount by the Carriers, which have led to what the Organizations assert are significant pressures – in the form of attendance control policies and other means – by management to limit the ability of employees to mark off due to fatigue or illness for themselves or for family members.

The Organizations stress the significant adverse impact on employees resulting from the sharp reductions in the working force and efforts by the Carriers to both schedule employees in ways that provided them much less time off and much less flexibility to attend to a variety of off-duty needs, including doctor's visits for the employee and for family members, or other important family or life events. According to the Organizations, employees who are fatigued or who are visibly ill and unable to safely work are either required to stay on the job or are being assessed points under the applicable attendance policy. The Organizations explain that the impetus for the paid sick leave proposal, including the provisions that preclude the Carriers from assessing points for sick leave absences and require that the sick days be treated as "on demand" days that cannot be denied for any reason by the Carriers, is to prevent these situations from continuing.

The Carriers oppose the proposal for several reasons. First, the Carriers object to the proposal on cost grounds. The estimated cost of the proposal, according to the Carriers, is $688,000,000 annually, an amount equivalent to a 6.4% GWI to all employees.[7] Second, the Carriers assert that although some Organizations have negotiated sick leave, most have opted instead to bargain for Supplemental Sickness Benefit Plans ("SSBPs"). According to the Carriers, in many instances, sick leave programs were traded for SSBPs in negotiations. The Carriers note that, to date, although demands for both sick leave benefits and SSBPs have been made, no Organization has been successful in negotiating both benefits. The Carriers also object that the Organizations' proposal in this case is not incremental; the Organizations' proposal

[7] The Organizations cost the proposal at less, based upon their assumptions that only 7 of the 15 sick leave days would be used each year, with the rest banked for possible future use, and that all days taken as paid sick leave will not necessarily be backfilled at overtime rates. The Organizations acknowledge, however, that in the absence of data concerning usage of a benefit that does not yet exist, the 7-day costing assumption is somewhat arbitrary and ignores, from a costing perspective, the ability to bank unused days without limit.

essentially provides employees with 15 days annually to use to mark off work for any reason and would lead to serious operational problems and impose greater burdens on employees who remain at work or are called in to cover those absences.

The Carriers maintain that, historically, the Parties have generally negotiated for paid time off that employees may use for days of absence for personal or family sickness. Employees have available to them a number of personal leave days, 11 paid holidays, and up to five weeks of vacation (up to two weeks of which may be used on a single day basis). In addition, absences of more than seven days in duration can be compensated in part through the Railroad Unemployment Insurance Act ("RUIA") and for those covered by SSBPs, pay is available for absences due to disabling illnesses that extend beyond four days.

The Carriers dispute that the attendance policies are being applied in the manner alleged by the Organizations and note that mark offs have risen significantly, making it more difficult to maintain uninterrupted and efficient operations and service, particularly with the reduced level of working forces. Granting this proposal would only exacerbate that situation. The Carriers maintain further that they enjoy the managerial prerogative to promulgate attendance policies and administer discipline and that if the Organizations believe that discipline is being assessed improperly, they have the right to grieve and arbitrate those claims.

The Board appreciates how deeply the Organizations and the membership feel about the manner in which the Carriers are applying their attendance policies. Disputes over those issues, however, are best resolved in the grievance and arbitration process, not by an overly broad and very costly proposal that would create 15 paid days a year that, while nominally labeled as sick leave days, would be structured to be used on demand as a means of permitting employees to better balance work-life needs and would effectively be personal days that could not be denied for any reason by the Carriers. We understand the concerns voiced by the Organizations as to the circumstances that led to this proposal (and several others made in this proceeding). We are simply not in agreement that this sick leave proposal is otherwise warranted or is the appropriate way to address the concerns. We have taken the changes in demands upon employees into account when we formulated our recommendations concerning the wage package, including the service recognition bonus component. Any overreaching by any Carrier in a particular case in the exercise of its managerial authority will need to addressed through the grievance and arbitration processes, whether they are facial challenges to the reasonableness of attendance policy provisions as drafted or challenges to their application to individual employees, which will focus upon the facts of the particular case.

Additionally, as noted in the discussion above with respect to holidays, we are recommending one additional day of personal leave time as part of the package in this matter.

For all of these reasons, we recommend that the Organizations withdraw their sick leave proposal.

CARRIERS' PROPOSALS – BIDDING, POOLS, AND EXTRA BOARDS AND BLET AND SMART-TD PROPOSALS RE SCHEDULES

The Carriers propose that an Automated Bid Scheduling ("ABS") System be adopted that they assert would permit both greater stability and efficiency in light of the manner in which rail operations are presently being conducted due to the adoption of the PSR model. On the one hand, the Carriers note that they are seeking that the subject matter described in their proposals be sent to the Parties for local handling in the Section 6 process on a Carrier-by-Carrier basis with an appropriate arbitration backstop if the negotiating process fails to reach agreement. On the other hand, the Carriers presented to the Organizations and to the Board a very carefully crafted set of language on these subjects.

The Carriers' proposal concerning ABS is as follows:

A. General

i. The carriers propose that it is necessary to establish a new approach to job assignments that brings structure, stability, predictability, and efficiency for all employees and the carriers covered by this Agreement.

ii. Previous agreements are amended to permit carriers to provide employees direct and immediate placement to a job through an automated bid system as provided herein. Said amendments will become effective: (a) on the date agreed to by the parties; or (b) absent agreement, 30 days following the date that any carrier-specific implementation issues have been resolved by final and binding arbitration, as provided below.

B. Automated Bid Scheduling (ABS)

iii. Automated Bid Scheduling (ABS) will serve as the primary method to assign employees on a regular basis, based on seniority, qualifications and job preferences.

iv. Carriers will maintain a system containing all employees' assignments, including pools and extra boards, which will be updated as necessary. Employees may update their assignment preferences at the designated time. New assignments will be bulletined or posted.

v. Employees will be responsible for accessing the system to determine if their assignment has changed.

C. Submitting Preferences

i. All employees will be required to electronically file their individual preferences for their assignment(s) on their Automated Bid Application and will specify a sufficient number of preferences to ensure a selection will be granted.

ii. Employees may make changes or update their individual preferences on their Automated Bid Application.

D. Job Assignments

i. Assignments awarded will be posted electronically for employees. All employee assignments will be assigned based upon the individual preferences employees submitted on their Automated Bid Applications, qualifications and seniority permitting. It is the employee's responsibility to be aware of the new assignment (if applicable) and be rested and available to report when required.

ii. Employees changing assignments will protect their assignment until the designated date and time. Employees who are at their home terminal (and not working) will be placed on their new assignment at the designated date and time. Employees on-duty or not at their home terminal at the start of a new assignment will remain on their previous assignment until returning to their home terminal.

