

STB FD 32760 (Sub 25) 11-12-97 D 183839 13/15

the Denver & Rio Grande Western Lines (D&RGW). The remaining six tie gangs are on the Union Pacific System Lines (UP). The UP also has one concrete tie gang and two surfacing gangs.

Of the twelve rail gangs, five are SP gangs and two are D&RGW gangs. The remaining five are UP gangs, not including one additional in-track-welding gang. This section will explore the current operation given the numerous seniority districts that split between these lines and even split the lines internally. Under the current system and collective bargaining agreements, the movement and efficiency of all the rail and tie gangs are hindered by climate changes, manpower shortages and equipment allocation problems.

1. Climate Problems

The nature of work on a Maintenance of Way system gang is such that working outdoors is unavoidable. Furthermore, the outside work is not intermittent, but is constant throughout the work day. These employees have little opportunity for reprieve from icy winds and snow or from blistering heat and sun. With a system as wide-spread as the merged Union Pacific, a certain amount of project scheduling can be done so as to attain optimal weather and climate conditions for the crew and the project. For example, it makes far more sense to schedule work for the colder northern regions during the summer months. If work in North Platte, Nebraska or Cheyenne, Wyoming is scheduled for the months of October through April, not only will there be great discomfort on the part of the

gang members, the job will undoubtedly be "frozen out,"⁴ and the employees sent home without work. While even the hottest conditions do not preclude maintenance of way work from an engineering standpoint, it is obvious that employees who work in extreme heat are more prone to discomfort, or even illness and injury. Work in extreme temperature affects employee morale and can conceivably be linked to safety concerns. An employee eager to finish a job to get out of the extreme heat or cold is simply more likely to take risks or shortcuts to finish a task and get out of the elements. Extreme temperatures may also cause grogginess and abnormal fatigue.

Due to the limitations placed on work scheduling by conflicting seniority rosters across the merged UP (inclusive of SP, WP and D&RGW), the 1997 schedule was not optimum for climate concerns.⁵ For example, Tie Gang 8563 (SP) worked the months of June through October in the Lordsburg Subdivision. This system stretches across southern Arizona and New Mexico. Needless to say, the heat is sweltering during those summer months. Meanwhile, another SP Tie Gang (8564) is scheduled to work the Cascade Subdivision in November through mid-December. The Cascade Subdivision is located in northern Oregon and this crew is likely to be working in cold conditions and may even be "frozen out" and sent home. Likewise, Tie Gang 8565 (D&RGW) is scheduled to work from late November through the first of 1998 on the Bond Subdivision, which is located in the heart of the Colorado Rocky Mountains. Again, weather conditions may

⁴ "Frozen out" refers to the occasion when the temperature stays below freezing and the ground is frozen. In such conditions, rail and tie work cannot be completed.

⁵ All current scheduling examples refer to Carrier Exhibit "32."

make it impossible for them to even commence that work so late in the year. SP Tie Gang 8566 is scheduled from April until October in the East and Bakersfield Subdivisions, a climate that would be good to work in during the late fall, winter, and early spring months will be very hot during the prime summer months. The examples continue throughout the entire schedule. UP Tie Gangs 9061, 9062, 9064, 9066 and Concrete Tie Gang 9073 all end their 1997 schedule in a cold climate, where work will be at least uncomfortable and, at worst, cut off early due to frozen ground.⁶ In examining the Rail Gang schedules, the same climatic difficulties are found. Gangs are expected to be able to work in cold regions during late winter and early spring while working in very hot climates during the brunt of summer. This scheduling makes no sense from any logistical standpoint. The weather can cause a halt in work and can cause discomfort, illness and safety concerns for employees.

No person can review this work schedule and not ask "why?" However, the answer is very simple. The current Collective Bargaining Agreements bind the hands of the Carrier. With these agreements in place, the Carrier can make no changes that would eliminate or alleviate the problems caused by scheduling in so many different climates without incurring delay, additional manpower needs and greater costs. To put this quite simply, by putting all of these systems under the Union Pacific Collective Bargaining Agreement, the Carrier could schedule crews to work in the south and western regions

⁶ The Current Operational Schedule is mapped out on Carrier Exhibits "33," "34," "35," and "36." These maps show the current and actual placement of gangs during the months of February, May, August and November.

during the late fall, winter and early spring. During the late spring, summer and early fall, the crews could then be moved to projects in the northern regions.

2. Manpower Issues

The seniority boundaries created by the Collective Bargaining Agreements hinder the efficient and effective completion of maintenance of way work in ways other than climatic scheduling problems. Manpower is a recurrent theme in maintenance of way work. When work is scheduled in a seniority district, the positions are posted for bidding by those district members. When the crew is filled, it leaves a hole in the staffing plans of that district. Conversely, if an insufficient number of employees bid on the road work, the gang does not have enough people to safely and effectively complete the work. The central point is that the seniority districts are stretched very thin on manpower when road work is done in their district.

This is currently handled in two ways. The positions left temporarily vacant due to a maintenance of way project in the district can be left empty, for other employees to cover until the project is complete; or the vacancies can be filled by hiring. However, once the project is complete, those new hires become excess and are furloughed. Additionally, both solutions lead to the problem of putting employees on tasks with which they are unfamiliar and inexperienced, whether the employee is from the shop or a new hire off the street. The learning curve for these employees hinders crew efficiency and brings with it safety concerns.

For example, when Tie Gang 9066 works on the Subdivision from Sacramento,

California to Ogden, Utah, the gang jobs are bulletined and employees are taken from their regular maintenance positions in the district to work on the road crew. When the 9066 works from Sacramento, California to Portland, Oregon, the former positions are all abolished and the jobs are rebid for the new seniority district. Those employees whose jobs are abolished then either go back to their vacant position, bump a less senior employee, or go home without work. This not only interferes with the employment of the crew members, it also affects the continuity of the crew make-up. With each abolishment and re-bid of positions, the composition of the crew is changed. Experienced employees are sent back to a vacant position, or back home with no work, while an inexperienced employee is put in their place, merely because of a change in location that can be less than 100 miles.

On D&RGW Tie Gang 8565, this relative small piece of track is made even smaller by the seniority districts. Two seniority districts are separated at Grand Junction, Colorado. Both districts contain trackage that demands maintenance of way work can only be performed in the milder months of the year, late April through early October. However, any gang that works on those small Subdivisions pulls manpower away from other important work. When a seniority district encompasses an area with only one type of climate, the potential to keep a crew working year-round decreases with the size of the district. In a system without seniority districts to limit the mobility of the workforce, the employees can be kept working in suitable climates all year long. Furthermore, the gang could have continuity because it would not need to be re-bid. This continuity means that the crew members are experienced in their jobs and they are accustomed to working with one

another. This prevents a learning curve situation and problems with communication between employees. A crew that has worked together for some time is naturally going to be more productive than a group of new employees who have yet to learn their jobs, much less learn how to communicate with each other. The crews could also be worked without causing manpower shortages in district locations. No jobs would be short-shifted and there would not be fluctuating short term, or almost part-time employment.

Another example of the difficulties in dealing with limited manpower due to seniority systems can be exemplified in the example of Elko, Nevada. In Elko, two separate seniority systems are present for two lines that intersect. One is a Southern Pacific seniority district and the other is Western Pacific seniority district. In Elko, one person working on the Western Pacific can be fully employed, while a Southern Pacific district employee is furloughed. These work locations are mere miles from each other, yet the imaginary lines drawn by the Collective Bargaining Agreement keep the Carrier from running an efficient operation with full employment.

3. Clogged Corridors

With the merger of Southern Pacific with the Union Pacific, the system now has several basic east-west corridors for use. However, because of the separate Collective Bargaining Agreements and the resulting seniority districts, work is currently scheduled in such a way that no corridor is left open for unobstructed business. Just this year, Tie Gang 9062 had to be moved in order to open the Wyoming corridor for business demands because maintenance of way gangs were also working on the other two corridors. Due to

the congestion caused by blocked corridors, the Wyoming project went gravely behind schedule.

From Salt Lake City, Utah to Sacramento, California the Western Pacific seniority district crosses with a Southern Pacific seniority district. If both crews are working on the line, the congestion on that corridor can make it almost impossible to pass. Even on double tracks that are on only one seniority district, the cross-overs (which allow the trains to switch tracks) usually only occur at a minimum distance of ten miles apart. This causes trains traveling in opposite directions to come to a complete halt and wait for a turn to pass along the clear track. This situation happening on single track is not so bad. However, due to the inability of the Carrier to schedule work on certain corridors in concert with all the seniority districts, this problem occurs on all of the corridors simultaneously. With the separate Collective Bargaining Agreements restraining the Carrier from scheduling maintenance of way work effectively and efficiently, the Carrier loses its competitive edge. The Collective Bargaining Agreements cause the Carrier to do business in a non-competitive manner and prevent any gains in efficiency or economies of scale that the Carrier should reap from the merger.

4. Summary of the Present

In reviewing the current work schedule and seniority district maps, it becomes apparent that the numerous Collective Bargaining Agreements and the resulting seniority districts exacerbate the problems with manpower, equipment, climate and rail congestion described above. The existing operation has ten tie gangs (totaling 912 men) and twelve

rail gangs (totaling 587 men). Even with 1,499 men working on the tie and rail gangs, six tie projects and nine rail projects will be left undone at the end of 1997. Of the six tie projects, four will go uncompleted due to time constraints and two will fail to be finished due to weather conditions. In total, this is 185 days of work left undone. The nine rail projects that fail completion total 86 days of work. A person reviewing these numbers could easily conclude that the Carrier needs to add more manpower and equipment to get these jobs done. However, the Carrier will demonstrate that this entire schedule could have been met in a manner that would have resulted in:

1. Full employment for crew employees on the SP, WP and D&RGW.
2. Consistent, reliable and productive crew staff, regardless of where they worked.
3. Crews working in synchronization on corridors to ensure that business was not hindered.
4. No manpower shortages in small seniority districts due to gang work being performed in the area.
5. No equipment shortages related to manpower issues.
6. No short-term employment cycles of hiring then furloughing in an attempt to manage manpower shortages.
7. Work assigned in locations appropriate to climate and season.
8. Employees being given a wider range of job opportunity with significantly less chance of furlough.
9. Realization of the benefits of merger and resulting gains for the Carrier, employees and the public.

A VISION OF THE FUTURE

As approved by the STB, we envision extending the present UP system operations to encompass the SPWL, D&RGW, and UP(WP). Such system operations are presently in effect on the UP and are quite efficient. Expanding this system makes sense, in business aspects as well as to the employees that work on the gangs. We want to give employees the opportunity to move to seasonal work, rather than be furloughed.

Without the constraints of several different Collective Bargaining Agreements and their subsequent seniority divisions, the ability of the Carrier to schedule productively and logically opens a whole new world of possibilities. For example, crews would not have to be rebid when seniority districts are crossed. This would help to keep the crews staffed with knowledgeable and experienced road workers who are comfortable working together as a team and understand their jobs and how to communicate with each other. On the SP currently, ties gangs are limited to regional districts. No sooner does a crew begin to "click" then the jobs are abolished and re-bulletined. One Collective Bargaining Agreement would eliminate all but the vacancies left by attrition and employee-initiated job transfers.

With one Collective Bargaining Agreement, the Carrier would have greater flexibility to work around climatic changes and corridor traffic needs. For example, the Union Pacific system was able to use a "swarming" technique in 1997 that produced great results in a short time by effectively using all of its available resources on one important corridor for fifteen days. The Carrier committed to shutting down the corridor during the time that the crews were there and, at the end of fifteen days, the corridor was finished and successfully

reopened to traffic. This swarming could be put to excellent use system-wide if there was only one Collective Bargaining Agreement. For example, during the coldest winter months, the crews could be concentrated in the south and southwestern regions, leaving the two northerly corridors open. As the seasons progressed, the crews could move from south to north. This envisions crews moving in more of a longitudinal direction north and south than across the system in east-to-west movements.⁷

While the Organization may oppose what the Carrier views as the completion of the merger, its reasons for doing so are weak and contradict the language of the STB merger decision. The Organization may argue against the consolidation of these lines under the Union Pacific Collective Bargaining Agreement by focusing on the possibility that employees may be moved from Junction City, Oregon to Grand Island, Nebraska to Three Rivers, New Mexico. This movement of forces, the Organization may contend, could put a strain on the personal lives of the employees. However, the Organization neglects to acknowledge three vital items.

First, employees are paid for visits home. System maintenance of way employees receive a travel allowance to accommodate their personal life. PEB 229 resulted in the September 26, 1996 National Agreement. In Article XIV of this Agreement, travel allowance benefits are addressed. Employees are given the choice of accepting a travel

⁷ The Proposed Operational Schedule is attached as Carrier Exhibit "37." A side-by-side comparison of the Existing Operational Schedule and the Proposed Operational Schedule can be found at Carrier Exhibit "38." Four maps, showing the geographic placement of gangs in the Proposed Schedule for the months of February, May, August and November are included as Carrier Exhibits "39," "40," "41," and "42."

allowance for miles actually traveled by the most direct highway route or allowing the Carrier to purchase a round-trip airline ticket for their use every third weekend while they are working at a location more than 400 miles from their residences.⁸ Additionally, the placement of SP/WL, WP and the D&RGW under the UPRR Collective Bargaining Agreement actually gives employees more opportunity for work closer to their homes.

Second, employees are free to choose their work for themselves. Positions on the systems gangs are bulletined. Employees make their choices to work on system gangs knowing that travel is imminent. Employees also make their choices with the knowledge that they will receive per diem payments and travel allowances.

Third, such long-range movement of employees and gangs would simply not be cost effective nor efficient for railroad operations. With the removal of Collective Bargaining Agreement barriers to efficient operations, movement of employee gangs would be more in the way of longitudinal movement, north to south, rather than latitudinal movement from east to west. Long distance movement of employees increases the cost of the maintenance work done and also increases the Carrier's cost of travel allowances. Any argument made regarding this projected excessive movement is unfounded, unsupportable and irrelevant to the end goal of the merger.

⁸ Article XIV is included as Carrier Exhibit "43."

1. Engineering Benefits

The benefits of putting these lines under the Union Pacific Collective Bargaining Agreement can be summed up in one phrase: **We can do more with less.** As can be seen by the Proposed Operational Schedule, without the interference of four collective bargaining agreements, efficiencies of the merger can be realized.⁹

Under one Collective Bargaining Agreement, the existing tie gang numbers could be reduced from ten to eight. This is a reduction of 131 employees. The existing rail gang numbers would fall from twelve to ten – a savings of 107 employees. Amazingly enough, with these numbers reduced, **all of the scheduled projects are completed.** Furthermore, this reduction of manpower equates into front cost savings on manpower that recurs annually.

With every tie or rail gang that is eliminated, so are gangs that are created to support that gang (district or regional surfacing and/or unloading gangs). Costs are additionally decreased because the gangs have vehicle costs which would cease to exist once the gang is abolished. For example, Tie Gang 9061 incurred labor costs in July 1997 of \$216,467.00.¹⁰ Other costs incurred by the gang were material and general expenses totaling \$10,242.00. Finally, the vehicle costs summed \$15,587.00. Not including the labor costs of the additional surfacing and unloading gang, Tie Gang 9061 cost the Carrier \$242,296.00 to run in the month of July for 44 employees. With the costs of the support

⁹ See the side-by-side comparison at Carrier Exhibit "38."

¹⁰ A schedule of wages is included as Carrier Exhibit "44."

gangs (9081 and 9091), the cost totals \$416,636.00.¹¹

Similarly, Tie Gang 9064 had expenditures of \$255,865.00 for 41 employees during the month of July 1997. Including the costs of the supporting gangs (9084 and 9094), the total rises to \$412,051.00.¹² Curve Rail Gangs 9011 and 9013 showed labor and vehicle costs of \$168,559.00 and \$155,265.00 for 33 and 31 employees, respectively. With unloading gang support (9021 and 9023), the costs rose to \$195,425.00 and \$182,131.00.¹³

This information can be summed up as follows¹⁴:

Gang No.	9061	9064	9011	9013	TOTALS
# of Employees	44	41	31	33	149
Base cost	\$242,296	\$255,865	\$168,559	\$155,265	\$821,985
Cost with support	\$416,636	\$412,051	\$195,425	\$182,131	\$1,206,243

Above, it was discussed that the proposed schedule would allow system gang movement to be so efficient as to allow for the elimination of 238 positions, or two tie gangs and two rail gangs. The figures above represent the elimination of four gangs (two tie and

¹¹ These calculations and supporting documentation are located at Carrier Exhibit "45."

¹² The spreadsheet showing these calculations, along with documentation, is attached as Carrier Exhibit "46."

¹³ See Carrier Exhibits "47" and "48" for the spreadsheets and documentation regarding these Curve Rail Gangs.

¹⁴ It should be noted by the Arbitrator that these figures for July 1997 are **actual** amounts.

two rail), yet only total 149 employees. The support staff for all four of these gangs totals approximately 63 employees, bringing the number of total employees to 212. With that number in mind, the elimination of these four gangs would have saved the Carrier \$1,206,243 in the month of July. Because most gangs work an average of ten months during the year, **estimated savings can be calculated at \$12,062,430 per year.** It should also be realized that this cost savings will repeat annually as it is an annually budgeted expense.

An analysis of the yearly wages and benefits paid to Gangs 9011 and 9061 during the twelve months period from August 1995 through July 1996 demonstrates greater wages and income than calculated above. For these two gangs, their annual income averaged \$73,684, including fringe benefits.¹⁵ If these past wage averages were used to calculate the savings of eliminating 212 jobs, the cost savings would be \$15,621,008. In this case, the Carrier would rather err on the side of prudence and estimate the manpower savings to be **\$12,062,430.**

The reduction of two rail gangs and two tie gangs also reduces the need for support mechanics. Each tie gang requires four mechanics, with each mechanic having a truck. The rail gangs have one mechanic and truck each. Each tie gang is budgeted for \$20,000 worth of maintenance materials per month. Each rail gang is budgeted for \$15,000 worth of maintenance materials per month. The salary and overhead for each mechanic is \$71,854 per year and the cost for a mechanic truck is \$25,774 per year. The reduction in

¹⁵ See Carrier Exhibit "49."

tie and rail gangs equates into an annual mechanic savings of **\$1,814,280**, to-wit:

TIE GANGS

4 mechanics @ \$71,854 each =	\$287,416
4 mechanic trucks @ \$25,774 each =	103,096
Maintenance materials for 12 months @ \$20,000 per month =	240,000
Sub-total	630,512
x 2 gangs	x2
Tie Gang Total Mechanic Savings	\$1,261,024

RAIL GANGS

1 mechanic @ \$71,854 each =	\$ 71,854
1 mechanic truck @ \$25,774 each =	24,774
Maintenance materials for 12 months @ \$15,000 per month =	180,000
Sub-total	\$276,628
x 2 gangs	x2
Rail Gang Totals Mechanic Savings	\$553,256

TOTAL MECHANIC SAVINGS **\$1,814,280¹⁶**

For the existing schedule to complete all of the scheduled projects, the crews would work a total of 2,120,256 hours. With the proposed operation, all of the projects are completed in 1,859,832 hours. This is a difference of 260,242 hours of payroll costs that the Carrier will save with the system under one Collective Bargaining Agreement. Using the July 1997 payroll of Gang 9061 to create an average hourly cost of work as \$26.66, the cost of those 260,242 hours of work can be estimated at **\$6,924,903.80¹⁷**.

With the present schedule, the Carrier projected that it would need to purchase

¹⁶ Supporting documentation is included as Carrier Exhibit "50."

¹⁷ Gang 9061 Labor Costs were \$216,467, divided by 41 employees, divided by 22 work days in July at nine hours a day equals \$26.66.

equipment for one tie gang and for one rail gang to optimize manpower. The equipment costs for one tie gang is \$4,569,781. The equipment costs for one rail gang is \$2,381,237. By putting these regions under the Union Pacific Collective Bargaining Agreement, the Carrier will be able to avoid a one-time cost of **\$6,951,018**.¹⁸

The above figures are only those benefits which the Carrier feels comfortable putting a price on. It should be recognized that there are greater benefits that can be attained from this merger that are more difficult to quantify. Given the above calculations, the Carrier asserts that the adoption of the attached Implementing Agreement, creating one western system under the Union Pacific Railroad Collective Bargaining Agreement, would equate in engineering savings estimated at **\$27,770,631** for one year.

2. Transportation Benefits

The proposed operation makes sense of seasonal and climatic changes -- scheduling work on the northern lines for the summer months and the southern lines for the winter months. This leaves corridors open for unobstructed travel and transportation, a benefit that will greatly enhance the Carrier's competitive edge and bottom line.

In 1996, the combined Union Pacific and Southern Pacific ran a total of 8,822,895 train hours. This total includes eastern lines that are not the subject of this arbitration. Of those train hours, an estimated 54.08% are on tracks that will be affected by the outcome

¹⁸ Supporting documentation is included as Carrier Exhibit "51."

of the merger. The year-to-date total of train hours for 1997 is 5,253,002.¹⁹ The cash impact/Total Cost per hour according to Financial Planning and Analysis is \$47.63.²⁰

Given the projected crew movement changes and work load shifting, the Transportation Energy Operations General Manager, Woodruff Sutton, has given an estimated savings of 5% from the operational budget. With this 5% estimate, the **Carrier's Train Delay cost savings would be \$11,597,864 annually.**²¹

The consolidation of the WP, SP/WL and D&RGW under the UPRR Collective Bargaining Agreement²² would also give transportation benefits regarding terminal performance. The changes in work scheduling would impact that number of hours that cars are held in terminals. During the first eight months of 1997, 4,626,214 cars were switched in the region subject to this arbitration. The system average of holding the cars in the terminal (terminal dwell) is 24.6 hours. Using Financial Planning and Analysis figures, the cash component of holding a 77.3 car train is \$13.99 per hour, or \$.1810 per hour per car. Using the 5% gains estimated above, the Carrier would expect to realize savings of **\$1,544,901** from terminal delays.²²

¹⁹ These figures are from Network Planning and are included as Carrier Exhibit "52."

²⁰ The Total Cost per hour is the sum of 1) Cost of fuel, 2) Cost of foreign cars, 3) Cost of re crews, and 4) Cost of overtime. This is the cash impact that would be directly removed from the operational budget.

²¹ The Train Delay cost savings is calculated by taking the YTD train hours (5,253,002) multiplied by 12/7 (to estimate the rest of the year) multiplied by the Total Cost per hour of \$47.63 multiplied by 54.08% (the amount of train hours actually under review in this arbitration).

²² This calculation was done by multiplying the 4,626,214 cars by 12/8 to estimate the total car switches for 1997, multiplied by 24.6 hours average terminal dwell multiplied by 5% improvement multiplied by cost per car of \$.1810 per hour.

In examining the transportation benefits, the Carrier used figures based on the cash components accounted for in the annual budget. Contributing costs were not factored in, to keep the estimate conservative. Combined, the estimated savings for transportation would be **\$13,142,765 annually**.

3. Summary of Benefits

As demonstrated above, the placement of the SPWL, UP(WP) and D&RGW under the Union Pacific Collective Bargaining Agreement would serve the goal of the merger: a more efficient operation with public transportation benefits. The efficiencies of the proposed system would give the Carrier increased flexibility and mobility of its forces. The improvement in engineering and transportation is conservatively estimated at **\$40,913,396**.

Before concluding, there is one more argument the Organization might raise which must be addressed. That argument is a contention by the Organization based on a following quotation from *Train Dispatchers v. ICC* (Carrier Exhibit "19"): ". . . 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.'" The next section will address any such unwarranted contention.

4. Proven Public Transportation Benefits versus Organization Contentions

In all likelihood, the Organization will make a contention based on this quotation from *Train Dispatchers v. ICC*. It will probably be an attempt to raise the "bloody shirt" that the Carrier is attempting to make great financial gains solely from the changes in collective

bargaining agreements. As the Carrier has established throughout this Submission, there is no merit whatsoever to such a contention. The modifications proposed by the Carrier are those which are necessary to achieve the public transportation benefits of this merger. In addition, the ICC, in Finance Docket No. 32133 (Carrier Exhibit "6"), made the following comments concerning the public benefits:

"Public benefits may be defined as efficiency gains which may or may not be shared with shippers and which include both cost reductions and service improvements. Cost reductions, regardless of whether they are passed on to shippers, are public benefits because they permit a railroad to provide the same level of rail services with fewer resources or a greater level of rail services with the same resources. An integrated railroad can realize additional benefits by capitalizing on the economies of scale, scope, and density which stem from larger operations. These benefits, which may initially be retained by the combining carriers, are eventually passed on to most shippers in the form of reduced rates and/or improved services." (page 53)

Thus, the ICC made it clear it expects the consolidating carriers to achieve cost reductions and that such cost reductions are a public benefit. The STB has not changed this standard.

The real issue is whether the Carrier's proposed changes - the Carrier's Proposed Arbitration Award - will promote more economical and efficient transportation, i. e., will the economies and efficiencies which the STB envisioned when it approved the UP/SP consolidation be achieved by the Carrier's proposal.

It is the Carrier's position that it has established throughout this submission that the Carrier's Proposed Arbitration Award is designed to "promote more economical and efficient transportation" and places the burden of New York Dock protection on the Carrier when it implements those economies and efficiencies.

THE IMPLEMENTING AGREEMENT

1. Introduction

It has been shown that the mandate of the STB is to merge the UP and SP in such a way as to provide for economies and efficiencies to the shipping public. In reviewing the Carrier's proposed implementing agreement, the Carrier believes this panel will find the proposal complies with the goals of the STB decision. If the Organization should submit a proposed implementing agreement, the Carrier also requests this Board to review that proposal closely to see the deviations from the STB decision.

2. Merger Application (Territory)

It is the system gang western territory consisting of the UP, SP Western Lines (SPWL), UP (WP) and DRGW territories, outlined in Carrier's Statement of Facts, which is now before this Board. To understand what is being proposed, it is necessary to review the seniority maps illustrating the western territories for system gangs before any consolidation proposed in accordance with the merger application.²³ Then, compare the current seniority maps with the map which illustrates the western territory after consolidation in accordance with the proposal in the merger application to achieve flexibility and operating efficiencies.²⁴ Consequently, in keeping with the Merger Application and the STB Decision the Carrier has fashioned an Implementing Agreement for system

²³ These maps are included as Carrier Exhibit "54."

²⁴ This map is included as Carrier Exhibit "55."

gangs on the western territory, which is attached as Carrier Exhibit "56," for adoption by the Board. The Implementing Agreement discussion is as follows:

Collective Bargaining Agreement

Section 1.

All system gang operations will be combined on UPRR, WPRR, SPRR and D&RGW territories and will be subject to the collective bargaining agreement between the Union Pacific Railroad (UPRR) and the Brotherhood of Maintenance of Way Employees (BMWE) effective January 1, 1973 (including revisions to April 1, 1992, as amended).

