

**BEFORE SPECIAL BOARD OF ADJUSTMENT  
NO. 604**

Charlotte Gold, Neutral Member  
A. Kenneth Gradia, Carrier Member  
Mike Perry, Union Member

In the Matter of Arbitration	)	
	)	
between	)	
	)	
National Carriers Conference Committee	)	Section 7 Arbitration
	)	
and	)	
	)	
International Association of Machinists	)	
And Aerospace Workers, AFL-CIO	)	
	)	

**UNION’S PREHEARING SUBMISSION**

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## **I. Introduction**

Following an exceptionally tough round of negotiations, the International Association of Machinist and Aerospace Workers, AFL-CIO (“IAM”) put a tentative agreement out for ratification by its railroad employees. IAM-represented employees overwhelmingly rejected the tentative agreement, finding the compensation increases insufficient given the increased healthcare costs to employees under the contract. Now, having been advised by the National Mediation Board that a release from mediation is unlikely to issue in the foreseeable future, the Union has made the difficult decision to arbitrate its contract dispute under Section 7 of the Railway Labor Act.

We urge this Board to adopt the Union’s proposal for the resolution of this dispute. The IAM proposal aims to deliver additional compensation to railroad machinists, particularly considering the increased work responsibilities shouldered by the craft, while recognizing that the rail carriers have already reached agreement with the organizations representing other crafts. Given the record-setting profitability of the railroad industry, the Union’s proposal is one that the carriers can easily afford and represents a fair resolution of the current dispute.

## **II. Statement of the Issue**

The Parties have agreed to the following statement of the issue:

Shall the Parties’ collective bargaining agreement be the terms proposed by the Carriers as set forth in Appendix B, or the terms proposed by the Union as set forth in Appendix C?

IAM Ex. 1 (Arbitration Agreement).

### **III. The Parties**

The International Association of Machinists and Aerospace Workers, AFL-CIO (“IAM”) represents nearly 600,000 active and retired members in total. The IAM was founded in 1888 by 19 railroad machinists who met secretly in a locomotive pit in Atlanta, Georgia to form a union. Today, the IAM is one of the largest and most diverse labor organizations, representing members in aerospace, transportation, the federal government, automotive, defense, woodworking, and several other industries. Transportation is the largest division within the IAM, covering both airline and railroad workers and representing more employees covered by the Railway Labor Act (“RLA”) than any other labor organization. IAM District Lodge 19 is the designated representative for machinists working in the railroad industry. In total, the District Lodge has 77 local lodges that it supports, representing over 11,000 active machinists and approximately 6,000 retired members across the country. Approximately 7,500 IAM members are involved in the present dispute.

The National Railway Labor Conference (“NRLC”) is an association consisting of all U.S. Class I freight railroads and numerous smaller freight and passenger lines. The NRLC began in 1963 when three regional railroad conferences formed a single, nationwide entity. The National Carriers’ Conference Committee (“NCCC”) is organized within the NRLC. It consists of the Chairman of the NRLC, who is also the Chairman of the NCCC, and five senior labor relations executives from Class I railroads. The NCCC acts as the collective bargaining representative for the railroads during national negotiations with all

unions representing rail employees. This multi-employer bargaining through the NCCC is commonly known as “national handling.” The five Class I carriers are: BNSF Railway Company (“BNSF”), CSX Transportation, Inc. (“CSXT”), The Kansas City Southern Railway Company (“KCSR”), Norfolk Southern Railway Company (“Norfolk Southern”), and Union Pacific Railroad Company (“Union Pacific”). Collectively, they employ more than 90% of the employees involved in national handling. A complete list of the carriers represented by the NCCC in this round of negotiations appears as Appendix A to the parties’ arbitration agreement. IAM Ex. 1. In addition to national handling, the NRLC represents the railroads in administering industry-wide health and welfare plans for rail employees and appears before federal agencies, congressional committees, the courts, and in arbitration regarding rail labor issues.

#### **IV. The Union Presentation**

At the hearing, the IAM intends to present testimony from some or all of the following individuals in its direct case:

Mike Perry, IAM District Lodge 19 Acting President/Directing General Chairman, will testify regarding the work of the machinist craft, the history of bargaining in this round of negotiations, the IAM’s ratification process, and its Section 7 proposal.

The following witnesses will testify regarding the expansion of machinist work responsibilities at their respective carriers: Josh Cox, a Local Chairman from Union Pacific; John Lawrence, a Local Chairman and President of Local Lodge 511 from CSXT;

James McAninch, a Local Chairman from BNSF; and Michael Mills, a Local Chairman from Norfolk Southern.

Richard Pantoja is the Union's economist and works for the IAM Transportation Department providing economic analysis in support of negotiations and in arbitration. He will testify regarding the financial health of the carriers and provide costing for the Union's Section 7 proposal.

## **V. Machinist's Craft Work and Responsibilities**

The work of the machinist's craft is highly skilled.<sup>1</sup> Machinists inspect, maintain, and repair diesel engines, air brake equipment, running gear, and locomotive components. They also maintain and repair machinery and heavy equipment, such as bulldozers, front-end loaders, and specialized equipment used to repair and maintain tracks. Machinists rivet, bolt, glue, braze, and weld to fabricate or modify replacement parts for equipment. They fabricate, cut, shape, and perform finish operations using various types of materials, such as steel and aluminum. They must understand complex mechanical operations and manuals. Increasingly, the work involves the use of laptop computers to diagnose and repair problems. Machinists work both in the locomotive repair shops and in the field as travelling roadway mechanics.

Machinists perform essential safety functions, requiring that they complete annual training and pass examinations in safety and track worker rules. They must ensure

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<sup>1</sup> Attached as IAM Exhibit 2 is a presentation regarding railroad machinists' responsibilities and work environment, prepared by District Lodge 19 for the Railroad Retirement Board. The presentation also includes photos showing the work environment.

compliance with Federal Railroad Administration (“FRA”) rules and safety regulations, as well as carrier-specific safety rules and policies. Periodic service of locomotives includes required safety inspections. Machinists also move locomotives within yard limits, and therefore must master and apply FRA regulations regarding locomotive operations. Some machinists must also maintain Commercial Drivers Licenses, depending on job duties.