The Carriers' proposal concerning Pools and Extra Boards for the Operating Crafts is as follows:

The carriers propose to establish a new approach to job assignments that brings more structure, stability, predictability, and quality of life for all employees covered by this Agreement. By modifying current rules and leveraging technology, the carriers believe it is possible to achieve these goals in a mutually beneficial way that improves efficiency and does not increase carrier costs. Accordingly, each carrier may serve notice on the authorized Organization representative(s) to implement some or all of the following:

A. Self-supporting pools

i. Pools will be converted to a system under which pool vacancies are primarily protected within that pool

ii. Pools will operate on a first in/first out basis, unless otherwise agreed to by a carrier and labor organization

B. Pool and extra board regulation

i. Pool service will be regulated based on a target number of starts that takes length of run into consideration

ii. There will be a predetermined time period during which the number of starts is tabulated for use in the carrier's calculation of the requisite number of employees in the pool

iii. There will be a predetermined time period for predicting the future number of pool starts utilizing technology

iv. There will be a process for automatic pool adjustment to ensure consistency with the requirements and intent of the Rail Safety Improvement Act (RSIA), full-time employee availability and fatigue abatement

v. Pools will operate on a first in/first out basis, unless otherwise agreed to by the parties

vi. The carrier may abolish or establish road, yard or combination extra boards which will be regulated by the carrier based on the needs of service

C. Workforce predictability and flexibility

i. In conjunction with adoption of the carrier proposals listed in Paragraph A and/or Paragraph B above, new agreements will provide for one or more of the following:

a. Opportunity for employees to observe rest outside the requirements of the Rail Safety Improvement Act

b. A procedure under which employees may trade assignments

c. A procedure under which employees may receive a pre-arranged layoff

D. Carrier-Specific Implementation and Other Issues

i. Each carrier may serve a notice of its intent to implement some or all of the item above and, in doing so, may identify any carrier-specific implementation matters that it believes must be addressed in connection with such implementation. The organization may respond with its own list of carrier-specific implementation issues that it believes must likewise be addressed.

ii. The parties shall meet and confer within 30 days following the carrier's notice to discuss the carrier proposals and any related proposals made by the organization. If the parties fail to resolve all issues within 60 days of the first meeting, then either party may submit the matter to final and binding, party-paid arbitration at any time thereafter.

iii. An arbitrator shall be selected within 10 days of the request for arbitration and a hearing shall be held within 30 days thereafter. The arbitrator will give consideration to pre-existing agreements on the carrier involved that cover the matters set forth in the parties' proposals. The arbitrator will only have jurisdiction to issue an award that provides efficiency and savings for the carriers while at the same time achieving one or more of the items in Section C.i.a.-c., above.

iv. The terms of the arbitrator's decision, which shall be issued within 30 days following the hearing and will be final and binding, shall ensure availability of a sufficient number of employees to improve operational efficiency and service reliability and comply with applicable regulatory requirements.

v. A joint committee between the individual carrier and organizations will be established to address implementation issues and to recommend any further changes to carrier-specific rules.

vi. Nothing in this Pool and Extra Board Proposal is intended to restrict any existing right of a carrier.

vii. Agreements reached pursuant to this Paragraph (C) will supersede any previous work/rest related rules and/or agreements and will become effective as agreed by the parties or 30 days following the arbitrator's award, as applicable, unless otherwise agreed to by the parties.

The Carriers assert that their proposal could result in a "win-win" situation for the Parties. Parts of the Carriers' proposals have already been negotiated and implemented on some properties and, according to the Carriers, have been successful both in meeting the Carriers' operational needs and in addressing the work-life balance concerns of the Organizations. The Carriers' proposals include the use of systems that would allow job posting, bidding, and assignments to be done electronically, avoiding the need to telephone employees whenever there is a displacement. The Carriers' self-supporting pools proposal addresses the process for obtaining a replacement for employees who mark off from those within the pool rather than using an extra board. The Carriers also propose to determine the number of jobs within each pool by the number of starts, rather than by the numbers of miles traveled. The Carriers maintain that the present data concerning unavailability shows that employees report off for various reasons in disproportionately large numbers for starts on Fridays, Saturdays, Sundays, holidays, and other high impact days. They believe that the proposed changes in bidding and the operations of the extra boards and pools can result in greater certainty of particular blocks of time off for operating craft employees and fewer delays operationally when an employee fails to report as expected. The Carriers estimate the savings of their proposal at approximately $38,000,000 annually in addition to the operational efficiencies that would result from these changes and acknowledge their willingness to negotiate appropriate quid pro quos with the Organizations during the local bargaining.

The BLET and SMART-TD in their written proposals to the Carriers and to the Board included the following proposal regarding scheduling:

> 5&2 Work Schedules
>
> 2) 5&2 work scheduled: On the effective date of the agreement, all General Committees of Adjustment shall have the right to serve notice on their respective rail carrier(s) invoking mandatory negotiations providing for voluntary scheduled days off for all unassigned road service. General Committees of Adjustment having more generous existing agreements have the right to retain those agreements.

The Board is persuaded that all Parties could potentially benefit from a re-examination in Section 6 bargaining at the Carrier-specific level of the bidding, pools, and extra board processes. The Board is further persuaded that, intertwined with and integrally related to those subjects, is the subject of flexibility, efficiency, certainty, and fairness of work schedules, including (but not limited to) the subject of scheduled days off and that these issues must also be addressed in the bargaining. Both Parties also recognize that it is most appropriate for the process to include a Party-paid, binding interest arbitration process to address these matters in the event that agreement is not fully reached during those negotiations.

We recommend adoption of both the Carriers' proposals and those of the Organizations to the extent that they provide for bargaining in good faith over these inter-related subjects – bidding systems and requirements, the operation of extra boards, the operation and regulation of pools, and other provisions related to scheduling fairness, efficiency, certainty, and flexibility –

and provide for an interest arbitration process in the event that full agreements are not reached. We believe that a six-month period for bargaining, beyond which time any Party may invoke arbitration, is sensible. We wish to underscore, however, that we express no opinions concerning the outcome of those negotiations and that we do not recommend adoption of the specific language of any of the proposals. We have not been provided with sufficient information to fully appreciate the nuances of the carefully crafted language in those proposals even if it were appropriate for us to do so at this stage. We do recommend, however, that to the extent that any issues of process or substance are not the subject of mutual agreement, then the authority to resolve those matters should rest with the arbitration board(s). Nothing in our Report should be interpreted to opine on the precise manner in which the bargaining is to take place (including which Parties are involved in those discussions) or whether the particulars of any needed arbitrations (including whether they would be most effective separately between each Carrier and each Organization separately or on some other basis).

BLET AND SMART-TD: ATTENDANCE POLICIES AND MEAL ALLOWANCES

The Brotherhood of Locomotive Engineers and Trainmen ("BLET") and the Sheet Metal, Air, Rail, and Transportation Workers – Transportation Division ("SMART-TD") propose the following:

> 1) Attendance Policies: On the effective date of the agreement, all non-negotiated attendance policies will be abolished and BLET and SMART TD General Committees of Adjustment shall have the right to serve notice on their respective rail carrier(s) invoking mandatory negotiations on attendance rules and requirements. General Committees of Adjustment having more generous existing agreements have the right to retain those agreements.
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> . . .
>
> 3) Meal Allowance: Adopt BLET CSX Single System Agreement meal allowance schedule as national agreement standard. General Committees of Adjustment having more generous existing agreements have the right to retain those agreements.

A scheduling proposal also advanced by the BLET and SMART-TD that was discussed above in combination with discussion of the Carriers' proposal concerning Bidding, Pools, and Extra Boards.