This language comports with the Merger Application and the Carrier's intent as expressed therein. If not adopted, the Carrier would be faced with attempting to perform system gang work on the western territory under the auspices and work rules of four (4) separate and diverse Collective Bargaining Agreements. Failure to implement the proposed system gang territory would bar the Carrier from realizing the operating efficiencies and service reliability and/or flexibility contemplated by the STB in approving the merger. If the Carrier has to attempt to operate its programmed maintenance functions under the four (4) separate Collective Bargaining Agreements then the labor productivity savings and equipment utilization savings will not be realized. When attempting to utilize its system gangs over the currently aligned territories, the Carrier is placed in a position of *being* approaching the Organization, *hat* in hand, and attempting to negotiate an agreement, *subject* subject to the whim of the particular Organization officer. Demands by the Organization can quickly offset any of the proposed savings and productivity enhancements contemplated by the STB.

Currently, system gang operations on the Union Pacific territory includes the system gangs which may perform work associated with the replacement and renewal of rail (steel relay and curve relay/transposition); the replacement and renewal of ties (both concrete and wood); the replacement and renewal of switches (tie and rail); the out of face surfacing of the track structure; the welding of rail (in-track welding and thermite); the unloading and distribution of the materials for the programmed tie or rail work; the pickup of the released materials from the tie or rail programmed work; the construction of new track; and other support work associated with the operation of the system gang. There is no limitation in the agreement as to the number of gangs that may be established.

In comparing these same types of system gang operations on the UP with the present SPWL operations, the SPWL Collective Bargaining Agreement provides for the renewal and replacement of rail (steel relay) with one (1) system steel gang and, only provides for out of face surfacing work with the Continuous Action Tampers (the CAT gang) as a system gang. Under this Collective Bargaining Agreement there can be only two assigned system type gangs. The renewal and or replacement of ties, rail, surfacing, switches, and/or crossings may be delegated to "Regional Mechanized Production Gangs" which operate over and are confined to four (4) separate regional seniority territories. The new construction and the welding functions are confined to gangs established independently on the nine (9) separate division or district seniority territories and cannot cross the artificially set boundary lines of the seniority division.

Likewise, in a comparison of the Denver & Rio Grande Western system gang operations with the Union Pacific system gang operations, the Carrier may only establish

one (1) system steel gang and may only establish one (1) system tie gang on the D&RGW territory. The remainder of the tie, rail, surfacing, etc. gangs may only be established and staffed by the employees on the three (3) Division seniority rosters and these division gangs are confined to the artificially imposed seniority boundaries of those three (3) seniority divisions.

The fourth player in this equation, the former Western Pacific Railroad, has a territory, with few exceptions, which is manned by employees assigned on a system seniority basis. However, as the Western Pacific does not have the significance of one of the two larger roads (UP or SPWL) the adoption of its Collective Bargaining Agreement does not fit the overall operation and committal to this CBA would be burdensome to the Carrier.

Looking at the differences between the various Collective Bargaining Agreements, there is an obvious need for one set of rules governing system gang operations. With separate rules and functions addressing how seniority operates the efficiencies and savings contemplated in the decision of the STB would not be realized.

The adoption of the Union Pacific Collective Bargaining Agreement, with its apparent flexibility and efficiencies, as the prevailing Collective Bargaining Agreement, and its related rules, in governing the Carrier's system gang operations over these identified territories, is therefore in keeping with the intent of the STB decision and should be found to be appropriate in line with the decisions of O'Brien (Carrier's Exhibit 24) and Benn (Carrier's Exhibit 30), among others.

Seniority Classifications

Section 2.

(A) UPRR, WPRR, SPRR and D&RGW employees who, prior to the effective date of the agreement, had a right based on their seniority to work on system type operations within their respective territories, will have their name and seniority dates dovetailed onto the UPRR System Gang seniority rosters for the following ten (10) classifications, as applicable:

GROUP 20: ROADWAY EQUIPMENT SUBDEPARTMENT

- (A) Roadway Equipment Operator
- (B) Roadway Equipment Helper

GROUP 26: TRACK SUBDEPARTMENT

- (A) System Extra Gang Foreman
- (B) System Assistant Extra Gang Foreman
- (C) System Gang Track Machine Operator
- (D) System Gang Truck Operator/Bus
- (E) System Extra Gang Laborer
- Special Power Tool Machine Operator (SPTMO)
- Roadway Power Tool Machine Operator (RPTMO)
- Roadway Power Tool Operator (PTO)
- Track Laborer

GROUP 27: TRACK SUBDEPARTMENT

- (A) Track Welding Foreman
- (B) Track Welder - Machine
- (C) Track Welder Helper

Section 2 of the Carrier's proposed Implementing Agreement identifies the present classifications to which employees are assigned under the Union Pacific Collective Bargaining Agreement when assigned to system type operations. Each of the BMWWE Collective Bargaining Agreements involved in this transaction also have similar type

position classifications and therefore this should not be considered as any kind of a stumbling block or issue of contention.

Establishment of Seniority Rights

Section 3

(A) UPRR division/district personnel who do not have seniority in Group 20, 26, or 27 prior to the effective date of this agreement will be added to the rosters identified in Section 2 (A), as applicable. These employees will be given seniority dates as of the effective date of the implementing agreement, on the applicable roster, and the ranking order will be determined by ranking the employees with the oldest division/district seniority dates first.

(B) All new employees hired to fill positions as identified under Section 2 (A) will establish seniority on the applicable system seniority roster pursuant to Rule 15(a) of the Collective Bargaining Agreement between UPRR and BMWV.

During the course of the negotiations attempting to reach an agreement the parties discussed this issue in detail. The above language comes from a proposal the Organization submitted to the Carrier and therefore should not be met with a lot of resistance. During those discussions, concern was expressed that division employees from the SP and D&RGW who had never worked on system type gangs would be obtaining seniority on these rosters. UP Division employees were not receiving the same opportunity. The above language corrects that problem and the Carrier has no objection to its inclusion. It is submitted here because it is a fair and equitable means of arranging for the consolidation of seniority on UP system rosters.

It is important for this Panel to keep in mind the mandate of the STB, which is to allow the merger of the UP and SP so as to bring about economies and efficiencies that would bring about public transportation benefits. The imposition of "prior rights" would

certainly be contrary to that mandate, and therefore should not be imposed.

Designations

Section 4

(A) All employees listed on the combined rosters established under Section 2 will have their hire date in the maintenance of way department listed next to their seniority date and the following designations listed next to their name:

Employee	Designation
UPRR	U
SPRR	S
WPRR	W
DRGW	D

Example

Designation	Name	SS#	Seniority Date	Hire Date
S	Brown JC	520-48-0901	7-16-73	2-8-71

(B) When employees with designations apply for bulletined Group 20, 26, or 27, positions, assignments will be handled as follows:

- (1) When bids are received from only S,W, and D designated employees, the employees listed on the applicable seniority roster with the superior seniority date/ranking will be assigned.
- (2) When bids are received from only U designated employees, the employee listed on the applicable seniority roster with the superior date/ranking will be assigned.
- (3) When bids are received from U designated employees, as well as S,W, or D designated employees, the senior U designated applicant and senior S,W, and D designated applicant will be identified, and the employee with the senior hire date will be assigned.

(C) The exercise of seniority displacement rights by U,S,W, and D designated employees will be controlled by the same principles explained in Section 4(A).

Section 4 also is language that was discussed during our negotiations. It was developed to address the fact that UPRR employees did not have system dates prior to 1983. SP and DRGW employees were being placed on the rosters with their division dates and therefore would have placed UPRR employees at a disadvantage. The above language treats the employees equally when bidding for such positions by comparing UP employees to SP, DRGW, or WP employees based upon their hire dates. The Carrier believes it also is a fair and equitable way of addressing the employees seniority concerns.

General Application of Seniority

Section 5

(A) Except as provided above, all new positions or vacancies that are to be filled for system type operations identified in Article 1, Section 2 (A) of this Agreement will be bulletined and assigned in accordance with Rule 20 of the Collective Bargaining Agreement between UPRR and BMWE.

(B) Except as provided above, employees assigned to system type operations identified in Section 2 (A) whose position is abolished or who are displaced will be governed by Rule 21 of the Collective Bargaining Agreement between UPRR and BMWE.

(C) Employees assigned to system type operations identified in Section 2 (A) will be governed by Rule 22 of the Collective Bargaining Agreement between UPRR and BMWE for the purpose of seniority retention on system seniority rosters.

(D) Employees who have seniority on the system combined rosters and who are regularly assigned in a lower class or who are furloughed from the service of the carrier will be governed by Rule 23 of the Collective Bargaining Agreement between the UPRR and BMWE.

To reiterate, the Carrier is not attempting to cherry-pick or rewrite agreement language. In line with the previous discussion concerning one Collective Bargaining

Agreement being applicable to the Carrier's system gang operations in the defined territory, the above rules of the Union Pacific Collective Bargaining Agreement with the BMWWE address how (1) an employee would be assigned to a vacancy or how new positions are to be filled; (2) how an employee exercises seniority rights; (3) what the employee is required to do to retain seniority rights on the new created system gang seniority rosters; and, (D) the protection of one's seniority date on the seniority roster. Also as previously stated, the Collective Bargaining Agreement rules between the BMWWE and the UPRR would be applicable and the mention of only the seniority rules in Sections 3, 4, and 5 is not intended to restrict employees seniority but to clarify how employees seniority operates. Decisions concerning seniority and its application are difficult decisions and therefore simplicity should be the rule. As Arbitrator James E. Yost, in his decision of April 14, 1997, relative to an arbitration proceeding over the between the United Transportation Union (UTU) and this Carrier wrote in part:

"Seniority is always the most difficult part of a merger. There are several different methods of putting seniority together but each one is a double-edged sword. In a merger such as this one that also involves line abandonments and alternate routing possibilities on a regular basis, the tendency is to present a more complicated seniority structure as the Organization did. **What is called for is not a complicated structure but a more simplified one that relies on New York Dock protection for those adversely affected and not perpetuating seniority disputes long into the future...**"²⁵ (Emphasis added)

Benefits

Section 6

²⁵ This decision is included as Carrier Exhibit "28."

All service performed by employees on any of the system territories identified in this agreement which is part of their continuous employment relationship in the Maintenance of Way Department will be combined for vacation, personal leave, entry rates and other present or future benefits that are granted on the basis of qualifying time of service in the same manner as through all such time had been spent in the service subject to one collective bargaining agreement.

This "boilerplate" language just clarifies that if an employee normally working under of the other Collective Bargaining Agreements involved in this consolidation accepts an assignment to a system gang working under the Union Pacific BMW Collective Bargaining Agreement as contemplated herein, the time spent on the gang(s) will be treated just as though the employee had continued working on a position bulletined under their respective Collective Bargaining Agreement.

Protection

Section 7

(A) The New York Dock employee protective conditions will be applicable to this transaction. There will be no duplication of benefits by an employee under this agreement and any other agreements or protective arrangements.

(B) If employees are entitled to protection as a result of this transaction, the following will apply:

- (1) Not later than the twenty-fifth day of the month following the month for which benefits are claimed, each "dismissed" employee will provide the Carrier with the following information for the month in which he/she is entitled to benefits:
 - (a) the day(s) claimed by such employee under any unemployment act, and
 - (b) the day(s) each employee worked in other employment, the name(s) and addresses of the employer(s), and the gross earnings made by the employee in such other employment.

- (2) If a dismissed employee has nothing to report under this Section account not being entitled to benefits under any unemployment insurance and having no earnings from other employment, such employee will submit, within the time period provided for in Section 4(B)(1), the appropriate form stating "Nothing to Report." This can be submitted by letter or on Form 32179 provided by the Carrier. The claim is to be submitted to:

Supervisor Protection Administration
1416 Dodge Street, MC PNG 06
Omaha, Nebraska 68179

- (3) The failure of any dismissed (furloughed) employee to provide the information required in this Section will result in the withholding of all protective benefits for the month in question pending receipt of such information for the employee.
- (4) Any "displaced" employees will file an initial claim with the Supervisor Protection Administration at the address set forth in Section 2 above. If an employee is determined to be eligible for displacement allowances, the employee will be paid a differential allowance for each month in which he/she is entitled. Such employee need not file any additional forms unless he/she becomes furloughed. In such an event, the employee will be subject to the requirements of a dismissed employee as set forth above.

While this arbitration is not protection arbitration under New York Dock, the language is included in the proposed Implementing Agreement of the Carrier for clarification. 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 impact.

In concert with the above language of Section 6 of the proposed Implementing Agreement, the following section just serves to clarify how claims for protective benefits under the New York Dock conditions are to be handled:

Satisfying Requirements of New York Dock

Section 8

This agreement will constitute the required agreement as provide in Article 1 Section 4 of the New York Dock employee protective conditions. Any claims for disputes arising from the application of this Agreement or the protective conditions referred to in Section 6 will be handled directly between the General Chairman and Director of Labor Relations.

Such handling of claims conforms with existing agreements on the property with the various BMW General Chairmen.

3. Summary

Quite simply, what Union Pacific is seeking from this Panel is nothing new, is nothing that hasn't already been approved by arbitrators, the ICC, the STB and the courts 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 is the Carrier's position that the following points clearly support a determination by this Panel that the Carrier's Proposed Arbitration Award should and must be the New York Dock Implementing Agreement between the Union Pacific/Southern Pacific and the Brotherhood of Maintenance of Way Employees:

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 and arbitrators, deriving their authority from the STB, are obligated to follow the rulings and decisions of the STB.

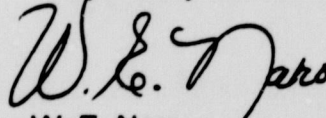
3. Procedural objections of the Organization are totally without merit. The STB has empowered Article I, Section 4 arbitrators to address *all* issues submitted to them. Section 4 arbitration is to be decided on the merits, not procedure. This includes Section 2 versus Section 4 arguments which have 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 Award - supported by arbitration awards, court decisions, and, most importantly, by the decisions of the ICC and STB - clearly and without a doubt meets the test. The Carrier's Proposed Arbitration Award will bring about more economical and efficient transportation in the territory covered by the proposal.

The Carrier requests this Panel to impose the Carrier's Proposed Arbitration Award as the Implementing Agreement.

Respectfully submitted,



W. E. Naro
Director Labor Relations
Maintenance of Way and Signal
Union Pacific Railroad
September 10, 1997

EXHIBIT 3

UNION PACIFIC RAILROAD COMPANY



1416 DODGE STREET
OMAHA, NEBRASKA 68179

RECEIVED

FEB - 6 1997

BMWE

February 4, 1997

L/R File: NYD-235

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. W. F. Gulliford
General Chairman, BMWE
1010 S. Joliet St. Suite 100
Aurora, Colorado, 80012-3150

Mr. D. E. McMahon
General Chairman, BMWE
930 Alhambra Blvd. Ste. 260
Sacramento, Ca. 95816

Mr. R. B. Wehrli
General Chairman, BMWE
1010 S. Joliet St. Ste. 102
Aurora, Colorado, 80012-3150

Gentlemen:

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 "UPRR" and the rail carriers controlled by Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and Denver and Rio Grande Western Railroad Company), collectively referred to as "SP". As part of the approval, the STB authorized the establishment of system gangs to work over territories covered by your respective collective bargaining agreements. In so doing the STB imposed the New York Dock employee protective conditions.

Therefore, pursuant to Section 4 of the New York Dock conditions, notice is hereby given of UP's intent establish such system operations operating under the collective bargaining agreement between UPRR and BMWE. Copies of this notice will be posted at locations accessible to interested employees as information and in compliance with the notice provisions of New York Dock.

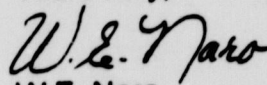
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nyd-235

It is not anticipated that any employees will be affected (displaced or dismissed) as a result of this transaction.

It is suggested that we meet in the offices of the Carrier at 1416 Dodge St. Room 332 B, Omaha, Nebraska, 68179, beginning at 1:00 p.m. on February 18, 1997, and continuing through February 19, 1997. Please advise if the date and time are acceptable.

Yours truly,



W.E. Naro

Director Labor Relations
Maintenance of Way & Signal

EXHIBIT 4

BMWE
September 26, 1996

MEDIATION AGREEMENT
CASE A-12718, A-12718 Sub 1, Sub 1A, Sub 2,
Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8

DATED SEPTEMBER 26, 1996

between railroads represented by the
NATIONAL CARRIERS' CONFERENCE COMMITTEE

and

employees of such railroads represented by the
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

increases."

(d) Article V, paragraph 2 of the Agreement shall be amended to change the reference of a four hundred dollar (\$400) transfer allowance to eight hundred dollars (\$800).

Part B - Conrail Supplemental Unemployment Plan

Conrail shall adopt any modifications made to the Conrail Supplemental Unemployment Plan in Conrail's tentative agreement with the BRS. Other than any such modifications, we recommend that the organization's proposals be withdrawn.

Part C - Work Force Stabilization

The Work Force Stabilization (WFS) Program effective on January 18, 1994, and applied retroactively back to July 29, 1991 shall continue in effect for the new agreement, and shall entitle an employee initially assigned to a WFS gang when it starts its work during the production season for the calendar year, six months of WFS work benefits or WFS unemployment benefits, subject to the terms of the agreement.

ARTICLE XIII - EXPENSES AWAY FROM HOME

Section 1 - First Adjustment

The allowances specified in the Award of Arbitration Board No. 298 (rendered September 30, 1967), as adjusted in various subsequent national agreements, shall be further adjusted as follows:

(a) The maximum reimbursement for actual reasonable lodging expense provided for in Article I, Section A(3) is increased from \$20.25 to \$23.50 per day;

(b) The meal allowances provided for in Article I, Sections B(1), (B(2) and B(3) are increased from \$4.75, \$9.50, and \$14.50 per day, respectively, to \$6.25, \$12.75, and \$19.00 per day, respectively;; and

(c) The maximum reimbursement for actual meals and lodging costs provided for in Article II, Section B is increased from \$34.75 per day to \$42.50 per day.

Section 2 - Second Adjustment

Effective July 1, 1998, the daily allowances specified in paragraphs (a), (b), and (c) of Section 1 above will be further adjusted to (a) \$26.75; (b) \$7.00, \$14.25, and \$21.25, respectively, and (c) \$48.00.

Section 3 - Minimum Allowance

On carriers where expenses away from home are not determined by the allowances made pursuant to the award of Arbitration Board No. 298, such allowances will not be less than those provided for in this Article.

Section 4

This Article shall become effective ten (10) days after the date of this Agreement.

ARTICLE XIV - TRAVEL ALLOWANCE

Section 1

(a) At the beginning of the work season employees are required to travel from their homes to the initial reporting location, and at the end of the season they will return home. This location could be hundreds of miles from their residences. During the work season the carriers' service may place them hundreds of miles away from home at the end of each work week. Accordingly, the carriers will pay each employee a minimum travel allowance as follows for all miles actually traveled by the most direct highway route for each round trip:

0 to 100 miles	\$ 0.00
101 to 200 miles	\$25.00
201 to 300 miles	\$50.00
301 to 400 miles	\$75.00
401 to 500 miles	\$100.00

Additional \$25.00 payments for each 100 mile increments.

(b) At the start up and break up of a gang, an allowance will be paid after 50 miles, with a payment of \$12.50 for the mileage between 51 and 100 miles.

(c) Carriers may provide bus transportation for employees to their home area on weekends. Employees need not elect this option.

Section 2

For employees required to work over 400 miles from their residences the carrier shall provide, and these employees shall have the option of electing, an air travel transportation package to enable these employees to return to their families once every three weeks. Ground transportation from the work site to the away from home airport shall be provided by each carrier, and on the return trip the carrier shall provide ground transportation from the away from home airport to the lodging site. In dealing with programmed work, the employees and carrier may know how long the employees will be required to work beyond the 400 mile range, and the employer can

require the employees to give advanced notice of their intention to elect the air transportation option so that the carrier may take advantage of discounted air fares. Employees must make themselves available for work on at least ninety percent of the regularly scheduled work days during the three week period. And, they will not qualify for the travel allowance set forth in Section 1 during the three week period. Irrespective of the customary meal and lodging entitlement that employees have under their local agreements, when employees elect the air transportation option, they shall be entitled to meals and lodging during the two away-from-home weekends in the three-week cycle and they shall not be entitled to meals and lodging during the third weekend upon which they return home by air transportation.

Section 3

Nothing herein shall be construed to bar the parties from reaching mutual agreement on alternative arrangements.

Section 4

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers where the organization representative may elect to preserve existing rules or practices pertaining to travel allowances by notification to the authorized carrier representative.

ARTICLE XV - SUBCONTRACTING

Section 1

The amount of subcontracting on a carrier, measured by the ratio of adjusted engineering department purchased services (such services reduced by costs not related to contracting) to the total engineering department budget for the five-year period 1992-1996, will not be increased without employee protective consequences. In the event that subcontracting increases beyond that level, any employee covered by this Agreement who is furloughed as a direct result of such increased subcontracting shall be provided New York Dock level protection for a dismissed employee, subject to the responsibilities associated with such protection.

Section 2

Existing rules concerning contracting out applicable to employees covered by this Agreement will remain in full effect.

ARTICLE XVI - PRODUCTION GANGS

Section 1

For purposes of Articles VIII, IX and X of the February 6, 1992 Imposed Agreement (Imposed Agreement), a production gang or crew is defined as a mobile and mechanized gang consisting of ten (10) or more employees.

Section 2

For purposes of applying Article XIII - Regional and System-Wide Gangs of the Imposed Agreement on those carriers which timely opted to create such gangs after the implementation of the recommendations of Presidential Emergency Board No. 219 ("covered carrier"), a regional and system-wide production gang shall be a gang that is heavily mechanized and mobile, continuously performing specific, programmed, major repair and replacement work utilizing a substantial (no fewer than twenty) number of employees.

Section 3

(a) A covered carrier shall give at least 60 days' written notice to the General Chairman or the General Chairmen of its intention to establish a regional or system-wide gang for the purpose of working over specified territory of the carrier or throughout its territory. The notice will include the number and staffing of the gang the carrier intends to operate during the work season, as well as identification of the location, beginning and ending mile post location of the work, starting and ending date of the project and the seniority districts involved.

If the parties are unable to reach agreement concerning the changes proposed by the carrier within thirty (30) calendar days from the serving of the original notice, either party may submit the matters set forth above to the final and binding arbitration procedures previously created for the resolution of this type of dispute.

(b) An individual who bids and is subsequently assigned to work on a regional and system-wide production gang established by a covered carrier may be held to that gang for a period of no more than 30 days. After such time, the employee will be entitled to bid for other jobs with the carrier, subject to the limitation that no more than ten percent of a gang may bid off during a one week period.

Section 4

Each employee assigned to a regional or system-wide production gang established by a covered carrier under this Article who does not leave the gang voluntarily for a period of at least six (6) months shall be entitled to a lump sum payment annually equal to five

percent of his or her compensation earned during the calendar year on that gang. Such compensation shall not exceed \$1,000 and, it shall be paid within 30 days of the completion of the employee's service on the gang. If the carrier disbands the gang in less than six months, the carrier will be responsible for payment of the production incentive earned as of that date.

Section 5

Existing property-specific agreements on a covered carrier, whether arrived at voluntarily or through arbitration, will continue to control the terms and conditions of regional and system-wide gangs on each covered carrier or sub-section of covered carrier property.

Section 6

This Article is intended to continue the use of regional and system gangs on carriers which timely opted to create such gangs after the implementation of the recommendations of PEB No. 219, but not to extend their use to carriers which opted to operate under other local provisions.

Section 7

This Article shall become effective ten (10) days after the date of this Agreement.

ARTICLE XVII - WORK SITE REPORTING

Article VIII - Work Site Reporting of the Imposed Agreement is amended to restrict any unpaid time traveling between the carrier-designated lodging site and the work site to no more than thirty (30) minutes each way at the beginning and end of the work day.

ARTICLE XVIII - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle the disputes growing out of the notices dated November 1, 1994 and served upon the organization by the carriers listed in Exhibit A on that date, and notices dated on or subsequent to November 1, 1994 served by the organization signatory hereto upon such carriers. This Agreement shall be construed as a separate agreement by and on behalf

of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 1999 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.


(b) No party to this Agreement shall serve, prior to November 1, 1999 (not to become effective before January 1, 2000) any notice or proposal for the purpose of changing the subject matter of the provisions of this Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Section, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) No party to this Agreement shall serve or progress, prior to November 1, 1999 (not to become effective before January 1, 2000), any notice or proposal which might properly have been served when the last moratorium ended on November 1, 1994.

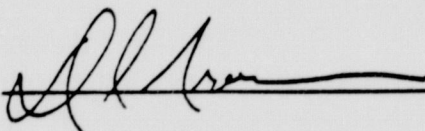
(d) This Article will not bar management and committees on individual railroads from agreeing upon any subject of mutual interest.

SIGNED AT WASHINGTON, D.C. THIS 26TH DAY OF SEPTEMBER, 1996.

FOR THE PARTICIPATING CARRIERS
LISTED IN EXHIBIT A:



Chairman



J.B. Dagnon

R.R. Pifer

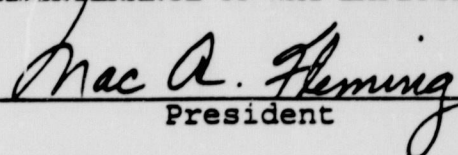
John / Pifer

Hugh L. Salmons

R. Spenshi

Th. Watts

FOR THE EMPLOYEES REPRESENT-
ED BY THE BROTHERHOOD OF
MAINTENANCE OF WAY EMPLOYEES:



President

EXHIBIT 5

**REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
NO. 319**

**Submitted Pursuant to Executive Order No. 12714,
Dated May 3, 1990,
and Section 10 of
The Railway Labor Act, as Amended**

**Investigation of disputes between the railroads represented by
the National Carriers' Conference Committee of the National
Railway Labor Conference and their employees represented by
certain labor organizations.**

**(National Mediation Board Case Nos. A-11471,
A-11472, A-11536, A-11538, A-11539, A-11540,
A-11543, A-11545, A-11546, A-11547, A-11569,
A-12117, A-12215, A-12217, A-12243, A-12252,
A-12256, A-12264, A-12265, A-12266, A-12282,
and A-12299)**

Washington, D. C.

January 15, 1991

contractual starting times and the times when there is actually work for yard crews to perform, the rules make it difficult to match work demands with crewing. Thus, the starting time restrictions reduce efficiency, inflate overtime, and adversely affect customer service. Eliminating these restrictions would help the carriers compete with trucks, which are not bound by any such restrictions.

d. Meal Period Rules

The Carriers propose to eliminate all existing rules which permit road crews to stop their trains in order to eat at a restaurant. The reason: to prevent significant delays and operating inefficiencies. These meal stops may delay trains over two hours which, in turn, leads to expiration of the crew's time under the Hours of Service Law. It is common for crews to carry their lunches and eat on board and the lack of an adverse impact on employees is demonstrated by the fact that the Organizations have already given up the right to stop for meals in interdivisional service.

5. Rules Issues - Carrier Non-Operating Craft Rules Proposals

a. System Gangs, Seniority Districts, and Work Day and Work Week Adjustments

Preliminarily, the Carriers assert that customer service is currently a hostage to archaic work rules which result in a lack of flexibility in scheduling maintenance of way (MOW) and signal work and in getting that work done. The Carriers ask this Board to recommend three basic sets of changes that would remedy what is considered an intolerable situation: (1) Authorize the railroads to establish regional or system gangs that would work over any given carrier's entire system, without regard to seniority districts or other territorial work restrictions. (2) Authorize the

carriers to realign or combine seniority districts, sections, and other labor-related territorial jurisdictions. (3) Authorize the carriers to make various adjustments in the work day and work week of MOW and signal employees in response to operational considerations.