Whether in the locomotive shops or in the field, machinist work is physically demanding and involves exposure to environmental hazards. Machinists are on their feet for the vast majority of the work day, climbing on or crawling under equipment, and frequently lifting between 70 and 100 pounds. Workers are frequently exposed to heights, working on top of locomotives and other heavy equipment. They also perform work in temperature extremes, working around hot locomotive engines and in all weather conditions. Work in the locomotive shops involves exposure to diesel exhaust, as well as welding and cutting fumes. Machinists are also exposed to many types of dust, including gasket materials cleaned off metal parts, ballast dust, and sand dust. The work environment is frequently noisy, often at very high decibel levels.

The typical schedule for a railroad machinist working in a shop is five days of eight hours with two weekdays off. However, given the 24/7 nature of railroad operations, machinists are commonly required to work overtime ranging from four to eight hours beyond the normal shift. Overtime is mandatory at times, especially on holidays. Machinist roadway mechanics often work nine to fourteen-hour days with five days off in between. All machinists are subject to being called in for work on their rest days.

Railroad machinist work requires extensive specialized training. In addition to formal classroom training, a journeyman must complete an intensive three-year apprenticeship program, or be able to otherwise demonstrate the necessary skills to work in the railroad industry. In particular, railroad machinists have specialized training related to internal combustion engines, which are complex piston-drive machines.

Although railroad machinists have training and skills unique to their industry, they also possess general skills that are in high demand in other sectors of the economy. Currently, the hiring outlook for machinists is robust. According to the U.S. Bureau of Labor Statistics, employment for machinists overall is expected to grow 2% from 2016 to 2026. IAM Ex. 3 at 7. In addition, “[j]ob prospects for machinist and tool and die makers are expected to be good, primarily because of the number of job openings arising each year from the need to replace workers who retire or leave the occupation.” *Id.*; see also IAM Exs. 4 - 5. In some regions of the country, demand is particularly strong and employees with necessary skills are in short supply. IAM Exs. 6 - 9.

Given the strong demand for machinist skills, two carriers – BNSF and Union Pacific – have begun offering signing bonuses up to \$25,000 for new hires in the machinist craft. IAM Exs. 10 - 13. “Hiring has become more difficult,” according to a spokesperson for BNSF. IAM Ex. 11. Incentive payments for new hires, however, have generated a negative reaction from current machinists due to the carriers’ attempts to hold down compensation increases for them.



## **VI. History of the Present Dispute**

In the last round of negotiations, the IAM reached agreement with the NCCC based on the recommendations of Presidential Emergency Board (“PEB”) 243, issued on November 5, 2011. IAM Ex. 14 (PEB 243 Report). The 2011 agreement contained a moratorium clause running through December 31, 2014. IAM Ex. 15 at 13. PEB 243’s recommendations and the resulting agreement included substantial wages increases:

7/1/2010	2.0% (retroactive)
7/1/2011	2.5% (retroactive)
7/1/2012	4.3%
7/1/2013	3.0%
7/1/2014	3.8%
1/1/2015	3.0%

IAM Ex. 14 at 87. PEB 243 made the final 3.0% increase effective January 1, 2015 optional in the sense that each labor organization involved in the proceedings could elect whether to include this wage increase. If elected, this wage increase would constitute the first increase in the next round of bargaining. The PEB recommended that the following language be included in the parties’ agreement to reflect that the optional wage increase set terms beyond the duration of the rest of the agreement:

This will confirm our understanding that if disposition of the 2015 Bargaining Notices is referred to any third party (including but not limited to a Presidential Emergency Board), this Letter may be provided to such body to confirm the parties’ mutual understanding that acceptance of the January 1, 2015 3.0% general wage increase was intended to constitute a complete resolution of the compensation adjustment issue for the calendar year 2015.

IAM Ex. 14 at 87. The IAM elected to receive the 3.0% increase effective January 1, 2015 and incorporated the recommended language into its agreement with the NCCC, thereby

resolving the issue of wage increases for the first year of the current round of bargaining. IAM Ex. 15 at 18.

In addition to the general wage increases, PEB 243 also recommended a lump-sum payment equivalent to 1% of straight-time earnings for the period November 1, 2010 through October 31, 2011, after application of the July 1, 2010 and July 1, 2011 general wage increases. IAM Ex. 14 at 18-19.

Although PEB 243 recommended solid wage increases, the Board also recommended a significant number of changes to the National Health and Welfare Plan covering railroad employees, as sought by the NCCC. The IAM and other unions had vigorously resisted these plan design changes, viewing them primarily as a mechanism to shift costs onto employees, and not merely a means to incentivize more efficient utilization of healthcare services. The plan design changes included: the introduction of annual deductibles for in-network benefits at the rate of \$200 individual/\$400 family; an increase in emergency room co-payments from \$25 to \$75 (waived if admitted to the hospital); the introduction of a 5% coinsurance for medical and hospital expenses where no fixed dollar co-payments apply with an out-of-pocket maximum of \$1000 individual/\$2000 family; and increases in some pharmacy co-payments. *Id.* at 27-29, 88. These changes were viewed as substantial concessions by both employees and the railroads.

PEB 243 also made recommendations regarding monthly employee contributions to healthcare coverage. The Board recommended that the then-current formula for employee contributions continue until July 1, 2016. The formula set employees contributions at the

lesser of 15% of the carriers' monthly payment rate or \$200. As of July 1, 2016, the PEB recommended that the amount be adjusted to the lesser of 15% of the carriers' monthly payment rate for 2016 or \$230. *Id.* at 88. This rate was to continue unless and until modified in the next rounds of bargaining. Applying these recommendations, employees initially paid \$198 per month under the 2011 Agreement, which increased to \$228 per month effective July 1, 2016. IAM Ex. 16.

IAM's railroad members ratified the agreement based on the PEB recommendations with 69% of ballots cast in favor of the contract.

On November 3, 2014, the NCCC served its Section 6 notice for this round of bargaining, and IAM served its notice on November 26, 2014. IAM Ex. 17 (NCCC Sec. 6); IAM Ex. 18 (IAM Sec. 6).