<u>Attendance Policies</u>

The Carriers' rights to unilaterally establish and modify reasonable attendance policies has been recognized for years. Shortly after the most recent rounds of work force reductions, a number of Carriers promulgated and/or revised attendance control policies that were points-based in design and were intended to discourage employees from absenting themselves from work when scheduled to work or when called in to work. There was litigation over the Carriers' rights to unilaterally make these changes and the courts found that the disputes were minor disputes under the RLA and that the Carriers could unilaterally establish or modify the policies subject to any limitations found to have been imposed by the existing Agreements. The courts further recognized that disputes over the limitations imposed by those existing Agreements on the establishment, amendment, or application of those attendance policies were to be resolved under the RLA pursuant to the grievance and arbitration process.

The BLET and SMART-TD propose that the existing attendance policies, to the extent that they were not the product of negotiation and agreement, be voided and that the General Committees of Adjustment enjoy the discretion on a Carrier-by-Carrier basis to invoke mandatory negotiations on the subject of attendance rules and requirements. In essence, if adopted, the Organizations' proposal would foreclose Carriers from reconstituting attendance rules and requirements absent agreement by the BLET and SMART-TD.

The Carriers protest that this incursion on management rights is unwarranted, from a legal end, and from a practical perspective, could lead to enormous increases in worker unavailability and cripple the Carriers' ability to operate the railroad and service shippers in a timely fashion.

The BLET and SMART-TD argue that the circumstances surrounding the revisions in both the terms and the application of the Carriers' various attendance policies, citing particularly to the BNSF Hi-Viz policy, have created irreparable harm to employees who are effectively being forced to work when they are sick and/or fatigued. The Organizations note that the adoption of PSR has resulted in sharp reductions in size of the operating craft working forces.[8] The Organizations allege that the current attendance policies are being abused by the Carriers to coerce employees who have legitimate reasons not to report to work to do so anyway. This is particularly egregious, according to the Organizations, when the Carrier has not provided the employee with reasonable advance notice of the need to report to work.

The Organizations argue that this PEB is the only appropriate forum to obtain relief in light of the responses to date from the courts and the length of time that the matters will remain unresolved if the grievance and arbitration processes were utilized. Further, arbitrators often require that these policies be challenged only at the stage of disciplinary action, thus further delaying resolution of the Organizations' objections. In the meantime, according to the Organizations, morale is suffering and employees are being irreparably harmed. The Organizations claim that the only way that fair and appropriate attendance policies will be promulgated is if they are bargained.

While we understand the views expressed by the Organizations regarding the Carriers' attendance policies and their implementation, we remain unpersuaded that the appropriate

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[8] The record indicates that were approximately 8% fewer TYE employees in May 2022 than pre-pandemic and that, in early 2020, following the onset of the pandemic, there were 25% to 30% fewer TYE employees than the pre-pandemic levels.

response is the one contained in the BLET and SMART-TD proposal. That proposal would eliminate the ability of the Carriers to enforce legitimate attendance-related expectations through the promulgation of reasonable attendance policies and the imposition of disciplinary actions. Any challenges to the reasonableness or contractual or legal propriety of any provisions of the attendance policies on their face, or as implemented in individual disciplinary actions, must be pursued through the grievance and arbitration processes. That these processes may take time to be completed is no reason to limit the Carriers' managerial prerogatives and restrict attendance policies to those that have been negotiated and bar all others.

The Board recommends that the BLET and SMART-TD withdraw their attendance policies proposal.

Meal Allowance

The BLET and SMART-TD seek an increase in the amount of the meal allowances paid to those who are held over away from their home terminal for extended periods. Currently, the national meal allowance is at $6.00 for Engineers held over for four hours and then additional payments of $6.00 after an additional eight hours. Those rates have remained unchanged since 1994. SMART-TD negotiated changes in these amounts for the Conductors in 2010, increasing the $6.00 figures to $8.00. There is no dispute that these national standards are out-of-date and have failed to keep pace with changes in the cost of food and meals.

The Carriers and both BLET and SMART-TD have reached a variety of Carrier-specific agreements that provide for meal allowances that exceed the current national provisions regarding meal allowances. Those Carrier-specific agreements were often reached in the context of agreements between those parties on other issues and often involved quid pro quos.

The BLET and SMART-TD urge the Board to establish new national standards for meal allowance for employees held over during the course of their assignments and to model those standards on meal allowance provisions that the BLET negotiated with CSXT in 2016, which the Organizations describe as providing for the following: $22.60 meal allowance payment after four hours; and additional $10.26 meal allowance payments for each additional eight-hour period of hold over. Those proposed amounts would be subject to annual adjustment based upon changes in the CPI-W.

The Carriers oppose this proposal on several grounds, including: 1) the assertion that the CSXT agreement on meal allowances was part of a much broader agreement on multiple items and should not be viewed in isolation as to the amount of a fair and appropriate meal allowance; 2) the national meal allowance provisions have historically been viewed as floors, but most Carriers have negotiated higher rates such that the status quo does not fall short of fairly compensating operating craft employees for meals; and 3) if the Board is inclined to grant the Organizations' request to update the national meal allowance provisions, then it should simply apply changes in the CPI-W to the previously negotiated national rates, which should result in rates of $11.72 for Engineers and $10.79 for Conductors.

We recognize that the national provisions for meal allowances for BLET and SMART-TD members are out of date. They were last adjusted for the BLET members in 1994 and for the SMART-TD members in 2010. Other than a recognition that the allowances from 28 years ago and 12 years ago are plainly no longer adequate, the record provides little by way of guidance as to the best way to adjust those allowances. We are not persuaded that an appropriate showing has been made that the blind extension of the BLET agreement reached at CSXT to all Carriers is either necessary or appropriate, particularly since the BLET and SMART-TD ask that those allowances be extended without any consideration of the quid pro quos given to obtain those allowances.

The record also fails to establish that merely updating the historically derived allowance amounts by changes in the CPI-W during the intervening years/decades will result in a fair and appropriate allowance.

Moreover, the record failed to indicate the proportion of Engineers and Conductors who qualify for meal allowances and who are not covered by a Carrier-specific agreement to provide allowances in excess of those set forth in the national agreement.

In sum, we agree that updating is needed, but the submissions do not clearly indicate the particular update that we should recommend. In light of those considerations, we remand the matter to the Parties to address. We would expect that any resolution would include both agreement on an appropriate allowance amount and also a mechanism to index that amount so that future disputes on the same issue, at least in the near term, may be averted. We decline, however, to direct arbitration in the event that bargaining fails to result in agreement. The issues were not shown to have been of sufficient criticality that, if necessary, updating of the national meal allowance amounts could not wait for resolution until the next round when it can be addressed with (hopefully) the backdrop of a sufficient record.

BRS: SIGNAL MAINTENANCE DIFFERENTIAL

The Brotherhood of Railroad Signalmen ("BRS") proposes:

> A rate increase, effective January 1, 2020, in the amount of $5.00 per hour, to be applied before any GWI, for maintenance employees and those employees directly responsible for or signatory to FRA-required safety-critical repairs, tests, and inspections.

This mirrors a proposal presented to PEB 243 for a similar requested increase in rates. The proposal stems from changes made over a number of years in the duties of signal maintenance employees and a transition from largely visual inspections to review of computer logs to ascertain where a problem may exist based on the position of a relay, installation of software updates, changing batteries in signal equipment, and performing FRA testing of equipment. Additionally, the signal maintenance employees have been required to cover larger territories and greater numbers of assets, a trend that the BRS asserts is aggravated by the implementation of Positive Train Control systems.