Current agreements barring MOW and signal employees from working outside their own seniority districts slow work, increase costs and are no longer justifiable, the Carriers affirm. These rules reduce employee productivity because replacement production gangs often need to learn the skills necessary to work on the project. They cause manpower shortages and duplications and idling of equipment because timing in the coordination of replacement gangs is extremely difficult. They disrupt employment and project continuity in a variety of ways and they adversely affect employee safety because of the learning curve that occurs as new gang members learn or relearn how to operate the equipment.

According to the Carriers, their proposals for system-wide and regional gangs and to realign or combine seniority districts would foster better employment continuity, provide improved work opportunities and employment stability, enhance safety, increase productivity, reduce costs, and permit better customer service.

Inflexible work days and work rules similarly impair operating efficiencies. The Carriers must be able to take advantage of potential productivity improvements that flexible scheduling would permit, for example, by scheduling maintenance work when it will be least interrupted by train traffic. Thus, the Carriers propose that they be authorized to (1) adjust starting times for all MOW and signal employees, (2) designate any consecutive days as rest days, (3) schedule work on the basis of four ten-hour days per week or other compressed schedules, (4) extend the number of days that can be worked (and then rested) consecutively, and (5) determine the timing and location of MOW and signal employees' meal periods, all in response to operational considerations.

These proposals would not lead to carrier abuse; nor do they require local, rather than national, handling. Some of the rules

the Carriers seek are already in effect on some properties, there is no evidence of abuse. Significantly, these local arrangements in large part reflect long-standing practices of the Carriers involved, rather than the Organizations' willingness to negotiate such flexibilities based on local conditions. Recent local agreements on these issues are rare and represent isolated, narrowly defined improvements in a largely rigid system of work rules to which the local Organizations still cling. The faith expressed by Emergency Board 211 in the local Organizations' willingness to reach negotiated agreements on these issues has been shown to have been unwarranted. This Board should not repeat that mistake.

b. Job Site Reporting

The Carriers propose that pay time for MOW and signal employees who have no assigned headquarters, or who are working at any job site away from their assigned headquarters, should begin and end at the work site. The rule that pay begins when an employee picks up his tools and starts work and ends when he finishes his work and puts his tools away is nearly universal, the Carriers contend. The EMWE and BRS have shown no convincing reason why they alone should be paid for commuting.

c. Yardmaster and Dispatcher Staffing Proposals

The Carriers contend that they need greater freedom in staffing dispatcher and yardmaster positions. They therefore propose to eliminate restrictions (both actual and claimed) on their ability to reduce the use of such employees, and consequently to reduce costs, where local conditions permit. Specifically, the Carriers seek authorization to combine dispatchers' work or blank dispatchers' positions when the work required on a day or shift can be handled by the remaining dispatchers on duty. Second, the Carriers propose that they be permitted to establish footboard

10. Arbitration

Arbitration of disputes between the various carriers and the BMWWE should be made available where the parties fail to agree, as specified above, in matters concerning starting times and the combining or realigning of seniority districts. If the parties fail to agree upon an arbitrator within five days of delivery of a request for arbitration, either party may request a list from the NMB of five (5) potential arbitrators. The arbitrator should be selected by alternatively striking names from the list. The fees and expenses of the arbitrator should be borne equally by the parties.

11. Regional and System-wide Gangs

The Carriers have indicated that greater operational efficiencies can be attained if production gangs can continue working together for longer periods of time. The BMWWE has been concerned with maintaining job opportunities for its members. The Board recommends the following changes in present practices:

(a) A carrier should give at least ninety (90) days' written notice to the appropriate employee representative of its intention to establish regional or system-wide gangs for the purpose of working over specified territory of the carrier or throughout its territory (including all carriers under common control). These gangs will perform work that is programmed during any work season for more than one seniority district. The notice should specify the terms and conditions the carrier proposes to apply.

(b) If the parties are unable to reach agreement concerning the changes proposed by the carrier within thirty (30) calendar days from the serving of the original notice, either party may submit the matters set

forth above to final and binding arbitration, in accordance with the following procedures:

(1) Should the parties fail to agree on selection of a neutral arbitrator within five (5) calendar days from the submission to arbitration, either party may request the National Mediation Board to supply a list of at least five (5) potential arbitrators, from which the parties shall choose the arbitrator by alternately striking names from the list. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel.

(2) The fees and expenses of the neutral arbitrator should be borne equally by the parties, and all other expenses should be paid for by the party incurring them.

(3) The arbitrator should conduct a hearing within thirty (30) calendar days from the date on which the dispute is assigned to him or her. Each party should deliver all statements of fact, supporting evidence and other relevant information in writing to the arbitrator and to the other party, no later than five (5) working days prior to the date of the hearing. The arbitrator may not accept oral testimony at the hearing, and no transcript of the hearing shall be made. Each party, however, may present oral arguments at the hearing through its counsel or other designated representative.

(4) The arbitrator must render a written decision, which shall be final and binding, within thirty (30) calendar days from the date of the hearing.

(5) The jurisdiction of the arbitrator is to be confined to a determination of how the seniority rights of affected employees will be established on the combined or realigned seniority rosters.

12. Contract Interpretation Committee

In view of the many new rule provisions recommended, the Board also suggests the establishment of a Contract Interpretation Committee. Similar committees have worked successfully in other circumstances where a number of contract changes have been implemented. The committee's jurisdiction should not overlap those

EXHIBIT 6

CONTRACT INTERPRETATION COMMITTEE
ESTABLISHED PURSUANT TO RECOMMENDATIONS BY
PRESIDENTIAL EMERGENCY BOARD NO. 219
INVOLVING THE NATIONAL RAILWAY LABOR CONFERENCE
AND THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
NOVEMBER 6, 1991

Interpretation of Unresolved Questions Concerning
the 1991 National Agreement Between the Carriers
Represented by
THE NATIONAL RAILWAY LABOR CONFERENCE
and the Employees Represented by
THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Introduction

In June, 1988 the Brotherhood of Maintenance of Way Employees (hereinafter the "BMWE" or the "Organization") and the National Railway Labor Conference (hereinafter the "NRLC" or the "Carriers") exchanged proposals pursuant to Section 6 of the Railway Labor Act (hereinafter the "RLA" or the "Act") regarding changes they desired to effect in existing collective bargaining agreements.

All other railway labor organizations also exchanged Section 6 proposals with the Carriers. Direct bargaining and mandatory mediation, prescribed by the RLA, were unsuccessful in producing any significant agreements. On March 6, 1990 the rail organizations and the Carriers agreed to a unique procedure which involved bifurcated hearings before a Presidential Emergency Board, which Board had not yet been established.

The March 6, 1990 agreement provided that the parties would first present their respective positions regarding Health and Welfare issues, and after the Presidential Emergency Board had considered those issues, the parties would then present evidence and argument to the Emergency Board concerning pending Wages and Rules issues.

Pursuant to Executive Order No. 12714 and Section 10 of the RLA, Presidential Emergency Board No. 219 (hereinafter "PEB 219") was established. PEB 219 conducted hearings and issued a Report to the President of the United States on January 15, 1991. The Report addressed proposed changes in collective bargaining agreements between the Carriers and all participating labor organizations including the BMWE.

Insofar as employees represented by the BMWE were concerned, PEB 219 made recommendations concerning (1) Expenses Away from Home, (2) Rates Progression, (3) Starting Times, (4) Meal Periods, (5) Alternative Work Weeks and Rest Days, (6) Subcontracting, (7) Work Site Reporting, (8) Intra-craft Work Jurisdiction, (9) Combining or Realigning Seniority Districts, (10) Arbitration, (11) Regional and System-wide Gangs, (12) Contract Interpretation Committee, (13) Work Force Stabilization and (14) The Select Committee.

The recommendations of PEB 219, insofar as the BMWE was concerned, were far-reaching and broad. The recommendations addressed significant subject matters which would have a substantial

impact upon the manner in which maintenance of way work would be performed in the future, and they included increased benefits which would be applicable to the members of the craft or class represented by the BMWE.

By necessity, in view of the many labor organizations involved in the proceedings and in light of the numerous, complex issues presented to PEB 219, it is understandable why many of PEB 219's recommendations were drafted in broad, general terms. It is also understandable, in light of the scope of the issues facing PEB 219 and in view of the standards applied by many prior presidential emergency boards, why PEB 219 left to the parties the task of dealing with the "give and take" in the recommendations and why PEB 219 also directed the parties to "fine tune" the recommendations.

Subsequent to the issuance of PEB 219's Report, the Congress of the United States, pursuant to Public Law 102-29, established a Special Board which was authorized to consider the parties' requests to clarify and modify subject matters addressed by PEB 219.

The Special Board concluded, in an Interpretation and Clarification Report issued on June 11, 1991, that certain requests for interpretation or clarification made by the BMWE were properly submitted to the Contract Interpretation Committee (hereinafter the "Committee"), which had been established as the result of the Report by PEB 219.

By letter dated August 22, 1991 the President of the BMWE, Mac A. Fleming, and the Chairman of the National Railway Labor

Conference, Charles I. Hopkins, Jr., respectively the BMW and NRLC Members of the Committee, notified Richard R. Kasher that he had been selected to serve as the Neutral Member of the Committee.

An organizational meeting was held on September 26 and 27, 1991 in Washington, D.C. at which certain procedural understandings were reached. It was agreed that the parties would first meet and discuss specific questions regarding interpretation or application of the PEB's recommendations which might be in dispute, in an effort to directly resolve the issues raised by those questions. It was agreed, in the event resolution was not possible through direct discussions and meetings attended by the parties, that the BMW and NRLC would exchange written submissions and deliver those submissions to the Neutral Member in advance of the parties having an opportunity to orally present their respective positions to the Neutral Member. It was agreed that the Neutral Member would have the authority to "conference" disputed issues with the parties and to meet ex parte with the BMW and/or the NRLC in an effort to resolve any existing disputes prior to the issuance of written interpretations. It was understood that any efforts by the Neutral Member in composing the parties' respective positions would have no influence, if agreement could not be reached, upon the Neutral Member's answer to any question. It was agreed that the Neutral Member of the Committee would be the only signatory to the interpretive answers to questions raised before the Committee.

As noted above, certain recommendations by PEB 219 were, by necessity and practice, written in broad and general terms. It should also be noted that PEB 219's Report and Recommendations, unlike a collective bargaining agreement, are not supported by a "bargaining history". Therefore, in many areas there is no reliable legislative history or history of negotiations which would aid this Committee in rendering its interpretations or clarifications of questions in dispute. Accordingly, while it is this Committee's intention to issue specific answers to questions so that our work results in a reduction of disputes, as opposed to a creation of new disputes, certain answers will, by necessity, require general application absent the citation of specific circumstances.

The following questions, which are primarily concerned with PEB 219's recommendations regarding Regional and System-wide Gangs, were presented to the Committee on October 23 and 24, 1991 in Washington, D.C. The following answers to those questions are issued by the Committee after thorough review of the parties' written submissions, their oral arguments in support of those submissions and consideration of PEB 219's Report and Recommendations.

Issue No. 1. Sub-question No. 2

"Is it the intent of PEB No. 219 to permit carriers to headquarter regional and system-wide gangs and thereby avoid furnishing meals and lodging or paying away from home expenses?"

Answer to Issue No. 1. Sub-question No. 2

PEB 219 did not, directly or indirectly, address the question of headquartering of regional and system-wide gangs. Both parties recognize that regional and system-wide gangs will, ordinarily, work over large geographic territories encompassing multiple seniority districts, and that customarily and ordinarily those gangs will not be "headquartered". It is also clear that it would be inappropriate for a carrier to establish a headquarters point for a regional or system-wide gang if the sole purpose of such headquartering was to avoid the carrier's obligation to provide gang members with meals, lodging or away-from-home expenses. The Neutral Member of the Committee cannot, at this time, establish a blanket prohibition on headquartering regional and system-wide gangs, since there may be some extraordinary circumstance which requires a carrier to headquarter such a gang.

Issue No. 1, Sub-question No. 3

"What is the difference between Regional Gangs and System-wide Gangs?"

Answer to Issue No. 1, Sub-question No. 3

PEB 219 made no distinction between regional and system-wide gangs when it referenced such gangs in its recommendations. It is generally recognized that regional gangs may perform work on more than one seniority district but on less than all seniority districts, while system-wide gangs may perform work on all seniority districts of a carrier's system, which system would include carriers under common control on that system.

Issue No. 1. Sub-question No. 4

"Once a carrier has proposed terms and conditions for regional and system-wide gangs under Section 11(a), is it the intent of PEB No. 219 to prohibit the union from submitting its own proposals, on behalf of the employees' best interests, during the thirty (30) day negotiation period contemplated by Section 11(b)?"

Answer to Issue No. 1. Sub-question No. 4

PEB 219 did not place any limitations on the proposals that the BMW may make in response to the carrier's proposal(s) during the thirty (30) day negotiation period following service of the carrier's notice.

Issue No. 1, Sub-question No. 5

"Section 11(a) recommends that carriers shall propose terms and conditions to be applied to regional or system-wide gangs. The first paragraph of Section 11(b) recommends that matters proposed in Section 11(a), where no agreement is reached within thirty (30) days, shall be submitted to binding arbitration in accordance with the subsections of Section 11(b). Section 11(b)(5) recommends that the neutral's jurisdiction be limited to only dispose of determination of affected employees' seniority rights on the combined or realigned seniority rosters. What process will result in binding disposition of all other disputed terms and conditions that were not resolved during the negotiations contemplated by the first paragraph of Section 11(b)?"

Answer to Issue No. 1, Sub-question No. 5

Section 11(b) of PEB 219's Report states that "either party may submit the matters set forth above to final and binding arbitration", while Section 11(b)(5) apparently contradicts Section 11(b)'s granting the parties' the right to submit matters to arbitration when it confines the jurisdiction of the arbitrator to a determination of seniority rights. The phrase "The matters set forth above" refers to items in a carrier's notice to establish regional or system-wide gangs. Those "matters" concern, inter alia, the "terms and conditions the carrier proposes to apply". It is the opinion of the Neutral Member of the Committee, in assessing the entirety of PEB 219's recommendations, that the limitation of the arbitrator's jurisdiction in Section 11(b)(5) is inconsistent with and substantively contrary to the broad scope of arbitration contemplated by Sections 11(a) and 11(b). Therefore, the Neutral Member of the Committee concludes that all subject matters contained in a carrier's proposal to establish regional or system-wide gangs, including the issue of how seniority rights of affected employees will be established, are subject to the expedited arbitration procedures contained in Section 11. BMW counterproposals, that are subject matter related to a carrier's proposals regarding the establishment of regional or system-wide gangs, would also, logically, fall within a Section 11 arbitrator's jurisdiction.

Issue No. 1, Sub-question No. 6

"In their Exhibit No. 36 to Presidential Emergency Board No. 219, the carriers acknowledged that the establishment of regional and system-wide gangs might constitute 'transactions' subject to the regulatory authority in the Interstate Commerce Commission. Presidential Emergency Board No. 219 suggested that the carriers be granted the contractual authority to establish such regional and system-wide gangs subject to arbitral adjustments of disputes arising over the implementation of such modifications, where unresolved through negotiations. Since the Interstate Commerce Act provides that labor protection attaches to many such transactions, with a mechanism for negotiation, and if necessary, binding arbitration of disputes arising therefrom, how did Presidential Emergency Board No. 219 intend the parties to harmonize the contractual disputes - adjustment mechanisms with those contemplated by the Interstate Commerce Act, both of which could apply to a single 'transaction'?"

Answer to Issue No. 1, Sub-question No. 6

Unlike its recommendation concerning increased labor protective benefits for another labor organization, PEB 219 made no recommendation regarding the issue of labor protection insofar as the establishment of regional and system-wide gangs represented by the BMWE was concerned. Nothing in the Report of PEB 219 states or implies that there would be any diminution of rights or obligations flowing from any employee protective conditions imposed by the Interstate Commerce Commission, applicable to BMWE-represented employees, arising as a result of the establishment of regional or system-wide gangs.

Issue No. 1, Sub-question No. 7

"Inasmuch as existing collective bargaining agreements do not refer to 'production gangs,' is it the intent of PEB No. 219 that Starting Times, Alternative Work Weeks and Rest Days, and Work Site Reporting referred to in Sections 3, 5, and 7, respectively, of the PEB No. 219 Report apply only to production gangs established in accordance with Section 11 (Regional and System-Wide Gangs) of the PEB No. 219 Report?"

Answer to Issue No. 1, Sub-question No. 7

PEB 219 did not, directly or by implication, limit the application of its recommendations regarding Starting Times, Alternative Work Weeks and Rest Days and Work Site Reporting to production gangs established in accordance with Section 11. Accordingly, it is the finding of the Neutral Member of the Committee that the recommendations contained in Sections 3, 5 and 7 of the Report of PEB 219 apply to production gangs, including the regional and system-wide gangs referred to in Section 11 of PEB 219's recommendations.

Issue No. 2

"What is the definition of 'production gang' for purposes of facilitating implementation of the applicable provisions of PEB 219?"

Answer to Issue No. 2

The term "production gang" or "production crew" is a common term used by the parties, and it is a term that has been in use in the railroad industry for decades. The definition of the term is not found in any specific document, either a collective bargaining agreement or a glossary of railroad terms, presented to PEB 219 in evidence or to this Committee. The BMW and the Carriers used the term throughout the course of their detailed presentations to PEB 219, without, apparently, finding it necessary to define that term for the Board. It is true, as the Organization points out, that the Carriers' primary witness, who testified regarding the industry's need to establish production gangs, regional gangs and system-wide gangs, consistently used illustrative examples of such gangs which characterized them as "heavily mechanized" and "mobile", and he described such gangs as continuously performing specific, programmed, major repair and replacement work utilizing a substantial number of employees. However, while that general description would, apparently, meet the definition of "production gang" in many circumstances, the Neutral Member of the Committee cannot, reliably, at this time, fashion a hypothetical definition in the absence of specific facts which raise the issue of whether a particular grouping of maintenance of way employees meets the definition of a "production gang".

The answers to the above questions were issued by the Contract Interpretation Committee this 6th day of November, 1991.

Richard R. Kasher
Richard R. Kasher, Neutral Member
Contract Interpretation Committee

CONTRACT INTERPRETATION COMMITTEE
ESTABLISHED PURSUANT TO RECOMMENDATIONS BY
PRESIDENTIAL EMERGENCY BOARD NO. 219
INVOLVING THE NATIONAL RAILWAY LABOR CONFERENCE
AND THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DECEMBER 4, 1991

Interpretation of Unresolved Questions Concerning
the 1991 National Agreement Between the Carriers
Represented by
THE NATIONAL RAILWAY LABOR CONFERENCE
and the Employees Represented by
THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Introduction

In June, 1988 the Brotherhood of Maintenance of Way Employees (hereinafter the "BMWE" or the "Organization") and the National Railway Labor Conference (hereinafter the "NRLC" or the "Carriers") exchanged proposals pursuant to Section 6 of the Railway Labor Act (hereinafter the "RLA" or the "Act") regarding changes they desired to effect in existing collective bargaining agreements.

All other railway labor organizations also exchanged Section 6 proposals with the Carriers. Direct bargaining and mandatory mediation, prescribed by the RLA, were unsuccessful in producing any significant agreements. On March 6, 1990 the rail organizations and the Carriers agreed to a unique procedure which involved bifurcated hearings before a Presidential Emergency Board, which Board had not yet been established.

STB FD 32760 (Sub 25) 11-12-97 D 183839 14/15

The March 6, 1990 agreement provided that the parties would first present their respective positions regarding Health and Welfare issues, and after the Presidential Emergency Board had considered those issues, the parties would then present evidence and argument to the Emergency Board concerning pending Wages and Rules issues.

Pursuant to Executive Order No. 12714 and Section 10 of the RLA, Presidential Emergency Board No. 219 (hereinafter "PEB 219") was established. PEB 219 conducted hearings and issued a Report to the President of the United States on January 15, 1991. The Report addressed proposed changes in collective bargaining agreements between the Carriers and all participating labor organizations including the BMWF.

Insofar as employees represented by the BMWF were concerned, PEB 219 made recommendations concerning (1) Expenses Away from Home, (2) Rates Progression, (3) Starting Times, (4) Meal Periods, (5) Alternative Work Weeks and Rest Days, (6) Subcontracting, (7) Work Site Reporting, (8) Intra-craft Work Jurisdiction, (9) Combining or Realigning Seniority Districts, (10) Arbitration, (11) Regional and System-wide Gangs, (12) Contract Interpretation Committee, (13) Work Force Stabilization and (14) The Select Committee.

The recommendations of PEB 219, insofar as the BMWF was concerned, were far-reaching and broad. The recommendations addressed significant subject matters which would have a substantial

impact upon the manner in which maintenance of way work would be performed in the future, and they included increased benefits which would be applicable to the members of the craft or class represented by the BMW.

By necessity, in view of the many labor organizations involved in the proceedings and in light of the numerous, complex issues presented to PEB 219, it is understandable why many of PEB 219's recommendations were drafted in broad, general terms. It is also understandable, in light of the scope of the issues facing PEB 219 and in view of the standards applied by many prior presidential emergency boards, why PEB 219 left to the parties the task of dealing with the "give and take" in the recommendations and why PEB 219 also directed the parties to "fine tune" the recommendations.

Subsequent to the issuance of PEB 219's Report, the Congress of the United States, pursuant to Public Law 102-29, established a Special Board which was authorized to consider the parties' requests to clarify and modify subject matters addressed by PEB 219.

The Special Board concluded, in an Interpretation and Clarification Report issued on June 11, 1991, that certain requests for interpretation or clarification made by the BMW were properly submitted to the Contract Interpretation Committee (hereinafter the "Committee"), which had been established as the result of the Report by PEB 219.

By letter dated August 22, 1991 the President of the BMW, Mac A. Fleming, and the Chairman of the National Railway Labor

Conference, Charles I. Hopkins, Jr., respectively the BMWE and NRLC Members of the Committee, notified Richard R. Kasher that he had been selected to serve as the Neutral Member of the Committee.

An organizational meeting was held on September 26 and 27, 1991 in Washington, D.C. at which certain procedural understandings were reached. It was agreed that the parties would first meet and discuss specific questions regarding interpretation or application of the PEB's recommendations which might be in dispute, in an effort to directly resolve the issues raised by those questions. It was agreed, in the event resolution was not possible through direct discussions and meetings attended by the parties, that the BMWE and NRLC would exchange written submissions and deliver those submissions to the Neutral Member in advance of the parties having an opportunity to orally present their respective positions to the Neutral Member. It was agreed that the Neutral Member would have the authority to "conference" disputed issues with the parties and to meet ex parte with the BMWE and/or the NRLC in an effort to resolve any existing disputes prior to the issuance of written interpretations. It was understood that any efforts by the Neutral Member in composing the parties' respective positions would have no influence, if agreement could not be reached, upon the Neutral Member's answer to any question. It was agreed that the Neutral Member of the Committee would be the only signatory to the interpretive answers to questions raised before the Committee.

As noted above, certain recommendations by PEB 219 were, by necessity and practice, written in broad and general terms. It should also be noted that PEB 219's Report and Recommendations, unlike a collective bargaining agreement, are not supported by a "bargaining history". Therefore, in many areas there is no reliable legislative history or history of negotiations which would aid this Committee in rendering its interpretations or clarifications of questions in dispute. Accordingly, while it is this Committee's intention to issue specific answers to questions so that our work results in a reduction of disputes, as opposed to a creation of new disputes, certain answers will, by necessity, require general application absent the citation of specific circumstances.

The following questions, which are primarily concerned with the Special Board's conclusion that "savings clauses" were properly included in the parties' agreement were presented to the Committee on November 21, 1991 in Washington, D.C. The following answers to those questions are issued by the Neutral Member of the Committee after thorough review of the parties' written submissions, their oral arguments in support of those submissions, consideration of PEB 219's Report and Recommendations and the Report of the Special Board.

Issue No. 3. Subquestion Nos. 1 and 2

"Does the 'agreement' imposed by Public Law No. 102-29 contain a 'savings clause' allowing each carrier to elect unilaterally which specific recommendation of PEB 219 will be part of the agreement imposed by the Public Law and which specific recommendation will not be solely because the individual carrier has rejected it?"

and

"Did section 3(f) of Public Law No. 102-29 give the Special Board jurisdiction to make a binding determination the carriers' proposed 'savings clause' -- a matter about which PEB 219 made no specific recommendation and the Special Board had not included as a modification to the PEB's recommendations?"

Answer to Issue No. 3. Subquestion Nos. 1 and 2

Subquestion Nos. 1 and 2, when reduced to their most basic form, address the question of whether the Carriers are entitled to exercise savings clauses with respect to certain provisions recommended by PEB No. 219 and imposed upon the parties by Public Law 102-29 as though arrived at by "agreement". It is the finding of the Neutral Member of the Committee that the "agreement" was "fine-tuned" to incorporate "savings clauses" in the specified articles when the Special Board so determined.

Issue No. 3, Subquestion No. 1

"If the answers to Question Nos. 1 and 2 hereinabove are yes, did the ten (10) day time period after the date of the settlement, within which the carriers may elect to preserve existing rules or practices and so notify the authorized employee representative, begin to toll on July 29, 1991 (effective date of Settlement) or October 16, 1991 (SB 102-29 Response to Joint Request)?"

Answer to Issue No. 3, Subquestion No. 1

In view of the continuing nature of the dispute as to whether the Carriers had the ability or the right to exercise a "savings clause" prerogative, it is the finding of the Neutral Member of the Committee that that right, which the Neutral Member found to exist, may be exercised by notifying the authorized employee representative on or before December 15, 1991.

Issue No. 3, Subquestion No. 4

"1.(a) Is it the intention of PEB No. 219 that present regional and system-wide gang agreements remain unchanged and in effect until changed under the provisions of the Railway Labor Act?

(b) Or, is it the intent that all present regional and system-wide gang agreements become null and void and if the carriers wish to establish a regional or system-wide gang they will give the union notice as outlined in Section 11(a), page 100, of the Report of PEB No. 219?"

Answer to Issue No. 3, Subquestion No. 4

The existence of a savings clause provision gives the Carriers an option to (1) retain existing rules and conditions applicable to regional and system-wide gangs or to (2) elect, in their stead and in the establishment of new regional and system-wide gangs, to notice their intention to establish such gangs under the rules and conditions which were recommended by PEB No. 291. The decision of a carrier not to elect to retain its existing regional and system-wide gang rules, that is, to opt for the rules and conditions recommended by PEB No. 219, does not, *per se*, automatically render existing regional and system-wide gangs "null and void". Rather, the parties, on particular properties, may agree that it is mutually advantageous to retain the old rules and conditions applicable to certain existing regional and/or system-wide gangs in order to avoid discontinuity and adverse affects upon members of existing gangs, while the new rules and conditions would be applied to newly-established regional and system-wide gangs.