IAM advised NCCC that it would be negotiating in a coalition with the International Brotherhood of Electrical Workers ("IBEW"), the Transportation Communications Union/IAM ("TCU"), and the Transport Workers Union of America ("TWU"). Collectively, the Organizations in this coalition represented approximately 22 percent of the workforce involved in national handling.

Two other union coalitions were also formed during this round of bargaining. The Coordinated Bargaining Group ("CBG"), consisting of the American Train Dispatchers Association ("ATDA"), the Brotherhood of Locomotive Engineers and Trainmen/IBT ("BLET"), the Brotherhood of Railroad Signalmen ("BRS"), the International Brotherhood

of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers (“IBB”), National Conference of Firemen and Oilers/SEIU (“NCFO”), and the Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (“SMART-TD”). Collectively, the CBG represented 58 percent of the involved workforce. Another coalition consisted of the Brotherhood of Maintenance of Way Employees Division/IBT (“BMWED”) and the Sheet Metal, Air, Rail and Transportation Workers – Mechanical Division (“SMART-Mechanical”), representing 20 percent of the workforce collectively.

The IAM and NCCC held their first conference on January 13, 2015, commencing a tough round of negotiations spanning three years. IAM Ex. 19. From the outset, the NCCC focused on holding wage increases to levels well below those achieved in prior rounds of national negotiations.<sup>2</sup> The Carriers also focused on changes to the design of the National Health and Welfare Plan, such as increases in co-pays, out-of-pocket maximums, co-insurance, and deductibles. In addition, the Carriers pursued substantial work rule changes throughout the negotiations, even ratcheting up those demands far into the bargaining process.

At the outset of negotiations, the rail industry was operating at full capacity, but not long afterward two primary rail commodities, coal and oil, experienced declines, leading to substantial lay-offs. The negotiations were also clouded by uncertainty both in the run-up to and the aftermath of the 2016 national election.

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<sup>2</sup> Attached as IAM Exhibit 20 is a historical summary of wage increases for IAM-represented employees, which was prepared in conjunction with PEB 243.

After fruitless direct negotiations, the IAM and its coalition partners invoked the NMB's mediation services in October 2015. IAM Ex. 21. The NMB assigned mediators Terri Brown and Jane Allen, and negotiations proceeded under the schedule set by the mediators. Unfortunately, little progress was made. On December 16, 2016, IAM District Lodge 19 published an update to its members summarizing the status of the negotiations:

[N]ational negotiations and the IAM Coalition remain stalled, hostage to Carriers' unremitting demands for major concessionary changes to the healthcare plan. . . . Each side has exchanged voluminous information with the Carriers emphasizing what they consider to be the high costs of the national health insurance plan relative to other industries, including non-union. The IAM coalition has stressed how much the plan design savings from the last contract have [done] to hold down costs, that employees are paying enough now, and comparing us to non-union industries, is a non-starter. The parties also remain far apart on wages. And, at a recent session, the Carriers added a host of concessionary work rule demands to their agenda.

IAM Ex. 22.

Negotiations continued throughout 2017. The NCCC presented the IAM and its coalition partners with a comprehensive proposal, which the IAM published to its membership. IAM Ex. 23. The proposal fell significantly short of an acceptable package.

On October 5, 2017, the NCCC reached a tentative agreement with the six CBG unions. The CBG agreement provided for wage increases totaling 12.5% over its term, including the 3% increase effective January 1, 2015 which was negotiated during the prior round based upon PEB 243's recommendations. The wage increases were as follows:

1/1/2015	3.0%
7/1/2016	2.0%
7/1/2017	2.0%

7/1/2018 2.5%  
7/1/2019 3.0%

The agreement provided for full retroactive payment of wage increases.

In terms of healthcare, the CBG agreement capped monthly employee contributions at the current rate of \$228.89 and provided that the amount would remain frozen unless and until renegotiated. The agreement also provided for substantial plan design changes shifting increased costs onto employees. Specifically, the increases for the Managed Medical Care Program (“MMCP”), which covers 90 percent of National Plan participants, were as follows:

MMCP PROVISIONS		PRE-EXISTING DESIGN		PATTERN PLAN DESIGN 2018		PATTERN PLAN DESIGN 2019 AND LATER	
		INN	OON	INN	OON	INN	OON
<b>Employee Coinsurance after Deductible</b>		5%	25%	10%	30%	10%	30%
<b>Annual Deductible</b>	Individual	\$200	\$300	\$325	\$650	\$350	\$700
	Family	\$400	\$900	\$650	\$1,300	\$700	\$1,400
<b>Annual Out-of-Pocket Maximum</b>	Individual	\$1,000	\$2,000	\$1,800	\$3,600	\$2,000	\$4,000
	Family	\$2,000	\$4,000	\$3,600	\$7,200	\$4,000	\$8,000
<b>Fixed-Dollar Copayments</b>	Telemedicine	N/A	N/A	\$10	N/A	\$10	N/A
	Convenient Care Clinic Visit	\$10	N/A	\$10	N/A	\$10	N/A
	Primary Care Physician Visit	\$20	N/A	\$25	N/A	\$25	N/A
	Urgent Care Center Visit	\$20	N/A	\$25	N/A	\$25	N/A
	Specialist Visit	\$35	N/A	\$40	N/A	\$40	N/A
	Emergency Room Visit	\$75	\$75	\$100	\$100	\$100	\$100

† “INN” refers to in-network and “OON” refers to out-of- network.

The CBG agreement also provided for no changes in existing work rules. The agreement’s moratorium clause runs through December 31, 2019, meaning that negotiations commence again within two years.