Many of these changes were well underway at the time of PEB 243. PEB 243 recommended that:

> We recommend that this be sent back to the parties for a single non-binding study and fact-finding designed to focus upon the job responsibilities of a Signal Maintenance employee and a Signal Installer. We anticipate that a single study or fact-finding hearing will occur at which representatives and/or witnesses from all relevant Carriers will participate. The results may serve as a basis for a mutually agreeable solution during the moratorium or barring that will be available to inform the parties on this issue for the next set of Section 6 negotiations.

Subsequent to the issuance of the PEB 243 Report, the Parties jointly conducted a set of interviews and surveys, but failed to convert what had been learned into a comprehensive job responsibility study and failed to complete the recommended fact-finding. No change in wages was implemented following those initial efforts and the record did not reveal any changes made in the following round of Section 6 negotiations that resulted in the 2015-19 Agreement.

The Carriers oppose the BRS proposal in this proceeding on both procedural and substantive grounds. The Carriers assert that no significant bargaining took place with respect to the proposal, which it asserts was withdrawn by the BRS on March 24, 2021, and that for that reason alone the Board should not grant the proposal. Substantively, the Carriers cost the proposal at $57,000,000 annually, which is equivalent to a GWI to all crafts and classes of employees of 0.4% and equivalent to a GWI of 8.1% if applied only to the Signalmen. The Carriers maintain that the BRS failed to follow through on the blueprint set forth in PEB 243.

According to the Carriers, that failure should persuade the Board to recommend withdrawal of this proposal.

We appreciate the many changes that have occurred and may be continuing to take place in the day-to-day signal maintenance duties performed by Signalmen and recognize that they play a critical role in the safe operation of the rail system. The record presented at the hearing, however, fails to establish a sufficient basis for this Board to recommend the requested increase in wages or an increase of some other amount. The record contains no detailed evidence concerning the changed duties or rationale for why they involved any changes in knowledge, skill, effort and/or responsibility, either in isolation or in comparison with those of other positions, sufficient to justify the requested increase in pay. The fact that it does not appear that significant bargaining took place with respect to this proposal prior to the hearings provides simply an additional reason why we are unable to recommend acceptance of this requested wage increase.

Accordingly, we recommend that the BRS withdraw its proposal for a separate wage increase for signal maintenance employees.

<u>BMWED: TRAVEL ALLOWANCES AND EXPENSES AWAY FROM HOME</u>

The Brotherhood of Maintenance of Way Division, IBT ("BMWED") sought two related craft-specific proposals:

> 1) to amend all Travel Allowances to include weekend and mid-week assembly point changes to be paid at the effective Internal Revenue Service (IRS) standard mileage rate for business travel for all miles traveled by the most direct highway route; and
>
> 2) to amend Expenses Away from Home provisions to be paid at the special transportation industry daily meals and incidental expenses allowance as well as the standard continental United States ("CONUS") daily lodging allowance established by the General Services Administration ("GSA").

The BMWED argues that the national standards for travel allowances and expenses away from home are long overdue for increase. They have not been adjusted for years. Travel allowances were last adjusted in national negotiations when established effective September 26, 1996. Meals and lodging allowances have not been adjusted since January 1, 2005. After the BMWED failed to persuade PEB 243 to increase the travel allowances and expenses away from home to IRS mileage and GSA hotel and meals and incidental expense levels, the BMWED negotiated with individual Carriers and obtained some increases in reimbursements, albeit in exchange for various quid pro quos. Carrier-specific agreements were reached with BNSF, CSXT, NS, UP, CP (Soo) and KCS.

The BMWED asserts that a number of changes have taken place over the years that have contributed to the creation of a problem that needs an immediate solution. Since Award 298, which set national standards in 1967 for travel allowances and expenses away from home, the number of freight railroads has decreased, the territories and seniority units serviced by the traveling gangs have grown in size significantly, and the proportion of work performed by traveling gangs, as opposed to headquartered gangs, has increased significantly. The BMWED maintains that employees are required to travel much greater distances, sometimes as much as 1,000 miles each way, to get to work. It is the Carriers that choose when and where the work is to be performed. Employees should not be expected to have to pay their own way to get to a remote site to perform work. The cost of traveling is a cost of doing business based upon the business model chosen by the Carriers to have work performed, not some benefit to the employees.

The BMWED maintains that many of its members have to pay hundreds of dollars for which they are not reimbursed fully simply to get from their homes to the work site. Some employees, for example, must drive from Illinois to Nevada to get to work every work cycle and then drive home again. The BMWED provided scores of anecdotes of employees who were forced to sleep in cars, skip food or eat nothing but fast food, sleep in substandard hotels replete with bed bugs and criminal activities taking place on premises, or sleep multiple employees in a room even during the COVID pandemic simply because the Carriers were unwilling to ensure that employees received fair reimbursements for travel in their personal vehicles and reasonable travel expenses while on the road. The BMWED denies that it is seeking a windfall.

The BMWED also notes that this issue has been a constant source of tension between the BMWED and the Carriers and argues that adopting the GSA schedule for expenses and the IRS rate for mileage will index those items in a way that should avoid the need to revisit this subject each round of bargaining. The GSA and IRS numbers are reviewed periodically by the federal government and are based on comprehensive studies which should help to ensure that the applicable rates remain fair and sufficient.

Additionally, the BMWED contends that the profits of the Carriers are presently high and that they can easily afford the proposal at issue in this case. This is not a question of additional compensation, but according to the BMWED, a question of fairness. The BMWED is seeking to be fairly reimbursed for reasonable expenses incurred in connection with work.

A failure by the Board to remedy this situation, according to the BMWED, could trigger a large exodus of skilled employees whom the Carriers would be hard-pressed to replace especially in today's tight job market. The BMWED notes that this issue is both critical to the membership and one of fundamental fairness and the Board is urged by the BMWED to grant the proposal without expectation of quid pro quos.

The Carriers oppose these proposals for a number of reasons. First, the cost is estimated at $83,000,000 annually ($57,000,000 annually for the expenses away from home changes and $26,000,000 annually for the increase in travel allowance). This is estimated to be equivalent in

GWI terms to a 0.7% of GWI for all employees or to a 4.4% GWI for BMWED members only. As a high-cost item, without any offered quid pro quos, the Carriers asserted that prior PEB reports, including that of PEB 243, suggest that the proposal should be rejected.

Second, the questions of travel allowances and expenses away from home have been addressed on a number of local properties, based upon granting specific quid pro quos and addressing the individual Carrier issues surrounding the operation of traveling gangs, such as the historic use of camp cars at Norfolk Southern. The fact that the individual Carriers have negotiated differing rates for travel allowances and expenses away from home underscore that this Board should not agree to the BMWED's suggested "one size" solution.

Third, the Carriers refer to statements in prior PEB Reports, particularly PEB 242, to the effect that, "The subject matter of these Work Rules is far too complex for major changes to be implemented without first being subject to the crucible of good faith bargaining which often yields a workable, balanced framework for addressing proven problems in a proportionate, measured fashion, taking into account appropriate tradeoffs and quid pro quos that often times accompany agreements to modify work rules."