The answers to the above questions were issued by the Neutral Member of the Contract Interpretation Committee this 4th day of December, 1991.

Richard R. Kasher
Richard R. Kasher, Neutral Member
Contract Interpretation Committee

EXHIBIT 7

UNION PACIFIC RAILROAD COMPANY

D. J. SMITH
GENERAL DIRECTOR
LABOR RELATIONS

1416 DODGE STREET
OMAHA, NEBRASKA 68102



December 12, 1991

PEB 219 BMW

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
MR R B WEHRLI
GENERAL CHAIRMAN BMW
1453 CHESTER ST
AURORA CO 80010

RECEIVED
DEC 14 1991
BMW

Dear Sir:

This is in reference to decisions on savings clauses rendered on December 4, 1991, by Mr. Richard R. Kasher, Neutral Member of Contract Interpretation Committee, and to the Response of Special Board 102-29 to Joint Request of the Brotherhood of Maintenance of Way Employees and the National Carriers' Conference Committee of the National Railway Labor Conference, issued October 16, 1991, as the Board's Interpretations of the Applications of Presidential Emergency Board No. 219 as interpreted, clarified and modified by the Special Board pursuant to Public Law No. 102-29.

This is to advise the Carrier elects to retain the current rules, Agreements, and practices between the Union Pacific Railroad Company and the Brotherhood of Maintenance of Way Employees in lieu of the corresponding rule relief recommended by Presidential Emergency Board 219 in Article VI(J), (4) Meal Periods (pages 97-98), and (11) Regional and Systemwide Gangs (pages 100-101) of that Board's report dated January 15, 1991.

Yours truly,

A handwritten signature in dark ink, appearing to read "D. J. Smith". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

EXHIBIT 8

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

PO BOX 1482 DENVER, CO 80202-1482

PAUL B. KINGSOLVER
DIRECTOR OF PERSONNEL AND LABOR RELATIONS

January 31, 1992

MW-7-88

NRLC 784

W. J. LOVETT
PERSONNEL ADMINISTRATORJ. P. O'REILLY
JOINT LABOR RELATIONS
J. REAMS
JOINT LABOR RELATIONS

To Don Griffin

Mr. W. F. Gulliford, General Chairman
Brotherhood of Maintenance of Way Employees
1701 Wynkoop Street
Suite 300
Denver, CO 80202-1047

Dear Sir:

This confirms conference date wherein Carrier is now advising the Organization of Carrier's desires to preserve existing rules or practices in lieu of those rules agreed to in the Interpretation of the Application of Presidential Emergency Board No. 219 with respect to Employees Represented by the Brotherhood of Maintenance of Way Employees as Interpreted, Clarified and Modified by the Special Board Pursuant to Public Law 102-29 as follows:

ARTICLE VI - MEAL PERIOD - Carrier desires to preserve the existing meal period rule identified as Rule 21.

ARTICLE VIII - WORK SITE REPORTING - The parties have reached agreement to cover work site reporting.

ARTICLE IX - STARTING TIME - Carrier desires to preserve the existing starting time rule identified as Rule 20.

ARTICLE X - ALTERNATIVE WORK WEEK AND REST DAYS - Carrier desires to preserve the existing alternative work week and rest days rule identified as Rule 16.

ARTICLE XI - INTRA-CRAFT WORK JURISDICTION - Carrier accepts this Article in its entirety.

ARTICLE XII - COMBINING OR REALIGNING SENIORITY DISTRICTS - Carrier accepts this Article in its entirety.

ARTICLE XIII - REGIONAL AND SYSTEM-WIDE GANGS - Carrier desires to preserve the existing rules covering regional (divisional) and system-wide gangs.

Yours truly,

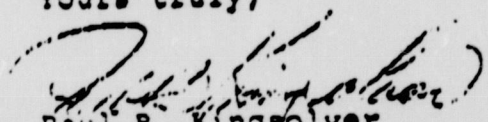

Paul B. Kingsolver
Director of Personnel
and Labor Relations

EXHIBIT 9

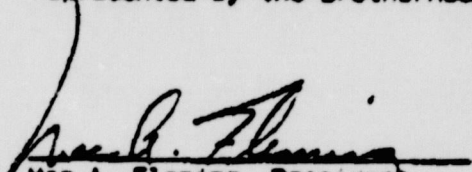
February 6, 1992

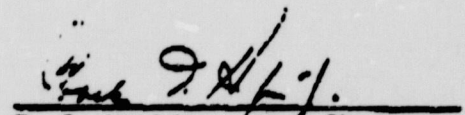
IMPOSED AGREEMENT IN ACCORDANCE WITH THE
PROVISIONS OF PUBLIC LAW 102-29

JULY 29, 1991

The attached document represents the Imposed Agreement terms necessary to implement the report and recommendations of Presidential Emergency Board No. 219, dated January 15, 1991, as clarified and modified by Special Board No. 102-29.

This Imposed Agreement is based upon the provisions of Public Law 102-29, signed by the President on April 18, 1991, which declares that the report and recommendations of Presidential Emergency Board No. 219 as clarified and modified by Special Board 102-29 shall be binding effective July 29, 1991, on the participating carriers represented by the National Carriers' Conference Committee of the National Railway Labor Conference and certain of their employees represented by the Brotherhood of Maintenance of Way Employees.


Mac A. Fleming, President
Brotherhood of Maintenance of
Way Employees


C. I. Hopkins, Jr., Chairman
National Carriers' Conference
Committee

Brotherhood of Maintenance of Way Employees

IMPOSED AGREEMENT
PURSUANT TO PUBLIC LAW 102-29
JULY 29, 1991

Between the participating carriers listed in Exhibit A attached hereto and hereby made a part hereof, and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the Brotherhood of Maintenance of Way Employees.

ARTICLE I - WAGES

Section 1 - Lump Sum Payment

Each employee subject to this Agreement imposed pursuant to Public Law No. 102-29, effective July 29, 1991, (hereinafter referred to as "Agreement") who qualified for an annual vacation in the calendar year 1991 will be paid \$2,000 within 60 days of the date of this Agreement. Those employees who during the calendar year 1990 failed to qualify for an annual vacation in the calendar year 1991 will be paid a proportional share of that amount, based on the percentage of the qualifying period satisfied. This Section shall be applicable solely to those employees subject to this Agreement who have an employment relationship as of the date of this Agreement or who have retired or died subsequent to January 1, 1990. There shall be no duplication of lump sum payments by virtue of employment under an agreement with another organization.

Section 2 - First General Wage Increase

Effective July 1, 1991, all hourly, daily, weekly, and monthly rates of pay in effect on June 30, 1991 for employees covered by this Agreement shall be increased in the amount of three (3) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 2 shall be applied as follows:

(a) Hourly Rates -

Add 3 percent to the existing hourly rates of pay.

(b) Daily Rates -

Add 3 percent to the existing daily rates of pay.

(c) Weekly Rates -

Add 3 percent to the existing weekly rates of pay.

Section 2 - Arbitration

If the parties are unable to reach agreement within ninety (90) calendar days from the serving of the original notice, either party may submit the matter to final and binding arbitration in accordance with the terms of Article XVI.

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date.

ARTICLE XIII - REGIONAL AND SYSTEM-WIDE GANGS

(a) A carrier shall give at least ninety (90) days written notice to the involved employee representative(s) of its intention to establish regional or system-wide gangs for the purpose of working over specified territory of the carrier or throughout its territory (including all carriers under common control) to perform work that is programmed during any work season for more than one seniority district. The notice shall specify the terms and conditions the carrier proposes to apply.

(b) If the parties are unable to reach agreement concerning the changes proposed by the carrier within thirty (30) calendar days from the serving of the original notice, either party may submit the matter to final and binding arbitration in accordance with Article XVI.

(c) All subject matters contained in a carrier's proposal to establish regional or system-wide gangs, including the issue of how seniority rights of affected employees will be established, are subject to the expedited arbitration procedures provided for in Article XVI. SMWE counterproposals, that are subject matter related to a carrier's proposals regarding the establishment of regional or system-wide gangs are also within the arbitrator's jurisdiction.

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date.

ARTICLE XVI - ARBITRATION PROCEDURES - STARTING TIMES, COMBINING OR REALIGNING SENIORITY DISTRICTS, AND REGIONAL AND SYSTEM WIDE GANGES

Section 1 - Selection of Neutral Arbitrator

Should the parties fail to agree on selection of a neutral arbitrator within five (5) calendar days from the submission to arbitration, either party may request the National Mediation Board to supply a list of at least five (5) potential arbitrators, from which the parties shall choose the arbitrator by alternately striking names from the list. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel.

Section 2 - Fees and Expenses

The fees and expenses of the neutral arbitrator should be borne equally by the parties, and all other expenses shall be paid for by the party incurring them.

Section 3 - Hearings

The arbitrator shall conduct a hearing within thirty (30) calendar days from the date on which the dispute is assigned to him or her. Each party shall deliver all statements of fact, supporting evidence and other relevant information in writing to the arbitrator and to the other party, no later than five (5) working days prior to the date of the hearing. The arbitrator shall not accept oral testimony at the hearing, and no transcript of the hearing shall be made. Each party, however, may present oral arguments at the hearing through its counsel or other designated representative.

Section 4 - Written Decision

The arbitrator shall render a written decision, which shall be final and binding, within thirty (30) calendar days from the date of the hearing.

ARTICLE XVII - SUBCONTRACTING

The special arrangements governing subcontracting that are contained in Article VIII of the October 17, 1986 National Agreement are continued substantially unchanged. However, if either the organization or carrier believes that the other party is not cooperating in an attempt to resolve the matter, that party may refer the matter to the Interpretation Committee described in Article XVIII, for prompt consideration and any action deemed appropriate that is consistent with the spirit and intent of the Agreement. This may include a requirement that an Advisory Fact-Finding panel be established immediately, regardless whether the conditions described for establishing such a panel have been met. The parties shall share equally the fees and expenses of any neutral arbitrator who may be utilized.

The establishment of the Interpretation Committee is to avoid a carrier taking a position which is contrary to the spirit and intent of the PEB 219 recommendations. Since the union's right to make proposals regarding

EXHIBIT A - As accepted and adopted by the Organization.
AME

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES, DATED ON OR ABOUT APRIL 2, 1984, OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS PERTAINING TO THE HEALTH AND WELFARE PLAN TO THE EXTENT INDICATED IN PROPOSAL IDENTIFIED AS "APPENDIX B" THERETO, AND NOTICES DATED ON OR ABOUT JUNE 10, 1988 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE WITH THE PROPOSALS SET FORTH IN ATTACHMENT A THERETO, SERVED ON RAILROADS GENERALLY BY THE GENERAL CHAIRMAN, OR OTHER RECOGNIZED REPRESENTATIVES OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, AND PROPOSALS SERVED BY THE CARRIERS ON OR ABOUT APRIL 9, 1984 AND MARCH 8, 1989 FOR CONCURRENT HANDLING THEREWITH.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the Brotherhood of Maintenance of Way Employees.

- Akron & Barberton Belt Railroad
- Alton & Southern Railway
- Atchison, Topeka & Santa Fe Railway
- 1 - Bessemer and Lake Erie Railroad
- Burlington Northern Railroad
- Canadian National Railways:
 - 1 - Great Lakes Region Lines in U.S.
 - 1 - St. Lawrence Region Lines in U.S.
 - 2 - Canadian Pacific Limited
- CSX TRANSPORTATION:
 - Atlanta & West Point Rail Road
 - Western Ry. of Alabama
 - Baltimore and Ohio Railroad
 - Baltimore and Ohio Chicago Terminal RR.
 - Chesapeake and Ohio Railway
 - Clinchfield Railroad
 - Seaboard System Railroad:
 - Georgia Railroad (former)
 - Louisville and Nashville Railroad (former)
incl. C&E and Monon
 - Seaboard Coast Line Railroad (former)
 - Western Maryland Railway Co.
- 2 - Chicago & Illinois Midland Railway
- Chicago & North Western Trans. Co.
- Colorado & Wyoming Railway
- Davenport, Rock Island and Northwestern Ry.
- Denver and Rio Grande Western Railroad
- 1 - Denver Union Terminal Railway
- Duluth, Winnipeg & Pacific Railway
- Houston Belt and Terminal Railway
- Illinois Central Railroad

- Kansas City Southern Railway
- Louisiana & Arkansas Railway
- Milwaukee (See Line)-KCS Joint Agency
- 1 - Kansas City Terminal Railway
- 3 - Lake Superior & Ishouming Railroad
- Los Angeles Junction Railway
- Manufacturers Railway
- 1 - Meridian & Sigbee Railroad
- 1 - Minnesota & Manitoba Railway
- Missouri Pacific Railroad
- Galveston, Houston and Henderson Railroad
- 4 - Missouri-Kansas-Texas Railroad
- 2 - Monongahela Railway
- 1 - Montour Railroad
- New Orleans Public Belt Railroad
- Norfolk and Portsmouth Belt Line Railroad
- Norfolk and Western Railway
- Norfolk Southern Railway Company
- Alabama Great Southern Railroad
- New Orleans & Northeastern Railroad
- 1 - Atlantic and East Carolina Railway
- 1 - Carolina & Northwestern Railway
- Central of Georgia Railroad
- Cincinnati, New Orleans & Texas Pacific Ry.
- Georgia Northern Railway
- Georgia Southern and Florida Railway
- 1 - Interstate Railroad
- 1 - Live Oak, Perry and South Georgia Railroad
- New Orleans Terminal Co.
- St. Johns River Terminal Company
- Tennessee, Alabama & Georgia Railway
- Tennessee Railway
- Northern Indiana Commuter Transportation District
- Northwestern Pacific Company
- Peoria & Pekin Union Railway
- 2 - Pittsburgh & Lake Erie Railroad
- 2 - Pittsburgh, Chartiers & Youghiogheny Railway
- Port Terminal Railroad Association
- Portland Terminal Railroad Company
- Richmond, Fredericksburg & Potomac Railroad
- St. Louis Southwestern Railway
- Southern Pacific Transportation Co.:
- Eastern Lines
- Western Lines
- Terminal Railroad Association of St. Louis
- 1 - Texas Mexican Railway
- Union Pacific Railroad
- Western Pacific Railroad
- Wichita Terminal Association
- Yakima Valley Transportation Co.

EXHIBIT A - As accepted and adopted by the carriers.
same

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES, DATED ON OR ABOUT APRIL 2, 1984, OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS PERTAINING TO THE HEALTH AND WELFARE PLAN TO THE EXTENT INDICATED IN PROPOSAL IDENTIFIED AS "APPENDIX B" THERETO, AND NOTICES DATED ON OR ABOUT JUNE 10, 1988 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE WITH THE PROPOSALS SET FORTH IN ATTACHMENT A THERETO, SERVED ON RAILROADS GENERALLY BY THE GENERAL CHAIRMAN, OR OTHER RECOGNIZED REPRESENTATIVES OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, AND PROPOSALS SERVED BY THE CARRIERS ON OR ABOUT APRIL 9, 1984 AND MARCH 8, 1988 FOR CONCURRENT HANDLING THEREWITH.

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 - Western Ry. of Alabama
 - Baltimore and Ohio Railroad
 - Baltimore and Ohio Chicago Terminal RR.
 - Chesapeake and Ohio Railway
 - Clinchfield Railroad
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 - Georgia Railroad (former)
 - Louisville and Nashville Railroad (former)
incl. C&E and Monon
 - Seaboard Coast Line Railroad (former)
 - Western Maryland Railway Co.
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- Chicago & North Western Trans. Co.
- Colorado & Wyoming Railway
- 1 - Consolidated Rail Corporation
- Davenport, Rock Island and Northwestern Ry.
- Denver and Rio Grande Western Railroad
- 1 - Denver Union Terminal Railway
- Duluth, Winnipeg & Pacific Railway
- Houston Belt and Terminal Railway
- Illinois Central Railroad

Kansas City Southern Railway
 Louisiana & Arkansas Railway
 Milwaukee (See Line)-KCS Joint Agency
 1 - Kansas City Terminal Railway
 3 - Lake Superior & Ishpeming Railroad
 Los Angeles Junction Railway
 Manufacturers Railway
 1 - Meridian & Bigbee Railroad
 1 - Minnesota & Manitoba Railway
 Missouri Pacific Railroad
 Galveston, Houston and Henderson Railroad
 4 - Missouri-Kansas-Texas Railroad
 2 - Monongahela Railway
 1 - Montour Railroad
 New Orleans Public Belt Railroad
 Norfolk and Portsmouth Belt Line Railroad
 Norfolk and Western Railway
 Norfolk Southern Railway Company
 Alabama Great Southern Railroad
 New Orleans & Northeastern Railroad
 1 - Atlantic and East Carolina Railway
 1 - Carolina & Northwestern Railway
 Central of Georgia Railroad
 Cincinnati, New Orleans & Texas Pacific Ry.
 Georgia Northern Railway
 Georgia Southern and Florida Railway
 1 - Interstate Railroad
 1 - Live Oak, Perry and South Georgia Railroad
 New Orleans Terminal Co.
 St. Johns River Terminal Company
 Tennessee, Alabama & Georgia Railway
 Tennessee Railway
 Northern Indiana Commuter Transportation District
 Northwestern Pacific Company
 Peoria & Pekin Union Railway
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 Port Terminal Railroad Association
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 Richmond, Fredericksburg & Potomac Railroad
 St. Louis Southwestern Railway
 Southern Pacific Transportation Co.:
 Eastern Lines
 Western Lines
 Terminal Railroad Association of St. Louis
 1 - Texas Mexican Railway
 Union Pacific Railroad
 Western Pacific Railroad
 Wichita Terminal Association
 Yakima Valley Transportation Co.

FOR THE CARRIERS:

- FOR THE BROTHERHOOD OF
MAINTENANCE OF WAY EMPLOYEES:**

Washington, D. C.

EXHIBIT 10



SOUTHERN PACIFIC LINES

Labor Relations Department • One Market Plaza, Room 304 • San Francisco, California 94105 • Fax 415-541-1087

DIRECTOR
D. A. PORTER
(415) 541-2019

MANAGER
T. A. JOHNSON
(415) 541-2019

WHEN REPLYING REFER TO FILE MofW 2-64 EL/WL/SSW
January 3, 1996

Mr. F. D. Lewis, General Chairman
Brotherhood of Maintenance of Way Employes
350 N. Sam Houston Parkway E., Suite 202
Houston, TX 77060

Mr. D. E. McMahon, General Chairman
Brotherhood of Maintenance of Way Employes
Alhambra-Jay Building, Suite 260
930 Alhambra Boulevard
Sacramento, CA 95816

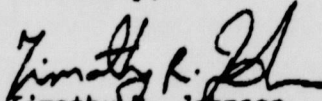
RECEIVED
JAN - 4 1996
OFFICE OF GENERAL CHAIRMAN

Dear Mr. Lewis and Mr. McMahon:

As you are both aware, pursuant to Article II of the October 1, 1991 Adaptation Agreement between the Southern Pacific Transportation Company (Eastern Lines and Western Lines), the St. Louis Southwestern Railway Company and the Brotherhood of Maintenance of Way Employes, the Carrier, as of January 1, 1996, was to "snap-back" to the rates and rules under the 1991 BMW National Imposed Settlement. With respect to the Articles which comprise the National Rules, several of them are to become effective ten (10) days after the January 1, 1996 date, "except on such carriers as may elect to preserve existing rules or practices"

This shall serve as this Carrier's written notice that it has elected to adopt all of the 1991 BMW National Rules with the exception of the following: Article VI - Meal Period; Article VII - Worksite Reporting; Article XIII - Regional and System-wide Gangs. The Carrier elects to preserve existing local rules and practices only with respect to the aforementioned subjects covered by Articles VI, VII, and XIII of the National Rules.

Sincerely,


Timothy A. Johnson
Manager - Labor Relations

cc: L. Borden - Tyler
C. F. Foose - Aurora
T. J. Matthews - Denver
E. P. Reilly - Denver
B. L. Reinhardt - Houston
D. T. Wickersham - Tucson
D. A. Porter - San Francisco
R. M. Winkenbach - San Francisco
P. L. Joyner - San Francisco

EXHIBIT 11

REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 229

**SUBMITTED PURSUANT TO EXECUTIVE ORDER NO. 13003
DATED MAY 16, 1996
AND SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED**

Investigation of disputes between certain railroads, represented by the National Carriers' Conference Committee of the National Railway Labor Conference including Consolidated Rail Corporation (including the Clearfield Cluster), Burlington Northern Railroad Co., CSX Transportation Co., Norfolk Southern Railway Co., Atchison, Topeka & Santa Fe Railway Co., Union Pacific Railroad, Chicago & North Western Railway Co., Kansas City Southern Railway Co. and their employees represented by the Brotherhood of Maintenance of Way Employees.

(National Mediation Board Case Nos. A-12718, Sub. 1, including Sub. 1A, Sub. 2, Sub. 3, Sub. 4, Sub. 5, Sub. 6, Sub. 7, Sub. 8)

**WASHINGTON, D.C.
JUNE 23, 1996**

b. The Carriers

The Carriers propose no change to the February 7, 1965 Job Stabilization agreement. The Carriers note that the agreement covers only 2.3 percent of the present workforce and revival of that agreement would require the Carriers to pay maintenance of way employees full compensation -- wages and benefits, adjusted for all future increases -- until they reach retirement age, if they are furloughed or displaced to lower paying jobs for any reason, apart from narrowly defined declines in business.

10. Regional and System-Wide Production Gangs

a. The BMWE

BMWE proposes to define production gangs as "out of face rail gangs and tie gangs with a minimum employee complement of 20 employees." BMWE also seeks to eliminate all "no-bid, no-bump" rules as they apply to regional and system-wide gangs and to confine the operational territory of these pre-programmed gangs to trackage falling within a circle of 400 miles in diameter. BMWE also seeks a savings clause permitting BMWE to opt to retain an existing rule regarding regional and system-wide gangs or to accept the new rule for application to a particular property.

b. The Carriers

The Carriers seek to define a "production gang" as "any crew that performs repetitive functions on a day-to-day basis, regardless of the size of the gang or the specific type of work being performed." According to the Carriers, many gangs of fewer than 20 positions could be operated much more efficiently if used on a regional or system basis, so gangs could build on their experience. Moreover, the Carriers assert that BMWE's position has deprived maintenance of way employees of the further work stabilization and expanded work seasons that would result from greater use of regional or system gangs. The Carriers also seek to form new regional and system gangs while retaining existing gangs under local agreements.

11. Sickness Benefits and Supplemental Sickness

a. The BMWE

BMWE seeks fully paid sick leave by accruing 80 hours of sick leave per year with no maximum. BMWE also seeks to integrate sickness benefits with the Railroad Unemployment Insurance Act (RUIA) and Supplemental Sickness benefits to provide eight hours pay per sick day with no waiting period.

BMWE seeks to amend the supplemental sickness benefit to provide that RUIA and the benefit covers 90 percent of average monthly earnings. BMWE proposes the elimination of all

Article IV, Section 1, of the February 7, 1965 Agreement shall be amended to read as follows:

"Section 1 - Subject to the provisions of Section 3 of this Article IV, protected employees who hold regularly assigned positions shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position as of the date they become protected; provided, however, that in addition thereto such compensation shall be adjusted to include subsequent wage increases."

(b) Conrail Supplemental Unemployment Plan

We recommend that Conrail adopt any modifications made to the Conrail Supplemental Unemployment Plan in Conrail's tentative agreement with the BRS. Other than any such modifications, we recommend that the Organization's proposals be withdrawn.

(c) Work Force Stabilization

The Board recommends that the Work Force Stabilization (WFS) Program effective on January 18, 1994, and applied retroactively back to July 29, 1991 shall continue in effect for the new agreement, and shall entitle an employee initially assigned to an WFS gang when it starts its work during the production season for the calendar year, six months of WFS work benefits or WFS unemployment benefits, subject to the terms of the agreement.

10. Regional and System-Wide Production Gangs

(a) In a dispute between the BMWF and the Burlington Northern, Arbitrator Joseph A. Sickles, on June 15, 1992, concluded that a production gang was "heavily mechanized and mobile, continuously performing specific, programmed, major repair and replacement work utilizing a substantial number of employees." He defined "substantial number of employees" as "no fewer than 20 employees." The Board believes that this is an appropriate definition of production gangs, which we recommend.

(b) A Carrier shall give at least 60 days' written notice to the General Chairman or the General Chairmen of its intention to establish a regional or system-wide gang for the purpose of working over specified territory of the Carrier or throughout its territory. The notice will include the number and staffing of the gang the Carrier intends to operate during the work season, as well as identification of the location, beginning and ending mile post location of the work, starting and ending date of the project and the seniority districts involved.

If the parties are unable to reach agreement concerning the changes proposed by the Carrier within thirty (30) calendar days from the serving of the original notice, either party may submit the

matters set forth above to the final and binding arbitration procedures previously created for the resolution of this type of dispute.

(c) An individual who bids and is subsequently assigned to work on a regional and system-wide production gang may be held to that gang for a period of no more than 30 days. After such time, the employee will be entitled to bid for other jobs with the carrier, subject to the limitation that no more than ten percent of a gang may bid off during a one week period.

(d) Each employee assigned to a regional or system production gang who does not leave the gang voluntarily for a period of at least 6 months shall be entitled to a lump sum payment annually equal to five percent of his or her compensation earned during the calendar year on that gang. Such compensation shall not exceed \$1,000 and, it shall be paid within 30 days of the completion of the employee's service on the gang. If the Carrier disbands the gang in less than six months, the Carrier will be responsible for payment of the production incentive earned as of that date.

(e) Existing property-specific agreements, whether arrived at voluntarily or through arbitration, will continue to control the terms and conditions of regional and system-wide gangs on each carrier or sub-section of Carrier property.

(f) This recommendation is intended to continue the use of regional and system gangs on Carriers which timely opted to create such gangs after the implementation of the recommendations of PEB No. 219, but not to extend their use to Carriers which opted to operate under other local provisions.

11. Sickness Benefits and Supplemental Sickness

The Board recommends increases in supplemental sickness benefits as detailed in Article VII of the BRS Agreement. The Board further recommends that the Organization's sickness benefits and supplemental sickness proposals be withdrawn.

12. Off-Track Vehicle Benefits

Effective upon signing the new agreement, we recommend that Article V of the Mediation Agreement of February 10, 1971, as amended, be revised as follows:

(a) That the following language be substituted for existing paragraph (a) of Article V:

This Article is intended to cover accidents involving employees covered by this agreement while such employees are operating, riding in, boarding, or alighting from off-track vehicles authorized by the carrier and any accident which occurs while an employee is under pay.

EXHIBIT 12

BEFORE THE
NATIONAL MEDIATION BOARD

- - - - - x

In the Matter of: :

PRESIDENTIAL EMERGENCY :

BOARD NUMBER 229 :

- - - - - x

The Madison Hotel
Drawing Room IV
15th and M Streets, Northwest
Washington, D.C.

Thursday, June 6, 1996

The above-entitled matter came on for hearing,
pursuant to notice, at 10:10 a.m.