Over several months, the CBG unions conducted ratification votes, with the members of five of the six organizations voting in favor of the new agreement.<sup>3</sup> The plan design changes for the ratifying CBG unions were implemented effective January 1, 2018. IAM Ex. 24 at 13 (NCCC Submission to SBA No. 602). The NCCC’s actuaries have estimated that, if the agreement’s design changes were implemented for all unionized employees on January 1, 2018, then the Plan’s per-employee per-month cost would be less than the previous plan design by \$73.24 in 2018, by \$87.03 in 2019, and by \$89.73 in 2020. *Id.* at 14; IAM Ex. 25 (App. A to NCCC Submission to SBA No. 602) at Fig. 5. In preparing these estimates, the NCCC’s actuaries relied upon a series of assumptions, including assumptions regarding behavioral changes in response to design changes leading to declines in the use of healthcare services by members and their dependents or the utilization of less expensive treatment options. IAM Ex. 24 at 42-43. The Carriers’ actuaries also made clear that their savings projections did not reflect any estimate of the ancillary programs included in the plan design changes, such as consolidated care management and pharmacy bids. Therefore, actual savings may be greater. IAM Ex. 25 at Fig. 5.

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<sup>3</sup> Only the IBB, which represents less than 1 percent of the involved workforce, failed to ratify the agreement. Following a second failed ratification vote, the IBB leadership signed the tentative agreement on behalf of its membership on April 13, 2018. IAM Ex. 26. The IBB agreement made the healthcare plan design changes retroactive to January 1, 2018. IBB also agreed to a “true-up” payment in the total amount of \$105.00 for the delay in the implementation and application of the healthcare changes. *Id.* at 17.

On December 8, 2017, the IAM and its coalition partners reached a tentative agreement based on the CBG settlement. IAM Ex. 27. District Lodge 19 immediately notified its membership that a deal had been reached. IAM Ex. 28. On December 27, 2017, the District mailed ratification packages to all local lodges involved in national handling. IAM Ex. 29. The ratification packages containing the tentative agreement and a cover letter from the District Lodge’s President and Directing General Chairman, stating: “We strongly believe that it is in the best interest of our membership to ‘**Ratify**’ this Tentative Agreement due to good increases in compensation and the current monthly employee contribution to remain frozen at \$228.89 per month for health care until the next agreement is negotiated.” The ratification package also included examples of retroactive pay and hourly rate increases under the tentative agreement, as well as a detailed summary of the health and welfare plan design changes. Under the tentative agreement, the typical machinist would see the following increases based upon straight-time hours:

Wage Increase Totals over Agreement Term

<b>Effective Date</b>	<b>Previous Rate of Pay</b>	<b>New Rate of Pay</b>	<b>Increase of Pay</b>	<b>x Hours = ST</b>	<b>Yearly Total of Increase</b>
1/1/2015	\$29.29	\$30.17	\$.88	3120	\$2745.60
7/1/2016	\$30.17	\$30.77	\$.60	2080	\$1248.00
7/1/2017	\$30.77	\$31.39	\$.62	2080	\$1289.60
7/1/2018	\$31.39	\$32.17	\$.78	2080	\$1622.40
7/1/2019	\$32.17	\$33.14	\$.97	2080	<u>\$2017.60</u>
					<b>\$8893.20</b>

The IAM’s practice is to hold ratification votes by secret ballot at local lodge meetings, where the agreement terms are explained and members may ask questions. The



District advised that vote tally sheets were to be returned from each local by February 5, 2017.

Despite the endorsement of the union leadership, IAM members overwhelmingly rejected the tentative agreement. Overall, the agreement failed by a vote of 3,054 against and 761 in favor. IAM Ex. 30. Out of the 53 locals voting on the agreement, the members in only six locals voted in favor of the contract. The margin in some locals was as large as ten to one against the agreement. The District Lodge also took a strike vote in conjunction with the ratification vote, which is its usual practice. Members voted to strike with 2,934 votes in favor and 705 votes against. On February 8, 2018, the Union announced that the tentative agreement had failed to ratify. IAM Ex. 31.

Shortly after, the District Lodge also requested that its membership participate in a survey regarding the national agreement to shed light on the reasons for the failed ratification. IAM Ex. 32. The results showed that 77% of respondents viewed affordable healthcare as essential, 63% indicated that significant improvements in wages are essential, followed closely by 61% who identified job security as essential. IAM Ex. 33. In particular, members expressed concern that increased healthcare costs for employees would significantly diminish the modest wage increases offered in the tentative agreement. Some members gave the example that if a family were to experience a serious medical problem, the increase in the out-of-pocket maximum from the current rate of \$2,000 to \$4000 in 2019 would entirely consume the corresponding annual wage increase under the

tentative agreement. Many members indicated their belief that they should strike to obtain a better settlement.

During the same time-frame as the IAM's ratification process, the other unions in its coalition conducted their own ratification processes. The TCU (including its Brotherhood of Railway Carmen Division ("BRC")) and the TWU voted in favor of the agreement. As a result, the healthcare design changes in the contract went into effect for the members of these organizations on February 1, 2018. IAM Ex. 24 at 15. The IBEW membership narrowly rejected the tentative agreement in an initial ratification vote, but subsequently approved the agreement also by a narrow margin in a second vote conducted in May 2018.

In addition, while the IAM ratification process was underway, the NCCC and the union coalition consisting of BMWED and SMART-Mechanical decided to arbitrate their contract dispute. Although the Carriers and these unions had reached agreement on wage increases, BMWED and SMART-Mechanical wanted to adopt a new health and welfare plan, which the unions claimed would deliver savings equivalent to the plan design changes agreed to by the CBG. NCCC insisted that BMWED and SMART-Mechanical should be subject to the same pattern agreements already reached and disputed that the unions' new plan delivered equivalent savings.

On February 27, 2018, these parties reached an agreement to arbitrate their dispute under RLA Section 7. IAM Ex. 34. The parties selected Gil Vernon as a neutral arbitrator and hearings were scheduled for May 7-8, 2018. IAM Ex. 35. It is our understanding that

the NCCC first developed the concept of the “true-up” in the context of this Section 7 arbitration, arguing that application of the pattern settlements already reached required an adjustment equivalent to the February 1, 2018 effective date of the healthcare design changes for TCU and TWU. NCCC also argued that BMWED and SMART-Mechanical should be subjected to an additional one-month “true-up” payment as a penalty, which would mimic the January 1, 2018 effective date of healthcare design changes for the CBG unions. On May 23, 2018, Arbitrator Vernon issued his decision. IAM Ex. 36 (SBA No. 602 Decision). He rejected the unions’ new healthcare plan and imposed the NCCC’s pattern settlement and the “true-up” payment, but he rejected the additional one-month penalty.

