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one source of supply during a work segment. Hub/System Board enployees utilized as extra trainmen will be marked to the bottom of the brakemen's extra board at a source of supply and will be used, in turn, with extra brakemen already on that extra board. Hub/System Board employees used in the capacity of extra switchmen will be marked to a "secondary" switchmen's extra board at a yard. Hub/System Board employees on such "secondary" switchmen's extra board will be used in turn, first in-first out to fill vacancies on yard assignments when no extra board switchmen are available with eight hours to wor'c.

4. Marking Rest

Hub/System Board employees may mark rest of 12 hours at the completion of any tour of duty without deduction from guarantee.

G. Transportation and Lodging

Hub/System Board employees will be entitled to transportation to and from their work segment, lodging, transportation between lodging and work assignments, and a daily meal allowance. If transportation to and from work segment is anticipated to exceed six hours, air transportation will be used where available.

1. <u>Use of Private vehicle</u>

Although under no obligation to do so, Hub/System Board employees may use their vehicle for transportation in lieu of Company-provided transportation upon advance approval from the Company. Hub/System Board employees who utilize their vehicle will be compensated for mileage (one round trip) from the employee's residence to and from the source of supply where used, and for work-related use while at that source of supply, in accordance with the Company's current mileage rate.

2. Per Diem

Hub/System Board employees will be compensated a day's meal allowance (\$32.00) for any day on which they are away from their home location. For travel days, the meal allowance will be paid for any day the employee leaves his/her home location prior to 5:00 PM or arrives back at his/her home location after 11:00 AM.

3. In lieu of lodging

For each work segment, a Hub/System Board employee may elect a daily 20

lodging allowance of \$20.00 in lieu of Company-provided lodging.

H. <u>Compensation</u>

1. During Work Segment

Pay for a Hub/System Board employee will be based on actual earnings made during a work segment, but not less than \$4,900.00, subject to wage and/or cost-of-living increases, per work segment, plus penalties, when applicable. Payment for the first half of a month shall be \$2,450 (one half of work segment minimum) regardless of the amount actually earned. If total earnings for the work segment exceed \$4,900.00, for the second half the Hub/System Board employee will be paid actual earnings for the work segment plus penalties, less the \$2,450 paid for the first half. If total earnings for the work segment are less than \$4,900.00, for the second half the Hub/System Board employee will be paid \$4,9400.00 plus penalties, less the \$2,450 paid for the first half.

2. Penalty for not protecting during work segment

Hub/System Board employees who make themselves unavailable for work for any portion of a work segment will have their work segment minimum (\$4,900.00) reduced by \$245.00 for each 24 hour period, or portion thereof, they are not available. Marking rest in accordance with agreement provisions will not be considered as making oneself unavailable. Guarantee (\$4,900.00 or \$2,450) will not be not be reduced for absences such as bereavement leave, jury duty, Company business (including physical and rules examinations), employee involvement programs, etc.

Trainman examples of items included in guarantee Straight Time Overtime Initial Terminal Delay Final Terminal Delay Initial Terminal Switching Final Terminal Switching Air Test All other duplicate pay arbitrary and allowance payments Deadhead

Conductor-only Allowance

<u>Trainman examples of items not included in guarantee</u> Road/Yard violations

Runarounds (depart and call in turn) Service outside assignment Penalty for work outside scope of UTU(T) agreement Claims prior to employee placing on R/S Board Crew Consist Special Allowance

Switchmen examples of items included in guarantee Straight Time Overtime

Cannonball

Service outside yard limits permitted by agreement Any duplicate payment Deadheads permitted by agreement Hours-of-service relief Footboard yardmaster Use of foreman for flagging or for self-propelled equipment

Switchman examples of items not included in guarantee Runarounds Interchange violations Service outside of assignment Call and Release Performing work of other yard crew Road/Yard violations Penalty for work outside scope of UTU(S) agreement Claims prior to employee placing on R/S Board Meal penalty Others performing switchman duties Penalties arising from improper use of foreman or helper Crew Consist Special Allowance

3. Compensation for working on rest segment

Although under no obligation to do so, Hub/System Board employees who accept an offer to extend their work segment, or perform service during their rest segment, will be paid for such service at the applicable road or yard rate, but not less than \$245 per day (24 hours), in addition to their work segment earnings/guarantee. Hub/System Board employees on a secondary switchmen's extra board who accept an offer to extend their work segment, or perform service during their rest segment, will only be used when no regular or extra board switchman is available with eight hours to work.

Hub/System Board employees occupying inactive positions shall be compensated \$3,800.00, adjusted for future wage and/or cost of living increases, per monthly inactive cycle. Although under no obligation to do so, an inactive cycle employee who marks up to perform service at the request of the Company shall be compensated for all earnings in addition to the inactive cycle pay.

5. Vacation Credits

Hub/System Board employees will accrue vacation credits based on one vacation credit for each \$100.00 in earnings, including guarantee

I. In Lieu Time

4.

In lieu of vacation and holidays/personal leave days, Hub/System Board employees will be allowed paid time off as follows:

All employees with 20 years or more of service will be allowed the equivalent of three split cycles.

All employees with less than 20 years service will be allowed the equivalent of two split cycles.

The work segment(s) allowed as "in lieu time" will be scheduled as closely as possible to the employee's scheduled vacation.

In the event an employee is on the Hub/System Board for only a portion of a calendar year, vacation days and holiday/personal leave days due or already taken during periods not on the Hub/System Board will be taken into account. An employee on the Hub/System Board for a portion of a calendar year, and who leaves the Hub/System Board during the year, will be entitled to vacation and holiday/personal leave days pursuant to the applicable agreement, less in lieu time taken while on the Hub/System Board. The total number of remaining days of entitlement will be divided by seven to determine the week(s) of vacation; all remaining days will be considered as personal leave days/holidays.

An employee who places to the Hub/System Board during a calendar year will have his/her in lieu time reduced by the number of vacation and holidays/ personal leave days taken prior to his/her placing on the Hub/System Board. If the remainder of the vacation and/or holidays/personal leave days is not equal to a complete work segment, the remaining vacation and/or personal leave days will be taken at the beginning or end of a day work segment.

Examples of in lieu time for an employee on the Hub/System Board for only a 23

portion of a calendar year:

Example One: Sixteen-year road employee entitled to 21 days' vacation and eight personal leave days (total of 29) uses two weeks of vacation (14 days) and three personal leave days in a calendar year prior to placing on the Hub/System Board. While on the Hub/System Board, this employee is entitled to two split cycles or one cycle as in lieu time, less the 17 days taken previously in the calendar year. If this Hub/System Board employee were to take in lieu time during September (30-day month), he/she would report 13 days late for the work segment or be released 13 days early from the work segment. Those 13 days combined with the 17 days taken previously would deplete this camployee's in lieu time for the calendar year.

Example Two: Twenty-t'ree year road employee entitled to 28 days' vacation and 11 personal leave days (total of 39) is on the Hub/System Board from the beginning of a calendar year through September. While on the Hub/System Board, this employee is entitled to three split cycles or one cycle and one split cycle as in lieu time. While on the Hub/System Board, the employee takes July (a 31-day month) as in lieu days. After coming off the Hub/System Board at the end of September, this employee has eight days remaining, of which seven are considered vacation and one personal leave day.

Example Three: Fifteen-year yard employee entitled to 21 days' vacation and 11 holidays (total of 32) is on Hu5/System Board from beginning of calendar year through end of June, at which time he/she comes off Hub/System Board and bids in a regular position as a switchman. During the period of time on the Hub/System Board the employee did not use any in lieu time. For the remainder of the calendar year (July 1 - December 31), the employee would be entitled to three weeks of vacation and seven holidays. The reason only seven holidays remain is that the other four were observed while the employee was on the Hub/System Board.

Example Four: Twenty-six year yard employee entitled to 35 days' vacation and 11 personal leave days for a total of 46 is on the Hub/System Board for the entire calendar year. The employee takes April (a 30-day month) and the first half of August (15 days) as in lieu time. This depletes the employee's in lieu entitlement for the calendar year.

UTU 61/24/97 ATTACHMENT "B" - Agreement

1. The Collective Bargaining Agreement for the Salt Lake Hub is:

Road: UP - Eastern District Road Schedule,

Yard: UP - UTU Yardmen Schedule for the territory Granger-Huntington-Salt Lake City-Butte, exclusive of crew consist agreements

Crew Consist: UP - Eastern District system crew consist condition for all crafts.

2. The existing Tier I, Tier II and Ready Reserve Boards as established in 1992 crew consist conductor only agreement on the UP Eastern District shall be maintained and established for the Salt Lake Hub. Employees who are considered protected employees in the Hub will also be considered as eligible to hold the aforementioned reserve boards in the Salt Lake City Hub.

3. It is understood and agreed by the parties that this consolidated agreement is a good faith effort to provide the carrier a single working agreement in the territory described in the Carrier's September 18, 1996 notice, while respecting the employees' entitlement to work under conditions no less desirable than before the merger. It is further understood that if it is found that an inadvertent omission of an agreement provision has occurred, the Carrier will immediately meet with the involved General Chairpersons and the General Chairperson will advise which of the previously effective rules and/or agreements will control in the factual situation.

It is further understood and agreed that this agreement is entered into with the clear understanding that it will not be characterized in any venue as evidence of a waiver of any moratorium(s) by these signatory Committees or others not signatory, unless specifically set forth in this agreement.

It is further understood and agreed that if particularized service exists in the territory addressed in this agreement that has not been specifically addressed, referenced or changed by the terms and conditions of this agreement, said particularized service will be maintained and operated under the terms and conditions as existed prior to the consummation of this agreement.

4. All UTU General Committees having jurisdiction in the Salt Lake Hub shall be considered as having a third party interest in any arbitration concerning the common Salt Lake Hub Agreement. Awards and/or interpretations concerning that agreement shall be applicable only in the Salt Lake Hub and shall not be referred to by any party outside the Salt Lake Hub.

5. All pool freight runs in the Salt Lake Hub shall be operated in accordance with the Interdivisional Pool Freight Rules contained in the 1972 National Agreement. Article XIII protection contained in that agreement is applicable to pool freight runs which are modified as a result of the implementation of the merger.

6. At the time of implementation of the Salt Lake Hub, it is not anticipated that there will be an adverse affect to employees holding seniority as firemen and hostlers in the Salt Lake Hub. However, it is recognized that all seniority rights and agreements pertaining to firemen and hostlers are preserved, with the exception that the training agreement from SP Western Lines shall be the common training agreement for the Salt Lake Hub.

The parties agree to meet in a timely manner as necessary in order to address equity concerns and the application of UTU-E agreements in the Salt Lake Hub.

7. It is recognized that with the source of supply to another craft of service being provided through UTU-represented crafts (such as but not limited to Fireman, Trainmen, etc.), the Union Pacific will not enter into any agreement with any other organization that would alter or affect the ebb and flow between the respective crafts.

8. Standard union shop provisions will apply in the Salt Lake Hub.

UTU 01/24/97 ATTACHMENT "C"

NEW YORK DOCK Q . A'S - UP/SP MERGER

- Q1. Must a "Displaced Employee" exercise his seniority to an equal or higher paying job to which he would be entitled in order to qualify for displacement allowance?
- A. Not necessarily. However, a "Displaced Employee" failing to do so will be treated for purposes of the guarantee as occupying an available higher paying position, subject to the one-for-one principle as set forth in Question and Answer 3.
- Q2. If an employee cannot hold a position which does not require a change of residence, will he be required to change his residence to ensure receiving his displacement or dismissal allowance if that change will trigger a claim for g varantee payment to junior employees?
- A. No. A change of residence will not be required if it causes guarantee payment to flow to other employees.
- Q3. A job is available to . ore than one protected employee with higher posted earnings than any of their guarantees. Will the earnings of the higher, posted assignment be charged against the guarantees of all such employees?
- A. No more than one protected employee will be treated at any one time as occupying a higher rated position held by a junior employee. That is to say, the senior employee guarantee will be treated as occupying the position producing the highest earnings, the second such senior employee will be treated as occupying the position producing the position producing the second highest earnings, and so forth.
- Q4. An employee performs service as Extra Yardmaster, both prior to and subsequent to the effective date of the coordination. How will such service be computed?
- A. (1) Such service and time prior to the coordination shall be included in the test period computations.

(2) Compensation for such service and time paid for subsequent to the coordination, and/or such service as could have been rendered, shall be applied against the test period guarantee.

- Q5. An employee with a guarantee of \$1,900 per month fails to exercise seniority to obtain a position with posted earnings of \$1,900-\$1,950. In a particular month, he earns \$1,850. What payment, if any, would be due?
- A. None, subject to the one-for-one principle. See Question and Answer 3.

- Q6. May an employee called and used as an emergency conductor or engineer, as the case may be, be charged with a loss of earnings on his regular assignment or with higher posted earnings on other assignments account of being so used?
- A. No, as he is protecting his seniority as conductor or engineer in accordance with the requirements of the applicable Agreement.
- Q7. How is vacation pay treated in computing guarantees under this Agreement?
- A. If a vacation falls entirely within one month, the compensation shall be treated as all other compensation creditable to that month. However, when a vacation commences in one month and ends in another, the vacation compensation will be proportioned between the months in accordance with the number of vacation days falling in each month.
- Q8. If an employee elects to accept the protective conditions of this Agreement while otherwise eligible for protection under a former protective arrangement or agreement, will such employee resume protection under the former agreement at the expiration of the protective period under this Agreement?
- A. Yes, provided protection under the former agreement has not been exhausted or expired.
- Q9. What is the meaning of "change in residence"?
- A. A "change in residence" as referred to in Section 5(b) and 6(d) of New York Dock shall only be considered "required" if the reporting point of the employee would be more than thirty (30) normal highway miles, via the most direct route, from the employee's point of employment at the time affected.
- Q10. Are relocations that occur subsequent to the initial implementation of the merger subject to the relocation benefits contained in the merger implementing document?
- A. It is understood, subsequent transactions can occur which prompt additional relocation allowances as contained in the merger implementing document.

Example: A train is removed from the Salt Lake City to Grand Junction pool six months after initial implementation and rerouted Ogden to Green River causing two employees, one from the pool and one from the extra board to relocate Salt Lake City to Ogden. Those employees would be qualified for relocation allowance.

- Q11. What events must occur prior to the carrier having the right to off set an employee's TPA for failure to hold a position with higher potential earnings:
- A. It is understood, the carrier must post the positions in order, highest rated position first then second highest etc.... The employee must then have an opportunity to hold the

higher rated position through the normal exercise of seniority. The aforementioned must not require a change of residence, and a higher rated position that does require a change of residence can not be used against the employee.

- Q12. If a lower rated position, as posted by the carrier, makes more money than the position held by the claiming employee, can the carrier off set protection income through the income of the lower rated position?
- A. No. The lower rated position can not be used against the earnings of a protected employee.

Q13. How will the TPA be calculated for elected agents or representatives of employees?

A. For each displaced or Jismissed employee, who served as an elected agent or representative of employees on a full or part-time basis during the test period, the employee's test period average (TPA) shall be equivalent to the average TPA, after discounting for extraordinary absence, of the three next senior active and three next junior active employees in the same service on that district, or the employee's own TPA, whichever is greater. When determining such employee's own TPA, compensation from both the UTU and the Carrier, as reported on the W-2 forms, shall be included in the calculation.

UTU 01/24/97 Signed this _____ day of _____, 1997

For the UTU:

M. B. Futhey

J. G. Pollard

A. M Lankfo:

J. Previsich

P. C. Thompson

J. K. Spear

R. E. Carter

G. A. Eichmann

For The Union Pacific:

D. E. Johnson

J. P. Kurtz

N. J. Lucas

Scott Hinkley

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The Role of Rail Labor Fifth American Railroad Conference November 13, 1991 (by Robert C. Barris) It is a great pleasure to appear as part of such a distinguished panel.

I am sure that many of you are aware that I have spent the last two years attempting to bring labor and management together to arrive at a new national labor agreement. You are also aware that having failed at that effort, my colleagues and I made certain recommendations which we hoped would help the parties reach collective bargaining agreements. Unfortunately, only three unions out of the eleven involved in the national negotiations attempted to follow our suggestions and reached agreement with the carriers.

The remaining unions struck the railroads and Congress passed legislation ending the strike and making the recommendations binding unless modified by a special board which was created to clarify ambiguous recommendations and modify any recommendations which were demonstrably inequitable. Congress legislated that one member of the special board would be an individual who had served on the emergency board.

I was flattered when I was subsequently called by the chairman of the House Committee on Energy and Commerce and told that I had been the unanimous choice of both management and labor to be the chairman of the special board. No one connected with the national wage negotiations has said anything good about me since.

When I accepted the job I knew that, as chairman, I would be

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the whipping boy for the bargaining failures of both management and labor. I am sorry to say that even today both sides are looking at the details of the recommendations to gain a temporary advantage instead of the reasons that the recommendations were necessary at all.

The reilroad industry is not unique in being both capital and labor intensive. Other transportation industries which have faced similar problems. None have taken as long to resolve problems of modernization or been as ready to allow outsiders to resolve those differences. None have been as slow to realize that the failure to address systemic problems hurts everyone.

It is true that in 1986 the CSX Corporation made an attempt to change the climate of bargaining with its unions. Its efforts were written up as a U.S. Department of Laber monograph, <u>CSX and</u> <u>the Railway Unions: In Search of New Solutions</u>, (1990). In explaining why CSX desired to change the bargaining process, the report noted:

Because of regulation and because of the provisions of the RLA, the Federal Government is always a background factor in negotiations between labor and management in the railway industry. Although the Government agencies were created to be neutral parties, balancing the needs of labor, management, shippers, and the public during relatively definable periods, they have in fact acted to support the cause of one party to the detriment of another, depending largely on the political winds of the times.

For this reason, negotiations in the rail industry always involve calculations by the various parties about what the outcome of a disagreement might be if it landed in the courts or if the Government intervened through the RLA's processes -- mediation or arbitration, followed perhaps by an emergency board 3

Call by the President to investigate the issue or even by a legislative decision in Congress. Usually at least one party has wanted to avoid Government intervention because its proponents predicted an unfavorable decision. Furthermore, once a Government agency takes over in a dispute, the parties have lost control, and an outsider makes decisions for the disputants.

In effect, the threat of Governmental action has become an external force that has encouraged the parties to reach agreement on their own.

I have quoted those paragraphs in their entirety because they both represent a clear statement of a prevailing view of bargaining in the railroad industry and also because the last paragraph is the clearest misstatement of how the process actually works that I have ever read. In the last national round of collective bargaining there was no attempt by either side to resolve differences. Rather each side maintained its original bargaining position to the very end of the process hoping the outsiders would agree completely with their position.

CSX decided to bargain for itself and initially did not join in national handling. It attempted to get all of its unions to agree to work rules changes in return for a share in the gains to be achieved. The unions consultant in this negotiations, my colleague on this panel, Brian Freeman noted, "Gainsharing is a deal, not the issue; the issue is getting rid of lots of people The rest of this is commetic." In the end, the attempt failed because one of the unions, the UTU, did not agree to the division of the "spoils". And while the CSX effort at gain sharing failed, the reasons for its failure may have had to do, as Brian

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noted, with the real agenda CSX had rather than the proposal itself.

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In any event, after this failure, no serious effort was made by the parties at any time, either nationally or locally to exchange meaningful proposals which would resolve their differences. By the middle of 1988 both labor and management were positioning themselves for the Congressional action which would occur when the Emergency Board report was turned down. And they did this jointly. The only effective mediation which occurred in the baryaining round resulted in a seven point agreement between the parties as to the process of establishing an emergency board.

On March 6, 1990, with the help of the Matienal Mediation Board, the carriers and all of the rail unions, with the exception of the International Association of Machinists, entered into an agreement with the following provisions:

1. The MMB will proffer arbitration on Health and Welfare, and Wages and Rules.

2. An Emergency Board shall be established on Health and Welfare, and Wages and Rules with the Health and Welfare issues to be heard and reported on first.

3. The Health and Welfare report and recommendations will be issued but not subject to self-help by any party until permitted by paragraphs 5 % 6. Wages and Rules issues shall be submitted to the same Board as soon as possible following its report on Health and Welfare.

4. The NOB is requested to conduct further and expedited mediation on Wages and Rules issues, as and when it deems appropriate.

5. No party will resort to self-help until after the

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RLA statutory "cooling off" period following the report by the Emergency Board on the Wages and Rules issues.

6. No party will resort to self-help during any period Congress is not in legislative session.

7. The parties request that all reports and recommendations by the Emergency Board be issued by September 15, 1990 and agreed to any reasonable request for an extension of time of the Emergency Board to allow ample time for hearings, mediation and formulation of recommendations.

The parties also privately agreed on the composition of that single emergency board -- the first emergency board in history which had all but one of the unions before it.

The bargaining in this round of national negotiations was colored by the failure to implement a 1985 agreement revising the medical insurance plan. The carriers refused to make a wage offer unless and until a health and welfare revision was agreed to. The unions, claiming that the 1985 agreement regarding health and welfare had expired, refused to go forward with any discussion of health and velfare unless wages were put on the table. Each side claimed that the other had reneged on their 1985 understandings. Deadlock and the PEB resulted.

When the PEB began its work it discovered that the issues involved in the health and welfare portion of the dispute were much less divisive than the early rhetoric had indicated. Since there had not been a major revision in the medical insurance plan since the early 1970's, there was basic agreement that controlling sky rocketing additional costs could only occur if either plan participants could be induced to convert to a 6

Preferred provider plan rather than the present indemnity plan or the indemnity plan costs were brought under control. It was also agreed, by the unions, although never publicly, that some contribution would have to be made in the future by the employees to their health care costs. And while it had been a major point of contention in earlier negotiations, the parties readily agreed that a neutral would be chosen to resolve differences between the parties in the administration of the plan as modified.

When the Emergency Board turned to wages and work rules, it became quite apparent that the carriers desire for lover labor costs was in direct conflict with the unions' view of what their sembers should be paid, not to mention the number of individuals who should be employed in the industry. To cite the simplest example, the carriers maintained that there was no need for a brakeman on most trains and that at least one of the two presently employed brakemen should be eliminated. The carrier solution was to suggest either that crew consist agreements which were not the subject of national bargaining be voluntarily taken up at the mational level and revised, or that UTU represented employees take a one-third wage out. The UTU committee replied that the issue of crew consist was not before the Emergency Board as it could not be part of national handling and that they would not take any wage cut. Despite many private conversations, meither side would change its position at all.

The Maintenance of Way Employes did not want to change their work schedules or seniority districts; the Locomotive Engineers 100 64 JI 16.61 10-10010000000

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did not want to increase the number of miles which constitutes a day's pay or handle additional pick-ups or set-outs: and the Clerks did not want the LaRocco report, which would tie clerk salaries to market rates, to be implemented. The shop crafts did not want a composite mechanic as was being suggested by the Carriers.

All of these areas of dispute were equally intractable and it became quite apparent to the Emergency Board, through its informal mediatory efforts as well as its hearings that the parties did not want to make the hard decisions which are necessary if collective bargaining is to work. Both sides wanted some one else to blane if their desired goals were not achieved. Furthermore, each side took the position that not achieving all of their goals was a defeat instead of claiming a success when any of their goals were achieved.

In the end, the Emergency Board did not receive a new wage or work rule offer from either the carriers or any of the unions. It did receive some informal guidence as to work rules issues from both union and management negotiators; however, the table positions never changed. There never was even an informal indication of what level of wage increase would be appropriate.

The Emergency Board was forced to make recommendations which later became decisions which most appropriately are made in a free society by the parties. Let me summarise those decisions:

The agreement will last until 1995. A system of managed care will be added to the present health plan and individual 8

employees will be required in the future to contribute part of their COLA to increases in costs.

Wage increases of 3 per cent a year in July, 1991, a lump sum payment of 3 per cent in July 1992, a 3 per cent lump sum January 1993, a 3 per cent wage increase July 1993, a 3 per cent lump sum January 1994, a 4 per cent wage increase July 1994, a 2 per cent lump sum January 1995 and a COLA beginning July 1995 if the parties do not make a new agreement before then.

Najor changes were suggested in the operating area with crew consist returned to the local properties where arbitration will occur on each property if agreement is not reached by the end of the year. The miles which constitute a days pay were increased by 4 miles a day for each year after 1992, with the milage ending at 130 miles for a day in 1995. Additional pick-up and set-outs were allowed and special exceptions to read-yard restrictions were created where a carrier can show that such changes are needed to obtain or retain a customer.

Changes were made in the definition of incidental work for the shopcrafts as well as creating a new expedited procedure for the resolution of contracting-out disputes.

The LaRocco report was adopted with changes which will lengthen the period of its implementation for the Clerk.

Major changes were made in the maintenance of way area, including combining or realigning of seniority districts; however, in most instances the details were left to binding arbitration. JI 16.20 10-10013030000

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I think it is fair to say that railway labor is both bitter and suspicious. The past year has been a traumatic one for union presidents. None of the major rail labor organizations has the same leader it had when national bargaining began in 1988. Each of the unions was asked to give up work rules which had been created years before. While they did not do so willingly, apparently their membership blazed then for being unable to hold back the tide of change. Of course in each case there were internal union reasons, not connected with labor management relations which played a major role in the forced ratirement of these individuals. Its new leaders are as uncertain of what the future demands of them as they are certain that the methods of their predecessors were a prescription for disaster. They are not unaware that the industry has problems and that trucks are a greater long-term threat to the continued employment of their members than work rule changes. But they will be the first to tell you that their members are not interested in the long term.

What does this mean for the future? First of all, I do not believe that the type and magnitude of work rule change which have occurred in this round will be repeated during this century. Some of the changes which were recommended by this PEB were first recommended over 30 years ago. Rail management must realize that the recommendations of PEE 219 were the culmination of years of effort on their part to effect change. The mate has been wiped clean. There is no backlog of public recommendations which have not been implemented. FROM-UTU CLEVELAND

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Both management and labor should view this last round as the end of an erg. For the past 20 to 30 years rail management and labor have failed to settle a serious issue with governmental involvement. Both sides have turned over their responsibilities to third parties. They have postured before the NNB in order to get before an emergency board, have postured before the emergency board board and have postured before Congress after the emergency board made its recommendations. The future will require them to maintain the free communication necessary for them to jointly succeed in a service industry. It will also require them to actually make bargaining decisions instead of leaving it to outsiders.

The question now is whether the railread industry is sepable of administering the new agreements in a fair and equitable manner so that there will be cooperation rather than antagonism in the work place. Inherent in the recommendations which form the basis for the new contracts is the need for greater productivity from the railroad work force. In the past this has meant the elimination of jobs -- a reduction in the number of employees. While there may be initial work force reductions in the operating area, in the main there will be only slight reductivity will come from the willingness of each individual employees to do his or her job as well as he or she can.

Nor is pay the question. One only has to look at the relative prosperity of Delta Airlines, which has the highest FROM-UTU CLEVELAND

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rates of pay in the industry, in comparison with Continental Airlines, which has the lowest, to realize that in a service industry employee attitudes and morale can be more important than a low cents per hour. Competitiveness is based upon maintaining a product which is desirable in the market place. While price is a major element, it is not the only one. Meeting commitments when one is in a service industry is equally important. As the failure of Continental Airlines, the lowest cost carrier in the airline industry, shows, having a cheep labor force does not bring and keep business. Delts Airlines, which is the high labor cost carrier, succeeds with the slogan "We lowe to fly and it shows". Delta believes that a willing work force is essential to its success.

Creative collective bargaining has not been one of the tools use by railroad management. The railroad industry regularly complains about the job protection which has been imposed upon it by the Interstate Commerce Commission, but has never seriously tried to use guaranteed job location as a bargaining tool. When American Airlines wanted to make major work rules changes one of its tools to buy other changes was to guarantee job location to its present work force. American Airlines did this because it had discovered that job location was a central concern of its employees. Maybe job location is of concern to railroad employees, maybe not, but does management really know?

Railroads regularly contract-out work which can be done by their own employees. The Emergency Board found this problem so Pervasive that it imposed a fifty per cent of the cost of the job penalty upon the railroads for the failure to notify the shop Craft unions of the intention to contract-out work <u>even where</u> <u>such contracting-out was allowable under the applicable</u> **Auragenent**. One would not call that a vote of confidence in the willingness of operating efficials to adhere to the torms of a previous screenent.

Mutual trust is not in the working vocabulary of many operating officials on the reilroads. As was noted in the Laber Department study of the CSX attempt: to form a new relationship with its unions:

Corporate cultures cannot change overnight, particularly in large companies. However, some particularly troublesome examples complicated the opportunities for collaboration throughout the company. On the LEW, for instance, CSX's local managers continually violated agreements about feeding workers, a practice that resulted in a short strike by the DAWE in 1988. Maintenance of Way employees also had to live in camp cars that were not air-conditioned and not even properly ventilated through the blistering hear of the summer of 1988. Rail labor attributes such problems to lack of attention, not to malice, but claims that they are pervasive at the lover levels of the company.

This example is used not to pick on CSX which has attempted to change its corporate culture, but to point out that even where such a change is desired by senior management, it does not always come easily. In fact, it is lower level management which usually is the greatest stumbling block to better relations, since it sees cooperation as a threat to its authority in the work place.

What is the role of rail labor? Clearly, labor unions have the obligation to maximize the interests of their members. 1

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Whether this means increased wages, working conditions, fringe benefits or job opportunities is a question which each union leader must answer. Historically the answer has been all of the above. But the past two decades have shown that in a stagmant or decreasing market such lack of differentiation of goals cannot succeed. The results have been fewer jobs, more restrictive work rules and wages which have not kept individual workers with the same relative buying power that they had in 1970.

If rail management approaches this period of change as an opportunity to get a little more from their workers, they have the opportunity to make their poor relationships even worse. On the other hand, if rail management will realize that the work rules changes which have now become law have created the level playing field which they have desired for so many years, they will be able to attempt to build a new working relationship. Such a relationship means working together for a common goal of a more prosperous railroad industry, one where there will be job opportunity for employees and profit opportunities for the railroads. This means that both sides must put the past behind them and forge a new relationship for the future.

UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET OMAHA, NEBRASKA 68179

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September 18, 1996 19W-UTU

Certified Mail-Return Receipt/Hand delivered

Mr. G.A. Eickmann General Chairman UTU 2933 SW Woodside Drive Suite F Topeka. KS 66614

Mr. J. G. Pollard General Chairman UTU 1675 Carr, Suite 200N Denver, CO 80215-3139

Mr. J.K. Spear General Chairman UTU 2870 East 3300 South, Suite 5 Salt Lake City, Utab 84109

Mr. R.E. Carter General Chairman UTU PO Box 1333 Pocatello ID 83204

Gentlemen:

Mr. D.E. Johnson General Chairman UTU 1860 El Camino Real, Suite 201 Burlingame, CA 94010

Mr. J.P.Kurtz General Chairm n UTU 1675 Carr, Suite 200N Denver, CO 80215-3139

Mr. J. Previsich General Chairman 1860 El Camino Real, Suite 201 Burlingame, CA 94010

Mr. N.J. Lucas General Chairman UTU 112 J Street Suite 202 Sacramento CA 95814

The U.S. Department of Transportation, Surface Transportation Board (STB), approved in Finance Docket 32760 the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad and Missouri Pacific Railroad), collectively referred to as "UP" and the rail carriers controlled by Southern Pacific Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and the Denver and Rio Grande Western Railroad Company), collectively referred to as "SP". The STB in its approval of the aforesaid Finance Docket has imposed the employee protective conditions set forth in New York Dock, 360 ICC 60.

Therefore, pursuant to Section 4 of New York Dock, notice is hereby given to implement that portion of the merger transaction which is set forth in Exhibit "A", attached. As you will note from reviewing the Exhibit, this merger transaction will affect employees, work and work locations and will obviously require the consolidation of employees under a single collective bargaining agreement.

This letter and Exhibit "A" will be hand delivered during the meeting in Kansas City on September 17 and 18, 1996 and mailed to your offices and posted on all applicable TE&Y bulletin boards. I suggest we establish meeting dates at our September 17 and 18 meetings.

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Yours truly,

W. S. Hinckley

W.S. Hinckley General Director Labor Relations

Exhibit "A" 19W-UTU-BLE

NOTICE

TO ALL TRAIN, ENGINE AND YARD SERVICE EMPLOYEES WORKING ON THE TERRITORIES:

UNION PACIFIC

SALT LAKE TO GREEN RIVER NOT INCLUDING GREEN RIVER SALT LAKE TO POCATELLO NOT INCLUDING POCATELLO SALT LAKE TO CALIENTE (EITHER ROUTE) OGDEN TERMINAL INCLUDING THE OUR&D SALT LAKE AND PROVO TERMINALS SALT LAKE TO AND INCLUDING WINNEMUCCA

SOUTHERN PACIFIC

OGDEN TO AND INCLUDING WINNEMUCCA OGDEN TERMINAL SALT LAKE TO GRAND JUNCTION NOT INCLUDING GRAND JUNCTION SALT LAKE TO OGDEN SALT LAKE AND PROVO TERMINALS

(THE ABOVE INCLUDES ALL MAIN AND BRANCH LINES, INDUSTRIAL LEADS AND STATIONS BETWEEN THE POINTS IDENTIFIED)

WHO ARE REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS OR THE UNITED TRANSPORTATION UNION

The U.S. Department of Transportation, Surface Transportation Board (STB), in Finance Docket No. 32760, has approved the merger of the Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") with the Southern Pacific Transportation Company, the SPCSL, Corp., the St. Louis-Southwestern

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Railway Company and the Denver and Rio Grande Western Railroad Company (collectively referred to as "SP").

In order to effectuate the benefits of this merger, UP and SP operations between the points identified above including certain terminal operations, must be consolidated into a common, unified operation.

Accordingly, to effectuate this merger in the above-described territory, and pursuant to theprovisions of the New York Dock Conditions, this is to serve as the ninety (90) day required notice that on or after January 1, 1997, it is the intent of the UP and SP to place the following transaction into effect:

I. Dual Point Terminal Consolidations

- A. <u>Salt Lake City</u>-All UP and SP operations within the greater Salt Lake City area shall be consolidated into a unified terminal operation.
- B. Ogden-All UP and SP operations (including the OUR&D) within the greater Ogden area shall be consolidated into a unified terminal operation.
- C. <u>Provo-All UP and SP operations within the greater Provo area shall be</u> consolidated into a unified terminal operation.
- D. <u>Elko-Carlin-All UP and SP operations within the greater Elko and Carlin area shall</u> be consolidated into a unified terminal operation at Elko.

II. Dual Point Pool Consolidations

- A. <u>Salt Lake City-Elko and Ogden-Carlin</u>-This may operate as either two pools with Salt Lake City and Ogden as the home terminals and Elko as a single away from home terminal or one pool with the home terminal in the Salt Lake City-Ogden metro complex. At Elko all crews may operate as a single far terminal pool for the return trip to the Salt Lake City-Ogden metro complex via either route with necessary transportation back to their tie-up point.
- B. <u>Salt Lake City-Green River/Pocatello-These two pools shall be combined into one</u> pool with Salt Lake as the home terminal and dual destination far terminals. <u>Ogden-Green River</u> may operate as a separate pool or be combined with the Salt Lake City-Green River pool with crews being operated back to the Salt Lake City-Ogden metro complex with necessary transportation back to their tie-up point.

- C. <u>Salt Lake City-Grand Junction/Helper/Milford/Provo</u>-These four pools shall be combined into one pool with Salt Lake City as the home terminal and multiple far terminals.
- D. <u>Helper-Provo/Grand Junction</u>-One pool shall be created with the home terminal at Helper with dual far terminal destinations of Provo and Grand Junction.
- E. <u>Milford-Provo/Helper</u>-One pool shall be created with the home terminal at Milford with dual far terminals of Provo and Helper.
- F. <u>Salt Lake City-Ogden Metro Complex</u>-Any pool crew with a home terminal in the Salt Lake City-Ogden metro complex may receive or leave their train anywhere within the limits of the Metro Complex which shall extend from the new terminal limits of Ogden through the new Terminal limits of Salt Lake.

III. Other Operations

- A. <u>Salt Lake City-Ogden-All UP and SP pool, local, work train and road switcher</u> operations within the Salt Lake City- Ogden metro complex and in the vicinity thereof shall be combined into a unified operation.
- B. <u>Salt Lake City-Provo-All UP and SP pool, local, work train and road switcher</u> operations between Salt Lake City and Provo and in the vicinity thereof (including mine runs out of Provo) shall be combined into a unified operation.
- C. <u>Winnemucca-Wells</u>-All UP and SP pool, local, work train and road switcher operations at and between Winnemucca and Wells and in the vicinity thereof shall be combined into a unified operation.
- D. <u>Extra Boards-At locations where there are more than one extra board, extra</u> boards may be combined into one or more extra boards.
- E. Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District.

IV. Seniority Consolidation

A. The seniority of all employees working in the territory described above shall be consolidated into one common new seniority district. All current seniority in all crafts shall be relinquished when new seniority is established. The seniority district shall be divided into three zones with seniority movement between the zones limited. The three zones shall be as follows:

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Zone 1: Salt Lake City and Ogden West to and including Winnemucca not including the terminals of Salt Lake City and Ogden.

Zone 2: Salt Lake City North to McCammon and Ogden East to Green River not including Green River or the road switchers, locals and yard assignments that operate in the vicinity thereof but including all operations in the Ogden and Salt Lake City Terminals.

Zone 3: Salt Lake City East, not including the Salt Lake Terminal, to but not including Grand Junction and South to Caliente via either route including the Provo terminal.

- B. Seniority movement between the Zones shall be limited to once per year unless employees are reduced from their working lists and cannot hold an assignment in their current Zone.
- C. The Salt Lake and Ogden Yard extra boards shall be included in Zone 2. The combined road extra board(s) shall not be part of any Zone and will not have limitations on moving between them and the various zones.

V. Collective Bargaining Agreement

All of the employees subject to this notice shall be covered under a single, common collective bargaining agreement including all National Agreement rules. The agreement shall be compatible with the economies and efficiencies that will benefit the public as outlined in the carrier's operating plan.

VI. Allocation of Forces

An adequate supply of forces shall be relocated from locations where assignments are abolished to locations where new assignments are established.

VII. Affected Employees

As a result of this transaction, Carrier estimates the following approximate number of TE&Y employees will be affected.

	Enginemen	Trainmen/yardmen
Union Pacific Eastern District	. 20	
Union Pacific SLC North	34	60

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Union Pacific SLC South	08	10
Union Pacific OUR&D	00	00
Union Pacific WP	22	21
Southern Pacific D&RGW	.37	<u>48</u>
Total	121	158

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The Carrier's STB submission identified 77 engineers and 107 trainmen/yardmen as possibly affected at these locations. In accordance with the previous letters to the BLE and UTU, this notice identifies 44 additional engineers and 51 additional trainmen/yardmen that could be affected upon completion of a negotiated agreement based on the Carrier's operating plan.

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UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET OMAHA. NEBRASKA 68179

September 18, 1996 18W-UTU

Certified Mail-Return Receipt/Hand delivered

Mr. G.A. Eickmann General Chairman UTU 2933 SW Woodside Drive Suite F Topeka, KS 66614

Mr. J. G. Pollard General Chairman UTU 1675 Carr, Suite 200N Denver, CO 80215-3139

Mr. J.K. Spear General Chairman UTU 2870 East 3300 South, Suite 5 Salt Lake City, Utah 84109

Gentlemen:

Mr. R.D. Hogan General Chairman UTU 5050 Poplar Avenue Suite 1510 Memphis TN 38157

Mr. J.P.Kurtz General Chairman UTU 1675 Carr, Suite 200N Denver, CO 80215-3139

The U.S. Department of Transportation, Surface Transportation Board (STB), approved in Finance Docket 32760 the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad and Missouri Pacific Railroad), collectively referred to as "UP" and the rail carriers controlled by Southern Pacific Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and the Denver and Rio Grande Western Railroad Company), collectively referred to as "SP". The STB in its approval of the aforesaid Finance Docket has imposed the employee protective conditions set forth in New York Dock, 360 ICC 60.

Therefore, pursuant to Section 4 of New York Dock, notice is hereby given to implement that portion of the merger transaction which is set forth in Exhibit "A", attached. As you will note from reviewing the Exhibit, this merger transaction will affect employees, work and work locations and will obviously require the consolidation of employees under a single collective bargaining agreement. This letter and Exhibit "A" will be hand delivered during the meeting in Kansas City on September 17 and 18, 1996 and mailed to your offices and posted on all applicable TE&Y bulletin boards. I suggest we establish meeting dates at our September 17 and 18 meetings.

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Yours truly,

W. S. Hinckley

W.S. Hinckley General Director Labor Relations

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UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREST OMAHA. NEBRASKA 68179

September 18, 1996 11W-UTU

Certified Mail-Return Receipt/Hand delivered

Mr. G.A. Eickmann General Chairman UTU 2933SW Woodside Drive Suite F Topeka. KS 66614

Mr. R.D.Hogan General Chairman UTU 5050 Poplar Avenue Suite 1510 Memphis TN 38157

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Yours truly.

WSHmal

W.S. Hinckley / General Director Labor Relations

EXHIBIT "A" 18W-UTU-BLE

Notice

TO ALL TRAIN, ENGINE AND YARD SERVICE EMPLOYEES WORKING ON THE TERRITORIES:

UNION PACIFIC

-DENVER TO OAKLEY INCLUDING OAKLEY -DENVER TO CHEYENNE NOT INCLUDING CHEYENNE -PUEBLO TO HORACE -DENVER TERMINAL

SOUTHERN PACIFIC

-DENVER TO AND INCLUDING GRAND JUNCTION -GRAND JUNCTION TO MONTROSE AND OLIVER -PUEBLO TO DALHART NOT INCLUDING DALHART BUT INCLUDING PUEBLO, TO SOUTH FORK, TO DOTSERO AND TO DENVER -DENVER TERMINAL

(THE ABOVE INCLUDES ALL MAIN AND BRANCH LINES, INDUSTRIAL LEADS AND STATIONS BETWEEN THE POINTS IDENTIFIED)

WHO ARE REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS OR THE UNITED TRANSPORTATION UNION

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In order to effectuate the benefits of this merger, UP and SP operations between the points identified above including certain terminal operations, must be consolidated into a common, unified operation.

Accordingly, to effectuate this merger in the above-described territory, and pursuant to the provisions of the New York Dock Conditions, this is to serve as the ninety (90) day required notice that on or after January 1, 1997, it is the intent of the UP and SP to place the following transaction into effect:

Dual Point Terminal Consolidations

I.

- A. <u>Denver-All UP and SP operations within the greater Denver area</u> shall be consolidated into a unified terminal operation.
- B. <u>Pueblo</u>-All UP and SP operations within the greater Pueblo area shall be consolidated into a unified terminal operation.

II. Dual Point Pool Consolidations

- A. <u>Denver</u>-All Denver-Grand Junction and Denver-Phippsburg pool operations shall be combined into one pool with Denver as the home terminal. All Denver-Cheyenne and Denver-Oakley pool operations shall be combined into one pool with Denver as the home terminal. These pools may later be combined into a single pool should a single pool provide more efficient operations.
- B. <u>Pueblo</u>-All Denver-Pueblo, Pueblo-Alamosa and Pueblo-Dalhart pool operations shall be combined into one pool with Pueblo as the home terminal. The Pueblo-Minturn pool shall remain separate until terminated with the cessation of service on portions of that line. The Pueblo-Horace pool shall remain separate until terminated with the abandonment of portions of that line.

III. Other Operations

- A. <u>Grand Junction</u>-Grand Junction-Minturn pool operations shall remain separate until terminated with the cessation of service on portions of that line. Grand Junction-Denver operations will be combined with II A above. Pool, local, road switcher and yard operations not covered in the above originating at Grand Junction shall continue as traffic volumes warrant.
- B. <u>Minturn Helpers</u>-Helper Service at Minturn shall remain separate until terminated with the cessation of service on portions of the line where the helpers operate.