BEFORE:

DAVID P. TWOMEY, Chairman

CARL E. VAN HORN, Board Member

WILLIAM P. HOBGOOD, Board Member

1 seniority district may need a crane but all the cranes and
2 operators in that district are in use. But, at the same
3 time, there is an available crane and operator just a few
4 miles away in an adjoining district and we can't use them.

5 The mismatch of seniority districts with operating
6 units also makes virtually all management tasks more
7 difficult than necessary. That is because the management of
8 an operating unit often has to deal with two or more
9 seniority districts and sometimes the use of employees and
10 equipment in a single seniority district has to be
11 coordinated between two operating units.

12 I will now turn things back over to Mr. Hopkins.

13 MR. HOPKINS: The first set of issues that we will
14 discuss and which I will introduce are those associated with
15 regional and system gangs.

16 Roger has just explained some of the problems with
17 crazy quilt and too small seniority districts and the
18 ability to have regional and system gangs relieves that to
19 some degree as he indicated. Regional and system gangs are
20 not new. They did not come into being with PEB 219. They
21 existed to some extent on some railroads for a long time. I
22 think on the UP, and Gary Lilly will correct me later or now
23 if I'm wrong, but for at least 60 years they have had
24 regional and system gangs.

25 But even where a railroad had them before, they

1 were not adequate to modern needs. There were limitations
2 on them, distance types of work and so on, so that all of
3 the railroads that were involved in the national round that
4 culminated with PEB 219 had an urgent need for regional and
5 system gangs so that there could be a very substantial
6 ability to cross seniority district lines with crews and
7 with machines, large or small.

8 The organization proposes that these be sharply
9 limited to a 400-mile diameter circle. Other witnesses,
10 these men are qualified and I am not, to explain all the
11 disabling results that would flow from the imposition of any
12 such of an arrangement. And the organization also asks that
13 what are called bid-and-hold provisions associated with
14 regional and system gangs be abolished.

15 Bid and hold means that there is a period of time,
16 a short period of time, which the witnesses will describe,
17 when a person who voluntarily bids on one of these regional
18 and system gangs cannot bid off that job for, as I say, a
19 relatively short period of time except in some cases where
20 there is a hardship.

21 What the carriers propose is that there be no
22 numerical limit or other limit on what can become a regional
23 or system gang. It should include all production work,
24 meaning work that is not done by the section crews that have
25 the fixed headquarters. And the carriers are proposing that

1 this new rule, expanded rule, applied to all of the
2 railroads.

3 There is a problem here that I am not sure whether
4 it has surfaced in any presentation so far but we had
5 thought it clear that the PEB 219 recommendations as
6 translated into the imposed agreement were meant to apply
7 everywhere and that those railroads had already had some
8 ability to utilize regional and system gangs, could keep
9 their rights to do so but take advantage of the new rights
10 under the new rules.

11 Unfortunately, when that question was submitted to
12 the Contract Interpretation Committee, the ruling was that
13 the railroad had to stay with what it already had or the new
14 but not both. And the result of that, unfortunately, was
15 that only three of the railroads adopted the new rules so to
16 the extent we are talking about this rule with three of the
17 railroads before you, that is the BN, CSXT and the western
18 portion of the Norfolk Southern.

19 This was, I guess, one of those classic Hobson's
20 choices faced by these railroads that in the end did not opt
21 for the new rules. The issue was pending for quite a while
22 and I don't say that critically but no one knew, of course,
23 until the neutral chairman ruled, how that was going to come
24 out and it didn't come out until December of 1991.

25 Well, the railroads have to do their planning for

1 recommendation that carried forward in the parties'
2 agreement or the imposed agreement adopted -- provided for a
3 select committee, I think it's called, which was to design
4 and did design a program for work force stabilization.
5 Meaning that any employee on one of these regional and
6 system gangs was assured a minimum of six months of work
7 during the production season or supplemental employment
8 benefits in lieu thereof to the extent of any shortfall in
9 that six-month assurance.

10 As it turned out, the -- all of these regional and
11 system gangs adopted pursuant to the new rule, pursuant to
12 the PEB recommendation, have all provided for work years in
13 excess of six months so that it has not been necessary for
14 anyone to invoke this six-month assurance under the work
15 force stabilization program but that bespeaks the
16 improvement in employment opportunities and duration of work
17 year to help counter what has been traditionally the
18 seasonality of maintenance of way employment.

19 With that, I will ask John Starkovich, my friend
20 on my right and your left, to take it from there.

21 MR. STARKOVICH: Thank you, Chuck.

22 Chairman Twomey, Mr. Van Horn, Mr. Hobgood, this
23 afternoon, as Mr. Hopkins stated, we are here to talk to you
24 about regional and system gangs. It is one of the major
25 work flexibilities of PEB 219 and it is also one of the most

1 the production season well before that because they begin
2 the production depending upon the geography as soon as they
3 can in a calendar year.

4 And so that obviously can't be done spontaneously.
5 It all has to be preplanned and preprogrammed. So for that
6 reason and others, those railroads stayed with their
7 preexisting rule in that respect and the UP being one of
8 them. I think the decision was unfortunate but the result
9 is what is really unfortunate because this was an
10 advancement in the modernization of the work rules, a needed
11 flexibility improvement, a needed improvement in
12 productivity and a needed improvement in the work
13 opportunities for employees. All of those points will be
14 developed in the testimony of the various witnesses.

15 As to regional and system gangs, where they exist
16 under the new rule on those three railroads that I
17 mentioned -- or railroads other than the three I mentioned,
18 I think this observation is worth making. What the PEB 219
19 had as its purposes with respect to regional system gangs
20 was to improve productivity, obviously, expand work
21 opportunities for employees and stabilize, help stabilize
22 the work force. The reality is that those purposes had been
23 advanced by the new regional and system gangs and the
24 witnesses will describe those results.

25 It is interesting to note here that the PEB

1 critical to the railroads. PEB 219 provided the carriers
2 with a regional system gang provision which allowed many of
3 us to go beyond the limited system gang rules that some of
4 us had. Some of us had little if any flexibility in this
5 area. But, as part of the overall package handed down by
6 PEBs 219 and 221, the boards awarded us this flexibility
7 because we indicated that we could better serve our
8 customers with such gangs in three areas.

9 The first area, we felt we could be more
10 productive and efficient, which would translate into better
11 customer service and hopefully more traffic and better
12 utilization of our resources. We thought we could provide
13 stable and longer work opportunities for our employees.
14 And, three, we thought we could perform the work much safer
15 utilizing this type of process.

16 We will try to illustrate briefly as possible as
17 to how we have accomplished that in all three areas. It
18 will be an overview and it won't be all-encompassing because
19 there is just too much detail for the limited time we have
20 with you today.

21 Before discussing that, after listening to the
22 BMW's presentation last week, we decided that we were going
23 to mix things up a little bit and address something up
24 front. In our view, today, you will get the rest of the
25 story or the other side of regional system gangs.

1 In their presentation, the BMWWE made an extensive
2 issue to you about how the unions felt these gangs were so
3 terrible. But I've got with me here a collection of really
4 super engineering officers that tell us something different.
5 They say that these gangs that are permitted to cross more
6 than one seniority district are beneficial to the employees
7 and, rather than me tell you about that, we thought we would
8 let you hear it straight from them.

9 First of all, Mr. Gary Woods from the NS would
10 like to tell you how things are going on the NS.

11 MR. WOODS: Good afternoon, Mr. Chairman, members
12 of the Board. On Norfolk Southern regional system gangs are
13 filled with employees that volunteer to do the work. We do
14 not force any employee on these gangs. Our employees want
15 to work on these gangs.

16 In 1995, we had 170 positions advertised and 770
17 employees bid on those positions. These positions were 90-
18 day bid and hold, which means that these employees can't get
19 off the gangs -- can get off the gangs after only 90 days if
20 they want to. It also means that they can't be displaced
21 for 90 days. And most of all, they know they have a stable
22 job for at least 90 days.

23 In 1995, very few employees wanted to get off
24 these regional system gangs. In fact, when the bid-and-
25 hold period expired, only four employees bid off these gangs

1 even though about 20 other positions existed.

2 These jobs are held by some of our most senior
3 people. If you recall last week, BMWWE mentioned one of our
4 regional and system gangs, T&S 28, when they were describing
5 how these gangs traveled great distances. Over half
6 employees on this gang have over 15 years' seniority. One
7 employee has 30 years' seniority and nine have 17 or more
8 years' seniority. Our three rail gangs average 12 years
9 seniority and 24 of the 53 employees have 15 or more years'
10 seniority. With all this seniority, these people could hold
11 employment near their homes if they chose to do so.

12 Prior to PEB 219, we would establish a gang to
13 install ties, surface track or whatever. We would work this
14 particular gang several weeks or months and then reach a new
15 seniority territory that would cause us to re-advertise the
16 positions, furlough the employees and basically create a new
17 gang. The railroad lost the productivity of a well-trained
18 gang and had to retrain new employees.

19 Also, on the northern part of our railroad, the
20 work season is shorter because you can't install ties or
21 surface track when the ballast is frozen. Prior to PEB 219,
22 we had to furlough people because of the short work season.
23 Now, with the PEB 219 rule, we can work regional system
24 gangs in the southern portion of the NNW in the wintertime,
25 move north in the summertime plus we can cross seniority

1 lines, which allows our people to work most of the year.

2 Before PEB 219, only 75 percent of our employees
3 worked 12 months out of the year. Now, 85 percent of our
4 people work 12 months out of the year.

5 Let me say something about safety on our regional
6 system gangs. Last week, Dr. Schwarzbeck attempted to
7 convey to this panel that working on a regional system gang
8 could cause an employee to be injured because of the travel
9 time and stress. T&S 23, the example BMW used for our
10 entire system, hasn't had an FRA reportable injury in over
11 two years. The R-3 dual rail gang, which I mentioned
12 earlier, moves over our entire system and hasn't had a
13 reportable injury since October of 1993.

14 This is a remarkable record when you consider rail
15 labor is probably the most difficult job the maintenance of
16 way department does. In fact, no employee of our regional
17 and system gangs has had a reportable injury this year on
18 Norfolk Southern. The implication that regional system gang
19 work is unsafe is not an accurate assumption.

20 We have a pass-out in your handout. Safety has
21 improved on all Class I railroads since, as you can see from
22 the handout. I think it is fourth or fifth down, entitled
23 Maintenance of Way Safety, PEB 219.

24 This is a ratio of 8.4 in 1991. That is injuries
25 per 200,000 man hours. In 1995, it was down to 3.5.

1 It is the same as saying if you had 100 men
2 working for a year, you would have 3.5 injuries per hundred
3 men working a year. That's what the ratio works out to be.

4 Our people want to work on these regional and
5 system gangs because that's where the money is in overtime
6 and expenses plus they can work the majority of the year.
7 We need to keep the PEB and expand it to include all
8 production gangs of less than 20 employees to open up more
9 opportunities for our employees to work most of the year.

10 Thank you, sir.

11 MR. STARKOVICH: Next will be Roger Cross from the
12 CSX.

13 MR. CROSS: Jobs on the system gangs on CSX are
14 very popular with our maintenance of way employees. In
15 1993, we had 746 jobs available on system gangs. Employees
16 put in 20,000 bids for these jobs. That is about 27 bids
17 for each position we had open. We have no problems filling
18 all positions on system gangs.

19 The other day, I heard the BMW say the reasons
20 employees bid on these jobs is because they don't have any
21 other opportunities to work. That just isn't true on CSX.
22 This year on CSX, more than half of the system gang jobs
23 were filled by employees who were awarded jobs from
24 headquarters positions. That means, they worked close to
25 home and voluntarily left their jobs to go to work on the

1 system gangs.

2 On top of that, almost half of the so-called bid-
3 and-hold jobs, the jobs BMWWE has especially complained
4 about, were also filled by employees who were working
5 headquarters positions and voluntarily left those positions
6 to go to system gangs.

7 System gangs have provided many of our maintenance
8 of way employees with longer work seasons. Before PEB 219,
9 about half of these employees worked all year. Now at least
10 75 percent of our employees work a full year.

11 System gangs allow us to plan our work better and
12 utilize employees and equipment over a larger area. If we
13 could work more production gangs on a regional and system
14 basis, our employees would have even more opportunities to
15 work a full year. We would like to do that. We cannot, if
16 we went back to the way it was before PEB 219, when half of
17 our maintenance of way employees couldn't work or earn money
18 for much of the year.

19 I would like to also say a couple of words about
20 safety on CSX. Since we began using system gangs in 1992,
21 our safety record for our maintenance of way employees has
22 improved by record standards each year. There is no basis
23 for assuming that work on regional and system gangs is
24 unsafe. In short, our regional and system gangs are
25 popular, they allow our maintenance of way employees to work

1 longer each year and they are safe.

2 DR. STARKOVICH: Next up is Mr. Bell from
3 Burlington Northern.

4 MR. BELL: Thank you. Good afternoon, Mr.
5 Chairman and members of the board.

6 We have been successful at filling jobs on our
7 region and system gangs with volunteers too. This year we
8 had 48,000 bids for only 1300 jobs on the region and system
9 gangs on BN.

10 That is 37 bids for each position. With region
11 and system gangs our employees are working longer each year
12 than ever before.

13 Before PEB 219 about 68 percent of our
14 maintenance-of-way employees could work 12 months out of the
15 year. Now we are up to 79 percent.

16 On the Union Pacific, and I mean the Union Pacific
17 proper, they have had region and system gangs for nearly 60
18 years. Almost 100 percent of their maintenance-of-way
19 employees work 12 months out of the year. We would like to
20 get there too. If we lost our region and system gangs our
21 employees would lose these increased work opportunities.
22 That would be a real shame.

23 MR. STARKOVICH: In short, we think our
24 engineering folks have adequately set forth to you a number
25 of things.

1 First of all, that our employees are bidding to
2 these gangs voluntarily and in large numbers.

3 Number two, many of the successful bidders for
4 these jobs are the more senior employees.

5 Number three, that the regional and system gangs
6 that we have have provided longer work opportunities, just
7 as the BMWWE asked for when they were before PEB 219.

8 I want to give you a little background on
9 maintenance-of-way work. Maintenance-of-way work is
10 generally divided into two categories, in two areas. One
11 typically referred to as basic maintenance consists of the
12 routine day to day maintenance and repair typically
13 performed by our headquartered crews working over
14 territories that over history were called sections.

15 The other is generally referred to as production
16 work. This is well understood in the industry as work that
17 involves the performance of the same repetitive function
18 much like a moving assembly line to repair, replace or build
19 track, whether it is ties, one tie after another, whether it
20 is rail, mile, mail after rail, or surfacing, miles of
21 surfacing. This type of work is usually but not always set
22 out in a program and then into a more specific schedule
23 subject to change for operational or other reasons.

24 Because the tasks are repeated over and over
25 again, the crews get more efficient and cover larger areas

1 of track in a shorter period of time every season. This is
2 important and it is important because it's better for our
3 customers because the faster we can get through this, the
4 less time our tracks are out of service and it means the
5 trains can run on time.

6 The difference between the basic maintenance and
7 the production crews is rooted in history and in a different
8 era when our society wasn't as mobile as it is now. In
9 those days what many of the railroads called "extra gangs"
10 came in and performed the construction and repair and
11 replacement work. In those days it wasn't intended that
12 these extra gangs would be other than seasonal or temporary
13 employees. They would be there only for a given project or
14 series of projects.

15 On the other hand, what were often called section
16 crews or gangs were used to perform the day to day work that
17 comes up. Instead of laying ties or rail in a production
18 type basis, these section crews might replace a couple of
19 defective ties one day, maybe replace a broken switch stand
20 another. They may be called out in the middle of the night
21 to repair a broken rail and then the next day come in and
22 tamp up a switch using power tampers.

23 Typically they perform a number of routine tasks
24 or maintenance tasks on any day, any given day, any given
25 week or whatever. These section crews are located within a

1 given geographical territory as designated by the carriers
2 simply to perform any day to day maintenance to keep the
3 track in service within the limitations of their size, their
4 equipment, their competence on an unscheduled, as needed
5 basis.

6 Now it may be easier for you to understand if we
7 analogized the process at least to a street maintenance
8 crew. For example, the equivalent of a section crew that
9 does routine day to day maintenance would be a city street
10 maintenance crew that would come in and maybe they would
11 repair a pothole, fill in some cracks, put up some street
12 signs, maybe paint some crosswalks all in the course of a
13 week of coming in to work, maybe on a one day type of
14 arrangement.

15 On the other hand, if you were going to rebuild
16 the street or if you had 1000 potholes up and down for miles
17 around and you decided that what you wanted to do was set up
18 a crew that would literally go from -- you would give them
19 the equipment and they would literally start at one end of
20 this road and start filling potholes from there to as far as
21 that road goes until they have got all the potholes cleaned
22 up. In our view that is the equivalent of a production
23 gang. It is not a perfect analogy but we hope that it
24 conveys the basic difference between the two.

25 There are many types of production crews and one

1 small subset of production crews are what we call the
2 regional system gangs. Regional system gangs are simply
3 production crews that cross seniority district lines. Mr.
4 Cross showed you the CSX. BN does not have quite as small
5 seniority districts as they have, but we too need to cross
6 our seniority district lines with these regional system
7 gangs.

8 All of our railroads, every one of them, have
9 multiple geographical territories that define the seniority
10 districts of our employees.

11 These are gangs that as they cross the seniority
12 district lines projects are such that sometimes you can get
13 a project that is located all within one seniority district,
14 but sometimes, more often than not, you have got projects
15 that turn around and span many seniority districts in order
16 to utilize the equipment and we need to be able to go across
17 those seniority district lines.

18 This could be rail relay. It could be replacement
19 of hundreds of defective ties. It could be undercutting.
20 It could be in-track welding. It could be surfacing. The
21 list goes on forever. It is the process that governs what
22 type of process are you doing. It's not day to day
23 maintenance. It is an assembly line, production type
24 operation.

25 It is more efficient and productive to have a

1 single gang follow the project as it moves across these
2 seniority districts rather than use a new gang in each
3 district. It breaks up the flow of the whole operation.

4 The need for these region system gangs is
5 important for a number of reasons.

6 Number one, productivity. As a practical matter,
7 changing members on a gang at any given boundary slows the
8 work and increases cost by reducing employee productivity.
9 Like many jobs members of a gang continue to build on and
10 apply the experience that is acquired as the project
11 progresses. The longer a person is on a given position, the
12 more productive they can become.

13 If an employee is replaced, it take time for the
14 replacement to learn the necessary skills in many cases and
15 to become familiar with the project, the equipment, and
16 their coworkers.

17 Some may be returning from furlough and may be
18 inexperienced and unfamiliar with the project and even
19 unskilled in the new assignment. Even qualified
20 replacements will take some time to become as productive as
21 the incumbent of a position as he acquires familiarity with
22 the work or the machine as he is working.

23 Before PEB 219, we often had to duplicate
24 expensive equipment in multiple seniority districts when we
25 could have used it systemwide. The efficiencies in avoiding

1 this duplication frees up money to put into other projects
2 including track improvements which create more work
3 opportunities for our maintenance-of-way employees and also
4 improve customer service.

5 Moreover, the problem can get worse if the
6 positions involve a more sophisticated machine, but it is
7 not just the sophisticated machines. It's even on the
8 smaller gangs. It's even losing one or two people on a four
9 person surfacing crew can seriously affect our productivity
10 and our efficiencies.

11 Number two, these gangs help us with our timing
12 problems and work delays. Under the old regional gang rules
13 and the regular schedule agreement rules, timing problems
14 can arise as a result of the bulletining, bidding and
15 awarding of positions that we have to do under our seniority
16 systems.

17 Timing becomes critical because it is not
18 difficult to see that the ongoing process of bulletining,
19 bidding, and awarding positions can get complicated and
20 valuable work days could be lost. All of those take time.
21 We have time limits in which we have to post bulletins. We
22 have got time limits in which we have to award the positions
23 and then get the employee to the job.

24 This can be aggravated by ordinary day to day
25 equipment failures, weather problems and any other work

1 problems at the job site. If gangs remain intact, however,
2 these problems would be minimized as would the periodic
3 manpower shortages on particular seniority districts at any
4 given time and the increased costs occasioned by delays that
5 prevent full use of the equipment.

6 Number three, it helped us avoid employment and
7 project disruptions as well. Any lack of stability on these
8 gangs disrupts the continuity of the work being performed.
9 As one employee moves to a vacancy the cascading effect of
10 the vacancies and movement of employees results in a total
11 disruption of not only that job and those positions but the
12 corresponding jobs and positions on those projects as well.

13 New members of the gang need to be retrained or at
14 least refamiliarized with the work and the result is
15 increased cost and delays in the project.

16 For example, on BN we provide a wide range of
17 training to our regional system gangs. Mr. Bell will take
18 just a couple of minutes to explain to you what we do on the
19 BN and Santa Fe in this regard.

20 MR. BELL: Safety is a very important part of
21 system region gangs. On Burlington Northern Santa Fe before
22 any gang starts their production work of replacing ties,
23 rail, or undercutting on any region system gang they go
24 through safety training. Most of this training can be used
25 both on the job and at home. There are 27 courses to

1 complete.

2 A few of these are: CPR, first aid, hand tool
3 safety, back training, defensive driving, lockout/tagout,
4 preventive maintenance on their machines, and many others.
5 This training is very beneficial to both the employees and
6 Burlington Northern Santa Fe.

7 MR. STARKOVICH: But it is not just the training
8 that is beneficial to these employees. Leaving the gangs
9 intact actually benefits the employees in another way, by
10 stabilizing the work force with longer term, more
11 predictable employment.

12 Instead of disbanding one gang to form a new gang,
13 going through about four weeks of bidding and bumping
14 procedures whenever the work crosses an invisible seniority
15 district boundary line, we no longer have to disrupt our
16 entire work force.

17 There is another advantage as well that the BMW
18 never mentions and that is the fact that many of the
19 employees bid on these gangs together. They have -- whether
20 you want to call it the "buddy system" or whatever, there
21 are people that they like to work with. They become friends
22 with them. They share travel arrangements. They generally
23 go to these gangs and work together because they like being
24 with each other and if they are going to have to work.

25 Simply put, they enjoy the regional gangs.

1 Having to restaff these positions from time to
2 time merely increases our cost, slows our work by reducing
3 employee productivity. It creates manpower shortages and
4 duplications. It disrupts the employment continuity and
5 project continuity and most importantly it adversely affects
6 our employee safety.

7 Most of these problems can be avoided by leaving
8 intact these gangs over the larger territories and PEB 219
9 allowed us to do more of that.

10 Mr. Bell has an example now of one such gang on
11 BN. It's a curve relay gang that shows just a few of the
12 productivity savings that we enjoy by being able to utilize
13 these work rules.

14 MR. BELL: There is a chart on the easel and also
15 six pages down you have it in your handout -- it looks like
16 this.

17 On this example you will see how production
18 improves after two or three months of work and everyone on
19 these gangs learn to operate their machines and reach full
20 production.

21 This is a curve relay gang on Burlington Northern
22 Santa Fe replacing rail on wood ties. The gang costs
23 \$13,800 a day in labor.

24 Now as you look at the graph, you can see the
25 production has improved by 25 percent from the time the gang

1 starts until it reaches full production, which happens in
2 two and a half months.

3 If you apply the savings of not starting and
4 training new people, by being able to cross seniority lines
5 and apply it to all the curve gangs on BNSF, the savings for
6 the 14 gangs would be \$3 million a year.

7 If we use the same startup savings in reaching
8 full production for all of the system region gangs the total
9 savings is \$14 million for the work season of 1996 for
10 Burlington Northern Santa Fe.

11 MR. STARKOVICH: I think it is pretty apparent
12 from looking at that chart what this really means to us in
13 terms of productivities and efficiencies. All of that is
14 money that we can now have available to pour back into the
15 infrastructure, which really creates more work opportunities
16 for our employees.

17 The last area that we think really gets improved
18 by using regional and system gangs or at least has an effect
19 on it is in the safety area. I think all of the individuals
20 up here have relayed that to you but we just wanted to
21 emphasize it once more, that as individuals move to a new
22 position there is this natural learning curve that
23 accompanies working a position.

24 As employees learn and relearn how to operate
25 equipment, there is a corresponding effect on the safety.

1 Our safety records since PEB 219 that we have already shown
2 clearly show fewer safety-related problems with these gangs
3 that remain intact over a larger territory.

4 Part of that success can be attributed to the
5 training but part of it has to do with the employees working
6 together, getting to know each other, getting to know the
7 process and not being disrupted by people dropping in and
8 moving out and dropping in and moving out.

9 They begin to work as a team, as an assembly line
10 type operation. What else do we need to do? Well, the
11 carriers believe that we need to go the next step in the
12 process. Actually, we need to get what we thought we got
13 out of PEB-219. We need to clarify what production gangs
14 are. And number two, we want this Board to let those of us
15 that have been working with PEB-219 region system gangs,
16 keep those rules as well as the rules we had in effect
17 before and let those railroads who had elected to keep their
18 old rules also be able to take advantage of the regional
19 system gangs, as well.

20 We think both sets of rules should be left in
21 place and the efficiencies we can get. It does not make any
22 sense to turn around and make us pick and choose in terms of
23 one or the other, when it can make sense for all of our
24 employees.

25 First of all, on the clarification of production

1 gangs, we think a production gang should be any gang that
2 does any repetitive work, any work that's done over and over
3 again that is not routine day-to-day maintenance. We think
4 that's a simple definition. We think that's one that will
5 work. We think it's one that turns around and reflects what
6 the parties know production gangs to have been.

7 This has been a very contentious issue between the
8 parties. We've had more arbitrations on what constitutes a
9 production gang than just about any other, at least for me,
10 and it's kept my attention diverted from some other things
11 that I should be doing.

12 But in any event, in our view, it does not matter
13 what the size of the gang is, how many machines are on the
14 gang. It's the process that governs. It's the process of
15 assembly line, tie after tie, mile and mile after rail, mile
16 and mile of rail, over and over again, surfacing, mile and
17 mile of surfacing. It's anything that's not the routine
18 day-to-day maintenance that was performed by our section
19 crews.

20 Prior to PEB-219, the unions, the railroads, and
21 the employees knew exactly what a production gang was and
22 what they did. It was only after PEB-219 that we got into
23 this big argument as to what constituted a production gang,
24 and I think it's fairly self-evident why that is. Most of
25 the work rule flexibilities that we got out of PEB-219 were

1 connected to what was a production gang.

2 The BMW came before you last week and told you
3 that they did whatever they thought they needed to do in
4 order to turn around and impede the process of implementing
5 the work rule changes of PEB-219, and, in the process, in
6 terms of implementing all of that, we lost sight of what a
7 real production gang is, but not from the standpoint that
8 everybody knew what it was to begin with.

9 We all knew what it was before PEB-209, which was
10 some years ago. We all knew what it was before PEB-219.
11 You heard Mr. Hopkins say that we put forth a definition
12 before PEB-219 and nobody challenged that definition. You
13 could take any employee off the track and ask them whether
14 or not they thought something was a production gang and they
15 could tell you. It was only after it was hinged to the
16 productivity rule, the improvement in work rules that we got
17 out of PEB-219 that it became an area of dispute.