Fourth, total reimbursement for these travel costs and expenses away from home has never been agreed to despite this form of work having been the norm for decades. The Board should adopt an approach in this case similar to that used in PEB 242 and PEB 243 and reject any temptation to address this complex subject by a simple, but unnuanced proposed solution.

Finally, the Board in PEB 243 rejected an almost identical proposal by the BMWED and nothing has changed with respect to the underlying issues since that time that would merit adopting a different approach or recommendation herein.

After careful consideration of the record and how these issues have been addressed historically, the Board is persuaded that, with minor modifications, the BMWED proposals should be adopted by the Parties. A brief overview of the reasons for this recommendation follows.

The assertion that the ruling in PEB 243 should effectively foreclose consideration of the proposal is unpersuasive. The circumstances that exist now are sufficiently different that we believe we must consider the matter in light of the current facts and circumstances. The fact that this item has fairly high cost – the Carriers estimate the cost of the proposal at $83,000,000 annually ($57,000,000 annually for the expenses away from home changes and $26,000,000 annually for the increase in travel allowance) or a combined equivalence in GWI terms of a 0.7% of GWI for all employees or a 4.4% GWI for BMWED members only – implies that historically employees have been required to shoulder significant portions of these work-related costs and, absent recommending adoption of the BMWED proposal, will be required to continue to do so for the indefinite future.

The fact that local Carrier-specific agreements were reached after PEB 243 does not mean that this matter is no longer in need of revision or that it should be addressed locally. The local agreements were to provide additional reimbursements above and beyond the national standards, not to indicate that these allowances and reimbursements are no longer appropriate for national handling. This proposal (and our recommendation) is intended to preserve those Carrier-specific agreements to the extent that they provide greater allowances and/or reimbursements than the revised national standards. Nor do we intend to undo any of the quid pro quos that the BMWED provided in order to have enjoyed the benefits of those Carrier-specific allowances and reimbursements over the years.

Addressing now the merits of the proposal, first, the evidence provided by the BMWED at the hearing has persuaded the Board that this is a serious problem and a serious inequity. Employees should not be required to pay significant sums of money out of pocket without reimbursement for the privilege of traveling to the often-remote sites where work is to be performed. That is more appropriately a business expense for the Carriers than a burden to be borne by the Maintenance of Way employees. Second, there is no reason as to why reimbursements should need to be paid for or offset by quid pro quos of similar value prior to being granted even if historically that was the case in the Carrier-specific negotiations. As the cost of food, lodging, and gas rises, so too must the amount of reimbursements. Third, even with the local Carrier-specific agreements, it is apparent from the BMWED presentation that a significant number of employees are currently required to pay expenses out of pocket without full reimbursement in order to travel to the location chosen for the gang's work. The fact that employees remain willing to work these jobs even if they have to pay for some of their own travel expenses is not a justification for prolonging this inequity. Fourth, selection of the IRS mileage rates takes into account the average costs associated with owning and operating a personal vehicle, including the fuel, insurance, and repairs and other costs associated with the expense of driving one's personal vehicle to and from work. Fifth, use of the GSA rates similarly provides some gauge of the actual costs of obtaining a single occupancy hotel room in an establishment that is appropriate and the costs of meals and incidental expenses.[9] The proposed solution has the additional advantage of not requiring periodic refinement as costs go up (or down as has happened on any number of occasions with respect to the IRS mileage rate).

[9] The recommended GSA rates are the standard, rather than the non-standard high cost, GSA CONUS rates.

The question is presented, however, as to how to properly protect against inappropriate windfalls. We are concerned about that potential and accordingly recommend a number of modifications and additions to the BMWED proposals to minimize that possibility. First, under the federal travel regulations of which the GSA rates are a part, agencies do not pay employees on temporary duty status away from home the published GSA hotel rates whether or not they actually expend that amount of money on hotels. The rates represent a maximum on the amount that travelers will be reimbursed if they are appropriately staying in hotels while on temporary duty status away from home. They also reflect the "government rate" negotiated with many hotel chains for travel while on official duty. We are persuaded that, if desired, the Carriers may condition reimbursements for hotel expense upon appropriate receipts from traveling employees and will be obligated to pay for single occupancy hotel rooms only to the extent that employees provide proof that they actually expended the claimed funds on a hotel room. (GSA does not impose the same documentation requirement with respect to meals and incidental expenses, which is a much lower per diem figure in any event, and we see no reason to recommend that be done here.) Nothing prevents the Carriers from arranging for an appropriate block of rooms at a given location and negotiating a favorable "railroad rate" for those rooms, thus limiting their costs. If they fail to do so, however, then actual expenses for hotel rooms are to be reimbursed subject to the GSA rate cap. Second, the obligation to provide payment for lodging up to the GSA amount is only applicable if the Carrier does not provide an appropriate room single directly at its own expense. If the Carrier wishes to provide appropriate single rooms to the traveling BMWED employees, then no hotel expense reimbursements will be due for those nights. Third, to ensure that the use of these rates both appropriately reimburses employees for their travel expenses (whether or not it does so 100% on every trip with mathematical precision) and, at the same time, does not create significant windfalls, it is recommended that a joint study of the adequacy of reimbursements be conducted by the BMWED and the Carriers beginning in early 2025 when data for the prior two plus full years should be available. If there are any concerns raised by the results of the study, the matter can then be addressed in the next round of national handling.

Finally, we note that our summary of many of the important factors to be included in the modified travel allowance and expenses from home national standards for BMWED traveling gang members will need to be augmented by various additional understandings.[10] We fully expect that the Parties following their receipt of this Report will be able to meet and address those items on either a Carrier-specific or broader basis.

We recommend acceptance of the BMWED proposals on travel allowance and expenses away from home with the modifications noted above.

SMART-TD (YARDMASTERS): SCOPE AND VACATIONS

The SMART-TD makes two proposals with respect to Yardmasters. The first proposes that the Scope Rule: 1) clearly define the duties and responsibilities of Yardmasters to include instruction and supervision over all crews occupying trackage in their respective districts, including data input and handling of all electronic devices used by train crew members; 2) clearly define parameters for transferring, consolidating, combining, or centralizing assignments; and 3) provide New York Dock or similar compensation to all who are adversely affected.

[10] By way of example only, we have not discussed how situations in which there simply are insufficient local rooms to provide single occupancy should be addressed. We assume that this question and many others like it will be discussed and resolved by the Parties directly as part of the process of converting the recommendations in this case into appropriate contractual language.

The SMART-TD proposes the following changes to vacations: 1) apply the principles of Article V, Section 2(d), of 1996 UTU Arbitration Award No. 559 (vacation benefits eligibility and scheduling) to all SMART-TD Yardmasters; 2) apply a 1/52 or basic day (whichever is greater) principle when calculating vacation pay; 3) recognize days of compensated service in other crafts when determining qualifying days and compensation for vacations; and 4) make other changes necessary to align Yardmaster vacation rules with that of the Operating Crafts.

