EXHIBIT 10

Arbitration Transcript

Case Number: 1208
Date: January 21, 2025

In the matter of:

UNION PACIFIC v SMART-TD, National Mediation Board Case No. 1208

ARBITRATION

Reported by:
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THE ARBITRATION BETWEEN
UNION PACIFIC AND SMART-TD
NATIONAL MEDIATION BOARD CASE NO. 1208

Report of Proceedings had the Arbitration before ARBITRATOR EARLENE BAGGET-HAYES, taken in the above-entitled cause before Macy Thompson, a court reporter, on the 21st day of January, 2025, commencing at the hour of 9:30 a.m.

A P P E A R A N C E S

JONES DAY

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I N D E X

ARBITRATOR: Good morning, everyone. My name is Earlene Baggett-Hayes. I am the assigned arbitrator in this matter, and we are currently on the record. I have met with the executive board and we mapped out a process. I will probably say in two or three sentences what took us 30 minutes to come up with, but luckily we did have guidance. But before I do that, I'd like for the advocates to introduce themselves. Record. Let's begin with the carrier.

MR. MUNRO: Good morning, Madam Chair. My name is Don Munro.

MR. CHIAVETTA: Good morning. My name is Tom Chiavetta.

MR. EDINGTON: Good morning. My name is Luke Edington.

MR. MCKINLEY: Good morning. My name is Sean McKinley.

ARBITRATOR: Thank you very much. So, in terms of the process, again, for your information, for the record, and briefly, we're going to begin with oral openings, after which there will be direct examination. There will be no cross examination, nor will there be objections accepted. After the case in chief by the carrier is going to present first. So after the case in chief presented by the carrier, of course we'll hear from. --

So again, oral openings, direct examination, no cross examination, and oral closings. Witnesses who are brought will be asked to swear or affirm that they are telling the truth, the whole truth and nothing but the truth.

Okay. And with that, I believe we're beginning. We're ready to begin with carrier's oral statement.

MR. MUNRO: Good morning. Thanks again, Madam Chairman and members of the board. My name again is Don Munro, and I am lead counsel for Union Pacific in this proceeding. I was also the lead counsel for the railroad industry in the proceedings before Presidential Emergency Board Number 250. So I've been involved in the issues that you have before you for many years, along with a number of the other folks in this room on both sides. I am joined by my partner, Tom Chiavetta, who was also industry council before PEB250.

And what I'd like to do today is just walk through a roadmap or summary of what you're going to hear from the carrier in its presentation today. This is the issue before this Court, whether and how to implement three articles, Articles 5, 6 and 7 from the 2022 National Agreement that was the product of the proceedings before PEB250. And as we suggested in our written materials, we are proposing a three-part rubric to address that question and it's laid out here on this slide.

The first is the scope of what this board has before it. What's the range of proposals that are legitimately before you? Do the union's proposals fit within that scope? And do the carriers.

Second, what is equity? How do you cost each side's proposal. Is it a win-win if either side is getting tens or hundreds of millions of dollars more in value than the other side?

And third, is it workable? PEB250, which was the original source of this deal, recommended something that would give the railroads both efficiency, operational benefits, and cost savings, while at the same time giving employees more control over their schedules. How do we achieve that in practice?

I'm going to outline both the argument and the evidence that you will hear from the carrier on each of these issues. And I'm also going to briefly address some of the secondary points, which are more legal in nature and less evidentiary that have been debated by the parties in their written submissions.

Before I do that, though, just one threshold point. This is really complicated subject matter. It is dense and it is at times a little hard to follow. I admit that I've been doing railroad work now for 30 years, and I struggle at times with how to piece all this together. We're going to do our best to explain it, but I think that this will be easier for everyone if -- if the Chair has any questions, we invite them, of course, during this proceeding.

Okay, so let me then turn to these three issues. The first is this threshold question about scope. And I say this is a threshold question because this board doesn't need to decide issues that aren't legitimate before it. If you can that any of the matters that the parties have raised are not within the scope of your jurisdiction, then, of course, you shouldn't move on to address the merits.

And so I think this is the first issue, both logically and legally to start with. All right. So what is the scope? In contract interpretation, we start, as always, with the text of the agreement. And again, all three articles have the same format. They say the issue is whether and how to implement a set of very specific topics that are referenced in that article. Okay. So it's the rules referenced in the article that are the issue.

And there's three sets of rules. Article 5 says, "voluntary assigned days off and proof rate service." That's the first set of rules we're talking about. The second set of rules are carrier specific implementation matters in Article 6, which provides a very specific set of rules to be implemented. And then the Same with Article 7, carrier specific implementation of a set of particular scheduling, vacancy, and assignment rules.

If it's not encompassed within those rules, it's not before you. The arbitration agreement that established this board says this board shall have jurisdiction "only over changes necessary to implement rules referenced in those three articles." It's consistent with the terms of the national agreement. That scope is further clarified by the bargaining mystery, the PEB250 bargain.

We know from that proceeding the trade here was assigned rest in exchange for scheduling and vacancy efficiencies. Now, the union, in its reply submission, says that we've argued to this board that it was a trade of wages for efficiencies. And just to clarify, that is not our argument. The wage increases that were provided by PEB250 is context. The one thing that we got out of that proceeding was Articles 6 and 7.

That was in the context of an agreement that provided for historic wage increases, but what we paid, in addition, the specific trade for Article 6 and 7 was Article 5. It was assigned rest. That's the quid pro quo. The union has suggested to this board that we now have to pay, again, with a whole bunch of other benefits that are not assigned -- And our response to that is, no, this is very narrow.

They get Article 5 scheduling for assigned days off, whether it's a four and one, five and one, five and two of various work REST schedules that the parties have discussed in their submissions. And we get Article 6 and 7. That's it. There's nothing else. There's only been three other arbitrations under these agreements. And we've quoted those awards in the written materials. They all confirm this very same limited scope of jurisdiction that I've outlined.

Two of those awards involved a different union, the BLET, the engineers, who represent -- the union that represents the engineers on the other side of the locomotive cap. But it's the same language; it's identical word for word. And Arbitrator Moreland, in those two cases, provides this guidance in his award, which is summarized here on the screen and also discussed in the written materials.

And he says that for Article 6 and 7 in particular, the carrier controls a limited dialogue. And what he means by that is we propose the implementation. The union can raise questions about that. They don't propose their own implementation. And the other award, the third award, the more recent award, is with this very same union. It's with SMART TD. It also supports the same limited approach.

There's two things I want to highlight from that award. First, none of the extras that the union is demanding here were awarded in that case. There's no differentials, there's no overtime, there's no pay increases, there's no change in penalty pay, there's no vacation, no personal leave, anything like that. Nor is there any change in guarantee, and you're going to hear a lot about guarantee payments. This is the amount that employees receive for being available on the extra board.

And the union asked to change those rules to be paid the guarantee on the rest days, which would be a dramatic and fundamental shift in how guarantee is handled. And Arbitrator Phillips said, no. Okay. So you have a collection of materials that all points toward a very limited jurisdictional scope with this board. Let's apply it to this case.

All right. Here's the list of all the things that the union has asked for. Most of these items have nothing to do with assigned rest or the implementation of Article 6 and 7. Just to highlight a few of them, for self-supporting pools, for example, while that is one of the subjects, at least, in Article 7, they're asking for a payment for self-supporting pools.

Well, there's no provision for payment in Article 7. And then once you get beyond that, Items 5 through 16, these aren't referenced at all. Items 5 through 9 are just more different kinds of time off. They're not assigned rest days. They're not voluntary assigned rest days for through freight service. They're completely different, separate forms of paid leave. And then Items 10 through 16, these are just pay increases. This is just more compensation.

Now, the union, I predict, will argue to this board, but all of these things are justified.

We need it. It's deserved. The rules that currently exist are unfair, they're inadequate, they haven't been changed often enough. People are hurting. There are lots of good reasons why we should get all these things.

Well, we've heard those arguments in multiple other forums, some of them before PEB250 and suffice it to say that we take a different view. But the main point is it doesn't matter because this is not a presidential emergency board. It is not a board tasked with writing an agreement broadly stated for the parties on all subjects. It's limited to the items in Articles 5, 6, and 7; not this.

The other point that I'd like to emphasize here is that, in addition to these items that the union has asked for that go well beyond the scope of this board's jurisdiction, their agreement language, their Appendix B, which is attached to their opening submission, and is their -- the form of the agreement that they're asking this board to impose has various hidden traps in it, various items that they're asking for that they don't discuss in their submission but that are nevertheless very significant.

And our witnesses are going to review things like except extending the rest days into the day before and the day after so that what may nominally appear to be a four and one schedule is really more like a 4:2. Their proposal to do away with the offset of guarantees so that they're paid over and above, is the phrase they use, all other pay. The idea that you would have to maintain at least 30% employees on the extra board.

So even though they say you can abolish the extra boards, they give it with one hand and take it away with the other. There's a lot of that kind of stuff in their Appendix B. Our witnesses are going to explain why that language is riddled with items that exceed the scope of this board's jurisdiction to impose. Now, to be fair, the union is making the same -- Excuse me a moment -- the union is making the same argument about our proposal.

They say you've proposed lots of things that go beyond the scope of this board's jurisdiction. Here's the list of what they say is not included. On the left, you see the items that they object to, and on the right is the language of the agreement. Each of the items that we've proposed is in fact a direct outgrowth of Article 5, 6, or 7. I'm not going to run through all of these, but let me just highlight three examples.

These are all by the way addressed in our reply submission. But just to take a couple of examples, the first one incorporating irregular service into proof-rate service. This is the -- regular service is things like hours-of-service relief. You're going to hear a fair amount about that over the next few days. This is the concept that employees who hit a limit that is imposed by federal law must stop working regardless of where they are.

And so as a consequence, sometimes trains are left outside the terminal before they get to their destination. And the question is whether that can be done by the pool when you establish a self-supporting pool. So the question is if you can establish a self-supporting pool and abolish the extra boards, who would otherwise perform that work, is that encompassed within Article 7?

Well, we think hours-of-service work is pool work. And we're going to make the argument to you that because it's a process of recovering pool trips, in other words, work that pool employees were doing, they're pool trains that need to be moved into the terminal, that that is pool work. But regardless of how you come out on that, whether you think we're right or the union's right, it's a question of implementation of Article 7.

Because in order to establish or implement self-supporting pools and to abolish extra pools, you have to understand what kind of work they're going to be doing. It's not outside the scope of this proceeding. Another example is the elimination of daily preference. It's Item Number 3. Article 6 says the carrier can implement a revised approach to filling vacancies.

And the union is saying, well, maybe so, but we still get to keep our existing systems, including these daily preference rules. Whether or not a new rule, Article 6, displaces or overrides existing rules on the same subject is a question of implementation. It's not outside the scope of this Court's jurisdiction. The same is true of displacement time. The last item on this list. Again, Article 6 provides for this new system, for filling vacancies. You have to determine, as part of that, what the time will be for people to move between jobs.

Both sides have a proposal on this subject. Ours is 24 hours. We're not entirely sure what the union's is, but it could be, effectively, instantaneous. And again, you can debate which side's rule is better, but what's not debatable is that that particular question of displacement time is a direct outgrowth of Article 6. It's a question of implementation. So the bottom line here is simple. Most of the union's proposals, 13 out of 16, are not within the scope of what's before this board. You don't even need to reach the merits of those proposals. By contrast, all of the union's proposals do concern matters of implementation.

Let me move on then to the second of the three questions that we posed. This one is whether the party's proposals are equitable. Is the value trade balanced? Are we getting roughly equal value in efficiencies and operational benefits to pay for the cost of assigned days off? Now, we agree with the union that the PEB did not recommend a particular outcome.

They did not say, for example, that the union members must get a five and two schedule or six and three or any other particular schedule. They also didn't say exactly what the carrier was supposed to receive, but they did say it had to be a win, win. And more importantly, the union agrees with us on this point. Both sides have said to this board, it needs to be a fair and equitable quid pro quo. Quid pro quo means something for something. It does not mean one side gets something and the other side gets nothing. And equitable means balanced, it means fair, it means equal, at least roughly equal.

And so the real question then is how do we determine what is fair? What is equal? Now, you can just put a finger in the wind and guess. But fairness, like beauty, is in the eye of the beholder. So we need some sort of objective, empirical approach, not a subjective assessment of fairness. And so what we have suggested is costing. The union agrees to some extent, but they have a very, very different methodology for costing.

And in some respects, this is the heart of this case. How do you value each of the items that the parties have proposed? What we're going to show today is that the union's methodology is not accurate. It is based on that do not have a basis in reality, or when they have a cost that doesn't work for them, they just don't include it. They just leave it out. In explaining our costing, I just want to highlight a couple of basic principles.

This case -- and you're going to hear this several times because it's critical. This case is not about how much work is going to be performed by the Union Pacific workforce. It's about who does that work. The work stays constant, and it's about allocating that work among different groups of employees. And that has a couple of different consequences.

First, earnings, the first of these boxes, is not relevant. Why? Because if you have a constant amount of work, we're going to be paying someone to do it anyway. It's just a question of who. So there's no cost and there's no savings associated with earnings. The amount of pay that you receive for the amount of work that you've done; that's staying constant.

The second item, carrying cost, does change. It is important to this because the carrying cost is a function of how many employees you have on hand to do the work. If you have to add people to do the same amount of work, you've increased your carrying costs. Health insurance is a good example of this. If you receive your health insurance benefits, so long as they're paid to all employees, then it doesn't matter whether you work 1500 hours or 1700 hours or 2000 hours, it's a carrying cost.

The third item is also a significant element of costing here. And again, the guarantee is paid to employees on the extra board, not on the pool, for the most part. And so the extra board, as you'll hear, is the source of workers who cover vacancies. They're being paid to be available, not just for working, and so, as a consequence, it's expensive. There's a guaranteed cost associated with maintaining the extraordinary.

So if you are allocating more work to the pool and less work to the extra board, that affects your costs. Our methodology, which you're going to hear from Mr. Janke this afternoon, measures how each proposal will change, add or subtract head count. So that's the main driver. Then the second thing that we're doing is measuring whether that work is going to be done by the pool or the extra board. More people in the pool, transferring more from the extra board, you're paying less in guarantee.

Again, for the most part, there's some nuance to this that Mr. Janke will get into, but those are the main elements, carrying cost and guarantee, not earnings. So let me just show you an example of this. This is what the parties have proposed in terms of work rest. Different models. So a 6:3 means six days of availability followed by three days of rest, etc.

All of the party's proposals, all of them, for assigned rest days, require adding employees. So they all have a cost. How much depends on how much time off you're providing. Now, we disagree about some of the assumptions here. As you're going to hear, we're assuming that, if you give people a rest day, they're going to use it. And the union is assuming that that's not necessarily the case. But we do agree that the more days you add, the more expensive it is.

So, for example, a 5:1, which is the pink bar, the Union Pacific proposal, is -- costs less than the union's proposals. And as we're going to show, there's a way to assess that. Mr. Janke will walk you through this calculation and how we arrive at the value, the cost of each of these items. Now, this is the five and one; this is the Union Pacific proposal. So five days of availability, one day off. That proposal, the least expensive one of the options that have been proposed, still costs $18 million per year, additional cost to the carrier.