18 This Board needs to put to rest any hint of any
19 artificial restrictions, such as the number of machines,
20 gang size, whether it's a two-person crew or a 150-person
21 crew. If the work that's being performed is not day-to-day
22 maintenance and if it involves a repetitive type of work, it
23 should be a production gang.

24 The second piece that I mentioned that we needed
25 to get was the carriers need to be able to use both the PEB-

1 219, the regional system gang rules, and be able to utilize
2 their pre-PEB-219 regional system gang rules, as well, or,
3 for those carriers who had to take the Hobson's choice, they
4 should be able to utilize both of them, depending upon the
5 circumstances and what makes good business sense. That's
6 where we need to get in this industry and we need to get
7 there as quickly as we can.

8 After PEB-219, the Contract Interpretation
9 Committee ruled that the carriers could not use both of
10 their rules. They had to elect, without knowing what the
11 rules would be, what would apply.

12 The BN and Santa Fe, the N&W portion of the NS,
13 and the CSX decided that we would take the risk and we went
14 ahead and took the regional system gang rules of PEB-219.
15 Other railroads did not, and we've noted that the UP did not
16 take that chance. They decided to keep their old rules.

17 But the UP has had system-wide gangs on the old UP
18 for over 60 years. And Mr. Gary Lilly is with us here from
19 the UP and he's going to talk to you briefly about their
20 experience with their system-wide gangs.

21 Mr. Lilly?

22 MR. LILLY: Good afternoon, Mr. Chairman, Board
23 members. As John mentioned, we've had regional and system
24 gangs on UP proper line for over 60 years. Those are the UP
25 lines that were owned before we merged with the Missouri

1 Pacific, MKT Railroad, the Chicago and Northwestern, and
2 some of the other former railroads.

3 If we also had been able to use PEB-219 procedures
4 in 1991, that might have given us a little more flexibility
5 to establish regional and system gangs on UP proper. But we
6 couldn't risk losing the rights we had before, we had for
7 more than 60 years, just on a chance that we might get the
8 BMW to agree to establish new ones or persuade an
9 arbitrator to do that, especially before we knew whether the
10 CIC or other arbitrators would impose major restrictions on
11 the new gangs.

12 Even if this Board clarifies the definition of
13 production gang the way the carriers propose, we ought to
14 have the right to try PEB-219 procedures without giving up
15 the regional system gangs we already have on the UP proper.
16 This would allow us to increase our productivity and offer
17 better work opportunities to even more MW employees, and
18 that goes double for the rest of the UP system.

19 We don't have as much flexibility to establish
20 regional and system gangs there as we do on the UP proper,
21 but we shouldn't have to give up that flexibility to try to
22 establish more gangs under PEB-219 procedures. That just
23 wouldn't make sense. I'd urge the Board to give us that
24 option.

25 MR. STARKOVICH: We would submit there is no

1 reason why the carriers shouldn't be allowed to utilize
2 both. Regional system gangs are good for our customers,
3 they're good for the carriers, and they're good for the
4 employees. We think the Board should give all carriers the
5 right to take the PEB-219 gang rules without losing the
6 rights they had before PEB-219 or the rights they are using
7 now in lieu of the PEB-219 regional system gang provisions.

8 This includes Conrail. It is interesting that
9 Conrail has had relatively few disputes as to what a
10 production gang is and it's working pretty well on their
11 railroad, as well. But Conrail does have some limiting
12 fixed geographical zones which are now causing them some
13 problems, as well. As business needs change and as the
14 railroad expands, downsizes, reorganizes, artificial
15 boundary lines, such as they have with their zones, ignore
16 the work place realities and they make things inefficient.

17 Conrail should have the same flexible territories
18 as the rest of us have.

19 In conclusion, we need to know that a production
20 gang is any gang that performs repetitive work which is not
21 routine day-to-day maintenance. We also need to have the
22 flexibility of retaining pre-PEB-219 and post-PEB-219
23 regional gang options.

24 Before we totally conclude, we have a significant
25 portion that we'd like to go through and go through the four

1 restrictions that the BMWWE has suggested to you should be
2 imposed on the regional system gang provision that we
3 already have. We think that the four restrictions that they
4 suggested are ridiculous. We think they would literally
5 shackle us with rules more restrictive than we had even
6 before PEB-219.

7 Those four unacceptable restrictions include
8 limiting our production gangs to 20 or more people, limiting
9 them to just rail and tie out-of-face, limiting their
10 geographical territory to a 200-mile radius, and, fourth,
11 eliminating the bid-and-hold provisions, even though it's a
12 limited 90-day period.

13 We will go through each of those four restrictions
14 and try to explain why they would be unacceptable to us and
15 why they are nothing more than an attempt to turn back the
16 clock, not only to pre-PEB-219, but even further, to the
17 point of restricting and, in some respects, eliminating what
18 we had before PEB-219.

19 It would not be good for our employees or us
20 because it would mean more gangs, with more turnover and
21 shorter seasons. It would mean higher costs and it would
22 interfere with our efforts to improve our safety
23 performance.

24 Going to the first restriction that they propose,
25 it's a geographical limiting, the 200-mile radius. This

1 would do nothing more than put the industry in a worse
2 position than before PEB-219. We would have to spend large
3 amounts of money to buy additional equipment.

4 The learning curves that we talked about would
5 become employees would work shorter seasons, just like
6 before PEB-219, because their work opportunities would be
7 limited. Some of those employees may not even earn a
8 vacation or qualify for a vacation.

9 As far as the day-to-day effect on the railroad
10 operations, I think I will let Mr. Woods and Mr. Bell
11 explain why they cannot live with it, from their
12 perspective.

13 Mr. Woods.

14 MR. WOODS: Mr. Chairman, BMW has requested that
15 regional and system gangs establish a 200-mile radius to
16 work in, radius circle to work in. This not only would
17 create more confusion and fewer work opportunities for our
18 employees, but would be a worse situation than we had before
19 PEB-219.

20 We've got a copy of Employees' Exhibit Number 13,
21 tab 5, up on the board and I will try to show you what I
22 mean. Right now, we have seniority districts that run from
23 -- the Nickel Plate runs from Buffalo to St. Louis. Wabash
24 runs from Detroit-Kansas City. The N&W runs from Norfolk to
25 Sandusky.

1 There is a circle here, but a definition of a
2 regional and system gang is one that crosses seniority
3 limits. This circle here doesn't cross the seniority limit.
4 So we couldn't work a regional or system gang there.

5 I've been on the railroad for 30 years and we've
6 been able to start a gang in Norfolk, if we wanted to, and
7 work them all the way to Sandusky on the former N&W.

8 If we wanted to make this circle where people
9 could be at the regional and system gang, we'd have to move
10 it westward. So at least part of it would cross here at
11 Bellevue, and if you did that, you would eliminate all these
12 folks between Petersburg and Norfolk from bidding on those
13 gangs.

14 And I guess we figure we don't want people from
15 Paynesville to Buffalo bidding on them, because we don't
16 have a circle here. We'd have to have another circle for
17 those folks. And we've left out Chicago, the folks up
18 there. So we'd have to have another circle. We'd wind up
19 with five or six circles by the time we got this thing
20 going, and I don't believe I'm smart enough to manage it.

21 I know one other thing. If I called my folks
22 today and told them, all right, any of you working 200 miles
23 away from home or working 200 miles away from this magic
24 center of this circle, you're cut off, we're going to cut
25 you off, get off your machine and go home, I guarantee you

1 they'd come up here and hang me before I got out of
2 Washington, and they ought to. It's just foolish to do
3 this.

4 Our folks want to work year-round. They want to
5 work every day they can, and you can't do that by putting a
6 chain around their neck and say you can't go but 200 miles.
7 They come to work on the railroad, they know the railroad
8 covers many states. It's a traveling job. I knew when I
9 was hired on, these other people know it. We've lived out
10 of suitcases and it gets in your blood and you enjoy that
11 type of work. My people like these gangs and this is just
12 foolish. That's about all I can say for it. We ought to
13 reject it out of face and let our people work the days that
14 they can work.

15 Thank you.

16 MR. STARKOVICH: Mr. Bell is now going to give you
17 a few brief comments, as well.

18 MR. BELL: We would look at BMW's Exhibit Number
19 14. I have a template here that is a 200-mile radius.
20 That's BMW's proposal and should be the work area, and it
21 fits there. This map shows, in red, the schedule for RP-
22 32, which is one of our relay gangs on concrete ties. And
23 you can see, if you use this template, this first work area
24 would be for a period of four months. That would be gang
25 one.

1 Then you would have to form another gang over here
2 to the left, which would be gang two, and that would be a
3 three months work area. Then you would have to form the
4 third gang, organize the third gang here in Oklahoma for
5 eight days. And then, of course, the fourth gang would be
6 formed down to the bottom here, and that one would be 45
7 days.

8 So you can see by this, if you use a 200-mile
9 radius, you would have to form four different gangs, you'd
10 have to go through the extensive learning curve to get them
11 for the production area, and one of them is only eight days
12 long, and, also, all four gangs work less than six months,
13 which is required for region and system gangs.

14 This would be very expensive for Burlington
15 Northern, Santa Fe, and it would be bad for our maintenance-
16 of-way employees, because it would have a very short work
17 period.

18 MR. STARKOVICH: Thank you Dewayne. The BMW
19 proposal goes even a little further, though. It not only
20 wants to do away what we got, what those of us who elected
21 to take with PEB-219 regional and system gangs, but it also
22 is proposing that that's the system that gets applied on all
23 the railroads and that the UP, who did not take the regional
24 and system gangs, also has some comments as to what it would
25 do to them if you were to turn around and reduce them to a

1 200-mile radius.

2 Mr. Lilly.

3 MR. LILLY: Thanks, John. The union's proposal
4 that all production work be done in a 200-mile radius circle
5 would be absolutely unworkable on the Union Pacific. It
6 would be devastating for our employees and devastating for
7 the railroad.

8 My railroad runs mostly in long straight lines.
9 That means a 200-mile radius circle will have only about 400
10 miles of track. Such a small amount of track does not
11 provide very much production work. So the members of our
12 production crews would have very little work opportunities.

13 Let me explain the effect in human terms. We now
14 have over 2,000 production employees. Almost all of them
15 work a full year. If we had 200-mile radius circles, only a
16 very small percentage of them could work for a full year.
17 Many of them would get only one to two months of work and
18 some of them none at all.

19 You should also know that many 200-mile radius
20 circles on the Union Pacific do not have enough employees
21 living in that area to make up a full production gang. A
22 good example is Wyoming. It is very sparsely populated.

23 Under the BMWWE proposal, it would be hard to fill
24 these gangs with employees outside that area because who
25 would want to travel very far for a job for only a month or

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1 two work. Obviously, this would make it difficult to get
2 our work done in some places.

3 The BMW proposal would turn our full-time
4 production force into a group of part-time employees. This
5 would be bad for our employees and bad for the railroad.
6 Employees would start leaving the railroad to take full-
7 time jobs somewhere else. The best employees would probably
8 leave first. The results would be a depleted work force
9 manned largely by people with little experience.

10 The BMW proposal would also make it very
11 difficult to use our equipment safely and efficiently.
12 Moreover, we would have to buy more equipment than we need.
13 I urge you not to make a recommendation that would deprive
14 our employees of the work they want and turn them into part-
15 timers.

16 MR. STARKOVICH: I think you can tell from the
17 presentations of all these gentlemen that basically what the
18 BMW is asking you to do is to turn back the clock. They
19 claim they want to keep the employees close to home but that
20 doesn't make sense to us if it means shorter work seasons,
21 fewer work opportunities, placing employees in furlough
22 status. Turning back the clock doesn't make sense at all.

23 We used to have regional gangs on the former
24 Burlington Northern piece of our property just like the NS
25 did. The BMW's proposal would really hit us.

1 Mr. Bell will show you that even if we did not
2 have PEB 219, the effect it would have had on us, what this
3 proposal would have on us under those old rules.

4 MR. BELL: I need to go to the chart here so you
5 can see this radius.

6 This is a map of the former Burlington Northern
7 that shows their old region gang districts by color. I hope
8 you can see it from where you are. But I have a radius here
9 that is 200 miles and I am going to show you how it would
10 fit where our old region gangs used to be able to work prior
11 to PEB 219.

12 As you can see, if you put that on this map, the
13 area that would be outside of this circle on these old
14 seniority districts would be very large. It takes in three-
15 quarters of most of the seniority districts. As you move it
16 around the map, you can see by the color what is still on
17 the outside of the 200-mile radius.

18 As you can see, this would give us a lot more
19 problems of trying to rebuild these gangs and everything as
20 they would reach these imaginary lines. It just doesn't
21 make sense for us to end up with something less than we had
22 prior to PEB 219.

23 MR. STARKOVICH: I am going to clarify something
24 that Mr. Bell said. Those are regional gang territories;
25 those are not independent seniority districts that you see.

1 Those are an agreement that we had in place that turned
2 around and allowed employees to work those regional
3 territories.

4 It does illustrate one basic step here and that is
5 that it is turning back the clock. Even their current
6 proposal would not put us in as good a position as we were
7 before PEB 219. It would put us in a worse position than we
8 were before. That doesn't make sense.

9 If you look at those, if you look at our 1996 work
10 schedule, our work schedule, we took the maximum distance
11 between the starting points and the ending points of our
12 1996 regional system gangs and averaged them all. We ended
13 up with an average of 663 miles. If you turn around and
14 averaged those territories, those territories average 621
15 miles but the efficiencies come without having to turn
16 around and cross those artificial barriers that they keep
17 wanting to put in. Whether they are circles or whatever,
18 they have to be able -- the rail runs in a straight line or
19 curves around. It does not -- it is not situated on a given
20 point. The railroad doesn't go around in a circle. It goes
21 from here to there and that's where the work is.

22 There are also -- we have also heard about the
23 distances involved but these aren't -- we also have some
24 gangs that go longer than 660 miles, 700 miles. We have
25 some gangs that go 1,265 miles. But there are always

1 legitimate business reasons why we do this. We don't go out
2 of our way to make these territories unduly long or anything
3 like that. We do them based upon the work, we do it based
4 upon utilization of our equipment, we do it based upon the
5 work season.

6 Up there, we have winter and you've got to get the
7 work done when the sun shines, so to speak, because when
8 winter hits, it makes it a lot more difficult to get it
9 done. We do it to be able to serve our customers because
10 available track time is precious time and between the
11 seasons and being able to run trains, you've got to get on
12 there and get it done in the time you have available to you.

13 Also, when you take a look at putting these gangs
14 together under the work force stabilization, we have to
15 afford these folks six months of work opportunities. So in
16 order to put it together sometimes when you're using a
17 certain type of equipment, you are not going to be able to
18 get six months' worth of work in all in one place. Work
19 will go from whether it's Pensacola, Florida, on its way up
20 to Seattle, you have to go where the work needs to be
21 performed. That's what happens. The rail wears out at
22 different cycle times and we have to get it fixed where it
23 wears out and when we have to do it, not conveniently in
24 200-mile radiuses as the BMWWE would suggest.

25 The other thing that causes us to go these longer

1 distances is the specialized equipment. They use all sorts
2 of equipment in this operation and it is really amazing to
3 watch. For a pencil pusher, I always get a kick out of
4 taking a look at some of this machinery but I want to call
5 your attention to three particular types that we use on BNSF
6 and I think most of the other carriers use as well.

7 One of them is the P811 and what the P811 is, it
8 is a concrete tie laying machine. What it does is it turns
9 around and it picks up the old ties, goes on the track,
10 mechanically picks up the old ties, pulls them out, relays
11 new ties underneath it, new concrete ties.

12 This machine, there are only three of them in the
13 United States today. They cost about \$5 million. In order
14 to turn around and justify and in order to take advantage of
15 the efficiency of that machine, you have to be able to use
16 it where you need to lay concrete ties.

17 You don't lay concrete ties all over and you don't
18 lay them for beginning to end for 1,000 miles.

19 You have a section where you have to lay them in
20 and then you turn around and go to another section, but it's
21 a specialized machine and the group that works with that
22 specialized machine, the support groups that go with it need
23 to work together.

24 There's also the undercutters. The undercutters,
25 there are only -- BN has five of those. The most expensive

1 undercutter will run you \$7 million. What an undercutter
2 does is an undercutter goes in and, in addition, where you
3 have your track and your ties, you also have the ballast in
4 between the rocks and that stuff, and that's to turn around
5 and make sure that there is drainage.

6 And what an undercutter does, the undercutter goes
7 in, lifts up the ties and the track just enough to pull that
8 ballast up and it pulls that ballast, those rocks, and puts
9 it back into the undercutter and then it puts them through
10 some shaker screens, which basically takes the dirt out of
11 the ballast is what it does, and then it replaces the
12 ballast back in, because any kind of dirt or anything else
13 that would follow the ballast turns around and impedes your
14 drainage and if you don't have good drainage, it turns
15 around and causes all sorts of problems with your road bed,
16 and that's when you start to have problems.

17 Another machine that we use is -- and there are
18 only four of these in the United States -- is what we call a
19 TLM, which is actually a new track construction machine.
20 They cost about a million dollars each. But to maximize the
21 use of this type of equipment -- basically, by the way, a
22 new track construction machine lays ties. It's kind of a
23 half of a P811. It just lays new ties, because there are no
24 old ties to pick up on new track construction.

25 But in order to maximize the use of this equipment

1 and any other equipment, even as small as a surfacing or a
2 tamper or whatever, we need them to be able to cover the
3 broad territories. We can't keep using inexperienced people
4 on them if we're going to achieve the productivity rates
5 that we need to.

6 In fact, as I said before, work seldom arises in
7 neat little packages of 200-mile radiuses, as the BMW
8 suggests. Their proposal would simply nullify the PEB-219
9 rules.

10 The next thing that the organization maintained
11 that we should be restricting is they think we should limit
12 the gangs to 20 or more. I don't know that we have to get
13 into that again that much. Production gangs, as I've said
14 before, have never meant crews with 20 or more people. Any
15 crew that does repetitive work is a production crew and any
16 crew that does routine maintenance is not a production
17 crew.

18 We have a lot of production crews that have fewer
19 than 20 people. We're going to give you a few examples.
20 Mr. Bell has got two or three examples that he's just going
21 to give to you to give you some idea what we're talking
22 about.

23 MR. BELL: Gangs less than 20 persons, B&B gangs,
24 surfacing gangs, undercutter gangs, field welding gangs, to
25 give you a brief description of a few of these.

1 B&B gangs; these gangs do program work, such as
2 renewing timber bridges with new concrete bridges. This is
3 a very repetitive work. One gang drives piling and welds on
4 the pre-cast caps. Another gang may tear out the old wood
5 bridge and set the new pre-cast concrete bridge. These
6 gangs also replace ties and stringers on wood bridges.
7 These are usually five to nine-person gangs.

8 Surfacing gangs; this is the same kind of gang
9 Bruce showed you in his video. These gangs can be very
10 large or as small as three persons. They would consist of a
11 foreman, tamper operator, and a ballast regulator operator.
12 The tamper raises the track structure and tamps the ballast
13 back under the ties to hold the track at the new surface.
14 This gang takes out the irregularities of dips and
15 misalignments of rail and reshapes the ballast. This
16 repetitive function is the only work this gang does.

17 The undercutter gang, John just explained that to
18 you. Field welding gang; this gang welds two rails end-to-
19 end together in the field. This is a process using a small
20 steel-making furnace that produces molten metal used to fill
21 the gaps between the two ends of the rail. This is a very
22 precise process. Everything is done in sequence and timed
23 to the second.

24 This again is repetitive work. The procedure is
25 performed the same way over and over again. This work can

1 be performed by a two-person or can be much larger,
2 depending on the needs.

3 MR. STARKOVICH: I went into a lot of deal on the
4 -- a long explanation on the undercutters, because as one of
5 your handouts, we have an undercutter. But let me just show
6 you briefly. I can do it without even referring to your
7 papers, if you'd like.

8 This would be an undercutter gang. As you can
9 see, this would not qualify as a regional system production
10 gang because it doesn't have the 20 people that the BMW
11 says that regional system production gangs have to have. So
12 that wouldn't be a production gang or regional system
13 production gang. This wouldn't be a regional system gang.

14 But lo and behold, I kind of feel like David
15 Copperfield here a little bit, if you put them together, if
16 you magically put them together, all of a sudden, that
17 becomes a regional system gang, because there's more than 20
18 people.

19 This wasn't and this wasn't. Why does magically
20 putting them together make it one? It's the process that
21 governs, now how many people are on there. It's a
22 repetitive function, it's a production function, and that's
23 what you govern, not these kinds of artificial restrictions
24 that they're suggesting with you here today.

25 The next restriction that they ask you to impose

1 is they say it should be confined to rail and tie out of
2 face gangs. What's on a face? Your guess is as good as
3 mine. I had asked the engineering folks to explain to me
4 what out-of-face was. I first encountered that term when we
5 got into some arbitrations over the regional system gangs,
6 and I will try to explain it to you in the words that they
7 gave me.

8 One of the engineers told me that he viewed out-
9 of-face as being continuous work, mile after mile, whatever
10 it is, whether it's rail, tie or whatever. One of the other
11 engineers told me, well, it involves several miles all at
12 once, it's not spot work, it's kind of scheduled. One of
13 the other engineers told me that, hey, you take a given
14 geographical area and you just turn around and you start in
15 that geographical area, you repair or you replace everything
16 there. He said you take two mileposts and you repair all
17 the ties or replace all the ties or you replace all the
18 rail.

19 But after that long explanation, it really doesn't
20 matter, because this out-of-face is nothing more, in my
21 opinion, than one more attempt to turn around and frustrate
22 the utilization of these rules.

23 Whether it's out of face or not out of face
24 shouldn't govern this thing. The repetitive aspect of it.
25 As a matter of fact, arguably, arguably the gang that

1 Mr. Bell talked to you about before, the curve relay gangs
2 that he showed you the productivity improvements, the money
3 that we save, arguably, and I bet we'd end up at arbitration
4 over it, that would not be out of face because what that
5 curve relay gang does, it will go down the track and it will
6 replace the rail on curves at one point and maybe do two or
7 three of the curves in a row and then maybe they won't do
8 another curve and then maybe they'll do two or three curves
9 after that and then maybe they'll skip a couple others.

10 But it doesn't change the nature. It is still in
11 production type mode. It is still going down the railroad
12 in a repetitive function all the way down. But we couldn't
13 get -- those kinds of gangs wouldn't be included if you take
14 this restriction that the BMW is suggesting it would be a
15 terrible setback for us.

16 Last but not least, the fourth restriction that
17 the BMW is asking for is the bid-and-hold that they would
18 like to do away with. They want to eliminate the bid-and-
19 hold's rule that the BN, the CSX and the N&W have and the
20 N&S have on our railroads. We think bid-and-hold is good
21 and we think some of our employees think it's good too. The
22 employees know they can't be bumped, they know where they're
23 going to go to work, they know they're going to have six
24 months' worth of work. That's good.

25 Whether you're an older, more senior employee or

1 whether you're a younger employee, knowing that somebody is
2 not going to swoop in and displace you, you know what you're
3 going to be doing and we think that's good. Employees like
4 it and they like knowing where they're going.

5 On BN, our bid-and-hold allows us to have people
6 stay on the gangs for 90 days. That's not the entire work
7 season, that's 90 days. I don't think that's -- we don't
8 believe that that's such a long period of time that -- and
9 after that, the employees can bid off if they get the
10 opportunity. If you recall Mr. Cross's presentation here,
11 he told you that over 50 percent of the employees on his
12 system gangs, on CSX, voluntarily leave their headquarter
13 points, the jobs that are close to home, and they go to
14 these gangs.

15 Employees can get hardship releases. I know on
16 the BN, if an employee has a reason to get off, the parties
17 get together and talk about giving them a hardship release.
18 Now they don't get hardship releases in every case but we do
19 talk about it and there is a provision for it and they get
20 them oftentimes.

21 The bottom line is this. It's the bid-and-hold
22 provisions that we do have we got either through agreement
23 with the BMWE or through the arbitration process. They
24 weren't unilaterally imposed; they were put in either of
25 those two ways. It is essential for the project continuity

1 to keep those bid-and-hold rules, to keep the gangs together
2 and to improve that continuity.

3 The rules are necessary for stability and
4 productivity. Any increased turnover causes you more
5 delays, less productivity and those learning curves, over
6 and over and over again. Our employees are not sandbagged
7 by these rules. They know they're there when they bid on
8 them. Many stay for the entire season. They know they are
9 going to be working away from home and they know their jobs
10 aren't unlike other people in the construction industry,
11 over-the-road truck drivers, highway workers and many
12 others. They are fully aware of all those conditions and
13 they still bid freely to them. As a matter of fact, the
14 percentage is close to 100 percent if you turn around and
15 combine all the carriers as the numbers indicated.

16 The BMW proposal would turn back the clock,
17 reduce productivity, result in more gangs and more people,
18 but they would be working less and earning less. Our
19 conclusion, where does that leave us? It leaves us at the
20 carriers' proposal. We ask you to define production gangs
21 as any gang that does a repetitive function and is not
22 involved in day-to-day routine maintenance, regardless of
23 how many employees or how many machines. We ask you to give
24 the carriers the flexibility to utilize both the PEB 219
25 regional system gang rules and also any other regional

1 system gang arrangements that they had in place before or
2 currently have in place.

3 The reasons for this are undeniable. Work is more
4 stable, there is more work with good pay, there is more
5 productivity, there is better customer service and there are
6 less disputes between the parties. It expands PEB work rule
7 benefits to more railroads and to more employees.

8 We urge the Board to reject the BMW's proposal
9 and adopt the two proposals that we have suggested and we
10 think it's right for the industry and for our employees.
11 And, with that, I will close.

12 CHAIRMAN TWOMEY: Thank you, John.

13 Any questions?

14 BOARD MEMBER HOBGOOD: One, I don't recall that
15 the organization addressed this question but it -- have the
16 carriers done any assessment of the employment implications
17 either under current conditions or under those proposed by
18 the organization? In other words, how much -- what impact
19 would it have on numbers? You mentioned in your closing
20 comments that the organization's proposal would increase the
21 number of gangs, increase the number of people but reduce
22 the amount of work that they would do.

23 You have addressed productivity, you have
24 addressed safety, you have addressed the length of time they
25 will be working but have you addressed in specific terms the

1 employment implications of either your position or the
2 organization's position?

3 MR. STARKOVICH: Mr. Hobgood, we have not. The
4 200-mile radius proposal that we saw before this Board is
5 the first time it was proposed by the BMW so we have not
6 had an opportunity to turn around and come up with any
7 numbers on that.

8 BOARD MEMBER HOBGOOD: Thank you.

9 CHAIRMAN TWOMEY: Okay, John.

10 I just have one question for Mr. Lilly. On UP
11 proper, on the system gangs there, what is their experience
12 with bid-and-hold? Do they have anything like that?

13 MR. LILLY: No, we do not have bid-and-hold.

14 CHAIRMAN TWOMEY: Thank you, sir.

15 MR. STARKOVICH: Did I answer your question? I
16 could tell by the look on your face that I must not have.

17 BOARD MEMBER HOBGOOD: You may not have the data.
18 I mean, you just may not have examined it, but when you deal
19 with work rule issues, you are obviously dealing with the
20 issues you have addressed, safety, productivity, employment
21 opportunity, all of those things.