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- C. Extra Boards -At locations where there are more than one extra board, extra boards may be combined into one or more extra boards. Helper service West and South of Denver may be protected from the combination road/yard extra board at Denver. If the Carrier establishes separate extra boards for the road and yard the road extra board shall protect this service.
- D. Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District.
- E. Power plants between Denver and Pueblo may be serviced by either the Pueblo-Denver pool or the Denver Extra Board or a combination thereof.

IV. Seniority Consolidation

The seniority of all employees working in the territory described above shall be consolidated into one common new seniority district. All current seniority in all crafts shall be relinquished when new seniority is established.

V. Collective Bargaining Agreements

All of the employees subject to this notice shall be covered under a single, common collective bargaining agreement including all National Agreement rules. The agreement shall be compatible with the economies and efficiencies that will benefit the public as outlined in the carrier's operating plan.

VI. Allocation of Forces

An adequate supply of forces shall be relocated to areas where additional forces are needed including to Cheyenne and/or Rawlins.

VII. Affected Employees

As a result of this transaction, Carrier estimates the following approximate number of TE&Y employees will be affected:

	Enginemen	Trainmen/yardmen
Union Pacific Eastern District	9	10
Union Pacific MPUL	· 28	34
Denver and Rio Grande	91	101
Total	128	145

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The Carriers' STB submission identified 93 engineers and 119 trainmen as possibly affected at these locations. In accordance with the previous letters to the BLE and UTU, this notice identifies 35 additional engineers and 26 additional trainmen/yardmen that could be affected upon completion of a negotiated agreement based on the Carriers' operating plan.

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MERGER IMPLEMENTING AGREEMENT (Salt Lake Hub)

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between the

UNION PACIFIC RAILROAD COMPANY SOUTHERN PACIFIC RAILROAD COMPANY

and the

UNITED TRANSPORTATION UNION

In Finance Docket No. 32760, the Surface Transportation Board approved the merger of Union Pacific Railroad Company/Missouri Pacific Railroad Company (Union Pacific or UP) with the Southern Pacific Transportation Company, the SPCSL Corp., the SSW Railway and the Denver and Rio Grande Western Railroad Company (SP). In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all employees working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

IT IS AGREED:

I. SALT LAKE HUB

A new seniority territory shall be created that is within the following area: DRGW mile post_____at Grand Junction on the Southeast, UP mile post _____at Yermo on the Southwest, UP mile post_____and SP mile post____at Winnemucca on the West, UP mile post____at McCammon on the North and UP mile post____at Granger on the East and all stations, branch lines, industrial leads and main line between the points identified.

II. SENIORITY AND WORK CONSOLIDATION

To achieve the work efficiencies and allocation of forces that are necessary to make the Salt Lake Hub operate efficiently as a unified system, the following seniority consolidation will be made:

A. A new seniority district will be formed and a master Trainmen Seniority Roster--UP/UTU Salt Lake Hub merged roster #1--will be created for the employees working as trainmen in the Salt Lake Hub on November 1, 1996. The new roster will be created as follows:

1. Trainmen placed on this new roster will be dovetailed based upon the employee's trainman'sdate. If this process results in employees having identicle seniority dates, seniority will be determined by the employee's hire date.

Name	Roster Ranking	Zone 1 (Salt Lake City/Ogden- Winnemucca <i>excluding terminals</i>) [WP.SP]	Zone 2 (Salt Lake City-McCammon, Ogden-Granger, Salt Lake City/Ogden terminals, excluding Green River yard/local/road switchers) [Idaho, UPED, DRGW]	Zone 3 (Salt Lake City- Caliente/Grand Juction excluding Grand Junction yard/local/road switchers) [S.Central, DRGW	Zone 4 (Callente-Yermo) [S.Central]
BROWN, A.	#1		·X		
GRAY, B.	#2			×	
BLACK, C.	#3			×	
WHITE, D.	#4	×			×
BLUE, E.	#5				
		L			X.

Prior Rights to Zones, Example (assumes only has 5 people on roster):

2. All employees placed on the roster may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this agreement.

3. New employees hire, and placed on the new roster subsequent to the adoption of this agreement will have no prior rights but will have roster seniority rights in accordance with the zone and extra board provisions set forth in this agreement.

B. The new UP/UTU Salt Lake Hub Merged Roster #1 seniority district will be divided into the following four (4) zones:

1. Zone 1 will include Salt Lake City and Ogden West to and including Winnemucca via either route but will not include the terminals of Salt Lake City and Ogden. (current WP and SP operations)

2. Zone 2 will include Salt Lake City North to McCammon and Ogden east to Granger and all road and yard operations in the Ogden and Salt Lake City terminals. Green River yard assignments, locals or road switchers are not included in this zone.

3. Zone 3 will include Salt Lake City East to but not including Grand Junction and South to Caliente via either route.

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4. Zone 4 will include Caliente to Yermo, California.

5. Road, road/yard or yard extra boards will not be part of any zone if they cover assignments in more than one zone. Extra Boards that cover assignments in only one zone will be governed by zone rules.

C. Trainmen initially assigned to the merged roster will be accorded prior rights to one of the four zones based on the following:

1. Zone 1-former WP and SP trainmen working positions that operate within the points specified for this zone on November 1, 1996.

2. Zone 2-former UP Salt Lake City North road and yard trainmen (including OUR&D), former UPED trainmen between Salt Lake City/Ogden and Green River, former DRGW trainmen holding yard and yard extra board assignments at Roper Yard and assigned to positions that operate between Salt Lake City and Ogden and working positions that operate within the points specified for this zone on November 1, 1996.

3. Zone 3-former DRGW trainmen from Salt Lake City to Grand Junction and at all points in between and former UP South Central trainmen between Salt Lake City and Caliente and working positions that operate within the points specified for this zone on November 1, 1996.

4. Zone 4 - former UP South Central trainmen from Caliente to Yermo and all points between Caliente and Yermo and working positions that operate within the points specified for this zone on November 1, 1996.

5. Any trainman working in one of the Zones on or before November 1, 1996 but currently reduced from the trainmen's working list shall also be given a date on the roster and prior rights in the appropriate zone. Trainmen currently forced to the Salt Lake Hub or borrowed out to the Salt Lake Hub will be released when their services are no longer required and will not establish a date on the new roster.

Note: Working positions that operate within the points specified for a zone is defined as holding an assignment (non-through freight, yard, extra board or through freight) with an on duty home terminal point within the territory of the new zone as specified above.

D. Trainmen assigned to the new merged roster after implementation shall be assigned to a zone based on the Carrier's determination of the needs of service at that time in the Salt Lake Hub but without prior rights. Conductors/Foremen or Switchmen/Brakemen in training at the time of implementation will be assigned a zone without prior rights based on the area designated in the bulletin/advertisement seeking application for train service.

E. The purpose of creating zones is twofold: First, it is to provide seniority in an area that an employee had some seniority prior to the merger and thus preference to some of his/her prior work over employees in other zones; Second, to provide a defined area that an trainman can become familiar with trackage and train operations so as not to be daily covering a multitude of different sections of track. As such, the following will govern:

1. Trainmen will be allowed to make application for an assignment in a different zone no more than once a year unless reduced from the working list in their zone or for returning to their zone when forced out of it. If reduced they may displace any junior trainman not holding prior rights to an assignment in either of the remaining two zones.

2. Trainmen must exhaust their seniority in their zone prior to moving to another zone except as provided in E(1) above.

3. Trainmen who move to another zone by application must remain in that zone or on a non-zone extra board, seniority permitting, for a minimum of one year.

4. Trainmen will be allowed to make application to any non-zone extra board at any time but will not be permitted to move to another zone except as provided in E (1) above.

F. It is understood that certain runs home terminaled in the Salt Lake Hub will have away from home terminals outside the Hub and that certain runs home terminaled outside the Hub will have away from home terminals inside the Hub. Examples are Salt Lake City/Ogden runs to Green River and Pocatello, Sparks to Elko. It is not the intent of this agreement to create seniority rights that interfere with these operations or to create doubleheaded pools. For example, Spark's will continue to be the home terminal for Sparks/Elko runs and a doubleheaded pool will not be established.

G. All trainmen vacancies within the Hub must be filled prior to any trainman being reduced from the working list or prior to engineers being permitted to exercise to any reserve or supplemental boards. All non prior right trainmen must be displaced prior to any trainmen holding a position on a reserve board or supplemental board.

H. All train service seniority outside the Hub will be held in abeyance during the interim period. Trainmen's working outside the Hub but currently holding seniority in the Hub will not be able to exercise seniority into the Hub during the interim period. After the interim period, seniority will be finalized with employees holding seniority inside only one Hub.

I. Trainmen will be treated for vacation, entry rates and payment of arbitraries as though all their time in train service on their original railroad had been performed on the merged railroad.

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III. TERMINAL CONSOLIDATIONS

The terminal consolidations will be implemented in accordance with the following provisions:

A. Salt Lake City/Ogden Metro Complex. A new consolidated Salt Lake City/Ogden Metro Complex will be created to include the entire area within and including the following trackage:

. Ogden mile posts ____UP east, ____UP north and ____SP west to Salt Lake City mile posts _____DRGW south and ____UP west.

1. All UP and SP pool, local, work train and road switcher operations within the SLC/Ogden Metro Complex shall be combined into a unified operation.

2. All road crews may receive/leave their trains at any location within the boundaries of the new complex and may perform any work within those boundaries. The Carric, will designate the on/off duty points for road crews within the new complex.

3. All rail lines. yards and/or sidings within the new complex will be considered as common to all crews working in, into and out of the complex. All crews will be permitted to perform all permissible road/yard moves. Interchange rules are not applicable for intra-carrier moves within the complex.

4. In addition to the consolidated complex, all UP and SP operations within the greater Salt Lake City area and all UP and SP operations (including the OUR&D) within the greater Ogden area shall be consolidated into unified terminal operations. The existing switching limits at Ogden will now include the former SP rail line to SP Milepost _____. The existing UP switching limits at Salt Lake City will now include the Roper Yard switching limits (former DRGW) to DRGW Milepost

B. Provo. All UP and SP operations within the greater Provo area shall be consolidated into a unified terminal operation.

C. Elko - Carlin. All UP and SP operations within the greater Elko and Carlin area shall be consolidated into a unified terminal operation at Elko.

D. Initial delay and final delay will be governed by the controlling collective bargaining agreements including the Duplicate Pay and Final Terminal Delay provisions of the 1985 and 1991 National Agreements.

E. The current application of National Agreement provisions regarding read /yard zones and Hours of Service relief shall continue to apply with yard crews able to perform such service in all directions out of the terminal.

IV. POOL OPERATIONS

A. The following pool consolidations may be implemented to achieve efficient operations in the Salt Lake City Hub:

1. <u>Salt Lake City - Elko and Ogden - Elko</u>. These operations may be run as either two separate pools or as a combined pool with the home terminal within the Salt Lake City/Ogden metro complex. If separate pools the carrier may operate the crews at the far terminal of Elko as one pool back to the metro complex with the crew being transported by the carrier back to its original on duty point at the end of their service trip. The carrier must give ten days written notice of its intent to change the number of pools. Since Elko will no longer be a home terminal for pool freight operations east to the metro complex a sufficient number of pool and extra board employees will be relocated to the metro complex.

2. <u>Salt Lake City - Green River/Pocatello and Oqden- Green River</u>. These operations may be run as either two separate pools or as a combined pool with the home terminal within the metro complex. The carrier must give ten days written notice of its intent to change the number of pools.

3. <u>Salt Lake City - Grand Junction/ Helper/ Milford/ Provo.</u> These operations may be run as either one, two, three or four separate pools with the home terminal within the metro complex. The carrier must give ten days written notice of its intent to change the number of pools.

4. <u>Helper-Grand Junction/Provo; Winnemucca-Elko; and Milford-Provo/Helper.</u> Each of these operations will be run as a single pool.

Note 1: While the Sparks-Carlin and Wendel-Carlin pools are not covered in this notice it is understood that they will operate Sparks -Elko and Wendel-Elko and will be paid actual miles when operating trains between these two points and will be further handled when merger coordinations are handled for the area West of Winnemucca.

Note 2: The Portola-Elko pool shall continue to operate as it currently does and will be further handled when merger coordinations are handled for the area West of Winnemucca.

5. <u>Other Service</u> - Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District.

6. The operations listed in A 1-5 above, may be implemented separately, in groups or collectively, upon ten (10) days written notice by the Carrier to the General Chairman.



2. Basic Day/Rate of Pay - The provisions of the November 1, 1991 Implementing Agreement (UTU) and the May 8, 1996 UTU Arbitration Award will apply including applicable entry rates.

3. Overtime - Overtime will be paid in accordance with Article IV of the November 1, 1991 UTU Implementing Agreement .

4. *Transportation*- Transportation will be provided in accordance with Section (2)(c) of Article IX of the October 31, 1985, UTU National Arbitration Award.

5. Meal Allowances and Eating En Route - Meal allowances and eating en route will be governed by Sections 2(d) and 2(e) of Article IX of the October 31, 1985 UTU National Arbitration Award as amended by the November 1, 1991, Implementing Agreement.

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Crews shall be paid an additional one-half $(\frac{1}{2})$ basic day for this service in addition to the miles run between the two terminals.

8. Except as provided in (7) above, turnaround service/hours of service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool crews. Employees used for this service may be used for multiple trips in one tour of duty. Extra boards may handle this service in all directions out of a terminal.

C. Agreement coverage - Employees working in the Salt Lake Hub shall be governed, in addition to the provisions of this Agreement by the UP Agreement covering______, the May 8, 1996 National Arbitration Award to Union Pacific and previous National Agreement provisions of any force or effect. Where conflicts arise the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive.

D. Crew Consist Productivity Funds - Upon implementation of this Agreement, all Crew Consist productivity fund payments shall be consolidated into one fund covered by the UP Agreement for trains operating with crews from the Salt Lake City Hub. The day prior to implementation of this Agreement, all existing productivity funds that invlove employes in the new Hub shall be distributed within _____ days. Upon final distribution of such payments these productivity fund ac_ounts shall involve only employees outside the Hub and all future payments to the productivity fund of employees in the Hub shall be made to one account covering the Salt Lake City Hub.

E. After implementation, the application process will be used to fill all vacancies in the Hub. Should an insufficient number of applications be filed and vacancies still remain the junior engineer on any reserve or supplemental boards shall be forced to the vacancy. If there are no trainmen on any reserve boards or supplemental boards then the junior trainman on the protecting extra board shall be forced to the vacancy. When forcing or recalling, prior rights trainmen shall be forced or recalled in their zone prior to trainmen who do not have prior rights in that zone.

V. EXTRA BOARDS

A. The following road/yard extra boards will be established to protect trainmen assignments working in or out of the Salt Lake City/Ogden metro complex or in the vicinity thereof:

1. Ogden-one (1) extra board to protect the Ogden-Green River Pool, and the Ogden Elko Pool (if pools are operated separately), the Ogden yard assignments and all road switchers, locals and work trains between Ogden-Green River, Ogden-McCammon and Ogden-Elko.

2. Salt Lake North-One (1) extra board to protect the Salt Lake-Pocatello/Green River Pool, the Salt Lake-Elko pool, Salt Lake Yard assignments and all road switchers, locals and work trains between Salt Lake and Ogden.

Note: If the carrier operates Metro complex pools to Pocatello/ Green River and Elko then the above extra boards will convert to Zone Extra Boards with one board designated to cover Zone 1 vacancies and the other board designated to cover Zone 2 vacancies.

3. Salt Lake South (Zone 3)-One (1) extra board to protect Salt Lake -Milford/Helper/Grand Junction/Provo pool(s).and all yard, road switcher, local and work train assignments not covered by other extra boards in Zone 3.

B. The Carrier may establish extra boards at outside points such as Milford, Provo, Helper, Elko, etc to meet the needs of service.

C. At any location where both UP and SP/DRGW extra boards exist the carrier may combine these boards into one board.

VI. PROTECTION

A. Due to the parties voluntarily entering into this agreement the Carrier agrees to provide wage protection to all trainmen who are listed on the Salt Lake Hub merged roster #1 and working a trainman assignment during the interim period. This protection will start with the effective date of this agreement and concurrently the carrier will be able to combine any assignments and handle traffic in any manner it determines business conditions warrant. The employees must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. This protection is wage only and hours will not be taken into account. If the interim period is less than one year, when the interim period is terminated, employees adversely affected or certified as part of the final agreement will have their protection period start over. If the interim period is in excess of one year the employee's

protection period will be reduced by the amount of time after one year until the agreement is finalized.

В. If it is necessary to proceed to arbitration to finalize this notice then all interim protection shall terminate on the effective date of the award and regular New York Dock provisions will be used to determine who is entitled to protection.

C. Employees required to relocate under this agreement will be governed by the relocation provisions of New York Dock.

D. There will be no pyramiding of benefits.

E. The establishing of interim protection is without prejudice or precedent to either parties position and will not be cited by either party.

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VII. IMPLEMENTATION

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> A (alternative) The parties have entered into this agreement to implement the merger of the Union Pacific and Southern Pacific railroad operations in the area covered by the notice. The parties understand the competitive nature of railroad operations in the west and believe that a speedy implementation of rail operations will permit the combined system to be in a better position to retain current business now subject to competitive pressures and to attract new business.

> In addition the parties understand that the overall implementation is being phased in to accomodate the cutover of computer operations, dispatching, track improvements and clerical support ...

> It is the parties intent to utilize the current work force in an efficient manner and to not require several relocations of an employee as the different areas are implemented. It is understood that some locations will have surpluses and others will have shortages as track improvements permit additional traffic volumes. It would be in the best interests of all concerned if final decisions on seniority and relocations were delayed where possible until the implementation of operations is more complete. This would give employees a more knowledgable choice when faced with relocation.

> To this end the parties have entered into an agreement wherein some of the provisions are interim in nature. Where appropriate these interim provisions will be phased

out or finalized by further negotiations. Each interim provision will be so identified. Should the provisions not be finalized by negotiation and arbitration is necessary the interim agreement shall continue until an award is recieved. If arbitration is necessary it shall not include whether employees are covered under New York Dock as those are made on an individual basis after the implementation of a final agreement.

B. The carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Employees whose assignments are changed shall be permitted to excercise their new seniority.

C. Prior to the movement to reserve boards or transfers outside the Hub it will be necessary to fill all positions in the Salt Lake Hub and then add all surplus positions to the newly created extra boards.

Example: In Zone 1 all pool turns, locals, yard and other assignments and the Salt Lake and Ogden extra boards must be filled prior to adding surplus trainmen to an extra board. If all positions are filled and there are five trainmen at Elko that do not have a spot and the other zones do not need them then they may be placed on an extra board at Elko.

VIII. FAMILIARIZATION

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A. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for the new operations. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualifications shall be handled with local operating officers.

B. Trainmen hired subsequent to the effective date of this document will be paid in accordance with the local agreements that will cover the appropriate Hub.

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MERGER IMPLEMENTING AGREEMENT (Denver Hub)

between the

UNION PACIFIC/MISSOURI PACIFIC RAILROAD COMPANY SOUTHERN PACIFIC TRANSPORTATION COMPANY

and the

UNITED TRANSPORTATION UNION

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all employees working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

IT IS AGREED:

I. Denver Hub

A new seniority territory shall be created that encompasses the following area: UP milepost _____at or near Sharon Springs, Kansas on the Southeast; UP milepost _____at Cheyenne, Wyoming on the North; DRGW milepost ____at Grand Junction, Colorado and milepost ____at Southfork, Colorado to the Southwest; DRGW milepost ____at Dalhart, Texas and UP milepost ____at Horace, Kansas to the Southeast and all stations, branch lines, industrial leads and main line between the points 'dentified.

II. Seniority and Work Consolidation.

To achieve the work efficiencies and allocation of forces that are necessary to make the merged Carrier operate efficiently as a unified system, the following seniority

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consolidations will be made:

A. A new seniority district will be formed and a master Trainmen Seniority Roster, UP/UTU Denver Hub Merged Roster #2, will be created for the employees assigned to the Denver Hub on November 1, 1996. The new roster will be created as follows:

1. Trainmen placed on this roster will be dovetailed based upon the employee's train service date. If this process results in employees having identical seniority dates, seniority will be determined by the employee's hire date.

Name	Roster Ranking	Zone 1 (Denver-Sharon Springs/Cheyenne excluding Cheyenne yard/local/road switchers, Pueblo-Horace) [UPED,MPUL Pueblo roster]	Zone 2 (Denver-GrandJunction/Axial, GrandJunction- Montrose/Oliver/Minturn, Denver Terminal) [UPED, DRGW]	Zone 3 (Pueblo- Denver/S.Fork/Mintum/ Dalhart excluding Dalhart & Mintum helper service)
JONES, A.	#1	X		[DRGW]
SMITH, B.	#2	×		
ADAMS, C.	#3	~		
BAILEY, D.	#4			X
GREEN, E.	#5		×	

Prior Rights to Zones, Example (assumes only has 5 people on roster)

2. All employees placed on the roster may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this Agreement.

3. New employees hired and placed on the new roster subsequent to the adoption of this agreement will have no prior rights but will have roster seniority rights in accordance with the zone and extra board provisions set forth in this Agreement.

B. The new UP/UTU Denver Hub Merged Roster #2 seniority district will be divided into the following three (3) Zones:

1. Zone 1 will include Denver east to and including a point at or near Sharon Springs and Denver north to, but not including, Cheyenne; and Pueblo e

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2. Zone 2 will include Denver west to and including Axial, Grand Junction, Grand Junction to Montrose, Oliver, Mintum and all road and yard operations within the Denver Terminal.

3. Zone 3 will include Pueblo to Denver, South Fork, Minturn and to Dalhart not including Dalhart and Minturn helper service.

4. Road, road/yard or yard extra boards will not be part of any zone if they cover assignments in more than one zone. Extra boards that cover assignments in only one zone will be governed by zone rules.

C. Trainmen initially assigned to the new roster will be accorded prior rights to one of the three zones based on the following:

1. Zone 1 - Trainmen assigned to rosters on the former Union Pacific Eastern District 10th, 11th and 14th Districts and MPUL Pueblo roster working positions that operate within the points specified for this Zone on November 1, 1996.

2. Zone 2 - Trainmen assigned to rosters on the former DRGW and Union Pacific Eastern District 14th District working yard assignments and positions that operate within the points specified for this Zone on November 1, 1996.

3. Zone 3 - Trainmen assigned to rosters on the former DRGW working positions that operate within the points specified for this Zone on November 1, 1996.

4. Any trainman working in one of the Zones on or before November 1, 1996, but currently reduced from the trainmen's working list shall also be given a date on the roster and prior rights in the appropriate Zone. Trainmen currently forced to positions within the Denver Hub or borrowed out to locations within the Denver Hub will be released when their services are no longer required and will not establish a date on the merged roster.

> NOTE 1: Working positions that operate within the points specified for a Zone is defined as holding an assignment (non-through freight, yard, extra board or through freight with an on duty home terminal point within the territory of the new Zone as specified above.

NOTE 2: If Grand Junction becomes a home terminal for pool freight service to Denver, then the Zones will be changed to have Zone 1 include all assignments working out of Denver and mine runs to Axial and Zone 2 shall have all assignments working out of Grand Junction and mine runs in the area.

D. Engineers assigned to the merged roster after implementation shall be assigned to a zone, but without prior rights, based on the Carrier's determination of the demands of service at that time in the Denver Hub. Conductors/Foremen or Brakemen/Switchmen in training at the time of implementation will be assigned a zone without prior rights based on the territory designated in the bulletin/advertisement seeking application for train service.

E. The purpose of creating zones is twofold: First it is to provide seniority in an area that an employee had some seniority prior to the merger, unless that trackage is abandoned, and thus preference to some of their prior work over employees in other zones; Second to provide a defined area that a trainman can become familiar with trackage and train operations so as not to be daily covering a multitude of different sections of track. As such the following will govern:

1. Trainmen will be allowed to make application for an assignment in a different zone no more than once a year unless reduced from the working list in their zone or when returning to their zone after a forced assignment. If reduced from the working list, the Trainman may displace any junior Trainman without prior rights to an assignment in the remaining two zones.

2. Trainmen must exhaust their seniority in their zone prior to moving to another zone except as provided in E(1) above.

3. Trainmen who move to another zone by application must remain in that zone or on a non-zone extra board, seniority permitting, for a minimum of one year.

4. Trainmen will be allowed to make application to any non-zone extra board that protects assignments in more than one zone at any time but will not be permitted to move to a different zone assignment except as provided in E (1) above.

F. It is understood that certain runs home terminaled in the Denver Hub will have away from home terminals outside the Hub and that certain runs home terminaled outside the Hub will have away from home terminals inside the Hub. Examples are Denver runs to Cheyenne and Pueblo runs to Dalhart. It is not the intent of this agreement to create seniority rights that interfere with these operations or to create double headed pools. For example, Denver will continue to be the home terminal for Denver-Cheyenne runs and Cheyenne will not have equity in these runs.

G. All train service vacancies within the Hub must be filled prior to any trainmen being reduced from the working list or prior to trainmen being permitted to exercise to any reserve or supplemental boards. All non-zone prior right trainmen must be displaced prior to any trainmen holding a position on a reserve board or supplemental board.

H. All train service seniority outside the Hub will be held in abeyance during the interim period. Trainmen working outside the Hub but currently holding seniority in the Hub will not be able to exercise seniority into the Hub during the interim period. After the interim period, seniority will be finalized with employees holding seniority inside only one Hub.

I. Trainmen will be treated for vacation, entry rates and payment of arbitraries as though all their time in train service on their original railroad had been performed on the merged railroad.

III. <u>Terminal Consolidations</u>

The following terminal consolidations will be implemented in accordance with the following provisions:

A. Denver Terminal

1. The existing switching limits at Denver will now include Denver Union Terminal north to and including M.P. ____, south to and including M.P. ____, east to and including M.P. ____,

2. All road crews may receive/leave their trains at any location within the boundaries of the new Denver terminal and may perform work anywhere within those boundaries. The Carrier will designate the on/off duty points for road crews.

3. All rail lines, yards, and/or sidings within the new Denver terminal will be considered as common to all crews working in, into and out of Denver. All crews will be permitted to perform all permissible road/yard moves.

B. General Conditions for Terminal Operations

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1985 and 1991 National Agreements.

2. Employees will be transported to/from their trains to/from their designated on/off duty point.

3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service zone, shall continue to apply. Yard crews at Denver, Grand Junction and Pueblo may perform such service in all directions out of the terminal.

4. Nothing in this Section B will prevent the use of other employees to perform this work and/or relief in any way permitted by applicable agreements.

IV. Pool Operations.

A. The following pool consolidations may be implemented to achieve efficient operations in the Denver Hub:

1. All Denver-Grand Junction and Denver-Phippsburg pool operations shall be combined into one pool with Denver as the home terminal. All Denver-Cheyenne and Denver-Sharon Springs pool operations shall be combined into one pool with Denver as the home terminal. These pools may later be combined into a single pool should a single pool provide more efficient operations.

In the alternative, all Grand Junction-Denver and Grand Junction Minturn pool operations shall be combined into one pool with Grand Junction as the home terminal and Denver may have one, two or three pools as the Carrier determines. Short pool operations when run shall be between Grand Junction-Bond and Denver-Bond with the Denver extra board protecting the Denver source of supply.

2. All Denver-Pueblo, Pueblo-Alamosa and Pueblo-Dalhart pool operations shall be combined into one pool with Pueblo as the home terminal. The Pueblo-Minturn pool shall remain separate until the number of pool turns drops below ten (10) due to the cessation of service on portions of that line, at that time, the Carrier may combine it with the remaining Pueblo pool. The Pueblo-Horace pool shall remain separate until terminated with the abandonment of portions of that line.

3. Grand Junction-Mintum pool operations shall remain separate until terminated with the cessation of service on portions of that line unless the alternative to A(1) above is selected.

4. Pool, local, road switcher and yard operations not covered in the above originating at Grand Junction shall continue as traffic volumes warrant.

5. Helper service at Minturn shall remain separate until terminated with the cessation of service on portions of the line where the helpers operate.

6. Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District.

7. Power plants between Denver and Pueblo may be serviced by either the Pueblo-Denver pool or the Denver Extra board or a combination thereof.

8. The operations listed in A 1-7 above, may be implemented separately, in groups or collectively upon ten (10) days written notice from the Carrier to the General Chairman.

B. The terms and conditions of the new operations set forth in Section A, are as follows:

1. Miles paid - Each pool shall be paid the actual miles between the points of the run for all service and combination deadhead/service. If a crew receives/leaves their train beyond the points of the run then they shall be paid the additional miles they operate the train.

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2. Basic Day/Rate of Pay - The provisions of the November 1, 1991 Implementing Agreement (UTU) and the May 8, 1996 Arbitration Award (UTU) will apply including applicable entry rates.

3. Overtime- Overtime will be paid in accordance with Article IV of the November 1, 1991 UTU Implementing Agreement.

4. Transportation - Transportation will be provided in accordance with Section (2)(c) of Article IX of the October 31, 1955, National Agreement (UTU).

5. *Meal Allowances and Eating En Route* - Meal allowances and eating en route will be governed by Sections 2(d) and 2(e) of Article IX of the October 31, 1985 National Agreement (UTU) as amended by the November 1, 1991, Implementing Agreement.

6. Blue Print Boards - All through freight service shall be rotary pool service with blue print provisions for placing employees in the proper order at the home terminal and at the far terminal. Under a blue print board operation, employees are not run-around if used on the train for which called.

7. Twenty-Five mile Zone - At Grand Junction, Pueblo, Oakley and Dalhart pool crews may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Crews shall be paid an additional one-half $(\frac{1}{2})$ basic day for this service in addition to the miles run between the two terminals.

Example: A Pueblo-Denver crew receives their north bound train ten miles south of the Pueblo terminal but within the 25 mile terminal zone limits and run to Denver. They shall be paid the actual miles established for the Pueblo-Denver run and an additional one-half basic day for handling the train from the point ten (10) miles south of the Pueblo terminal.

8. Turnaround Service/Hours of Service Relief - Except as provided in (7) above, turnaround service and Hours of Service Relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool crews. Employees used for this service may be used for multiple trips in one tour of duty.

9. Nothing in this Section B (7) and (8) prevents the use of other employees to perform work currently permitted by other agreements, including, but not limited to yard crews performing hours of service relief within the road/yard zone, ID crews performing service and deadheads between terminals, road switchers handling trains within their zones and using an employee from a following train to work a preceding train.

C. Agreement coverage - Employees working in the Denver Hut shall be governed, in addition to the provisions of this Agreement by the UP Agreement covering______, the May 8, 1996 UTU Arbitration Award applicable to Union Pacific and previous National Agreement provisions still of force and effect. Where conflicts arise the specific provisions of this Agreement shall prevail. None of the provisions of these agreements are retroactive.

D. Crew Consist Productivity Funds - Upon implementation of this Agreement, all Crew Consist productivity fund payments shall be consolidated into one fund covered by the UP Agreement for trains operating with crews from the Denver Hyb. The day prior to implementation of this Agreement, all existing productivity funds that involve employees in the new Hub shall be distributed within ______ days. Upon final distribution of such payments these productivity fund accounts shall involve only employees outside the Hub and all future payments to the productivity fund to employees in the Hub shall be made to one account covering the Denver Hub.

E. After implementation, the application process will be used to fill all vacancies in the Hub. Should an insufficient number of applications be filed and vacancies still remain, the junior trainman on any reserve or supplemental boards shall be forced to the vacancy. If there are no trainmen on any reserve boards or supplemental boards, then the junior trainman on the protecting extra board shall be forced to the vacancy and the senior demoted engineer in the Hub shall be recalled to the extra board. When forcing or recalling, prior rights trainmen shall be forced or recalled in their zone prior to trainmen who do not have prior rights in that zone.

V. EXTRA BOARDS

A. The following road/yard extra boards will be established to protect train service assignments as follows:

1. Denver - One (1) extra board to protect the Denver-Cheyenne, Denver-Sharon Springs and Denver-Phippsburg pools, the Denver yard assignments and all road switchers, locals and work trains originating within these territories and extra service to any power plant.

2. Pueblo - One (1) extra board to protect the Pueblo-Denver, Pueblo-Alamosa, Pueblo-Mintum and Pueblo-Dalhart pool operations, Pueblo Yard assignments and all road switchers, locals and work trains originating within the these territories.

3. Grand Junction - One (1) extra board to protect Grand Junction-Denver and Grand Junction-Minturn pool(s), Grand Junction yard, road switcher, local and work train assignments originating within these territories.

NOTE: If Grand Junction does not become a home terminal for pool freight service Grand Junction-Denver and Grand-Junction Minturn, then all assignments specified in this Section A(3) shall be protected by the Denver extra board.

B. The Carrier may establish extra boards at outside points to meet the needs of service.

C. At any location where both UP and DRGW extra boards exist the carrier may combine these boards into one board.

VI. PROTECTION

A. Due to the parties voluntarily entering into this agreement the Carrier agrees to provide wage protection to all trainmen who are !isted on the Denver Hub Merged Roster #2 and working a trainman's assignment during the interim period. This protection will start with the effective date of this agreement and run concurrent with the Carrier's right to combine any assignment and handle traffic in any manner it determines business conditions warrant. The employees must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments

when they could hold higher paying assignments, etc. This protection is wage only and hours will not be taken into account. If the interim period is less than one year, when the interim period is terminated, employees adversely affected or certified as part of the final agreement will have their protection period start over. If the interim period is in excess of one year the employee's protection period will be reduced by the amount of time after one year until the agreement is finalized.

B. If it is necessary to proceed to arbitration to finalize this notice then all interim protection shall terminate on the effective date of the award and regular New York Dock provisions will be used to determine who is entitled to protection.

C. Employees <u>required</u> to relocate under this agreement will be governed by the relocation provisions of New York Dock.

D. There will be no pyramiding of benefits.

E. The establishing of interim protection is without prejudice or precedent to either parties position and will not be cited by either party.

VII. IMPLEMENTATION

A. It is the intent during the interim period to minimize the relocation of employees who wish to delay relocating, if their services are not needed immediately at another location, and to determine the number of surplus/ shortage of trainmen in the Hub. If a surplus exists, the opportunities for transfers will exist to other locations on the system that will need trainmen.

A. (alternative) The Parties have entered into this agreement to implement the merger of the Union Pacific Railroad and Southern Pacific Railroad operations in the area covered by notice 18W. The Parties understand the competitive nature of railroad operations in the west and believe that a speedy implementation of rail operations will permit the combined system to be in a better position to retain current business now subject to competitive pressures and to attract new business.

In addition, the Parties understand that the overall operational implementation is being phased in to accommodate the cut over of computer operations, dispatching, track improvements and clerical support.

It is the Parties' intent to utilize the current work force in an efficient manner and not to require several relocations of an employee as areas of combined UP/SP operations are implemented. It is understood that some locations will have a surplus of employees while other locations will have a shortage due to such factors as track improvements that permit additional traffic volumes and cessation of business over other trackage. Therefore, it would be in the best interests of all concerned to delay final decisions on seniority placement and relocations where possible until the implementation of operations is closer to completion to enable employees to make a more informed choice of their options when faced with relocation.

To this end, the Parties have entered into an agreement wherein some of the provisions of this Agreement are interim in nature. Where appropriate, these interim provisions shall be phased out or finalized by further negotiations. Each interim provision will be identified. In the event the Parties do not reach final agreement on the interim provisions, this Agreement shall continue in effect until an arbitration decision is received.

In addition, if arbitration is necessary, it shall not include any determination of whether employees are protected under New York Dock or provisions of New York Dock since such determinations are made on an individual basis after implementation of a final agreement or arbitration award.

B. The Carrier shall give thirty (30) days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Employees whose assignments are changed shall be permitted to exercise their new seniority.

C. Prior to movement to of reserve boards or transfers outside the Hub, it will be necessary to fill all positions in the Denver Hub and then add all surplus positions in the Hub to the newly created extra boards.

Example: In Zone 1 all pool turns, locals, yard any other assignments and the extra boards at Denver must be filled prior to adding surplus trainmen to an extra board. If all positions are filled and there are five engineers at Pueblo that do not have a spot and the other zones do not need them, then they may be placed on an extra board at Pueblo.

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INTERSTATE COMMERCE COMMISSION REPORTS

required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and members of his family, including living expenses for himself and his family, and for his own actual wage loss during the time necessary for such move, and for a reasonable time thereafter not to exceed 5 working days. The extent of the responsibility of the railroad under this provision and the ways and means of transportation shall be agreed upon in advance by the railroad and the affected employee or his representatives: provided, however, that changes in place of residence which are not a result of a transaction, which are made subsequent to the initial change and which grow out of the normal exercise of seniority rights, shall not he considered to be within the purview of this section: provided further, that the railroad shall, to the same extent as provided above, assume the expenses, et cetera, for any employee furloughed within three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to the railroad within 90 days after the date on which the expenses were incurred.

APPENDIX III

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 et seq. [formerly sections 5(2) and 5(3) of the Interstate Commerce Act]. except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

1. Definitions.—(a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed. (b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under

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any existing job security or other protective conditions or arrangements: provided, that if an employee otherwise is eligible for protection under both this appendix and some other job security or other protective conditions or arrangements. he shall elect between the benefits under this appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect: provided further, that the benefits under this appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits: and, provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

4. Notice and agreement or decision.—(a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referce has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered. 360 LC.C.

INTERSTATE COMMERCE COMMISSION REPORTS

5. Displacement allowances.—(a) So long after a displaced employee's displacement as he is unable. in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, he paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and *provided further*, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that be is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. Dismissal allowances.—(a) A dismissed employee shall be paid a monthly dismissal allowance. from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment. any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.



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1901 L STREET, N.W., WASHINGTON, D.C. 20035/AREA CODE: 202-862-7200 FAX 202-862-7230

ROBERT F. ALLEN

D.P. LEE Vice Chairman and General Conned Chairman

ALE GRADIA

VIA FEDERAL EXPRESS

November 1, 1994

Mr. G. Thomas DuBose President United Transportation Union 14600 Detroit Avenue Cleveland, OH 44107

Dear Mr. DuBose:

The rail freight carriers represented by the National Carriers' Conference Committee (NCCC) for the 1995 wages, rules and benefits round of collective bargaining intend to bargain on a concerted national basis with respect to their employees represented by your organization, as has been the case generally in all past bargaining rounds since the 1930's. Those carriers have authorized NCCC representation by duly executed powers of attorney and are listed in Attachment A hereto. That list will be supplemented from time to time as additional carriers authorize representation by the NCCC in national handling with respect to your organization.

Attachment B comprises a notice served nationally on your organization on behalf of these carriers pursuant to Section 6 of the Railway Labor Act. It is served upon you as the national representative of your organization and the carriers propose it be handled nationally and concurrently with any Section 6 proposals that may be served by your organization. We believe that national handling represents the best opportunity for your organization and the freight railroads to manage our way to and through the next round of collective bargaining in a manner that serves the mutual interests of our respective constituents and their separate interests as well.

However, we realize that our view may not be shared by your organization. If that is the case, we are prepared to enter into discussions with your organization for the purpose of seeking harmonious ways of proceeding. Our desire is to make an agreement, sooner rather than later, and one that promotes equity for all.

Our industry and our employees have the opportunity to build on the industry's improved competitive position and regain an edge in tomorrow's transportation marketplace. If we can constructively address our labor differences, we will have gone a long way to ensure that success. Neither labor nor management can afford to let this chance pass without making the effort.

For convenience and expedition, we propose that initial conferences be waived. We have set aside the weeks of November 7 and November 14 for meetings. I will be contacting you shortly and hope that we can schedule a meeting date during that period.

Your very Huly.

Attachments

cc: All NCCC-represented carriers

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ATTACHMENT "B" Carrier UTU Section 6 Proposals November 1, 1994

Based on competitive realities in the transportation and financial marketplaces, the carriers propose that the parties agree to make all necessary changes in contracts, rules and practices to improve efficiency and productivity to the maximum degree possible, facilitate discontinuance of redundant positions and personnel, eliminate waste, reduce time paid for but not worked, contain and curtail the costs of wages and benefits, and prevent primary or secondary strikes. boycotts or other job actions; and at the same time give due consideration to the interests and concerns of employees so that a result is achieved that promotes the competitive and financial needs of the industry as well as the mutual interest oi employees and employers in responsible rules, rates of pay and working conditions.

More specific and detailed itemizations of the changes requested are below, and the carriers reserve the right to make additional proposals.

......

I. Compensation Elements

A. Wages

Revise existing pay rules and adjust pay levels in relation to competitive labor market data to correspond to pay of comparable positions in other industries and to offset impediments to productivity under existing rules and practices insofar as there is no agreement to eliminate such impediments to productivity.

B. Basic Day

Amend any existing rules specifying the minimum number of miles encompassed in the basic day to specify 160 miles, with an appropriate adjustment in the overtime divisor.

C. Mileage Regulating Factors

Amend any existing rules in regard to monthly mileage limitations to provide that a carrier in its discretion may adjust such limitations as it deems appropriate.

D. Manning

1. By mutual consent, revise rules to provide that the size and complement of all crews shall be at the carrier's discretion.

2. Absent the mutual consent described in Paragraph 1 to eliminate such impediments to productivity, make appropriate reductions in the rates of pay of all ground service employees (which shall remain frozen at those levels), make appropriate deductions from the pay of all ground service employees to cover a portion of the monthly costs of the Health and Welfare, Dental, and Early Retiree Major Medical Plans, and make appropriate reductions in the cost of time paid for but not worked.

II. Rules

A. Eliminate any existing restrictions upon the use by a carrier of road and/or yard crews, including any limitations on the use of road and/or yard crews to make pickups and/or setoffs on their own property and/or on properties of foreign carriers; and provide that the carrier may in its discretion use road and/or yard crews in the manner it deems appropriate.

B. Eliminate any existing rules restricting the establishment by a carrier of starting times of yard employees; and provide that the carrier may in its discretion establish such starting times as it deems appropriate.

C. Eliminate any existing rules restricting a carrier's right to annul any assignment at any time.

D. Eliminate any existing rules or practices permitting extra employees to be available only during calling cycles.

E. Eliminate any existing rules, procedures or conditions applicable to existing or future interdivisional service (as defined in existing agreements); provide that a carrier may in its discretion institute or change such service upon such terms as it deems appropriate; and provide that if such service is discontinued application of associated protective conditions will be discontinued at the same time.

F. Eliminate any existing requirements restricting a carrier's right to create, combine, separate, or change extra boards at common terminals in any manner it deems appropriate and to provide that employees on such board(s) will protect service on any seniority district as specified by the carrier.

G. Eliminate any existing requirements that provide for the adjustment (paying the difference) between actual earnings and guarantees on extra boards on other than a payroll period basis, and provide that such adjustment may be made in any manner determined by the carrier.

H. Eliminate any existing restrictions or requirements applicable to the coupling and uncoupling of appurtenances such as air hoses, signal hoses and control cables, replacement of batteries, and the placement, removal, inspection or other handling of endof-train devices, radios, computers, fax machines, and/or any other equipment used in train operation as designated by a carrier; and provide that the carrier in its discretion may require the handling of such appurtenances and or equipment by such employees and in the manner it deems appropriate.

I. Eliminate any existing rules or practices requiring payment for runarounds within terminals and/or enroute.

J. Eliminate any existing provisions which require a carrier to pay an employee who cannot accept a call because of the Hours of Service Law.

K. Utilization of employees

1. Amend any existing rules or practices restricting a carrier's ability to transfer surplus employees to provide that the carrier may in its discretion transfer surplus employees to any locations on any part of its system without regard to seniority district or collective bargaining agreement boundaries, including the ability to assign such employees on a temporary basis.