So if we're going to have an equitable trade, we need to find something approaching $18 million in savings. That balancing can be done in one of two ways. You can reduce head count through efficiencies and how we call people, how the jobs are assigned, how fast the pool works, and how the work is apportioned. Or you can reduce the guarantee by moving work from the extra board to the pool. Our proposal, and this is just a graphic representation of Mr. Janke's testimony in our Exhibit 42 finds about $16 million in savings to counteract the blue and red bar, which is the cost.

So everything on the left there, that's the additional cost associated just with assigned days off. And then everything else is what we get out of Article 6 and 7. And as you can see, a big chunk of that is the abolishing extra boards, which we undeniably have the right to do under Article 7. The various other Mr. Janke will run through as well. Now, we fine tuned this, our proposal, so that we're not getting an advantage.

The employees still come out ahead, as you can see on this bar graph, but it's pretty close. It's within two and a half million, roughly. The union's proposal, by contrast, is not close. Now, they've omitted costing of any kind for all of those items that you see in the red box. They don't have -- they just don't mention those costs. And it's a really big omission because that set of items, the red box, and these are all the things that I've described as being outside this board's jurisdiction, but if they were, the cost of all those exceeds $200 million per year.

Now, to be sure, some of those items are much more expensive than others. And this slide just is a graphic representation of our costing of the various items that the union has proposed. The two items on the left in red are items that we all agree are legitimately items within this Court's jurisdiction. So the question of scheduled rest, the question of self-supporting pools, we don't agree that this is the proper approach or that this is the proper outcome, but we at least agree that those are questions before you.

Everything else, all the black bars are those what we've called the extraneous or extra items. And as you can see there's -- some of them are comparatively huge. Some of them, the small bars, are only millions of dollars per year. The bigger ones are tens of millions of dollars. And there isn't any quid pro quo for any of this. So you leave aside the fact that some of these items are not properly before you. Again, it's not close to equitable.

What about the cost of rest days, the

item, as I said in the red bars. This is the -- again, this is from Exhibit 42, which Mr. Janke will review. The blue on the top is the union's costing, and the gray on the bottom is that same set of proposals using our assumptions. We're going to show that for their work-rest proposal, they are making a number of errors and omissions. We're going to run through some of those.

One of the big ones is that they left out of their costing the extra boards, despite the fact that they proposal covers those employees. They are proposing rest days for everyone, including people who are not in proof-rate service, therefore outside the scope of Article 5. But nevertheless, if you're going to cost their proposal in an honest way, you have to include those individuals. They conclude that their proposal would cost tens of millions of dollars.

If you add the extra board, as we think you would need to do, it would add at least 35 million more per year. Now, this is complicated by different assumptions about head count and benefits and assumptions about the usage of rest days that I mentioned earlier. We're going to walk through all of them. But the bottom line is their proposals would cost at least 50 million and probably up to $90 million per year, just the rest days. So how do they justify that? How do they get to an equitable agreement?

Their core argument on equity is that we're going to abolish 80% of the extra boards and that that will save a third of a billion dollars for year, 333 million. So they say, all right, problem solved. You've got this huge savings in abolishing the extra boards. Well, there's two problems with that. First of all, it's not true. It is not true.

We are going to show through witness testimony that we are not proposing to abolish anything close to 80% of the extra boards. What they heard in bargaining, intentionally or not, has been misunderstood to put it -- And we're going to explain why it is that we can't abolish 80% of the extra boards. But the second point, and the one that I want to emphasize, is that this idea doesn't make sense from a costing perspective because even if we did abolish 80% of the extra boards, the work doesn't go away.

This is the point I made earlier. It's about allocation, not amount. So as you -- so this graph shows there's about 600,000 crew starts per year. That's the amount of times that people have what we call a work event. That's not going to change based on the implementation of these variables. Someone is still going to be doing it. So that's why the bars of each of these options is the same. What changes, depending on how many extra boards you abolish, is the allocation.

So it moves from the current here, where you've got about roughly 60% in the pool and 40% in the extra board. If we abolish 60% of the extra boards, the pool will do more. Likewise, if we abolish 80% of the extra boards, again, the pool will do even more and the extra board will do less. But the work is just moving from the extra board to the pool. We have to pay for it either way.

And so a huge chunk of their proposed savings, or 333 million, is the earnings that would go from the extra boards to the pool. That's not a savings. It's also true with respect to their calculation of benefits, where they've included a bunch of railroad retirement taxes that are going to be paid regardless of who does the work. So the total savings from abolishing the extra boards, if you calculate it out, is about 9 million, not 333. Now, this is, again, just a graphic representation of what we've said in the party's different costing exhibits, including their Exhibit 43 and our Exhibit 42.

The total head count savings from the implementation of our Article 6 and 7 is not 1500 people; it's more like 200. That's just from the number of people that are going to be added or subtracted based on the abolishing the extra boards. So that's incorporated in these bars. It's not broken out as a separate map. But what this shows then is if you do incorporate those changes into the larger set of proposals, including the addition of assigned rest days, the net effect is that you add head count either way. So this is head count here on the left. Sorry. This is head count. Okay. The union's proposal would add about 1500 people to the workforce.

ARBITRATOR: You're rounding out the 1452?

MR. MUNRO: Yes, 1450.

ARBITRATOR: Okay.

MR. MUNRO: About 1500. Yeah. Roughly. 1,452. Our proposal adds about 250. So even under our proposal, the workforce is going to increase in size. What our proposal does is it's not going to increase as much. So our proposal would add about 480 people as a function of assigned rest. That's how many additional employees will be needed to fill in for the fact that now people are taking assigned rest days.

We've reduced that by about 200 and change through the abolishing of extra boards and other savings under Article 6 and 7. But it's about -- like I said, it's a savings of about 200, 233 people. So that number would be 480. But for the savings under Article 6 and 7. We're not saving this number, which is what the union is suggesting, because we're not getting rid of 1,500 -- or 1,452 people. We're just not because, again, the work stays the same. Now, this 250, of course, has a cost. It has a carrying cost.

One of the things that we've talked about in preparing for this proceeding is the idea that the union proposal essentially means that we have to build a church for Easter Sunday. We have to build a system that is large enough to accommodate the maximum amount of size of people you might need, and there's a cost associated with that. So we have to bring in all these people to cover the assigned rest days. There's a substantial cost associated with that change.

All right. Let me turn to the third question, which is workability. Which size proposal is workable? Which will achieve the goals laid out by the PEB? And the reason -- one of the reasons why this case is so complicated is that there are multiple overlapping and competing interests. I've tried to just summarize what you've read in the submissions on the slide. The items on the left are the carrier's interest. We want to improve efficiency, we want to improve availability.

So we want to be able to operate efficiently, but we also want employees to be available when they need to be called. The items on the right are in the union's interests. They want to control time off, they want more time off, they also want to maintain the earnings that employees are currently paid. And the thing to note about this is that, while there's an obvious tension between the carrier's goals and the union's goals, there's also a tension within the union's own goals.

So, of course, there's a tension between availability and time off. You increase time off; you reduce ability. That's obvious. But the other problem here is that the union wants to increase payoff, but be paid the same or actually more. And that is very difficult to achieve without getting paid -- without a pay increase. Which is not the purpose of Articles 5, 6, and 7. This is not an exercise in increasing pay. It's an exercise in balancing scheduling interests, not increasing their compensation.

Now, these competing interests are reflected in where the parties agree and where they don't agree. Let me just quickly review those. On work rest, we both agree. There needs to be some voluntary assigned rest days. Now, we have different proposals. We've proposed a five in one. They've proposed, among other things, a four and one. For Articles 6 -- Okay, for Article 6, we agree that there should be some new system for filling vacancies is actually not that different from what we currently have in place.

It's a form of enhanced standing bid similar to what the carrier party uses. Where we disagree are in the details. Things like displacement time, the forcing rules, exceptions like whether this will apply system wide or whether it will supplant the daily preference boards, and, of course, in the cost. For self-supporting pools under Article 7, again, we agree that there should be self-supporting pools. Where we disagree is what it means when we convert to self-supporting pools.

We think that when you have a self-supporting pool, it means the work that can can't be performed by the pools because at the same time the extra board is being abolished. Now, there's a sort of philosophical question that underlies these issues. The union seems to be saying, yeah, we can have these new rules, but we also keep our existing rules. You can abolish the extra board, but the extra board still has to be used to perform the work. So, yeah, you can't really abolish them.

Our view is that if you have a new, it supplants the existing rules. It's not a nullity. And the addition of self-supporting pools plus the right to abolish extra boards means that we're not keeping extra boards. Same thing is true of the pool regulation. We both agree there needs to be pool regulation. We both have proposed something. Again, the difference is in the details.

So in order for these rules to improve efficiency, to provide the sort of operational benefits that the PEB recommended, our position is the board cannot adopt the form of the rules that the union has proposed because they include dozens of exceptions, caveats, pay increases, preservation of existing rules, and the subtle attempts to add advantages in their Appendix B. Appendix B is not workable. It cannot be implemented. Exhibit 7, by contrast, which is the carrier's proposed language, will fulfill the roles set out by the PEB250.

ARBITRATOR: Mr. Munro, your voice is fading at the end of the sentences. I hope you're not tiring.

MR. MUNRO: I hope not. I will try.

ARBITRATOR: Thank you.

MR. MUNRO: Okay, let me turn now to the last section, which is these what the other issues or secondary arguments. These are more sort of legal points, less about the evidence that's before the board and more about, sort of, how to interpret the agreements.

The first of these issues concerns the other carriers. So there's two other major carriers, Class 1 -- three other Class 1 carriers that have reached agreements under Articles 5, 6, and 7. And the parties are pointing to different agreements as comparators. The union has pointed to BNSF, Norfolk Southern. And as we've outlined in our submission, there are several reason reasons why those are not appropriate comparators.

The first is this point about voluntary

versus imposed. We all agree that there is a lot in those other agreements that is not contained in Articles 5, 6 and 7. That's fine if you want to reach a voluntary agreement. I mean, this is one of the Q and A's from the national agreement, and it's specifically says you can go ahead and bargain over additional work rules if you want to. But that's a voluntary approach. It can't be imposed through arbitration.

And the union agrees with us on this point. In their opening brief, at page 37, they note that while voluntary bargaining allows the parties more latitude, the board must "ensure provisions for each article are limited to those that are necessary for implementation." Well, we agreed. Those carriers included lots of extras for different reasons. On Norfolk Southern, for example, they already had differentials for their engineers. That's not true here. So the rationale doesn't apply. They had reasons to do what they did voluntarily; we do not.

The second reason those other carrier agreements are not comparable is because of the purpose and design of Articles 5, 6, and 7. The whole point was to allow each carrier to do this differently at the local level, to have different agreements, carrier specific. And the union never suggested before PEB250 that it should be a nationally uniform rule. It wanted these deals to be local, meaning carrier specific. And they have no response to this argument.

Third, BNSF and Norfolk Southern are not good comparatives. They have different rules, different pre-existing rules, different norms, different operational issues. We think that, for example, on BNSF, there is a debatable question about how their implementation has gone. We've said, based on the public, record that it has not gone well. The union says no. It says no. The implementation has gone fine. But note that it is not proposing adoption of the BNSF agreement. It wants to pick and choose something from it, something from BNSF, something from elsewhere. The only agreement that has been imposed by arbitration is the CPKC agreement with this union that was imposed by Mike Phillips. And that one has no guarantee for rest days. None of the extras that I've outlined. It's limited to Articles 5, 6, and 7.

The other issue that the union has raised that we've addressed in our written materials is this question of bad faith. Look, I find the arbitration boards rarely want to delve into finger pointing about who was in bad faith and who was in good faith. This is often the last refuge of a party with nothing to say about the merits. If you can't win on the merits, you attack the process. You accuse the other side of bad faith.

Our witnesses will explain that at the June 3rd to 5th meeting in Las Vegas, the union was unambiguous that it viewed bargaining as over. Union Pacific stayed in case the union changed its mind but sat there alone on June 5th. Now, the union says, well, you needed to show up in Dallas after we gave up on June 5th in Vegas. Well, that's not how it works. It's not how it works in dating. It's not how it works in collective bargaining. The other person dumps you. You don't just assume that your plans remain in place.

We're also going to address the related allegations about changing the bargaining team and some of the other things that they've accused us of. But the point is there's no bad faith. And by the way, we're not saying the union was operating in bad faith. Both sides tried, but they failed. Bargaining failed. And that's exactly why there is a provision in the national agreement that provides for this proceeding. It cannot be bad faith to invoke a process, an arbitration process, that the agreement expressly provides.

Finally, let me just touch on this question of the IGN and the Texas and Pacific. What this boils down to is the union is saying, yeah, you can implement Articles 5, 6, and 7, but you can't implement the parts of it that we don't like. On two of the properties that -- subsections of Union Pacific. There's two problems with their argument.

The first is that the language in the old local agreements that they're relying on does not bar changes to extra board rules. It doesn't. If you walk through the language of the agreements that they're citing, starting with their Exhibit 72, the 1988 Crew Consist Agreement provides that changes may be made by mutual consent. And then it has various restrictions on whether you can serve notices to change certain parts. And it's important to understand what those different parts are.

The agreement had different sections. It had a section Article 1, which is excerpted here for crew consist. Now, crew consist is the term that both sides have used for many, many years to describe the size of a train group and in particular whether you need a brakeman, two brakemen, conductor, et cetera. It's a rule about the size of your workforce. There's a separate article for extra boards, Article 2.

If you go on in this agreement, you'll see that there's a completely separate article, and the moratorium in this provision, what the union is relying on, says that you can't make changes to a limited set of provisions of this agreement, including crew consist but not extra boards. It doesn't mention the extra boards.

This is that moratorium. As you see, it limited you to making changes in the specific provisions governing peer attrition, protecting employees, car limits. Extra boards are not listed there. And then it goes on to say that you can make changes by mutual agreement. Okay. Fine. That appears to mean that you can continue to make changes by mutual agreement in the extra boards.

Then in 1993, there's a new agreement on crew consist with a moratorium that says the parties cannot serve notices to change it. That's Exhibit 67. It doesn't contain anything about extra boards. Again, has no bearing on this. And then you get to this 1996 agreement that they cited, and it says that moratorium provisions currently in place pertaining to crew consist provisions will remain in full force and effect. Well, that's just saying that that moratorium back in this 1988 agreement remains in place.

It doesn't say anything about extra boards. There's no moratorium on changing extra board rules. It has nothing to do with this. And the LaRocco Award, which they cite over and over again also has nothing to do with this case. I was lead counsel for the industry in that case, and it concerned a completely different issue. The issue in that case was whether the carriers could serve a notice to change the size of crews. This Language that we were looking at a moment ago about how many people you have to have on the train. And the union said, look, we have a provision that says you can't change that rule. This is special. This is different than all the other agreements that are out there. And they won on that point, but it was about changing the size of the crew. It had nothing to do with extra boards.

The second problem with their argument is that they did agree to change this. There is mutual consent. That's what the 2022 agreement is. It is mutual consent to change existing rules. This union is a party to that agreement that makes changes in extra board rules. That would modify those existing rules absent some exception. And there isn't anything in Article 7 that carves out these two properties. In the absence of that kind of exception, a new agreement changes an old agreement.