The SMART-TD contends that the current Scope language is too imprecise and has allowed the Carriers to: a) assign incidental Yardmaster work to other crafts, e.g., allowing train crews to generate switch lists on their own electronic devices or using those devices to direct the placement of rail cars, often to incorrect locations; b) assign non-Yardmaster duties to Yardmasters without additional compensation; and c) change the geographic scope of operations supervised by Yardmasters, including requiring that they supervise remotely using cameras and other technology rather than doing so in person. The SMART-TD argues that additional technology cannot adequately compensate for the shortages of needed employees. The SMART-TD proposed the adoption of following contract language (which it intends to be bargained and adopted locally):

> (a) The rules of this agreement shall govern the rates of pay, hours of service, and working conditions of Yardmasters. The term "Yardmaster" as used in this agreement shall be construed to mean Yardmasters of all grades, including relief and extra, including footboard Yardmasters, where Yardmasters were previously employed.
>
> (b) Yardmasters shall have the sole and exclusive right to perform any and all Yardmaster duties and responsibilities. Those duties and responsibilities shall include: supervision over employees directly engaged in the switching, blocking, classifying and handling of cars, inputting of data into electronic devices that train crews (yard / road) utilize, verification of all yard work events executed via electronic devices, execution of inbound train traffic and duties incidental thereto that are required of the Yardmaster, along with such other duties as assigned by the Carrier. (Mediation Agreement dated September 21, 1978). To the extent that the Carrier wishes to have other employees, incidental to their other duties, perform any of the duties performed by Yardmasters, such must be jointly agreed to in writing with the respective General Chairperson. In no event shall such incidental duties performed by other employees result in the reduction or elimination of a Yardmaster position. To the extent the Carrier wishes to add any additional duties, including any

> incidental duties, such must be jointly agreed to in writing with the respective General Chairperson.
>
> (c) The Carrier retains the right to establish, maintain, and abolish Yardmaster positions in any seniority district, subject to the following: prior to any position abolishment, a joint and mandatory 14-day time study (union officer(s) and local manager) must be performed within 30 days of the proposed abolishment. The Carrier is not permitted to abolish any position unless and until completion of the aforementioned time study requirement. If the joint study establishes that there is insufficient Yardmaster work, then and only then can the position be abolished. In the event there is a disagreement as to the sufficiency of work that remains, the parties agree to submit the matter to arbitration under Section 3 of the Railway Labor Act. The Carrier shall not abolish the position until completion of this process. Notwithstanding the foregoing, any adversely affected Yardmasters will be entitled to the equivalent of New York Dock protection.

The vacation proposal seeks to clarify the manner in which vacation entitlement is determined and the amount that is paid for vacation days in light of the fact that employees working as Yardmasters often work in other crafts during the year. The SMART-TD asserts that these changes are necessary to remove unfair disparities that exist as a result of Yardmasters not being covered by the national vacation agreement.

The Carriers oppose both changes, which they cost at $8,000,000 annually (scope) and $500,000 annually (vacation), collectively equivalent to less than a 0.1% GWI for all employees and to an 4.3% GWI for Yardmasters only.

After careful review of the SMART-TD submission, the Board is unpersuaded that a sufficient case has been made either to warrant changing the scope provisions to the much more restrictive language in the proposal or to warrant changing the vacation agreement language, which has been in place for many years and throughout that period has varied from the national vacation agreement. There was no showing of changed circumstances or compelling inequity that would warrant our recommending adoption of the vacation proposal.

The Board recommends withdrawal of both proposals.

SHOPCRAFTS – BRC, IAM, IBB, IBEW, NCFO, SMWIA, TWU – NIGHT/WEEKEND DIFFERENTIAL AND MEAL ALLOWANCE/MEAL PERIOD

The Shopcrafts – Brotherhood of Railway Carmen, International Association of Machinists and Aerospace Workers, International Brotherhood of Boilermakers, National Conference of Firemen and Oilers, Sheet Metal Workers International Association, and the Transport Workers Union – propose two new compensation items: 1) a weekend and shift differential of 10% over normal rates; and 2) providing those employees who are required to work more than three hours beyond their bulletined working hours:
a) reasonable time off with pay for a meal period; and b) meal allowances of $25.00 which will be received with their regular pay.

The Shopcrafts note that there have been massive reductions in headcount from 1990 to 2019 (37,222 to 23,289 and some crafts suffered even larger reductions) and very significant additional reductions since 2019. Those reductions are unevenly distributed depending on both the Carrier and the particular craft and location. The net result, according to the Organizations, is that with fewer employees overall, those remaining are required to work more days and more hours and employees, even those with great tenure, are being denied days off and required to work overtime shifts. Additionally, the Shopcrafts introduced data showing that significant numbers of shopcraft employees are currently working schedules that require them to working one of the days of the weekend and a smaller, but still substantial number of employees, are scheduled to work both Saturdays and Sundays. The Shopcrafts cite large increases in overtime at various locations and anecdotal instances in which employees are required to work double shifts multiple days back-to-back and in which unsafe condition reports were submitted.

The Shopcrafts note that the 10% proposed weekend and evening differential was not only fair, but in line with agreements at MetroNorth (IAM) and the LIRR (NCFO). The

Shopcrafts state that they hope that the differential will both compensate the workforce for the increased weekend and evening work and motivate the Carriers to hire additional workers to reduce the overall strain on their workforces.

The Shopcrafts maintain that $25.00 as a meal allowance is a reasonable amount and note that a meal period is needed to offset the physical and mental demands placed on employees who are required to work more than 11 hours in a day. Whether employees who have been required to work more than 11 hours have also been refused time to take a brief break to drink, eat, or simply rest briefly, was not indicated. Nor does the record reveal whether any problems that may exist in that regard are more commonplace at some Carriers or at some work locations than others.

The Carriers have costed the shift and weekend differential request at $116,000,000 annually, which is equivalent to a GWI of 1.1% to all of the crafts and classes of employees in this proceeding, or an equivalent of a 6.4% addition to GWI for the affected crafts. The Carriers have costed the meal period and meal allowance request at $13,000,000 annually, which is equivalent to a GWI of 0.1% to all of the crafts and classes of employees in this proceeding, or an equivalent of a 0.7% addition to GWI for the affected crafts.

The Carriers oppose both proposals. They assert that the average overtime hours worked per week (all Carriers combined) for the Shopcrafts (all crafts combined) was between three and four hours a week and argue that there is no need for either a differential or for a meal allowance or meal period since employees work at fixed locations and there are already sufficient break periods provided throughout the day.

The Board recognizes that the Carriers' submission reported only average hours and combines all Carriers and all crafts in that data. It cannot, therefore, be determined if there are legitimate problems regarding the degree of mandated overtime in a given craft or for a given Carrier or for a particular work location.

The record in this case is simply not sufficient to permit a recommendation by the Board that the Shopcrafts' proposals for a night and weekend shift differential of 10% and a $25.00 overtime meal allowance plus time off with pay for the meal period for employees working more than three hours of overtime – which address the situation on an across-the-board basis and without regard to the particular situation for any given location, Carrier, or craft – be granted.

We recommend that the Shopcrafts withdraw their proposals concerning night/weekend differential pay and paid meal periods/paid meal allowance.

<u>NCFO: ADDITIONAL PAY FOR PERFORMING INCIDENTAL WORK</u>

The National Conference of Firemen and Oilers ("NCFO") proposes an increase in the base wage rate of $1.58 per hour effective January 1, 2020, to adjust the pay relationship between NCFO-represented employees and shop Mechanics to account for changes in job responsibilities resulting from assignments under the incidental work rule.