2. Eliminate any existing restrictions on the use of employees. whether or not represented by the Organization, to perform any work as and where needed; and provide that a carrier in its discretion may require any employees represented by the Organization to perform any work as and where needed that the carrier deems appropriate.

L. Eliminate any existing requirements providing for automatic release of employees upon arrival at terminals.
M. In order to better serve customer needs and enhance the carriers' ability to compete:

1. Expand existing expedited procedures to provide carriers with additional flexibility to respond to customer needs and new business opportunities.

2. Eliminate any existing seniority district restrictions which impede expedited customer service; and provide that a carrier in its discretion may use employees outside of their seniority district when deemed appropriate by the carrier to expedite customer service.

3. Amend any existing rules to provide that a carrier may use any road crew to pick up a train stopped short of a terminal because of the Hours of Service Law, and proceed through the terminal on its trip.

4. Amend any existing rules to provide that crews in road and yard work train service may handle revenue cars.

5. Eliminate any existing rules regarding meal periods, and related allowances and/or penalties, in road service.

N. Where restricted, provide that a carrier in its discretion may substitute road switcher crews and/or mine switcher crews for any yard crews when deemed by the carrier to be appropriate. In utilizing this discretion, any restrictions related to the elimination of the last yard engine on a shift or in a yard are eliminated. Also, a carrier, in its discretion, may require road switcher and mine switcher crews to make up and dispose of their own trains without restrictions when deemed by the carrier to be appropriate.

O. Eliminate any existing requirements for the use by a carrier of a switchtender, car retarder operator, hump motor car operator, pilot, herder, conductor/pilot, flagman, or any other independent assignment.

P. Where restricted, provide that a carrier in its discretion may establish engineer-only crews in helper and light engine road movements when deemed by the carrier to be appropriate.

Q. Where restricted, provide that a carrier in its discretion may determine which employees, if any, shall be used on, or in connection with, self-propelled equipment.

R. Where restricted, provide that a carrier in its discretion may call and use extra road switcher assignments.

S. Eliminate any existing rules or practices which prohibit the holding on to cars when makin, pickups and setouts and any other moves in road and yard territory.

T. Eliminate any existing rules or practices which prohibit road crews from classifying their trains in any manner, or which require that trains be made up in station order.

U. Amend existing rules or practices with regard to short turnat und freight service to permit the distance from the terminal to be run to be up to 25% of the miles encompassed in the basic day.

V. Provide that a carrier in its discretion may extend or contract switching limits. including the right to consolidate yards located within 30 miles of each other.

W. Eliminate any existing rules or practices which require that a crew work as a unit.

X. Provide that the carrier may establish standardized calling procedures in lieu of existing rules and practices.

III. General

A. If and where any restrictions exist, there will be no restrictions on the use of new technology by employees in any craft, and such use shall not create an exclusive right thereto.

B. Except in circumstances where dready provided, provide for the establishment of special boards of adjustment to arbitrate disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions with the parties sharing equally the fees and costs of the arbitrators.

C. Eliminate any existing provisions for personal leave days and annual leave.

D. Compensated Absences

1. Amend any existing rules or agreements to provide that in order to qualify for a vacation or personal leave an employee must be credited with compensation for at least 200 days for work in the preceding year and have satisfactory attendance.

2. Amend existing rules and practices to provide that employees will be automatically marked up after completion of vacation periods.

E. Holidays

Amend any existing rules and practices in regard to paid holidays to provide that an employee who is unavailable during the 15 days preceding the holiday, the holiday, and the 15 days following the holiday will be disqualified for such pay.

F. Health and Welfare

1. With respect to The Railroad Employees National Health and Welfare, Early Major Medical Benefit and Dental Plans:

Expand cost-sharing by employees and more effectively contain costs incurred by the Plans. Matters to consider include, among other things, benefit design changes; modifying deductibles, annual out-of-pocket and lifetime maximums, copayments and coinsurance; expanding exclusions; and limiting eligibility and the duration of extended or continued coverage.

Improve Plan administration. Matters to consider, include, among other things, experience rating by railroad; mandatory managed care where available; universal non-duplicative COB; stand-alone deductibles; and governance of all Plans by the NCCC.

2. In the event of enactment of federal or state health care legislation, the carriers may propose appropriate, responsive measures with respect to the above described plans. The carriers and the organization (in concert with other affected organizations) will meet to consider such measures, with the assistance of a neutral (if necessary) empowered to render binding decisions. Such neutral shall be jointly selected by the parties, or absent agreement, appointed by the National Mediation Board.

G. Americans with Disabilities Act

Provide that the parties shall cooperate to facilitate any actions needed to make reasonable accommodations without undue hardships to qualified individuals with disabilities.

H. Employee Involvement

Where a carrier establishes voluntary employee involvement programs involving customer service, safety, etc., provide that the organization shall not discourage employee involvement in such programs.

I. Improved Injury Compensation System

By mutual consent, develop joint legislative proposal governing employee compensation for on-the-job injuries in lieu of existing system that reflects current trends and is more equitable to injured employees, provides benefits in a more efficient and less adversarial manner, is structured with incentives to reduce the number of injuries and the cost of any injuries that may occur, and promotes a more constructive approach to safety.

J. Service Disruptions

1. In addition to prohibitions imposed by existing requirements, provide that, except for lawful dimary strikes and picketing of the carrier or carriers involved in a major dispute with the Organization, engaging in or respecting strikes or picketing of any carrier or of anyone else including shippers, secondary boycotts, slowdowns and any other concerted self-help activities, are prohibited. Appropriate penalties will be applied for an employee and/or Organization which violates this provision.

2. Provide that: During any work stoppage or disruption of operations due to other forms of concerted self-help by employees in any part of the railroad industry, a carrier shall have the unilateral right to suspend all bulletin, assignment, displacement, mileage or earnings rules or regulations; any pay and protective provisions of any applicable agreements; any other applicable agreements or rules relating to the use or compensation of employees; any agreements which provide for union or agency shop, deduction for union dues, union fee checkoff or political contributions. Such agreements and rules may be suspended by the carrier for the duration of such work stoppage or disruption and employees will be assigned any compensation on a basis to be determined by the carrier in its discretion. This provision is not intended to and will not modify or suspend protection provided in agreements adopted pursuant to the Interstate Commerce Act, or pursuant to some other statutory provision, if any, requiring employee protection.

IV. Miscellancous

A. Subsequent Legislative or Regulatory Events

If a legislative or regulatory requirement is imposed during the term of the parties' national agreement that materially affects the application of any provision contained in such agreement or materially increases the carrier's labor costs, provide that the carrier may propose appropriate, responsive measures. The parties shall meet promptly to consider such carrier proposals, with the assistance of a neutral (if necessary) empowered to render binding decisions. Such neutral shall be jointly selected by the parties or, absent agreement, appointed by the National Mediation Board, with the parties sharing equally the neutral's fees and costs.

B. Contract duration to be through year 1999.

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C. Adopt moratorium similar to that contained in the last national settlement.

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-CONTROL AND MERGER-SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(Arbitration Review)

A T T A C H M E N T B T O S E C O N D DECLARATION OF PAUL C. THOMPSON (CARRIER'S ARBITRATION SUBMISSIONS(S) AND CARRIER'S EXHIBITS 24-34)

E RECEIVED

APR 0 5 1997

SURFACE PORTATION BOARD Clinton J. Miller, III General Counsel UNITED TRANSPORTATION UNION 14600 Detroit Avenue Cleveland, Ohio 44107-4250 (216) 228-9400

Date: May 2, 1997

In the matter of arbitration between

United Transportation Union

- and -

Union Pacific Railroad Company

CARRIER'S SUBMISSION

Carrier's Statement of the Issue:

Do the Carrier's Proposed Arbitration Awards constitute fair and equitable bases for the selection and assignment of forces under a <u>New York Dock</u> proceeding so that the economics and efficiencies - the public transportation benefit - which the STB envisioned when it approved the underlying rail consolidation of the SP into the Union Pacific will be achieved?"

INTRODUCTION

The merits arbitration involved in this dispute is an arbitration proceeding governed by the

New York Dock labor protective conditions, which were imposed by the Surface Transportation

Board (STB) in Finance Docket No. 32760. A copy of Finance Docket No.32760 is attached as

Carrier's Exhibit "1" and a copy of the New York Dock conditions is attached as Carrier's Exhibit "2".

Both the STB, in Finance Docket No. 32760, and the specific language of the New York

Dock conditions make clear what is to be accomplished in this proceeding - the transactions necessary

to achieve the underlying rai, consolidation must take place.

In Finance Docket No. 32760, the Commission said:

"The basic framework for mitigating the labor impacts of rail mergers is embodied in the <u>New York Dock</u> conditions, which have been held to satisfy the statutory requirements of 49 U.S.C. 11347. <u>New York Dock</u> Ry. v. United States, 609 F2d 83 (2d Cir. 1979). See New York Dock. 360 I.I.C. at 84-90. The New York Dock conditions provide both substantive oenefits for affected employees (dismissal allowances, displacement allowances, and the like) and procedures (negotiation, if possible: arbitration, if necessary) for resolving disputes regarding implementation of particular transactions. We may tailor employee protective conditions to the special circumstances of a particular case. but we will adhere to the practice which the ICC adopted in <u>Railroad</u> <u>Consolidation Procedures</u>, 363 I. I. C. at 793, and to which it consistently adhered, see, e.g., <u>BN/SF</u>, slip op. at 79-81; <u>UP/CNW</u>, slip op. at 94-96, that employees are to be provided the protections mandated by 49 U. S. C. 11347 unless it can be shown that, because of unusual circumstances, more stringent protection is necessary."

This charge is spelled out much more simply in the Conditions -

"Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this Section 4." (Carrier's Exhibit "2")

Quite simply, this is what the Carrier is asking for in this arbitration proceeding - that the decision of this Arbitration Board will provide for an appropriate rearrangement of forces so that the economies and efficiencies of the underlying rail consolidation of the Southern Pacific Rail Corporation (SP) into the Union Pacific Railroad Company (UP) may be accomplished. There can be no doubt that this is a proper and worthwhile goal. The STB, on page 108 of <u>Carrier's Exhibit "1"</u>, said:

"In sum, the merger benefits here outweigh any competitive harms of the transaction, and the public interest requires that we approve it."

Because this Board sits as an extension of the STB and is bound to follow STB precedent and policy (STB precedent and policy incorporates all applicable ICC precedent and policy), the Carrier believes it is appropriate to review (1) the history of labor protective conditions in the railroad industry, (2) the history of the Section 11341 (a) mmunity provision of the Interstate Commence Act (ICA) and (3) a review/synopsis of the results of other <u>New York Dock</u> proceedings in d railroad industry These reviews will provide this Arbitration Board with the background information needed to recognize that the Carrier's two Proposed Arbitration Awards fully satisfy the requirements of <u>New</u> <u>York Dock</u> - they provide for the efficient and economic rearrangement of forces in the Denver and Salt Lake City Hubs to achieve the public transportation benefits that are the basis for the underlying rail consolidation.

However, before beginning these reviews, there is one item which must be addressed first. That item is the jurisdiction and authority of this Board.

Jurisdiction and Authority of this Panel.

It is the Carrier's position there can be no question UP's Proposed Arbitration Awards are "transactions" within the meaning of the STB's <u>New York Dock</u> conditions. Article I, Section 1(a) of <u>New York Dock</u> defines a "transaction" as "any action taken pursuant to authorizations of this Commission upon which these provisions have been imposed." The STB's predecessor, the ICC, explained the relevant inquiry as follows:

> "In our view, 'approved' transactions include those specifically authorized by the Commission, such as the various proposals we have approved which led to the formation of CSXT... and those that are directly related to and grow out of, or flow from, such a specifically authorized transaction. The instant transaction, the transfer of the dispatching functions, falls into the latter category. The existence of this second category of transactions is implicit in the definition of the term 'transaction' in the standard labor protective provisions: '(A)ny action taken pursuant to authorizations of this Commission cn which these provisions have been imposed.' New York Dock Ry. --Control -- Brooklyn Eastern Dist., 360 I.C.C. 60, 84 (1979)...."

This quote is from a case involving CSX Corporation and the Dispatchers Union which the

ICC reviewed in 8 I.C.C.2d 715. The case had its beginning in an arbitration case decided by Referee Robert J. Ables. These cases are discussed at length later in this submission and may be found at Carrier's Exhibit "3", (the ICC decision), and at Carrier's Exhibit "4", (Referee Ables' decision).

UP's proposed combinations of operations, facilities and work forces at Denver and Salt Lake City to form single carrier operations clearly are "directly related to and grow out of, or flow from" the STB's decision in Finance Docket No. 32760 authorizing UP to control SP.

Since this is clearly a <u>New York Dock</u> transaction, this Referee has jurisdiction under Article I, Section 4 to impose the implementing agreements proposed by UP. As will be explained more fully later in this Submission, STB precedent and policy clearly establishes both it and <u>New York Dock</u> arbitrators have authority under Sections 11341(a) and 11347 of the Interstate Commerce Act to override Railway Labor Act (RLA) procedures and collective bargaining agreements as necessary to allow a carrier to combine work forces and achieve the efficiencies which flow from a merger. Thus, as the ICC said in the CSX/Dispatchers case:

> "In light of the Supreme Court's decision in <u>Train Dispatchers</u>, there is no longer any dispute that under section 11341(a) the Commission may exempt approved transactions from certain laws, such as the RLA and collective bargaining agreements subject to the RLA, that would prevent the transactions from being carried out. This authority extends to arbitrators as well, when they are working under the delegated authority of the Commission."

Because the Organization's probable objections to the Carrier's Proposed Arbitration Awards will be contrary to well-established STB precedents, it is important to note that neutrals in Article I, Section 4 proceedings are acting as an agent of the STB and are bound by controlling STB authorizations and decisions. In Indiana R.R. -- Lease and Operation Exemption -- Norfolk & W. Ry., Finance Docket 31464 (July 13, 1990), the ICC reiterated that an arbitrator is bound to follow the ICC's determinations concerning those issues on which it has ruled: " (I)n initial'y permitting arbitrators to decide, we assume that they will act within the limits of their jurisdiction and consistent with applicable precedent."

Neutrals in <u>New York Dock</u> proceedings have consistently and correctly recognized they must follow precedent when considering issues raised in an Article I, Section 4 proceeding. The following are examples of this principle:

<u>Consolidated Rail Corp. and Monongahela Ry. Co. and BLE(E)</u>, Referee LaRocco - "(s)ince the Arbitrator derives his authority from the ICC, the Arbitrator must strictly follow the ICC's pronouncements."

United Transp. Union v. Illinois Cent. R.R., Referee Fredenberger - "In determining this threshold question as well as any other rising under Article I, Section 4 of the Conditions a Neutral Referee is bound and must be guided by the relevant pronouncements of the ICC as to the meaning and scope of the Conditions...."

Norfolk & W. Ry. and Brotherhood of R.R. Signalmen, Referee LaRocco - "This Committee is a quasi-judicial extension of the ICC and thus we are bound to apply the ICC's interpretation of the Interstate Commerce Act and the <u>New York Dock</u> Conditions."

Union Pacific R.R. and American Train Dispatchers' Ass'n., Referee Fredenberger "As the author of the ...Conditions, the Commission's interpretations of those conditions, if directly on point, are binding upon a Referee in an Article I, Section 4 proceeding."

Based on the foregoing, this Board has both the authority and the duty, delegated from the

STB pursuant to Article I, Section 4 of the New York Dock conditions and sections 11341(a) and

11347 of the Interstate Commerce Act, to adopt both of the Carrier's Implementing Agreements.

Those proposals are authorized by and are fully consistent with the STB's decision authorizing the

merger of SP into UP, the New York Dock labor protective conditions imposed by the STB in that

approval decision and the precedential decisions applying those conditions.

History of Labor Protective Conditions in the Railroad Industry

The concept of labor protection for railroad employees began during the Great Depression and, as might be expected, had its genesis as part of a consolidation effort. The Emergency Railroad Transportation Act of 1933 was designed to encourage consolidations of facilities between carriers. However, the Act also provided that there would be a "job freeze" so that any consolidation would not result in more unemployment. The Act was unsuccessful because carriers were unwilling to achieve consolidations at the risk of a job freeze. In addition, the Act was temporary and scheduled to expire in June of 1936.

The June 1936 expiration date is significant. Rail labor was concerned that with the expiration of the Emergency Railroad Transportation Act carriers would actively pursue consolidations without job freeze protection. During 1935 and 1936, labor worked for legislation which would provide even greater protection than the Emergency Railroad Transportation Act had provided. The most prolabor of the many legislative solutions was the Wheeler-Crosser bill, which provided for lifetime protection for employees who were deprived of employment as a result of a consolidation. The realities of the Wheeler-Crosser bill (management was afraid of the lifetime protection feature and labor feared for the constitutionality of the bill) led the parties to negotiate a labor protection agreement. That agreement is the Washington Job Protection Agreement of May 1936.

While the Washington Job Agreement constitutes the genesis of labor protection in the railroad industry, it is important to note that it is an "agreement." In subsequent years, manage... ent and labor entered into numerous agreements where management achieved flexibility, economy and efficiency in exchange for labor protection. However, over the years another form of protection evolved - protective conditions which were mandated (imposed) by the ICC as a condition of its

approval of carrier-requested transactions. That is the form of protection involved in this dispute.

The ICC got into the protection business in a case involving the trustees of the Chicago, Rock Island & Gulf Company and the Chicago, Rock Island & Pacific Roilway Company. In that case, the ICC ruled that in order for the Commission to approve the Companies' request for the lease arrangement they desired, it would impose the following "just and reasonable" employee protective conditions: "that for a period not exceeding five years each retained employee should be compensated for any reduction in salary so long as he is unable, in the exercise of his seniority rights under existing rules and practices to obtain a position with compensation equal to his compensation at the date of the lease"

The ICC's decision was upheld in <u>United States v. Lowden</u> (308 US 225). In that decision, the Court said:

"Nor do we perceive any basis for saying that there is a denial of due process by a regulation otherwise permissible, which extends to the carrier a privilege relieving it of the costs of performance of its carrier duties, on condition that the savings be applied in part to compensate the loss to employees occasioned by the privilege."

Congress followed the ICC's lead and, in the Transportation Act of 1940, mandated employee protection. Specifically, the Act covered mergers and consolidations subject to Commission approval and granted employees who were adversely affected by such a transaction four years of protection.

Over the last fifty-five years, both Congress and the ICC have addressed the terms and conditions of employee protection and the <u>New York Dock</u> labor protective conditions are the result of that evolutionary process. However, there is an even older evolutionary process involving the ICC's role in mergers and consolidations; one that is equally as important as the evolutionary process involving the involving labor protective conditions. That process involves the immunity power.

The History of the Section 11341(a) Immunity Provision.

There can be no doubt as to the importance of the immunity power. This power gives the STB and <u>New York Dock</u> arbitrators acting for the STB the authority to modify collective bargaining agreements as necessary to carry out an STB-approved transaction. Without this authority, one of the key public transportation benefits of this or any merger - the creation of a single, coordinated work force - would be rendered impossible. Given this undeniable importance of the immunity power, this history is likewise of considerable importance.

A good discussion of the role of the immunity clause is found in the ICC's report (Finance Docket No. 30,000) concerning the Union Pacific/Missouri Pacific/Western Pacific merger. The Commission's comments are both informative and instructional and are worth repeating. The relevant comments are as follows:

"The Transportation Act of 1920 first established our jurisdiction over railroad consolidations now found in 49 U.S.C. 11341-11350. The effect of the 1920 Act was to give the Commission exclusive jurisdiction over all phases of consolidations by regulated carriers

The Commission's Immunity Power. The plenary and exclusive nature of Commission jurisdiction over consolidations is confirmed by the immunity provisions which were added by the Transportation Act of 1920. These provisions are now contained in 49 U.S.C. 11341(a) which provides:

'A carrier, corporation, or person participating in (the approved transaction) is exempt from the antitrust laws and from all other law, including State and Municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control of franchises acquired through the transaction.' (emphasis added by the Commission).

The immunity clause is unambiguous on its face: it applies to all laws, both State and Federal, as necessary to allow implementation of an approved consolidation. We are bound to give effect to its terms, and it is unnecessary to engage in the methods of statutory construction advanced by the SP. "The express immunity provisions of the statute are a necessary complement to the Commission's authority to approve or disapprove consolidations, mergers, or acquisitions of control. Without the immunity provisions of section 11341(a), approved transactions would be subject to attack under various Federal and State laws, undercutting our authority to supervise the national transportation network.

"The courts have recognized the broad reach of our immunity power. Suits based on statutes other than the Interstate Commerce Act, challenging Commission-approved transactions, have been regularly dismissed on the basis of the immunity provisions of section 11341(a)" (366 I.C.C. 462, at 556-557)

It is important to note that one of the cases cited by the Commission where challenges based on other statutes were dismissed involved a challenge based on the Railway Labor Act. In that case, *Brotherhood of Locomotive Engineers v. Chicago & N. W. Ry.*, 314 F.2d 424 (8th Cir. 1963), the Court described its charge as follows: "We thus direct our attention now to the basic issue nwhether the statutory authority conferred upon the ICC by the Interstate Commerce Act to approve and facilitate mergers of carriers includes the power to authorize changes in working conditions necessary to effectuate such mergers."

The Court had to deal with the basic issue of what happens when two Federal statutes are in conflict. In that case, the two statutes were the Interstate Commerce Act and the Railway Labor Act. The Court found that the Interstate Commerce Act took precedence. Specifically, the Court said:

"While the three Supreme Court cases just discussed do not deal directly with the specific problem now confronting us (namely, whether the provisions relating to merger and providing for compensation for affected employees take precedence over the provisions of the Railway Labor Act) in the situation here presented we believe that the cases afford very substantial support for the view that Congress intended the ICC to have jurisdiction to prescribe the method for determining the solution of labor problems arising directly out of approved mergers. Thus, like the trial court, we come to the conclusion that

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to hold otherwise would be to disregard the plain language of section 5(11) conferring exclusive and plenary jurisdiction upon the ICC to approve mergers and relieving the carrier from all other restraints of federal law." (p. 431-432)

A copy of Brotherhood of Locomotive Engineers v. Chicago & N. W. Ry. is attached as Carrier's

Exhibit "5".

The ICC continued to hold to its position that it had exclusive jurisdiction over mergers and was authorized by Congress to set the terms and conditions for the transactions involved in mergers. In Sub-No. 25 to Finance Docket No. 30,000 (the UP/MP/WI' merger docket), the ICC's jurisdiction to exempt a transaction from the requirements of the Railway Labor Act was challenged by the BLE.

The Commission rejected the challenge, saying:

"The Commission's jurisdiction over railroad consolidations and trackage rights transactions, within the scope of 49 U.S.C. 11343, is exclusive. Our approval exempts such a transaction from the requirements of all laws as necessary to permit the transaction to be carried out, and includes an exemption from the requirements of the RLA."

A copy of Sub-No. 25 is attached as Carrier's Exhibit No. "6".

The ICC continued to address the section 11341(a) immunity question. In a decision involving the Norfolk & Western and Southern Railway Companies and the Dispatchers Organization, the ICC made the following comments:

"However, Article Section 4 of <u>New York Dock</u> provides for compulsory, binding arbitration of disputes. It has long been the Commission's view that private collective bargaining agreements and RLA provisions must give way to the Commission-mandated procedures of section 4 when parties are unable to agree on changes in working conditions required to implement a transaction authorized by the Commission. Absent such a resolution, the intent of Congress that Commission-authorized transactions be consummated and fully implemented might never be realized. Moreover, 49 U.S.C. 11341(a) exempts from other law a carrier participating in a section 11343 transaction as necessary to carry out the transaction."

A copy of ICC decision 4 I.C.C.2d 1080 is attached as Carrier's Exhibit "7 ".

The Commission continued to develop is position regarding its immunity power. In a CSX

Corporation control case involving the Chessie System and the Seaboard Coast Line, the Commission

reviewed its own history regarding section 11341(a):

"As noted earlier in this decision, the court of appeals remanded to the Commission the question of whether section 11341(a) may operate to override the provisions of the RLA. In our decision . . . we said that we would address and explain our views on this issue. We do so here.

"Despite some labor suggestions to the contrary, we do not believe the Commission is prevented by the *Carmen* decision from finding that section 11341(a) may displace Railway Labor Act procedures (that decision found no exemption for 'contracts' because that term, unlike 'law' does not appear in section 11341(a) to exempt mergers and consolidations from the RLA at least to the extent of our authority under section 11347. Thus we consider our section 11341(a) authority in the context of mergers and consolidations a 'mirror image' of our 11347 power. To the limited extent (as described in this decision or established by arbitrators) that we are able to act under section 11347, we are also able to foreclose resort to RLA procedures.

"We base our assertion of this authority principally on several grounds: (1) the language of the statute, which exempts transactions approved by us under Subchapter III of Chapter 113 of the Interstate Commerce Act 'from the antitrust laws and from all other law:' (2) the legislative history of the 1978 codification of the Interstate Commerce Act which shows that the exemption found in section 11341(a) 'from the antitrust laws and from all other law, including State and municipal law' clearly embraces exemption from all other *Federal law* as the new language was substituted for former section 5(12)'s 'of all of the restraint, limitations, and prohibitions of law. Federal. State, or municipal' to *eliminate redundancy* ...; and (3) several Court of Appeals decisions, including a concurring Supreme Court opinion...indicating that the Commission had the power to displace the RLA in the circumstances present in those cases."

A copy of 6 I.C.C.2d 715 is attached as Carrier's Exhibit "8".

The Supreme Court of the United States finally directly dealt with the immunity issue in two

cases that were decided by the Court in 1991 - Norfolk and Western Railway Company v. American

Train Dispatchers Association and CSX Transportation, Inc v. Brotherhood of Railway Carmen

(Train Dispatchers). The Court, in agreeing with the ICC's long-standing view regarding the section

11341(a) immunity issue, ruled:

"Our determination that section 11341(a) supersedes collective-bargaining obligations via the RLA as necessary to carry out an ICC-approved transaction makes sense of the consolidation provisions of the Act, which were designed to promote "economy and efficiency in interstate transportation by the removal of the burdens of excessive expenditure The Act requires the Commission to approve consolidations in the public interest Recognizing that consolidations in the public interest will 'result in wholesale dismissale and extensive transfers, involving expense to transferred employees' as well as 'the loss of seniority rights', the Act imposes a number of laborprotecting requirements to ensure that the Commission accommodates the interests of affected parties to the greatest extent possible Section 11341(a) guarantees that once these interests are accounted for and once the consolidation is approved, obligations imposed by laws such as the RLA will not prevent the efficiencies of consolidation from being achieved. If section 11341(a) did not apply to bargaining agreements enforceable under the RLA, rail carrier consolidations would be difficult, if not impossible, to achieve. The resolution process for major disputes under the RLA would so delay the proposed transfer of operations that any efficiencies the carriers sought would be defeated . . . (resolution procedures for major disputes 'virtually endless') ... (dispute resolution under RLA involves 'an almost interminable process') ... (PLA procedures are 'purposely long and drawn out'). The immunity provision of section 11341(a) is designed to avoid this result." (499 US 117, at p. 133)

A copy of Train Dispatchers is attached as Carrier's Exhibit "9".

There can be no doubt as to how the STB and the Supreme Court believe the section 11341(a) immunity provision is to be applied. Its application by the ICC, and now by the STB, has resulted in the fundamental structure of the <u>New York Dock</u> labor protective conditions. That fundamental structure is the trade-off between employee protection and a dispute resolution process outside of and quicker than the Railway Labor Act. Without this fundamental structure of the <u>New</u>

York Dock conditions, the public good would in the same shape it was in with the Emergency Railroad Transportation Act of 1933 - even though consolidations are in the public good, no vailroad would pursue them because of the fear of excessive employee protection without some guarantee that the "virtually endless" resolution procedures under the Railway Labor Act would be set aside. The ICC again reiterated the importance of this trade-off in its decision in Finance Docket 32133 (the UP/CNW merger decision) when it said:

> "That framework provides *both* substantive benefits for affected employees... and a procedural mechanism... for resolving disputes regarding implementation of particular transactions made possible by the underlying rail consolidation." (Carrier's Exhibit "1" at p. 95)

Additional guidance which the ICC gave regarding the application of the section 11341(a)

immunity provision is also found elsewhere in the UP/CNW merger decision. The ICC specifically

addressed several aspects of the immunity provision with the following comments:

"THE SECTION 11341(a) IMMUNITY PROVISION. The exemptive power of section 11341 (a) is not limited to the financial and corporate aspects of the approved control transaction but reaches all changes that logically flow from that transaction. The Commission, however, has never required applicants to identify all anticipated changes that might impact on CBAs or RLA rights. Such a requirement could negate many benefits from changes that only become apparent after the consummation. Moreover, there is no legal requirement for identification, since section 11341(a) is 'selfexecuting.' that is, its exemptive power is effective when necessary to permit the carrying out of a project. Put another way, the exemption does not depend on a Commission finding that it is applicable. We will not limit the use of section 11341(a) by declaring that it is available only in circumstance identified prior to approval."

There can be no doubt, based on the above cited decisions, that the section 11341(a) immunity provision gives the Commission (and arbitrators acting for the Commission in Section 4 New York Dock arbitrations), the authority "to override the RLA or CBAs negotiated thereunder"

in order to carry out an approved ICC transaction. The following section is a review of how arbitrators, the ICC, courts and implementing agreement negotiators have responded to this challenge.

The History of the Results of Other New York Dock Proceedings within the Industry

Since October 19, 1983 decision in the UP/MP/WP merger (<u>Carrier's Exhibit "4"</u>), the ICC/STB has consistently ruled it has, and by extension <u>New York Dock</u> arbitrators have, the jurisdictional authority to transfer work and employees from one collective bargaining agreement to another, notwithstanding contrary requirements of the Railway Labor Act or collective bargaining agreements.

The October 19, 1983, decision gave Union Pacific the legal foundation needed for its strategy in the implementing agreement negotiations concerning the merger of the MP and WP into UP. That strategy was, and is, that employees of the involved railroads at each common location would be placed on a single seniority roster and would then work under a single collective bargaining agreement. In addition, this negotiating strategy was based on the position that the <u>New York Dock</u> conditions allowed for an override of the RLA and CBAs. This strategy also applied to all resulting arbitration for the UP/MP/WP merger.

As required by controlling decisions regarding the STB's authority in merger transactions, the referees involved in those arbitrations accepted Union Pacific's position regarding the section 11341(a) immunity provision. Decisions by William E. Fredenberger, Jr., Dr. Jacob Seidenberg and Judge David H. Brown, correctly applying ICC rulings, all commented favorably on Union Pacific's approach. Referee Fredenberger ruled on a case involving the UP and WP merger and the Dispatchers Organization: Referee Seidenberg dealt with a case involving the UP and MP merger and the BLE; and, Referee Brown dealt with a case involving the UP and MP merger and the BLE.

In his case, Referee Fredenberger made the following comments concerning the transfer of

work from the Western Pacific Dispatchers Agreement to Union Pacific dispatchers:

"In another proceeding involving Finance Docket 30,000 decided October 19, 1983, the ICC also determined that the Railway Labor Act and existing collective bargaining agreements must give way to the extent that the transaction authorized by the Commission may be effectuated. Given the Commission's ruling noted above with respect to the specific transfer of work in this case this referee concludes that neither the Railway Labor Act or existing protective and schedule agreements. even when considered in the context of Sections 2 and 3 of the <u>New York Dock</u> conditions, impair the Referee's jurisdiction under Article I, Section 4 of the <u>New York Dock</u> conditions to resolve the impasse concerning transfer of the work in this case."

A copy of Referee Fredenberger's decision is attached as Carrier's Exhibit "10".

Referee Seidenberg, in a case involving the transfer of work from the former Missouri

Pacific BLE agreement to coverage by the Union Pacific BLE agreement, made the following

comments concerning the importance of the ICC's October 19, 1983 decision:

"We find that, despite the weight of arbitral authority that was formerly in effect prior to the ICC October 19, 1983 Clarification Decision, those arbitration awards must now yield to the findings of the Clarification Decision, i.e., that in effecting railroad consolidations the Commission's jurisdiction is plenary and that an arbitrator functioning under Article I, Section 4 of the labor protective conditions, is not limited or restricted by the provisions of any laws, including the Railway Labor Act, and that the arbitration provisions of the <u>New York Dock</u> Conditions are the exclusive procedures for resolving disputes arising under the Consolidation. We find that the interpretation and application of the Commission as to the scope of its prescribed labor conditions in the instant case, has to be given greater weight than an arbitration award also pertaining to the scope of these labor protective conditions." In addition, Referee Seidenberg had this to say about the specific transfer of work involved in

that case:

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"In summary we are aware that any consolidation of rail properties disturbs the status quo and is unsettling to the affected Organization and employees. However, the Interstate Commerce Commission held that the Consolidation here in issue, with the prescribed labor conditions, is consistent with the public interest (366 ICC 619), and it must be accepted disturbing as it may be, even to the extent of doing away with the MP August 10, 1946 Local Agreement. We find that the Carriers have sought to select and assign the forces, in a fair and reasonable manner, and still achieve the efficiencies and benefits which were the prime motivations for seeking the Consolidation. We find that conducting all three common point operations under the UP operating rules and schedule rules are not inconsistent with these objectives, since the UP has common control of the consolidation."

A copy of Referee Seidenberg's BLE decision is attached as Carrier's Exhibit "11".

Referce Brown went into great detail in discussing the jurisdictional issue since the UTU was challenging the referee's authority to move employees from coverage under the MP collective bargaining agreement to coverage under the UP agreement. Even though Referee Brown declined to issue a ruling in this case (he did so for reasons unrelated to the jurisdictional issue), his comments on the jurisdictional issue are worth reciting here:

"The jurisdiction of this arbitral committee is derived from the Interstate Commerce Commission, which derives its authority from Congress as set forth in Revised Interstate Commerce Act, 49 U.S.C.A. Secs. 11341(a) and 11347. This committee is a creature of ICC and is chartered to exercise a measure of t^{+} authority of ICC in order that final and effective resolution may be had in relation to multi-party disputes which will assuredly rise when employees compete for job assignments and union committees contest for troops and territory.

"The authority of this panel is circumscribed not by the Railway Labor Act, but by the mandate of the Interstate Commerce Commission, and, subject to the will of the ICC, we are commissioned to exercise its full authority to achieve a fair and equitable resolution of the dispute before us. The ICC's authority in such cases as that before us is plenary and exclusive "And indeed, without such authority vested in some board or agency it is not reasonable to expect that matters such as those before us could ever be resolved, since it is clearly in the interest of one or more partisans to maintain the status quo in one or more details"

"We therefore conclude and find that this committee has jurisdiction to transfer work from the MP to the UP is such is deemed appropriate in giving effect to the ICC decisions in the several dockets herein involved. We further find that should circumstances reflect that placing the transferred work under the UP collective bargaining agreements would be the most appropriate means for giving effect to such decisions, this committee has jurisdiction to do so."

A copy of Referee Brown's decision is attached as Carrier's Exhibit "12".

Even though these decisions were rendered several years before *Train Dispatchers*, and even though there were many twists and turns in the road as the ICC, the courts, arbitrators, railroads and unions dealt with the section 11341(a) immunity provision issue, what Referees Fredenberger, Seidenberg and Brown said in these four decisions accurately reflects the current state of the law.

Prior to *Train Dispatchers*, other referees struggled in other cases involving ICC-approved transactions with the issue of overriding the RLA and CBAs, and they did so without the guidance provided by the Supreme Court. Yet, those referees were able to make correct decisions even in cases where both work and employees were transferred from one agreement to another or even when one agreement was eliminated.

On September 25, 1985, Referee Robert Ables, in an arbitration involving the Norfolk and Western Railway Company, Interstate Railroad Company, Southern Railway Company and the United Transportation Union, confronted the following issue: "Does this arbitration panel have jurisdiction to consider the content of an implementing agreement where an existing contract would be changed and, if so, what shall be the contents of that implementing agreement?" Actually, the issue was even more dramatic than a "change" in an existing contract; the implementation of the carriers' proposal would lead to the elimination of the Interstate collective bargaining agreement. Referee Ables placed the Interstate trainmen under the N&W agreement with the following comments:

"No responsible court would ultimately refuse to order an implementing agreement under the disputes settling of Section 4. Only the 27 trainmen off the Interstate Railroad who did not ratify the tentative agreement of April 27, 1985, are holding out on working under the N&W contract. All other unions in this case have accepted the same or similar agreement, including organizations representing firemen, engineers, clerks and maintenance of way employees.

"Labor protective conditions are in place.

"There is no legal, public policy, or common sense reason not to decide at this level of proceedings what will eventually be decided, i.e., an implementing agreement to accomplish the purposes of an authorized consolidation."

A copy of Referee Able's Interstate decision is attached as Carrier's Exhibit "13".

On May 19, 1987, Referee Robert O. Harris dealt with a case involving the transfer of union-

represented dispatchers to a location where the work in question was performed by non-represented

employees. Challenges to the arbitration panel's jurisdiction by the Dispatchers' Union, as well as

challenges as to whether such a transfer constituted an appropriate rearrangement of forces, were the

questions before Referee Harris. He dealt with the jurisdictional issue first:

"The panel hearing the instant dispute has exactly the same authority as that noted by Arbitrator Brown, quoted above. Whatever may have been the view prior to the ICC decision in the Maine Central case, it is clear that the ICC believes that its order supersedes the Railway Labor Act protection. While it did not state specifically that the inconsistencies between Sections 2 and 4 of <u>New York Dock</u> conditions are to be resolved in favor of Section 4, that conclusion is inescapable. Furthermore, as a creature of the ICC, this panel is bound to the ICC view."

Next. Referee Harris dealt with the rearrangement of forces issue:

"It is clear that if the employees who are moved to Atlanta are consolidated with the present Atlanta employees, the present collective bargaining agreement between N&W and ATDA may not be carried along: however this does not change the rights of individual employees.... What is lost by the transfer is the incumbency status of the ATDA... The protections afforded by <u>New York Dock</u> are to individual employees, not to their collective bargaining representatives."

A copy of Referee Harris' decision is attached as Carrier's Exhibit "14".

Referees Fredenberger. Seidenberg. Ables and Harris correctly interpreted and applied the ICC's view of the 11341(a) immunity provision and clearly understood that the purpose of an ICCapproved merger was to achieve economies and efficiencies in the operations of the merged carriers that would be in the public interest.

After Train Dispatchers, the ICC also took guidance from the Supreme Court's decision. In

Finance Docket No. 28905 (Sub-No. 23), a case involving CSX and the ATDA, the Commission

said:

"We see nothing in the Supreme Court's decision in *Train Dispatchers* that would alter our earlier findings on this point. In fact, if anything, the Court's decision, which upheld this Commission's views regarding the immunity provisions of section 11341(a), strengthens this reasoning. The Court discussed the ICA's goal of promoting economy and efficiency in interstate transportation. It is also noted Congress's recognition that consolidations in the public interest will result in 'extensive transfers, involving expense to transferred employees."

"In view of this language, we believe that our approval of future transactions that may logically arise out of a consolidation transaction, even though they are not mentioned at the time of the original transaction's approval, is consistent with the ICA's goals, as expressed by the Court Obviously, then, as far back as 1980, we contemplated that the applicants could undertake operational changes to improve efficiency which we had not considered in the decision and that specific approval of these coordinations was not necessary. To the extent these changes adversely affect employees, they are entitled to the full panoply of protective benefits available to rail employees adversely affected by a transaction approved by us." This is the case mentioned earlier and it is attached as Carrier's Exhibit "3".

Federal courts also took guidance from *Train Dispatchers*. The Railway Labor Executives Association (RLEA), in 987 F.2d 806, and the ATDA, in 26 F.3d 1157, both went to court to challenge ICC decisions involving ICC review of arbitration awards. In the RLEA case, the United States Court of Appeals for the District of Columbia Circuit, addressed the issue of what it takes to override CBAs to effectuate an ICC-approved consolidation:

> "What, then, does it mean to say that it is necessary to modify a CBA in order to effectuate a proposed transaction? In this case the Commission reasonably interpreted this standard to mean 'necessary to effectuate the purpose of the transaction.' If the purpose of the lease transaction were merely to abrogate the terms of a CBA, however, then 'necessity' would be no limitation at all upon the Commission's authority to set a CBA aside. We look therefore to the purpose for which the ICC has been given this authority. That purpose is presumably to secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from employees to their employer. Viewed in that light, we do not see how the agency can be said to have shown the 'necessity' for modifying a CBA unless it shows that the modification is necessary in order to secure to the public some transportation benefit flowing from the underlying transaction (here a lease).

"Transportation benefits include the promotion of 'safe, adequate, economical, and efficient transportation,' and the encouragement of 'sound economic conditions... among carriers." (p.815)

A copy of this decision (known as Executives) is attached as Carrier's Exhibit No. "15".

The case involving the ICC and the ATDA also was heard by the Court of Appeals for the

District of Columbia. In that case, the Court made a variety of comments concerning the proper

application of the New York Dock conditions:

"Section 4 does not provide a formula for apportioning the 'selection of forces.' Instead, it frees the hand of the arbitrator to fashion a solution that is 'appropriate for application in the particular case."" (p. 1163)

"The Union next attacks the ICC's finding on the merits, arguing that the four Corbin employees were capable of performing the work in Jacksonville and that there was thus no need to give it to non-union employees. The argument misapprehends the standard of necessity. In *Executives*, we held that to satisfy the 'necessity' predicate for overriding a CBA, the ICC must find that the underlying transaction yields a transportation benefit to the public; 'not merely (a) transfer (of) wealth from employees to their employer.' In other words, the benefit cannot arise from the CBA modification itself; considered independently of the CBA, the transaction must yield enhanced efficiency, greater safety, or some other gain."

"We find reasonable the ICC's view that the section 11341(a) exemption for 'approved...transaction(s)' extends to subsidiary actions that fulfill the purposes of the main control transaction....The <u>New York Dock</u> conditions define 'transactions' as 'any action taken pursuant to authorizations of this Commission on which these provisions have been imposed'...The ICC adopted this definition at the urging of labor unions, who insisted that labor protections must extend not only to workers displaced by the main control transaction but also to those displaced by later, related restructurings The ICC's elastic construction of 'approved transaction' in this case mirrors this settled understanding."

A copy of the ATDA case is attached as Carrier's Exhibit "16".

The ICC had the opportunity to apply the Court of Appeals decisions when it reviewed several arbitration awards which had been appealed to the Commission. All of the cases involved the acquisition by Fox Valley and Western Railroad Company of the Fox River Valley Railroad Corpot.tion and the Green Bay and Western Railroad Company. A common issue in some of these cases involved the issue of the ICC's authority to override collective bargaining agreements. The following are the ICC's comments on this issue:

"It is now well established that these CBA terms (rates of pay, rules, and working conditions) can be modified by us or by an arbitrator as necessary to carry out an approved transaction." (Finance Docket No. 32035 (Sub-No. 2))

"We uphold the arbitrator's rejection of UTU's request for preservation of pre-transaction rates of pay, rules, and working conditions. On pages 7-8 of his decision, the arbitrator determined that this would undermine efficient

operation of the merged entity." (Finance Docket No.32035 (Sub-No. 3))

"The Sub-No. 4 appeal concerns the FRVR signalmen represented by UTU. The parties failed to reach an implementing agreement, and the issues were submitted to arbitration. On August 13, 1993, arbitrator Herbert L. Marx, Jr., rendered a decision establishing an implementing agreement. He rejected UTU's request for preservation of rates of pay, rules and working conditions, and determined that preservation would thwart the transaction by blocking the creation of a 'single, coordinated work force.'