The NCCC had also demanded a “true-up” payment from the IBEW membership due to the delay in the implementation of their agreement caused by their initial failed ratification vote. In July 2018, IBEW and NCCC arbitrated the “true-up” issue before Arbitrator Joshua Javits, who issued a decision on July 17, 2018 imposing a four-month “true-up” payment. IAM Ex. 37 (SBA No. 603 Decision).

Following the failed ratification vote, the IAM sought to re-engage with the NCCC with the assistance of NMB mediators. However, NCCC declined to negotiate over terms different from the agreements reached with the other railroad organizations. In addition, the NCCC asserted for the first time that the IAM must agree to a “true-up” payment due to delayed implementation of healthcare design changes, which would be offset from employee’s retroactive wage increases. IAM Ex. 38 (NCCC proposal). In discussions

with the NMB, the IAM was advised that a release from mediation, if any, would not occur for a significant period of time.

On July 10, 2018, District Lodge 19's President and Directing General Chairman advised its local leaders and members that he had made the "extremely difficult decision" to arbitrate the current contract dispute. IAM Ex. 39. He explained the NCCC's position, including the demand for a "true-up", and the NMB's unwillingness to issue a release from mediation in the foreseeable future. He further explained that the District Lodge would be unable to move forward in the next round of negotiations beginning at the end of 2019 unless the current dispute was concluded.

## **VII. Major Disputes and Section 7 Arbitration under the RLA**

Under the RLA, disputes over the formation or modification of collective-bargaining agreements are referred to as "major disputes." *Elgin, Joliet & E. Ry. v. Burley*, 325 U.S. 711, 723 (1945). Generally, RLA collective-bargaining agreements do not expire. Rather, they become "amendable" in accordance with the bargaining process mandated by the Act. The Act sets forth a multi-step process for resolving major disputes and delegates broad discretion to the National Mediation Board ("NMB") to oversee that process. The statutory process is the same for both the airline and rail industries, except for additional steps in the process applicable only to commuter railroads. While the RLA process is ongoing, the Act's "status quo" requirement prohibits the parties from engaging in self-help. *See generally Detroit & Toledo Shore Line R.R. Co. v. United Transp. Union*, 396 U.S. 142, 149 (1969).

The process for forming or amending a CBA is triggered when one or both parties serve on the other a “Section 6” notice. 45 U.S.C. § 156. Within 10 days, the parties must agree on a time and place to begin negotiations, and within 30 days they must meet and begin direct bargaining. *Id.* If an agreement is not reached, at any time either party may end direct bargaining by invoking the NMB’s mediation services. 45 U.S.C. § 155, First. Once in mediation, an NMB-appointed mediator sets the schedule for further negotiations and facilitates the talks. Mediation continues until the NMB determines that further efforts on its part are unlikely to be productive and releases the parties. 45 U.S.C. § 155, First. The NMB has broad discretion to determine whether to release the parties from mediation and judicial efforts to compel the Board to issue a release have been uniformly unsuccessful. *See, e.g., IAM v. NMB*, 930 F.2d 45, 48 (D.C. Cir. 1991) (holding that the NMB’s latitude in mediation includes anything “that can fairly be said to be designed to settle a dispute without a strike and does not independently offend other laws”).

Following a release, if the parties have declined final and binding interest arbitration, a 30-day “cooling-off” period begins during which the parties are barred from self-help. 45 U.S.C. § 155, First. When a dispute threatens to interrupt interstate commerce such that a section of the country would be deprived of essential transportation service, the NMB may recommend that the President of the United States create a Presidential Emergency Board (“PEB”). 45 U.S.C. § 160. The PEB is charged to investigate the dispute and submit a report to the President within 30 days, which triggers another 30-day cooling-off period. 45 U.S.C. § 160. The report customarily sets forth recommendations

for the settlement of the dispute, which, although not legally binding, have generally formed the basis for the parties' eventual agreement.

If the parties do not reach agreement, self-help becomes available after the final cooling-off period expires. In the case of the rail industry, however, Congress has often intervened to prevent a threatened strike following the issuance of a PEB report either by requiring further proceedings to resolve the dispute or by legislating the PEB recommendations. *See, e.g., Burlington N. R.R. Co. v. Bhd. of Maint. of Way Employes*, 481 U.S. 429 (1987) (creating a new board); *Bhd. of Locomotive Eng'rs v. Chicago, Rock Island & Pac. R.R. Co.*, 382 U.S. 423 (1966) (requiring interest arbitration); *Maine Cent. R.R. v. Bhd. of Maint. of Way Employes*, 873 F.2d 425 (1st Cir. 1989) (enacting the PEB recommendations as law).

As an alternative to a release, the parties may agree to arbitrate their contract dispute under Section 7 of the RLA, as is the case in this matter. 45 U.S.C. § 157. The scope of Section 7 arbitration is broad, encompassing essentially any issue that the parties agree to send to a board. RLA Sections 7, 8 and 9 set out specific, detailed rules of procedure for arbitration, but the parties remain free to set their own terms by mutual agreement.

In Section 7 interest arbitration, as in the PEB process, arbitrators strive to arrive at a mutually acceptable resolution of the dispute. *See The Railway Labor Act at Fifty* (Charles M. Rehmus, ed.)(1976), at 148 (in discussing Section 7 interest arbitrations, “[t]he importance of arriving at an award that is within the limits of acceptability of both sides cannot be overstated.”); PEB 222 Report, at 83 (May 28, 1992) (“We think it would be

unrealistic and a costly exercise in futility for all concerned if our total recommendations did not take into consideration, as a critical ingredient, their acceptability by the parties.”); PEB 242 Report, at 57 (Dec. 30, 2007) (“any recommendation ought to reflect a mutually acceptable basis for agreement”). In determining acceptability, a key component is the reasonable expectations of the parties based upon such considerations as prior bargaining and the carrier’s financial circumstances.