Now, they say, well, but that wasn't really what we meant to do. And these general committees weren't really consulted. And we thought we had this whole agreement. Well, then put in an exception. They didn't. And in fact, there was a process to put in exceptions. That's what side lettered is. There was an express negotiation for carve outs. They didn't ask to include the IGN and the TNP. Others did. They're not included.

The carrier was prohibited from serving notices on some other properties. But these committees had an opportunity to exclude their properties and they chose not to, presumably because they wanted the other benefits associated with the national agreement. Side letter five is unequivocal that the 2022 articles apply to all of Union Pacific.

Okay. Let me just now introduce you to what the rest of our presentation looks like. We're going to begin with an introduction to railroad operations. Doug Svatos from Crew Management Services at Union Pacific is going to explain how this all works. Then we're going to turn to a brief explanation of our view of the bargaining history. Jennifer Powell, who was on the Union Pacific bargaining team and was at all of these sessions, will explain our view on that.

Then Doug and Jennifer together are going to go through the exercise of comparing the parties' proposals under each of these articles. We're then going to wrap up the day with a discussion of costing by Grant Janke. He will walk us through the methodology for costing both the union's items and the carrier's.

And then at some point to be determined, I hope to be able to present a limited, very short testimony by Brendan Branon, who was the lead negotiator for the carriers during the national bargaining round. Mr. Branon has left the industry but has agreed to appear remotely. He also has a declaration, which has already been submitted. He will essentially be testifying to the subject identified in that declaration. Absent any questions, or if were in need for a break, we are prepared to proceed with our case in chief.

(Brief Discussion.)

ARBITRATOR: Is ten minutes sufficient?

MR. MUNRO: Sure.

ARBITRATOR: Okay. We will take a ten-minute break. Thank you.

(Whereupon, a break was taken at 10:26 a.m.)

MR. CHIAVETTA: Thank you. Just to begin, I just want to address the point of timing just to give everybody an overview of where we're going with this first part of the presentation.

ARBITRATOR: Before you say that, let me just indicate that the technicians -- and this is for everyone -- if there is a desire or a need to remove the microphone from the stand, you can certainly do it, anyone who's at the podium. And also, if you'd like to move away from the podium, feel free to do that as well.

MR. CHIAVETTA: Okay, thank you.

ARBITRATOR: Okay.

MR. CHIAVETTA: All right. Just from a timing standpoint so everybody has this on the radar. We anticipate that these first two sections will begin with an overview of the train operations, and then we'll discuss the local bargaining history. Those two pieces combined should take about an hour. We then plan to address Article 7, 6 and 5 in that order. And I anticipate Article 7 will take about 45 minutes. So that may put us around the lunch hour. And we're happy to, obviously, stop and take breaks as anybody needs to.

So we'd like to start just with a general overview of train operations. And for that I'm going to turn to Doug Svatos.

Doug, would you please introduce yourself.

MR. SVATOS: Good morning. My name is Doug Svatos. I'm the general director of crew management services. I've been with Union Pacific for about 12 years. In my role, I oversee our 24x7 dispatching of our train engine and yard crews. I am responsible for our crew lodging, our crew transportation, and our contact for the FRA for hours of service as it relates to crews.

MR. CHIAVETTA: Thank you. And Can everybody hear Doug okay? Because I can -- I can give him the -- I understand we're gonna have more microphones.

ARBITRATOR: I have more of these.

MR. CHIAVETTA: Doug, why don't I give

you the mic and then I'll project. I understand we're gonna have more microphones tomorrow.

EXAMINATION

BY MR. CHIAVETTA:

Q. Okay. So, Doug, you were saying you're the general director for crew management services. And let's start just by doing a general overview of Union Pacific's operations?

A. Yeah. So just a quick overview of Union Pacific. Just Union Pacific it -- route miles. We have about 32,000 miles of track that cross 23 states across the western United States. We employ just shy of 33,000 employees. Of that 33,000 employees, roughly 28% is represented by SMART, who's here today. Our annual payroll is about $4.2 billion. And we serve roughly 10,000 customers across the United States.

Q. Thanks, Doug. And why don't we go ahead and talk about the assignments that the trainmen perform?

ARBITRATOR: May I interrupt? I think it's only because you didn't take the stand, but since you're a testifying witness, perhaps. I should swear you in.

MR. SVATOS: Okay.

ARBITRATOR: Please raise your right hand. Do you swear or affirm that you will tell the truth, the whole truth, nothing but the truth?

(Witness sworn.)

MR. SVATOS: I do.

ARBITRATOR: Thank you very much. And again, your name for the record, Doug Svatos. Okay. Third try.

EXAMINATION

BY MR. CHIAVETTA:

Q. Go ahead, Doug.

A. Yeah. So a brief overview of our assignments across Union Pacific. I always compare this just for sake of most people are familiar with how post office mail system works. So you have your yard. Think of your yard. When we're talking about our yards, that's your sort facility. That is where our freight cars or tank cars are taken to be sorted to be determined which customer they would go to or if they need to get sent to another location across our system to be sent to a customer.

When we think about our yard crews, it's best to think about them as these are employees that have a schedule. So they know, day in and day out, what time they go to work. They have scheduled off days. Generally it's a five and two schedule. So five working days followed by two off days. And employees in yard service are paid, basically, for the work they do. So when they're at work, they get paid; on their days off, they're not compensated.

When we think about local service, the best analogy there is think of that as your local mail person. They're the ones that are delivering the cars to the customers or picking up the cars from the customers to get sent to another customer. Local service, very similar to yard service. They're scheduled -- they have assigned days off. They typically work a five and two schedule. Five work days and two days off. They have a known start time, and they generally go to work at the same location and tie up or finish their work at the same location.

Similar to yard service, they're paid for the work that they perform. So when they go to work, they get paid. They get compensated for that.

Q. And Doug, at the top of the slide, we see that these two categories, yard service and local service, fall under the rubric of assigned service. What does assigned service refer to?

A. Yeah. So think of assigned service as the employees that have a set schedule. Every single day they know when they're going to go to work. That's how we think about assigned service in this context.

Q. So it's essentially shift work, more or less?

A. Correct. Next, we'll talk about unassigned service. So that differs from the assigned service as these employees do not have a set start time. They do not have a set days off. This first category here is our unassigned through freight service. So using that same postal analogy, think of our through freight crews as they're the ones that would be moving the mail across the country.

So you're sending a letter from Chicago to Los Angeles. Our through freight crews are 24/7, 365. We are moving trains every single day of the week. Like I said, they have variable start times. These crews have a designated on-duty point, So they go on duty at the same location every day. They take a train to what we call an away-from-home terminal. So an example would be I am stationed out of West Colton, California. That is where I go on duty every day. I would take a train to Yuma, Arizona. Once the train's there, I would tie up. So that's where tie-up is, when I finish working for the day. I would get rest, and then upon being rested, I get called -- work back from Yuma, Arizona to West Colton, California.

Q. So Doug, let me just stop you there. So in that example that you gave, West Colton would be the home terminal, Yuma would be the away from home terminal?

A. That's correct.

Q. And you would call somebody from a pool that is on call 24/7, unless they're marked off, right?

A. Correct.

Q. And that person would report to duty at the home terminal, take a train to the away-from-home terminal.

A. Correct.

Q. All right. Thanks.

A. So when we think about these employees in yard service, local service, and unassigned through freight service, those are the employees that own those positions. So that's their job. We have a group of people that are the extra board. It's best to think the extra board as the employees that cover the vacancies. When these employees are unavailable for work. Could be unavailable for a multitude of reasons, personal leave, vacation, sick.

The extra board would cover the vacancy that pool employee creates. The extra board differs relative to our unassigned through freight service, our local service, and our yard service because they are compensated based on a guarantee. So unlike the employees in those prior services, they are paid for their availability first. So an example would be, an employee on an extra board, in that pay half, they go to work zero times. They have a set amount of money that they would get paid for their availability.

If that same situation happened to an employee in pool freight service or unassigned freight service, they would not get compensated. The way it works for employees on an extra board is every single time they go to work, they start to offset that guarantee. So an example would be, just for strictly round numbers, if their guarantees $5,000 a half, they work enough to earn $2,500, they would earn $2,500 of earnings plus the $2,500 there's a guarantee to.

ARBITRATOR: What's a half?

WITNESS SVATOS: A half. Think of it as when you break up a month. The first 15 days followed by the last 15, 16.

BY MR. CHIAVETTA:

Q. And Doug, we'll talk about this in more detail as we go on, but for employees on an extra board who receive a guarantee, if they mark off or are unavailable, how does that affect the guarantee?

A. Yeah. So there's rules that govern how that exactly works. But generally speaking, when an employee marks off in a non-compensated status, they are not paid guaranteed for that day. If they mark off in excess of whatever CBA rules govern them, in excess of that, they would forfeit their guarantee for that paid half.

Q. We'll just pause here, and if the board has any questions. I'm sorry, Chairman Baggett-Hayes, if you --

ARBITRATOR: I have none. Thank you.

BY MR. CHIAVETTA:

Q. Okay, thank you. What we plan to do next is have Doug illustrate using a whiteboard, the way in which the pools operate.

A. So I'm going to cover three different topics here. First, how the pool operates today, what happens when there's a vacancy in the pool, and then what happens when there's no employees available in the pool to work.

So to walk through this demonstration for the demonstration's sake, this will be our home terminal. So in the example, think of this as West Colton, California. This would be the away from home terminal, Yuma, Arizona. When we're looking at this, these are labeled as positions, position one through six, position one meaning you're the first employee that would get called to work. This would be the employees' names and this is the turn.

So when we think about this on a pool freight operations, employees bid to a pool turn. So what that means is, I apply, that is the position that I own. When Pool Turn A goes to work, the employee that is working that pool turn would be called to work with that. So that is their job is the pool turn on that pool. That differs a little bit down here when we start to look at the extra board.

Extra board employees don't own a turn in the same sense that employees on a pool do. They own a position on the extra board. They work up basically in a line of first in, first out type operation. And when it's their turn to go to work, they would be called next.

So in practice, what happens is -- I'm going to kind of walk through a couple examples here -- is you think of this, basically, in a line. Employee Allen on Pool Turn A, there's a train that needs to get called. Mr. Allen gets called to work on his pool term. He works to the away-from-home terminal. He will tie up, finish working that day. He will go first out at the away-from-home terminal on his pool turn. Everybody else that's at the away-from-home terminal will move up one position with their pool turn.

Until now in this example, Mr. Brown's first out. So if we followed that again, what would happen is a train is getting ready to be called Pool Turn B. It's first out. Mr. Brown on Pool Turn B would be called to work. He'd work the away-from-home terminal. He would tie up on his pool turn, get mandatory rest. Everybody at the home terminal would move up one position, and the same works for the away-from-home terminal.

A train needs to get prompted be called Pool Turn A is first out. Mr. Allen on Pool Turn A is called from the away-from-home terminal to tie back up at the home terminal. Since he was the first one, he would go to the bottom of the board. Much like the home terminal, what you would see happen, the next employee up would get called to work on his pool turn. He works back on his turn, ties back up, and then -- they would work up the board.

In this next example, what I'll show is when one of these employees on a pool turn is unavailable. So in the example I used, this employee could be on a personal leave day or vacation day. What happens is they would lay off. They'd be come unavailable at the home terminal. So for demonstration purposes, I put them down here where it says unavailable.

Now we have Pool Turn C that is vacant with no employee on it. Mr. Carter's unavailable for work, and we have a train that needs to be called. As we talked about, the extra board is who covers the vacancies on these pool terms when the employees aren't available. So what would happen is Pool Turn C would be called to work. Mr. Smith, who was first out on the extra board, would be called on Pool Turn C on Mr. Carter's turn, and he would work that pool turn to the away-from-home terminal, tie up, and get rest. And just like in the prior example, everybody else would move up one position on board.

Q. And Doug, when they're at the away-from-home terminal, you said they would tie up and get rest. Would they typically go to a hotel?

A. Yes. When they tie up, they would go to a lodging facility that is approved. Generally, it's the exact same lodging facility every single time.

Q. And how much rest would there be in between getting called to work?

A. So FRA mandates at least 10 hours of rest. If you work over 12 hours, it's minute per minute rest. So much like the pool, when they work up the extra board does the exact same.

For demonstration purposes, we'll say Mr. Davis is unavailable and Pool Turn D needs to be called the work. Mr. Jones, who was first on the action board, very similar as the last example, would work Pool Turn D out of town and tie up. And then the next employee would work up the board. Employee Garcia would now move to first out. Much like the pool, employees on the extra board can become unavailable, vacation, personal leave, days, sick.

So for this example, we'll show Mr. Garcia as unavailable. And next, what we'll say, we refer to it in our submission as waiting on turn. So an example would be Mr. Carter, he laid off. He was unavailable for 24 hours. It takes the pool turn, and for demonstration sakes, longer than 24 hours to make it back to the home terminal.

So Mr. Carter is now available to work,

but his pool turn is not at the home terminal. So he's kind of -- he's unavailable in a sense. So what we see happen is another train gets prompted. Mr. Smith goes back. Once he ties up, because Mr. Carter is available again, even though his pool turn is gone, Mr. Smith goes back to the extra board and Mr. Carter goes back to his turn. Pool Turn D works up the board. In this next example --

Q. Let me just stop you there. So in that example that you just gave, after the employee marked up for work, I believe it was employee Carter, he was available for work at that point, but he was not in the pool rotation because his turn was not yet back in the home terminal; is that correct?

A. Correct. So in this next example, what we'll see happen is Mr. Davis, unlike Mr. Carter, he will extend his unavailable time and continue to be unavailable. So what happens in practice is the train gets called, Pool Turn D. Mr. Jones ties back up at the home terminal on Pool Turn D. He goes back to the extra board, though, while Mr. Davis remains unavailable. And then the normal vacancy -- or the process would continue until Mr. Davis became available and the extra board would fill that position until he was available again.

For this next example, we'll talk about what a made-up turn is. And that's what happens when the pool becomes exhausted. So let me reset the board here real quick. I'm just going to create a situation to show what that looks like here. So now for purposes of this example, the entire pool is exhausted. Just for demonstration purposes, we'll show them all at the away-from-home terminal right now.

In practice, what you would see happen is there could be employees working to the away-from-home terminal, there could be employees working back to the home terminal, but just to make it easy for the demonstration. So now we run into a situation where we need another turn call. There's nobody available in the pool. All the pool turns are out of town on duty. So this is what we talked about in our submission as a made-up turn.

A made-up turn is actually added to the board. The first out employee on the extra board would be called to work on that made-up turn. He would work to the away-from-home terminal on the made-up turn. All these employees would work back. Just to make the demonstration easy, we'll pretend that's the home terminal now. Everyone's back at the home terminal. As soon as Mr. Jones ties back up, the made-up turn gets removed from the board, and they would go back to the extra board. That's what happens when your pool is completely exhausted.

MR. CHIAVETTA: Any other questions from the chairwoman? No?

Thank you. Thanks.

So the carrier will call its next witness. Jennifer Powell.

ARBITRATOR: Good morning.

(Witness sworn.)

MS. POWELL: I do.

ARBITRATOR: Thank you.