"We will uphold Marx's award in Sub-No. 4 in its entirety. Marx's determinations as to preservation of rates of pay, rules, and working conditions in Sub-No. 4 were appropriate under our Lace Curtain standard of review. Marx found (arbitration decision, p. 8) that FVW "convincingly argues that FV&W will have a single integrated work force covering the entire system and determination of which assignments are GBW or FRVR positions would not be feasible or efficient." Finance Docket 32035 (Sub-No. 4))

A copy of the ICC's decision in the Fox Valley and Western case is attached as <u>Carrier's</u> Exhibit "17".

All of these decisions have combined to establish that the STB and its Article I, Section 4 arbitrators have the authority to modify collective bargaining agreements as necessary to realize merger efficiencies identified by the carrier. One of the ICC's last labor protection decisions reviewed a <u>New York Dock</u> arbitration award which had approved changes of the same kind as those proposed by UP in this case.

That award is a decision by Referee Robert M. O'Brien in a case involving the United Transportation Union and the Brotherhood of Locomotive Engineers and CSX Transportation, Inc. A copy of Referee O'Brien's CSXT/BLE and UTU decision is attached as <u>Carrier's Exhibit "18"</u>.

The Organizations appealed Referee O'Brien's award to the ICC. On November 22, 1995, the ICC issued its decision reviewing the O'Brien award. A copy of that ICC's decision is attached

as Carrier's Exhibit "19".

Because of the thoroughness of both Referee O'Brien's award and of the ICC decision, the

Carrier will discuss the award and the decision at considerable length.

The case was the result of the following notice which CSXT served on both the UTU and the

BLE:

"The January 10, 1994, notice advised the affected BLE and UTU General Committees of Adjustment that CSXT intended to fully transfer, consolidate and merge the train operations and associated work on the former WM, RF&P and a portion of the former C&O in the area between Philadelphia. PA., Richmond, VA., Charlottesville, VA., Lurgan, PA., Connellsville, PA., Huntington, W. VA. and Bergoo, W. VA. This proposed consolidation would include all terminals, mainlines, intersecting branches and subdivisions located in this territory between southern Pennsylvania and southern Virginia. This territory would be known as the Eastern B&O Consolidated District. It would encompass seven (7) existing seniority districts for train service employees and five (5) existing seniority districts for engine service employees."

"The January 10, 1994, notice also advised the BLE and UTU General Committees of Adjustment that the aforementioned operations on the C&O, WM and RF&P would be merged into operations on the former Baltimore and Ohio Railroad and the affected train and engine service employees would be governed by the existing collective bargaining agreements on the former B&O applicable to train and engine service employees. Additionally, CSXT proposed that the working lists of the separate districts protecting service in this territory would be merged, including establishment of common extra boards to protect service out of the respective supply points that would be maintained."

As this Board will discover when it reviews the Carrier's Proposed Arbitration Awards, the approach of the CSXT and the Carrier in this case are highly similar, if not identical. As expected, both the UTU and the BLE challenged the CSXT's approach. It is anticipated the UTU will mount a similar challenge to Union Pacific's approach for the Denver and Salt Lake City Hubs. Referee O'Brien's and the ICC's responses to the Organizations' challenges are most instructive and provide this Board with guidance.

Initially, Referee O'Brien made the following comments concerning his authority and obligation:

"It is a universally accepted principle that Arbitrators appointed pursuant to Article I, Section 4, of the <u>New York Dock Conditions</u> serve as an extension of the ICC. Since these Arbitrators derive their authority from the ICC, they are duty bound to follow decisions and rulings promulgated by the ICC. The ICC has suggested that <u>New York Dock</u> Arbitrators should initially decide all issues submitted to them, including issues that might not otherwise be arbitrable, subject, of course, to ICC review. Consistent with that mission, the undersigned Arbitrator hereinafter addresses the issues advanced by the UTU and BLE."

The first challenge by the Organizations and Referee O'Brien's answer are as follows:

"Has CSXT presented a 'transaction' as defined in Article I, Section 1(a) of the New York Dock Conditions?"

"In this Arbitrator's opinion, the operational changes proposed by the Carrier in its January 10, 1994 notice directly related to and flowed from the aforementioned transactions that were authorized by the ICC. Were it not for the ICC permission in those Finance Dockets, CSXT would have no authority to merge the B&O, C&O, WM and RF&P territories into a single, discrete rail freight operation. To this Arbitrator, there is a direct causal relation between the mergers and coordinations sanctioned by the ICC in the Finance Dockets cited in the Carrier's January 10, 1994, notice and the operational changes it sought to implement on the former B&O, C&O, WM and RF&P properties. Accordingly, that proposal constituted a 'transaction' as defined in Article I, Section 1(a), of the New York Dock Conditions."

The ICC supported Referee O'Brien's finding, saying:

"The Arbitrator's finding on linkage is a factual finding as to causation, and, as such, is entitled to deference under our Lace Curtain standard of review. Such findings are reversed only upon a showing of egregious error.

The arbitrator's finding of linkage was not egregious error. The purpose of the changes is to ensure that CSXT ceases to operate as a collection of separate railroads and fully enjoys the operational economies of being a unified system."

It is the Carrier's position that a review of its Proposed Arbitration Awards will establish there is a direct causal relation between the UP/UP coordination approved by the ICC in Finance Docket No. 32760 and the operational changes the Carrier seeks in order to implement that coordination.

The Organizations continued their challenge to the correct interpretation of Section 11341(a)

and Referee O'Brien correctly applied the law in the next challenge and answer:

"Does Section 11341(a) of the Interstate Commerce Act apply to proceedings exempted from prior review and approval by the ICC?"

"As noted at the outset of this proceeding, Arbitrators acting under the authority of the ICC must adhere to ICC rulings and decisions. In the aforementioned Carmen II decision, the ICC expressly stated that Arbitrators appointed under the <u>New York Dock</u> conditions have the authority to modify collective bargaining agreements when necessary to permit mergers. Thus, this Arbitrator has the authority under both Section 11341(a) and 11347 to modify collective bargaining agreements if this is necessary to carry out the coordination proposed by CSXT in its January 10, 1994, notice."

The ICC, when addressing this challenge, once again stated its long-held position:

"It is well settled that we have the authority to modify collective bargaining agreements when modification is necessary to obtain the benefits of a transaction that we have approved in the public interest."

It is the Carrier's position the Neutral Member of this Board has the authority to replace multiple collective bargaining agreements in the Denver Hub and the Salt Lake City Hub with single, existing collective bargaining agreements as proposed by the Carrier in its Proposed Arbitration Awards because such replacements are necessary to effectuate the efficiencies and economies of the UP/SP consolidation. In the CSXT case, the carrier referenced seven (7) Finance Dockets. The Organizations also

challenged this approach. The specific challenge and Referee O'Brien's answer are as follows:

"Are the provisions of Section 11341(a) inapplicable to combinations of multiple approved or exempted transactions?"

"For all the foregoing reasons, this Arbitrator finds that it was not improper for CSXT to reference a combination of seven (7) Finance Dockets in its January 10, 1994, notices to the UTU and BLE."

The ICC agreed:

"As long as the actions at issue are rooted in transactions subject to New York Dock, it does not matter whether these conditions were imposed in one transaction or several."

The Organizations' next challenge went directly to the heart of an Article I. Section 4 arbitration:

"Is the Section 11341(a) exemption necessary to carry out the Carrier's proposed transaction?"

Obviously, this is the critical question. It is Carrier's belief this Board will find that the collective bargaining replacements provided for in the Carrier's Proposed Arbitration Awards, which are made possible by the Section 11341(a) exemption, are necessary.

The next challenge by the Organizations dealt with the fact that on some of the properties involved in the CSXT's proposal the Organizations and CSXT had previously entered into implementing agreements which were "to remain in full force and effect until revised or modified in accordance with the Railway Labor Act." The Organizations contended such implementing agreements could now only be changed in accordance with the Railway Labor Act and not in accordance with Article I, Section 4 arbitration. Referee O'Brien dismissed this challenge saying: "For all the foregoing reasons, this Arbitrator finds that it was permissible for CSXT to propose a subsequent coordination of property that had been coordinated previously which was subject to an implementing agreement which could only be modified or revised pursuant to the Railway Labor Act."

Once again, the ICC supported Referee O'Brien:

"The parties dispute whether the coordination sought by CSXT would contravene provisions in prior implementing agreements that allegedly require subsequent coordinations be accomplished through bargaining under the RLA.

"We uphold the arbitrator's decision that these provisions impose no such requirement."

Should the Organization in this case make a similar contention to this Board, the contention

should be rejected.

The Organizations last challenge is another "go to the heart of the issue" challenge:

"Is there a public transportation benefit flowing from the Carrier's proposal?"

Referee O'Brien simply and correctly found that the promotion of more economical and

efficient transportation constituted a public transportation benefit. Specifically, he said:

"The Carrier anticipates that its proposed changes will promote more economical and efficient transportation in the territory now served by the B&O, C&O, WM and RF&P which it wished to coordinate. According to the D.C. Court of Appeals, there would thus be some transportation benefit flowing to the public from the underlying transaction proposed by CSXT in its January 10, 1994, notices to the UTU and BLE."

The ICC agreed with keferee O'Brien and, in addition, set forth its views on how the standard

provided by the Court of Appeals in Executives was to be applied:

"In other words, the court's standard is whether the change is (a) necessary to effect a public benefit of the transaction or (b) merely a transfer of wealth from employees to their employer.

"This standard has been met here. The Arbitrator did not commit error

(much less egregious error) in finding that the changes sought by CSXT would improve efficiency, a factual finding entitled to deference under our Lace Curtain standard...."

- "The changes sought by CSXT do not appear to be a device to transfer wealth from employees to the railroad. Indeed, there does not appear to be a significant diminution of the wealth of the employees....In order to use employees more efficiently, CSXT will require some employees to work different territories and to report to different staging areas. Some employees may have to move...."
- "The arbitrator found that the consolidation of the seniority districts would lead to lower costs, hence resulting in transportation benefits. But the unions have asserted that these benefits arise merely from the modifications of the CBA, thereby contravening the court's holding in ATDA."
- "Here, the 'transaction' is not, as labor contends, the modification of the collective bargaining agreements but rather the mergers of four previously separate railroads into a single entity. The merging of seniority districts does not have its genesis in the modifications of the collective bargaining agreements. As long as the C&O, B&O, WM and RF&P remained separate railroads, the employees of each must of necessity have worked independently of each other. Approval of the merger was the action that permitted these four groups of employees to be melded into one. Once the merger had taken place, the consolidation of employees -- and the modifications of the collective bargaining agreements -- became necessary if the efficiencies of the single work force, made possible by the merger, were to be realized."

It is the Carrier's firm belief this Board will find there is a transportation benefit flowing to the public from the underlying transaction proposed by the Carrier in its Proposed Arbitration Awards The Carrier is confident this Board will follow the lead set by the ICC - and now part of the STB's precedent - and reject any arguments put forward by the Organization that the Carrier's collective bargaining agreement consolidation proposals are designed to take wealth from the employees.

In each of the challenges which were raised by the BLE and UTU in the CSXT case and which were discussed above, Referee O'Brien correctly applied the rulings and decisions of the ICC and found for the CSXT and his findings were supported by the ICC. There was an additional challenge raised by the Organizations in that case and it will be discussed later in this submission.

It is the Carrier's position that Referee O'Brien's decision and the ICC review affirming that decision are the latest and most definitive statements regarding Article I, Section 4 arbitration. It is also the Carrier's position that when this Board applies the principles of that decision and that review it can reach no other conclusion than that the Carrier's Proposed Arbitration Awards are appropriate, provides a public transportation benefit and should be imposed as the Arbitrated Implementing Agreements for this dispute.

Based on all the foregoing, it is abundantly clear the ICC/STB, the Federal courts and arbitrators have established "the law" or "the rules" for any <u>New York Dock</u> arbitration. The law/ rules may be summarized as follows:

(1) The section 11341(a) immunity provision and the section 11347 labor protection conditioning authority allows for the override of the RLA and CBAs so long as the ICC provides for the interests of affected employees.

(2) The <u>New York Dock</u> conditions provide for the interests of affected employees a d for a procedural mechanism for resolving disputes. This is the great genius of the <u>New York Dock</u> conditions - employees receive substantial labor protection outside of the RLA process and carriers receive a procedural mechanism to effectuate the economies and efficiencies of an ICC-approved consolidation in a timely manner outside of the RLA and CBA processes.

(3) Arbitrators, courts and negotiators have determined the following actions qualify as necessary to achieve the goals and purposes of an ICC-approved consolidation:

a. Work and employees may be transferred from coverage under one collective bargaining agreement to coverage under another, or even transferred from union to non-union status.

b. This process may " result in wholesale dismissals and extensive transfers, involving expense to transferred employees" as well as "the loss of seniority rights."

c. The "Carrier's choice" is a satisfactory method to determine which rules and which agreement will prevail in any particular transaction within a consolidation.

d. Collective bargaining agreements which would prevent the full, complete achievement of the economies and efficiencies available to both the public and the carrier may be replaced by another existing collective bargaining agreement.

(4) Carriers are not required "to identify all anticipated changes" before the STB. Subsidiary transactions which support the effectuation of economies and efficiencies are also covered by the section 11341(a) immunity provision.

(5) Arbitrators, deriving their jurisdiction from the STB and acting for the STB, are bound to strictly follow the rulings and findings of the STB.

Given all the foregoing, it is Carrier's position these five "laws" or "rules" of <u>New York Dock</u> arbitration govern this proceeding. It is also the Carrier's position these five "laws" or "rules", when applied to the facts of this case, support a finding that the Carrier's Proposed Arbitration Awards are both appropriate and necessary if the STB-approved consolidation of the SP into the UP is to achieve the economies and efficiencies at the Denver and Salt Lake City Hubs which were envisioned by the STB when it found this consolidation to be in the public interest.

POTENTIAL PROCEDURAL ISSUES

Historically, in cases of this type, there was always a procedural question raised by labor

concerning the referee's jurisdiction. For example, Referee Seidenberg (Carrier's Exhibit "11 ")and

Referee Brown (Carrier's Exhibit " 12") both found it necessary to address this procedural issue:

"Does Arbitrator have jurisdiction under Section 4, Article I of the ICC imposed <u>New York Dock</u> Conditions to permit Carriers to transfer work from Missouri Pacific RR to Union Pacific and transferred work performed under
the operating rules and collective bargaining agreement between the Union Pacific RR and the BLE?" (Referee Seidenberg)

"Does this committee, in applying the <u>New York Dock</u> Conditions to the UP/MP merger, have jurisdiction to transfer work from the MP to the UP and place the transferred work under the operating rules and collective bargaining agreements of the UP?" (Referee Brown)

In both of these decisions, the Referee correctly found he had the necessary jurisdiction/authority. After *Train Dispatchers*, there can be no realistic nor responsible argument to the contrary. The Supreme Court and the ICC/STB have ruled <u>New York Dock</u> arbitrators, as delegees of the ICC/STB, have the authority to modify or set aside the RLA and CBAs in order to effectuate the transactions identified by the Carrier that are needed to achieve the economies and efficiencies inherent in the underlying rail consolidation. Should the Organization take a position challenging this panel's jurisdiction to implement the Carrier's Proposed Arbitration Award, such a challenge should and must be rejected.

In addition to this basic challenge to a <u>New York Dock</u> arbitrator's authority, labor has often raised one other challenge to the arbitrator's authority - a challenge based on Article I, Section 2 of the <u>New York Dock</u> conditions, which in turn flows from the requirements of Section 11347 of the Interstate Commerce Act. This is the remaining challenge to CSXT's proposal that Referee O'Brien had to address.

The question which the BLE and UTU put before Referee O'Brien is as follows:

"Does the Arbitrator lack authority to grant CSXT's request for modification or relief from existing collective bargaining agreements because Article I. Section 2, of the <u>New York Dock</u> conditions mandates the preservation of rates of pay, rules, working conditions and rights, privileges and benefits under existing agreements?" The relationship between Section 2 and Section 4 has long been a procedural issue for New

York Dock arbitrators. Referee Robert O. Harris, in Carrier's Exhibit "14", gave the following

review of that relationship:

"The central issue in this case is the reconciliation of the conflict between Sections 2 and 4 of Appendix I to New York Dock. As noted earlier, Section 2 deals with the right of the employees to continue to enjoy the protection of the Railway Labor Act and any agreements which may have been bargained by the collective bargaining representatives of the affected employees. Section 4, on the other hand, indicates the method by which a carrier may give notice of a change in its operations and the method of resolving disputes which may arise thereafter. This proceeding results from the application of Section 4, and its authority derives from that section.

"Prior to 1981, the question of whether a carrier could, through a consolidation of forces, effect changes in rates of pay, rules, or working conditions had never been raised before an arbitrator in a Section 4 proceeding. Between 1981 and 1983 at least five arbitrators ruled that the ICC did not desire that changes of rates of pay, rules, or working conditions, or of representation under the Railway Labor Act occur through arbitration under Section 4 of the New York Dock conditions...." (Referee Harris then cited those five arbitration awards. Should the Organization cited any of those awards, they should be disregarded by this panel. For reasons set forth below, those awards must now be considered as invalid and an improper application of the rulings and decisions of the ICC.)

"Prior to, at the time of, and subsequent to this ICC decision, various arbitrators ruled that Section 4 effectively superseded the Section 2 protection contained in New York Dock and that new conditions could be imposed pursuant to such a Section 4 arbitration award. It should be noted that in at least two cases arbitrators who had made earlier decisions regarding the interrelationship between sections 3 and 4 have changed their position"

"... it is clear that the ICC believes that its order supersedes the Railway Labor Act protection. While it did not state specifically that the inconsistencies between Sections 2 and 4 of New York Dock conditions are to be resolved in favor of Section 4, that conclusion is inescapable. Furthermore, as a creature of the ICC, this panel is bound to the ICC view. If that view is incorrect, it is to the courts, not this panel, that the Organization must turn for relief from this newly evolved reconciliation of the conflict between the two sections." The dispute concerning the relationship between Section 2 and Section 4 continued. In *Executives* (Carrier's Exhibit "15"), the Court of Appeals remanded a case to the ICC to define "rights, privileges and benefits." While the remanded case was before the ICC, Referee O'Brien had to deal with the Organizations' Section 2/Section 11347 challenge. He made the following ruling:

"Although the ICC has suggested that <u>New York Dock</u> arbitrators addr. ss all issues submitted to them, subject to its review, clearly it would be inappropriate for the Arbitrator to determine what was intended by he statutory language 'rights, privileges and benefits' in Section 405 of the R iil Passenger Service Act. In *Executives*, the Court of Appeals for the D. C. Circuit specifically remanded this determination to the ICC. Therefore, it would be totally inappropriate for this Arbitrator to offer an opinion on the scope of this statutory language and I expressly decline to do so."

CSXT appealed this one part of Referee O'Brien's decision to the ICC. In the same

decision when it affirmed Referee O'Brien's decisions that were challenged by the Organizations, the

ICC both ruled an arbitrator had jurisdiction to address the Section 2(Section 11347) versus Section

4 issue and gave Section 4 arbitrators the following guidance concerning the proper outcome for that

dispute.

"We must also determine whether the CBA provisions to be changed--(1) 'scope' provisions governing 'ownership' of work and (2) seniority provisions--are 'rights, privileges, and benefits' that must be preserved. The D.C. District Court remanded RLEA to permit the Commission to define the meaning and scope of the phrase "rights, privileges, and benefits' in section 405 of the Amtrack Act as incorporated into 49 U.S.C. 11347."

"We believe this is compelling evidence that the term 'rights, privileges, and benefits' means the 'so-called incidents of employment, or fringe benefits, ...and does not include scope or seniority provisions."

"...almost all consolidations require scope and seniority changes in order to effectuate the purpose of the transaction. Railway Labor Act bargaining over these aspects of a consolidation would frustrate the transaction. The ATDA court looked past conduct in consolidations when it rules that scope rules were not among those provisions protected as 'rights, privileges, and benefits.""

"...Thus, both scope rules and seniority provisions have historically been changed without RLA bargaining and, accordingly, are not eligible as 'rights, privileges, and benefits."

"...Finally, we find that the changes may be made even if they are inconsistent with existing collective bargaining agreements and that our authority to require these changes is consistent with the requirement of section 2 of New York Dock that 'rights, privileges, and benefits' of existing collective bargaining agreements be preserved."

This is a powerful statement and puts the Section 2 versus Section 4 argument to rest. The

Carrier is confident the Board will follow this ICC/STB precedent.

Moreover, in Finance Docket No. 32035 (Sub-Nos. 2-6) (Carrier's Exhibit "17"), the ICC

addressed the Article J, Section 2 issue with the following comments:

"As a starting point, arbitrators should recognize that Article I, Section 2 of <u>New York Dock</u>, 360 I.C.C. at 84, permits, and may even require, the preservation of rates of pay, rules, and working conditions. Indeed, the literal language of that section calls for preservation of collective bargaining agreements (CBAs), although both the Commission and the courts have recognized that CBA terms may be modified <u>as necessary</u> to carry out and obtain the full benefits of a transaction that we have approved in the public interest."

As mentioned above in the review of this ICC decision, the Commission continues to rely on the Section 11341(a) immunity (as well as its authority under section 11347) to modify or set aside collective bargaining agreements as necessary to achieve the public transportation benefit of an approved transaction. Thus, regardless of whether the Organization frames its opposition to the Carrier's Proposed Arbitration Award as a Railway Labor Act, collective bargaining agreement or Article I, Section 2 issue, such opposition is without merit. As the ICC also said in Finance Docket 32035 (Sub-Nos, 2-6)): "It is now well established that these CBA terms can be modified by us or by an arbitrator as necessary to carry out an approved transaction." (Sub-No. 2)

There are two more related procedural issues which may be raised by the Organization and both are totally without merit. The first issue would involve a contention the Carrier is restricted to including in its proposed arbitration award only to those items which were included in its application to the ICC/STB. As mentioned above, the ICC, in its discussion of the section 11341(a) immunity provision, makes clear that " (T)he Commission, however, has never required applicants to identify all anticipated changes that might impact on CBAs or RLA rights. Such a requirement could negate many benefits from changes that only become apparent after consummation." Under the STB's merger approval, the Carrier has the discretion to identify what transactions make sense on the merged carrier.

The second issue may involve a contention the arbitrator should consider and, in fact, be governed by the proposals presented by the parties during negotiations. Such a position is totally contrary to public policy. Were negotiators to be held accountable for their efforts to make agreements, such actions would have a chilling effect on the give and take which characterizes negotiations. The parties would resist offering serious proposals and they certainly wouldn't make those efforts in the future. Proposals where there is no final agreement between the parties are just that - proposals. Any contention by the Organization that the Referee should impose one of the Carrier's negotiating proposals as the Arbitration Award is totally without merit and must be rejected. As Referee Herbert Marx said in a case involving the Chesapeake and Ohio Railway, the Seaboard System and the Carmen:

> "A final note: Again during negotiations, certain additional side agreements were offered by the Carriers to cover, on a reassurance basis, certain specific

issues. Since these did not lead to a negotiated settlement, the Carriers are correct in stating they should not be held to such additional provisions"

A copy of Referee Marx' decision in that case is attached as "Carrier's Exhibit "20".

MERITS ISSUE

Now that these three traditional procedural arguments have been set aside, it is necessary to

look at the one issue in this case. That issue may be stated as follows:

"Do the Carrier's Proposed Arbitration Awards constitute a fair and equitable basis for the selection and assignment of forces under a <u>New York Dock</u> proceeding so that the economies and efficiencies - the public transportation benefit - which the STB envisioned when it approved the underlying rail consolidation of the SP into the Union Pacific will be achieved?"

It is the Carrier's position there is only one possible answer to this question and that answer is "YES." The Carrier believes a review of its Proposed Arbitration Awards will clearly demonstrate the Awards best achieve the public transportation benefits the STB had in mind when it approved the UP/SP merger. However, before that review, there is one corollary issue which must be addressed. That issue has to do with the standard to be used to determine whether the Carrier's Proposed Implementing Agreements are appropriate.

There can be no doubt the standard for the appropriateness of the Carrier's proposed implementing agreements is whether the consolidations proposed by the Carrier will yield a public transportation benefit. It is the Carrier's position it will establish that its proposed awards certainly meet and exceed the standard of proof established by the STB and applied by <u>New York Dock</u> arbitrators.

Referee Ables, in a case involving CSX and the ATDA, dealt with how far a carrier could go to achieve the approved economies and efficiencies. Specifically, he said: "The Commission could not reasonably anticipate all the changes - either in kind or degree - that would logically flow from its authorization to merge carriers. Absent the parties themselves agreeing how to accommodate the changes, <u>neutrals are hard-put to consider substituting their judgment for that of carriers</u> why the change either will not effect the economies and efficiencies projected or that some artificial bar, like the limits of <u>New York Dock</u> conditions or the public interest connection between authorized mergers and changes, prevent the proposed operational changes." (emphasis added)

A copy of Referee Ables' decision in this CSX/ATDA case is attached as Carrier's Exhibit "4".

Likewise, Referee O'Brien (Carrier's Exhibit "18") accepted the carrier's judgment as to what

would meet the standard of proof:

"The Carrier anticipates that its proposed changes will promote more economical and efficient transportation in the territory now served by the B&O, C&O, WM and RF&P which it wished to coordinate. According to the D.C. Court of Appeals, there would thus be some transportation benefit flowing to the public from the underlying transaction proposed by the CSXT in its January 10,1994, notices to the UTU and BLE."

Again, it is instructive to turn to the ICC's decision in Finance Docket No. 32035 (Sub-Nos.

2-6), Carrier's Exhibit "19". In that decision, the Commission dealt directly with the standard

required of carriers:

"Arbitrators should also be aware that in Springfield Terminal the court admonished us to identify which changes in pre-transaction labor agreements are necessary to secure the public benefits of the transaction and which are not. We have generally delegated to arbitrators the task of determining the particular changes that are and are not necessary to carry out the purposes of the transaction, subject only to review under our Lace Curtain standards. Arbitrators should discuss the necessity of modifications to pre-transaction labor arrangements, taking care to reconcile the operational needs of the transaction with the need to preserve pre-transaction arrangements. Arbitrators should not require the carrier to bear a heavy burden (for example, through detailed operational studies) in justifying operational and related work assignment and employment level changes that are clearly necessary to make the merged entity operate efficiently as a unified system rather than as two separate entities, if these changes are identified with reasonably particularity. But arbitrators should not assume that all pre-transaction labor arrangements, no matter how remotely they are connected with operational efficiency or other public benefits of the transaction, must be modified to carry out the purpose of the transaction."

It is the Carrier's position its proposed implementing agreements are completely consistent with the STB's ruling. The Carrier's proposals address only those operational and related work assignment changes which are "clearly necessary to make the merged entity operate efficiently as a unified system." The Carrier's proposals seek to create a unified operation that will meet both the needs of our customers and the challenges raised by our rail, barge and truck competitors. In other words, the proposals seek to provide the public transportation benefit envisioned by the STB when it approved this merger.

CONCLUSION

Quite simply, what Union Pacific is seeking from this Board is nothing new, is nothing that hasn't already been approved by arbitrators and the ICC/STB in other cases and is nothing less than what is necessary to achieve the public transportation benefits which the STB envisioned when it approved the merger.

Specifically, it the Carrier's position that the following points clearly support a determination by this Board that the Carrier's Proposed Arbitration Awards should and must be the <u>New York Dock</u> Implementing Agreements between the UP/SP and the UTU for the Denver and Salt Lake City Hubs

1. The Section 11341(a) immunity provision, as well as section 11347, gives arbitrators the authority to override the Railway Labor Act and Collective Bargaining Agreements as necessary to achieve the purpose of the underlying rail consolidation.

2. This is the clear position of the STB that arbitrators who derive their authority from the STB are obligated to follow the rulings and decisions of the STB.

3. Any procedural objections of the Organization regarding the Section 4 arbitration are totally without merit. The STB has empowered Article I, Section 4 arbitrators to

address all issues submitted to them. Section 4 arbitration is to be decided on the merits, not procedure. This includes Section 2 versus Section 4 arguments which have now been decided in favor of Section 4.

4. The test is whether the proposed changes will achieve a public transportation benefit. A proposal which brings about more economical and efficient transportation satisfies this test.

5. The Carrier's Proposed Arbitration Awards - supported by arbitration awards, court decisions, and, most importantly, by the decisions of the ICC/STB - chearly and without a doubt meets the test. The Carrier's Proposed Arbitration Awards will bring about more economical and efficient transportation in the territory covered by the proposal.

The Carrier request this Board to imposed its Proposed Arbitration Awards as the Implementing Agreement governing the UP/SP and the UTU for the Denver and Salt Lake City Hubs.

WSH mehler

W. S. Hinckley General Director - Labor Relations Union Pacific Railroad Company

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In the Matter of Arbitration between

Union Pacific Railroad Company

-and-

The United Transportation Union

CARRIER'S SUBMISSION

regarding the February 23, 1996 Commitment Letter and Merger Negotiations

INTRODUCTION

On August 12, 1996, the U.S. Department of Transportation, Surface Transportation Board ("STB") issued its written decision in Finance Docket No. 32760 granting approval, with conditions, of the November 30, 1995 merger application of the Union Pacific Corporation and its subsidiaries ("UP") seeking the acquisition of the Southern Pacific Rail Corporation and its subsidiaries ("SP"). A copy of that decision is marked as **Carrier's Exhibit "1"**.

The written decision emphasizes the public interest standard to be applied in merger transactions and addresses the significant transportation benefits associated with the merger as well as its competitive, labor, and environmental impacts. The decision also addresses the problem posed by the service decline and capital inadequacy of the SP and describes the capital investment to be made in the SP which will enable the UP/SP to compete effectively with the recently merged (1995) BNSF. The decision describes the direct cost savings that will be realized by the merged railroad and its shippers through attainment of shorter, more economic and efficient routings and an operating plan which

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provides for flexibility through the consolidation of facilities, equipment, management and manpower. The Board also noted that this is the first major merger since the passage of the Staggers Rail Act of 1980 that has received widespread union support. The UTU pledged its support of the UP/SP merger publicly through the statements made by Mr. Clint Miller, General Counsel to the UTU, before the STB. Mr. Miller's endorsement of the merger on behalf of the UTU was based on two chief components: 1) the UTU's concern about the continued viability of SP without this merger in view of the poor financial condition of the SP as well as threat posed by the BNSF competitive environment, and 2) the commitment letters exchanged between the UP and the UTU. A copy of Mr. Miller's Statement before the STB is found at **Carrier's Exhibit "30"**.

Prior to the STB's decision concerning the UP/SP merger application, the UP and the UTU engaged in discussions concerning issues related to the proposed merger. UP's Vice President of Labor Relations, John Marchant, documented the commitments resulting from these discussions in a letter dated February 26, 1996. Two supplemental letters clarifying the UP's position concerning the application of New York Dock benefits were sent on February 26, 1996 and March 26, 1996. All three letters are found at Carrier's Exhibit "29".

The Carrier served notices on the UTU to negotiate the Denver Hub and Salt Lake City Hub merger implementation on September 18, 1996. Copies of the Notices and Amendments to the Notices served on the UTU are attached as **Carrier's Exhibit "24"**. The negotiations held pursuant to those notices continued well beyond the Salt 14 minimum of 30 days. The following chronology reflects the negotiating schedule with the

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UTU concerning the Denver and Salt Lake Hubs:

09/17-18/96 Meeting in Kansas City with UTU General Chairmen and Vice Presidents assigned to merger negotiations; scheduled future negotiation meetings.

09/18/96 Denver Hub and Salt Lake Hub notices hand-delivered and mailed.

11/14-15/96 Meeting in SLC scheduled from 1:00 p.m. the 14th thru 5:00 p.m. the 15th; general discussion of Denver SLC notices, concepts. NOTE: UTU circulates copy of BLE Denver Hub proposal to all present.

12/2/96 Carrier distributed written proposals for Denver Hub and Salt Lake City Hub.

12/2-6/96 Meeting in Salt Lake City scheduled to begin with Denver Hub 1:00 p.m. thru noon on 4th, SLC Hub 1:00 p.m. 4th thru noon on 6th. NOTE: amended notices hard delivered and mailed during this week.

12/16-20/96 Held open for UTU negotiations, UTU Vice President Lankford advised week needed for UTU to prepare written proposals.

01/08-10/97 Meeting in Scottsdale began with Denver Hub 1:00 p.m. thru noon 9th, SLC 1:00 p.m. 9th thru noon 10th.

01/09/97 10:30 a.m. UTU delivered a written SLC proposal.

01/22-24/97 Meeting in Scottsdale began with Denver Hub 1:00 p.m. thru noon 23rd, SLC Hub 1:00 p.m. thru noon 24th.

1/22/97 10:00 p.m. UTU calivered a written SLC proposal to Carrier .

No implementing agreements were reached.

The UTU in a February 3, 1997, letter to the Carrier (Exhibit "31") indicated they had complied with the conditions stated in the commitment letter, but that the Carrier had not lived up to the commitments expressed in the letter. The UTU's letter went on to invoke expedited arbitration in accordance with the "final commitment" of the February 26, 1996 commitment letter. However, the February 26, 1996, commitment letter referred to arbitration only *after* the UTU "believes Union Pacific's application of the <u>New York Dock</u>

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conditions is inconsistent with our commitments,..." The Board is now faced with the

following question:

"What, if anything, is arbitral with regard to the February 23, 1996, commitment letter?"

CARRIER'S POSITION

- 1. The UTU's Request for NYD Arbitration pursuant to the February 23, 1996 Commitment Letter is Unfounded and Improper. There can be no Section 11 Arbitration Prior to Merger Implementation.
- 2. The UTU's Attempt to Arbitrate Proposals Submitted During Negotiations is Improper and Contrary to Law and Arbitral Authority. Without Waiving this Position, the UTU Failed to Negotiate Agreements to Implement a Merger of the Denver and Salt Lake City Hubs Consistent with the Carrier's Operating Plan.

COMMITMENT LETTERS

The UTU wishes to place the cart before the horse by arbitrating the "application" of the enhanced NYD protection provided in the February 26, 1996, commitment letter. This is not an appropriate issue for discussion before this Board. There has been no merger implementation either through voluntary agreement or mandatory arbitration. Thus, since their are no individual NYD claimants, there can be no arbitration concerning the propriety of the Carrier's application of NYD benefits. Moreover, the commitments made by UP were based on the condition precedent that the UTU would reach a voluntary agreement to implement the <u>Carrier's</u> Operating Plan. Although the Carrier has reached agreement with other crafts based on the same commitments, the UTU was not willing to follow through with its commitment to reach a voluntary agreement based on the Operating Plan.

The February 26, 1996, commitment letter pertained to the application of New York

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Dock labor protection. The opening paragraphs referred to UP's stipulation to the imposition of NYD conditions in its SP Merger Application and to the number of UTU represented positions identified in the Labor Impact Study filed by the UP with the Merger Application as follows:

"UP will grant automatic certification as adversely affected by the merger to the 1409 train service employees, the 85 UTU-represented yardmasters and the 17 UTU represented hostlers projected to be adversely affected in the Labor Impact Study and to all other train service employees and UTU represented yardmasters and hostlers identified in any Merger Notice served after Board approval. UP will also grant automatic certification to any engineers adversely affected by the merger who are working on properties where engineers are represented by the UTU. UP will supply UTU with the names and TPA's of such employees as soon as possible upon implementation of the above merger."

UP identified 93 engineers and 119 trainmen in the Denver Hub locations and 77

engineers and 107 trainmen in the Salt Lake Hub locations as possibly affected by the

merger in its submission to the STB. The Merger Notices for these locations identified an

additional 35 engineers and 26 trainmen in the Denver Hub and 44 engineers and 51

trainmen in the Salt Lake Hub that could be affected upon completion of a negotiated

agreement based on the Carrier's operating plan. These NYD Notices are at Carrier's

Exhibit "24".

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The commitment also included the following:

"UP also commits that, in any Merger Notice served after Board approval, it will only seek those changes in existing collective bargaining agreements that are necessary to implement the approved transaction, meaning such changes that produce a public transportation benefit not based solely on savings achieved by agreement change(s)."

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The letter also specified the foregoing commitments were conditioned on the following:

"...on the basis of the UTU's agreement, after merger approval, to voluntarily reach agreement for the implementation of the Operating Plan accompanying the Merger Application."

The UTU International voiced its support of the merger us exchange for these commitments. However, the UTU negotiators were not willing to voluntarily reach an agreement for implementation of the Carrier's Operating Plan. The UTU clearly rejected the changes required for the Operating Plan which included integrating train crew operating districts and terminals through a "hub and spoke" strategy to take advantage of efficiencies created by new and alternative routings. The Operating Plan specifies "one common collective bargaining agreement with common seniority" for operating employees within each hub as well as for all road operations into and out of the hub. These principles are summarized in the Operating Plan found at Appendix A, pages 254-259, of Volume 3 of the Merger Application, Carrier's Exhibit "36". The STB agreed these basic concepts would create the public transportation benefit essential to the merger by yielding enhanced efficiency through new and improved rail service.

After several bargaining sessions, the UTU negotiators submitted two partial proposals for the Salt Lake City Hub and none for the Denver Hub. It was apparent that the parties had reached an impasse, especially in view of the UTU's February 3, 1997 letter requesting arbitration. The Carrier had no choice but to serve an arbitration notice concerning the merger implementation of the Denver and Salt Lake City Hubs in accordance with Article I, Section 4 of New York Dock. The February 4, 1997, arbitration notice is indexed as Carrier's Exhibit "32".

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MERGER NEGOTIATIONS

The UTU's February 3, 1997 request for arbitratrion is improper in two respects. First, it is an attempt to arbitrate the application of Section 11 New York Dock benefits prior to merger implementation as stated above. Second, it is an attempt to arbitrate collective bargaining by placing the proposals/counter proposals submitted by the two parties during negotiations into the arbitration arena. This raises several serious issues which the Carrier must address under protest prior to turning to the arbitration in accordance with Article I, Section 4 of New York Dock.

At the outset of the negotiations, beginning with a meeting held on September 17 and 18, 1996, with the UTU General Chairmen and International Vice Presidents in involved in these negotiations, the Carrier and the UTU discussed the issue of placing proposals before each other. Both parties agreed that to have open and full discussion of all issues, they needed the freedom to place proposals on the table with the assurance they would not be cited outside the negotiating arena. This was again confirmed at the conclusion of the last bargaining session on January 24, 1997. Yet several days later, in its letters dated February 3, 1997 and February 7, 1997, (Carrier's Exhibit "31") the UTU asserted the proposals made during negotiations were the proper subject of arbitration. As a matter of public policy in both arbitration and courts of law, offers of compromise and settlement are not admissible. Negotiating proposals and counter proposals fall into this category, In <u>How Arbitration Works</u>, fourth edition, Elkouri and Elkouri states or, page 333; "Offers of compromise and admissions made in attempting settlement of rights and disputes prior to submission to arbitration may be received but probably will be given very little, if any, weight by arbitrators. It is recognized that a party to a dispute may make an offer with the hope that a compromise can be reached and the dispute ended. Even the mere introduction of such evidence may impair future attempts at dispute settlements. Thus, it has been strongly urged that offers of compromise should not even be admitted into evidence."

The UTU Representatives involved in the negotiations presented written proposals for the Salt Lake Hub implementation to the Carrier on January 9, 1997 and on January 22, 1997. On both occasions, UTU Vice President A.M. Lankford reiterated that the UTU submitted these proposals for the Carrier's consideration only for the purpose of negotiation. In fact, Vice President Lankford included a cover letter with the UTU's January 22, 1997, Salt Lake Hub proposal which stated, *"It is not intended by the Organization that the contents be used as a basis for any consideration outside the forum intended."* The "forum intended" as discussed and agreed between the parties was within the realm of merger negotiations, not arbitration. Contrary to this representation, the UTU takes the position that the Carrier's proposals exchanged during negotiations are now somehow in violation of the Commitment Letter and are the proper subject of arbitration as stated in their February 3, 1997, letter to the Carrier (Carrier's Exhibit "31").

Union Pacific Vice President J.J. Marchant responded to this issue in a letter to the UTU dated February 4, 1997, (Exhibit "31") as follows:

"Your second paragraph alludes to overreaching proposals by the Carrier and sound operational proposals by the UTU. Without going into detail, I believe that the negotiators failed to share with you the

UTU proposals that were administratively burdensome and would have greatly increased transportation costs. The reason that I will not go into detail is that the parties agreed up-front and at their last meetings that neither party's proposals would be used outside the realm of negotiations. This was done in an effort to encourage a free flow of ideas without fear that a proposal would later be used against the party making it. "

"Because the parties have agreed that any proposal offered by either side during negotiations will not be placed before an arbitrator, it is improper for the UTU to seek to arbitrate the validity of the Carrier's proposal. The only proposals that may property be before an arbitrator are the parties' proposed arbitration agreements."

The UTU responded to the Carrier in a letter dated February 7, 1997, (Exhibit

"31"), reiterating its position that the parties' proposals may be used in arbitration and that

Section 11 arbitration over the application of the commitment letter should take place

before Section 4 implementing agreement arbitration.

The Carrier submits that the UTU's position is improper and contrary to authority.

Without waiving this position, the Carrier must address the issues the UTU has raised, but

does so under protest with confidence the Arbitrator will recognize the UTU's position is

improper.

Content of UTU Proposals:

The proposals must be viewed in two contexts, the STB decision and the Commitment Letter. The STB approval of the merger was accompanied by several important mandates, including the following quotes from the decision (Exhibit "1"):

"We find that the statutory protections provided in New York Dock are appropriate to protect employees affected by the merger, the lines sales and the terminal railroad control transactions...Nc unusual circumstances have been shown in this case to justify additional protection." (page 172)

"An arbitrator acting under Article I Section 4 of the New York Dock conditions imposed in the lead docket...will have the authority to override CBAs and RLA rights, as necessary to effect, respectfully, the merger in the lead docket..." (page 173)

"Certain requests denied. We will not impose several additional laborrelated conditions that have been requested by parties to this proceeding." (page 174)

"Cherry-Picking. We will deny ARU's request that we order any CBA 'rationalization' be accomplished by allowing UP. SP's unions to 'cherry pick' from existing UP or SP agreements." (page 174)

"Reimbursements. We will deny ARU's request that we require UP/SP to repay SP employees their forgone lump sum payments and their deferred wage increases. SP has already 'paid' its employees for their wage concessions by giving up productivity concessions achieved by the nation's other railroads." (page 174)

"UP/SP customers will benefit from tremendous service improvements brought about by reductions in route mileage, extended single-line service, enhanced equipment supply, better service reliability, and new operating efficiencies." (page 108)

The following is a brief review of the quid pro quo exchanged by the parties in the

commitment letter:

Commitments made by the Carrier to the UTU:

- Limit the Organization's exposure to changes necessary to complete the merger by implementing changes which are not solely for the financial benefit of the Carrier.
- Give protection certification for a number of employees as specified in the commitment letter.
- Give the affected General Committees an opportunity to develop a seniority system for the merged areas.

Commitments by the UTU to the Carrier:

- UTU support for the merger and operating plan.
- UTU recognition that some changes are necessary to implement the merger.
- A seniority system that is not illegal, administratively burdensome or costly.

These commitments were based on the condition the parties enter into a voluntary implementing agreement based on the Operating Plan.

The UTU's proposals, as shown hereinafter, clearly deviate from the STB decision and the commitment letter.

A written proposal was presented by the UTU lead negotiator in a meeting with Carrier on January 9, 1997, with the disclaimer that the document should not be considered a proposal. This document was used for discussion purposes. The proposal is found at **Carrier's Exhibit "33"**. The Carrier's negotiator, General Director W.S. Hinckley asked many questions for purposes of reaching an understanding of the UTU "proposal" due to the fact that the document was nothing more than an outline in many sections and lacked sufficient detail in others to afford due consideration of the issues the UTU was attempting to place on the negotiating table.