In determining the appropriate basis for settlement, past Boards have often sought to determine whether a pattern of voluntary settlements exists in the same bargaining round, either at a given carrier (“internal pattern”) or within the industry generally (“external pattern”). However, even in cases where an overwhelming majority of employees are already covered by new agreements, past Boards have made clear that they are not slavishly bound to follow the pattern principle. As PEB 174 stated “the fact that other unions may have accepted a particular pattern of wage increases is not of itself adequate reason why [another union] should accept that same pattern. Each organization is entitled to have its wage demands considered on their own merits.” PEB 174 Report, at 5 (Feb. 12, 1969). Although not automatically applicable, Boards generally have held that “where a pattern is clearly established and ascertainable,” the burden is on the party opposing the pattern to “clearly demonstrate an inequity or a rational and convincing basis for a changed wage structure.” PEB 181 Report, at 13 (Apr. 30, 1972).

## **VIII. The Union's Proposal**

The Union's proposal in this proceeding is as follows:

### **General Wage Increases**

January 1, 2015	3%
July 1, 2016	2%
July 1, 2017	2%
July 1, 2018	2.5%
July 1, 2019	3%
January 1, 2020	3%

The January 1, 2020 increase is intended to constitute a complete resolution of the compensation adjustment issue for calendar year 2020.

### **Wage Responsibility Adjustment**

Effective January 1, 2019, all IAM-represented employees' base rates of pay will be increased by \$1.00 per hour.

### **Health and Welfare**

The plan design changes contained in the parties' tentative agreement shall apply effective as soon as practicable following the issuance of the Section 7 award without any "true-up" payment.

### **Duration**

January 1, 2015 through December 31, 2019, with the above settlement of general wage increases for calendar year 2020.

Except as specifically set forth above, all other terms are as contained in December 2017 tentative agreement.



## **IX. The Board Should Adopt the Union's Proposal**

We do not dispute that there is a pattern of settlements in this round of national handling. The Union proposal should be adopted nonetheless. For the most part, the Union proposal is consistent with earlier settlements. In deference to the established pattern, the additional wage increase lies beyond the duration of the current pattern and sets terms for the next round of bargaining. To the extent that the wage responsibility adjustment is a departure from the pattern, it is justified by circumstances unique to the machinist craft. The NCCC's insistence on a "true-up" payment is inequitable and should not be awarded. Lastly, the Union's proposal falls well within the Carriers' ability to pay, considering the continued profitability of the Carriers and the recent rebound in demand.

### **A. The Additional 3% Wage Increase Is Consistent with the Settlement in the Last Round of Bargaining**

The IAM's proposal for an additional 3% general wage increase at the beginning of the next round of bargaining is intended to address the membership's concern that the tentative agreement contains insufficient wage increases, especially considering increased employee costs for healthcare. The additional 3% would increase annual wages per employee by an average of approximately \$2,247 or \$1.02 per hour beginning January 1, 2020. IAM Ex. 40 at 10 (Union Economist Report).

The Union proposal is explicitly modelled on the wage recommendations made by PEB 243 which included a similar 3% wage increase effective at the beginning of the current round of negotiations. Given that negotiations in this round dragged on for three

years, the next round of bargaining is now not far off, and so an increase scheduled to coincide with the reopening of negotiations will offer meaningful relief to employees.

The IAM's proposal is also intended to address the NCCC's insistence that there is an established pattern of wages increases in this round that should not be altered. As a general matter, a pattern exists within the same time frame. Thus, the IAM's proposed 3% increase effective January 1, 2020 stands outside of the existing pattern by extending the duration of the parties' agreement with respect to the wage component. This is essentially the same approach as taken by PEB 243. The Board gave each union the option of accepting an additional wage increase which would settle the issue of wages for the first year of the next bargaining round, but otherwise recommended identical settlement terms for all organizations. Thus, PEB 243 viewed the next-round increase as falling outside of its pattern recommendations.

It should also be noted that none of the agreements reached in this round between the NCCC and the other rail unions contain "me too" provisions. In fact, the NCCC has historically refused to include "me too" provisions in its agreements. Although NCCC may claim that adherence to a pattern is necessary for sound labor relations, it has not bound itself by contract to offer the same terms to all organizations.

**B. The \$1.00 Per Hour Differential Is Warranted by Changes in the Work Responsibilities of the Machinist Craft**

The IAM is also proposing a \$1.00 per hour differential payable to all machinist employees effective January 1, 2019. This proposal is intended to address members' concern that the tentative agreement offered insufficient compensation adjustment in light of the fact that the machinist craft is increasingly required to shoulder additional job responsibilities by performing work historically performed by other shop crafts. The \$1.00 differential is roughly equivalent to a 3% wage increase, although unlike a percentage wage increase, it is a fixed-dollar amount and not subject to future compounding. IAM Ex. 40 at 10.

Differential payments have a long history in the railroad industry. A differential is simply a premium paid to railroad workers in recognition of the level of skill and training required to perform certain work. Although these adjustments have appeared in agreements as far back as World War I, differentials were addressed in a more comprehensive fashion in 1991 by PEB 219 and again in 1992 by PEB 220. *See* PEB 219 Report (Jan. 15, 1991); PEB 220 Report (May 28, 1992). Ultimately, both Boards recommended that the parties establish Joint Skill Adjustment Committees to study and reach a determination on the need to adjust wages based upon skill and pay for similar work in other occupations. The agreements resulting from this process varied significantly by union, but generally provided for differentials ranging from \$.25 to \$.50 per hour for such things as working as a lead, performing welding work, or having an FCC license,

among other specialized skills. While the national differentials have remained basically unchanged for at least 15 years, at the local level individual unions and several carriers have agreed to recognize additional differentials and to increase the premium pay. Accordingly, at present, the amounts and skills for differentials vary greatly depending on the union and the carrier.<sup>4</sup> In this sense, differentials historically have stood apart from the application of pattern settlements.