The NCFO contends that the increase is warranted due to the disparity of wages between its members, who are the lowest paid craft among the Shopcrafts, and the Mechanics. The requested differential, $1.58 per hour, when applied to an eight-hour day, is equivalent to the $6.30 per hour differential between the Laborer rate of pay and the Mechanic rate of pay for two hours each day.

The complaint is a response to the treatment of incidental work that took place following PEB 219. The current shopcraft rule, as imposed by Special Board 102-29, includes the following language:

> Where a shopcraft employee or employees are performing a work assignment, the completion of which calls for the performance of "incidental work" (as hereinafter defined) covered by the

> classification of work rules or scope rules of another craft or crafts, such shopcraft employee or employees may be required, so far as they are capable, to perform such incidental work provided such work does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as "incidental" when it involves removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment and shall include simple tasks that require neither special training nor special tools. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment.
>
> In addition to the above, simple tasks may be assigned to any craft employee capable of performing them for a maximum of two hours per shift. Such hours are not to be considered when determining what constitutes a "preponderant part of the assignment." If there is a dispute as to whether or not work comprises a "preponderant part" of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the Shop Committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work.

There is no dispute that, when the Laborers are assigned to perform Hostler duties, for example, they receive a negotiated differential for that work. The proposal at issue in this case is solely concerned with the performance of Mechanic type work by the Laborers. The Organization argues that as there have been increasing staffing shortages among Mechanics, the Carriers have increasingly been calling upon Laborers to perform that work, up to the maximum two hours a day permitted by the incidental work rule.

The Carriers oppose granting the requested pay increase. For costing purposes, the Carriers estimate the cost of the NCFO proposal to be approximately $6,000,000 annually, which is equivalent to less than a 0.1% GWI for all employees in total cost or equivalent to a 6.0% GWI applied only to the NCFO members.

We are not persuaded that sufficient evidence exists in the record before us to justify a recommendation that the NCFO's position be adopted. The NCFO asserts with reference to general situations that there has been abuse of the incidental work rules by the Carriers. The short answer to that general assertion is that if the NCFO believes that, on any given assignment, its members were required to perform job assignments that exceed the limits on such work contained in the incidental work rules – i.e., it is not "incidental" or it exceeds the appropriate two-hour time limit on such incidental work or it is a preponderant part of the work assignment or it required special training or tools or was other than a simple task – then the affected employees should grieve the action and seek to be made appropriately whole. The record in this case, however, is short of specifics that would reveal to the Board the extent of any such assignments that go beyond those permitted by the incidental work rule. To the extent that the NCFO seeks to modify or rescind the incidental work rule, no adequate showing to that effect was made.

We appreciate that the facilities maintenance workforce has been reduced at many shops and that there is a shortage of Mechanics in certain trades, requiring greater use by the Carriers of the incidental work rule. That fact alone, however, does not support the requested pay increase, particularly when it is not accompanied by any relaxation of the limitations contained in the incidental work rule.

The failure to have engaged in significant negotiation over this proposal prior to the Board process represents another basis for recommending that the proposal be withdrawn.

For all of these reasons, the Board recommends that the NCFO withdraw its proposal in this case.

TRANSPORTATION COMMUNICATIONS UNION (TCU)/INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (IAM) (CLERICAL) – DISCIPLINE FOR USE OF SICK LEAVE

The Transportation Communications Union (TCU)/International Association of Machinists and Aerospace Workers (IAM) (Clerical) proposes that:

> Utilization of collectively bargained sick leave will not result in discipline being assessed. Collectively bargained sick leave cannot be used against an employee's attendance record. This proposal is without prejudice to the Union's ability to grieve this issue in accordance with the procedures outlined in the existing collective bargaining agreements.

Unlike most of the other Organizations, the TCU/IAM has negotiated sick leave benefits. The number of days of paid sick leave varies by carrier, but generally ranges from five to 20 days of paid sick leave annually, depending on the employee's years of service. Under most agreements, employees receive their full daily rate of pay when unable to work and using sick leave. Some agreements reduce the amount of that sick leave pay. The number of unused days that can be carried over from year to year also varies by agreement.

The TCU/IAM asserts that counting an employee's use of paid sick days when assessing excessive absenteeism under Carrier-promulgated attendance policies is inherently unreasonable and unfair and vitiates the entire purpose of the paid sick leave provisions. The TCU/IAM argues that the effect of the Carriers' attendance policies has been to limit employees' use of their paid sick leave days when it is necessary to be absent from the workplace due to illness or exposure to those who are ill. The Organization argues that the problem is particularly acute during the current COVID-19 pandemic.

The Carriers oppose the TCU/IAM proposal and assert that they have a management right to promulgate attendance policies and to determine the content of those policies, subject to the rights of the organization to grieve the particular disciplinary action under those policies.

The Board recommends that the TCU/IAM proposal be withdrawn. The blanket prohibition that is included in the proposal on treating a day of absence covered by paid sick leave as exempted from use against an employee's record is simply too overbroad for us to grant, particularly in light of the facts that the programs in place at the various Carriers are all different and that many have existed for years.

The Board appreciates that the application of a number of Carrier promulgated attendance policies is a source of some tension at this time, particularly in light of the severe shortage of available employees in many locations. Nevertheless, the Board is unable to recommend adoption of the proposal of the TCU/IAM in this case and recommends its withdrawal.

ATDA: SUPPLEMENTAL SICKNESS BENEFIT PLAN

The American Train Dispatchers Association ("ATDA") proposes to require the Carriers to establish a Supplemental Sickness Benefit Plan ("SSBP") that mirrors the SMART-TD Yardmaster SSBP where an SSBP is not in effect. The ATDA has been able to negotiate for SSBP coverage for portions of its membership at some carriers. In addition, ATDA has negotiated paid sick leave benefits at other properties.

SSBPs are a form of short-term disability benefit programs that begin benefit eligibility after a brief waiting period and pays benefits that are a percentage of lost pay for up to 12 months. The precise amounts of benefits vary depending on the agreement between the particular Organization and the particular Carrier. The formulas take into account the fact that eligible disabled employees will also be receiving Railroad Unemployment Insurance Sickness Benefits ("RUIA"). The maximum RUIA benefit for 2022 is $85 a day ($425 a week).

The ATDA complains that RUIA benefits coverages are capped at a relatively low amount; the 2022 maximum RUIA benefits will replace only 21.0% of a disabled dispatcher's lost earnings and is payable for only a maximum of 26 weeks (39 weeks for employees with 10 or more years of service). SSBP benefits, by contrast, are payable for up to 12 months. The ATDA points to the fact that most of the other organizations have SSBP programs and that they have been able to negotiate SSBP coverage for some of the CSXT dispatchers and asks the Board to recommend adoption of its proposal to extend that coverage to Dispatchers working at all Carriers.

The Carriers oppose the ATDA proposal, noting that none of the other organizations who enjoy an SSBP program also have paid sick leave benefits and none of the organizations that enjoy sick leave have been provided an SSBP program. The Carriers state that there is no reason to award the ATDA an SSBP program in addition to its negotiated sick leave benefit program.

The Carriers cost this proposal at $2,000,000 annually, which is equivalent to a 1.0% GWI to the ATDA members or 0.02% GWI equivalent for all freight rail employees.