EXAMINATION

BY MR. CHIAVETTA:

Q. Jen, would you please introduce yourself.

A. Sure. My name is Jennifer Powell. I am the general director of labor relations, and I am responsible for negotiations and dispute resolutions under the Section 3 and Section 6 process of the RLA for all the TY&E crafts, which are our engineers and our train persons. I've got 20 years of railroad experience and 14 of those spent in labor relations.

Q. Jen, were you involved in the local

bargaining over Articles 5, 6, and 7?

A. Yes. I was a member of the core negotiating team.

Q. And who else was a member of the carrier's negotiating team?

A. We had Maqui Parkerson, who's our board member. She was the lead negotiator. There was myself, and Doug Svatos.

Q. Is that who you would refer to as the core team?

A. Yes.

Q. There's been some criticism from the union. They've suggested that Union Pacific frustrated the bargaining process by frequently changing out who was at the table. What's your response to that criticism?

A. The core negotiating team never did change throughout the entire negotiation process. We did bring in some directors from our labor relations team, periodically, who also handled those territories for the agreement which we were negotiating, so they would be involved in that. And we also brought in various operating partners as well to provide their perspective on operations and to ensure that the things that we were talking about in negotiations were going to meet their operational needs.

Q. Jen, we have -- pulled up here on the screen, we've got a bargaining timeline on the PowerPoint, and it identifies different events that happen throughout bargaining, different meetings. Were you at all of those meetings?

A. Yes, I was.

Q. And so it looks like the bargaining began December 28, 2023, when the union serves its Article 5 notice.

A. Correct.

Q. And then the carrier countered with notice under Articles 6 and 7 in January of 2024.

A. Yes. We provided notice on 5, 6 and 7.

Q. And as you said, you were at all of these bargaining sessions. There's been a suggestion by the union -- they've indicated that during bargaining the carrier said repeatedly that adapting the self-supporting pools, which is something we'll explain next, would allow it to cut extra boards by 80%. Did the carrier ever say that during bargaining?

A. No, we did not say that. We said that we would, potentially -- if 80% of the hours-of-service work could go to the pool, come off of the extra board and go to the pool. But we did not say we were going to cut 80% of the extra boards.

Q. Okay. In what approximately what percentage of the extra board's work is the hours-of-service work that was referred to?

A. It's approximately 14% of the total work that they cover.

Q. So the carrier never suggested -- So the 80% was said in relation to that 14% of the extra board's total work.

A. Correct.

Q. And is there any doubt in your mind about that?

A. No. When that issue was raised, I did go and review our meeting notes, and I also discussed with colleagues who were part of that meeting, and that is exactly what we were talking about.

Q. And when you say, "when that issue was raised," when you saw that in the --

A. Yes. Yes.

Q. All right. I want to jump ahead here. And we see that there was a meeting on June 3rd and 4th, 2024, in Las Vegas, Nevada. Were you at that meeting?

A. Yes, I was.

Q. And how long was that meeting initially scheduled to last?
A. It was scheduled for three days, a half a day on that last day.
Q. Did the bargaining session actually last all three days?
A. No, it did not.
Q. Why not?
A. On the 4th, the organization said that, basically, we were not coming to an agreement, that we would go to arbitration, that they would see us in arbitration.
Q. And so in the carrier's mind, when the union made that statement on June 4th, was the bargaining effectively over at that point?
A. Yes.
Q. And you testified that there was a third day or a half day of negotiations scheduled for June 5th, correct?
A. Correct.
Q. Was the carrier there on June 5th?
A. Yes, we were.
Q. Was anybody from the union there on June 5th?
A. No.

Q. And what did you conclude based on the union's absence from that last day of negotiations?
A. Based on what their comments were and the fact that we did not meet the next day, we concluded that negotiations were over.
Q. As of that meeting in Las Vegas, did the parties have any additional bargaining sessions scheduled to going into that meeting?
A. We did. We typically would schedule a few meetings, you know, at the same time. So we had another meeting scheduled June 17th in Dallas.
Q. And what happened with respect to the Dallas meetings? Did the carrier attend those?
A. No, we did not. We cancelled our travel arrangements.
Q. Why did you cancel your travel arrangements?
A. Because we did not think that the negotiations were going to continue.
Q. And in between June 4th, 2024, when the union walked out of the negotiations, and when the meetings in Dallas had been scheduled to start, did you hear anything further from the union?
A. We did. We received a counter proposal on June 14, which I believe was that Friday before we

were scheduled to meet with them.
Q. And did that -- is that the June 14th proposal, you said, from the union? Did the union's June 14th proposal do anything to advance the negotiations from the carrier's point of view?
A. No, it did not.
Q. And how did it compare to the proposals that had been exchanged during the meeting in Las Vegas?
A. Their counter proposal actually brought us further apart than we were at the point where we left negotiations earlier that month, so.
Q. And Jen, you've testified that you were at all of the bargaining sessions. You saw all the proposals, correct?
A. Yes.
Q. In your mind, what were the sticking points that prevented a voluntary deal?
A. There was -- one of the main things was paying guarantee for unavailable days. So paying guarantee for those rest days. We were preferring a mandatory rest schedule while the union was wanting a voluntary rest schedule. And then the other issue was CSF guarantee. I'm sorry.
Q. Was the union asking for things that,

from the carrier's perspective, were outside the scope of Articles 5, 6 and 7?

A. Yes. Well, in their June 14th proposal, there was a number of things in there. Yes.

Q. And what was the effect of those things that the union was adding?

A. It was just added all additional cost to -- and they weren't related to the PEB.

Q. Okay. Thank you.

We'll pause there and I'll open the opportunity for questions to the chairwoman. If not--

ARBITRATOR: I have none. Thank you.

MR. CHIAVETTA: Thank you. Unless anybody needs a break, then we'll plan to move into the next topic, which is Article 7.

ARBITRATOR: You can continue.

BY MR. CHIAVETTA:

Q. All right, thank you.

All right. Doug, you've explained using the whiteboard the way in which pools work today. In one of the carrier's proposals, which is found in Article 7A, is to establish self-supporting pools. What is a self-supporting pool?

ARBITRATOR: And all the testifying witnesses continue to be under oath.

WITNESS SVATOS: I'm sorry.

ARBITRATOR: And that includes you.

BY MR. CHIAVETTA:

Q. She said you continue to be under oath.

A. Okay, thank you. A self-supporting pool, very much what it sounds like. So instead of first going to the extra board to fill the vacancy, what you would see happen is the employee, in their pool turn, would be pulled off the board and the next employee in their pool turn would move up to the next spot.

Q. So Doug, using the whiteboard, can you just show us just what that would look like it?

A. So in our prior examples where we talked about the employee would become unavailable and their pool turn would remain on the board, what would happen in a self-supporting pool is, when this employee becomes unavailable, both the employee and their pool turn would come off the board. And then the next employee on the board and their pool turn would move up a slot. So it would not first be filled by an extra board; it would just be the next employee on the pool.

Q. And Doug, earlier you talked about this concept of waiting turn where somebody from the extra board is called to protect my vacancy. That person works for the away-from-home terminal. In the meantime, I mark up, but I'm, essentially, caught in limbo. I'm not moving up the rotation with the opportunity to make money. The carrier is not going to call me in the normal course of things, right? What happens in this scenario with self-supporting pool once somebody who had marked off from the pool is now available for work?

A. Yeah. So like we talked about in the prior example, where the pool turn may be out of town, the employee is available, what would happen in a self-supporting pool, as soon as this employee becomes available, the employee and their pool term gets added back to the board at the bottom of the board, and they would continue to work up the board until their turn is called to work.

Q. Doug, earlier you talked about this scenario where the pool board is exhausted, and you talked about how, in that instance, the carrier would add a made-up turn to the pool board. What would happen if -- with self-supporting pools under the carrier's proposal if the pool were exhausted?

A. It would actually be the exact same scenario. So if the pool was exhausted, a made-up turn would be added to the board, and an extra board employee would be called on that made-up turn to work from the home terminal to the away-from-home terminal. Once they get back to the -- from the away-from-home terminal to the home terminal, the made-up turn would be removed from the board, and the employee would go back to the extra board.

Q. Doug, are there instances where both the pool is exhausted and the extra board that protects the vacancies on that pool are also exhausted? Meaning nobody's available to come to work.

A. Yes, those instances do happen.

Q. And that happens today?

A. Correct.

Q. What happens today when those two circumstances exist?

A. Yeah. So when both the pool and the extra board are exhausted, there's a set of vacancy procedures. So call it call-in rules that would generally call other employees at that location, pool service, other extra boards at that location, maybe yard or local employees as well.

Q. Under the carrier --

ARBITRATOR: Can you say that again? I

think the question was, if the pool and the extra board are both designated based on the ones that they would be available.

WITNESS SVATOS: Yeah. So there's a set of calling proceeds -- so each property has different calling procedures that govern -- or when the pool's exhausted, the extra board is exhausted, that we would call other. So most locations have more than one pool item. So you may see two, three, four pools at one home terminal that would operate different directions out of that home terminal.

So you would generally -- This is kind of -- it's all -- it varies by agreement, but you generally call other employees on other pools to work off their turn to go work in this pool. Or if there's other extra boards at that home terminal, you would call employees generally -- off that extra board to go work in that pool. Does that --

ARBITRATOR: Yeah. That's fine.

WITNESS SVATOS: Okay.

BY MR. CHIAVETTA:

Q. Doug, under the carriers Article 7 proposal, going forward, what would happen if both the pool and the extra board were exhausted?

A. In practice, generally, very similar to what would happen today. You would call a set of vacancy procedure rules that would likely call other extra boards at that location or other employees in pool or yard or local service.

BY MR. CHIAVETTA:

Q. Okay. I think we'll turn the microphone over to Jen Powell just to talk through some of the differences between the two side's Article 7 proposals.

So Jen -- and these are -- by the way, we have the PowerPoint that talk -- that walks through in further detail some of the concepts that Doug has explained using the whiteboard.

So Jen, under Article 7, the union has its own Article 7 proposal, correct?

A. Correct.

Q. And under that Article 7 proposal, would up also be establishing self-supporting pools?

A. Yes.

Q. And would you please let us know where we can find the union self-supporting pool proposal?

A. Yes. It's under their Article 1B1 and it's 1 through 4.

Q. So Article 1B1 through 4 of Appendix B.

A. Yes. Yes.

Q. Jen, are there any important differences between the carrier's self-supporting pool proposal and the union's?

A. Yes, there's approximately five major differences between the two proposals. The first difference is that -- and you see here, they do say that the turns removed from the board, just like Doug was talking about, at the time of layoff. However, it's silent as to who's going to fill that vacancy. So, I mean, we can make an assumption there. They're talking about it the same way we are, but we aren't. It's just unclear. So that's one big difference.

The second difference. Sorry about that. There it goes. Okay. Their second difference, you'll see here. There's really -- this is like the second and third difference here. So the proposal would also -- it differs on how we fill a vacancy when that pool is exhausted, so that means when there's no rested available employees in the pool anymore, and now we have to fill that vacancy, they are calling the first out and rested train person. I'm sorry.

Our proposal is that we're going to call the first out, rested and available train person from a -- at the extra border location. And so they're limiting -- I'm sorry. They're limiting us to the fact that we can only call from the extra board at the location, and then the next step is we have to go to the pool -- another pool at that same location. So for example, if we have an extra board at a location and it's exhausted, then we have to go to a pool at that location versus potentially utilizing another extra board at a closer location that we're also paying guarantee for.

Q. So Jen, is it fair to say, with respect to the second difference -- and by the way, going back to the first difference, so who fills the vacancy. There may or may not be disagreement on that point; is that correct?

A. It's unclear. Yeah. It's just unclear.

Q. Okay. And then with respect to the second difference that you're talking about, is the scenario where both the pool and the extra board are both exhausted. Is it fair to sum up the dispute as the carrier's proposal would allow them to draw from a broader pool of employees to fill that vacancy than the union's.

A. Yes. Exactly.

Q. So the union's is more restrictive on who can be called.

A. Yes. Yes. Exactly. And you'll see it says from the protecting -- I'm sorry. One more point. So from the protecting extra board at that location, another point I would like to make was we could have other extra boards at that location that protect other work as well. Maybe they aren't protecting that specific pool, but the way that this is written is that we would be restricted from using those employees as well.

Q. Even though they would generally be reporting to work at the exact same place as --

A. Correct.

Q. -- employees --

A. Correct.

Q. On the extra board that protects them.

A. And the third -- we'll stay on this one. And the third difference is the fact that when we do not have an extra board, the protecting extra board at that location, when we do go to another pool, we then have to pay a 65-mile penalty for doing that, which is a half a day of pay is what that equates to.

So they're limiting who we can call off of a guaranteed pool, and then requiring us to go to another pool at that location and then having to pay a penalty for doing that.

Q. And so, Jen, just to set the stage again, we're talking about the scenario where both the pool board and the extra board is exhausted. And as Doug was saying, even today, there's situations where somebody from another pool or another extra board could be called to fill that vacancy, correct?
A. Correct. Correct.
Q. And if that happens today, does that employee get an extra 65-mile payment?
A. No.
Q. So this union's proposal in that respect would be giving the employees more pay than they would receive today for doing that same work.
A. Correct. Correct.
So the fourth difference which further exacerbates the cost of using the other pool is that there's also a provision in Smart's proposal that if we do use a different pool more than four times during a weekly regulation period, we have to add a position to the extra board. So -- and as you'll hear multiple times, I mean, employees on the extra board are receiving guarantee and that's a cost to the carrier.
And really, it doesn't make -- this doesn't make sense because it really doesn't fix the problem of having a pool exhausted. It would likely

fix the issue maybe at that exact instance of having that vacancy. But it's similar to fixing a leaky pipe. You're just mopping up the water instead of actually fixing the pipe itself. So, you know, if there's not enough people in the pool to do the pool work, really, what we should be doing is adding to the pool and not just adding people to the extra board.

Finally, the fifth difference --

ARBITRATOR: That's in the event that more than four starts in their conditions, they're correct?

WITNESS POWELL: So if we use another -- a different pool to protect the pool that's exhausted more than four times -- four starts. And now, let's be clear, I mean, we define a start as, it could be, the trip from the home terminal to the away-from-home terminal and then another start back. So that's essentially two round trips. So if we do it two round trips, the carrier must add a position to the protecting extra board. Which, again, doesn't fix the issue in the pool.

BY MR. CHIAVETTA:

Q. In how long -- it talks about the regulation cycle. So how long would the regulation cycle typically --

A. It's done weekly. So yeah, we would have that person that, essentially, we don't really need on an extra board for a whole week and paying that guarantee.

Q. So you were essentially short staffed on the pool one week. And the union says, if that happens for two round trips, you've got to add somebody to the extra board. Our position is that, in that scenario, maybe we have a shortage on the pool, and the solution would be to add somebody to the pool, not to the extra board where you're going to be earning the guarantee making money, potentially, for not working, correct?

A. Correct. Correct.

Q. So now, let's talk about the -- I think we're up to the fifth key difference here between the two proposals.

A. Okay. So the fifth difference is that the carrier is proposing that -- and I think Don briefly mentioned the hours-of-service relief work that the pool, under our self-supporting pool model, that hours-of-service relief work would be done by the pool. So that work is, again, when a pool train doesn't make it because the crew only has so much time to work. They may have to stop work midway through their run, so they could be, you know, 50 miles from their destination terminal, home terminal, away-from-home terminal. So that train just has to sit there. So that's what we call that train died on hours of service.