The IAM is one of the seven unions representing shopcraft employees working for the carriers. The other unions are: the International Brotherhood of Electrical Workers (“IBEW”); the Brotherhood of Railway Carmen (“BRC”), which is a division of the Transportation Communications Union (“TCU”); the Transport Workers Union (“TWU”); the International Brotherhood of Boilermakers and Blacksmiths (“IBB”); the National Conference of Firemen and Oilers (“NCFO”); and the Sheet Metal, Air, Rail and Transportation Workers – Mechanical Division (“SMART - Mechanical”). BRC and TWU represent carmen who repair and maintain railroad cars. The other shopcraft unions, however, historically have performed work related to the repair and maintenance of locomotives and other equipment. In the locomotive shops, electrical workers represented by IBEW specialize in inspecting and repairing electrical components. IBB-represented boilermakers traditionally have specialized in the maintenance and repair of boilers, tanks, and related components. SMART – Mechanical sheet metal workers traditionally have

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<sup>4</sup> Attached as IAM Exhibit 41 is a sample of various differentials as they currently exist at different carriers.

performed pipefitting work, including water, air, and gas piping, and small gauge sheet metal work, including shaping, bending, cutting and welding sheet metal. NCFO-represented employees generally perform work related to cleaning and storing shop equipment and materials.

Increasingly, the carriers are assigning machinists to perform work historically done by these other crafts. Our witnesses will provide testimony detailing the way the work of other crafts is being shifted to machinists and the prevalence of these practices at the major carriers. *See also* IAM Exs. 42 – 48. For example, at CSXT, machinists are required to perform numerous tasks traditionally performed by electricians when conducting service center inspections on locomotives. In addition, daily, machinists are required to perform utility work, such as buckling hoses, replacing light bulbs, changing brake shoes, and operating forklifts. At Norfolk Southern, machinists are now required to do water pressure tests and repairs on locomotive cooling systems which used to be considered pipefitter work, as well as work on locomotive cabs previously performed by carmen. On BNSF, machinists were assigned to the Arc Mod project and are now performing educator tube gasket work, even though these tasks traditionally are considered pipefitter work.

The carriers will likely respond that they are simply assigning work in accordance with the “Incidental Work Rule” which currently exists in the shopcraft agreements.<sup>5</sup> The

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<sup>5</sup> The Incidental Work Rule provides as follows:

Where a shopcraft employee or employees are performing a work assignment, the completion of which calls for the performance of “incidental

Incidental Work Rule permits management to assign non-craft work to a shopcraft employee provided that the incidental work is does comprise a preponderance of the assignment. Work is considered incidental if it involves removing or replacing parts and appliances from or near the main work assignment or involves simple tasks that require neither special training nor special tools. As we will show, however, the volume of specialized, non-craft work increasingly assigned to machinists far exceeds the bounds of the Incidental Work Rule.

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work” (as hereinafter defined) covered by the classification of work or scope rules of another craft or crafts, such shopcraft employee or employees may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as “incidental” when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment, and shall include simple tasks that require neither special training nor special tools. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment.

In addition to the above, simple tasks may be assigned to any craft employee capable of performing them for a maximum of two hours per shift. Such hours are not to be considered when determining what constitutes a “preponderant part of the assignment.”

If there is a dispute as to whether or not work comprises a “preponderant part” of a work assignment the Carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the Shop Committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the Carrier for the actual time at pro rata rates required to perform the incidental work.

The assignment of non-craft work to machinists without any additional compensation for assuming these added responsibilities is a major source of dissatisfaction among IAM members. Our proposal seeks to address this concern. In the railroad industry, the traditional method of compensation for expanded responsibilities is the payment of a differential. The Union's proposal is in keeping with this well-established practice. Insofar as the differential is payment in recognition of additional work and addresses a situation unique to the machinist craft, awarding the differential requested by the Union would not disrupt the pattern of settlements reached in this round.

**C. The Carriers Are Not Entitled to a "True-Up" Payment**

The IAM acted in good faith to obtain ratification of the tentative agreement. Although the agreement fell short of members' expectations based on past contracts, the Union urged ratification and made the case that the agreement represented the best deal possible at the negotiating table. The members in turn exercised their democratic right as guaranteed to them under the Labor Management Reporting and Disclosure Act ("LMRDA") to reject the tentative agreement. At bottom, the Carriers want the exercise of members' democratic rights to come at a cost. The Organization cannot agree to that.

We submit that, if the Carriers wanted conditions to attach to a failure to ratify the tentative agreement, then these conditions should have been made known before the tentative agreement was sent out for a vote. Instead, IAM members voted upon the contract initially without any indication that the failure to ratify would trigger further conditions. In our view it would simply be unfair to impose such conditions now.

The past custom and practice between the parties does not support the imposition of a “true-up”. The IAM has negotiated with the railroads for decades, but has not been faced with a demand for a “true-up” in those past bargaining rounds. In fact, in past bargaining rounds, it has been common for the railroad unions to implement new agreements over the course of several months, without a demand that later settling unions to “true-up” their agreements. For example, in the last round of bargaining, the different unions reached agreement following PEB 243 at different times:

<b>Union</b>	<b>Date of Tentative Agreement</b>	<b>Date of Ratification</b>
BRS	November 17, 2011	February 2, 2012
BLET	December 1, 2011	January 5, 2012
BMWED	February 2, 2012	April 20, 2012
IBB	November 17, 2011	January 4, 2012
SWMIA	November 17, 2011	n/a
NCFO	November 17, 2011	January 5, 2012
TCU	November 14, 2011	December 22, 2011
ATDA	December 1, 2011	February 2, 2012
IAM	November 14, 2011	December 22, 2011
IBEW	November 16, 2011	January 5, 2012

Despite these differences in timing, none of the organizations were asked to “true-up” the value of the significant healthcare design changes which all agreed to following the recommendations of PEB 243. Given this history, IAM was taken by surprise with the NCCC’s demand for a “true-up”.