22 I would assume that the organization is concerned
23 about all those things as well but I would also assume that
24 they are concerned about the issue of employment, employment
25 opportunity and the number of members that have those

1 opportunities. If you increase productivity under the PEB
2 219 rules, if you increase flexibility, if you have -- you
3 have addressed the issue of safety, the next logical
4 question from their point of view I would assume, and
5 certainly from mine in terms of examining the various
6 options, is what are the employment implications of either
7 having these rules or not having the rules.

8 So if during the course of these deliberations, we
9 can have that information, I think it would be helpful to
10 know what the implications are.

11 MR. STARKOVICH: I think it's safe to say that the
12 overall employment of the maintenance of way employees for
13 all the railroads has been pretty stable. You have no seen
14 ups and downs. It has been pretty stable. We have done a
15 significant amount of hiring on Burlington Northern at least
16 over the last few years so I don't -- I don't think that
17 there is a decrease in the overall employment levels.

18 BOARD MEMBER HOBGOOD: Again, the next level of
19 that is if we were to go in your direction of changing the
20 20-person rule, for instance, then what implications would
21 that have in terms of their employment?

22 MR. STARKOVICH: I would hope that what it would
23 allow us to do is more efficiently utilize our current work
24 force and then, for us anyway, hopefully attrition would --
25 what it would do is it would help us not have to hire as

1 many people.

2 MR. MOORE: We'll address that further at the end.
3 The general principle you're dealing with, of course, is you
4 get a longer work season for the employees and you absorb
5 them as you go along.

6 That is the regional system and gang presentation.
7 Do you want us to proceed, or should we take a break at this
8 point?

9 CHAIRMAN TWOMEY: No, we'll take a break at this
10 time for about 45 minutes. We will be back around 3:25.

11 Thank you very much.

12 [Whereupon, at 2:40 p.m., the hearing was recessed
13 for lunch, to reconvene at 3:25 p.m., this same day.]

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EXHIBIT 13

Before Emergency Board No. 229

WAGE AND RULES DISPUTE BETWEEN RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE AND THEIR EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Introduction to the Work Rules Case

Shea & Gardner

May 1996

The carriers offered the BMWWE substantial increases similar to those tentatively agreed to by the BLE, the BRS, and the UTU, and adopted as to the UTU by Arbitration Board No. 559 in its May 8, 1996 Award (CX 5). The carriers did not insist on major rules relief from those unions and do not insist on it from the BMWWE either. If the pattern is not followed here, however, this Board should recognize, as did PEB 219, that wage increases and continuation of the generous health and welfare benefits provided at carrier expense call for relaxation of restrictive work rules so as to offset at least in part the cost to the carriers of the increased wages and fringe benefits. Although PEB 219 went part way in that regard, unnecessary restrictions that interfere with the flexibility of carrier operations and the utilization of MW employees and equipment still remain. These shortfalls of the current work rules are addressed in the carriers' proposals.

6. The Carriers' Proposals

We merely summarize here those proposals and the reasons for them -- matters that are addressed in depth in other presentations.

(1) Regional and system-wide gangs. In order to take advantage of the regional and system-wide gang procedures recommended by PEB 219, as interpreted by the CIC, the carriers were required to elect to utilize only gangs established under those new procedures and thus abandon existing gangs or procedures; and they had to make that election before arbitration of disputes under the recommended procedures. In view of the uncertainties that resulted, only three of the major carriers (or parts thereof) elected the PEB's recommended procedures. In

addition, the BMWWE has insisted that a gang must have 20 or more members to constitute a regional or system-wide gang for purposes of the PEB's recommended rule. One arbitrator upheld that contention, and while the CIC did not it is necessary to agree to such sizeable gangs to obtain BMWWE agreement and avoid the delay and uncertainty of arbitration. Hence, the regional and system-wide gang rule should be clarified to make clear that a production gang is a crew or gang that performs repetitive work on a day-to-day basis, without regard to its size; that regional and system-wide gangs are production gangs that performed such work programmed to cover more than one seniority district; and that the carriers may utilize the rule to establish such gangs without sacrificing existing gangs and procedures with regard thereto.

(2) Combining and realigning seniority districts. PEB 219 recommended an arbitration procedure for proposals to combine or readjust seniority districts in the absence of agreement. The utility of the recommended procedure has been limited by disputes concerning the nature and extent of the arbitrator's powers. The CIC ruled that such arbitration is not restricted to the determination of seniority rights on the combined or realigned seniority rosters. This has led in practice to a "balancing" of interests with respect to seniority district proposals which is unpredictable as to outcome and time consuming in presentation. The arbitration rule should be revised to direct arbitrators to give weight to PEB 219's conclusion that combining and realigning seniority districts to coordinate with operational realities accomplishes an important operational need, and to consider whether a proposed adjustment in seniority districts would create increased work opportunities for employees.

EXHIBIT 14

AGREEMENT
between
UNION PACIFIC RAILROAD COMPANY
and the
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

OFFICE OF GENERAL CHAIRMAN

This agreement, made this 5th day of July, 1997, by and between Union Pacific Railroad Company (UPRR) and employees of the Southern Pacific Transportation Company Eastern and Western Lines (SPRR), St. Louis Southwestern Railway Company (SSW), and Denver & Rio Grande Western Railroad Company (D&RGW) represented by the Brotherhood of Maintenance of Way Employees, witnesseth:

IT IS AGREED:

With the following exceptions, all terms and conditions of the Mediated Agreement dated September 26, 1996, will be applicable on the former SPRR, SSW, and the D&RGW on the same basis as though these former railroads had been party to the Mediated Agreement dated September 26, 1996 :

1. Unless otherwise specified herein, any references to either "the date of the agreement" or "the effective date of the agreement" within the Mediated Agreement of September 26, 1996, its addendum, or side letters will be interpreted to mean July 5, 1997.
2. In applying the provisions of Part A of Article II - Cost of Living Payments to the SPRR and SSW, eighteen cents (\$.18) of the twenty seven cent (\$.27) cost of living presently in effect will be eliminated and the remaining nine cent (\$.09) cost of living allowance effective January 1, 1996, will be rolled into the basic rate of pay effective January 1, 1996.
3. In adopting Part B of Article II - Cost of Living Payments, it is agreed that all other existing cost of living agreements are eliminated.
4. In applying Article I Section 1-First General Wage Increase, Article III Section A - Equity Adjustment, and Side Letter 4 to SPRR and SSW, such provisions will be applied effective January 1, 1996.

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5. In adopting Article IV - Rate Progression- it is agreed that the entry rates contained therein are adopted on the D&RGW. Any agreements to the contrary are eliminated. Those employees on the former D&RGW as of the effective date of this agreement will not be subject to the rate progression provisions established under this agreement.
6. The effective date of Article XII - Workforce Stabilization, Article XIV - Travel Allowance, Article XVII - Work Site Reporting, and Side Letters 1 and 2 will be July 5, 1997.
7. In applying Article XIII- Expenses Away From Home - UPRR will have until January 5, 1998, to calculate the amount due for the period from October 6, 1996, to July 5, 1997, and make such payment to the appropriate employees.
8. This agreement is in full and final settlement of notices served pursuant to Section 6 of the Railway Labor Act by the BMWWE on October 25, 1996, and November 11, 1996, and notices served by UPRR on January 6, 1997

FOR THE ORGANIZATION:

Wm. F. Gulliford
General Chairman, D&RGW

Roger D. Smith
General Chairman, SPRR (EL & SSW)

A.E. McMahon
General Chairman, SPRR (WL)

APPROVED:

C. F. Fover
Vice President, BMWWE

L.W. Lander
Vice President, BMWWE

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FOR THE CARRIER:

W. E. Jones
Director Labor Relations

D. J. Smith
Asst. Vice President Labor Relations

EXHIBIT 15

AGREEMENT
between
UNION PACIFIC RAILROAD COMPANY
and the
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

This agreement is made by and between Union Pacific Railroad Company (UPRR) and the Brotherhood of Maintenance of Way Employees (BMWE) to develop procedures for the establishment and operation of system gangs over the UPRR, the Western Pacific (WPRR), Southern Pacific Railroad Western Lines (SPRR) and the Denver & Rio Grande Western Railroad (D&RGW).

IT IS AGREED:

Section 1. (Agreed to tentatively prior to negotiations failing on other issues)

Effective July 1, 1997, all system gang operations listed hereinafter will be combined on UPRR, WPRR, SPRR and D&RGW territories and will be subject to the collective bargaining agreement between UPRR and BMWE:

SYSTEM OPERATIONS

System Steel Gang Work
System Curve Gang Work
System Switch Gang Work
System Welding/Glue Gang Work
System Tie and Ballast Gang Work
System Rail and Concrete Tie Gang Work
System Surfacing and Lining Gang Work
System Pick-Up and Distribution Gang Work

Section 2. (Agreed to tentatively prior to negotiations failing on other issues)

(A) UPRR, WPRR, SPRR and D&RGW employees who, prior to July 1, 1997, had a right based on their seniority to work on system type operations within their respective territories, will have their name and seniority dates dovetailed into the rosters for the following ten (10) classifications, as applicable:

GROUP 20: ROADWAY EQUIPMENT SUBDEPARTMENT

- (a) Roadway Equipment Operator
- (b) Roadway Equipment Helper

GROUP 26: TRACK SUBDEPARTMENT

- (a) System Extra Gang Foreman
- (b) System Assistant Extra Gang Foreman
- (c) System Gang Track Machine Operator
- (d) System Gang Truck Operator/Bus
- (e) System Extra Gang Laborer
- Special Power Tool Machine Operator (SPTMO)
- Roadway Power Tool Machine Operator (RPTMO)
- Roadway Power Tool Operator (PTO)
- Track Laborer

GROUP 27: TRACK SUBDEPARTMENT

- (a) Track Welding Foreman
- (b) Track Welder - Machine
- (c) Track Welder Helper

(B) On the same basis as WPRR, SPRR and D&RGW employees have a right to work on system type operations within their respective territories, the UPRR division/district personnel who do not have seniority in Group 20, 26, or 27 prior to the effective date of this agreement will be added to the rosters identified in Section 2(A), as applicable. These employees will be given seniority dates of July 1, 1997, on the applicable roster, and the ranking order will be determined by ranking the employees with the superior division/district seniority dates senior.

Section 3. (Agreed to tentatively prior to negotiations failing on other issues)

All employees listed on the combined rosters established under Section 2 will have their hire date in the Maintenance of Way Department listed next to their seniority date and the following designations listed next to their name:

<u>Employee</u>	<u>Designation</u>
UPRR	U
SPRR	S
WPRR	W
D&RGW	D

EXAMPLE

<u>DESIGNATION</u>	<u>NAME</u>	<u>SOCIAL SECURITY</u>	<u>SENIORITY DATE</u>	<u>HIRE DATE</u>
S	BROWN JC	520-48-0901	7-16-73	2-8-71

Section 4. (Agreed to tentatively prior to negotiations failing on other issues)

(A) Subsequent to July 1, 1997, all new employees hired to fill positions identified under Section 2(A) will establish seniority on the applicable system seniority roster. Such employees will have no designation listed by their names.

(B) New employees hired to fill positions identified under Section 2 (A) who commence work on the territory of the SPRR, WPRR, or D&RGW, will also establish a seniority date for a comparable position within that same territory on a seniority district of their choice (e.g. a new employee hired for a system laborer position commencing work on SPRR territory will also establish seniority as a laborer within the SPRR seniority district of his choice).

(C) New employees, who are hired to fill positions identified under Section 2(A) and who commence work on UPRR territory, will establish seniority pursuant to Section 4(A) only. These employees, however, will have the right to apply for and receive assignment for any bulletined position on the division or district of their choice within the UPRR system (i.e. Nebraska, Wyoming, Kansas, Utah, California, Idaho, or Oregon Division and Eastern, South Central or Northwestern District).

Section 5. (Agreed to tentatively prior to negotiations failing on other issues)

(A) When employees with designations apply for bulletined Group 20, 26 or 27, positions, assignments will be handled as follows:

- (1) When bids are received from only S, W, and/or D designated employees, the employees listed on the applicable seniority roster with the superior seniority date/ranking will be assigned.
- (2) When bids are received from only U designated employees, the employee listed on the applicable seniority roster with the superior seniority date/ranking will be assigned.
- (3) When bids are received from U designated employees, as well as S, W, and/or D designated employees, the senior U designated applicant and the senior employee of the S, W, and D designated applicants will be identified, and the employee with the senior hire date will be assigned.

(B) The exercise of seniority displacement rights by U,S,W, and D designated employees will be controlled by the same principles explained in Section 5(A).

Section 6. (Discussed but no agreement made)

(A) While it is recognized that an employee identified in Section 2. of this agreement may apply for and accept a Group 20, 26, or 27 position that has an assembly point outside his respective system territory, or an assembly point located in excess of one thousand (1000) normal roadway traveled miles from his home station by the most direct route, such employee will not be required to do so to protect seniority and benefits under this or any other agreement. Further, such employee will not be force assigned or recalled to a position with an assembly point outside his respective system territory, or an assembly point located in excess of one thousand (1000) normal roadway miles from his home station by the most direct route.

(B) While it is recognized that an employee identified in Section 4.(A) of this agreement may apply for and accept a Group 20, 26, or 27 position that has an assembly point located in excess of one thousand (1000) normal roadway traveled miles from his home station by the most direct route, such employee will not be required to so do so to protect seniority or benefits under this or any other agreement. Further, such employee will not be force assigned or recalled to a position with an assembly point located in excess of one thousand (1000) normal roadway miles from his home station by the most direct route.

(C) In the application of (A) and (B), the term "home station" means the employee's residence except in instances where the residence is located off-line or off the applicable seniority district in which case the home station will be an on-line station identified in the Carrier's system timetable that is within the applicable seniority district and nearest the employee's point of residence.

Section 7. (Agreed to tentatively prior to negotiations failing on other issues)

Employees identified in Section 3 herein, who do not accept Group 20, 26, or 27 positions that are assigned pursuant to Rule 20(e) of the UPRR/BMWE collective bargaining agreement, will forfeit seniority in the class of the positions involved only. Employees hired after the effective date of this agreement will be subject to the provisions of Rule 23 (a) and (b) of the UPRR/BMWE collective bargaining agreement.

Section 8. (Conceptually agreed to tentatively but no language worked out prior to negotiations failing)

Rule 40 of the UPRR/BMWE collective bargaining agreement will be amended to read as shown in Attachment B.

Section 9. (Discussed but no agreement made)

Respective rates of pay for positions assigned to the system operations listed herein will be established at the highest prevailing rates being allowed Maintenance of Way employees filling similar respective assignments on the UPRR, SPRR, WPRR or D&RGW. Rates of pay established under this provision will be subject to all future general wage increases, including cost of living allowances (COLA).

Section 10. (Discussed but no agreement made)

Furloughed employees returning to service to accept Maintenance of Way Department assignments who have at least five (5) days unused vacation time entitlement, will, upon request, be issued a loan voucher in the amount of \$100, \$200 or \$300 to facilitate their return to service. Such loans will be interest free and deductions for repayment of at least \$50 from the borrowing employees' pay vouchers will be made commencing with the employees' second pay voucher issued subsequent to their return to service. Deductions greater than the fifty dollar minimum may be authorized by the employees involved.

Employees receiving such loans who have no more than five (5) days unused vacation remaining in the calendar year, will not be allowed to take vacation time until the loan repayment is complete. If, for whatever reason, the loan repayment is not complete by the end of the calendar year, the unpaid portion of the loan will be deducted from the employees' payment for the year's unused vacation time.

Section 11. (Discussed but no agreement made)

Employees assigned to any positions listed under Section 2(A) of this agreement who do not voluntarily leave the gang to which assigned for a period of six (6) months, shall, within sixty (60) days of the end of said six month period, receive from the Carrier a lump sum payment equal to five (5) per cent of their respective compensation earned during that period, or \$1000, whichever is greater.

If, prior to the end of a six month period, said employees involuntarily leave the gang to which assigned or the Carrier disbands the gang in its entirety, the employees forced to leave the gang shall, within sixty (60) days of their last day on the gang, receive from the Carrier a lump sum payment equal to five (5) per cent of their respective compensation earned during the period employed on the gang.

Section 12. (Discussed but no agreement made)

An employee assigned to a position listed under Section 2(A) of this agreement will be allowed to choose the type of away from home accommodations/expenses that will be

applicable for each calendar month. The options from which the employee may choose are:

- (1) A per diem allowance as provided under Rule 39(e);
- (2) Company provided lodging with direct billing and a per diem allowance as provided under Rule 39(e) minus \$23.50 per day (minus \$26.75 per day effective 7-1-98); or
- (3) Company provided lodging and meals with direct billing and a per diem allowance as provided under Rule 39(e) minus \$42.50 per day (minus \$48.00 per day effective 7-1-98).

Note: If no election is made by the employee prior to the 25th of the preceding month, option (1) will apply for the month involved.

Section 13. (Agreed to tentatively prior to negotiations failing on other issues)

All service performed by employees on any of the system territories identified in this agreement which is part of their continuous employment relationship in the Maintenance of Way Department will be combined for vacation, personal leave, entry rates, and other present or future benefits that are granted on the basis of qualifying time of service in the same manner as though all such time had been spent in the service under one collective bargaining agreement.

Section 14. (Agreed to tentatively prior to negotiations failing on other issues)

(A) The New York Dock employee protective conditions, which is attached hereto as Attachment "A", will be applicable to this transaction. There will be no duplication of benefits by an employee under this agreement and any other agreements or protective arrangements.

(B) If employees are entitled to protection as a result of this transaction, the following will apply:

- (1) Not later than the twenty-fifth day of the month following the month for which benefits are claimed, each "dismissed" employee will provide the Carrier with the following information for the month in which he/she is entitled to benefits:
 - (a) the day(s) claimed by such employee under any unemployment act, and

- (b) the day(s) each employee worked in other employment, the name(s) and addresses of the employer(s), and the gross earnings made by the employee in such other employment.
- (2) If a dismissed employee has nothing to report under this section account not being entitled to benefits under any unemployment insurance and having no earnings from other employment, such employee will submit, within the time period provided for in Section 3(B)(1), the appropriate form stating "Nothing to Report." Claims are to be submitted to:

Supervisor Protection Management
1416 Dodge Street, Room 335
Omaha, Nebraska, 68179

- (3) The failure of any dismissed (furloughed) employee to provide the information required in this section will result in the withholding of all protective benefits for the month in question pending receipt of such information for the employee.
- (4) Any "displaced" employees will file an initial claim with the Supervisor Protection Management at the addresses set forth in Section 2 above. If an employee is determined to be eligible for displacement allowances, the employee will be paid a differential allowance for each month in which he/she is entitled. Such employee need not file any additional forms unless he/she becomes furloughed. In such event, the employee will be subject to the requirements of a dismissed employee as set forth above.

Section 15. (Agreed to tentatively prior to negotiations failing on other issues)

This agreement will constitute the required agreement as provided in Article I Section 4 of the New York Dock employee protective conditions. Any claims or disputes arising from the application of this Agreement or the protective conditions referred to in Section 6 will be handled directly between the General Chairman and Director of Labor Relations.

This agreement will become effective on the ____ day of _____, 1997.

Signed in Omaha, Nebraska, this ____ day of _____, 1997

FOR THE ORGANIZATION:

General Chairman, BMWE

General Chairman, BMWE

General Chairman, BMWE

FOR THE CARRIER:

Director Labor Relations

APPROVED:

Vice President, BMWE

RULE 40 - ALTERNATIVE WORK PERIODS

(a) With an election in writing by a majority of employees assigned to a system gang project, all the regular work days of a work half or work month may be worked consecutively so the employees may observe the regular rest days of the respective work period consecutively as well. Such work schedules will commence on the first calendar day of the payroll period involved.

(b) With an election in writing by a majority of employees working on a project and with the concurrence of the appropriate manager, a compressed work week, compressed work half or compressed work month may be established. In such cases, all the regular work hours of the respective work period will be compressed into consecutive work days of more than eight (8) but no more than twelve (12) hours per day. Time worked before the assigned starting time and/or after the normal quitting time for such arrangements will be paid for at the applicable pro rata rate and will not exceed four (4) hours per day.

(c) Where it would be required to work a fraction of a day for a work period arrangement under (b) in order to equal the number of hours in the period, respectively, the remaining hours will be distributed and worked throughout the compressed work period unless agreed to work a partial day at the end thereof.

(d) Rules in effect covering payment for service performed on rest days will apply to those accumulated rest days provided within this rule.

(e) Except for any distributed hours provided for in paragraph (c), time worked prior to or after the assigned daily hours will be paid for at the overtime rate in accordance with the overtime provisions of the Agreement.

(f) Observance of holidays will be handled as follows:

(f-1) Unless agreed otherwise by a majority of the gang members and the appropriate Manager, if a holiday falls on a Monday, Tuesday, Wednesday, Thursday, Friday or Sunday, the holiday will be observed at the end of the compressed work period and the amount of service hours ordinarily scheduled in line with the terms of this Agreement will be reduced by eight (8).

(f-2) If a holiday falls on a Saturday, there will be no reduction in the amount of service hours ordinarily scheduled in line with the terms of this Agreement.

(f-3) With a signed election in writing by a majority of the employees subject to a compressed work period arrangement defined under paragraphs (a) and (b) and with the concurrence of the Manager, accumulated rest days provided herein may be used for workdays to make up time and observe the Thanksgiving and

Christmas holidays, but not limited to these holidays, on their normal observed days. Under this same approval process, rest days may be worked in exchange for time off on workdays immediately preceding and/or following such holidays. Any rest days worked under this provision will be in the pay period the holiday is observed and will be paid for at the straight time rate.

(f-4) Employees who qualify for holiday allowances under existing rules will be compensated eight (8) hours at the straight time rate for the holiday involved.

(f-5) If required to perform service during the hours at the end of the compressed work period observed as the holiday, employees will be compensated at the overtime rate.

(g) For vacation qualifying purposes, employees assigned to a compressed work period arrangement as provided herein will be allowed credit for each day worked during the calendar year as follows:

<u>Work Hours</u>	<u>Credit</u>
8	1
9	1.125
10	1.25
11	1.375
12	1.5

(h) Where the hours of the fraction of a day contemplated in paragraph (c) of this Agreement are distributed throughout the compressed work period, there will be no additional vacation credit allowed. If at the end of the calendar year an employee's vacation qualifying days would be adversely affected as a result of this provision, upon presentation of proof of an adverse impact, vacation qualifying days will be adjusted accordingly.

(i) Employees who observe their vacation while assigned to a gang working a compressed work period arrangement will be compensated on the basis of the gang's regular assigned hours, at the pro rata rate and will be charged the number of vacation days based upon the ratio in paragraph (g).

(j) For those employees exercising seniority displacement rights into or away from positions which are working a compressed work period, the normal ten (10) calendar day time limit for exercising seniority shall be increased to fifteen (15) calendar days unless further extension of time is agreed to by the Director of Labor Relations and the General Chairman.

(k) If a gang is working a compressed work period and all or some of the positions in such gang are to be abolished, the Carrier will have satisfied the advance notice requirement of Rule 21 by giving a four (4) working days' notice of abolishment of such positions.

(l) Employees working a compressed work period under paragraphs (a) or (b) shall have their workdays and rest days set forth in writing a minimum of five (5) workdays in advance of the beginning of the work period arrangement and said written notice will be posted at convenient locations accessible to the employees affected.

(m) A compressed work period established pursuant to paragraph (b) of this rule may be terminated by serving a thirty-six (36) hours' advance notice. Such change will not take effect until the first scheduled workday of a work period.

(n) Should any disputes arise regarding the application of this Agreement, the General Chairman and the designated Labor Relations officer shall meet in an attempt to resolve any and all issues.

(o) The provisions of the rule apply to a gang as a whole and not the individual employees and is designed to improve productivity, and the composition of employee's rest hours to afford employees a greater opportunity for extended visits to their homes. Except as provided herein, existing practices, understandings, or any other Agreements regarding the assignment of work periods are not modified.

STB FD 32760 (Sub 25) 10-31-97 D 183657

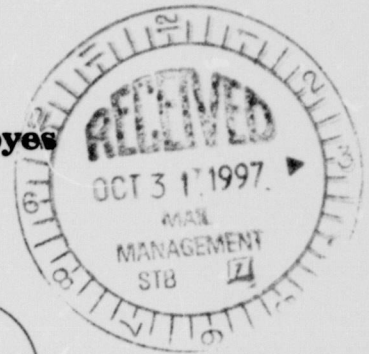
Mac A. Fleming
President



183657
William E. LaRue
Secretary-Treasurer

Brotherhood of Maintenance of Way Employees

Affiliated with the A.F.L.-C.I.O. and C.L.C.



October 31, 1997

via messenger

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760 (Sub-No. ²⁵), Union Pacific Corp.--Control &
Merger--Southern Pacific Corp.

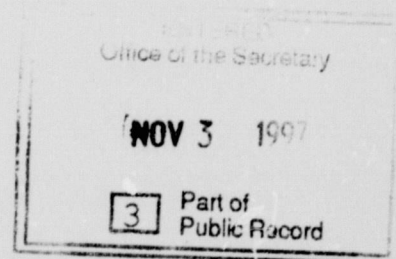
Dear Mr. Williams:

Enclosed for filing with the Board are the original and ten copies of an Unopposed Motion for Extension of Time submitted by the Brotherhood of Maintenance of Way Employees. Please stamp the extra copy as received so that the messenger can return it to me. Thank you for your cooperation.

Sincerely,

Donald F. Griffin
Assistant General Counsel

cc: W. Naro
W. A. Bon
R. Wehrli
W. Gulliford
D. McMahon
C. Fouse
M. A. Fleming

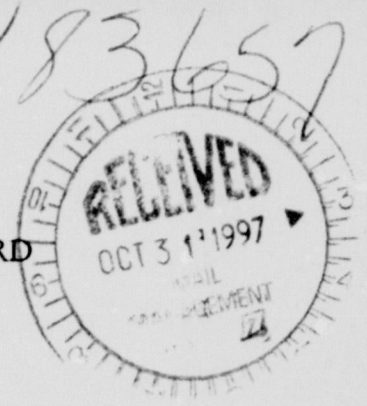


Andrew T. Malleck
National Legislative Representative
Michael De Emilio
Assistant to President for
State Legislative Activities

10 G Street, N.E., Suite 460
Washington, D.C. 20002-4213

Telephone (202) 638-2135
FAX (202) 737-3085

BEFORE THE SURFACE TRANSPORTATION BOARD



UNION PACIFIC CORP., et al.,--MERGER--
SOUTHERN PACIFIC CORP., et al.

) Finance Docket No. 32760
) (Sub-No. ____)

Office of the Secretary

UNOPPOSED MOTION FOR EXTENSION OF TIME

NOV 3 1997

3 Part of
Public Record

The Brotherhood of Maintenance of Way Employees ("BMWE") respectfully requests an extension of time to file a petition for review of an award of arbitrator Peter R. Meyers made pursuant to Article I, Section 4 of the New York Dock conditions, dated October 15, 1997 ("the Meyers Award"). BMWE must file its petition with the Board on November 4, 1997 pursuant to the terms contained in 49 C.F.R. §1115.8. BMWE seeks an extension of time up to and including November 12, 1997 in which to file its petition for review of the Meyers Award. The grounds for this motion are the following.