A virtually identical proposal was addressed in PEB 243. The Board in that case recommended withdrawal of the proposal. We do so here as well. The other organizations that have negotiated SSBP coverage do not enjoy the benefits of a paid sick leave program. That distinction precludes a finding that the pattern of providing SSBP benefits should be applied to the ATDA. The provision from the ATDA Agreement with CSXT addressing SSBP benefits provides in pertinent part:

> This refers to our negotiations, which led to the proposed collective bargaining agreement of June 12, 2003. That agreement modified the ATDA sick plan from a program of sick days granted on a seniority basis to the ATDA Supplemental Sickness Benefit Plan. This disability insurance plan will be modeled after the national plan granted most UTU-represented yardmasters.

The proposal urged by the ATDA in this proceeding seeks to obtain the benefits of a SSBP program without the changes to the sick leave program that was a quid pro quo for the ATDA obtaining SSBP benefits at CSXT. No reason was shown that would warrant our recommending placing the ATDA in a more beneficial position than the other Organizations it wishes to be compared with in connection with this proposal.

VI. SUMMARY OF RECOMMENDATIONS

General Wage Increases and Service Recognition Bonuses

Date	Increase	Compounded
7-1-20	3.0% GWI	1.030
12-1-20	$1,000.00 service recognition bonus	
7-1-21	3.5% GWI	1.066
12-1-21	$1,000.00 service recognition bonus	
7-1-22	7.0% GWI	1.141
12-1-22	$1,000.00 service recognition bonus	
7-1-23	4.0% GWI	1.186
12-1-23	$1,000.00 service recognition bonus	
7-1-24	4.5% GWI	1.240
12-1-24	$1,000.00 service recognition bonus	

[Employees are to receive full retroactivity, calculated and paid consistently with the usual practices of the Parties.]

Health and Welfare

Effective January 1, 2023, remove the cap on monthly employee contributions so that thereafter the contributions equal 15% of the overall cost to the Plans of providing covered benefits to participants.

Effective January 1, 2023, change the plan design to:

1) increase the annual maximum for hearing benefits from $600.00 to $2,000.00; and
2) remove age limits on speech therapy and provide coverage for Applied Behavioral Analysis without age or dollar limits for those with Autism Spectrum Disorder.

The Joint Committees are to meet to design and oversee an appropriate rebid process to ensure that current costs are competitive and not excessive.

Personal Day

Effective January 1, 2023, employees are to receive one additional paid personal day per year.

BMWED Travel Allowance and Expenses Away from Home

Effective January 1, 2023, BMWED members on traveling gangs who are assigned to work away from home are to be reimbursed for travel expenses and hotel and meal and incidental expenses as follows: 1) mileage will be provided at the published IRS mileage rate for business travel for the most direct route to the work location; 2) employees will receive allowances for meals and incidental expenses at the then current GSA standard CONUS per diem rates; and 3) employees will be provided appropriate single rooms at Carrier expense or, if such rooms are not provided, will be entitled to reimbursement for reasonable hotel costs not to exceed the then current GSA standard CONUS scheduled amount for a single occupancy hotel room.

BLET and SMART-TD Meal Allowances

The issue is returned to the Parties to bargain appropriate updated national agreement meal allowances, if possible.

Carriers' Proposal regarding Automated Bidding Systems, Pools, and Extra Boards and BLET and SMART-TD Proposal regarding Work Schedules

All issues returned to the Parties for negotiation with any and all unresolved issues to be resolved by final and binding Party-paid interest arbitration.

VII. CONCLUSION

This Report is submitted by the Emergency Board in the hope that it will be viewed by the Parties as a fair and reasonable basis for resolution of all issues remaining in dispute.

Respectfully submitted,

Ira F. Jaffe, Chairman

Barbara C. Deinhardt, Member

David P. Twomey, Member

APPENDIX A

EXECUTIVE ORDER

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ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN CERTAIN RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE OF THE NATIONAL RAILWAY LABOR CONFERENCE AND THEIR EMPLOYEES REPRESENTED BY CERTAIN LABOR ORGANIZATIONS

Disputes exist between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by certain labor organizations. The railroads and labor organizations involved in these disputes are designated on the attached list, which is made part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended, 45 U.S.C. 151-188 (RLA).

I have been notified by the National Mediation Board that in its judgment these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive a section of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the RLA (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. Establishment of Emergency Board (Board). There is established, effective 12:01 a.m. eastern daylight time on July 18, 2022, a Board composed of a chair and two other members, all of whom shall be appointed by the President to investigate and report on these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. Report. The Board shall report to the President with respect to the disputes within 30 days of its creation.

Sec. 3. Maintaining Conditions. As provided by section 10 of the RLA, from the date of the creation of the Board and for 30 days after the Board has submitted its report to the President, no change in the conditions out of which the disputes arose shall be made by the parties to the controversy, except by agreement of the parties.

Sec. 4. Records Maintenance. The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. Expiration. The Board shall terminate upon the submission of the report provided for in section 2 of this order.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,
July 15, 2022.

LIST OF PARTIES

<u>Railroads</u>

BNSF Railway Company

CSX Transportation, Inc.

The Kansas City Southern Railway Company

Norfolk Southern Railway Company

Union Pacific Railroad Company

Alameda Belt Line Railway

Alton & Southern Railway Company

The Belt Railway Company of Chicago

Bessemer and Lake Erie Railroad Company d.b.a. C.N.

Brownsville and Matamoros Bridge Company

Cedar River Railroad Company

Central California Traction Company

Consolidated Rail Corporation

Delaware & Hudson Railroad Company d.b.a. C.P.

Gary Railway Company

Grand Trunk Western Railroad Company d.b.a. C.N.

Idaho & Sedalia Transportation Company

Illinois Central Railroad Company d.b.a. C.N.

Indiana Harbor Belt Railroad Company

Kansas City Terminal Railway Company

Longview Switching Company

Los Angeles Junction Railway Company

New Orleans Public Belt Railroad Corporation

Norfolk & Portsmouth Belt Line Railroad Company

Northeast Illinois Regional Commuter Railroad Corporation (METRA)

Northern Indiana Commuter Transportation District

Palmetto Railways

Port Terminal Railroad Association

Portland Terminal Railroad Company

Soo Line Railroad Company d.b.a. C.P.

Terminal Railroad Association of St. Louis

Texas City Terminal Railway Company

Union Railroad Company

Western Fruit Express Company

Wichita Terminal Association

Winston-Salem Southbound Railway Company

Wisconsin Central Ltd. d.b.a. C.N.

<u>Labor Organizations</u>

BMWED/SMART-MD Coalition consisting of:

Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters

International Association of Sheet Metal, Air, Rail and Transportation Workers – Railroad, Mechanical and Engineering Department

Coordinated Bargaining Coalition consisting of:

American Train Dispatchers Association

Brotherhood of Locomotive Engineers and Trainmen

Brotherhood of Railroad Signalmen

International Association of Machinists and Aerospace Workers

International Brotherhood of Boilermakers, Iron Ship Builders, Forgers and Helpers

International Brotherhood of Electrical Workers

National Conference of Firemen & Oilers, 32BJ, SEIU

International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division

Transportation Communications Union/IAM

Transport Workers Union of America