The Carrier found the items submitted for negotiation were diametrically opposed both to the STB decision and the commitment letter by "cherry-picking" rules from several agreements. Items requested by the UTU included the following:

- Preservation of all existing collective bargaining agreements between the parties;
- Common seniority for employees currently within the Hub and preservation of prior rights to assignments with the assignment governing which CBA applies for work rule and pay purposes;
- Creation of a System Board (non-furlough board) for all employees within the Hub as well as maintenance of Reserve Boards;
- Protection under Article XIII of the 1972 UTU National Agreement for being required to work interdivisional service within the Hub at locations where the employee did not hold seniority prior to the merger.

Obviously, such provisions frustrate the public benefit intent of the transaction

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through increased cost and administrative chaos that would inhibit efficient rail service and

prevent implementation of the Operating Plan. These items were also included in the UTU's final proposal submitted to the Carrier on January 22, 1997, attached as Carrier's Exhibit "34".

The Carrier urges this Board to closely review the UTU's January 22 proposal since it reflects the UTU negotiators' attempt to reconstruct the STB's approval of the Carrier's Operating Plan by proposing, as stated in the cover letter accompanying the proposal, "benefits for the Carrier not anticipated by Surface Transportation Board or New York Dock conditions."

The "benefits" included in this proposal were certainly not in the Carrier's interest nor in the public interest as mandated by the STB. Although the UTU named two collective bargaining agreements to govern operations within the Hub (UPED, Idaho), the proposal continued to cherry-pick from numerous collective bargaining agreements (SP West) including agreements outside the Salt Lake City Hub territory (Texas). In addition to the costly and complicated System Board, the UTU proposed the following for inclusion in an implementing agreement:

- 50% minimum on all extra boards;
- Highest 12 months wages to be considered in computing each employee's TPA;
- Minimum of ten familiarization trips for each employee regardless of ability.

The UTU also proposed deviating from the pool and extra board consolidations found in the Carrier's Operating Plan in an apparent attempt to frustrate operational flexibility and manpower utilization efforts necessary to create the economic efficiencies the STB approved and demanded. The UTU proposals as compared to the STB decision and the Commitment Letter, fail as follows:

- Attempt to expand NYD protection.
- Cherry-pick from multiple UP and SP agreements.
- Fail to recognize a single seniority system and single collective bargaining agreement while the seniority proposed is administratively burdensome and costly.
- Fail to recognize necessary changes that are not merely financial benefits to the Carrier.

As previously stated, the Carrier successfully negotiated agreements with the BLE and other Organizations to consolidate seniority under single collective bargaining agreements. Consolidations similar to the merger of forces sought in this case are not new to the Union Pacific Railroad. Several Arbitrators have commented favorably on Union Pacific's strategy for achieving the economies and efficiencies – the chief objective underlying a merger.

Dr. Jacob Seidenberg made the following commentary concerning the transfer of work from the former Missouri Pacific BLE agreement coverage to coverage under the

Union Pacific BLE agreement:

" In summary, we are aware that any consolidation of rail properties disturbs the status quo and is unsettling to the affected Organization and employees. However, the Interstate Commerce Commission held that the Consolidation here in issue, with the prescribed labor conditions, is consistent with the public interest (366 ICC 619), and it must be accepted disturbing as it may be, even to the extent of doing away with the MP August 10, 1946 Local Agreement. We find that the Carriers have sought to select and assign forces, in a fair and reasonable manner, and still achieve the efficiencies and benefits which were the prime motivations for seeking Consolidation. We find that conducting all three common point operations under the UP operating rules and schedule rules are not inconsistent with these objectives, since the UP has common control of these operations." A copy of Referee Seidenberg's decision is found at Carrier's Exhibit "11".

In a New York Dock arbitration award issued April 24, 1995 by Mr. Robert O'Brien involving the UTU, BLE and the CSX, the arbitrator was presented with a similar situation. The transaction would include seven (7) different trainmen seniority districts of four cifferent railroads. The arbitrator found as follows:

"CSXT has convinced this Arbitrator that it is necessary to change the seniority districts of the train and engine service employees affected by its proposal if the territory of the erstwhile C&O, B&O, WM and RF&P to be coordinated is to be run as a distinct and unified rail freight operation. Where the Carrier required to continue operating this territory as four separate railroads each with its own work force and seniority district the operating efficiencies contemplated by the coordination would be illusory. According to the Carrier, the proposed consolidation of the present four seniority districts into a single seniority district will eliminate some train delays and will promote more efficient manpower utilization. To achieve this enhanced efficiency it is necessary to eliminate the current sen ority districts on the affected territory and create a single seniority district."

This scenario is directly on point with the present case. A copy of Referee O'Brien's decision is included as Carrier's Exhibit "18".

The Carrier refers the Board to numerous other arbitration awards and court decisions cited in the other portions of the Carrier's submission to this Board which support the strategy for consolidation of the UP/SP as endorsed by the STB.

SUMMARY

The Carrier respectfully requests this Board to summarily dismiss the UTU's request for Section 11 NYD arbitration pursuant to the February 23, 1996, Commitment Letter prior to merger implementation as unfounded and improper. The UTU's attempt to arbitrate proposals submitted during negotiations should also be dismissed as improper. The Carrier's proposals before this Board covering the merger implementation in the Denver Hub and the Salt Lake City Hub meet the objective of providing a transportation benefit to the shipping public. Again, as noted in UTU General Counsel Miller's statements befor the STB, the poor financial condition of the SP and the competitive threat of the BNSF were two compelling reasons for the UTU International's support of the UP/SP merger. The Carrier's proposals for consolidation of forces pursuant to the Carrier's Operating Plan under *"one collective bargaining agreement with common seniority"* are an effective and essential mechanism to achieving an economically competitive merged UP/SP system.

FOR THE CARRIER:

William S. Hinckley General Director Labor Relations

March 17, 1997



CARFIER'S SUBMISSION SUPPORTING THE PROPOSAL COVERING THE SALT LAKE HUB

The Carrier has in its other submissions detailed the history of the merger and negotiating process that took place after the Carrier served its New York Dock notice. This submission will not repeat those details but will focus on the various Articles in the proposal that will determine the allocation of forces in the areas covered by the two notices before this Board and the terms and conditions that will govern after the merger is implemented.

INTRODUCTION

The ICC and STB have many times set forth the role of an arbitrator in New York Dock proceedings. The arbitrator is an extension of the STB and is directed to carry out the STB's mandate. In this case that mandate is to merge the UP and SP in such a way as to provide for economies and efficiencies to the shipping public. The ICC in its January 5, 1989 decision Finance Docket No. 30965 stated:

"The arbitrator's duty, simply stated, is to fashion an implementing arrangement that will reconcile worker protections with the terms and the objectives of the transaction that we approved. If those terms and objectives cannot be achieved without modification of existing work rules and collective bargaining arrangements, he clearly has the authority to modify such arrangements to the extent necessary to carry out his mandate." Carrier exhibit no. 21.

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The key phrase in this statement is "the transaction that we approved." The duty is not to carry out the desires of the Organization that conflict with the approved transaction. A review of what the STB approved in this case car be summarized in part by the following quotes from the decision:

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"We find that the statutory protections provided in New York Dock are appropriate to protect employees affected by the merger, the lines sales and the terminal railroad control transactions...No unusual circumstances have been shown in this case to justify additional protection." (page 172)

"An arbitrator acting under Article I Section 4 of the New York Dock conditions imposed in the lead docket...will have the authority to override CBAs and RLA rights, as necessary to effect, respectfully, the merger in the lead docket..."(page 173)

"Certain requests denied. We will not impose several additional labor-related conditions that have been requested by parties to this proceeding.(page 174)

"Cherry-Picking. We will deny ARU's request that we order any CBA "rationalization" be accomplished by allowing UP/SP's unions to "cherry pick" from existing UP or SP agreements."(page 174)

"Reimbursements. We will deny ARU's request that we require UP/SP to repay SP employees their forgone lump sum payments and their deferred wage increases. SP has already "paid" its employees for their wage concessions by giving up productivity concessions achieved by the nation's other railroads." (page 174)

"UP/SP customers will benefit from tremendous service improvements brought about by reductions in route mileage, extended single-line service, enhanced equipment supply, better service reliability, and new operating efficiencies." (page 108)Carrier exhibit no. 1.

In reviewing the Carrier's proposal before this Board the Carrier believes that the arbitrator

will find that the proposal complies with the goals of the STB decision. The Carrier also asks this

Board to review the Organizations proposal closely to see the deviations from the STB decision.

ARTICLE I- GEOGRAPHICAL AREA

SALT LAKE HUB- currently there are six seniority districts that operate in and out of Salt Lake City. These seniority districts are for the most part, long thin districts that force employees to move from the Salt Lake/Ogden area as far as 700 miles to be able to hold a position or when being promoted to engine service. The proposal red aws the seniority district so that in five of the six directions out of Salt Lake/Ogden seniority extends only one crew

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change point. In the sixth direction, to the South, the district goes to Yermo. Employees South of Salt Lake already hold seniority to this point. Yermo is an away from nome terminal for both Las Vegas and Los Angeles. The points in between Salt Lake and Yermo are both home terminals for double headed pools and thus provide problems for drawing a new seniority boundary.

ARTICLE II-SENIORITY AND WORK CONSOLIDATION

SENIORITY- The proposal will consolidate the seniority of those employees working in the Hub into a new seniority district that has most of the assignments home terminaled in the Salt Lake/Ogden area. No longer will employees have to relocate to distant cities while the Carrier hires new employees in the same city they just left. This was a frequent occurrence under the previous multiple seniority district system. This eliminates many lost work days and costs that employees used to incur while following their seniority. The employees will relinquish the seniority outside the Hub for the new and greater seniority inside the Hub.

In a New York Dock arbitration award issued April 24, 1995 by Nir. Robert O. Brien involving the UTU, BLE and the CSX, the arbitrator was presented with a similar situation. The transaction would include seven (7) different trainmen seniority districts of four different railroads. The arbitrator found as follows:

"CSXT has convinced this Arbitrator that it is necessary to change the seniority districts of the train and engine service employees affected by its proposal if the territory of the erstwhile C&O, B&O, WM and RF&P to be coordinated is to be run as a distinct and unified rail freight operation. Where the Carrier required to continue operating this territory as four separate railroads each with its own work force and seniority district the operating efficiencies contemplated by the coordination would be illusory. According to the Carrier, the proposed consolidation of the present four seniority districts into a single seniority district will eliminate some train delays and will promote more efficient manpower utilization. To achieve this enhanced efficiency it is

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necessary to eliminate the current seniority districts on the affected territory and create a single seniority district."Carrier exhibit no. 18.

This situation is directly on point with the current case. What the UTU has offered the Carrier in negotiations and in its proposals would retain these seniority districts and an illusion of benefits to a merged Carrier. It is a necessity to consolidate the six seniority districts into a single district.

WORK CONSOLIDATION- The alternative routing options the Carrier now has because of the merger, will reduce the number of train miles operated in the Hub. This will result in some of the through freight pools becoming larger and some of them becoming smaller. However, except for one case, Ogden-Carlin to Ogden-Elko, all the crew change points will remain the same. This enables the Carrier to propose that the crews retain prior rights to the pools, locals and road switchers that continue similar post merger operations. While the employees have a new seniority district they are able to retain some prior rights to their old work.

ARTICLE IN-TERMINAL CONSOLIDATIONS

SALT LAKE CITY/OGDEN METRO COMPLEX- Salt Lake City and Ogden are major roil centers approximately 30 miles apart. The Ogden terminal had a jointly owned facility, the OUR&D, that has been owned by the Union Pacific and Southern Pacific. It will become the major crew change point for east-west traffic. The Salt Lake City terminal has yards supporting both UP and SP operations. The Ogden facilities will be combined into a single operation and the Salt Lake facilities will become combined into a single operation. It is common in terminals where there are multiple yards to have one yard become a switch yard

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and another an ir termodal yard and a third a local support yard or to close one of the facilities. In addition, because of the closeness of the yards and the opportunity to have alternaic routing and directional routing it is proposed that the two terminals become combined into a complex that provides greater efficiency for through freight operations. By creating a complex it enables the Carrier to change crews in a larger area without clogging yard facilities and without the expense of dog carching crews. For example, due to weather conditions the route across the Great Salt Lake may be closed, sending all traffic around the Lake. A smooth operation will allow the traffic that formerly went across the lake to go on through the Salt Lake yard to sidings between Salt Lake and Ogden. This will keep the Salt Lake Yard free and will allow Ogden crews to pick up their trains closer to their terminal.

SMALL R TERMINALS- There are two smaller terminals in this Hub that will need to be consolidated. Carlin, Nevada will be closed and the work shifted to Elko, Nevada which is east of Carlin; the separate facilities at Provo, Utah will be consolidated into a single operation.

ARTICLE IV-POOL OPERATIONS

GENERAL CONCEPTS- The alternative routing opportunities that are a result of the merger require a consolidation of pool operations that will benefit both the Carrier and the employees. Adverse weather conditions, maintenance of way work and the increased speed of trains during directional routing all require that crew availability be flexible enough to quickly accommodate the shift in traffic on a short term basis. The Carrier has in recent years created pools that have more than one away from home terminal or different routes to the same away from home terminal.

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Without this flexibility when traffic shifts, pools are cut and employees have up to 48 hours to make a displacement. At the end of 48 hours traffic is often shifted again and employees who just placed into a new pool are again reduced from this new pool and added back to the old pool. This frequently results in lost work opportunities for pool employees and requires the extra board to work additional shifts. When pools are combined the employees can follow the traffic shifts immediately without any displacement and no work opportunities are lost.

In an STB decision dated July 17, 1996 (Finance Docket No 30000) involving the UTAM merger, the STB vacated an arbitrator's decision that had denied a seniority district consolidation on the basis that it was not necessary under the ICC merger authorization. The STB held

"With regard to these arguments, the Board notes that the evidence on the record does indicate an integration of operations by the UP and MP on the Menoken Junction and Council Groves lines. There is also evidence on the record that the merger will yield efficiencies: the merger of the two labor pools will allow the present signal maintenance functions on those lines to be undertaken with at least one fewer employee."Carrier exhibit no. 22.

SALT LAKE CITY-ELKO AND OGDEN ELKO- These routes are parrallell until joining east of Elko. They provide the opportunity to run directional traffic or to run traffic over only one line due to weather, derailments and maintenance work. If two pools, they will share a common far terminal and could be run back to the home terminal as a single pool. Economies and efficiencies to the shipping public and more work opportunities to the crews will result from having the flexibility to run as two pools or one pool depending on traffic flows over each line.

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SALT LAKE CITY-GREEN RIVER/POCATELLO AND OGDEN-GREEN RIVER-These

pools operate north and east from the Salt Lake/Ogden area. Salt Lake and Ogden both have the same far terminal. If traffic is routed from the West through Salt Lake * en there is a need for flexibility on the east side of Salt Lake/Ogden to operate to Green River. The same reasoning applies on this east side and need to be repeated here. Salt Lake -Pocatello has traditionally been a small pool handling North-South traffic. Since there is another pool based in Salt Lake that will be covering the same track as fur as Ogden combining these pools into one pool better utilizes the manpower.

SALT LAKE CITY-GRAND JUNCTION/ HELPER/PROVO- These operations run to the southeast from Salt Lake. While previously the major SP lines to the East most traffic over them is being routed through Green River. The remaining traffic will be mostly coal traffic originating in the Helper area and traffic coming down from Salt Lake to Provo to serve the large steel mills in the area. Since the traffic will be sparse and not regularly scheduled the most efficient use of manpower is to combine the pools. This will stabilize the manpower and reduce the amount of displacing between separate pools.

HELPER-GRAND JUNCTION/PROVO AND MILFORD-PROVO/HELPER- Helper is the point of supply for coal loadings that will go both east and west from Helper so a single pool going both ways is warranted. Milford crews currently run to Provo and by adding Helper as an additional terminal it will eliminate costly crew changes at Provo for run through trains.

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SPARKS-CARLIN AND WENDEL- CARLIN-

With the change of the Carlin terminal

to Elko it will be necessary to run the Sparks and Wendel pools to Elko. This is a move of less than thirty miles and will permit the trains to run east-west without a short gap until the next notice is served on the area west of Elko.

TERMS AND CONDITIONS- There are six collective bargaining agreements (CBA) currently covering this area. The Carrier's merger plan before the STB and approved by the STB ca''s for a single CBA for this Hub. This operating plan is what was approved by the UTU in the commitment letters. It would be a tremendous anchor around the Carrier's neck and the shipping public if the Carrier was not permitted to have all employees covered by a single CBA. It is important to note that the Carrier is not trying to cherry pick different rules from the six agreements as the Organization as proposed or to keep several different agreements that employees could operate under on a day to day basis. It would be impossible to combine pools and/or extra boards unless there was a single agreement.

The ICC has also discussed the issue of multiple CBA's in a transaction. In ICC decisions dated January 5, 1989 and September 24, 1990 involving Finance Docket No. 30965 the ICC vacated the portion of the award that retained multiple CBA's in a transaction. In the first decision in a lengthy decision it vacated the portion of the Award that retained the multiple CBA's and discussed the purpose of labor protection. In the second decision it summarized its first ruling as follows:

"...Specifically, we disapproved the Kasher Award determination that the collective bargaining agreements (CBAs) that were in place on the properties of the MEC, the D&H, the PT and the B&M should continue to be the CBAs in force on the ST as to all "prior rights" employees. We determined that preserving all of the preexisting provisions contained in the CBAs of each of the separate emitties involved

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would vitiate one major purpose for the underlying leases. It would eliminate any possibility of achieving the economies and efficiencies afforded by application of the more flexible ST work rules to the entire GTI system."Carrier exhibit no. 23.

The UP purchased the JP. The UP has been in national handling these several years and its system agreements are covered under the same national rules and have the same basic day and similar rates of pay. The SP has been out of National handling since 1985 and its various agreements have differing basic days and rates of pay and road/yard work rules. It was not the intent of the STB to perpetuate these diversities and complexities but to have a single merged rail system with a single CBA in its Hubs. The Carrier has selected the UP Eastern District Agreement as the one to govern the area. This is the same agreement as proposed by the UTU to the Carrier. It currently governs the main line into this Hub and will have even more traffic afterwards. The Carrier believes that " preponderance of work" is not a proper factor to decide the CBA as work is shifting and fewer miles will be run in the Hub. The ICC in the above case set the standard when selecting a single CBA. The Carrier believes that it has the right to select the CBA to govern the Hub.

TWENTY-FIVE MILE ZONE- The Carrier believes that this provision is needed to expedite the movement of trains and be competitive with the BNSF. Currently when trains die under the Hours of Service Act the pool crew called is often given a release and a dog catch crew is called. This delays the train and if at the far terminal delays the pool crew in getting home and reduces the pool crews pay.

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ARTICLE V-EXTRA BOARDS

GENERAL- The Carrier believes that the coordination of the pools and other assignments also calls for the consolidating of extra boards. Under a single CBA the Carrier would establish extra boards to cover a geographical area. The current Eastern District CBA provides for separate boards for conductors and brakemen/switchmen where yard are involved and the proposal keeps this distinction where there are three or more yard assignments. When less than three yard assignments then a combination board for conductor/brakemen/switchmen is proposed.

OGDEN/SALT LAKE CITY- This area calls for three sets of extra boards. The benefits of having three geographical extra boards is t'at employees will have more job opportunities in a single location rather than having to move back and forth between Salt Lake and Ogden. Under the pre-merger operations extra boards often protected only part of a city thus having multiple extra boards at some points but with different seniority. Because of the merger of six seniority districts into one, these three extra boards will be filled based on the dovetail seniority of the employees in the Hub. The existing Eastern District extra board agreement will apply to these newly created extra boards.

OTHER LOCATIONS-The Carrier will maintain extra boards at other crew change points when the requirements of service call for them. If on a prior right area then prior right seniority will govern. If at a dual location then seniority will be used on a 50/50 ratio basis. This preserves prior right work where possible and these other locations are at outside points from the center of the Salt Lake Hub.

ARTICLE VI-PROTECTION

This arbitration is not protection arbitration under New York Dock. The STB in its decision stated that employees adversely affected would be afforded New York Dock protection. Only the STB can state the protective conditions and those can only be changed by voluntary negotiations between the parties. It is the Carrier's position that this Board has no authority to alter the terms of New York Dock protection. In addition, it is impossible before the merger is implemented to know who will be so affected so individual employees cannot claim protective benefits at this time. Protection is an individual item and each employee stands in a unique place with his/her seniority in determining adverse impact. New York Dock provides for separate arbitration for each individual after they allege adverse affect.

ARTICLE VII-IMPLEMENTATION

The proposal calls for a 30 day implementation notice. This is standard in many arbitration cases. Section D provides for employees to follow their work outside the Hub to other locations. Some trains will be routed through Pocatello, Idaho and others south through the Los Angeles Basin. The different routing of trains will be responsible for a surplus in this Hub and this provision will enable employees to go to areas will shortages will arise. It provides for seniority choice first and forcing second as is custom in filling vacancies. The period of one year covers the length of time needed to handle further negotiations in these other areas. Without this provision the Carrier would be required to hire in these other place; and employees inside the Hub will be furloughed and lose work opportunities. The Organization's proposals to the Carrier had provisions for following work inside the Hub and the Carrier believes that the same provisions apply outside the Hub.

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ARTICLE VIII-CREW CONSIST

PRODUCTIVITY FUNDS-The six different agreements have several different methods of allocating productivity funds. Some pay into one fund some have a supplemental fund, some pay direct on the regular payday and others at the end of the year. Each also has different criteria for what the Carrier should pay the fund and when additional payments should be made to either the fund or a crew member. It would be impossible to comply with these different agreements and payments with the employees working under a single CBA and intermingled on the various assignments and extra boards. If a conductor from one former roster worked with a br keman from another immediately there would be a dispute as to whose fund received a payment.

The only fair way to handle it is to close out the Hub employees participation in other funds on the implementation date and start a new fund with just those employees eligible in the Hub participating in the new fund. The Carrier will make payment to the fund in accordance to the Eastern District agreement and distribution to the employees at year end will also be in accordance with that agreement. Those employees who previously sold their funds/special allowance should not be entitled to a windfall at this time.

CREW SIZE-The Carrier is currently not required to fill certain yard and local/road switcher assignments in the Hub. Even though the Eastern District agreement would require that the Carrier fill them, it would be against the whole concept of a merger to benefit the public to require the Carrier to now fill positions previously not required to do so and have the shipping public pay for them. The Carrier should not have to fill those positions now permitted to be blanked.

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The ICC decision dated September 24, 1990 Finance Docket No. 30965 also dealt with

the issue of crew consist and having a single crew consist agreement. The ICC stated:

"...We conclude that the provision of the Award extending the scope of ST's crew practices to all operations within the GTI system in the context of the total implementing agreement does not require us to vacate the Award."Carrier exhibit no.23.

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This provision provides for employees to familiarize themselves with new trackage they will traverse at no additional cost. The Carrier recognizes a need to do this and that different trackage and different employees may require a different number of such trips. The Organization has requested a large number of paid trips in an effort to generate pay for not working and an unneeded expense and should be rejected.

ARTICLE X-FIREMEN

It is rare anymore to have pre-October 31, 1985 firemen in this area. As such this article merely provides for the retention of their rights should they develop as a result of the merger. It establishes their seniority in the Hub and identifies the rights of post 1985 firemen.

ARTICLE XI-HEALTH AND WELFARE

The Eastern District agreement requires that employees coming under that agreement be covered under the hospital association. The UTU took the Carrier to arbitration over this issue and this proposal is in keeping with that award.

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QUESTIONS AND ANSWERS

The questions and answers have been developed to clarify items in the proposal. The parties have long used this method to give further detail to the written contract. These questions and answers are similar to the ones entered into with the Brotherhood of Locomotive Engineers covering similar provisions in their negotiated agreement that is currently out for ratification.

SUMMARY

The Carrier has shown that its proposal complies with the STB decision and respectfully requests that the arbitrator impose it as the terms and conditions governing the Salt Lake Hub.

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W.S.Hinckley General Director Labor Relations Union Pacific March 17, 1997

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CARRIER'S SUBMISSION

SUPPORTING THE PROPOSAL

COVERING THE

DENVER HUB

The Carrier has in its other submissions detailed the history of the merger and negotiating process that took place after the Carrier served its New York Dock notice. This submission will not repeat those details but will focus on the various Articles in the proposal that will determine the allocation of forces in the areas covered by the two notices before this Board and the terms and conditions that will govern after the merger is implemented.

INTRODUCTION

The ICC and STB have many times set forth the role of an arbitrator in New York Dock proceedings. The arbitrator is an extension of the STB and is directed to carry out the STB's mandate. In this case that mandate is to merge the UP and SP in such a way as to provide for economies and efficiencies to the shipping public. The ICC in its January 5, 1989 decision Finance Docket No. 30965 stated:

> "The arbitrator's duty, simply stated, is to fashion an implementing arrangement that will reconcile worker protections with the terms and the objectives of the transaction that we approved. If those terms and objectives cannot be achieved without modification of existing work rules and collective bargaining arrangements, he clearly has the authority to modify such arrangements to the extent necessary to carry out his mandate."Carrier exhibit no. 21.

The key phrase in this statement is "the transaction that we approved." The duty is not to carry out the desires of the Organization that conflict with the approved transaction. A review of what the STB approved in this case can be summarized in part by the following quotes from the decision:

"We find that the statutory protections provided in New York Dock are appropriate to protect employees affected by the merger, the lines sales and the terminal railroad control transactions...No unusual circumstances have been shown in this case to justify additional protection." (page 172)

"An arbitrator acting under Article I Section 4 of the New York Dock conditions imposed in the lead docket... will have the authority to override CBAs and RLA rights, as necessary to effect, respectfully, the merger in the lead docket..." (page 173)

"Certain requests denied. We will not impose several additional labor-related conditions that have been requested by parties to this proceeding.(page 174)

"Cherry-Picking. We will deny ARU's request that we order any CBA "rationalization" be accomplished by allowing UP/SP's unions to "cherry pick" from existing UP or SP agreements."(page 174)

"Reimbursements. We will deny ARU's request that we require UP/SP to repay SP employees their forgone lump sum payments and their deferred wage increases. SP has already "paid" its employees for their wage concessions by giving up productivity concessions achieved by the nation's other railroads." (page 174)

"UP/SP customers will benefit from tremendous service improvements brought about by reductions in route mileage, extended single-line service, enhanced equipment supply, better service reliability, and new operating efficiencies." (page 108)Carrier exhibit no. 1.

In reviewing the Carrier's proposal before this board the Carrier believes that the arbitrator will

find the proposal complies with the goals of the STB decision. The Carrier also asks this board to

review the Organizations proposal closely to see the deviations from the STB decision.

ARTICLE I- GEOGRAPHICAL AREA

DENVER HUB- The Denver Hub will connect with Grand Junction on the West, Cheyenne on the North, Sharon Springs on the East and Dalhart on the South. A major difference in this Hub compared to the Salt Lake Hub is that the current SP main line is being abandoned over the Tennessee Pass and on the Pueblo Line. The Pueblo Line is a UP line that the SP had trackage rights over before the merger and 99% of the traffic was SP traffic. The Hub has three main points at Denver, Grand Junction and Pueblo and extends one crew change point in each direction.

ARTICLE II-SENIORITY AND WORK CONSOLIDATION

SENIORITY- The proposal will consolidate the seniority of those employees working in the Hub into three prior right zones with a single common roster for the whole Hub. Due to the cessation of service over large segments of track it is not possible to use prior rights to pool runs in this Hub. Doing so would result in some employees having prior rights to no work. The zone concept takes the remaining work and distributes it to the three major on duty points. Each Hub in this proposal shares in the remaining work and each gives in the reduction of work. The employees will relinquish their seniority outside the Hub for the new and greater seniority inside the Hub.

In a New York Dock arbitration award issued April 24, 1995 by Mr. Robert O. Brien involving the UTU, BLE and the CSX, the arbitrator was presented with a similar situation. The transaction would include seven (7) different trainmen seniority districts of four different railroads. The arbitrator found as follows:

"CSXT has convinced this Arbitrator that it is necessary to change the seniority districts of the train and engine service employees affected by its proposal if the territory of the erstwhile C&O, B&O, WM and RF&P to be coordinated is to be run as a distinct and unified rail freight operation. Where the Carrier required to continue operating this territory as four separate railroads each with its own work force and seniority district the operating efficiencies contemplated by the coordination would be illusory. According to the Carrier, the proposed consolidation of the present four seniority districts into a single seniority district will eliminate some train delays and will promote more efficient manpower utilization. To achieve this enhanced efficiency it is necessary to eliminate the current seniority districts on the affected territory and create a single seniority district."Carrier exhibit no. 18.

This situation is directly on point with the current case. What the UTU as offered the

Carrier in its proposals would retain these seniority districts and an illusion of benefits. It is a necessity to consolidate the three seniority districts into a single district.

WORK CONSOLIDATION- The alternative routing options the Carrier now has because of the merger, will reduce the number of train miles operated in the Hub. This will result in some of the through freight pools becoming larger and some of them becoming smaller. However, except for one case, Denver- Sharon Springs, all the crew change points will remain the same. By using the zone concept the employees will have prior rights to areas they previously worked in or to work that has been moved to the zone they are now in. While the employees have a new seniority district they are able to retain some prior rights to their old work.

ARTICLE III-TERMINAL CONSOLIDATIONS

DENVER- Both the UP and SP have yard operations in the Denver terminal. These will now be combined into a single operation. The SP and MPUL both work in the Pueblo yard and this yard will be placed in zone three after implementation and will be manned by employees with prior rights in that zone.

ARTICLE IV-POOL OPERATIONS

GENERAL CONCEPTS- The alternative routing opportunities that are a result of the merger require a consolidation of pool operations that will benefit both the Carrier and the employees. Adverse weather conditions, maintenance of way work and the increased speed of trains during directional routing all require that crew availability be flexible enough to quickly accommodate the shift in traffic on a short term basis. The Carrier has in recent years created

pools that have more than one away from home terminal or different routes to the same away from home terminal.

Without this flexibility when traffic shifts, pools are cut and employees have up to 48 hours to make a displacement. At the end of 48 hours traffic is often shifted again and employees who just placed into a new pool are again reduced from this new pool and added back to the old pool. This frequently results in lost work opportunities for pool employees and requires the extra board to work additional shifts. When pools are combined the employees can follow the traffic shifts immediately without any displacement and no work opportunities are lost.

In an STB decision dated July 17, 1996 (Finance Docket No 30000) involving the UP/MP merger, the STB vacated an arbitrator's decision that had denied a seniority district consolidation on the basis that it was not necessary under the ICC merger authorization. The STB held:

"With regard to these arguments, the Board notes that the evidence on the record does indicate an integration of operations by the UP and MP on the Menoken Junction and Council Groves lines. There is also evidence on the record that the merger will yield efficiencies: the merger of the two labor pools will allow the present signal maintenance functions on those lines to be undertaken with at least one fewer employee."Carrier exhibit no. 22.

GRAND JUNCTION-DENVER/BOND AND GRAND JUNCTION- MINTURN- As it was necessary in the Salt Lake Hub to make two previously double headed pools single headed, it is necessary to make the Grand Junction-Denver pool a single headed pool. In addition it will have both long and short capabilities depending on weather conditions and the train volume through the several tunnels that exist along this route.

DENVER-CHEYENNE/PHIPPSBURG/BOND/AND SHARON SPRINGS- The Carrier will have the option of running trains three directions out of Denver. To the north is the UP main line, to the east the upgraded KP line direct to Kansas City and to the south the farter route to Texas. Depending on various factors all three routes will be used and thus the need to consolidate pools.

PUEBLO-DENVER AND PUEBLO DALHART- This route is expected to see an increase in business. With the abandonment of the lines east and west from Pueblo the remaining work has been consolidated into a new pool, shifting the home terminal from Denver to Pueblo to accommodate the loss of other work and to reduce the number of relocations.

TERMS AND CONDITIONS- There are three collective bargaining agreements (CBA) currently covering this area. The Carrier's merger plan before the STB and approved by the STB calls for a single CBA for this Hub. This operating plan is what was approved by the UTU in the commitment letters. It would be a tremendous anchor around the Carrier's neck and the shipping public if the Carrier was not permitted to have all employees covered by a single CBA. It is important to note that the Carrier is not trying to cherry pick different rules from the three agreements or to keep several different agreements that employees could operate under on a day to day basis. It would be impossible to combine pools and/or extra boards unless there was a single agreement.

The ICC has also discussed the issue of multiple CBA's in a transaction. In ICC decisions dated January 5, 1989 and September 24, 1990 involving Finance Docket No. 30965 the ICC vacated the portion of the award that retained multiple CBA's in a transaction. In the first decision in a lengthy decision it vacated the portion of the Award that retained the multiple

CBA's and discussed the purpose of labor protection. In the second decision it summarized its first ruling as follows:

"...Specifically, we disapproved the Kasher Award determination that the collective bargaining agreements (CBAs) that were in place on the properties of the MEC, the D&H, the PT and the B&M should continue to be the CBAs in force on the ST as to all "prior rights" employees. We determined that preserving all of the preexisting provisions contained in the CBAs of each of the separate entities involved would vitiate one major purpose for the underlying leases. It would eliminate any possibility of achieving the economies and efficiencies afforded by application of the more flexible ST work rules to the entire GTI system."Carrier exhibit no. 23.

The UP purchased the SP. The UP has been in national handling these several years and its system agreements are covered under the same national rules and have the same basic day and similar rates of pay. The SP has been out of National handling since 1985 and its various agreements have differing basic days and rates of pay and road/yard work rules. It was not the intent of the STB to perpetuate these diversities and complexities but to have a single merged rail system with a single CBA in its Hubs. The Carrier has selected the UP Eastern District Agreement as the one to govern the area. It currently governs the Denver proper area, the connection to the main line at Cheyenne and the direct line to Kansas City. The Carrier believes that " preponderance of work" is not a proper factor to decide une CBA as work is shifting and fewer miles will be run in the Hub. The ICC in the above case set the standard when selecting a single CBA. The Carrier believes that it has the right to select the CBA to govern the Hub.

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PRODUCTIVITY FUNDS-The three different agreements have different methods of allocating productivity funds. Each also has different criteria for what the Carrier should pay the fund and when additional payments should be made to either the fund or a crew member. It would be impossible to comply with these different agreements and payments with the employees working under a single CBA and intermingled on the various assignments and extra boards. If a conductor from one former roster worked with a brakeman from another, immediately there would be a dispute as to whose fund received a payment.

The only fair way to handle it is to close out the Hub employees participation in other funds on the implementation date and start a new fund with just those employees eligible in the Hub participating in the new fund. The Carrier will make payment to the fund in accordance to the Eastern District agreement and distribution to the employees at year end will also be in accordance with that agreement. Those employees who previously sold their funds/special allowance should not be entitled to a windfall at this time.

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SUMMARY

The Carrier has shown that its proposal complies with the STB decision and respectfully requests that the arbitrator impose it as the terms and conditions governing the Denver Hub.

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W.S.Hinckley / General Director Labor Relations Union Pacific Railroad March 17, 1997

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CARRIER'S EXHIBITS

RECEIVED APR 08 1997 FIELD SERVICE DEPT

- 1. 8/12/96 STB DECISION 2. NEW YORK DOCK CONDITIONS
- 3. FD 28905 (SUB NO.23), CSX CONTROL CHESSIE SYSTEM, 8 ICC 2d 715, 8/13/92
- 4. CSX and ADTA (ROBERT ABLES) 11/11/88
- 5. BLE v. CNW, 314 F.2d 424 (8th Cir. 1963)
- 6. FD 30000 (SUB NOs. 18 and 20) 10/19/83
- 7. FD 29430 (SUB NO. 20), NS CORP -CONTROL- N&W and SOUTHERN RAILWAY, 4 ICC 2d 1079, 5/24/88
- 8. FD 28905 (SUB NO. 22), CSX CONTROL- CHESSIE SYSTEM and SEABOARD COAST LINE, 6 ICC 2d 715, 5/21/90
- 9. N&W v. ATDA v. CSX v. BRC, 113 L.Ed. 2d 95 (1991)
- 10. UP/WP and ADTA (WILLIAM FREDENBERGER) 5/27/84
- 11. BLE and UP/MP (JACOB SEIDENBERG) 1/17/85
- 12. UP/MP and UTU (DAVID BROWN) 1/95
- 13. N&W/INTERSTATE RR/SOUTHERN and UTU (ROBERT ABLES) 9/25/85
- 14. N&W/SCUTHERN and ADTA (ROBERT HARRIS) 5/19/87
- 15. RAILWAY LABOR EXECUTIVES v. US, 987 F.2d 806 (D.C. Cir. 1993)
- 16. ADTA v. ICC, 26 F.3d 1157 (D.C. Cir. 1994)
- 17. FD 32035 (SUB NOs. 2-6), FOX VALLEY & WESTERN LTD., 7/31/95
- 18. UTU and BLE and CSX (ROBERT O'BRIEN) 4/24/95
- 19. FD 28905 (SUB NO. 27), CSX -CONTROL- CHESSIE/SEABCARD, 1995 ICC Lexis 300, 12/7/95
- 20. CHESSIE/SEABOARD and BRC (HERBERT MARX, .! K.) 12/5/84
- 21. FD 30965 (SUB NO. 1), DELAWARE and HUDSON, 1/5/89
- 22. FD 30000 (SUB NO. 48), UPRR -CONTROL- MPRR, 7/17/96
- 23. FD 30965 (SUB NO. 1), DELAWARE and HUDSON, 9/24/90
- 24. NYD NOTICES and AMENDMENTS for DENVER and SLC HUBS
- 25. SLC HUB CONDUCTOR ASSIGNMENT RATIONALIZATION
- 26. DENVER HUB CONDUCTOR ASSIGNMENT RATIONALIZATION
- 27. CARRIER'S FINAL PROPOSAL SLC HUB
- 28. CARRIER'S FINAL PROPOSAL DENVER HUB
- 29. COMMITMENT LETTERS
- 30. UTU GENERAL COUNSEL CLINT MILLER'S TESTIMONY BEFORE THE STB
- 31. FEBRUARY 3, 4 AND 7, 1997 LETTERS BETWEEN UTU AND CARRIER
- 32. FEBRUARY 4, 1997 ARBITRATION NOTICE
- 33. 1/9/97 UTU PROPOSAL FOR SLC HUB
- 34. 1/22/97 UTU PROPOSAL FOR SLC HUB
- 36. MAPS
- 36. FD 32760, RAILROAD MERGER APPLICATION. VOLUME 3 (OPERATING PLAN, LABOR IMPACT EXHIBIT AND SUPPORTING STATEMENTS)
- 37. UTU & BLE v. STB (RLEA Intervenors), D.C. Circuit 3/21/97, re Robert O'Brien Award [#18, 19]
- 38. First Division Award No. 24158, 8/5/92

UNION PACIFIC RAILROAD COMPANY



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September 18, 1996 18W-UTU

Certified Mail-Return Receipt/Hand delivered

Mr. G.A. Eickmann General Chairman UTU 2933 SW Woodside Drive Suite F Topeka, KS 66614

Mr. J. G. Pollard General Chairman UTU 1675 Carr, Suite 200N Denver, CO 80215-3139

Mr. J.K. Spear General Chairman UTU 2870 East 3300 South. Suite 5 Salt Lake City, Utah 84109

Gentlemen:

Mr. R.D. Hogan General Chairman UTU 5050 Poplar Avenue Suite 1510 Memphis TN 38157

Mr. J.P.Kurtz General Chairman UTU 1675 Carr, Suite 200N Denver, CO 80215-3139

The U.S. Department of Transportation, Surface Transportation Board (STB), approved in Finance Docket 32760 the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad and Missouri Pacific Railroad), collectively referred to as "UP" and the rail carriers controlled by Southern Pacific Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and the Denver and Rio Grande Western Railroad Company), collectively referred to as "SP". The STB in its approval of the aforesaid Finance Docket has imposed the employee protective conditions set forth in New York Dock, 360 ICC 60.

Therefore, pursuant to Section 4 of New York Dock, notice is hereby given to implement that portion of the merger transaction which is set forth in Exhibit "A", attached. As you will note from reviewing the Exhibit, this merger transaction will affect employees, work and work locations and will obviously require the consolidation of employees under a single collective bargaining agreement. This letter and Exhibit "A" will be hand delivered during the meeting in Kansas City on September 17 and 18, 1996 and mailed to your offices and posted on all applicable TE&Y bulletin boards. I suggest we establish meeting dates at our September 17 and 18 meetings.

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Yours truly.

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W. S. Hunckley

W.S. Hinckley General Director Labor Relations

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EXHIBIT "A" 18W-UTU-BLE

Notice

TO ALL TRAIN, ENGINE AND YARD SERVICE EMPLOYEES WORKING ON THE TERRITORIES:

UNION PACIFIC

-DENVER TO OAKLEY INCLUDING OAKLEY -DENVER TO CHEYENNE NOT INCLUDING CHEYENNE -PUEBLO TO HORACE -DENVER TERMINAL

SOUTHERN PACIFIC

-DENVER TO AND INCLUDING GRAND JUNCTION -GRAND JUNCTION TO MONTROSE AND OLIVER -PUEBLO TO DALHART NOT INCLUDING DALHART BUT INCLUDING PUEBLO, TO SOUTH FORK, TO DOTSERO AND TO DENVER -DENVER TERMINAL

(THE ABOVE INCLUDES ALL MAIN AND BRANCH LINES, INDUSTRIAL LEADS AND STATIONS BETWEEN THE POINTS IDENTIFIED)

WHO ARE REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS OR THE UNITED TRANSPORTATION UNION

The U.S. Department of Transportation, Surface Transportation Board (STB), in Finance Docket No. 32760, has approved the merger of the Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") with the Southern Pacific Transportation Company, the SPCSL, Corp., the St. Louis-Southwestern Railway Company and the Denver and Rio Grande Western Railroad Company (collectively referred to as "SP").

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In order to effectuate the benefits of this merger. UP and SP operations between the points identified above including certain terminal operations, must be consolidated into a common, unified operation.

Accordingly, to effectuate this merger in the above-described territory, and pursuant to the provisions of the New York Dock Conditions, this is to serve as the ninety (90) day required notice that on or after January 1, 1997, it is the intent of the UP and SP to place the following transaction into effect:

- I. Dual Point Terminal Consolidations
 - A. <u>Denver-All UP and SP operations within the greater Denver area shall be</u> consolidated into a unified terminal operation.
 - B. <u>Pueblo-All UP and SP operations within the greater Pueblo area shall be</u> consolidated into a unified terminal operation.

II. Dual Point Pool Consolidations

- A. <u>Denver-All Denver-Grand Junction and Denver-Phippsburg pool operations shall</u> be combined into one pool with Denver as the home terminal. All Denver-Cheyenne and Denver-Oakley pool operations shall be combined into one pool with Denver as the home terminal. These pools may later be combined into a single pool should a single pool provide more efficient operations.
- B. <u>Pueblo-All Denver-Pueblo</u>, Pueblo-Alamosa and Pueblo-Dalhart pool operations shall be combined into one pool with Pueblo as the home terminal. The Pueblo-Minturn pool shall remain separate until terminated with the cessation of service on portions of that line. The Pueblo-Horace pool shall remain separate until terminated with the abandonment of portions of that line.