Today we would call -- we would typically go to the extra board first, call the extra board employee to go perform hours-of-service relief, so they would go pick up that dead train and bring it back into this destination that it was intended to get to.

So the carrier's proposing -- typically this work is pool service that just doesn't make it. So the carrier is proposing that the pool just continues to do this pool freight work to get that train to the destination it was intended to do. The union's proposal makes that work essentially exclusive to the yard that only -- or sorry -- to the extra board. That only the extra board can do that or work.

Q. And what is the maximum on-duty period under the Hours of Service Act?

A. 12 hours.

Q. So we're talking about the scenario where the train leaves the home terminal on its way to the away-from-home terminal and that trip ends up

taking more than 12 hours.
A. Correct. Correct.
Q. And so once you hit that 12-hour limit, that train's got to stop moving, and you need to send somebody to go relieve that train.
A. Yeah. We would -- the train would stop. We would have to send a van to go get that crew that can no longer do any work, and then send another crew out to bring the train in that has -- that is rested and available to do that work.
Q. Okay. So that's the hours-of-service relief work.
A. Yes.
Q. And you testified that typically today that would be done by the extra board.
A. Typically.
Q. Why is it that that's typically done by the extra board?
A. So generally, our agreements require us to go to the extra board first to protect that service. We have many agreements that talk about that, but it's not necessarily exclusive to the extra board. We do have provisions in the national agreement that allow yard assignments to relieve trains that have died on hours of service as long as

it's within 25 miles from their switching limits of the yard that they work in. So they can only go up to 25 miles outside.

We also can use road switchers. I mean, there's many different types of service. And the pool can also do hours-of-service relief as well.

Q. And so, that scenario that you described with the switching limits, can you think of that as almost a circle, that it circles the yard and you've got a 25 mile zone where, if the train -- if the train hits the 12-hour limit within that 25-hour zone -- I'm sorry. 25-mile zone, you could call somebody other than the extra board to bring that train to the home terminal?

A. Correct. And we actually have. It varies across the system. We don't have it on every location, but there's also agreement provisions that provide for a pool -- called in pool service. We call it a 25-mile zone. And they would go out, get the train, and run it through their terminal to their destination point. So they could go pick up that train that died on hours of service outside of the terminal. So I mean we have agreement provisions that provide for that type of work.

Q. So most of the time, the train's coming into the terminal and then it's getting switched, but some of the time you've got these through freight trains that just continue on unchanged, Correct?

A. Correct. Correct.

Q. And you're saying in those scenarios, as long as they're, basically, dying within a 25-mile limit of the yard, you could send a pool crew to actually do that hours-of-service relief work?

A. They would go pick up the train that's really intended to go maybe another 500 miles, you know, down the track. And so they'll take -- they'll pick it up and continue taking it on to its destination.

Q. Okay.

ARBITRATOR: And that's the existing procedure?

WITNESS POWELL: We have agreements that provide for that, essentially. So that train wouldn't have to be stopped at that terminal. That you'll get in run it on to their final terminal.

ARBITRATOR: So it's more than -- I thought you were going after, when it is more than 25 miles and extra boarding space.

WITNESS POWELL: Sorry, I couldn't hear.

ARBITRATOR: I thought you were going after, If it's more than 25 miles, what's the process? And what are you proposing?

WITNESS POWELL: If it's more than 25 miles, we typically would call an extra boarder to perform that hours-of-service relief. But there's no -- if the extra board is exhausted, we'd use pool crews to do that work as well.

BY MR. CHIAVETTA:

Q. In the proposal, then would be we're not going to turn to the extra board in the first instance we would be having the pool do that work.

A. Correct.

Q. That hours-of-service relief work. So they would be the first people to call as opposed to the actual board?

A. Correct.

Q. And that's the proposal?

A. That is our proposal, yes.

Q. And that's a change from existing practice --

A. Yes.

Q. -- as you just described.

And why does the carrier believe that it's appropriate for employees from self-supporting pools to do that hours-of-service relief work?

A. Well, we're trying to put pool work -- I mean, those were pool through freight trains. So we're trying to put that work into the pool. And if we put it in the pool, it also frees up the extra board to do what -- really what it does is to fill vacancies. It protects those vacancies in assigned service, and it protects the pool when it's exhausted. So we're not using up our extra board as much to do that hours-of-service relief.

Meaning we have them when we do have a need because of a vacancy or other things to use them to protect a regular job, which typically are the ones that are servicing our customers and things like that. So those are the types of jobs we can't, necessarily -- if we don't run those jobs, there's an impact to our customers on those, so...

BY MR. CHIAVETTA:

Q. Thanks, Jen.

I'm going to direct this next question to Doug.

Doug, we've heard about the extra board and how it protects vacancies in the pool. Today it also does the hours-of-service relief work. And what percentage of the extra board's work today is this hours-of-service relief work that we're talking about?

A. Yeah. So we're talking -- looking at from 2024, we average about 7 to 8% re-crew rate. So that's when we're talking about hours-of-service relief. That comes out to about 120 starts a day.

Q. So about 120 starts a day that crew doesn't make it to the away-from-home terminal in less than 12 hours, so you've got to send some sort of hours-of-service relief.

A. That's correct. And that's spread out across the system. So you don't generally see -- you won't see tens or hundreds of them at one location. That's a system number.

Q. So this hours-of-service relief work is a small percentage of the extra board's overall work; is that right?

A. Correct.

Q. So by reassigning the hours-of-service relief work from the extra board to the pool, would you be able to eliminate extra boards altogether?

A. No. We will not be able to eliminate extra boards by moving hours-of-service relief into the pool.

Q. Would you be able to cut extra boards by 80% by doing that?

A. No.
Q. Doug, the union has expressed concern about ensuring that employees receive adequate time at home between starts. They talk in their submission about this concept of home cycle time. Would assigning hours-of-service relief to the pool have any effect on the amount of time that employees in the pool are at home?
A. So in our proposal, because employees that would work hours-of-service relief would tie back up at the home terminal and they wouldn't be working all the way to the away-from-home terminal, they would get more time at home.
Q. And is that because, if you're typically getting called from a pool, and you're taking a train to the away-from-home terminal, you're spending the night at some hotel somewhere out of town as opposed to being home?
A. That's correct.
Q. Whereas, if you're doing the hours-of-service relief, you're starting and ending the workday in the same location.
A. Correct.
Q. Doug, the union, in general, has advocated for changes that would result in additional

predictability and stability for its members. Would adding hours-of-service relief to do anything to further those goals?

A. So adding hours-of-service relief -- and you look at it in the context of kind of looking at the system. What we actually see is employees on an extra board today, kind of, in my example that I showed earlier, they have to go look at vacancies that are on a pool. That extra board may cover multiple pools. So they would have to go see when they get called to work on Pool A, Pool B, they cover assigned service, they may have to see if there's vacancies on that assigned service, and since they cover the hours-of-service relief, they have to look at a multitude of different areas to see when they would get called to work.

By moving hours-of-service relief with self-supporting pool into the pool, it actually decreases the variability for an extra board employee.

Q. And so Doug, is it fair to sum it up by saying by moving the hours-of-service relief work into the pool, as you said, it's going to decrease the variability for extra board employees. There might be a slight increase to variability for pool employees; is that fair?

A. Yeah, that's fair. And because, when you look at it across the system, we're talking about 120 starts a day spread out. You're not talking about a large increase typically at one location.

Q. And by moving that work, you would also be generating additional work opportunities for employees in the pool.

A. Correct.

BY MR. CHIAVETTA:

Q. Another part of the proposal that we saw -- that we see on the screen here, in addition to referring to hours-of-service relief and having that work being done by the self-supporting pools, there's a reference to having turnaround service and work-train service done by the -- done by the self-supporting pool, at least under the carrier's proposal.

Correct, Jen?

A. Correct.

Q. So could you just explain what is turnaround service and what is unassigned work-train service?

A. Turnaround service really is what it sounds like. It's basically taking a train to a nearby location, turning around, and tying back up at home. You could be taking it to a customer, you could be taking it out to a siding, multiple things. But essentially it's, they take a train out, they come back, tie up, and are back at home that day.

Unassigned work-train service is, essentially, that unplanned work. That is where we would transport ballasts or equipment to some point between the terminal -- from the home terminal to the away-from-home terminal.

Q. At some point in between the home terminal and the away-from-home terminal?

A. Yes, typically.

Q. And today, who does this work that you describe? The short turnaround service, where you're operating a train -- you're going out. You're operating a train to some fixed point and then back to the home terminal and then the work-train service. Who primarily does that work today?

A. The extra board.

Q. And under the carrier's proposal for self-supporting pools, who would primarily be doing that work tomorrow?

A. The pool.

BY MR. CHIAVETTA:

Q. Doug, I'll ask you the same question

that I asked with respect to the hours-of-service relief work. Would doing -- having the employees in the self-supporting pool do the turnaround service and the work-train service, would that have any effect on the amount of time that employees in the pool spend at home?

A. Yeah. So very similar to hours-of-service relief. Since they wouldn't be working to the away-from-home terminal and getting rest there, they'd be tying up back at home. They would get more time at home.

Q. So we've proposed that there's three buckets of work that, today, are done primarily by the extra board that, tomorrow, would be done by the self-supporting pool. That hours-of-service relief work, the turnaround service, and the work-train service. And by the way, Doug, I believe your testimony was the hours-of-service relief is about 14% of the extra board's work today.

By adding the short turnaround service and the work-trained service, are you substantially increasing that percentage?

A. No.

Q. So somewhere around 14%?

A. Correct. Correct.

Q. So you'd be moving about 14% of the work that's primarily done by the extra board to the self-supporting pool. Would that allow the carrier to eliminate extra boards?

A. It would not.

Q. Why would the carrier still need extra boards, even if you're moving this work that's a small percentage of its overall work to the self-supporting pool?

A. So you're still going to have circumstances where employees on a self-supporting pool become unavailable. You're still going to have situations where there's an increase in train demand, and extra boards still will need to cover assigned service.

BY MR. CHIAVETTA:

Q. Thanks, Jen. In closing -- the article proposals, Jen, can you just sum up where things stand, what we view as the key differences between the two sides?

A. Yeah. So the key differences that we have identified here is, one, that the union's proposal adds a cost to the carrier. We have the 65-mile payment to pools that they want to spread across the system. And I do want to clarify, they have one territory that does get this payment for pools, but what they want to do is take that one provision and spread it across the entire system.

Q. Hey, Jen --

A. I think I said earlier that -- that this was new, so I wanted to clarify that.

ARBITRATOR: Yes, you did.

BY MR. CHIAVETTA:

Q. Oh, sorry. Yeah, I was just going to say, Jen, so when we're talking about territories. So Union Pacific system has different territories where different collective bargains agreements apply?

A. Correct. Yes.

Q. So you're saying that --

A. We have one area out of all of the agreements that has a payment provision if they're called off another pool, but what the union wants to do is to spread that across the entire system. So I just wanted to clarify that.

The other piece that adds cost to the carrier is that it would require us adding to the extra board, which, again, guarantee, it doesn't really fix the problem. We'd have to keep them on the board for an entire week. Another main issue is that it restricts us from using the pool to protect that hours-of-service relief, that short turnaround, and work-trained service that we provide in our proposal.

It also preserves some guaranteed income at the expense of efficiency and productivity by, kind of, restricting the process in which we fill those assignments. And Union Pacific's proposal is an efficient way to fill those vacancies and decreases the reliance on the extra board.

Q. Jen, when we talk about preserving guaranteed income, are we essentially saying that the union's proposal would funnel more people to the extra board?

A. Correct. Correct.

ARBITRATOR: Would you repeat that question?

BY MR. CHIAVETTA:

Q. Sure. Yeah. When we talk about preserving guaranteed income as one of the differences between the two sides' proposals, my question to Jen was does that essentially mean that the union's proposal is, more or less, funneling more of the work to the extra board, whereas the carrier would be funneling more of the work to the pools, which, for the most part, are not guaranteed?

A. Correct. Yes. You're correct. And

again, the purpose of that is to utilize those extra boards for those vacancies that we really need to use them for.

Q. And from a cost standpoint, that matters because on the extra board, assuming you're available, you going to get paid even if you're not working, whereas that's not true on the pool, right?

A. Yes. Correct.

Q. Are there are any further questions on the self-supporting pool proposal? We're happy to take.

ARBITRATOR: No.

MR. CHIAVETTA: So the next topic is pool regulation. I can either keep going, or if people would like a break, I am happy to take one.

ARBITRATOR: Is there a need for a break?

How are the witnesses.

Are you okay, Macy?

Okay, let's keep going.

BY MR. CHIAVETTA:

Q. Okay. All right. So now we'll turn to the topic of pool regulation. Article 7 of the national agreement authorizes the carriers to do several things including regulating pool by starts.

Doug, to begin with, would you please explain what we're talking about when we're talking about regulating the pool?

A. Yeah. So in the most simple terms, regulating the pool is the process that determines how many employees, based on the train volume, are needed to staff that pool.

Q. And what is the goal of pool regulation or what are the goals?

A. Yeah. So there's really two main goals. It's the equitable distribution of work to employees in the pool. And, two, it's to make sure there's enough employees to protect the demand of the trains that run in that pool.

Q. Doug, would you please explain how pools are regulated today?

A. Today, pools are regulated based on a historical look-back period. So the way that looks is you generally look at a 15-day or 20-day look-back to say, over the last 20 days, here's the amount of demand or trains that ran in that pool. From there, there's agreement rules that govern how many starts or miles an employee will work within that period of time. So what we would see in practice is there's a range when employees are above the range that are governed by that agreement, we would add employees to the pool to make sure the pool employees worked less. If you were below the range, you would subtract employees from that pool so each employee would have an opportunity to work more often.

Q. And when you're talking about adding or subtracting employees, are you talking about those turns that we saw on the whiteboard?

A. Correct.

Q. Today, when you're regulating pools, are there instances where you're doing it by mileage?

A. Correct.

Q. So you would be looking within a look-back period of, say, 20 days; is that fair?

A. Yep, that's fair.

Q. In this example that we have on the PowerPoint where you've got the terminal at Fort Worth and then the away-from-home terminal in Sweetwater, Texas, over that 20-day period, you would look and you would see how many miles did trains operate between those two points during that period?

A. You would see how many miles each pool turn operated over that 20-day look-back period to make that determination on how many employees are needed for that pool.

Q. And there would be some range where, as long as it's within this range, we're going to leave the pools alone. If it's below the range, we would reduce the number of turns in the pool, correct?
A. Correct.
Q. So that the employees who are left in the pool would then get called to work faster?
A. Correct.
Q. And if it's above the range, you would add turns to the pool to essentially slow it down?
A. Correct.
Q. Doug, under the carrier's proposal, and under the union's proposal, going forward, pools would be regulated by starts. And what is a start?
A. A start, just to, kind of, making it very simple, is basically anytime an employee is called to work in that pool.
Q. And so under the carrier's proposal, we talked with self-supporting pools about having that hours-of-service relief work done by the pool. If the pool were called for that hours-of-service relief work, would that be considered a start?
A. Yes.
BY MR. CHIAVETTA:
Q. All right. And Jen, Article 7B1

through 4 of the 2022 National Agreement establishes the general contours of what a method for regulating pools by starts would look like. And Jen, would you please just walk us through each of these four contours?