So too in this round, the healthcare design changes were not implemented identically among all organizations. For the CBG unions, the healthcare changes became effective January 1, 2018, whereas the changes for TCU and TWU went into effect on February 1,



2018. It is unclear to us why this difference in timing is tolerable, but any further delay requires a “true-up”. In addition, by agreement, the NCCC and the IBB reached an entirely different arrangement. Following a second failed ratification vote, the IBB leadership signed the tentative agreement on behalf of its membership on April 13, 2018. The IBB agreement made the healthcare plan design changes retroactive to January 1, 2018, but the union also agreed to a “true-up” payment in the total amount of \$105.00 for the delay in the implementation and application of the healthcare changes. Given the variation in the treatment of different organizations within this round, it is difficult to credit the NCCC’s assertion that the “true-up” is dictated by the application of pattern principles.

Moreover, the pattern principle does not require agreement terms which match to the penny. In the words of PEB 243: “Rough equivalence, not precise parity, is the appropriate standard even if the Board were applying pattern principles.” IAM Ex. 14, PEB 243 Report, at 23. To insist upon perfect parity would be more of a hinderance than a help in reaching collective bargaining agreements.

The demand for precise parity in terms of healthcare cost savings also makes little sense in the overall context of these negotiations. The agreements reached by the NCCC with various unions do not have equivalent overall value on a per member basis. Although the general wage increases are set to occur in the same percentage amounts on the same schedule, the dollar cost of these increases is substantially different on a per member basis due to differences in employees’ current rates. In this context, it is nonsensical to insist

upon exactly equivalent healthcare savings on a per member basis when the main contract cost – wage increases – varies considerably among employees.

In this regard, it is also important to understand what the \$73.24 monthly “true-up” represents. The amount is based on actuarial projections of overall savings to the Plan due to the new design changes. Although these projections have been broken out on a per member basis, there is absolutely no relationship between the per member projection and the actual costs to Plan generated by a given employee. It also bears emphasis that the amount is based on projections, which may or may not prove accurate in time. Although actual results may vary from the projection, the Carriers have not proposed a later true-up of the “true-up”.

Finally, as we demonstrate below, the “true-up” is not dictated by economic necessity. With respect to the approximately 7,500 IAM railroad members participating in national handling, the “true-up” amount in total equals approximately \$4.4 million for all the Carriers represented by the NCCC. IAM Ex. 40 at 11. In the overall context of the labor agreements reached in this round, this is an extraordinarily small amount from the carriers’ perspective, but a substantial amount for individual employees at \$584 per member. The Carriers are pursuing this amount from employees even though they continue to enjoy record profitability and a substantial decrease in their tax burden due to the Tax Cuts and Jobs Act of 2017. In sum, there is no economic justification for the Carriers’

demand – it is simply an attempt to extract more from employees in retaliation for their rejection of the tentative agreement.<sup>6</sup>

#### **D. The Carriers Have the Ability to Pay for the Union’s Proposal**

Although the RLA does not specify any factors that Boards should consider in interest arbitrations, Boards have traditionally considered ability to pay in formulating recommendations. *See, e.g.*, PEB 242 Report, at 11 (Dec. 30, 2007) (“‘Ability to pay’ is one criterion traditionally considered in collective bargaining and interest arbitrations when attempting to determine appropriate compensation and working conditions”). As past Emergency Boards have found, where a Carrier is “a thriving enterprise,” it is “proper that the Carrier shares this success with its employees.” PEB 226 Report, at 12 (Apr. 21, 1995); *see also* PEB 230 Report, at 13 (June 23, 1996) (when “circumstances have dramatically changed for the better and the class I railroads have become extremely profitable,” a “case can no longer be made for [] wage restraint”). Similarly, “[i]f employees are more productive, they should be rewarded.” PEB 213 Report, at 22 (July 1, 1988).

Here, the carriers are highly profitable and financially healthy, and are projected to remain so for the foreseeable future. *See* IAM Ex. 40 (Union Economist Report). The carriers are easily able to pay for the cost of the Union’s proposal. In 2017, revenue for the Class I carriers combined was up 6.4% overall – the largest single year revenue increase

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<sup>6</sup> We recognize that Arbitrator Javits addressed many of these objections in the IBEW arbitration of the “true-up” issue, but respectfully disagree with the conclusions reached in that case.

since 2011 when the industry was recovering from significant contraction in 2009. Revenue was also up for all the Class I railroads individually, ranging from +3.1% for CSXT to +12.5% for Norfolk Southern. All Class I railroads reported a profit in 2017, with BNSF leading the way with \$12.1 billion in net income and a 57% profit margin. The combined net margin for the Class I carriers was 52.6%, driven largely by reductions to the carriers' income tax liability resulting from the *Tax Cuts and Jobs Act of 2017*. Due to recent legislation decreasing the federal corporate income tax rate from 35% to 21% and allowing full cost depreciation of equipment, the Freight Rail industry's effective tax rate has plummeted. IAM Ex. 49.

The outlook for the future is also bright. Generally, the economy is strong and consumer demand is on the rise. In a recent interview with *Progressive Railroading*, BNSF's President and CEO Carl Ice noted that, "the overall state of the economy is really one of the best indicators of what we should expect to happen with freight demand in the coming year" and went on to state that the economy is going strong. IAM Ex. 50. As Norfolk Southern's President and CEO James Squire states in the same article:

The broader economy supports an optimistic outlook for ... the freight-rail industry. Overall, growth has been accelerating, inflation is tame and unemployment is the lowest in 16 years. The Purchasing Manager's Index, an indicator of the manufacturing sectors economic health, is the highest level in 12 years, and consumer confidence remains high.

*Id.* Both the short-term and long-term projections reflect continued growth for the rail industry. In fact, it is estimated that there will be a 41% increase in total U.S. freight shipments from 18 billion tons to an estimated 25.2 billion tons by 2045. *Id.* Other rail

executives and industry analysts concur in this bullish outlook on the industry's future.  
IAM Ex. 40 at 8-9.

The Union's economist estimates that the IAM proposal will increase the total cost to all carriers combined by \$49.8 million during the period covered by the contract. *Id.* at 10. This increase in costs can easily be absorbed considering the current levels of record profitability and projections for continued strong financial performance.

**X. Conclusion**

For all the foregoing reasons, we respectfully request that the Board select the Union's Proposal as the basis for its award.

Respectfully submitted,

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