III. Other Operations

- A. <u>Grand Junction-Grand Junction-Minturn pool operations shall remain separate</u> until terminated with the cessation of service on portions of that line. Grand Junction-Denver operations will be combined with II A above. Pool, local, road switcher and yard operations not covered in the above originating at Grand Junction shall continue as traffic volumes warrant.
- B. <u>Minturn Helpers</u>-Helper Service at Minturn shall remain separate until terminated with the cessation of service on portions of the line where the helpers operate.

drgnotic/9/06/96

- C. Extra Boards -At locations where there are more than one extra board, extra boards may be combined into one or more extra boards. Helper service West and South of Denver may be protected from the combination road/yard extra board at Denver. If the Carrier establishes separate extra boards for the road and yard the road extra board shall protect this service.
- D. Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District.
- E. Power plants between Dever and Pueblo may be serviced by either the Pueblo-Denver pool or the Denver Evira Board or a combination thereof.

IV. Seniority Consolidation

The seniority of all employees working in the territory described above shall be consolidated into one common new seniority district. All current seniority in all crafts shall be relinquished when new seniority is established.

V. Collective Bargaining Agreements

All of the employees subject to this notice shall be covered under a single, common collective bargaining agreement including all National Agreement rules. The agreement shall be compatible with the economies and efficiencies that will benefit the public as outlined in the carrier's operating plan.

VI. Allocation of Forces

An adequate supply of forces shall be relocated to areas where additional forces are needed including to Cheyenne and/or Rawlins.

VII. Affected Employees

As a result of this transaction, Carrier estimates the following approximate number of TE&Y employees will be affected:

	Enginemen	Trainmen/yardmen
Union Pacific Eastern District	9	10
Union Pacific MPUL	- 28	34
Denver and Rio Grande	91	101
Total	128	145

drgnotic/9/06/96

The Carriers' STB submission identified 93 engineers and 119 trainmen as possibly affected at these locations. In accordance with the previous letters to the BLE and UTU, this notice identifies 35 additional engineers and 26 additional trainmen/yardmen that could be affected upon completion of a negotiated agreement based on the Carriers' operating plan.

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UNION PACIFIC RAILROAD COMPANY

Handout 12 - 2-96

1416 DODGE STREET CMAHA NEBRASAA 68179



December 2, 1996 Amended Notice 18W-UTU

Certified Mail Return Receipt Requested/Hand-Delivered

Mr. G.A. Eickmann General Chairman UTU 2933 SW Woodside Drive Suite F Topeka, KS 66614

Dear Sir:

The Carrier is hereby amending the Notice 18W served pursuant to Section 4 of New York Dock on September 18, 1996, pertaining to Finance Docket 32760 and the implementation of that portion of the Union Pacific/Southern Pacific merger transaction specified in that notice. The Carrier serves notice as specified on the attached Exhibit "A" to change all references in the September 18, 1996 Notice to the location "Oakley", Kansas to "at or near Sharon Springs, Kansas" on the Union Pacific. This amended notice does not amend or alter the remaining items set forth in the original Notice served on September 18, 1996. The employee protective conditions set forth in New York Dock apply to this amended notice.

This letter and the attached Exhibit "A" will be hand delivered during meetings in Salt Lake City the week of December 2, 1996, mailed to your office and posted on all applicable TE&Y bulletin Boards.

Yours truly,

W.S. Hinckley General Director Labor Relations

CC:

AM Lankford - UTU Vice President PC Thompson - UTU Vice President MB Futhey - UTU Vice President

Exhibit "A" Amended Notice 18W-UTU

AMENDED NOTICE

TO ALL TRAIN AND YARD SERVICE EMPLOYEES WORKING ON THE TERRITORY:

UNION PACIFIC - DENVER to a location at or near SHARON SPRINGS, KANSAS

(THE ABOVE INCLUDES ALL MAIN AND BRANCH LINES, INDUSTRIAL LEADS AND STATIONS BETWEEN THE POINTS IDENTIFIED)

WHO ARE REPRESENTED BY THE UNITED TRANSPORTATION UNION

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket No. 32760.

The Notice previously served on the United Transportation Union dated September 18, 1996, covering employees working Denver to Oakley is hereby amended, in part, to include operations between Denver, Colorado to a location at or near Sharon Springs, Kansas in lieu of operations between Denver, Colorado and Oakley, Kansas. The remaining items in the September 18, 1996 Notice have not been amended by this notice.

New York Dock protective conditions apply to this amendment.

UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET OMAHA NEBRASKA 68179

September 18, 1996 19W-UTU

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Certified Mail-Return Receipt/Hand delivered

Mr. G.A. Eickmann General Chainnan UTU 2933 SW Woodside Drive Suite F Topeka. KS 66614

Mr. J. G. Pollard General Chairman UTU 1675 Carr, Suite 200N Denver, CO 80215-3139

Mr. J.K. Spear General Chairman UTU 2870 East 3300 South. Suite 5 Salt Lake City. Utah 84109

Mr. R.E. Carter General Chairman UTU PO Box 1333 Pocatello ID 83204

Gentlemen:

Mr. D.E. Johnson General Chairman UTU 1860 El Camino Real, Suite 201 Burlingame, CA 94010

Mr. J.P.Kurtz General Chainnan UTU 1675 Carr, Suite 200N Denver, CO 80215-3139

> Mr. J. Previsich General Chairman 1860 El Camino Real, Suite 201 Burlingame, CA 94010

Mr. N.J. Lucas General Chairman UTU 112 J Street Suite 202 Sacramento CA 95814

The U.S. Department of Transportation, Surface Transportation Board (STB), approved in Finance Docket 32760 the common control and merger of the rail carriers controlled by Union Pacific Corporation (Union Pacific Railroad and Missouri Pacific Railroad), collectively referred to as "UP" and the rail carriers controlled by Southern Pacific Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and the Denver and Rio Grande Western Railroad Company), collectively referred to as "SP". The STB in its approval of the aforesaid Finance Docket has imposed the employee protective conditions set forth in New York Dock, 360 ICC 60.

Therefore, pursuant to Section 4 of New York Dock, notice is hereby given to implement that portion of the merger transaction which is set forth in Exhibit "A", attached. As you will note from reviewing the Exhibit, this merger transaction will affect employees, work and work locations and will obviously require the consolidation of employees under a single collective bargaining agreement. This letter and Exhibit "A" will be hand delivered during the meeting in Kansas City on September 17 and 18, 1996 and mailed to your offices and posted on all applicable TE&Y bulletin boards. I suggest we establish meeting dates at our September 17 and 18 meetings.

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Yours truly.

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W. S. Hinckley

W.S. Hinckley General Director Labor Relations

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Exhibit "A" 19W-UTU-BLE

NOTICE

TO ALL TRAIN, ENGINE AND YARD SERVICE EMPLOYEES WORKING ON THE TERRITORIES:

UNION PACIFIC

SALT LAKE TO GREEN RIVER NOT INCLUDING GREEN RIVER SALT LAKE TO POCATELLO NOT INCLUDING POCATELLO SALT LAKE TO CALIENTE (EITHER ROUTE) OGDEN TERMINAL INCLUDING THE OUR&D SALT LAKE AND PROVO TERMINALS SALT LAKE TO AND INCLUDING WINNEMUCCA

SOUTHERN PACIFIC

OGDEN TO AND INCLUDING WINNEMUCCA OGDEN TERMINAL SALT LAKE TO GRAND JUNCTION NOT INCLUDING GRAND JUNCTION SALT LAKE TO OGDEN SALT LAKE AND PROVO TERMINALS

(THE ABOVE INCLUDES ALL MAIN AND BRANCH LINES, INDUSTRIAL LEADS AND STATIONS BETWEEN THE POINTS IDENTIFIED)

> WHO ARE REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS OR THE UNITED TRANSPORTATION UNION

The U.S. Department of Transportation, Surface Transportation Board (STB), in Finance Docket No. 32760, has approved the merger of the Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") with the Southern Pacific Transportation Company, the SPCSL, Corp., the St. Louis-Southwestern

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Railway Company and the Denver and Rio Grande Western Railroad Company (collectively referred to as "SP").

In order to effectuate the benefits of this merger, UP and SP operations between the points identified above including certain terminal operations, must be consolidated into a common, unified operation.

Accordingly, to effectuate this merger in the above-described territory, and pursuant to the provisions of the New York Dock Conditions, this is to serve as the ninety (90) day required notice that on or after January 1, 1997, it is the intent of the UP and SP to place the following transaction into effect:

- 1. Dual Point Terminal Consolidations
 - A. <u>Salt Lake City</u>-All UP and SP operations within the greater Salt Lake City area shall be consolidated into a unified terminal operation.
 - B. <u>Ogden-All UP and SP operations (including the OUR&D) within the greater</u> Ogden area shall be consolidated into a unified terminal operation.
 - C. <u>Provo-All UP and SP operations within the greater Provo area shall be</u> consolidated into a unified terminal operation.
 - D. <u>Elko-Carlin-All UP and SP operations within the greater Elko and Carlin area shall</u> be consolidated into a unified terminal operation at Elko.

II. Dual Point Pool Consolidations

- A. <u>Salt Lake City-Elko and Ogden-Carlin-This may operate as either two pools with</u> Salt Lake City and Ogden as the home terminals and Elko as a single away from home terminal or one pool with the home terminal in the Salt Lake City-Ogden metro complex. At Elko all crews may operate as a single far terminal pool for the return trip to the Salt Lake City-Ogden metro complex via either route with necessary transportation back to their tie-up point.
- B. <u>Salt Lake City-Green River/Pocatello-These two pools shall be combined into one</u> pool with Salt Lake as the home terminal and dual destination far terminals. <u>Ogden-Green River</u> may operate as a separate pool or be combined with the Salt Lake City-Green River pool with crews being operated back to the Salt Lake City-Ogden metro complex with necessary transportation back to their tie-up point.

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- C. <u>Salt Lake City-Grand Junction/Helper/Milford/Provo-These four pools shall be</u> combined into one pool with Salt Lake City as the home terminal and multiple far terminals.
- D. <u>Helper-Provo/Grand Junction-One pool shall be created with the home terminal at</u> Helper with dual far terminal destinations of Provo and Grand Junction.
- E. <u>Milford-Provo/Helper-One pool shall be created with the home terminal at Milford</u> with dual far terminals of Provo and Helper.
- F. Salt Lake City-Ogden Metro Complex-Any pool crew with a home terminal in the Salt Lake City-Ogden metro complex may receive or leave their train anywhere within the limits of the Metro Complex which shall extend from the new terminal limits of Ogden through the new Terminal limits of Salt Lake.

III. Other Operations

- A. <u>Salt Lake City-Ogden-All UP and SP pool, local, work train and road switcher</u> operations within the Salt Lake City-Ogden metro complex and in the vicinity thereof shall be combined into a unified operation.
- B. <u>Salt Lake City-Provo-All UP and SP pool, local, work train and road switcher</u> operations between Salt Lake City and Provo and in the vicinit/ thercof (including mine runs out of Provo) shall be combined into a unified operation.
- C. <u>Winnemucca-Wells</u>-All UP and SP pool, local, work train and road switcher operations at and between Winnemucca and Wells and in the vicinity thereof shall be combined into a unified operation.
- D. Extra Boards-At locations where there are more than one extra board. extra boards may be combined into one or more extra boards.
- E. Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District.

IV. Seniority Consolidation

A. The seniority of all employees working in the territory described above shall be consolidated into one common new seniority district. All current seniority in all crafts shall be relinquished when new seniority is established. The seniority district shall be divided into three zones with seniority movement between the zones limited. The three zones shall be as follows:

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Zone 1: Salt Lake City and Ogden West to and including Winnemucca not including the terminals of Salt Lake City and Ogden.

Zone 2: Salt Lake City North to McCammon and Ogden East to Green River not including Green River or the road switchers, locals and yard assignments that operate in the vicinity thereof but including all operations in the Ogden and Salt Lake City Terminals.

Zone 3: Salt Lake City East, not including the Salt Lake Terminal, to but not including Grand Junction and South to Caliente via either route including the Provo terminal.

- B. Seniority movement between the Zones shall be limited to once per year unless employees are reduced from their working lists and cannot hold an assignment in their current Zone.
- C. The Salt Lake and Ogden Yard extra boards shall be included in Zone 2. The combined road extra board(s) shall not be part of any Zone and will not have limitations on moving between them and the various zones.

V. Collective Bargaining Agreement

All of the employees subject to this notice shall be covered under a single, common collective bargaining agreement including all National Agreement rules. The agreement shall be compatible with the economies and efficiencies that will benefit the public as outlined in the carrier's operating plan.

VI. Allocation of Forces

An adequate supply of forces shall be relocated from locations where assignments are abolished to locations where new assignments are established.

VII. Affected Employees

As a result of this transaction, Carrier estimates the following approximate number of TE&Y employees will be affected.

	Enginemen	Trainmen/yardmen
Union Pacific Eastern District	- 20	19
Union Pacific SLC North	34	60

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Union Pacific SLC South	08	10
Union Pacific OUR&D	00	00
Union Pacific WP	22	21
Southern Pacific D&RGW	<u>37</u>	48
Total	121	158

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The Carrier's STB submission identified 77 engineers and 197 trainmen/yardmen as possibly affected at these locations. In accordance with the previous letters to the BLE and UTU, this notice identifies 44 additional engineers and 51 additional trainmen/yardmen that could be affected upon completion of a negotiated agreement based on the Carrier's operating plan.

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UNION PACIFIC RAILROAD COMPANY



December 2, 1996 Amended Notice 19W-UTU 1416 DODGE STREET

Certified Mail Return Receipt Requested/Hand-Delivered

Mr. R.E. Carter General Chairman UTU PO Box 1333 Pocatello, ID 83204

Dear Sir:

The Carrier is hereby amending the Notice 19W served pursuant to Section 4 of New York Dock on September 18, 1996, pertaining to Finance Docket 32760 and the implementation of that portion of the Union Pacific/Southern Pacific merger transaction specified in that notice. The Carrier serves notice as specified on the attached Exhibit "A" to add the territory on the Union Pacific between Caliente, Nevada and Yermo, California to the September 18, 1996 Notice. This amended notice does not amend or alter the remaining items set forth in the original Notice served on September 18, 1996. The employee protective conditions set forth in New York Dock apply to this amended notice.

This letter and the attached Exhibit "A" will be hand delivered during meetings in Sait Lake City the week of December 2, 1996, mailed to your office and posted on all applicable TE&Y bulletin Boards.

Yours truly,

W.S. Hunchley

W.S. Hinckley / General Director Labor Relations

cc: AM Lankford - UTU Vice President PC Thompson - UTU Vice President MB Futhey - UTU Vice President

Exhibit "A" Amended Notice 19W-UTU-BLE

AMENDED NOTICE

TO ALL TRAIN, ENGINE AND YARD SERVICE EMPLOYEES WORKING ON THE TERRITORY:

UNION PACIFIC - CALIENTE, NEVADA to YERMO, CALIFORNIA

(THE ABOVE INCLUDES ALL MAIN AND BRANCH LINES, INDUSTRIAL LEADS AND STATIONS BETWEEN THE POINTS IDENTIFIED)

WHO ARE REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS OR THE UNITED TRANSPORTATION UNION

The U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP") in Finance Docket No. 32760.

The Notice(19W-UTU-BLE) previously served on the Brotherhood of Locomotive Engineers on September 20, 1996, and served on the United Transportation Union on September 18, 1996, covering employees working in the territories specified in that Notice is hereby amended, in part, to add operations between Caliente, Nevada and Yermo, California. As a result, Section IV, Seniority Consolidation, shall be amended to provide for a fourth zone as follows:

Zone 4: Caliente to Yermo

The remaining items in the Notice 19W-UTU-BLE have not been amended by this notice.

New York Dock protective conditions apply to this amendment.

UNION PACIFIC RAILROAD COMPANY

December 6, 1996

Amended Notice 19W-UTU-BLE 1416 DODGE STREET OMAHA NEBRASKA 68179

Certified Mail-Return Receipt

Mr. D.L. Stewart General Chairman BLE 44 North Main Layton, UT 84041

Mr. N.J. Lucas General Chairman UTU 112 J. Street, Suite 202 Sacramento, CA 95814 Mr. E.L. Pruitt General Chairman BLE 38750 Paseo Padre Parkway, Suite ∴.7 Fremont, CA 94536

Mr. D.E. Johnson General Chairman UTU 1860 El Camino Real, Suite 201 Burlingame, CA 94010

Gentlemen:

The Carrier is hereby amending the Notice 19W-UTU-BLE served pursuant to Section 4 of New York Dock served on the UTU September 18, 1996, and served on the BLE September 20, 1996, pertaining to Finance Docket 32760 and the implementation of that portion of the Union Pacific/Southern Pacific merger transaction specified in that notice. The Carrier serves notice as specified on the attached Exhibit "A" to include operations that run west of Elko but short of Winnemucca and exclude Winnemucca from the territories listed in Notice 19W-UTU-BLE. This amended notice does not alter or amend the remaining items set forth in the original notice served on September 18 and 20, 1996. The employee protective conditions set forth in New York Dock apply to this amended notice.

This letter and the attached Exhibit "A" will be posted on all applicable TE&Y bulletin boards.

Yours truly,

WSHmile

W.S. Hinckley / General Director Labor Relations

Exhibit "A" Amended Notice 19W-UTU-BLE

AMENDED NOTICE

TO ALL TRAIN, ENGINE AND YARD SERVICE EMPLOYEES WORKING ON THE TERRITORY:

UNION PACIFIC - Salt Lake to but excluding Winnemucca

SOUTHERN PACIFIC - Ogden to but excluding Winnemucca

(THE ABOVE INCLUDES ALL MAIN AND BRANCH LINES, INDUSTRIAL LEADS AND STATIONS BETWEEN THE POINTS IDENTIFIED)

WHO ARE REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS OR THE UNITED TRANSPORTATION UNION

In Finance Docket No. 32760, the U.S. Department of Transportation, SurfaceTransportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to, as "Union Pacific" or "UP") with the Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), the SPCSL Corp., the St. Louis Southwestern Railway Company ("SSW"), and the Denver and Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "Southern Pacific" or "SP").

The Notice (19W-UTU-BLE) previously served on the Brotherhood of Locomotive Engineers on September 20, 1996, and served on the United Transportation Union on September 18, 1996, covering employees working in the territories specified in that Notice is hereby amended, in part, to include operations that run west of Elko but short of Winnemucca and excluding Winnemucca from the territories listed in the original Notice 19W-UTU-BLE. The remaining items in the original Notice19W-UTU-BLE have not been amended by this notice.

New York Dock protective conditions apply to this amendment.

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Harold Ross - BLE General Counsel James McCoy - BLE Vice President Don Hahs - BLE Vice President AM Lankford - UTU Vice President PC Thompson - UTU Vice President MB Futhey - UTU Vice President
UNION PACIFIC RAILROAD COMPANY



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December 6, 1996 Antanded Notice 19W-UTU-BLE

Certified Mail-Return Receipt

Mr. D.L. Stewart General Chairman BLE 44 North Main Layton, UT 84041

Mr. N.J. Lucas General Chairman UTU 112 J. Street, Suite 202 Sacramento, CA 95814 Mr. E.L. Pruitt General Chairman BLE 38750 Paseo Padre Parkway, Suite A-7 Fremont, CA 94536

Mr. D.E. Johnson General Chairman UTU 1860 El Camino Real, Suite 201 Burlingame, CA 94010

Gentlemen:

The Carrier is hereby amending the Notice 19W-UTU-BLE served pursuant to Section 4 of New York Dock served on the UTU September 18, 1996, and served on the BLE September 20, 1996, pertaining to Finance Docket 32760 and the implementation of that portion of the Union Pacific/Southern Pacific merger transaction specified in that notice. The Carrier serves notice as specified on the attached Exhibit "A" to include operations that run west of Elko but short of Winnemucca and exclude Winnemucca from the territories listed in Notice 19W-UTU-BLE. This amended notice does not alter or amend the remaining items set forth in the original notice served on September 18 and 20, 1996. The employee protective conditions set forth in New York Dock apply to this amended notice.

This letter and the attached Exhibit "A" will be posted on all applicable TE&Y bulletin boards.

Yours truly,

WSHmile

W.S. Hinckley / General Director Labor Relations cc: -Harold Ross - BLE General Counsel James McCoy - BLE Vice President Don Hahs - BLE Vice President AM Lankford - UTU Vice President PC Thompson - UTU Vice President MB Futhey - UTU Vice President

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Exhibit "A" Amended Notice 19W-UTU-BLE

AMENDED NOTICE

TO ALL TRAIN, ENGINE AND YARD SERVICE EMPLOYEES WORKING ON THE TERRITORY:

UNION PACIFIC - Salt Lake to but excluding Winnemucca

SOUTHERN PACIFIC - Ogden to but excluding Winnemucca

(THE ABOVE INCLUDES ALL MAIN AND BRANCH LINES, INDUSTRIAL LEADS AND STATIONS BETWEEN THE POINTS IDENTIFIED)

WHO ARE REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS OR THE UNITED TRANSPORTATION UNION

In Finance Docket No. 32760, the U.S. Department of Transportation, SurfaceTransportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to, as "Union Pacific" or "UP") with the Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SPT"), the SPCSL Corp., the St. Louis Southwestern Railway Company ("SSW"), and the Denver and Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "Southern Pacific" or "SP").

The Notice (19W-UTU-BLE) previously served on the Brotherhood of Locomotive Engineers on September 20, 1996, and served on the United Transportation Union on September 18, 1996, covering employees working in the territories specified in that Notice is hereby amended, in part, to include operations that run west of Elko but short of Winnemucca and excluding Winnemucca from the territories listed in the original Notice 19W-UTU-BLE. The remaining items in the original Notice19W-UTU-BLE have not been amended by this notice.

New York Dock protective conditions apply to this amendment.

10:45 am

To:Thomas L. Dein, Patrick G. Kenny, Jack E. Denniscc:From:Thomas L. DeinDate:01/06/97 03:49:54 PMSubject:Per our AM Discussion 01/06

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SALT LAKE CITY HUB CONDUCTOR ASSIGNMENT RATIONALIZATION

Pool Limits	Currrent Pool Crews	Projected Pool Crews	Crew Difference
Ogden - Green River	8.	23	+15
Salt Lake City - Green River	42	28	-14
Salt Lake City - Pocatello	10	08	-2
Ogden - Elko	24	38	+14
Salt Lake City - Elko	36	11	-25
Salt Lake City - Milford	30	31	+1
Salt Lake City - Grand Jct	37	07	-30
Salt Lake City - Provo	01	05	+04
Milford - Las Vegas	47	48	+1
Las Vegas - Yermo	32	34	+2
Elko - Valmy	01	01	0
Salt Lake City - Ogden (UP)	07	0	-07
Salt Lake City - Ogden (SP)	07	0	-07
Total Pool Adjustments	282	234	-48

Yard & Local Job Assignment Locations	Current Jobs	Projected Jobs	Difference
Grand Jct	10	4	-6
Helper	2	2	0
Provo	5	4	-1
Roper	21	24	+3
Salt Lake City North Yard	24	15	-9
Ogden	18	10	-08
Elko / Carlin	5	3	-02
Totals	85	62	-23

Assumption: Current extra boards are properly sized to protect pool, local and yard assignments.

With this assumption, and the above projected decreases in conductor assignments (-71 total) the projected decrease in extra board assignments would be 21 (71 X 30%).

Partial List of Job Creations

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Pocatello	10
Rawlins	10
Cheyenne	20
Dalhart	25
El Faso SP	23
El Paso UP	25
Tuscon	65
West Colton	25
Current condu	ctor borrow-outs -

Force assignments Salt Lake City - 05

53.

UPEY. 26

DENVER HUB CONDUCTOR ASSIGNMENT RATIONALIZATION

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Pool Limits	Currrent Pool Crews	Projected Pool Crews	Crew Difference
Deaver - Cheyenne	08	11	+03
Denver - Oakley (ShrnSpg)	04	18	+14
Salina - Oakley(Shrn Spg)	04	16	+12
Denver - Phippsburg 165	08	08	0
Denver - Grand Junction	14	22	+ 8
Denver - Pueblo	08	10	+02
Pueblo - Minturn	16	0	-16
Grand Jct - Minturn	17	0	-17
Pueblo - Horace	20	1	-19
Horace - Hoisington	16	. 1	-15
Hoisington - Council Grove	16	1	-15
Pueblo - Dalhart 268	10	13	+03
Totals	141	101	.
Yard & Local Job Assignment Locations	Current Jobs	Projected Jobs	Difference
Denver	27	20	-07
Pueblo	10	4	-06

Grand Jct (See SLC Hub)			
Cheyenne (No Change)			
Hoisington (No Change)			1
Council Grove (No Change)			
Totals	37	24	-13

Assumption: Current extra boards are properly sized to protect pool, local and yard assignments.

With this assumption, and the above projected decreases in conductor assignments (# total) the projected decrease in extra board assignments would be 24(27 X 30%).

Job Creations	
10	
10	
20	
25	
SP	23
25	
65	
25	
	10 20 25 SP 25 65

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Current conductor borrow-outs - 53 SP & 5 UP.

UP EXHIBIT 27

MERGER IMPLEMENTING AGREEMENT (Salt Lake Hub)

between the

UNION PACIFIC RAILROAD COMPANY SOUTHERN PACIFIC RAILROAD COMPANY

and the

UNITED TRANSPORTATION UNION

In Finance Docket No. 32760, the Surface Transportation Board approved the merger of Union Pacific Railroad Company/Missouri Pacific Railroad Company (Union Pacific or UP) with the Southern Pacific Transportation Company, the SPCSL Corp., the SSW Railway and the Denver and Rio Grande Western Railroad Company (SP). In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all employees working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

IT IS AGREED:

I. SALT LAKE HUB.

A new seniority district shall be created that is within the following area: DRGW mile post 446.5 at Grand Junction, UP mile post 161.02 at Yermo, UP mile post 665.0 and SP mile post 553.0 at Elko, UP mile post 110.0 at McCammon and UP mile post 847 at Granger and all stations, branch lines, industrial leads and main line between the points identified.

II. SENIORITY AND WORK CONSOLIDATION.

The following seniority consolidation will be made:

A. A new seniority district will be formed and master Seniority Rosters--(UP/UTU) Salt Lake Hub--will be created for the employees working as Conductors, Brakemen, Yardmen (the term yardman shall, in this agreement, refer to all yard positions

including foreman, helper, utility man, herder, switchtender and post October 31, 1985 hostlers) and Firemen in the Salt Lake Hub on November 1, 1996. (The term "trainmen" is used hereafter as a generic term to include all UTU-C, T&Y represented employees and where applicable all UTU-E represented employees) The four new rosters will be created as follows:

1. Switchmen/brakemen placed on these rosters will be dovetailed based upon the employee's current seniority date. If this process results in employees having identical seniority dates, seniority will be determined by the employee's current hire date with the Carrier.

2. Conductors placed on these rosters will be dovetailed based upon the employee's actual promotion date into the craft. If this process results in employees having identical seniority dates, seniority will be determined by the employee's current hire date with the Carrier.

3. All employees placed on a roster may work all assignments protected by a roster in accordance with their seniority and the provisions set forth in this agreement.

4. New employees hired and placed on the rosters subsequent to the adoption of this agreement will have no prior rights.

B. Employees assigned to the merged rosters with a seniority date prior to November 1, 1996, will be accorded primary prior rights reflecting their previous seniority areas that remain in the Hub and secondary prior rights with dovetail rights being the final determination for selection purposes to pool operations as follows:

POOL	PRIMARY	SECONDARY	DOVETAIL
SLC-MILFORD	S. CENTRAL	NONE	YES
SLC-POCATELLO	IDAHO	NONE	YES
SLC-Green River	UPED/IDAHO-ratio	NONE	YES
OG-Green River	UPED	DRGW	YES
OG-ELKO	SP	WP	YES
SLC-ELKO	WP	SP	YES
SLC-Provo/Helper/Grand Jct.	DRGW	NONE	YES
SLC-PROVO	DRGW	NONE	YES
Milford-Provo/Helper	SO. CENTRAL	DRGW	YES

Milford-Las Vegas	So. Central/Las Vegas	NONE	YES	
Las Vegas-Yermo	LAS VEGAS	NONE	YES	

Note 1: The Carrier does not plan Salt Lake City - Ogden pool operations and this service will be handled by an extra board or road switcher service. If sufficient extra work develops to sustain 4 or more pool turns, then a pool shall be established and pro rated on a 50/50 basis with Idaho prior right employees taking the odd numbered turns and DRGW prior right employees taking the even numbered turns.

Note 2: Salt Lake City - Helper may be combined with either the Salt Lake City - Grand Junction or the Salt Lake City - Provo pool.

Note 5. This Section does not limit the Carrier to these pool operations. New pools operated on prior rights areas will have the same primary prior rights and those that operate over two prior right areas will be manned from the dovetail roster.

Note 4: The Salt Lake City-Elko pool and the Salt Lake City-Grand Junction pool shall be single-headed operations with Salt Lake City as the home terminal. The Carrier shall give ten days written notice of the change to single headed pools if not given in the original 30 day implementation notice.

C. Yard crews will not be restricted in a terminal where they can operate but the following will govern which employees will have preference for assignments that go or, duty in the following areas:

LOCATION	PRIMARY	SECONDARY	DOVETAIL
ROPER	DRGW	IDAHO	YES
SLC-NorthYard/intermodal	IDAHO	DRGW	YES
OGDEN	OURD/IDAHO	SP	YES
ELKO	WP	SP	YES
CARLIN	SP	WP	YES
PROVO	DRGW	South Central	YES
Transfer Jobs	On Duty Point	NONE	YES
LAS VEGAS	LAS VEGAS	NONE	YES

D. Road Switchers will work in a given area and may cross prior right boundaries. Employees shall have prior rights to road switchers based on the on duty points:

- 1.- Salt Lake City North: Idaho.
- 2. Salt Lake City Provo: DRGW
- 3. Provo Milford: South Central
- 4. Salt Lake City Milford via Tintic: South Central
- 5. In other areas the prior rights of the on duty points will govern.

E. Locals that continue current operations shall be prior righted. Locals that operate over more than one prior rights area shall be prior righted based on the on duty point.

F. It is understood that certain runs home terminaled in the Salt Lake Hub will have away from home terminals outside the Salt Lake Hub and that certain runs home terminaled outside the Salt Lake Hub will have away from home terminals inside the Salt Lake Hub. Examples are: Salt Lake City/Ogden runs to Green River and Pocatello, and Portola/Sparks to Elko. It is not the intent of this agreement to create seniority rights that interfere with these operations or to create double headed pools. For example, Sparks will continue to be the home terminal for Sparks/Elko runs and a double headed pool will not be established.

G. All trainman vacancies within the Salt Lake Hub must be filled prior to any trainman being reduced from the working list or prior to trainman being permitted to exercise to any reserve boards.

H. With the creation of the new seniority district all previous seniority outside the Salt Lake Hub held by trainmen on the new rosters shall be eliminated and all seniority inside the Hub held by trainmen outside the Hub shall be eliminated.

I. Trainmen will be treated for vacation and payment of arbitraries as though all their service on their original railroad had been performed on the merged railroad.

J. Trainmen who have been promoted to Engine service and hold engine service seniority inside the Salt Lake Hub and working therein on November 1, 1996 shall be placed on the appropriate roster(s) using their various trainmen seniority dates. Those Engine service employees, if any, who do not have a train service date in the Salt Lake Hub shall be given one in accordance with the October 31, 1985 National Agreement. Those engine service employees who previously came from an area that was not covered by an UTU-E contract shall be placed on the dovetail UTU-E roster with their current "reserve engineer" (fireman) seniority date.

III. TERMINAL CONSOLIDATIONS.

The terminal consolidations will be implemented in accordance with the following provisions:

A. <u>Salt Lake City/Ogden Metro Complex</u>. A new consolidated Salt Lake City/Ogden Metro Complex will be created to include the entire area within and including the following trackage:

Ogden mile posts 989.0 UP east, 3.25 UP north and 780.21 SP west and to Salt Lake City mile posts 739.0 DRGW south and 781.17 UP west.

1. All UP and SP pool, local, work train and road switcher operations within the SLC/Ogden Metro Complex shall be operated as a single carrier operation.

2. All road crews may receive/leave their trains at any location within the boundaries of the new complex and may perform any work within those boundaries pursuant to the controlling collective bargaining agreements. The Cartier will designate the on/off duty points for road crews within the new complex with the on/off duty points having appropriate facilities for inclement weather and other facilities as currently required in the collective bargaining agreement. The on-duty points shall be the same as the off-duty points.

3. All rail lines, yards and/or sidings within the new complex will be considered as common to all crews working in, into and out of the complex. All crews will be permitted to perform all permissible road/yard moves. Interchange rules are not applicable for intra-carrier moves within the complex.

4. In addition to the consolidated complex, all UP and SP operations within the greater Salt Lake City area and all UP and SP operations (including the OUR&D) within the greater Ogden area shall be consolidated into two, separate terminal operations. The existing switching limits at Ogden will now include the former SP rail line to SP Milepost 780.21. The existing UP switching limits at Salt Lake City will now include the Roper Yard switching limits (former DRGW) to DRGW Milepost 739.0.

B. <u>Provo.</u> All UP and SP operations within the greater Provo area shall be consolidated into a unified terminal operation.

C. <u>Elko/Carlin</u>. All UP and SP operations within the greater Elko and Carlin area shall be consolidated into a unified terminal operation at Elko. Carlin will become a station enroute.

D. General Conditions for Terminal Operations.

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1985 and 1991 National Awards and implementing agreements.

2. Employees will be transported to/from their trains to/from their designated or /off duty point in accordance with Article VIII, Section 1 of the October 31, 1985 National Agreement.

3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service zone, shall continue to apply. Yard crews at any location within the Hub may perform such service in all directions out of their terminal.

Note: Items 1 through 3 are not intended to expand or restrict existing rules.

IV. POOL OPERATIONS.

A. The following pool consolidations may be implemented to achieve efficient operations in the Salt Lake City Hub:

1. <u>Salt Lake City - Elko and Ogden - Elko</u>. These operations may be run as either two separate pools or as a combined pool with the home terminal within the Salt Lake City/Ogden metro complex. This pool service shall be subject to the following:

(a) If the pools are combined, then the former SP and WP trainmen shall have prior rights on a 40/60 basis.

(b) If separate pools, the Carrier may operate the crews at the far terminal of Elko as one pool back to the metro complex with the crew being transported by the Carrier back to its original on duty point at the end of their service trip.

(c) The Carrier must give ten days written notice of its intent to change the number of pools or to combine the pools at Elko for a single pool returning to Salt Lake City/Ogden.

(d) Since Elko will no longer be a home terminal for pool freight operations east to the metro complex a sufficient number of pool and extra board employees will be relocated to the metro complex.

2. <u>Salt Lake City - Green River/Pocatello and Ogden - Green River</u>. These operations may be run as either one, two, or three separate pools. The Carrier shall determine whether to combine any or all of the pools and shall give ten days notice of its combining of pools.

3. <u>Salt Lake City - Grand Junction/Helper/ Provo</u>. These operations may be run as either one, two, or three separate pools with the home terminal within the metro complex. The carrier must give ten days written notice of its intent to change the number of pools. If run as a combined pool(s) then prior rights to the pool(s) shall be based on the percentages that existed on the day the ten day notice is given.

4. <u>Helper-Grand Junction/Provo and Milford-Provo/Helper</u>. Each of these operations will be run as a single pool.

5. <u>Other Service</u>. Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District with the on duty point within the new seniority district.

Note: All service, with on duty points at Elko, operating to Winnemucca, but not including Winnemucca, shall be operated as part of the Salt Lake City Hub.

6. The operations listed in A 1-4 above, may be implemented separately, in groups or collectively, upon ten (10) days written notice by the Carrier to the General Chairman. Implementation notices governing item (5) above, shall be governed by applicable collective bargaining agreements.

Note 1: While the Sparks-Carlin and Wendel-Carlin pools are not covered in this notice it is understood that they will operate Sparks-Elko and Wendel-Elko and will be paid actual miles when operating trains between these two points pursuant to the current collective bargaining agreements and will be further handled when merger coordinations are handled for that area.

Note 2: The Portola-Elko and Winnemucca-Elko pools shall continue to operate pursuant to the current collective bargaining agreements and will be further handled when merger coordinations are handled for that area.

B. The terms and conditions of the pool operations set forth in Section A shall be the same for all pool freight runs whether run as combined pools or separate pools. The terms and conditions are those of the designated collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth below. The basic Interdivisional Service conditions shall apply to all pool freight service. Each pool shall be paid the actual miles run for service and combination service/deadhead with a minimum of a basic day.

1. <u>Twenty-Five Mile Zone</u> - At Salt Lake City, Ogden, Elko, Milford, Grand Junction, Helper, Provo, Green River, Las Vegas, Yermo and Pocatello pool crews may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Crews shall be paid an additional one-half ($\frac{1}{2}$) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis.

Example: A Salt Lake City-Milford crew receives their north bound train ten miles south of Milford but within the 25 mile zone limits and runs to Salt Lake. They shall be paid the actual miles established for the Salt Lake-Milford run and an additional one-half basic day for handling the train from the point ten (10) miles south of Milford back through Milford.

Note: Crews receiving their trains on the far side of their terminal but within the Salt Lake-Ogden complex shall be paid under this provision.

2. <u>Turnaround Service/Hours of Service Relief</u>. Except as provided in (1) above, turnaround service/hours of service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to setting up other employees. Trainmen used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may handle this service in all directions out of a terminal that is within the Hub.

3. Nothing in this Section B (1) and (2) prevents the use of other employees to perform work currently permitted by prevailing agreements.

C. <u>Agreement coverage</u>. Employees working in the Salt Lake Hub shall be governed, in addition to the provisions of this Agreement by the UP Agreement covering the Eastern District for both road and yard, including all addenda and side letter agreements pertaining to that agreement, the 1996 National Agreement applicable to Union Pacific and previous National Agreement provisions still applicable. Except as specifically provided herein, the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. Since the employees have not worked under a daily preference system in the yard the employees shall be governed by the regular application system for yard assignments and the daily preference system shall not apply in the Salt Lake Hub.

D. After implementation, the application process will be used to fill all vacancies in the Hub as follows:

1. Prior right vacancies must first be filled by an employee with prior rights to the vacancy who is on a reserve board prior to considering applications from employees who do not have prior rights to the assignment

2. If no prior right applications are received, then the junior dovetailed employee on a reserve board at the location who holds prior rights to the assignment will be forced to the assignment or permitted to exercise seniority to a position held by another employee.

3. If there are no prior right employees on one of the reserve boards covering the vacant prior right assignment, then the senior non prior right applicant will be assigned. If no applications are received then the most junior employee on any of the reserve boards will be recalled and will take the assignment or displace a junior employee. If there are no trainmen on any reserve boards, then the senior furloughed trainman in the Salt Lake Hub shall be recalled to the vacancy. When forcing or recalling, prior rights trainmen shall be forced or recalled to prior right assignments prior to trainmen who do not have prior rights.

4. Non prior right vacancies will be filled by the senior applicant from the dovetail roster. If no applicant then the junior employee on any reserve board in the Hub shall be recalled to the vacancy in accordance with the provisions of the UPED reserve board agreement.

V. EXTRA BOARDS.

A. The following extra boards may be established to protect vacancies and other extra board work in or out of the Salt Lake City/Ogden metro complex or in the vicinity thereof:

1. **Ogden :** One conductor and one brakeman/switchmen(total of two) extra boards to protect the Ogden-Green River Pool, and the Ogden-Elko Pool (if pools are operated separately), the Ogden yard assignments and all road switchers, locals and work trains between Ogden-Green River, Clearfield-McCammon and Ogden-Elko.

2. Salt Lake North: One conductor and one brakeman/switchmen (total of two) extra boards to protect the Salt Lake-Pocatello/Green River Pool, the Salt Lake-Elko pool, all Salt Lake Yard assignments and all road switchers, locals and work trains between Salt Lake to Wendover and Salt Lake to Clearfield except work trains may work all the way to Ogden

Note: If the Carrier operates Metro Complex pools to Pocatello/ Green River and Elko then the above extra boards will convert to two sets of extra boards with one set covering east pool freight and one covering west pool freight. The east extra boards will also cover all road switcher, locals, yard assignments and work trains at or between Salt Lake and Pocatello/Green River/Ogden with the west extra board covering these assignments between Ogden/Salt Lake and Elko.

3. Salt Lake South: One conductor/brakeman extra board to protect Salt Lake -Milford/Helper/Grand Junction/Provo pool(s) and all road switcher local and work train assignments in this area.

Note: The Carrier may operate more than these extra boards in the Salt Lake Metro complex. When more than these extra boards are operated the Carrier shall notify the General Chairman what area each extra board shall cover. When combining extra boards the Carrier shall give ten (10) days written notice.

B. The Carrier may establish or keep extra boards at points such as Milford, Provo, Helper, Elko, Las Vegas etc to meet the needs of service pursuant to the designated collective bargaining agreement provisions. If there are less than three yard assignments at any of these locations then the extra boards shall be conductor/brakemen/switchmen boards. If at least three yard assignments then the extra boards shall be separated into a conductor board and a brakemen/switchmen board.

C. At any location where both UP and SP/DRGW extra boards exist the Carrier may combine these boards into one board.

D. The Ogden and Salt Lake extra boards shall be filled off the dovetail roster. Extra Boards in prior right areas such as Milford, Las Vegas and Helper shall be filled using prior rights. Extra boards at the dual locations of Provo and Elko shall be filled on a 50/50 basis. At Grand Junction the extra board will be a combination east-west board.

VI. PROTECTION.

The Surface Transportation Board has stated that adversely affected employees shall be covered by New York Dock protection.

VII. IMPLEMENTATION.

A. This implements the merger of the Union Pacific and Southern Pacific railroad operations in the area covered by Notice 19W and any amended notices thereto.

In addition, the parties understand that the overall implementation is being phased in to accommodate the cut over of computer operations, dispatching, track improvements and clerical support.

B. The Carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Employees whose assignments are changed shall be permitted to exercise their new seniority. After the initial implementation the 10 day provisions of the various Articles shall govern.

C. Prior to the movement to reserve boards or transfers outside the Salt Lake Hub, it will be necessary to fill all positions in the Salt Lake Hub.

D. In an effort to provide for employees to follow their work to areas outside the Salt Lake Hub, the Carrier shall advertise vacancies at locations outside the Hub for a period of one year from the implementation date, as long as a surplus of trainmen exist in the Hub, for employees to make application. The dovetail roster shall be used for determining the senior applicant. Should an insufficient number of applications be received then the junior surplus employee shall be forced to the vacancy. Employees who move by application or force shall establish new seniority and relinquish seniority in the Hub.

VIII. CREW CONSIST.

A. Upon implementation of this agreement (award) all crew consist productivity funds that cover employees in the Hub shall be frozen pending payment of the shares to the employees both inside the Hub and outside the Hub. A new productivity fund shall be created on implementation day that will cover those employees in the Salt Lake Hub and the funds that cover employees outside the Hub shall continue for the employees who remain outside the Hub. The Salt Lake Hub employees shall have no interest or share in payments made to those funds after implementation date.

B. Payments into the new productivity fund shall be made in compliance with the UPED crew consist agreement. Those employees who would have participated in the shares of the productivity funds had they originally been hired on the UPED shall be eligible to participate in the distribution of the new fund except as stated in (D) below.



C. Employees who would have been covered under the UPED special allowance provisions had they been hired originally on the UP Eastern District shall be entitled to a special allowance under those provisions except as stated in (D) below.

D. Those employees who sold their special allowances/productivity funds previously are not entitled to those payments under this agreement (award).

E. While the UPED crew consist agreement will govern this Hub the Carrier is not required to place yardmen/brakemen on any local, road switcher, yard or other assignment anywhere in the Hub that is was not required to use under the least restrictive crew consist agreement that previously existed.

IX. FAMILIARIZATION.

A. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for the new operations. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualifications shall be handled with local operating officers. The parties recognize that different terrain and train tornage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of Operating Practices and local chairmen in implementing this section.