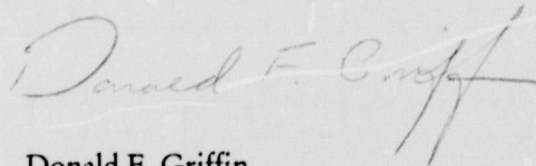
The undersigned was counsel for BMWE in the arbitration and will prepare the petition for review of the award. Presently, BMWE has been involved in both collective bargaining and legislative activities surrounding the report of Presidential Emergency Board No. 234 that made recommendations for settling the collective bargaining dispute between BMWE and Amtrak. At this time, both BMWE and Amtrak are eligible to engage in self help at 12:01 AM, November 6, 1997. The undersigned has been involved in BMWE's legislative and collective bargaining efforts during this time. Additionally, the undersigned was called to

Kansas for two days earlier this week to deal with serious issues related to a lease by the Union Pacific of a line in central Kansas and the employee protective consequences of that lease. Accordingly, BMWE cannot finish preparation of its petition for review within the time limits set forth in 49 C.F.R. §1115.8.

BMWE notes that under the regulations, the Board retains the discretion to modify the time limits for filing a petition for review of an arbitral award. BMWE respectfully submits that it has shown good cause for this limited extension. The undersigned spoke about this motion with the Union Pacific Railroad Company's ("UP") Director of Labor Relations, Wayne Naro, who stated that UP will not oppose this motion.

WHEREFORE, BMWE respectfully requests the Board to grant this motion and extend BMWE's time for filing a petition for review of the Meyers Award up to and including November 12, 1997.

Respectfully submitted,



Donald F. Griffin
Assistant General Counsel
Brotherhood of Maintenance of Way Employees
10 G Street, N.E., Suite 460
Washington, DC 20002
(202) 638-2135

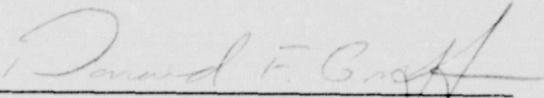
Attorney for Brotherhood of Maintenance of Way
Employees

Dated: October 31, 1997

Certificate of Service

I hereby certify that today I served a copy of this motion by overnight delivery upon:

Wayne E. Naro, Director Labor Relations
Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179



Donald F. Griffin

Date: October 31, 1997

Mac A. Fleming
President



183657

William E. LaRue
Secretary-Treasurer

Brotherhood of Maintenance of Way Employees

Affiliated with the A.F.L.-C.I.O. and C.L.C.

October 31, 1997



via messenger

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760 (Sub-No. __), Union Pacific Corp.--Control & Merger--Southern Pacific Corp.

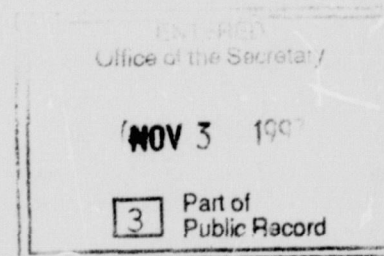
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Sincerely,

Donald F. Griffin
Assistant General Counsel

cc: W. Naro
W. A. Bon
R. Wehrli
W. Gulliford
D. McMahon
C. Foose
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Andrew T. Malleck
National Legislative Representative
Michael De Emilio
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State Legislative Activities

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Telephone (202) 638-2135
FAX (202) 737-3085

STB FD 32760 (Sub 25) 8-27-98 D 190753

190753

SHEA & GARDNER
1800 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20036

FRANCIS M. SHEA (1905-1989)
WARNER W. GARDNER
LAWRENCE J. LATTO
ROBERT T. BASSECHES
BENJAMIN W. BOLEY
RALPH J. MOORE, JR.
MARTIN J. FLYNN
STEPHEN J. POLLAK
DAVID BOOTH BEERS
ANTHONY A. LAPHAM
RICHARD M. SHARP
JOHN D. ALDOCK
WILLIAM S. MOORE
JOHN TOWNSEND RICH
JAMES R. BIEKE
WILLIAM F. SHEEHAN
R. JAMES WOOLSEY
FREDERICK C. SCHAFFRICK
DAVID B. COOK
STEPHEN J. HADLEY

WENDY S. WHITE
WILLIAM R. GALEOTA
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CHRISTOPHER E. PALMER
MARK S. RAFFMAN
BERNICE M. BLAIR

(202) 828-2000
FAX: (202) 828-2195

ERIC C. JEFFREY
DANA J. MARTIN
VALERIE E. ROSS
MICHAEL K. ISENMAN
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MATTHEW M. HOFFMAN
JAMES CHAD OPPENHEIMER*
L. KYM DAVIS*
D. BRUCE MYERS, JR.*
M. DAVID DOBBINS*

*NOT ADMITTED IN D.C.

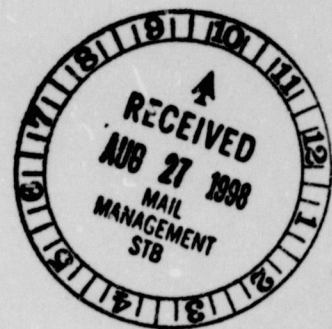
August 27, 1998

OF COUNSEL
RICHARD T. CONWAY DAVID V. AINSWORTH*
WILLIAM H. DEMPSEY BARBARA L. KIRSCHTEN

DELIVERY BY HAND

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., 7th Floor
Washington, D.C. 20036

ENTERED
Office of the Secretary
AUG 27 1998
Part of
Public Record



Re: Finance Docket No. 32760 (Sub-No. 25), Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Transp. Co., et al. -- Arbitration Review

Dear Mr. Williams:

Enclosed for filing in the referenced matter are the original plus ten (10) copies of Union Pacific's Motion for Extension of Time in which to File Opposition to Motion for Vacatur of Arbitral Award. I apologize for filing this motion on the day that the opposition would be due, but it was not until late yesterday afternoon that it became evident that an extension would be necessary.

As stated in the Motion, counsel for the BMW has previously stated that the Union would be agreeable to a reasonable extension of time for UP to file its Opposition.

Thank you for your assistance with this matter.

Very truly yours,

Eugenia Langan

Eugenia Langan
Attorney for Union Pacific
Railroad Company

Encl.
cc: Donald F. Griffin, Esq.

ENTERED
Office of the Secretary

AUG 27 1998

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 25)



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

(Arbitration Review)

**MOTION FOR EXTENSION OF TIME IN WHICH TO FILE
OPPOSITION TO MOTION FOR VACATUR OF ARBITRAL AWARD**

Union Pacific Railroad Company ("UP"), respondent herein, respectfully requests an extension of one week, to and including September 3, 1998, in which to file its Opposition to Motion for Vacatur of Arbitral Award, which is currently due today.

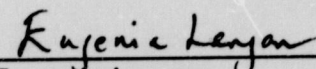
This brief extension is necessary because UP's General Director - Labor Relations, who must make a Declaration in support of the Opposition and UP's in-house counsel in charge of supervising preparation of the Opposition are both traveling on company business this week, and are unavailable to review the draft prepared by the undersigned counsel.

Last week, the undersigned counsel spoke by telephone with the BMW's counsel in this matter, and told him that UP might need a short extension of time in which to file the Opposition. BMW counsel replied that the union would be agreeable

to any reasonable extension the carrier might need. Today, however, when the necessity for an extension became clear, BMWWE counsel is away from his office, and so we have been unable to confirm with him that the union agrees that an extension of one week is reasonable.

WHEREFORE, good cause having been shown, UP prays for an extension of time in which to file its Opposition, to and including September 3, 1998.

Respectfully submitted,



Eugenia Langan
Shea & Gardner
1800 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 828-2000

Attorney for Respondent

August 27, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of August, 1998, served the foregoing Motion by causing copies thereof to be delivered by hand to counsel for Petitioner, as follows:

Donald F. Griffin
Assistant General Counsel
Brotherhood of Maintenance of Way Employees
10 G Street, N.E., Suite 460
Washington, D.C. 20002

Eugenia Langan
Eugenia Langan

STB

FD-32760 (SUB25)

6-24-98

D

ID-188913

188913

SHEA & GARDNER
1800 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20036

FRANCIS M. SHEA (1905-1989)
WARNER W. GARDNER
LAWRENCE J. LATTO
ROBERT T. BASSECHES
BENJAMIN W. BOLEY
RALPH J. MOORE, JR.
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STEPHEN J. HADLEY

OF COUNSEL
RICHARD T. CONWAY
WILLIAM H. DEMPSEY
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JAMES CHAD OPPENHEIMER
L. KYM DAVIS

*NOT ADMITTED IN D.C.

June 24, 1998

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JUN 24 1998

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DELIVERY BY HAND

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., 7th Floor
Washington, D.C. 20036

Re: Finance Docket No. 32760 (Sub-No. 25), Union Pacific
Corp., et al. -- Control & Merger -- Southern Pacific
Transp. Co., et al. -- Arbitration Review

Dear Mr. Williams:

Enclosed for filing in the referenced matter are the
original plus ten (10) copies of the Joint Motion for Additional
Extension of Time, submitted on behalf of both the petitioner,
the Brotherhood of Maintenance of Way Employees, and the
respondent, Union Pacific Railroad Company.

Thank you for your assistance with this matter.

Very truly yours,

Eugenia Langan/MS

Eugenia Langan
Attorney for Union Pacific
Railroad Company

Encl.

cc: Donald F. Griffin, Esq.

188913

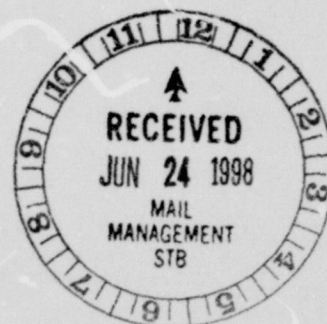
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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 25)



UNION PACIFIC CORPORATION, *et al.* -- CONTROL AND MERGER
SOUTHERN PACIFIC TRANSPORTATION COMPANY, *et al.*

(Arbitration Review)

JOINT MOTION FOR ADDITIONAL EXTENSION OF TIME

Petitioner, the Brotherhood of Maintenance of Way Employees ("BMWE") and respondent, Union Pacific Railroad Company ("UP"), jointly move for an additional extension of time in which to file their opening supplemental statements in this matter, to and including August 5, 1998. The grounds for this motion are as follows:

1. By decision served on May 14, 1998, this Board extended the time for the parties to file their opening supplemental statements in this matter until June 25, 1998. The purpose of that extension was to provide time for the parties to finalize a tentative agreement that would resolve this matter, which concerns implementation of the consolidation of maintenance-of-way forces in the Western District of the merged UP/SP system. The tentative agreement would also provide for a voluntarily negotiated implementation of the consolidation of maintenance-of-way forces in the Eastern District of the merged system.

2. The parties have since finalized the tentative agreement, and it has been submitted to the BMW's ratification processes. The count of the ratification vote is scheduled for July 6, 1998, and the results should be known that day or the next. If the agreement is ratified, consolidation of maintenance of way forces throughout the merged system will have been accomplished by the parties voluntarily, without need for further arbitration or review by this Board.

3. But if the agreement is not ratified, the parties will need an additional thirty days after the vote count to prepare their opening supplemental statements. In particular, the BMW's quadrennial convention, which counsel for the BMW must attend, commences on July 13, 1998, and counsel for the BMW will be away from his office during the following week as well. The Board's procedural schedule for this case contemplates simultaneous service and filing of both sides' supplemental statements, however, warranting an extension for both sides.

Wherefore, good cause having been shown, the parties hereby jointly move for an additional extension of time, to and including August 5, 1998, in which to file their opening supplemental statements, and for corresponding extensions of the other scheduled filing dates.

Respectfully submitted,

Donald F. Griffin/ms

Donald F. Griffin
Assistant General Counsel
Brotherhood of Maintenance
of Way Employees
10 G Street, N.W., Suite 460
Washington, D.C. 20002
(202) 638-2135

Attorney for Petitioner

Date: June 24, 1998

Eugenia Langan/ms

Eugenia Langan
Shea & Gardner
1800 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 828-2000

Attorney for Respondent

STB

FD-32760 (SUB25)

5-8-98

D

ID-187451

ENTERED
Office of the Secretary

MAY - 8 1998

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760 (SUB-NO. 25)



UNION PACIFIC CORPORATION, *et al.* -- CONTROL AND MERGER
SOUTHERN PACIFIC TRANSPORTATION COMPANY, *et al.*

(Arbitration Review)

D

JOINT MOTION FOR EXTENSION OF TIME

The Brotherhood of Maintenance of Way Employees ("BMWE"), petitioner in this matter, and Union Pacific Railroad Company ("UP"), respondent, jointly move for a 45-day extension of time in which to file their opening supplemental statements. Those statements are currently due on May 11, 1998, so the extension would run to and include June 25, 1998. The extension is needed to allow time for the parties to finalize their tentative agreement that will resolve this matter and also provide an agreed-upon implementation of the merger on the portion of the merged UP/SP system not involved in this matter, as set forth below.

This Board has granted extensions of the time for parties to file opening supplemental statements three times, by orders served March 1, March 26, and April 7, 1998. The purpose of these extensions was to allow the parties time to attempt to reach a settlement of the issues in this case, in which the BMWE seeks review of the *New York Dock* arbitration award implementing the consolidation of maintenance of

way forces in the Western Territory of the merged system. Soon after negotiations commenced, it became evident that it might also be possible for the parties to reach a voluntary implementing agreement for the consolidation of maintenance of way forces in the Eastern Territory.

The negotiations were fruitful. The parties have reached a tentative agreement in principle that would dispose of the issues in this case and also implement the Eastern Territory consolidation. The parties are now negotiating over contract language to memorialize the tentative agreement, and hope to complete that process within the next week or so. After the agreement is reduced to writing, it is subject to the BMW's ratification processes. If the agreement is ratified, consolidation of maintenance of way forces throughout the merged system will have been accomplished by the parties voluntarily, without need for further arbitration or review by this Board.

The parties have agreed that an extension of 45 days is necessary to allow time for the agreement to be reduced to writing and for the ratification process to be completed. Because ratification would eliminate any need for further proceedings on the merits of this case, it would obviously be wasteful for the parties to prepare supplemental statements before the results of the ratification vote are in.

WHEREFORE, good cause appearing, the BMW and UP respectfully request the Board to grant this motion and extend the parties' time to file opening supplemental statements for an additional 45 days, to and including June 25, 1998.

Respectfully submitted,

Donald F. Griffin / EL

Donald F. Griffin
Assistant General Counsel
Brotherhood of Maintenance
of Way Employees
10 G Street, N.W., Suite 460
(202) 638-2135

Attorney for Petitioner

May 8, 1998

Eugenia Langan

Eugenia Langan
Shea & Gardner
1800 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 828-2000

Attorney for Respondent

STB FD 32760 (Sub 25) 3-27-98 D 186750

186750

SHEA & GARDNER
1800 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20036

FRANCIS M. SHEA (1905-1986)
WARNER W. GARDNER
LAWRENCE J. LATO
ROBERT T. BASSECHES
BENJAMIN W. BOLEY
RALPH J. MOORE, JR.
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(202) 828-2000
FAX: (202) 828-2195

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JAMES CHAD OPPENHEIMER
L. KYM DAVIS

*NOT ADMITTED IN D.C.

OF COUNSEL
RICHARD T. CONWAY
WILLIAM H. DENPSEY
BARBARA L. KIRSCHTEN

March 27, 1998

DELIVERY BY HAND

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., 7th Floor
Washington, D.C. 20036

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MAR 31 1998

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Re: Finance Docket No. 32760 (Sub-No. 25), Union Pacific Corp., et al. -- Control & Merger -- Southern Pacific Transp. Co., et al. -- Arbitration Review

Dear Mr. Williams:

Enclosed for filing in the referenced matter are the original plus ten (10) copies of Union Pacific's Unopposed Motion for Addition Extension of Time to File Opening Supplemental Statement.

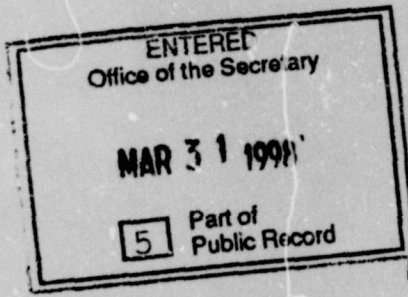
Thank you for your assistance with this matter.

Very truly yours,

Eugenia Langan
Eugenia Langan
Attorney for Union Pacific
Railroad Company

Encl.
cc: Donald F. Griffin, Esq.

186750



**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 32760 (SUB-NO. 25)

**UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY — CONTROL AND MERGER
SOUTHERN PACIFIC TRANSPORTATION COMPANY, ST. LOUIS
SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP. AND
THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY**

(Arbitration Review)

**UNOPPOSED MOTION FOR ADDITIONAL EXTENSION OF
TIME TO FILE OPENING SUPPLEMENTAL STATEMENTS**

Union Pacific Railroad Company, et al. ("UP"), respondents in this matter, hereby move for an additional extension of time for the parties to file opening supplemental statements to and including May 9, 1998. Petitioner, the Brotherhood of Maintenance of Way Employees ("BMWE") has authorized us to state that the union does not oppose this extension.

Currently pending before the Board is a joint motion by UP and petitioner, the Brotherhood of Maintenance of Way Employees ("BMWE") for an extension of time to March 30, 1998. On March 25, however, the parties to concluded that their settlement discussions in this case, which concerns the establishment of system gangs on UP's Western District, should include discussion of UP's proposal to establish system gangs on its Eastern District in an upcoming New York Dock implementation of the UP/SP merger. This may allow for settlement of the "fairness" issue in this case -- whether it is

fair for UP to use 49 U.S.C. § 11321(a) to establish system gangs after failing to obtain them in Railway Labor Act negotiations -- on a system-wide basis, rather than relitigating that self-same question on a piecemeal territorial basis. In addition, the expanded negotiations may help the parties to reach a voluntary implementing agreement for the Eastern District.

Obviously, however, inclusion of the Eastern District issues greatly expands the issues on the table now, and it is unrealistic to expect that they will be dealt with by March 30. UP therefore seeks an additional extension of the parties' time to file opening statements to and including May 9, 1998. This allows the parties 30 days (from March 25) to attempt to reach agreement settling this case and the prospective Eastern District case; and then allows two weeks for preparation of the statements, so that during the negotiation period neither party incurs legal fees and expenses that may prove to be unnecessary.

Respectfully submitted,

Eugenia Langan
Eugenia Langan
Shea & Gardner
1800 Massachusetts Avenue, N.W.
Washington, D.C. 20036
(202) 828-2000

Attorney for Union Pacific, et al.

I certify that I have this 27th day of March, 1998, served the foregoing by causing a copy thereof to be sent by first-class mail, postage paid, to counsel for petitioner, Donald F. Griffin, 10 G Street, N.E., Suite 460, Washington, D.C. 20002.

Eugenia Langan

STB FD 32760 (Sub 25) 3-23-98 D 186571

186571
SHEA & GARDNER
1800 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20036

FRANCIS M. SHEA (1905-1989)

WARNER W. GARDNER
LAWRENCE J. LATTO
ROBERT T. BASSECHES
BENJAMIN W. BOLEY
RALPH J. MOORE, JR.
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OF COUNSEL
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MATTHEW M. HOFFMAN
JAMES CHAD OPPENHEIMER
L. KYM DAVIS

March 23, 1998



DELIVERY BY HAND

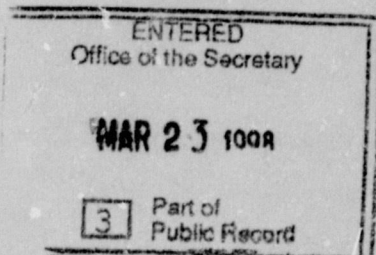
Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., 7th Floor
Washington, D.C. 20036

Re: Finance Docket No. 32760 (Sub-No. 25), Union Pacific
Corp., et al. -- Control & Merger -- Southern Pacific
Transp. Co., et al. -- Arbitration Review

Dear Mr. Williams:

Enclosed for filing in the referenced matter are the original plus ten (10) copies of the Joint Motion for Extension of Time in Which to File Opening Supplemental Statement, submitted on behalf of the Brotherhood of Maintenance of Way Employees and Union Pacific jointly.

Thank you for your assistance with this matter.



Very truly yours,

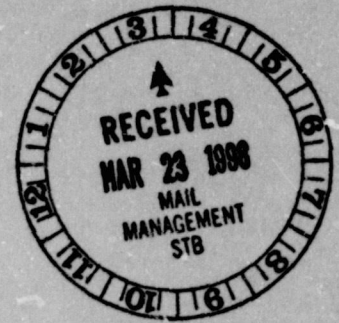
Eugenia Langan
Eugenia Langan
Attorney for Union Pacific
Railroad Company

Encl.

cc: Donald F. Griffin, Esq.

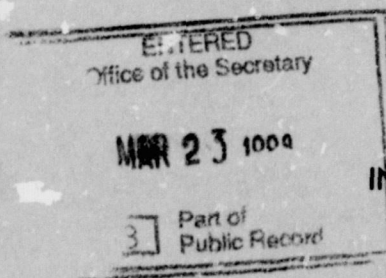
186579

BEFORE THE SURFACE TRANSPORTATION BOARD



UNION PACIFIC CORP., et al.--MERGER--
SOUTHERN PACIFIC TRANS. CO., et al.

) Finance Docket No. 32760
) (Sub-No. 25)



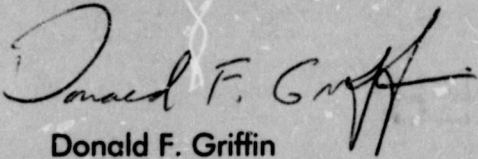
JOINT MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE OPENING SUPPLEMENTAL STATEMENT

On March 2, 1998, the Board served an order in this proceeding extending the parties' time for filing opening supplemental statements from March 3, 1998 until March 23, 1998. The Board granted that extension because the parties were attempting to negotiate a settlement to the Brotherhood of Maintenance of Way Employees' ("BMWE") appeal. BMWE and the Union Pacific Railroad Company ("UP") met on March 6 and 20, 1998 in settlement negotiations. The parties have not reached agreement but are continuing to attempt to reach agreement on a settlement.

In light of the continuing settlement negotiations, BMWE and UP jointly file this motion seeking an additional seven (7) days time, up to and including March 30, 1998, in which to file their opening supplemental statements. BMWE and UP respectfully submit that they have shown good cause for this motion and the extension of time is reasonable.

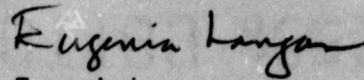
WHEREFORE, BMW and UP respectfully request the Board to grant this joint motion and extend the time for filing opening supplemental statements up to and including March 30, 1998.

Respectfully submitted,



Donald F. Griffin
Assistant General Counsel
Brotherhood of Maintenance of
Way Employes
10 G Street, N.E., Suite 460
Washington, DC 20002
(202) 638-2135

Attorney for Brotherhood of
Maintenance of Way Employes



Eugenia Langan
Shea & Gardner
1800 Massachusetts Ave., N.W.
Washington, DC 20036
(202) 828-2198

Attorney for Union Pacific Railroad
Company

Dated: March 23, 1998

STB FD 32760 (Sub 25) 2-25-98 D 186004

Mac A. Fleming
President



William E. LaRue
Secretary-Treasurer

186004

Brotherhood of Maintenance of Way Employees

Affiliated with the A.F.L.-C.I.O. and C.L.C.

February 20, 1998



Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760 (Sub-No. 25), Union Pacific Corp.--Control & Merger--Southern Pacific Trans. Co.

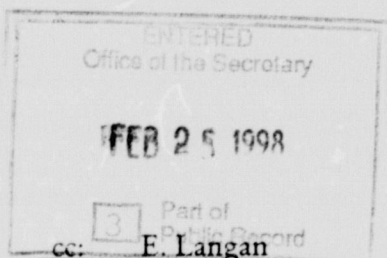
Dear Mr. Williams:

Enclosed for filing with the Board are the original and ten copies of the "Unopposed Motion for Extension of Time in which to File Opening Supplemental Statement" submitted on behalf of the Brotherhood of Maintenance of Way Employees.

Please stamp the extra copy of each document as received so that the messenger can return it to me. Thank you for your cooperation.

Sincerely,

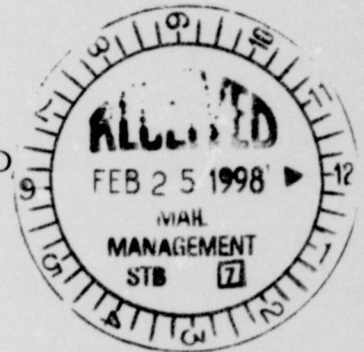
Donald F. Griffin
Assistant General Counsel



cc: E. Langan
W. A. Bon
R. Wehrli
W. Gulliford
D. McMahon
D. Tanner
M. A. Fleming

186004

BEFORE THE SURFACE TRANSPORTATION BOARD



UNION PACIFIC CORP., et al.,--MERGER--
SOUTHERN PACIFIC TRANS. CO., et al.

) Finance Docket No. 32760
) (Sub-No. 25)

ENTERED
Office of the Secretary

FEB 25 1998

Part of
Public Record

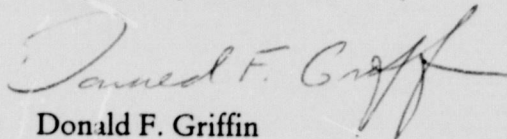
UNOPPOSED MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE OPENING SUPPLEMENTAL STATEMENT

On February 11, 1998, the Board served an order in this proceeding requesting the parties file supplemental statements on March 3, 1998. The Brotherhood of Maintenance of Way Employees ("BMWE") respectfully submits this motion for an extension of time up to and including March 23, 1998 in which to file its opening supplemental statement. BMWE seeks this additional time so that it can engage in negotiations with the Union Pacific Railroad Company ("UPRR") that may lead to a settlement of this appeal.

The undersigned conferred about this motion with counsel for the UP, Eugenia Langan, who stated that UP will not oppose this motion.

WHEREFORE, BMW respectfully requests the Board to grant this motion and extend the time for filing opening supplemental statements up to and including March 23, 1998.

Respectfully submitted,



Donald F. Griffin
Assistant General Counsel
Brotherhood of Maintenance of Way Employees
10 G Street, N.E., Suite 460
Washington, DC 20002
(202) 638-2135

Attorney for Brotherhood of Maintenance of Way
Employees

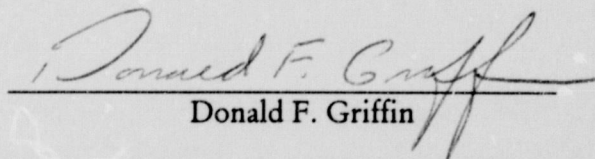
Dated: February 20, 1998

Certificate of Service

I hereby certify that today I served a copy of the foregoing motion by first class mail upon:

Eugenia Langan
SHEA & GARDNER
1800 Massachusetts Avenue, N.W.
Washington, DC 20036

Dated: February 20, 1998


Donald F. Griffin