A. Sure. So first, again, you mentioned the start. So the pools would be regulated based on a target number of starts versus some that aren't regulated by mileage today. But it's essentially the same number of starts would equate to the same number of miles that they operate. There's also a --

Q. Let me stop you there, Jen. Just -- so with respect to the first point, it says "Pool service will be regulated based on a target number of starts that takes the length of run into consideration."

A. Yes.

Q. What is the length of run?

A. That's the mileage. That's the miles of the run, which is today how we calculate it in some areas.

Q. Okay. The distance between the home terminal and the away-from-home terminal.

A. Yes.

Q. Okay. Please move on.

A. Next will be a predetermined period of time, a look-back period. Typically, today in our agreements, we look back 20 days to see how many starts were made by an employee over that period of time. So that gives the carrier a good idea of how the pool would work in the future.

It also allows us to now look into the future. So we have a look-ahead provision where we can look ahead seven days to see what our known vacancies are. So we have people on vacation, we have people that arrange to take a personal leave day, things like that. We can account for those absences and fill those vacancies. So we can take a -- take that into account when we make the determination of how many people we would need on the pool to protect that work.

And then finally, there's a process for adjusting the pool to ensure it's properly staffed. So it's never, you set it one time and then it's done. It's a continued -- we propose weekly adjustment that is done. So we'll continually, every week, look back, and then we will also look forward at our known vacancies. And then do the calculation to determine how many individuals we would need on the pool to protect those vacancies and protect the work that needs to be done.

Q. All right. So Jen, just to sum up, so under -- in these, by the way, as we said, this is the language from the national agreement.

A. Yes.

Q. So the big changes under the national agreement would be, we're regulating pools by starts rather than mileage. The look-back is the same, right? We have a look-back period today --

A. Yes, we do that today.

Q. -- tomorrow. The look-ahead, that Item 3, that's something that's new.

A. That's new. That's new.

Q. And that's where we're looking at to see, you know, are employees in the pool going to be off sick? Well, not sick, right? But for planned vacancies like --

A. Known vacancies. Yes.

Q. -- vacation. Okay. And if -- presumably with that look-ahead factor, you know, there's going to be employees off, the regulation formula would account for that by saying we've got to add people to the pool, right?

A. Correct, correct.

Q. And then this last part, the process for automatic pool adjustment, is that something that's done today?

A. That is. That is done today.

Q. And the reference there to the Rail Safety Improvement Act. What is that?

A. So that's just to determine -- so if someone -- Rail Safety Improvement Act provides that if you have six consecutive starts, consecutive starts being that there's not a 24-hour period of time in between each start to break that consecutive period. So if there's six consecutive starts, an employee would get 48 hours off, and they would be in what we call federal rest.

And they're unavailable at that time. If Doug was to see a number of people going into that federal rest on a particular board, he would know he would probably need to make some adjustments to prevent that because that means they're working very quickly, and we need more people on the board.

Q. Okay. So you would want to slow the pool down and add people?

A. Yes. So the automatic pool adjustment, this weekly adjustment, allows us to also take that into account.

Q. Jen, does each sides' pool regulation proposal fit within these four general contours?

A. Yes, it does.
Q. Are there any important differences between the two sides' proposals?
A. Yeah, there's a few.
Q. Would you please walk us through those differences?
A. Sure.
If you want to pull up.
So the big difference that you'll see is that these are called start ranges. So we have a low range and a high range, and that's the number of starts that can be done in that adjustment period of time. And the starts may differ based on the length of run or the pool mileage of that run. And so you'll see on the left we have, we call them our short pools, which are, you know, 150 miles or less to what we would consider a long pool, which we could operate 291 miles or more.
So as you can see, the shorter the pool, typically the more starts an employee is going to get versus a longer pool because it takes them longer to get to point A and point B and back. They usually make people starts.
The big difference between Union Pacific's proposal and SMART TD's proposal is that

since we have the ability to do that, to look forward for known vacancies, we've accounted for the known vacancies of what now is the introduction of rest days into our starts. So our start range is lower because we are including -- we would include not only the known vacancies, but we would also include this now rest day that would be introduced into the pools. And that our proposal was a five in one rest-day model, which is essentially -- almost 17%. We'll say 16% unavailability. It introduces 16% of unavailability into that pool now because of those rest days. So we're taking that into account in the starts here.

Q. And Jen, let me ask you, so that 16.7% number, is that because the carrier has proposed a 5:1 available rest schedule. So by definition you would be unavailable then one out of every six days, and that's equivalent to 16.7%.

A. Yes. Exactly, exactly.

Q. All right. And so when we look at these two proposals side by side, that low number and the high number, that's saying that when we do this look-back, let's use the 150, the pool that's 150 miles long as an example. So under the union's proposal, they would be saying, during that lookback period, we want employees to be getting somewhere

between 22 and 24 starts; is that right?
A. That's correct.
Q. And under Union Pacific's proposal, we've basically taken the numbers that they have, the same range, and we've just multiplied that by 16.7% to account for the voluntary rest days.
A. That's correct. Yes. We're essentially -- I don't think we're far apart on what the starts should be. It's just how we're calculating it and whether or not the rest days are being included in that calculation, which we do in ours.
Q. And by multiplying all of these numbers by the full 16.7%, are we effectively assuming that all of the employees are going to take their rest days?
A. Yes.
BY MR. CHIAVETTA:
Q. And Doug, can you just explain why is the carrier making that assumption?
A. We're making that assumption because we need to have the correct number of employees to protect the service to our customers.
Q. So Doug, is it fair to say that even if employees don't take -- even if all employees don't take their rest days, we've got a plan for the

possibility that they will because we have to protect service and we just don't know.

A. Correct. With them being voluntary, we do not know if they will take the rest days.

Q. And how would that affect operations If you ended up in a scenario where you were not accounting for rest days, and then you have a surge in employees taking their rest days? What would that do to operations?

A. Yeah. So what you would see in practice is, if one week we went from a large number of employees taking their off days, what we'd see is we'd end up being short employees in the pool. You'd have to supplement that with the extra board. What you'd also see is mass -- big swings in our workforce week to week. So if you think about it, looking at one pool at one location, that might be three, four people. When you look at it across their seniority hubs where they can work, that turns into tens of people. Across the system, we're talking -- you'd be moving hundreds of people into pool service and out of pool service week to week. So it creates more variability and instability for the employees.

Q. Doug, by -- so just to sum that up, in some sense, by having the lower ranges, there's an advantage to the carrier because you're staffed for the possibility that employees are all going to take rest days, right?

A. Correct.

Q. And there's also an advantage to employees because there's not as much variability in their assignments from week to week. They're not bouncing back and forth from the pool to the extra board, getting furloughed?

A. Correct.

Q. And Doug, so when we look at these regulation factors with lower ranges proposed by the carriers, what would that mean for the work opportunities for employees in the pool?

A. That would mean the work opportunities would decrease for the employees in the pool, but would provide them the voluntary rest days.

ARBITRATOR: Can you repeat that?

WITNESS SVATOS: It would be less work opportunities for each individual employee in the pool, but it would grant them the voluntary rest days.

BY MR. CHIAVETTA:

Q. And the overall amount of work is not changing, right? It's just a matter of which employees are doing it?

A. Correct. This would not affect the amount of work in the pool.

Q. And as we heard in the opening statement, any rest-day proposal would require us to add employees to account for additional time off, correct?

A. Correct.

Q. So under the carrier's pool regulation proposal, individual employees in the pool might be working less, but they're going to be getting more time off than they do today.

A. Correct.

BY MR. CHIAVETTA:

Q. So Jen, we've talked about the difference between the pool -- the two parties' proposals when it comes to these ranges. Are there any other key differences between the carrier's and the union's pool regulation proposal?

A. Yes, there are.

Q. Actually. I'm sorry, Jen. But before we get to that, just one more point that I want to make on the regulation piece.

A. Sure.

Q. So is it clear to you whether or not the union is proposing to take into account rest days when regulating the rules and determining those ranges?

A. It is unclear. So their proposal -- their Appendix B does not mention a rest date. We call it a rest-day factor or taking into account rest days as we did -- as you saw in our regulation starts ranges. They do not take it into account in their starts ranges. And they do not have it in their proposal, but in their exhibit, they are taking a rest-day factor.

As you can see there, they have an example in their Exhibit 43 that shows the 5:2 model that they're proposing on an extra board, which is essentially they get two days off out of seven days a week. That's your 0.29 of unavailability because of the rest. They're taking that into account when they calculate the number of positions that are needed on the board.

Q. So this Slide 24, just so we're clear, this is exactly from SMART Exhibit 43.

A. Yes.

Q. And when we talk about the rest-day factor, we're referring to whatever multiplier we're using to adjust the starts ranges?

A. Yes. Yes.

Q. And so for the example where it's a 5:1, because that's one out of every six days, the multiplier is going to be 16.7%; is that right?
A. Correct. Correct.
Q. And in this example From Union Exhibit 43, they've got the 5:2 model, where employees are available five days and then two days of work. I'm sorry. Two days of rest. So there, two of the seven days you're unavailable, and they appear to be saying you should take that into account by multiplying the ranges by 0.29 or 29%?
A. Yes. So here they do appear to be taking rest days into account and taking the entire rest-day period into account in their formula to calculate the number of spots on a board, but then in their proposal, they do not have the rest-day piece in there. They do account for known vacancies in that forward period, but they do not account for rest days in their calculation in their proposal, which is Appendix B.
Q. Thank you. So let's move on to the next key difference between the two sides proposal. So just to sum up, the first difference, we're not really sure, right? We think that there may be a difference between the two sides as to whether or not

to take rest into account, but we're not sure because of this SMART Exhibit 43. Is that fair to say?

A. Correct. And our proposal does take rest days into account, and we make the assumption that they are going to take their rest days.

Q. All right. So Jen, let's turn to the next key difference between the two sides' pool regulation proposals.

A. So the next -- the next difference is that the union has proposed that if we don't obtain the target starts that they propose, the employee will be compensated a trip rate for each start up to the mid-range target, which is that middle road. So it's not even if we meet the low part of the range. We have to pay this trip rate until they hit the mid-range.

So that, again, is an additional cost to the carrier. We're going to have to pay an employee a trip rate for every time, and then that might not always be -- you know, if someone's outside of the starts, that might not always be something that the -- the carrier can control either.

Q. And Jen, is the trip rate -- is that basically the payment that you get for going to work and taking a train to the away-from-home terminal?

A. Yes. Pool freight employees are typically paid miles, so if their pool freight run in the example we had before was 198 miles, they'd be paid on a mileage basis, but we have things called a trip rate now that is basically a flat rate that takes into account those miles and other things. So, essentially, they're getting paid the same rate for every trip. It's a flat rate of pay that they get for every trip. That's what a trip rate is. So they're essentially requiring the carrier to pay a one way trip every time we're outside of those starts.

Q. And today we heard from Doug that there's pool regulation today, and we've got a lower range and an upper range, right?

A. Yeah.

Q. And so there's a midpoint today. It might be expressed in miles as opposed to starts, right?

A. Correct.

Q. And today, if somebody in the pool doesn't hit that mid-range target, does the carrier have to pay that person?

A. No.

Q. So under the union's proposal then -- let's just go back to look at the factors. So the union is essentially saying -- again, let's use the pool mileage of 150 as an example. The union is proposing that if an employee in the pool doesn't work at least 23 starts, they're going to be compensated some trip rate, right?

A. Yes. Yes. Exactly.

Q. So it's a new payment that employees wouldn't be getting today?

A. Correct.

Q. And Jen, are there any other key differences between the two sides' proposal -- pool regulation proposals?

A. Yeah. There's another difference in the guidelines that they're proposing that we use to regulate the pool. So in their Appendix B, it's Article 5F Numbers 3 and 4, they're proposing that we provide the employees with sufficient home-cycle time between trips in comparison to the current, previous methods of regulating the pool. So basically, the employees will get more time as -- they want employees to have more time at home in addition to the voluntary rest days, but that's not what the pool regulation provision requires in PEB250.

The other difference in Number 4 there is that the union proposes that we ensure the earnings are no less than what can be achieved through the respective mileage agreements in place at the time of this agreement is made effective. So essentially, they're guaranteeing the pool. Again, we're introducing rest into these pools and they're requiring the carrier to keep the earnings the same as it is today, where they have no rest in their pool. So we're going to have to pay for availability is essentially what that's -- or pay for unavailability is what that's doing.

Q. So, Jen, is it fair to say that the carriers not opposed to periodically adjusting the pool. In fact, that's going to happen as part of the pool regulation process, right?

A. Yes. Yes.

Q. It's just that the carrier takes exception to these two specific guidelines that the union says will be used to regulate pools as a measure of whether regulation is working, right?

A. Correct.

Q. And today, is there any type of guideline that says you've got to regulate pools so that employees in the pools get sufficient, what the union calls, home-cycle time?

A. Home-cycle time. No.

Q. And is there anything in the agreements -- well, 4, by definition, refers to the money that employees make today, correct?

A. I mean, the intent of the mileage regulation is to just maintain that the employees are getting their trips to have -- to make their earnings, you know. So I mean, that's just the intent of having a pool regulation factor to ensure that employee has the number starts to make their earnings.

Q. But with 4, is it correct that the union is saying that, look, we're going to get these additional date -- time off, but you still have to regulate the pool.

A. Yes.

Q. So we make just as much money as we do today with less time off today?

A. Yes. That's exactly what Number 4 is doing.

BY MR. CHIAVETTA:

Q. Doug, is it important to make sure that we get the pool regulation factors correct?

A. Yes, it's very important. Making sure we have the correct pool mileage regulation ensures we have the right number of employees to staff the trains on the pool. Having it too low could potentially risk service, or having it in the wrong range may lead to employees going from pools to extra boards and causing large swings and variability of manpower week to week.

BY MR. CHIAVETTA:

Q. Jen, could you just please sum up the key takeaways when it comes to the two parties' pool regulation proposals.

A. So the carrier is including a rest-day factor to account for that additional unavailability that we're introducing into the pool. It's unclear if the unions are including the rest-day factor in that calculation. As I talked about earlier, their proposal, their Appendix B does not have a rest-day factor, so that is a big difference.

Then the union's imposing some penalties for falling short of the required starts that they propose. So if we don't hit that mid-range point, we have to pay a penalty of a trip rate or additional day's pay for that.

And then finally there's guidelines that are guaranteeing time at home and maintaining their past level of earnings. So they want to extend -- you know, maintain their existing pay while getting additional time off with the rest days. So in -- our proposal is minimizing the variability by including those rest days and it's putting people in the right place for where the work is.

Q. And Jen, just so it's clear, so on this takeaway slide, I think on that third piece, "maintain existing pay notwithstanding additional time off," that's actually something that Smart's proposing and not something Union Pacific's proposing, correct?

A. Correct. Correct.

Q. So that should be reversed, just so the record is clear. That brings us to the end of the pool regulation piece. And actually let me just make one more point here. With the pool regulation piece, are there some pools that are guaranteed?