X. FIREMEN

A. This agreement also covers firemen. Pre-October 31, 1985 firemen will only have seniority in the Salt Lake Hub and if unable to work an engineer's assignment or a mandatory firemen's/hostler psotion they shall be permitted to hold a fireman's postion first in their prior rights area and second, using their dovetail seniority.

B. Post October 31, 1985 firemen shall continue to be restricted to mandatory assignments and if unable to hold an engine service postion will be required to exercise their train service seniority in the Hub.

XI. HEALTH AND WELFARE

Employees not previously covered by the UPED agreement shall have 60 says to join the Union Pacific Hospital Association in accordance with that agreement.

QUESTIONS AND ANSWERS -UTU SALT LAKE HUB

Article I - SALT LAKE HUB

- Q1. Does the new seniority district change switching limits at the mile posts indicated?
- A1. No. It is the intent of this agreement to identify the new seniority territory and not to change the existing switching limits except as specifically provided elsewhere in this agreement.
- 0.2. Which Hub is Grand Junction in?
- A2. For seniority purposes trainmen are in the Denver Hub, however due to the unique nature of Grand Junction being a home terminal for one Hub and away from home for another Hub, the extra board may perform service on both sides of Grand Junction.
- Q3. What Hub are the Valmy coal assignments in?
- A3. Because they are on duty at Elko and work to or short of Winnemucca, but not including Winnemucca, they are part of the Salt Lake Hub. This is also true of assignments that work out of Carlin but short of Winnemucca.

Article II - SENIORITY AND WORK CONSOLIDATION

- Q4. How long will prior rights rosters be in effect?
- A4. They will lose effect through attrition.
- Q5. Do the OUR&D rosters and agreements survive this merger?
- A.5. No.
- Q.6 It is the intent of Article II B note 4 to operate SLC-Elko and SLC-Grand Junction as one pool?
- A.6 No, each of these pool are now double headed and it is the intent of that note to run each pool as a single headed pool and not combine them with each other.
- Q7. In Article II(G), what does it mean when it refers to protecting all trainmen vacancies within the Hub?
- A7. If a vacancy exists in the Salt Lake Hub, it must be filled by a prior rights employee prior to placing employees on reserve boards. If a non prior rights employee is working in the Salt Lake Hub then a prior rights employee must displace that person prior to prior right trainmen going to a reserve board. If a vacancy exists in a pool and a trainman is on a reserve board that

person will be recalled prior to the carrier using trainmen who do not hold reserve board rights or hiring new trainmen..

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- Q8. Will existing pool freight terms and conditions apply on all pool freight runs?
- A8. No. The terms and conditions set forth in the controlling collective bargaining agreements and this document will govern.
- Q9. What is the status of an employee who placed in the Hub after November 1, 1996 but pricr to the implementation of this Award?
- Q9. They shall be placed on the roster using their dovetail date but they shall not have any prior rights.
- Q10. Will an employee gain or lose vacation benefits as a result of the merger? A10. No.
- Q11. When the agreement is implemented, which vacation agreement will apply?
- A11. The vacation agreements used to schedule vacations for 1997 will be used for the remainder of 1997. Thereafter the Eastern District Agreement will govern.
- Q12. If a local operated by a UP Idaho trainman previously went on duty at the UP North Yard now goes on duty at the Roper Yard, does it now operate over more than one seniority district or is it continuing current operation.
- A12. Changes in on duty points within a terminal or the travel over other tracks in a terminal does not alone alter the "continue current operations" intent of the Agreement.
- Q13. What is the status of firemen's seniority?
- A13. Firemen seniority will be dovetailed in a similar manner as trainmen.

ARTICLE III - TERMINAL CONSOLIDATIONS

- Q14. Are the national road/yard zones covering yard crews measured by the metro complex limits or from the switching limits where the yard assignment goes on duty?
- A14. The switching limits where the yard crew goes on duty.
- Q15. If crews go on duty in the Complex short of Ogden, is Ogden part of the initial terminal?
- A15. No, it is an intermediate point.

ARTICLE IV - POOL OPERATIONS

Q16. If the on duty point for the Salt Lake - Green River pool is moved from North Yard to Roper Yard, will the mileage paid be increased?

- A16. Yes. The mileage will be from the center of Roper Yard to Green River.
- Q17. Can you give some examples of work currently permitted by prevailing agreements as referenced in Article IV B 3?
- A17. Yes, yard crews are currently permitted to perform hours of service relief in the road/yard zone established in the National Agreement, ID crews may perform combination deadhead service and road switchers may handle trains that are laid down in their zone.
- Q18. Because of the elimination of Elko as a home terminal for pool service what type of job assignment will the trainmen who remain at Elko protect?
- A18. The Carrier anticipates that for those trainmen who remain in this area, that based on manpower needs, the guaranteed extra board will protect extra locals, branch line work (Valmy coal), yard vacancies, short turnaround service, HOSA relief work and so forth.
- Q19. Will the Carrier change the Las Vegas-Milford pool to a single-headed pool?
- A19. No, not as a result of this merger notice. Article IX of the 1986 National Award v ould govern any future action.
- Q20. If a crew in the 25 mile zone is delayed in bringing the train into the original terminal so that it does not have time to go on to the far terminal, what will happen to the crew?
- A20. Except in cases of emergency, the crew will be deadheaded on to the far terminal.
- Q21. Is it the intent of this agreement to use crews beyond the 25 mile zone? A21. No.
- Q22. In Article IV(B), is the ½ basic day for operating in the 25 mile zone frozen and/or is it a duplicate payment/ special allowance?
- A22. No, it is subject to future wage adjustments and it is not duplicate pay/special allowance.
- Q23. How is a crew paid if they operate in the 25 mile zone?
- A23. If a pre-October 31, 1985 trainmen is transported to its train 10 miles south of Milford and he takes the train to Salt Lake and the time spent is one hour south of Milford and 9 hours 17 minutes between Milford and Salt Lake with no initial or final delay earned, the employee shall be paid as follows:
 - A. One-half basic day for the service South of Milford because it is less than four hours spent in that service.
 - B. The road miles between Salt Lake and Milford (207).
 - C. One hour overtime because the agreement provides for overtime after 8 hours 17 minutes on the road trip between Salt Lake and Milford. (207 miles divided by 25 = 8'17")

- Q24. Would a post October 31, 1985 trainman be paid the same?
- A24. No. The National Disputes Committee has determined that post October 31, 1985 trainmen come under the overtime rules established under the National Agreements/Awards/Implementing Agreements that were effective after that date for both pre-existing runs and subsequently established runs. As such, the post October 31, 1985 trainman would not receive the one hour overtime in C above but receive the payments in A & B.

- Q25. How will initial terminal delay be determined when performing service as outlined above?
- A25. Initial terminal delay for crews entitled to such payments will be governed by the applicable collective bargaining agreement and will not commence when the crew operates back through the on duty point. Operation back through the on duty point shall be considered as operating through an intermediate point.
- Q26. What does "at the location" mean in Article IV D 2?
- A26. This is a gegraphical term that forces junior employees in the general location to a vacancy rather than someone much farther away.
- Q27. Is the identification of the UP Eastern District collective bargaining agreement in Article IV(C) a result of collective bargaining or selection by the Carrier?
- A27. Since UP purchased the SP system the Carrier selected the collective bargaining agreement to cover this Hub.
- Q28. When the UP Eastern District agreement becomes effective what happens to existing claims filed under the other collective bargaining agreements that formerly existed in the Salt Lake Hub?
- A28. The existing claims shall continue to be handled in accordance with those agreements and the Railway Labor Act. No new claims shall be filed under those agreements once the time limit for filing claims has expired for events that took place prior to the implementation date.
- Q29. In Article IV(D), if no applications are received for a vacancy on a prior rights assignment, does the prior right trainman called to fill the vacancy have the right to displace a junior prior right trainman from another assignment?
- A29. Yes. That trainman has the option of exercising his/her seniority to another position held by a junior prior right employee, within the time frame specified in the controlling collective bargaining agreement, or accepting the force to the vacancy.

ARTICLE V - EXTRA BOARDS

- Q30. How many extra boards will be combined at implementation?
- A30. It is unknown at this time. The Carrier will give written notice of any consolidations whether at implementation or thereafter.
- Q31. Are these guaranteed extra boards?
- A31. Yes. The pay provisions and guarantee offsets and reductions will be in accordance with the existing UPED guaranteed extra board agreement.

ARTICLE VI - PROTECTION

- Q32. What is loss on sale of home for less than fair value?
- A32. This refers to the loss on the value of the home that results from the Carrier implementing this merger transaction. In many locations the impact of the merger may not affect the value of a home and in some locations the merger may affect the value of a home.
- Q33. If the parties cannot agree on the loss of fair value what happens?
- A33. New York Dock Article I, Section 12(d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction.
- Q34. What happens if an employee sells a \$50,000 home for \$20,000 to a family member?
- A34. That is not a bona fide sale and the employee would not be entitled to a New York Dock payment for the difference below the fair value.
- Q35. What is the most difficult part of New York Dock in the sale transaction?
- A35. Determine the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount.
- Q36. Who is required to relocate and thus eligible for the allowance?
- A36. An employee who can no longer hold a position at his/her location and must relocate to hold a position as a result of the merger. This excludes employees who are borrow outs or forced to a location and released.
- Q37. Are there mileage components that govern the eligibility for an allowance?
- A37. Yes, the employee must have a reporting point farther than his/her old reporting point and at least 30 miles between the current home and the new reporting point and at least 30 miles between reporting points.

- Q38. Can you give some examples?
- A38. The following examples would be applicable.

Example 1: Employee A lives 80 miles north of Salt Lake and works a yard assignment at Salt Lake. As a result of the merger he/she is assigned to a road switcher with an on duty point 20 miles north of Salt Lake. Because his new reporting point is closer to his place of residence no relocation benefits are allowable.

Example 2: Employee B lives 35 miles north of Salt Lake and goes on duty at the UP yard office in Salt Lake. As a result of the merger he/she goes on duty at the SP yard office which is six miles away. No relocation benefits are allowable.

Example 3: Employee C lives in Elko and is unable to hold an assignment at that location and places on an assignment at Salt Lake. The employee meets the requirement for relocation benefits.

Example 4: Employee D lives in Salt Lake and can hold an assignment in Salt Lake but elects to place on a Road Switcher 45 miles north of Salt Lake. Because the employee can hold in Salt Lake no relocation benefits are allowable.

- Q39. Are there any restrictions on routing of traffic or combining assignments after implementation?
- A39. There are no restrictions on the routing of traffic in the Salt Lake Hub once the 30 day notice of implementation has lapsed. There will be a single collective bargaining agreement and limitations that currently exist in that agreement will govern (e.g. radius provisions for road switchers, road/yard moves etc.). However, none of these restrictions cover through freight routing. The combining of assignments are covered in this agreement.

Article VIII - IMPLEMENTATION

- Q40. On implementation will all trainmen be contacted concerning job placement?
- A40. No, the implementation process will be phased in and employees will remain on their assignments unless abolished or combined and then they may place on another assignment or on a reserve board depending on their seniority rights. The new seniority rosters will be available for use by employees who have a displacement.
- Q41. How will the new extra boards be created?
- A41. When the Carrier gives notice that the current extra boards are being abclished and new ones created in accordance with the merger agreement, the Carrier will advise the number of assignments for each extra board and the effective date for the new extra board. The trainmen will have at least ten days to make application to the new extra board and the dovetail roster

will be used for assignment to the Board. It is anticipated that the extra boards will have additional trainmen added at first to help with the familiarization process.

- Q42. Will the Carrier transfer all surplus employees out of the Hub?
- A42. No. The Carrier will retain some surplus to meet anticipated attrition and growth, however, the number will be determined by the Carrier.
- Q43. When will reserve boards be established and under what conditions will they be governed?
- A43. When reserve boards are established they will be governed by the current reserve board agreement current the UP Eastern District.

GENERAL

- Q44. Do the listing of mileposts in Article I mean that those are the limits that employees may work?
- A44. No, the mile posts reflect a seniority district and in some cases assignments that go on duty in the new seniority district will have away from home terminals outside the seniority district which is common in many interdivisional runs.
- Q45. If the milepost is on the east end of Yermo can the crew perform any work in the station of Yermo west of the mile post?
- A45. Yes, Yermo is the away from home terminal and the crew may perform any work that is permissible under the Eastern District collective bargaining agreement as the crew does now under its current agreement. If a yard assignment is established it will not be filled by employees from the Salt Lake Hub
- Q46. Will all pool freight be governed by the same rules?
- A46. Yes, all pool freight will be governed by the UPED interdivisional rules, such as but not limited to, initial terminal delay, overtime, \$1.50 in lieu of eating en route.
- Q47. Will all employees be paid the same?
- A47. No, the current rules differ between pre and post October 31, 1985 employees with regards to such items as entry rates, duplicate payments and overtime. Since those are part of the National Agreements that supersede local rules they will continue to apply as they have applied on the UPED prior to the merger.
- Q48. What will the miles paid be for the runs?
- A48. Actual miles between terminals with a minimum of a basic day as determined by the National Agreement.

UP EXHIBIT 28

MERGER IMPLEMENTING AGREEMENT (Denver Hub)

between the

UNION PACIFIC/MISSOUP! ACIFIC RAILROAD COMPANY SOUTHERN PACIFIC TRANSPORTATION COMPANY

and the

UNITED TRANSPORTATION UNION

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all employees working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement,

IT IS AGREED:

I. Denver Hub

A new seniority district shall be created that encompasses the following area: UP inilepost 429.7 at Sharon Springs, Kansas; UP milepost 511.0 at Cheyenne, Wyoming; DRGW milepost 451.7 at Grand Junction, Colorado and milepost 251.7 at Alamosa, Colorado; SSW milepost 545.4 at Daihart, Texas and UP milepost 732.1 at Horace, Kansas and all stations, branch lines, industrial leads and main line between the points identified.

II. Seniority and Work Consolidation.

The following seniority consolidations will be made:

A. A new seniority district will be formed and master Seniority Rosters, UP/UTU Denver Hub, will be created for the employees working as Conductors, Brakemen, yardmen (the term yardman shall, in this agreement, refer to all yard positions including foreman, helper, utility man, herder and switch tender) and Firemen in the Denver Hub on November

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1, 1996. (The term "trainmen" is used hereafter as a generic term to include all UTU-C, T&Y represented employees and where applicable all UTU-E represented employees). The four new rosters will be created as follows:

1. Switchmen/brakemen placed on these rosters will be dovetailed based upon the employee's current seniority date. If this process results in employees having identical seniority dates, seniority will be determined by the employee's current hire date with the Carrier.

2. Conductors placed on these rosters will be dovetailed based upon the employee's actual promotion date into the craft. If this process results in employees having identical seniority dates, seniority will be determined by the employee's current hire date with the Cerrier.

Name	Roster Ranking	Zone 1 (Denver Terminal, Denver- Axial/Bond/ to Sharon Springs/Cheyenne excluding Sharon Springs & Cheyenne yard/local/road switchers . Pueblo-Horace) [UPED,MPUL Pueblo roster,DRGW]	Zone 2 (GrandJunction/Denver/Bond /Montrose/Oliver/Mintum) [DRGW]	Zone 3 (Pueblo- Denwer/S.Fork/Mintum/ to Dalhart, excluding Dalhart) [DRGW]
JONES, A.	#1	x		
SMITH, B.	#2	x		¥ ·
ADAMS, C.	#3			x
BAILEY, D.	#4		x	
GREEN, E.	#5			x

Prior Rights to Zones, Example (assumes only has 5 people on roster):

3. All employees placed on the roster may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this Agreement.

4. New employees hired and placed on the new rosters on or after November 1, 1996, will have no prior rights but will have roster seniority rights in accordance with the zone and extra board provisions set forth in this Agreement.

B. The new UP/UTU seniority districts will be divided into the following three (3) Zones:

1. **Zone 1** will include Denver east to but not including Sharon Springs and the Oakley extra board, Denver north to but not including Cheyenne, Denver west to and including Bond and Axial, Pueblo east to Horace, and all road and yard

operations within the Denver Terminal including any road switchers at Colorado Springs.

Note: The Oakley extra board is part of the Denver Hub and assignments at Oakley will be filled by the Denver Hub. The reference to Sharon Springs is for pool freight service and the work normally protected by the oakley extra board shall continue as part of the Denver Hub.

2. **Zone 2** will include Grand Junction to Denver (long pool only), Grand Junction to Montrose, Oliver, Minturn (not including Minturn helper service) and Bond and yard assignments.

3. **Zone 3** will include Pueblo to Denver, South Fork, Mintum and to Dalhart not including Dalhart, but including Minturn helper service and yard assignments.

4. Road, road/yard or yard extra boards will not be part of any zone if they cover assignments in more than one zone. Extra boards that cover assignments in only one zone will be governed by zone rules and the current rules of the collective bargaining agreement for this Hub.

C. Trainmen initially assigned to the new rosters will be accorded prior rights to one of the three zones based on the following:

1. **Zone 1** -Trainmen assigned to rosters on the former Union Pacific Eastern District 12th District, MPUL Pueblo trainmen and DRGW employees working positions within the points specified for this Zone on November 1, 1996.

2. **Zone 2** -Trainmen assigned to rosters on the former DRGW, working positions within the points specified for this Zone on November 1, 1996.

3. **Zone 3** -Trainmen assigned to rosters on the former DRGW, working positions within the points specified for this Zone on November 1, 1996.

D. Trainmen hired and assigned to the merged roster after implementation shall be assigned to a zone, but without prior rights, based on the Carrier's determination of the demands of service at that time in the Denver Hub.

E. The purpose of creating zones is twofold: First it is to provide seniority in an area that an employee had some seniority prior to the merger, or contributed some work after the merger, unless that trackage is abandoned, and thus preference to some of their prior work over employees in other zones; Second to provide a defined area of trackage and train operations that an employee can become familiar so as not to be daily covering a multitude of different sections of track. As such the following will govern:

1. Trainmen will be allowed to make application for an assignment in a different zone as vacancies arise. If reduced from the working list in their zone, trainmen may exercise their common seniority in the remaining two zones.

2. Trainmen may not hold a reserve board outside their zone. The current collective bargaining agreement is amended to provide for a reserve board for each zone.

3. Trainmen with a seniority date prior to February 1, 1992 shall be permitted to hold a reserve board in their zone. Trainmen holding a seniority date subsequent to February 1, 1992 must be displaced prior to employees being permitted to hold a reserve board position.

F. It is understood that certain runs home terminaled in the Denver Hub will have away from home terminals outside the Hub and that certain runs home terminaled outside the Hub will have away from home terminals inside the Hub. Examples are Denver to Cheyenne ar J Pueblo to Dalhart. It is not the intent of this agreement to create seniority rights that interfere with these operations or to create double headed pools. For example, Denver will continue to be the home terminal for Denver-Cheyenne runs and Cheyenne will not have equity in these runs. The Denver-Rawlins run currently has no employees assigned to it. If this operation is reestablished at a later date the current Denver-Rawlins pool agreement will continue to apply with Denver as the home terminal.

G. All vacancies within the zones must be filled prior to any trainmen being reduced from the working list or prior to trainmen being permitted to exercise to any reserve board.

H. With the creation of the new seniority district all previous seniority outside the Denver Hub held by trainmen on the new rosters shall be eliminated and all seniority inside the Hub held by trainmen outside the Hub shall be eliminated.

I. Trainmen will be treated for vacation and payment of arbitraries as though all their service on their original railroad had been performed on the merged railroad.

J. Trainmen who have been promoted to Engine service and hold engine service seniority inside the Denver Hub and working therein on November 1, 1996, shall be placed on the appropriate roster(s) using their various trainmen seniority dates. Those Engine service employees, if any, who do not have a train service date in the Denver Hub shall be given one in accordance with the October 31, 1985 UTU National Agreement.

III. <u>Terminal Consolidations</u>

The following terminal consolidations will be implemented in accordance with the following provisions:

A. Denver Terminal

1. The existing switching limits at Denver will now include Denver Union Terminal north to and including M.P. 6.24 and M.P. 6.43 on the Dent Branch, south to and including M.P. 5.5, east to and including M.P. 635.10, and west to and including M.P. 7.5. Yard crews currently perform service or the Boulder Branch and they may continue to do so after implementation of this agreement in accordance with existing agreements.

Note: The intent of this section is to combine the two Carrier's facilities into a common terminal and not to extend the switching limits beyond the current established points.

2. All UP and SP operations within the greater Denver area shall be consolidated into a unified terminal operation.

3. All road crews may receive/leave their trains at any location within the boundaries of the new Denver terminal and may perform work anywhere within those boundaries pursuant to the applicable collective bargaining agreements. The Carrier will designate the on/off duty points for road crews with the on/off duty points having appropriate facilities for inclement weather and other facilities as currently required in the collective bargaining agreement.

4. All rail lines, yards, and/or sidings within the new Denver terminal will be considered as common to all crews working in, into and out of Denver. All crews will be permitted to perform all permissible road/yard moves pursuant to the applicable collective bargaining agreements. Interchange rules are not applicable for intra-carrier moves.

B. General Conditions for Terminal Operations

1. Initial delay and final delay will be governed by the controlling collective bargainin, agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1985 and 1991 National Awards and implementing agreements.

2. Employees will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the October 31, 1996 National Agreement.

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3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service zone, shall continue to apply. Yard crews at Denver, Grand Junction and Pueblo may perform such service in all directions out of the terminal.

Note: Items 1 through 3 are not intended to expand or restrict existing rules

IV. Pool Operations.

A. The following pool consolidations may be implemented to achieve efficient operations in the Denver Hub:

1. All Grand Junction-Denver/Bond and Grand Junction-Minturn pool operations shall be combined into one pool with Grand Junction as the home terminal. Denver may have one, two or three pools, Denver-Phippsburg/Bond, Denver-Cheyenne, and Denver-Sharon Springs with the Carrier determining whether to combine the pools. Short pool operations when run shall be between Grand Junction-Bond and Denver-Bond.

2. All Pueblo-Denver and Pueblo-Dalhart pool operations shall be combined into one pool with Pueblo as the home terminal. The Pueblo-Alamosa local shall remain separate but Pueblo-Alamosa traffic may be combined with the Pueblo-Dalhart and Pueblo-Denver pool if future traffic increases result in pool operations. The Pueblo-Minturn pool shall remain separate until the number of pool turns drops below ten (10) due to the cessation of service on portions of that line, at that time, the Carrier may combine it with the remaining Pueblo pool. The Pueblo-Horace pool shall remain separate until terminated with the abandonment of portions of that line. The tri-weekly local provisions shall apply until abandonment of any portion of the line east of Pueblo where Pueblo crews now operate.

3. Pool, local, road switcher and yard cperations not covered in the above originating at Grand Junction shall continue as traffic volumes warrant.

4. Helper service at Minturn shall remain separate until terminated with the cessation of service on portions of the line where the helpers operate.

5. Any pool freight, local, work train or road switcher service may be established to operate from any point to any other point within the new Seniority District with the on duty point within one of the zones. 6. The operations listed in A 1-4 above, may be implemented separately, in groups or collectively upon ten (10) days written notice from the Carrier to the General Chairman. Implementation notices covering item (5) above, shall be governed by applicable collective bargaining agreements.

7. Power plants between Denver and Pueblo may be serviced by either Pueblo-Denver pool or the Denver Extra board or a combination thereof. The Denver extra board shall be used first and if exhausted, the pool crew will be used and deadheaded home after completion of service.

B. The terms and conditions of the pool operations set forth in Section A shall be the same for all pool freight runs whether run as combined pools or separate pools. The terms and conditions are those of the designated collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth below. The basic Interdivisional Service conditions shall apply to all pool freight service. Each pool shall be paid the actual miles run for service and combination service/deadhead with a minimum of a basic day.

1. <u>Twenty-Five mile Zone</u> - At Grand Junction, Pueblo, Sharon Springs, Denver, Cheyenne and Dalhart, pool crews may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Crews shall be paid an additional one-half (½) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours then they shall be paid on a minute basis.

Example: A Pueblo-Denver crew receives their north bound train ten miles south of the Pueblo terminal but within the 25 mile terminal zone limits and runs to Denver. They shall be paid the actual miles established for the Pueblo-Denver run and an additional one-half basic day for handling the train from the point ten (10) miles south of the Pueblo terminal.

2. <u>Turnaround Service/Hours of Service Relief</u> - Except as provided in (1) above, turnaround service and Hours of Service Relief at both home and away from home terminals shall be handled by extra boards, if available, prior to setting up other employees. Trainmen used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may perform this service in all directions out of their home terminal within the Hub.

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Note: Due to qualification issues at Minturn the pool crews will continue to perform Hours of Service relief at this location.

3. Nothing in this Section B (1) and (2) prevents the use of other trainmen to perform work currently permitted by prevailing agreements.,

C. <u>Agreement Coverage</u> - Employees working in the Denver Hub shall be governed, in addition to the provisions of this Agreement, by the Agreement between the Union Pacific Railroad Company and the UTU Union Pacific Eastern District, both road and yard, including all addenda and side letter agreements pertaining to that agreement, the 1996 National Agreement applicable to Union Pacific and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein, the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. Since most of the employees have not worked under a daily preference system in the yard the employees shall be governed by the regular application system for yard assignments and the daily preference system shall not apply in the Denver Hub.

D. After implementation, the application process will be used to fill all vacancies in the Hub as follows:

1. Prior right vacancies must first be filled by an employee with prior rights to the vacancy who is on a reserve board prior to considering applications from employees who do not have prior rights to the assignment including those in other zones within the Denver Hub. A reserve board employee will be recalled prior to considering applications from employees who do not have prior rights to the assignment.

2. If there are no prior right employees on the reserve board covering the vacant prior right assignment then the senior applicant without prior rights to the vacancy will be assigned. If no applications are received then the most junior employee on any of the other reserve boards will be recalled and will take the assignment or displace a junior employee. If there are no trainmen on any reserve board, then the senior furloughed trainman in the Denver Hub shall be recalled to the vacancy. When forcing or recalling, prior rights trainmen shall be forced or recalled to prior right assignments prior to trainmen who do not have prior rights.

3. Non prior right vacancies will be filled by the senior applicant from the dovetail roster. If no applicant then the junior employee on any reserve board in the Hub shall be recalled to the vacancy in accordance with the provisions of the UPED reserve board agreement.

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V. EXTRA BOARDS

A. The following road/yard extra boards may be established to protect trainmen assignments as follows:

1. **Denver** - One conductor and one brakeman/switchman (total of 2) extra boards to protect the Denver-Cheyenne, Denver-Sharon Springs and Denver-Phippsburg and Denver-Bond pools, the Denver yard assignments and all road switchers, locals and work trains originating within these territories and extra service to any power plant and other extra board work.

2. **Pueblo** - One conductor and one brakeman/switchman (total of 2) extra boards to protect the Pueblo-Denver, Pueblo- Alamosa, Pueblo-Mintum and Pueblo-Dalhart pool operations, Pueblo Yard assignments and all road switchers, locals and work trains and other extra board work originating within the these territories. The MPUL extra board shall remain separate and shall be phased out with the Pueblo-Horace pool operations.

3. **Grand Junction** - One conductor and one brakeman/switchman (total of 2) extra boards to protect Grand Junction-Denver, Grand Junction-Bond and Grand Junction-Mintum pool(s), Grand Junction yard, road switcher, local and work train assignments and other extra board work originating within these territories. Since the extra board at Grand Junction is at a point joining two hubs, it may protect work up to but not including Helper, Utah.

Note: At each of the above locations the Carrier may operate more than these extra boards. When more than these extra board is operated the Carrier shall notify the General Chairman what area each extra board shall cover. When combining extra boards the Carrier shall give ten (10) days written notice.

B. The Carrier may establish extra boards at outside points to meet the needs of service pursuant to the designated collective bargaining agreement provisions. Extra boards at outside points such as Phippsburg may continue.

C. At any location where both UP and DRGW extra boards exist the Carrier may combine these boards into one board. If at any location there are less than three yard assignments then the extra boards referred to in A, B or C above shall be combined into a single Conductor/brakemen/switchmen extra board.
VI. PROTECTION

The Surface Transportation Board has stated that adversely affected employees shall be covered by New York Dock protection.

VI. HEALTH AND WELFARE

Employees not previously covered by the UPED agreement shall have 60 days to join the Union Pacific Hospital Association in accordance with that agreement.

VIII. IMPLEMENTATION

A. The Parties have entered into this agreement to implement the merger of the Union Pacific Railroad and Southern Pacific Railroad operations in the area covered by Notice 18W and any amended notices thereto.

In addition, the Parties understand that the overall operational implementation is being phased in to accommodate the cut over of computer operations, dispatching, track improvements and clerical support.

B. The Carrier shall give thirty (30) days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Employees whose assignments are changed shall be permitted to exercise their new seniority. After the initial implementation the 10 day provisions of Article IV(A)(6) and Article V(A) (note) shall govern.

C. Prior to movement to reserve boards or transfers outside the Hub, it will be necessary to fill all positions in the Denver Hub.

D. In an effort to provide for employees to follow their work to areas outside the Denver Hub, the Carrier shall advertise vacancies at locations outside the Hub for a period of one year from the implementation date, as long as a surplus of trainmen exist in the Hub, for employees to make application. The dovetail roster shall be used for determining the senior applicant. Should an insufficient number of applications be received then the junior surplus employee shall be forced to the vacancy. Employees who move by application or force shall establish new seniority and relinquish seniority in the Hub.

IX. CREW CONSIST.

A. Upon implementation of this agreement (award) all crew consist productivity funds that cover employees in the Hub shall be frozen pending payment of the shares to the employees both inside the Hub and outside the Hub. A new productivity fund shall be created on implementation day that will cover those employees in the Denver Hub and the funds that cover employees cutside the Hub shall continue for the employees who remain outside the Hub. The Denver Hub employees shall have no interest or share in payments made to those funds after implementation date.

B. Payments into the new productivity fund shall be made in compliance with the UPED crew consist agreement. Those employees who would have participated in the shares of the productivity funds had they originally been hired on the UP Eastern District shall be eligible to participate in the distribution of the new fund except as stated in (D) below.

C. Employees who would have been covered under the UPED special allowance provisions had they been hired originally on the UP Eastern District shall be entitled to a special allowance under those provisions except as stated in (D) below.

D. Those employees who sold their special allowances/productivity funds previously are not entitled to those payments under this agreement (award).

E. While the UPED crew consist agreement will govern this Hub the Carrier is not required to place yardmen/brakemen on any local, road switcher, yard or other assignment anywhere in the Hub that is was not required to use under the least restrictive crew consist agreement that previously existed in either the Salt Lake or Denver Hub.

X. Familiarization

A. Employees will not be required to lose time or "ride the road" on their own time in order to qualify for the new operations. Employees will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualifications shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and the operating officer assigned to the merger will work with the local Managers of operating practices and local chairmen in implementing this section.

XI. Firemen.

A. This agreement also covers firemen. Pre-October 31, 1985 firemen will only have seniority in the Denver Hub and if unable to work an engineer's assignment or a mandatory firemen's/hostler position they shall be permitted to hold a fireman's position first in their prior rights zone and second, using their dovetail seniority.

B. Post October 31, 1985 firemen shall continue to be restricted to mandatory assignments and if unable to hold an engine service position will be required to exercise their train service senicrity in the Hub.

QUESTIONS & ANSWERS -UTU DENVER HUB

Article ! - DENVER HUB

- Q1. Does the new seniority district change terminal limits at the mile posts indicated?
- A1. No. It is the intent of this agreement to identify the new seniority territory and not to change the existing terminal limits except as specifically provided eisewhere in this agreement.
- Q2. Which Hub is Grand Junction in?
- A2. For seniority purposes trainmen are in the Denver Hub, however due to the unique nature of Grand Junction being a home terminal for one Hub and away from home for another Hub, the extra board may perform service on both sides of Grand Junction.

Article II - SENIORITY AND WORK CONSOLIDATION

- Q3. What is the status of an employee who placed in the Hub after November 1, 1996 but prior to the implementation of this Award?
- A3. They shall be placed on the roster using their dovetail date but they shall not have any prior rights.
- Q4. What happens if employees still have the same seniority date based on the current hire date?
- A4. The UPED agreement has a provision for determining the seniority date under these conditions and that agreement will govern.
- Q5. Why do the zones appear to overlap?
- A5. Zones indicate a given area depending on the on duty point of an assignment. For example, for long pool service, Grand Junction is the proper zone for Grand Junction- Denver service. For short pool service Grand Junction is the zone for going to Bond and Denver is the proper zone for going Denver-Bond.
- Q6. In Article II(G), what does it mean when it refers to protecting all vacancies within a zone?
- A6. If a vacancy exists in a zone, it must be filled by a prior rights employee prior to placing employees on reserve boards. If a non prior rights employee is working in a zone then a prior rights employee must displace that person prior to going to a reserve board. If a vacancy exists in one zone and an employee in another zone is on a reserve board that person will be recalled prior to the Carrier hiring additional trainmen.

- Q7. Will existing pool freight terms and conditions apply on all pool freight runs?
- A7. No. The terms and conditions set forth in the controlling collective bargaining agreement and this document will govern.
- Q8. Will an employee gain or lose vacation benefits as a result of the merger? A8. No.
- Q9. When the agreement is implemented, which vacation agreement will apply?
- A9. The vacation agreements used to schedule vacations for 1997 will be used for the remainder of 1997. Thereafter the UPED agreement will govern.
- Q10. What is the status of firemen's seniority?
- A10. Firemen seniority will be dovetailed in a similar manner as trainmen.

Article III - TERMINAL CONSOLIDATIONS

- Q11. If a yard job goes on duty in the previous UP yard what are the switching limits for performing work in the road, and zone west of Denver?
- A11. DRGW M.P. 7.5 will be used for all yard crews on duty in Denver.

Article IV - POOL OPERATIONS

- Q12. If the on duty point for the Denver-Cheyenne pool is moved from Denver Union Terminal to the DRGW Yard, will the mileage paid be increased?
- A12. Yes. The mileage will be from the center of DRGW Yard to Cheyenne.
- Q13. In Article IV A 6 how would other operations be established?
- A13. The controlling collective bargaining agreements would govern. For example ID service would be covered under Article IX of the 1985 National Agreement, road switchers can be established at any location under the local road switcher agreement.
- Q14. In Article IV(B) Section 3 provides that the Carrier has the right to perform work currently permitted by other agreements, can you give some examples?
- A14. Yes, yard crews are currently permitted to perform hours of service relief in the road/yard zone established in the National Agreement, ID crews may perform combination deadhead/service and road switchers may handle trains that are laid down in their zone.
- Q15. If a crew in the 25 mile zone is delayed in bringing the train into the original terminal so that it does not have time to go on to the far terminal, what will happen to the crew?
- A15. Except in cases of emergency, the crew will be deadheaded on to the far terminal.

Q16. Is it the intent of this agreement to use crews beyond the 25 mile zone? A16. No.

- Q17. In Article IV(B), is the ½ basic day for operating in the 25 mile zone frozen and/or is it a duplicate payment/special allowance?
- A17. No, it is subject to future wage adjustments and it is not duplicate pay/special allowance.
- Q18. How is a crew paid if they operate in the 25 mile zone?
- A18. If a pre-October 31, 1985 trainman is transported to its train 10 miles east of Sharon Springs and he takes the train to Denver and the time spent is one hour east of Sharon Springs and 9 hours 24 minutes between Sharon Springs and Denver with no initial or final delay earned, the employee shall be paid as follows:
 - A. One-half basic day for the service east of Sharon Springs because it is less than four hours spent in that service.
 - B. The road miles between Sharon Springs and Denver.
 - C. One hour overtime because the agreement provides for overtime after 8 hours 24 minutes on the road trip between Sharon Springs and Denver. (210 miles divided by 25 = 8'24")
- Q19. Would a post October 31, 1985 trainman be paid the same?
- A19. No. The National Disputes Committee has determined that post October 31, 1985 trainmen come under the overtime rules established under the National Agreements/Awards/Implementing Agreements that were effective after that date for both pre-existing runs and subsequently established runs. As such, the post October 31, 1985 trainman would not receive the one hour overtime in C above but receive the payments in A & B.
- Q20. How will initial terminal delay be determined when operating in the Zone?
- A20. Initial terminal delay for crews entitled to such payments will be governed by the applicable collective bargaining agreement and will not commence when the crew operates back through the on duty point. Operation back through the on duty point shall be considered as operating through an intermediate point.
- Q21. When the UPED agreement becomes effective what happens to existing DRGW/MPUL claims?
- A21. The existing claims shall continue to be handled in accordance with the DRGW/MPUL Agreements and the Railway Labor Act. No new claims shall be filed under that agreement once the time limit for filing claims has expired.
- Q22. Is the identification of the UPED collective bargaining agreement in Article IV© a result of collective bargaining or selection by the Carter?
- A22. Since UP purchased the SP system the Carrier selected the collective bargaining agreement to cover this Hub.

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- Q23. In Article IV (D), if no applications are received for a vacancy on a prior rights assignment, does the prior right trainman called to fill the vacancy have the right to displace a junior trainman from another assignment?
- A23. Yes. That trainman has the option of exercising his/her seniority to another position held by a junior employee, within the time frame specified in the controlling collective bargaining agreement, or accepting the force to the vacancy.

Article V - EXTRA BOARDS

- Q24. How many extra boards will be combined at implementation?
- A24. It is unknown at this time. The Carrier will give written notice of any consolidations whether at implementation or thereafter.
- Q25. Are these guaranteed extra boards?
- A25. Yes. The pay provisions and guarantee offsets and reductions will be in accordance with the existing UPED guaranteed extra board agreement.

ARTICLE VI - PROTECTION

- Q26. What is loss on sale of home for less than fair value?
- A26. This refers to the loss on the value of the home that results from the carrier implementing this merger transaction. In many locations the impact of the merger may not affect the value of a home and in some locations the merger may affect the value of a home.
- Q27. If the parties cannot agree on the loss of fair value what happens?
- A27. New York Dock Article I Section 12 (d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction.
- Q28. What happens if an employee sells a \$50,000 home for \$20,000 to a family member?
- A28. That is not a bona fide sale and the employee would not be entitled to a New York Dock payment for the difference below the fair value.
- Q29. What is the most difficult part of New York Dock in the sale transaction?
- A29. Determine the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount.
- Q30. Who is required to relocate and is thus eligible for the New York Dock benefit?
- A30. An employee who can no longer hold a position at his/her location and must relocate to hold a position as a result of the merger. This excludes employees who are borrow outs or forced to a location and released.

- Q31. Are there mileage components that govern the eligibility for an allowance?
- A31. Yes, the employee must have a reporting point farther than his/her old reporting point and at least 30 miles between the current home and the new reporting point and at least 30 miles between reporting points.
- Q32. Can you give some examples?
- A32. The following examples would be applicable.

Example 1: Employee A lives for nitles north of Denver and works a yard assignment at Denver. As a result of the merger he/she is assigned to a road switcher with an on duty point 20 miles north of Denver. Because his new reporting point is closer to his place of residence no relocation benefits are allowable.

Example 2: Employee B lives 35 miles north of Denver and goes on duty at the UP yard office in Denver. As a result of the merger he/she goes on duty at the DRG/W yard office which is four miles away. No relocation benefits are allowable.

Example 3: Employee C lives in Pueblo and is unable to hold an assignment at that location and is placed in Zone 1, where a shortage exists, and places on an assignment at Denver. The employee meets the requirement for relocations benefits.

Example 4: Employee D lives in Denver and can hold an assignment in Denver but elects to place on a Road Switcher 45 miles north of Denver. Because the employee can hold in Denver, no relocation benefits are allowable.

Article VII-HEALTH AND WELFARE

- Q33. Must employees not covered under the UP Hospital Association join after the merger?
- A33. Yes because it is part of the UPED UTU collective bargaining agreement.

Article VIII - IMPLEMENTATION

- Q34. Are there any restrictions on routing of traffic or combining assignments after implementation?
- A34. There are no restrictions on the routing of traffic in the Denver Hub once the 30 day notice of implementation has lapsed. There will be a single collective bargaining agreement and limitations that currently exist in that agreement will govern, e.g., radius provisions for road switchers, road/yard moves etc. However, none of these restrictions cover through freight routing. The combining of assignments is covered in this agreement.

- Q35. On implementation will all trainmen be contacted concerning job placement?
- A35. No, the implementation process will be phased in and employees will remain on their assignments unless abolished or combined and then they may place on another assignment or on the protection board depending on surplus. see Article VIII(B). The new seniority rosters will be available for use by employees who have a displacement.
- Q36. How will the new extra boards be created?
- A36. When the Carrier gives notice that the current extra boards are being abolished and new ones created in accordance with the merger agreement, the Carrier will advise the number of assignments for each extra board and the effective date for the new extra board. The employees will have at least ten days to make application to the new extra board and the dovetail roster will be used for assignment to the Board. It is anticipated that the extra boards will have additional engineers added at first to help with the familiarization process.
- Q37. Will the Carrier transfer all surplus employees out of the Hub?
- A37. No. The Carrier will retain some surplus to meet anticipated attrition and growth, however, the number will be determined by the Carrier.
- Q38. When will reserve boards be established and under what conditions will they be governed?
- A38. They will be established in each zone at implementation. When reserve boards are established, they will be governed by the current agreement covering the UPED trainman at Denver.

Article IX- CREW CONSIST

- Q39. When this award is implemented will the productivity funds be paid out at that time?
- A39. No, the number of credits that each employee, who will be in the Hub, has earned will be determined and frozen for the pre-existing fund. They will then start earning credits in the new fund. Those employees not in the Hub will continue to earn credits in their old fund.

GENERAL

- Q40. Do the listing of mileposts in Article I mean that those are the limits that employees may work?
- A40. No, the mile posts reflect a seniority district and in some cases assignments that go on duty in the new seniority district will have away from home terminals outside the seniority district which is common in many interdivisional runs.

- Q41. If the milepost is on the west end of Sharon Springs can the crew perform any work in the station of Sharon Springs east of the mile post?
- A41. Yes, Sharon Springs is the away from home terminal and the crew may perform any work that is permissible under the Eastern District collective bargaining agreement. If a yard assignment is established it will not be filled by employees from the Denver Hub
- Q42. Will all pool freight be governed by the same rules?
- A42. Yes, all pool freight will be governed by the UPED interdivisional rules, such as but not limited to, initial terminal delay, overtime, \$1.50 in lieu of eating en route.
- Q43. Will all employees be paid the same?
- A43. No, the current rules differ between pre and post October 31, 1985 employees with regards to such items as duplicate payments and overtime. Since those are part of the National Agreements that supersede local rules they will continue to apply as they have applied on the UPED prior to the merger.
- Q44. What will the miles paid be for the runs?
- A44. Actual miles between terminals with a minimum of a basic day as determined by the National Agreement.

UNION PACIFIC RAILROAD COMPANY

J J MARCHANT SA ASST VICE PRESIDENT. LABOR RELATIONS





February 26, 1996

Mr. Charles Little President UTU 14600 Detroit Ave Cleveland OH 44107

Dear Sir.

This refers to our earlier conversation concerning the issues of <u>New York Dock</u> protection and the certification of adversely affected UTU employees.

As you know, Union Pacific, in its SP Merger Application, stipulated to the imposition of the <u>New York Dock</u> conditions. The Labor impact Study which UP filed with the Merger Application reported that 328 trainmen would transfer, that 1081 trainmen jobs (net) would be abolished, that 85 UTU represented yardmaster jobs and 17 hostler positions would be affected because of the implementation of the Operating Plan. The Labor Impact Study also indicates that a number of engineer positions will be affected but does not indicate how many, if any, of those are working on properties where engineers are represented by the UTU.

Within the <u>New York Dock</u> conditions, Section 11 addresses disputes and controversies regarding the interpretation, application or enforcement of the <u>New York</u> <u>Dock</u> conditions (except for Sections 4 and 12). Under Section 11, perhaps the two most serious areas for potential disputes involve whether an employee was adversely affected by a transaction and what will be such employee's protected rate of pay.

In an effort to eliminate as many of these disputes as possible, Union Pacific makes the following commitment regarding the issue of whether an employee was adversely affected by a transaction: UP will grant automatic cartification as adversely affected by the merger to the 1409 train service employees, the 85 UTU-represented yardmasters and the 17 UTU represented hostlers projected to be adversely affected in the Labor Impact Study and to all other train service employees and UTU represented yardmasters and hostlers identified in any Merger Notice served after Board approval. UP will also grant automatic certification to any engineers adversely affected by the merger who are working on properties where engineers are represented by the UTU. UP will supply UTU with the names and TPA's of such employees as soon as possible upon implementation of approved merger. Union Pacific commits to the foregoing on the basis of UTU's agreement, after merger approval, to voluntarily reach agreement for implementation of the Operating Plan accompanying the Merger Application. UP also commits that, in any Merger Notice served after Board approval, it will only seek those changes in existing collective bargaining agreements that are necessary to implement the approved transaction, meaning such changes that produce a public transportation benefit not based solely on savings achieved by agreement change(s).

Even with these commitments, differences of opinion are bound to occur. In order to ensure that any such differences are dealt with promptly and fairly, Union Pacific makes this final commitment: If at any time the International President of the UTU (or his designated representative) believes Union Pacific's application of the <u>New York Dock</u> conditions is inconsistent with our commitments, UTU and UP personnel will meet within five (5) days of notice from the UTU International President or his designated representative and agree to expedited arbitration with a written agreement within ten (10) days after the initial meeting if the matter is not resolved, which will contain, among other things, the full description for neutral selection, timing of hearing, and time for issuance of Award(s).

In view of Union Pacific's position regarding the issues of <u>New York Dock</u> protection and the certification of employees, I understand that the UTU will now support the UP/SP merger.

Sincerely,

cc: B. A. Boyd, Jr. Asst. President UTU

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UNION PACIFIC RAILROAD COMPANY

J J MARCHANT SR ASST VICE PRESIDENT. LABCA RELATIONS



1416 DODGE STREET OMAHA NEBPASKA 68179

March 26, 1996

Byron Boyd Asst. President UTU 14600 Detroit Avenue Cleveland, OH 44107

Dear Sir:

This refers to our earlier conversations concerning the most appropriate method of calculating a test period average for a union officer who is leaving his or her union office and returning to full time employment with the Carrier and had no Union Pacific earnings (in the case of a full time union officer) or reduced earnings (in the case of a part-time union officer) during the test period.

After discussing the matter with Mike Hartman, Director of Employee Relations, I advised that we usually calculate a TPA in such cases by using the earnings of the two individuals immediately above and immediately below the union officer on the seniority roster to produce an "average earnings." This average then becomes the union officer's TPA. Mike also assured me that, in calculating such an average, we "de-select" any employee with unusually low earnings (i.e., medical problems, excessive layoffs, etc.).

I assume that you are in agreement with the method of calculation described above. However, if you have any concerns, please do not hesitate to contact me.

Sincerely,

UNION PACIFIC RAILROAD COMPANY

SR ASST VICE PRESIDENT!



March 8, 1996

Mr. R. P. McLaughlin President - Brotherhood of Locomotive Engineers Standard Building 1369 Ontario Street Cleveland OH 44113

Dear Sir.

This refers to our discussions concerning the issues of <u>New York Dock</u> protection and the certification of adversely affected BLE employees.

As you know, Union Pacific, in its SP Merger Application, stipulated to the imposition of the <u>New York Dock</u> conditions. The Labor Impact Study which Union Pacific filed with the Merger Application reported that 251 engineers would transfer and that 772 engineer jobs would be abolished because of the implementation of the Operating Plan.

Within the <u>New York Dock</u> conditions, Section 11 addresses disputes and controversies regarding the interpretation, application or enforcement of the <u>New York</u> <u>Dock</u> conditions (except for Sections 4 and 12). Under Section 11, perhaps the two most serious areas for potential disputes involve whether an employee was adversely affected by a transaction and what will be such employee's protected rate of pay.

In an effort to eliminate as many of these disputes as possible, Union Pacific makes the following commitment regarding the issue of whether an employee was adversely affected by a transaction: Union Pacific will grant automatic certification as adversely affected by the merger to the 1023 engineers projected to be adversely affected in the Labor Impact Study and to all other engineers identifed in any Merger Notice served after Board approval. Union Pacific will supply BLE with the names and TPA's of such employees as soon as possible upon implementation of approved merger. Union Pacific also commits that, in any Merger Notice served after Board approval, it will only seek those changes in existing collective bargaining agreements that are necessary to implement the approved transaction, meaning such changes that produce a public transportation benefit not based solely on savings achieved by agreement changes(s).

Union Pacific commits to the foregoing on the basis of BLE's agreement, after merger approval, to voluntarily reach agreement for implementation of the Operating Plan accompanying the Merger Application.

1416 DODGE STREET OMAHA NEBRASKA 68179 Even with these commitments, differences of opinion are bound to occur. In order to ensure that any such differences are dealt with promptly and fairly, Union Pacific makes this final commitment: If at any time the affected General Chairman or the assigned International Vice President of the BLE believes Union Pacific's application of the <u>New</u> <u>York Dock</u> conditions is inconsistent with our commitments, BLE and Union Pacific personnal will meet within five (5) days of notice from the General Chairman or the International Vice President to attempt to resolve the dispute. If the matter is not resolved, the parties will agree to expedited arbitration with a written agreement within ten (10) days after the initial meeting. The Agreement will contain, among other things, the full description for neutral selection, timing of hearing, and time for issuance of Award(s).

In view of Union Pacific's position regarding the issues of <u>New A Dock protection</u> and the certification of employees, I understand that the BLE will now export the UP/SP merger.

Sincerely,

-30 502 were held in some respect? 1 MR. GRIFFIN: The signalmen did meet with 2 the UP, as I said, there were no meaningful overtures 3 made to the BMWE or to my 4 Recwiedge 20 the 5 dispatchers 5 VICE CHAIRPERSON SIMMONS: I see. 7 CHAIRPERSON MORGAN: Thank you very much. Next we will hear from Clinton Miller and he will 3 represent the United Transportation Union and the 9 Transportation Communications International Union. 10 5 --No? I can't get that right today, I guess. 12 MR. MILLER: May it please the Board, I'm. 13 Clint Miller. I'm general counsel to the United 14 Transportation Union. The Transportation 15 Communications International Union conceded their four minutes to Mr. Griffin who just made the presentation 16 on behalf of the Allied Rail Union. ---18 Seated at the table with me is UTU National Legislative Director James M. Broganhoffer. 19 20 The United Transportation Union, as the Board well knows, represents conductors, trainmen, 21 yard masters, Hostlers and some engineers of the 22

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applicants. UTU is in support of the proposed merger.

UTU's support of the merger is based on the concerns as to the survivability of a stand alone SP in the current environment in the West and importantly, upon the agreements of the applicants, to conditions that will help mitigate the impact of job loss on our members.

UTU asks the Board to condition any approval of the application upon those agreements that were made part of our verified statement and comments and brief, pursuant to its authority under Section 11324(C) as we requested in those documents.

13 The agreements with UP contain conditions in the form of commitments in applying the New York 14 dock labor protected conditions which is the basis, as 15 I stated, for UTU's support for the proposed merger. 16 : -The chief condition that the applications 18 have agreed to with UTU is the automatic certification 19 as adversely affected by the merger of the train service, yardmaster, hostler employees that 20 are projected to be adversely affected by the labor impact 21 study that was submitted wit the application and of 22

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other train a11 service employees and ---representative yard masters, hostlers and engineers that are identified in any merger notice that is served after Board approval.

Moreover, the UP has agreed to supply UTU with names and test period averages of those employees adversely affected on an automatic certification rasis as soon as possible, upon the implementation of the merger.

10 Further, and just as importantly, in any :: merger notice served after Board approval, the 12 applicants in using the immunity provision will only seek those changes in existing collective bargaining agreements that are actually necessary to implement the approved transaction, meaning such changes that produce a public transportation benefit is not based solely on savings achieved by changes in the labor agreements themselves.

19 In the event that there are any differences between UP and UTU, that arise with regard 20 to UP's application of the New York dock conditions 21 along the lines of these agreements and UTU takes the 22

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position that their behavior is inconsistent with these commitments, UTU and UP personnel will meet upon five days' notice from the UTU International President and agree to expedited arbitration with a written agreement within 10 days.

Finally, in the event UP uses a lease arrangement or lease arrangements to complete the merger of various SP properties into MP or UP, the New York dock conditions would nevertheless be applicable, rather than the N & W conditions as modified by <u>Mendocino Coast</u>. UP has also voluntarily agreed with UTU as to this condition.

13 In view of UP's agreement :: these conditions, UTU agreed to support this merger. 14 These commitments will eliminate a lot of the problems that 15 UTU has recently experienced in the UP-CNW merger that 16 are indicated by UTU's petitioned review of the :7 implementing agreement arbitration award that was 13 rendered therein by Arbitrator John McRut. Although 19 20 I am happy to advise the Board that late last Friday, 21 that matter was resolved by agreement of the parties and as soon as I return to my office in Cleveland, we 22

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will be filing a withdrawal of our petition to review the McRut award.

The UTU represents 79,000 transportation industry workers in the United States and Canada and believes itself to be the largest labor organization in the rail industry representing a very substantial portion of the employees of the applicants.

UTU views its chief responsibility to protect the economic interest of its members and it's the UTU members who actually make the national rail transportation work.

12 As the Board is award, rail labor. 13 including UTU has been very concerned about and highly critical of rail mergers in general because of the significant job loss and family dislocations that they entail, particularly where parallel lines are involved.

UTU supports the proposed UP/SP merger, not only because UP has agreed to conditions as to how the New York dock conditions will be applied that will help mitigate the impact of job loss on its members, but also because of its concern about the continued

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viability of SP without a merger in a UPCS&W BNSF environment in the West.

UTU is very familiar with the financial condition of SP. UTU retained financial experts to analyze the SP when it was sold to Ric Grande industries, and again, when UP sought concessionary labor agreements because of its cash losses in what were termed wage adaptation negotiations that were mandated by the report of Presidential Emergency Board 219 and Fublic Law 102-29 in 1991.

The congressional recognition of SP's cash losses at that point provided SP with a way to pay our members less money than employees doing exactly the same work on other railroads. Our members now earn about 20 to 25 percent less at SP than at other Class 1 railroads.

Congress did not want another Conrail, Milwaukee or Rock Island situation on its hands when it passed Public Law 1021-29 which mandated the wage adaptation negotiations.

As UTU understands it, SP has lost about \$1.3 billion from rail operations since the SP Santa

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Fe merger was rejected by the ICC. SP itself has been spun out prematurely, we believe, of the SF SP holding company pending the approval of that carrier merger.

As far as UTU is concerned, there just isn't enough real estate left in either the criginal spin out from SFSP holding company and the later Ric Grande acquisition for the SP to continue to offset its net operating losses from rail operations by selling the real estate that it does have left. That has been, as the Board knows, the modus operandi of SP for quite some time.

UTU believes the approval of the BN Santa Fe merger actually makes things worse for SP. SP couldn't efficiently compete before that merger to generate net income from rail operations. It probably could not survive in UTU's view competing against the UPCS&W and the BN Santa Fe in the current environment.

18 UTU believes that the financial condition 19 of an applicant carrier may be taken 1220 20 consideration in a merger, as well as negative 21 competitive consequences. There is a clear case of financial need that has been made by the SP in this 22

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2	UTU is not concerned with the niceties of
3	the failing carrier doctrine. Its concerns are
4	intensely more practical. We represent practical
5	people. UTU represents operating employees. They
6	know that single line service is more efficient than
7	interchange operations. They also know that trackage
8	rights can provide a way to address problems related
9	to competition: In fact, our SP members operate all
10	the new trains that SP now has a result of the
	trackage rights that were obtained in the BN Santa Fe
:2	merger. The SP operates over BN Santa Fe trackage
:3	rights between Chicago and Kansas City, Kansas City
:4	and Forth Worth and Pueblo and Fort Worth.
	UTU also has concerns about the safety
.6	implications of a stand alone SP. Financially
	troubled railroads don't invest as much in safety and
	in general are forced to cut corners. Deferring
. 9	required maintenance is the first corner cut in UTU's
20	experience and that in the long run leads to more
11	hazards to our members.

UTU also does not want the SP to be forced

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to be sold in pieces. As far as UTU is concerned. that's just another unwelcome possibility if this application is not approved. What happens to the pieces that nobody wants?

More importantly, UTU members will lose more jobs in piecemeal line sales at least some of which which may be done by the exemption line sale method with no labor protection at all. The new owners likely will pay less and have worse working conditions and UTU knows that from too much painful past experience.

12 Support of this merger application is, in sum, the best of a bad lot of choices for UTU. The support itself is conditioned on the applicants' agreements as to how applicable protective conditions will be administered. On balance, because of the uncertainty of the long-term survival of a stand-alone SP, intact, in the current environment in the West where two mega-carriers dominate rail service, UTU submits approval of the merger is the best of a bad lot of choices for this Board itself.

If there are no questions, that would

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	COMMISSIONER OWEN: I would just like to
	say one thing. I compliment you, first of all, for
	working it out and I think that the gentleman sitting
:	to your left might have something to do with it.
ŧ	Secondly, why doesn't some of the other
7	unions learn from your experience on how to sit down
8	and work with the railroad in trying negotiate some
9	kind of compromise situation?
10	MR. MILLER: Commissioner Owen, I'll say
::	in defense of all the other labor organizations that
12	as the former International President of this union,
13	Fred Harden, used to say it takes two to tango. I
14	heard Mr. Griffin say that no invitation had been made
15	to the Brotherhood of Maintenance and Weighing
16	Employees, for example. We have no criticism of other
-7	parties. They have perhaps different needs and
18	different choices. Those are the kinds of things that
19	have to be approached by both parties. They have to
20	tango together in order to reach adjustment.
21	COMMISSIONER OWEN: I appreciate that very

much.

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CHAIRPERSON MORGAN: But clearly from your perspective there's concern among the workers about the future of SP. We heard a lot of discussion today about whether it's the failing firm or whether it can carry on for a while longer. But the workers are concerned.

7 MR. MILLER: Chairman Morgan, the general chairpersons of the general committees of adjustment 8 which are the bodies that we have that are chiefly 9 responsible for the administration of our contract 10 have made the International aware of their concerns along these lines. They're the ones that have dealt 10 13 with the wage adaptation negotiations. They're the ones that were in on the retention of the financial 14 experts in the two instances that I talked about and they are the spokespersons for the employees that we represent. They are the people who are on the ground. They're on the firing line. And it is their concerns that have driven UTU to make the adjustments that it has made with Union Pacific, yes.

CHAIRPERSON MORGAN: And clearly if the SP were to shrink its system or end up being sold in

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pieces that would not necessarily be in the interest of your membership?

MR. MILLER: No, that would be a very 3 unwelcome prospect and that, as much as the conditions 4 that the Union Pacific has agreed to is what drives 5 us. We want the SP to remain as intact as possible. 5 The alternative of piece meal line sales to carriers that we have no good relationship with or horror of horrors, the prospect of exemption line sales to regionals, particularly given the amendments to the Interstate Commerce Act are something we don't want to have anything to do with.

VICE CHAIRPERSON SIMMONS: You're to be congratulated for your initiatives.

MR. MILLER: Thank you. It's the initiative of the International President on down.

17 CHAIRPERSON MORGAN: Thank you. We will 18 now go to rebuttal time. Mr. Roach?

19 MR. ROACH: Thank you very much, Madam Chairman. I know it's been a long day and I apologize 20 for the fact that I'm going to make it longer. 21

(Laughter.)

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CHARLES L LITTLE

BYRON A. BOYD. JR Assistant President

ROGER D GRIFFETH General Secretary and Treasure

FAX and UPS NEXT DAY AIR

Inited

14600 DETROIT AVENUE CLEVELAND. OHIO 44107-424 PHONE. 216-228-9400 FAX: 216-228-5755

February 3, 1997

C-31

Mr. J. J. Marchant Senior Vice President-Labor Relations Union Pacific Railroad Company 1416 Dodge Street Omaha, Nebraska 66179 FAX (402) 271-4474

Dear Mr. Marchant:

After meeting recently with UTU Assistant President Byron A. Boyd and UTU Vice Presidents P. C. Thompson, A. M. Lankford and M. B. Futhey regarding progress of implementing agreement negotiations with the carrier related to the UP-SP Merger, STB Finance Docket 32760, it is apparent to me that the carrier is not living up to the commitments contained in your February 26, 1996 letter to me regarding same, which were, as you know, addressed favorably to UTU in the STB Merger Decision and concurring opinions.

transportation

union

Chiefly, although not exclusively, the carrier has made it impossible to achieve voluntary implementing agreements by insisting upon provisions that produce benefits based solely on savings achieved by agreement changes. The UTU has addressed in its proposals all of the operational needs of the carrier necessary for implementation to produce public transportation benefits.

Therefore, pursuant to the "final commitment" of the carrier described in the penultimate paragraph of your February 26, 1996 letter, I believe Union Pacific's application of the <u>New</u> <u>York Dock</u> conditions is inconsistent with its commitments, requiring UTU and UP personnel to meet within five (5) days after your receipt of this letter to agree to expedited arbitration as described therein.

The UTU personnel to be involved in setting up the expedited arbitration will be myself, Assistant President Boyd, and General Counsel Clinton J. Miller, III. Please identify the carrier personnel to be involved.

Sincerely,

Thanks & Freel Charles L. Little

International President

CC: B. A. Boyd, Jr., Assistant President
R. W. Earley, Vice President-Administration
P. C. Thompson, Vice President (FAX)
A. M. Lankford, Vice President (FAX)
M. B. Futhey, Vice President (FAX)
All UP and SP General Chairpersons (FAX or UPS Next Day Air)

UNION PACIFIC RAILROAD COMFANY

J J MARCHANT VICE PRESIDENT LABOR RELATIONS 1416 DODGE STREET OMAHA NEBRASKA 68179



February 4, 1997

FAX and UPS NEXT DAY AIR

Mr. Charles Little International President 14600 Detroit Avenue Cleveland, OH 44107-4250

Dear Sir

This refers to your letter of February 3, 1997, requesting expedited arbitration due to the carrier's application of New York Dock conditions with respect to the UP/SP merger.

I was surprised by your letter as it seems to terminate the negotiations with your Organization. Mike Hartman advised your negotiators that he would be willing to meet with Mr. Lankford further if the UTU desired. Scott Hinckley advises that progress was made and that he advised Messrs. Futhey and Thompson that he would review the progress with the undersigned and get back to them. The Carrier has reached agreement with several other Organizations under the same commitment letters and had hoped to reach one with the UTU.

Your second paragraph alludes to overreaching proposals by the Carrier and sound operational proposals by the UTU. Without going into detail, I believe that the negotiators failed to share with you the UTU proposals that were administratively burdensome and would have greatly increased transportation costs. The reason that I will not go into detail is that the parties agreed up-front and at their last meetings that neither party's proposals would be used outside the realm of negotiations. T. 's was done in an effort to encourage a free flow of ideas without fear that a proposal would later be used against the party making it.

Because the parties have agreed that any proposal offered by either side during negotiations will not be placed before an arbitrator, it is improper for the UTU to seek to arbitrate the validity of the Carrier's proposal. The only proposals that may properly be before an arbitrator are the parties' proposed arbitration agreements.

Since your negotiators have decided to terminate negotiations, it leaves me with no choice but to instruct Mr. W. S. Hinckley to serve an arbitration notice on the Salt Lake and Denver Hubs in accordance with New York Dock. Without waiving my position regarding your request for arbitration, I suggest that these issues be progressed in the following manner:

- 1) The arbitration will be a Section 4 arbitration.
- 2) The arbitration will be expedited.
- 3) The arbitration will address the Denver/SLC Hubs.
- 4) The Organization may raise the February 26, 1996 letter issues in this arbitration with the Section 4 arbitrator deciding the appropriateness of those issues.

The Carrier personnel involved in both setting up this arbitration and participating in the arbitration will be Scott Hinckley and Dick Meredith. Please contact Scott at 271-5201 to begin the process of establishing the panel.

Yours truiy,

J. J. Marchant

cc

B A Boyd R W Earley P C Thompson A M Lankford M B Futhey

020497 jjm

CHARLES L. LITTLE

BYRON A. BOYD, JR. Assistant President

ER D. GRIFFETH





February 7, 1997

J. J. Marchant, Vice President-Labor Relations Union Pacific Railroad c/o Sonesta Beach Resort, Rm. 502 350 Ocean Drive Key Biscayne, FL 33149 FAX (305) 361-3096

Dear Mr. Marchant

This is in reply to your February 4, 1997 letter response to my February 3, 1997 letter to you invoking arbitration in accordance with your February 26, 1996 commitment letter.

To begin with, I am happy to hear that Scott Hinckley feels progress has been made, and I commend to you that my letter does not represent a termination of negotiations, but rather an impetus to successfully concluding them. Perhaps, Mr. Hinckley, and hopefully Mr. Hartman as well, will now be sufficiently motivated to get to their bottom line proposals.

Additionally, I obviously disagree with your view of the carrier and union proposals, and beyond that, I also disagree that the parties' proposals may not be used in this arbitration. UTU reserves the right to make any presentation it sees fit.

Finally, I disagree with the propriety of the carrier invoking <u>New York Dock</u> Art. I, Section 4 implementing agreement arbitration as to the so-called "Salt Lake and Denver Hubs" in advance of the commitment letter arbitration. From my reading of its decision and concurring opinions, I believe the STB would feel likewise. I have no problem with expediting the commitment letter arbitration since your February 26, 1996 letter calls for that. Nor do I have a problem with the Article I, Section 4 arbitration(s) occurring immediately after the commitment letter arbitration, perhaps even using the same arbitrator. I am willing to discuss these issues with you directly or with your designees. I look forward to hearing from you or them.

Charles L. Faile Sincerely.

Charles L. Little International President

cc:

B. A. Boyd, Assistant President (FAX)

R. W. Earley, Vice President-Administration

P. C. Thompson, Vice President (FAX)

A. M. Lankford, Vice President (FAX)

M. B. Futhey, Jr., Vice President (FAX)

All UP-SP General Chairperson (FAX or UPS Next Day Air)

Richard Meredith, Gen. Dir. Employee Relations Planning-UP (FAX)

FEB 07 '97 14:03 Time Dimension I shor Relations LP (FAX)

VION PACIFIC RAILROAD CON ANY





February 4, 1997

Mr. P. C. Thompson Vice President, UTU 10805 West 48th Street Shawnee Mission, KS 66203 Mr. Al M. Lankford Vice President 13 Timbergreen Circle Denton, TX 76205

Mr. M. B. Futhey, Jr. Vice President 7610 Stout Road Germantown, TN 38138

Gentlemen

This refers to the Carrier's NYD notices dated September 18, 1996, as amended, for the Denver - SLC Hubs. Those notices were served in accordance with Section 4 of the NYD labor protective conditions.

The negotiations which have been held pursuant to those notices have continued well beyond the Section 4 minimum of 30 days.

Unfortunately, the negotiations have not been successful and it is the Carrier's opinion the parties are now at an impass, especially in light of the UTU letter dated February 3, 1997.

Therefore, and in accordance with Section 4, this will serve as the required notice of the Carrier's desire to submit the dispute between the UTU and the UP/SP and the Denver/SLC Hubs to NYD arbitration.

It is my understanding that UTU President Little, Asst. President Boyd, and General Counsel Miller will be the UTU personnel involved in establishing the arbitration panel.

Yours truly,

Scott Hunchley

Scott Hinckley

C 10:30am

MERGER IMPLEMENTING AGREEMENT (Sait Lake Hub)

C- 33

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between the

UNION PACIFIC RAILROAD COMPANY SOUTHERN PACIFIC RAILROAD COMPANY

and the

UNITED TRANSPORTATION UNION

In Finance Docket No. 32760, the Surface Transportation Board approved the merger of Union Pacific Railroad Company/Missouri Pacific Railroad Company (Union Pacific or UP) with the Southern Pacific Transportation Company, the SPCSL Corp., the SSW Railway and the Denver and Rio Grande Western Railroad Company (SP). In order to achieve the benefits of operational changes made possible by the transaction, to coordinate the seniority of all employees working in the territory covered by this Agreement into one common seniority district and to provide agreement modifications necessary to effect the benefits of the merger,

IT IS AGREED:

1. SALT LAKE HUB

A new seniority territory named Salt Lake Hub shall be created that is within the following area: DRGW mile post ______ at Grand Junction on the Southeast, UP mile post ______ at Yermo on the Southwest, UP mile post ______ and SP mile post ______ at Elko on the West, UP milepost ______ at McCammon on the North and UP mile post ______ at Granger on the East and all stations, branch lines, industrial leads and main line between the points identified.

In addition to the seniority rights of existing employees, the Salt Lake Hub shall have a common Seniority Roster for each craft (Brakemen, Conductors and Switchmen) created for all employees working in the Salt Lake Hub on _____, and a single common roster for all employees hired thereafter.

The parties agree that agreement modifications necessary to effect the merger are contained herein; all other provisions of existing agreements, including but not limited to, crew consist, reserve board slots, rates of pay, rules and working conditions are matters contained in individual agreements between the parties and are not affected by this agreement.

A. ZONES

The new UP/UTU Salt Lake Hub common seniority district will be divided into four (4) zones. Each zone shall include extra board(s) for Conductors, Brakemen and Switchmen as necessary to meet the needs of the service in that zone.

The purpose of creating zones is twofold: First, it is to allocate work in an area recognizing the entitlements of existing employees to that work; Second, to provide a defined area over which a trainman/switchman can become familiar with trackage and train operations so as not to be daily covering a multitude of different sections of track.

Employees will not be required to lose time or "ride the road" on their own time in order to qualify for the new operations. Employees will be provided with a sufficient number of familiarization trips, not less than _____ trips, unless mutually agreed to, in order to become familiar with the new territory. Employees on familiarization trips shall be compensated in accordance with the controlling agreement the same as if working the assignment on which becoming familiar. Issues concerning individual qualifications shall be handled with local operating officers.

2

Zones are defined as and will be governed by the following:

1. Zone 1 will include Salt Lake City and Ogden West to and including Elko via either route but will not include the terminals of Salt Lake City and Ogden. (current WP and SP pool and local operations)

Assignments (including extra board positions) in Zone 1 will be allocated _____% to the former WP and _____% to the former SP. Assignments in the zone will be governed by the controlling agreement for their respective allocation.

Assignments allocated to the former WP will be available for the exercise of prior rights seniority by former WP employees in accordance with their prior rights to the work in, or moved to, the Zone. Assignments allocated to the former SP will be available for the exercise of prior rights seniority by former SP employees in accordance with their prior rights to the work in, or moved to, the Zone.

Employees from the Salt Lake Hub common roster may exercise seniority to assignments in Zone 1 in accordance with their standing on the common roster and behind those who have prior rights to the assignment.

a. Pool operations

1. Salt Lake City - Elko and Ogden - Elko.

This operation may be run as two pools with home terminals at Ogden and Salt Lake City. Crews brought on duty in Ogden may be transported to Salt Lake City for departure and crews brought on duty at Salt Lake City may be transported to Ogden. The Carrier may operate the crews at the far terminal of Elko back to Salt Lake City or Ogden, with the crews transported by the carrier back to their original on duty point at the end of their service trip. Employees transported between Salt Lake City and Ogden shall be compensated established highway mileage (_____) between those two points at the rate of the service trip.

b. Terminal consolidations

Elko - Carlin. All UP and SP operations within the greater Elko and Carlin area shall be consolidated into a unified terminal operation at Elko.

Note 1: While the Sparks-Carlin and Wendel-Carlin pools are not covered in this notice it is understood that they will operate Sparks -Elko and Wendel-Elko and will be paid actual miles when operating trains between these two points and will be further handled when merger coordinations are handled for the area West of Elko.

Note 2: The Portola-Elko pool shall continue to operate as it currently does and will be further handled when merger coordinations are handled for the area West of Elko.

3

c. Extra Boards

The following extra boards will be established to protect assignments in Zone 1:

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- 1. Conductors' extra boards at Salt Lake and Ogden
- 2. Brakemen's extra boards at Salt Lake and Ogden
- 3. Combination extra board at Elko
2. Zone 2 will include Salt Lake City North to McCammon and Ogden east to Granger and all road operations in the Ogden and Salt Lake City terminals. Green River locals or road switchers are not included in this zone.

Assignments (including extra board positions) in Zone _____ will be allocated _____% to the former ______. Assignments in the zone will be governed by the controlling agreement for their respective allocation.

Assignments allocated to the former _____ will be available for the exercise of prior rights seniority by former _____ employees in accordance with their prior rights to the work in, or moved to, the Zone. Assignments allocated to the former _____ will be available for the exercise of prior rights seniority by former _____ employees in accordance with their prior rights to the work in, or moved to, the Zone.

Employees from the Salt Lake Hub common roster may exercise seniority to assignments in Zone 2 in accordance with their standing on the common roster and behind those who have prior rights to the assignment.

5

- a. Pool operations
- b. Terminal Consolidations
- c. Extra Boards

The following extra boards will be established to protect assignments in Zone 2

1. Conductors' extra boards at

2. Brakemen's extra boards at

3. Yard extra board at

3. Zone 3 will include Salt Lake City East to but not including Grand Junction and South to Caliente via either route.

Assignments (including extra board positions) in Zone _____ will be allocated _____% to the former ______. Assignments in the zone will be governed by the controlling agreement for their respective allocation.

Assignments allocated to the former _____ will be available for the exercise of prior rights seniority by former _____ employees in accordance with their prior rights to the work in, or moved to, the Zone. Assignments allocated to the former _____ will be available for the exercise of prior rights seniority by former _____ employees in accordance with their prior rights to the work in, or moved to, the Zone.

Employees from the Salt Lake Hub common roster may exercise seniority to assignments in Zone 3 in accordance with their standing on the common roster and behind those who have prior rights to the assignment.

6

a. Pool operations

- B. Terminal consolidations
- c. Extra Boards

The following extra boards will be established to protect assignments in Zone 3

1. Conductors' extra boards at

2. Brakemen's extra boards at

3. Yard extra board at

4. Zone 4 will include Caliente to Yermo, California.

Assignments (including extra board positions) in _one ____ will be allocated ____% to the former _____ Assignments in the zone will be governed by the controlling agreement for their respective allocation.

Assignments allocated to the former _____ will be available for the exercise of prior rights seniority by former _____ employees in accordance with their prior rights to the work in, or moved to, the Zone. Assignments allocated to the former _____ will be available for the exercise of prior rights seniority by former _____ employees in accordance with their prior rights to the work in, or moved to, the Zone.

Employees from the Salt Lake Hub common roster may exercise seniority to assignments in Zone 4 in accordance with their standing on the common roster and behind those who have prior rights to the assignment.

A. Pool operations

B. Terminal consolidations

C. Extra Boards

The following extra boards will be established to protect assignments in Zone 4

1. Conductors' extra boards at

2. Brakemen's extra boards at

3. Yard extra board at

II. SENIORITY

To achieve the work efficiencies and allocation of forces that are necessary to make the Salt Lake Hub operate efficiently as a unified system, the following will apply:

- A. Existing rights of employees to exercise seniority in the Salt Lake Hub shall be preserved. Assignments in each Zone shall be allocated as set forth in the Zone provisions of Article I.A of this agreement. An allocated assignment shall be subject to seniority choice, as follows:
 - First: existing employees who have prior rights to the allocated work.

Second: employees from a Salt Lake Hub Common Roster.

Employees will be treated for vacation, entry rates and payment of arbitraries as though all their time in operating service on their original railroad had been performed on the merged railroad. A protected employee on any seniority roster will be considered a protected employee on all seniority rosters.

B. In addition to the seniority rights of existing employees, the Salt Lake Hub shall have a Seniority Roster for each craft (Brakemen, Conductors and Switchmen) created for all employees working in the Salt Lake Hub on _____. The new Salt Lake Hub rosters will be created as follows:

- Existing employees placed on the new craft rosters will be dovetailed based upon the employee's earliest retained seniority date in the craft. If any employees have identical seniority dates in the craft, seniority will be determined by the earliest employee's retained seniority in a UTU represented craft. If the earliest retained seniority date is identical, seniority will be determined by birth date.
- 2. Employees hired subsequent to the effective date of this agreement shall be placed on a single common road/yard Salt Lake Hub roster which will rank below each of the craft rosters set forth above. Such employees shall, when qualified, rank as Conductor/Foreman in accordance with their relative standing on the common roster.

When a class of students completes their preparatory training and examinations, their order of standing for seniority will be determined as follows:

a. FIRST GROUP - Employees from the carrier's other crafts will be ranked highest in potential seniority in the class of trainees based on the employee's number of years of continuous service with the carrier. In the event that two employees have the same date of hire, they shall be ranked according to their date of birth with the senior employee ranking ahead of

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junior employees.

b. SECOND GROUP - New employees will be ranked amongst themselves by their date of birth and placed behind Group 1 in seniority.

Thereafter, the first service performed by a member of said class as either a trainman or switchman will establish the common seniority date for all members of the class in the order determined by the above groups. If more than one class is prepared to mark up for service in the same Hub on the same date, all groups will be ranked in accordance with a and b above, as if they were all in the same class of students.

When a single new employee is marked up for initial service as either brakeman or switchman, he/she will establish a seniority date as of the date such initial service is performed.

NOTE: A seniority "picture" of all affected locations on the merged railroad(s) will be taken as of a specific date so that all employees are identified with a Hub roster.

III. HUB/SYSTEM BOARD

The Salt Lake Hub will be divided into Demand Number Areas (DNA). ______A Hub/System Board will be established for the Hub. (see attachment)

For each DNA in a hub, a number of positions on the Hub/System Board equal to the number by which the supply of active employees exceeds the demand number shall be made available for seniority choice of Hub common roster employees at that DNA. If the Company's need for employees at a DNA exceeds the demand number, the Company may bulletin fewer Hub/System Board positions and allow employees in excess of the demand number to continue working at that DNA.

The Salt Lake Hub/System Board employees may be used anywhere on the Union Pacific Lines, including within the Salt Lake Hub.

IV. PROTECTION

A. The parties agree that all employees listed on the Salt Lake Hub common roster will be automatically certified for wage protection, which will be calculated pursuant to New York Dock provisions. (NYD Q's and A's will be attached)

B. Employees who relocate under this agreement will be governed by the relocation provisions of New York Dock as modified by Article XII of the 1972 UTU National Agreement or at employee option a lump sum payment of ______ in lieu thereof

C. If any other organization involved in this merger receives more generous protective

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conditions than those set forth herein, the more generous provisions will be offered to the UTU.

V. IMPLEMENTATION

The Carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub.

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ATTACHMENT "A"

HUB/SYSTEM BOARD

DEMAND NUMBER

The Hub will be divided into Demand Nut. per Areas.

The demand number represents the minimum number of trainmen/switchmen permitted to work on other than the Hub/System/Reserve Board from each Demand Number Area (DNA).

The demand number may be adjusted as a result of changes in operations, business conditions or other factors that would cause an increase or decrease in operations.

A downward adjustment in a demaid number can only be made after 90 days from the date of the last downward adjustment.

The minimum demand number for each DNA will consist of the number of regular assignments within the DNA plus 30% the number of assignments. Sufficient workforce shall be maintained in each DNA to provide relief for vacations, layoffs, PL days, etc.

II TRANSFERS - No shortage to surplus

On the effective date of this Agreement, the ability of a trainman/switchman to exercise seniority between DNA's shall be temporarily restricted as follows:

A Prior rights employees do not count Non-prior rights employees as active

Employees at a DNA, where the supply of active employees is equal to or less than the demand number, shall not be allowed to transfer to a DNA where the supply of active employees, with seniority established prior to the effective date of this Agreement, is equal to or greater than the demand number for that DNA.

B Non-prior rights employees count everyone as active

Employees who establish seniority subsequent to the effective date of this agreement and who are at a DNA where the supply of active employees is equal to or less than the demand number, shall not be allowed to transfer to a DNA where the supply of active employees is equal to or greater than the demand number for that DNA.

UTU to UP 1/23/97 C De

Definition of "Active Employee"

Active employees are those employees who hold a regular, extra, or Hub/System Board/Reserve Board position at a DNA and who have earned compensation as a trainman/switchman under the schedule agreement during the last 30 days. Trainmen/switchmen who commence a leave of absence, are dismissed, or reach the 30th day of absence for reasons such as suspension, illness or injury, shall no longer be considered active until they return to service and earn compensation as a trainman/switchman under schedule agreements.

III HUB/SYSTEM BOARD

A Defines where a "Hub/System Board" employee can work

One Hub/System Board will be established in each of the seniority hubs. While on a Hub/System Board, an employee is subject to being used in the capacity of an extra trainman or extra switchman at any DNA on the Union Pacific RR.

Hub/System Board employees must first be used within the Hub if positions exist prior to being sent to another DNA outside the Hub.

B Assignments - Needs of Service

Hub/System Board positions will be determined on a monthly basis as follows:

How to calculate the number of assignments

For each DNA in a hub, a number of positions on the Hub/System Board (including inactive positions) equal to the number by which the supply of active employees exceeds the demand number may be made available for seniority choice of Hub common roster employees at that DNA.

2 Allows carrier latitude in total number of assignments

If the Company's need for employees at a DNA exceeds the demand number, the Company may bulletin fewer Hub/System Board and/or Reserve Board positions and allow employees in excess of the demand number to continue working at that DNA.

C Voluntary

1

Bulletin period

The Company will bulletin voluntary Hub/System Board positions by Noon Pacific Time on the first day of the month preceding the month of assignment. Bids will close at Noon Pacific Time the 7th day of the month preceding the month of assignment and posted by 3 PM that day. Hub common roster employees who select the Hub/System/Reserve Board by seniority choice will be known as voluntary Hub/System/Reserve Board employees.

2

Exercise of seniority to get off the Hub/System Board

During the period of time he/she is on the Hub/System Board, a voluntary Hub/System Board employee will not be entitled to exercise seniority. Such employee will be allowed full exercise of seniority upon completion of their Hub/System Board obligation, in accordance with applicable agreements.

D Involuntary

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The Company may elect to assign involuntary Hub/System Board positions to employees on the hub common roster, subject to the demand number for that DNA, or to the number of employees allowed to remain at that DNA. Involuntary Hub/System Board positions will be assigned on a monthly basis at Noon Pacific Time on the 10th day of the month preceding the effective month of the assignment, as follows:

Who to draft

At a DNA, if there are insufficient voluntary Hub/System Board employees to fill the number of Hub/System Board positions, the junior trainnen/switchmen on an extra board (including unassigned brakemen/switchmen) equal to the number of positions on the Hub/System Board not filled by voluntary employees shall be removed from the active list for that DNA. Employees reduced in this manner who hold common roster seniority will be allowed to mark to the Hub/System Board.

Released from Hub/System Board

These Hub/System Board employees will be known as involuntary Hub/System Board employees and, when released by the Company from their Hub/System Board obligation, will be allowed to mark to an extra board at the DNA from which assigned. 3

Exercising seniority from Hub/System Board

Involuntary Hub/System Board employees may exercise seniority from a Hub/System Board to a DNA as follows:

a May mark to an extra board if the number of non-Hub/System Board trainmen/switchmen at that DNA is less than the demand number for that DNA; or,

By bid or bump to a regular position, subject to applicable agreements.

b When exercise of seniority must be made

Assigned involuntary Hub/System Board employees must make application to exercise seniority from the Hub/System Board by Noon Pacific Time the 8th day of the month preceding the month in which the exercise of seniority will become effective.

Involuntary Hub/System Board employees will not be released from the Hub/System Board until the end of a cycle (month) as set forth above.

NOTE: should the assignment of the Hub/System Board positions leave a surplus of employees in a Zone within the DNA, junior employees may be reduced from an extra board in that Zone within the Demand Number Area. Employees so reduced may exercise their right to displacement, or may mark to an extra board in a shortage location within the Demand Number Area.

E Hub/System Board Work/Inactive assignments

The Company will make inactive and work assignments, referred to as cycles, available for seniority choice (date of hire as a trainman or switchman) to Hub/System Board employees on the first day of the month preceding the month of assignment. Bids will close at Noon Pacific Time the 15th day of the month preceding the month of assignment and posted by Noon the 16th day. Failure of a Hub/System Board employee to indicate a preference will be considered as no preference and such employee's cycle will be assigned by the Company.

A Hub/System Board employee not occupying an inactive position will be used on one of the following cycles:

31-day month:

Cycle - 20 consecutive 24-hour periods (work segment), with 11 consecutive 24-hour periods (rest segment); or,

Split Cycles - 10 consecutive-24 hour periods (work segment) with 5 consecutive 24-hour periods (rest segment) followed by 10 consecutive 24-hour periods (work segment) with 6 consecutive 24-hour periods (rest segment).

30-day month:

Cycle - 20 consecutive 24-hour periods (work segment), with 10 consecutive 24-hour periods (rest segment); or,

Split Cycles - 10 consecutive 24-hour periods (work segment) with 5 consecutive 24-hour periods (rest segment) followed by 10 consecutive 24-hour periods (work segment) with 5 consecutive 24-hour periods (rest segment).

29-day month:

Cycle - 20 consecutive 24-hour periods (work segment) with 9 consecutive 24-hour periods (rest segment); or,

Split Cycles - 10 consecutive 24-hour periods (work segment) with 5 consecutive 24-hour periods (rest segment) followed by 10 consecutive 24-hour periods (work segment) with 4 consecutive 24-hour periods (rest segment).

28-day month:

Cycle - 19 consecutive 24-hour periods (work segment) with 9 consecutive 24-hour periods (rest segment); or,

Split Cycles - 10 consecutive 24-hour periods (work segment) with 5 consecutive 24-hour periods (rest segment) followed by 9 consecutive 24-hour periods (work segment) with 4 consecutive 24-hour periods (rest segment).

F Work Segments of cvcle

Work segments for a Hub/System Board employee shall begin at the time the employee reports to the on-duty point of the source of supply from which the

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employee bid or was placed on the Hub/System Board, and shall end at the time the employee is released from the work segment at that same source of supply.

The scheduled end of a Hub/System Board employee's work segment will be based on the date and time the work segment began. For example, a 20-day work segment which begins at 7:30 AM on July 11 will end at 7:30 AM on July 31 (480 hours later). In the event that a Hub/System Board employee is not returned to his/her home location at the scheduled end of his/her work segment, or the scheduled end of the voluntarily extended work segment, the employee will be compensated as follows:

Penalty for not being released at proper time

If arrival is less than four hours past scheduled end time: no extra compensation

If arrival is four hours or more, but less than eight hours past scheduled end time: \$245.00 in addition to regular earnings/guarantee.

If arrival is eight hours or more, but less than 24 hours past scheduled end time: \$245.00 in addition to regular earnings/guarantee plus succeeding work segment will be reduced by one day (24 hours).

If arrival is 24 hours or more, but less than 48 hours past scheduled end time: \$490.00 in addition to regular earnings/guarantee plus the succeeding work segment will be reduced by two days (48 hours).

For each additional 24 hours past the scheduled end time, until the employee returns to his/her home location: An additional \$245 plus the succeeding work segment will be reduced by one additional day (24 hours).

The Company will have the option of returning the Hub/System Board employee to his/her home source of supply prior to the scheduled expiration of his/her work segment in order to avoid delay in commencement of scheduled rest segment.

2 Marking up at work location

Hub/System Board employees will be marked to their work segment extra boards in accordance with their arrival time at the lodging facility. If two or more employees have the same arrival time, the employees will be marked to the board in reverse seniority order. Hub/System Board