A. We do have some pool service that is guaranteed on Union Pacific.

Q. And under the two sides' pool regulation proposals, which pools would they apply to?

A. This regulation factor only applies to non-guaranteed pool freight service.

Q. And the parties are in agreement on that?

A. Yes.

Q. All right. Thank you.

Unless the chairwoman has any questions, that brings us to the end of the pool regulation piece.

ARBITRATOR: I do not.

MR. CHIAVETTA: So the next topic that we'll talk about is extra board regulation. This one is a little bit shorter. Happy to keep going. If anybody needs a break, and also, I'm happy to stop.

ARBITRATOR: Do we know what time?

WITNESS SVATOS: Lunch was here at noon, which is -- but I don't know how long this will take.

ARBITRATOR: How long did you say this is?

MR. CHIAVETTA: I think this one's about 15, 20 minutes.

ARBITRATOR: How long did you say?

MR. CHIAVETTA: This one's about 15 to 20 minutes.

(Whereupon, Arbitrator discusses with board members.)

MR. CHIAVETTA: Yeah. So -- well, we have an extra board regulation, and then we have turn trading and pre-arranging layoffs. I guess when you add in those last two pieces, the turns trading and then the prearranged layoffs. That really, I guess, brings us to the complete end of Article 7, and, probably, that may actually be closer to 30 minutes.

ARBITRATOR: Okay. Okay. We'll take a 45-minute break for lunch.

MR. CHIAVETTA: Okay. Thank you.

(Whereupon, a break was taken at 12:08 p.m.)

(On the record at 12:52 p.m.)

ARBITRATOR: The witnesses continue to be under oath. Please feel free to begin.

BY MR. CHIAVETTA:

Q. Thank you. So now we'll turn to another part of the carrier's Article 7 proposal which has to do with extra board regulation. And Article 7 of the 2022 National Agreement, which we see on the screen, has language authorizing the carrier to abolish or establish road, yard, or combination extra boards, which will be regulated by the carrier based on the needs of service.

Jen, would you please walk us through what the carrier has proposed in terms of extra board regulation?

A. Sure. So what the carrier proposes is almost identical to what the PEB language that you just saw previously provides for. Our proposal proposes that we'll have full discretion on the regulation of extra boards. And that is found in our Article 7B, Number 3 there. And also that it may establish, abolish, or combine any yard -- any road, yard, or combination extra boards based on the means of service.

Q. And there's references in both sides' submissions to supplemental extra boards. First of all, what is a supplemental extra board?

A. A supplemental extra board is another form of an extra board, and it, essentially, protects when an extra -- regular extra board is exhausted, that supplemental board will back up that board.

Q. So the supplemental extra board is essentially an extra board for the extra board.

A. Correct.

Q. And are supplemental extra boards covered under the carrier's proposal in terms of what they could establish or abolish?

A. Yes. Yes.

Q. In its rebuttal, the union does not challenge the carrier's right to abolish supplemental extra boards, but they question the wisdom of doing so. They argue on page 24 of their rebuttal that "the outright abolishment of supplemental extra boards as proposed by the carrier is unnecessary and would cause harm to the carrier's ability to protect the needs of service or predict future manpower hiring needs." End of quote.

BY MR. CHIAVETTA:

Q. Doug, what's the carrier's response to that criticism?

A. Supplemental boards across the system are very underutilized. We'll have some detailed slides showing the amount of usage on supplemental boards in our costing exhibit this afternoon.

Q. And I believe we saw during the opening, abolishing supplemental boards accounts for a large group portion of the cost savings associated with the carrier's proposal, correct?

A. Correct.

Q. And we've got a witness who will provide more detail on that. And Doug, practically speaking, in the carrier's proposal, when it says the carrier will have full discretion on regulation of guaranteed pools and extra boards, what does that mean?

A. Today, the way extra boards are regulated, there's a minimum percentage -- a minimum percentage of the number of jobs that get protected. So using just an easy round number here, if the extra board covers 100 positions and the minimum percent is 20%, you would have to have a minimum of 20 people on that extra board. In our proposal, what that would mean is we would staff based on the needs of service. So if it would be less than whatever that minimum is today, we would have less individuals on that extra board.

Q. So just to use an example, in today's world, and I'll just use round numbers, say the extra board protects a pool where there's 100 turns on the pool. If the threshold were 20%, or the regulation piece were 20%, that would mean the extra board would have to have 20 people on it?

A. Correct. At least 20.

Q. Okay. And under the -- under the carrier's proposal going forward, it could regulate those boards just based on the needs of service, just like Article 7 of the national agreement says, correct?

A. Correct.

BY MR. CHIAVETTA:

Q. In terms of regulating the extra boards, how does what the carrier proposed differ from what the union proposed, Jen?

A. So what the carrier, again, proposed

was full discretion on how to regulate the extra board. Where the union's proposal differs is that they're requiring the carrier to maintain a minimum number on the extra board, 30%. This dilutes our rights that we were afforded in the PEB to have exclusive rights to regulate our extra board based on the needs of service.

Q. In that 30% figure they've proposed, are there minimums today for extra boards?

A. Yes, there are.

Q. And those are expressed in percentage terms?

A. Correct.

Q. How do the minimums today compare to the 30% threshold proposed by the union?

A. We do have some locations that do have a 30%, some that have a lower percentage rate. It varies across the system. So this is the most aggressive.

Q. Okay. Do you have any locations currently on your system where the threshold -- the number is greater than 30%?

A. No.

Q. And so by increasing that percentage, is the union effectively increasing the amount of people the carrier would have to have on the extra board?

A. Correct.

Q. And those employees get the guarantee, which means, as long as they're available, you're paid regardless of whether you work, right?

A. Correct.

Q. Is there any other difference between the two proposals when it comes to extra board regulation?

A. Yeah. So the other difference is, again, going back to the right that we have under the PEB to establish or abolish extra boards. In the union's proposal, they request the carrier to provide 30 days advance notice with our intent to establish an extra board, and then, with that, we must set reasonable terms with the union on that extra board. And then to further complicate things, they're not allowing the carrier to fill necessarily that extra board except for only if people bid to it. So they're restricting who we could even have on that extra board should we -- have a need for a new extra board.

Q. So in the carrier's view, does what the union propose impinge on the carrier's right under

Article 7 of the National Agreement to establish or abolish extra boards and to then regulate them based on needs of service?

A. Correct. Yes.

Q. Jen, what are the key takeaways when we talk about this topic of extra board regulation?

A. So again, under the PEB we have -- the carrier has the right to regulate the extra board based on needs of service. And that's what is in our proposal versus the union's proposal, which requires a minimum of a 30% to have on that extra board. We also have the ability to establish and abolish extra boards without limits. And that includes supplemental boards as well.

Again, the union actually didn't have any language in their proposal that addressed abolishing extra boards, but they did provide some conditions around what we would need to do if we established an extra board and how we could fill that extra board.

Q. Just to go back to illustrate that last point you made about the union lacking -- the union's proposal lacking that language about abolishing extra boards. So to go back to the national agreement language. So again, this is Article 7 of the National

Agreement. In Article 7 of the national agreement specifically uses the term abolish and gives the carrier that right, correct?

A. Correct.

Q. Then if we scroll ahead to SMART TD's proposal, you refer to the fact that their Section C talks about establishing boards, but it doesn't say anything about abolishing boards.

A. I found no provision in their proposal that provided for abolishing the extra board.

MR. CHIAVETTA: If there's any questions on this topic, we're happy to take them.

ARBITRATOR: No. Thank you.

BY MR. CHIAVETTA:

Q. All right. We will move on to Article 7C. And we've titled this section "Workforce Predictability and Flexibility." That's language that comes right from the 2022 National Agreement. And the 2022 National Agreement says that, "In conjunction with the adoption of self-supporting pools and/or the pool and extra board changes that are authorized by the agreement, new agreements will provide for one or more of the following: The opportunity for employees to observe rest outside the requirements of the Rail Safety Improvement Act, the RSIA, a procedure under which employees may trade assignments, or a procedure under which employees may receive a prearranged layoff."

So the national agreement effectively guarantees that if the carriers get these changes in Article 7, employees will get one of those three things, additional rest, the ability to trade turns, or prearranged layoffs.

And Jen, then under the carrier's proposal for Article 7, do employees get any of those three things?

A. Yes. Our proposal includes all three of those.

Q. And we'll talk through the first piece, which is the rest days, when we get to Article 5. So that will be later in the day. So let's talk about the second piece where the agreement -- the national agreement says that employees could get a procedure under which employees may trade assignments. What has the carrier proposed in that respect?

A. The carrier's proposal includes a mechanism to allow employees on a non-guaranteed pool freight. So again, remember, we have some pools that have a guarantee where they get that minimum earnings per pay half. So this would only apply to non-guaranteed pool freight. But under certain conditions they can swap or trade a term.

So if they are in that first-out position -- going back to Doug's demonstration, if they are in that first-out position, they could ask another employee that maybe is in the 10th position to trade turns with them, so now they don't have to work as quickly. Maybe they want to go to, you know, their child's baseball game or something. They only need a few hours off. This allows them to do that. Maybe the other employee wants to work quicker so they can get home for the next day for some other event. So this allows employees to have a -- you know, make the decision on their own to swap their turns and their board position in order to accommodate things in their life that they need to take care of.

Q. And Jen, the carrier's proposal refers to this right being given to train persons in OK status. What does it mean to be in OK status?

A. OK status means you are available and rested to work.

Q. And Jen, you just talked through the benefits of the ability to trade turns, the fact that it affords employees more time off between work if they want it. Or as you said, if an employee actually wants to go to work faster, then they can potentially trade turns with another employee and do that. Does the union's proposal also include a provision that allows employees to trade turns?

A. Yes, it does.

Q. And I scrolled ahead. So now I've pulled up text from SMART TD's proposal, which says, "Train persons assigned to guaranteed pool freight boards who utilize the turn swap option will not have guarantee reduced in any manner."

Jen, is there any -- what are the key differences between the two sides' proposals when it comes to trading turns?

A. The biggest difference here is that, again, we are only applying this mechanism to trade turns to non-guaranteed pool freight service. SMART TD's proposal affords it to get non-guaranteed and guaranteed pool freight. And so, again -- and then with that, they're saying if a guaranteed pool freight employee uses that option, they're not going to have their guarantee reduced.

Q. And why does the carrier care about whether or not employees on guaranteed boards have the right to trade terms?

A. Again, so we pay guarantee for

availability, and if we have a person in a first-out position that could be called for work in the next two hours, move themselves down to a -- some boards have, you know, 50 people on them, they can move themselves down pretty far where they don't work for quite a while. That is just allowing them to continue to have guarantee for time that we're not going to call them to work.

Q. Jen, could you foresee a scenario where, if employees on guaranteed boards had the ability to trade turns, you would have this constant swapping of turns so that employees are moving down and, you know, they're having limited availability. They're technically still available, I should say, correct, when they trade down, but they're not getting called to work?

A. They would be at -- towards, you know, a lower position in the board waiting to get back to the top of the board in order to be called. And during that time period, which could be, you know, it could be a day, two days, they could be waiting for that to happen, they're going to be receiving guarantee for that entire time.

Q. And under the union's proposal, is there any cap on the number of times that employees can trade turns?

A. No, there's not. One similarity we do have is that the employees have to work after they make the trade turn, but the union's proposal provides for an unlimited number of turns, while the carrier's proposal provides for 12 per year.

Q. All right. Let's turn to the next aspect. So as we saw with that language in the national agreement that talks about workforce predictability and flexibility, there are the rest days, which we'll get to, the term trading, which we just discussed, and then the last thing is the procedure to allow employees to take prearranged layoffs.

Jen, does each side's proposal include procedures for prearranged layoffs?

A. Yes. Carrier's proposal here in Article 7C, Number 1 here.

Q. And are there any major differences between the two parties' proposals on this issue?

A. The prearranged -- the percentage of employees that are allowed to take prearranged is very different. The carrier is providing for a minimum of 5% of employees allowed to take a prearranged day versus the unions, which is 25%. So five times higher than that.

Q. And so if you have a pool of 100 employees, and the existing prearranged layoff threshold is 4%, then what would that mean in practice?

A. That four individuals can take a prearranged day on any -- in each day.

ARBITRATOR: Could you repeat your response, please.

WITNESS POWELL: Four individuals could take a pre -- a layoff. So they would have essentially four positions open each day for a person to put in for a day off. Usually it's vacation, single day vacation, or personal leave day.

BY MR. CHIAVETTA:

Q. And you testified that the carrier's proposal is to increase the thresholds to 5%?

A. Correct.

Q. And what are the thresholds today?

A. We, generally, are around 4%.

Q. And what is the union's proposal when it comes to the threshold?

A. On the pool, they're proposing 25%, and on an extra board, they're proposing 20%.

Q. So six times higher than existing

prearranged thresholds at least with respect to pools?
A. Yes. Yes.
Q. Five times higher than existing prearranged thresholds with respect to extra pores.
A. Correct.
Q. And the more -- the higher those thresholds, what does that mean for availability?
A. That is just opening more positions for people to be able to take time off. So on any given day, we could have up to 25% of the pool employees off on a compensated day.
BY MR. CHIAVETTA:
Q. And Doug, what purpose do these thresholds serve?
A. Yeah. Union Pacific operates -- like I talked about earlier -- 24 hours a day, 7 days a week. And we have commitments to our customers to make sure they're trains are moving. Having a threshold is what allows us to make sure we have enough crews to meet the train demand.
Q. Doug, what would be the operational impact of increasing the existing prearranged thresholds, either fivefold or sixfold, as you would be doing under the union's proposal?
A. Yeah. So if you think about this in

context with the pool mileage rate regulation, what you would see, because we all have the seven-day look-ahead, you can see swings of manpower from 25%. Going on extreme side where 25% of the pool wants to be off for one week, the next week, what you would see is the exact opposite, where maybe it's a low percentage. When you think about that across one pool, it may be a handful of people, but you start to expand that across an entire employee seniority hub or across the system, we're talking big swings of manpower week to week.

Q. And so you're referring back to the pool regulation proposals where both sides are saying, in addition to the look-back, we're going to have a look-ahead, right?

A. Correct.

Q. We're going to look at the known vacancies. And if you increase the number of employees who could be off a single day, then that's going to cause people to be added to the pool under either side's pool regulation proposal, right?

A. Correct.

Q. And then if that drops the following week, there's going to be a big swing; is that right?

A. Correct.

Q. And as of today, we heard that the thresholds are typically around 4%. Are there days now where you don't come close to hitting that 4% threshold?

A. Correct. We generally see it the thresholds getting at about 4% on the weekends is when we see our peak prearranged demand today.

Q. And then what happens during the week?

A. Usually, it's a lower if anybody uses them.

Q. So the higher thresholds also would create more unavailability on weekends and holidays when the carrier might already be short staffed.

A. Correct.

Q. Doug, one of the union's criticisms of UP's proposal is that by proposing to increase the threshold by only 1% that, you know, in some boards you would effectively just be increasing the number of employees who could be off by one. What's your response to that?

A. When you look at it in context with also granting voluntary time off, so we're giving an extra percentage on prearranged. But on top of that there will be voluntary rest days for employees to also use.

BY MR. CHIAVETTA:

Q. Jen, could you just walk us through the key takeaways as we close this section?

A. Sure. We'll point out that the biggest difference on the prearranged is the percentage of minimum requirements that we have. We're -- we're proposing a 5% minimum on prearranged days while the union has a 25% and 20% prearranged threshold. So that's a significant difference there.

In regard to the ability to swap or trade turns, the union's proposing that that's also applied to the guaranteed pools, which the carrier expressly removes the guarantee pools from that opportunity to trade. By providing it to guarantee pools, it just adds existing costs and an opportunity for some gamesmanship. And then finally, the carrier is proposing a limited number of trades per year versus the union, which has an unlimited number.

MR. CHIAVETTA: That brings us to the close of that section, unless the chairwoman has any questions.

ARBITRATOR: I do not. Thank you.

MR. CHIAVETTA: So we'll turn next to Article 6, which in the national agreement is titled "Automated Bid Scheduling."

BY MR. CHIAVETTA:

Q. Jen, what general topics are covered by each side's Article 6 proposal?

A. The three main topics under the automated bid scheduling proposals are how you bulletin and bid to an assignment, displacement -- and a displacement is when an employee is removed from an assignment for various reasons that Doug will explain that more -- and also how you notify an employee that they have been displaced, and then, finally, how to fill assignments if we have no bid assignments and are forcing roles to those assignments.

Q. So let's take each of those three topics in order. Let's start with the bulletining. What does it mean to bulletin an assignment?

A. Bulletin is just the carrier, if we have a new assignment, we would put up a bulletin that employees could see that would have -- agreements vary -- but it would have things like what days of the week does it work, if it has any off days, whether it's -- you know, starting time, how many miles does it operate. Those types of -- that type of information. And then an employee can review and determine if that's something they would want to work. They put in a bid to that assignment and it's all based on their seniority. The most senior person would be awarded that assignment.

Q. Jen, what are the differences between the two parties' proposals or I should say the key differences when it comes to bulletining assignments?

A. The carrier is proposing a 72-hour standardized bulletin period for all new assignments. The SMART TD's proposal, it provides that assignments are awarded every day at 10:00 a.m. It's also -- it's unclear if really those are just for the new assignments or quite -- or really how that -- how that would work. But the carrier's proposal is providing we would put up a three-day bulletin and employees would put up -- they would have bids on file for those assignments.

Q. And just so we're clear, Jen, so the union's Article 6 proposal is a side letter to Appendix B, correct?

A. Correct.

Q. Side Letter Number 1?

A. Yes.

Q. And the reference in there under SMART TD proposal where it says award at 10:00 a.m. daily, is that a reference to Section B of Side Letter 1 that says, "New assignments will be advertised. The senior applicant will be assigned at the time the bulletin closes, which will be 10:00 a.m. central."

A. Yes.

Q. And Jen, each party's proposal also addresses the process for awarding assignments. Just to give us some background. So you talked about bulletining. Can you speak to how assignments are awarded today?

A. Our proposal today is actually how we handle a lot of assignments across the system today. It's called a standing bid proposal. And essentially, employees will have a preference of assignments that they have on file, from their first choice to their, you know, tenth choice. And as that job -- new job is bulletined, the carrier will go and see who is the senior person that has that choice highest on their list to be put into that position. So that's called a standing bid. The employee maintains that bid and then they just get picked up and put on that assignment. And we have that process virtually across our system.

Q. So basically, you have somebody in a position, and you have other employees who have expressed interest in that position and said, hey, if it opens up, I want to be in that position so that if that position becomes available, it's just automatically awarded to the person with the standing bid who's the most senior?

A. Correct.

ARBITRATOR: How is it Bulletined?

WITNESS POWELL: We would put up the -- in our proposal, we would put up the three -- the 72-hour bulletin. Today, the rules vary based on the type of assignment it is.

ARBITRATOR: I mean, literally, how is it bulletined? Is this -- How do you receive the information?

WITNESS POWELL: I'll refer that to Doug.

Doug.

WITNESS SVATOS: So it gets bulletin in our-- It's our crew management system. So an employee would have -- has access to go in, look at what jobs are up for bulletin. They can put in the standing bids today if they're interested in a position that they can't hold. So it's all electronic.

BY MR. CHIAVETTA:

Q. And Jen, in the section on bulletins, there's a reference in the carrier's proposal to daily preference. There's talk in the submissions about these daily preferences boards. What's the difference between the two sides in terms of what they propose with respect to daily preference boards?

A. The carrier proposes to standardize our bids system across all assignments. So it's a standard process which would eliminate these daily preference boards, which we have at a few locations. The union would like to -- their proposal would like to carve out those assignments and let them retain their existing rules on how they bid and are awarded assignments.

BY MR. CHIAVETTA:

Q. And Doug, can you just explain what a daily preference board is, how it works in practice?

A. Yes. So when we're talking about daily preference boards, going back to the opening, we're talking about yard service. So today, out of the about 100 yards we have across the system, 10 are daily preference boards. So the other 90 boards all operate based on an employee bids a job. That job generally works the exact same work every single day with assigned off days.

Where a daily preference board is different is they bid off days. And then every day they go through and they place bids in to say I want to work this job on first shift or this job on second shift or this job on third shift. And then there's a list that they go through based on seniority to award jobs every single day to those employees.

Q. So Doug, just so that we're clear, in the current system, where you've got the yard job, as you said earlier, those are assigned jobs, you have three shifts per day at a yard; is that right?

A. Correct.

Q. So first shift, second shift, third shift.

A. Correct.

Q. And you would bulletin today -- you would bulletin a position, and it would be a position in a yard for first shift with Friday, Saturday off days; is that right?

A. Correct.

Q. And if you don't have daily preference boards, the employee who bids on and gets that assignment would just continue in that first-shift roll with Friday, Saturday off days until they're displaced; is that right?

A. That's correct. They would work the same job every single day.

Q. And the difference is with the daily preference board, you testified that they would be bidding on off days. And first of all, how often are they bidding on off days?

A. Up to every single day. Oh, let me rephrase that. When they're bidding on off days, they bid the off day in very similar to a yard board. They're on those off days until they bid a new set of off days.

Q. Okay. And by off days, we saw earlier that employees in the yard have a 5:2 work rest schedule now, right? They work five days a week; they have two days off?

A. Correct.

Q. And so you can't have everybody off on the same day. So is it the case that the carrier will have, you know, some positions in the yard have Friday, Saturday off days, others have Tuesday, Wednesday off days?

A. Correct.

Q. So the employees, you're saying they bid on, okay, what two off days am I going to get that week. And then what happens on a daily basis for the daily preference boards?

A. Yeah. Then on a daily basis we go

through and look at all of the individuals that have bids in for every single job that are on the daily preference. So if you think about it like this, if it's a Tuesday job, and employees that have Tuesday off, we don't look at them. We look at every employee that's available to work on Tuesday, and based on their seniority, award them what job they're going to work that individual day. Call them. They get a notification. They work that job that day, and then repeat that process the next day.

Q. Doug, why is the carrier proposing to eliminate daily preference boards?

A. A few different reasons. So administratively, it is very, very cumbersome. If you look at it relative to our normal yard operations, where employees bid a job, they stay on that job. A daily preference board, you're going back through and reevaluating where everyone works not just on a daily basis, but every single shift. It adds opportunities for employees to maybe one day work a second-shift day, or Tuesday work a second-shift job, the next day, sign up to work a first-shift job, make themselves unavailable because they worked over, and then we're losing productivity and it's more inefficient for us.

Q. In that scenario where you have

somebody on a daily preference board and let's say they have Friday, Saturday rest day, so the, the rest days are not coming into play. But it's Tuesday, they've worked second shift, and when does second shift run from?

A. Yeah. Second-shift usually is about 14:00, 2:00 p.m. till 23:00, 11:00 p.m. at night.

Q. And under the RSIA or Hours of Service Act, how much rest do those yard employees have to have between on-duty periods?

A. So they would still have to have 10 hours of rest.

Q. So the situation you're describing is one where somebody might work second shift one day and the next day decide, you know, I'm going to work first shift, and there may not have been 10 hours in between those two.

A. Correct. They may have worked overtime or bid on an earlier first-shift job than 8:00, could have been 7:00 a.m.

Q. And then what -- what happens in that situation from the carrier's perspective?

A. Yeah. So what happens is we then fill that because there's a vacancy and that employee is not rested. We have to fill that position with an extra board employee.

ARBITRATOR: Do you know that at the time that the employee submits the request?

WITNESS SVATOS: No. Because you wouldn't know they're not rested. I'm trying to think how, like, the best way to describe this. So what would happen is you set the boards, basically, that night. The way it would work is you award the positions, they wouldn't be rested, and then you know they're not rested. So you know you have to fill that position with an extra board employee. Does that answer your question?

ARBITRATOR: Does that actually happen? Does the employee actually submit for --

WITNESS SVATOS: That does happen.

ARBITRATOR: It does happen.

WITNESS SVATOS: Yes.

ARBITRATOR: So they have a second-day job. And they, by virtue of this daily preference board, they indicated interest in working the following day, starting in the morning without the rest period. And you have to basically say, well, you can't do that because it's a violation of, whatever, RSIA.

WITNESS SVATOS: No. You would still

award that position, and then they would be unavailable to work that day because they're not rested. So then we'd fill that vacancy with an extra board employee.

ARBITRATOR: At what point do you do that?

WITNESS SVATOS: Once we know they're not going to be rested. So the way it works --

ARBITRATOR: Do you know that when they apply?

WITNESS SVATOS: No.

BY MR. CHIAVETTA:

Q. All right. So we've talked about bulletins, bidding and awarding assignments. The second major topic that you've identified, Jen, is displacements and notification.

First of all, what is a displacement? Doug, you can take that.

A. A displacement occurs when an employee may have their job abolished. When an employee voluntarily passes up their position to go exercise seniority to displace someone else. A displacement also could happen when an employee was on an assigned job, there's a change in their working conditions, whether it be the rest days, a change in pay, a change

in start time, potentially.
Q. And Doug, what happens today when someone is displaced?
A. Yeah. So generally what you see happen when an employee is displaced is they have a set amount of time on the system. It's closer to 48 hours. So they have 48 hours to go review and see if there's somebody junior to them that they can go displace on that position. So what would happen is a senior employee would displace somebody, and they would get that position, which would lead to another displacement downline.
Q. And the current -- the current time is you get from the time -- is the 48 hours to exercise seniority after getting displaced; is that right?
A. That's correct.
Q. And when does that 48-hour clock start running?
A. That 48-hour clock starts to run after the employee is notified. So a notification would be employee accepts a phone call from crew management, accepts one of the electronic messages sent from crew management.
Q. And when you talk about the 48-hour clock starts running from the time the employee is

notified, under today's rules, if the carrier calls the employee to tell them that they've been displaced and the employee doesn't answer the phone, does that count as being notified under the existing rules?

A. That does not. And what we see in practice is we'll have times where an employee will avoid that notification and they may extend that 48 period up to 24, 48 hours at a time because they're avoiding the notification.

Q. Okay. And does the carrier have ways that they could electronically communicate with employees?

A. Yeah. We send electronic messages to an employee via their portal or crew management system and then automated calls on top of that as well.

Q. And if the carrier sends one of those electronic messages to an employee today to notify them of their displacement, but the employee doesn't acknowledge it in any way, does that under today's rules count as proper notice?

A. No.

Q. So in practice, even though the collective bargaining agreements say you have 48 hours from the time -- you have 48 hours to exercise seniority, that 48-hour period is actually

substantially greater.
A. That's correct.
Q. And while that employee is displaced, are they working anywhere?
A. No. When an employee is displaced, they're, lack of better words, are kind of in limbo. They don't own an assignment, they don't own a pool turn, we're waiting for them to exercise their seniority to displace somebody else.
Q. Doug, what effect displacements have on UP's operations?
A. It renders employees unavailable for the amount of time that they're displaced. The longer or more often a displacement happens, it could have greater effects on the workforce.
BY MR. CHIAVETTA:
Q. Jen, how do the parties' proposals differ when it comes to this topic of displacements?
A. So the parties' proposals differ with the process of notifying employees' displacements and also the number of displacements that would occur.
So in regard to notifying the employees of displacements, the carrier's proposal provides that after eight hours -- after the carrier makes it attempts for eight hours to notify the employees,

after that eight-hour period, the employee will be considered notified. And then we also, in our proposal, provide for a 24-hour notice period that they have. So today they have 48 hours. Our proposal will reduce that to 24 hours. And so after 8 hours you're considered notified, that 24-hour period will begin.

Q. So under UP's proposal, going forward, the amount of time from the point of displacement to the time you would have to exercise seniority would be 24 hours plus the 8 hours, assuming the employee didn't accept notice before the 8 hours?

A. Correct. Correct.

Q. So it would be effectively capped at 32 hours.

A. Correct.

Q. And in order to start the clock on that eight-hour time, the carrier would have to call all the phone numbers on file for that employee; is that right?

A. Yes. That time would start once the carrier made attempts on all of the numbers that the employee provides to us; then the time would start.

Q. And how does that compare to the union's proposal when it comes to the process for notifying employees of displacement?

A. The union's proposal does not provide any description on what's considered proper notification, so we would have the same issue we have today.

Q. And what about the displacement period where it's 48 hours, currently, as we heard. UP is proposing that that be reduced to 24. What is the union -- what has the union proposed with respect to the time to exercise seniority once you're notified of the displacement?

A. Sorry. So that is also somewhat unclear in their proposal. Again, they have the process with the 10:00 a.m. daily notification. We are unclear if that includes any displacement time on that.

Q. And so, Jen, you testified that, in addition to the process for notifying employees, there's also a difference between the two sides when it comes to the number of displacements that each side's proposal would generate. Can you explain what you mean by that?

A. Correct. So the union also provided a provision in their proposal which allows for employees to pass up assignments. Their proposal specifically allows employees, after a 30 day period, if they no longer want to work that assignment, they can pass up or throw up that assignment and decide to go work on work another assignment and potentially displace another employee.

Q. Today, Jen, are there pass-up provisions where, once an employee has held a position for a certain amount of time, they can exercise seniority to new position?

A. There are. It varies across the system, but there are some rules out there. Then there's some that do not have that rule at all.

Q. And you testified that the union has proposed a 30-day pass-up provision where, if you've held the position for at least 30 days, you can exercise seniority to a new position. How does that compare to the length of time under the current pass-up provisions?

A. Again, it depends on the territory. We do have some agreements that do provide for a pass-up provision. The timeframe can vary. We also have some locations and territories that have no pass-up provisions. So what the union is proposing is to expand that 30-day provision across the entire system.

Q. Next, we're going to talk about the

process. I'll go back to the earlier slide where -- when you broke down the Article 6 proposal, you identified three high level topics, the bulletins, bidding and awarding, displacements and notifications. And then this last topic, filling no-bid assignments and forcing rules. What sort of things will we be talking about in this section?

A. So this particular section is when no one -- if someone does not bid, let's say they have a displacement and they're in this limbo land, but they have no bids on file to go to another assignment, how do you place that person? And where do you place that person? So that is what our forcing rules are. And then we have another scenario where we have assignments -- a new assignment that we don't have any bids for. So who can we put into that assignment? So there's really two scenarios.

Q. How do the two parties' proposals differ, Jen, when it comes to filling no-bid assignments.

A. So the two parties' proposal differs, basically -- there's four major differences. There's who can be forced, there's the location to which someone can be forced, there's if there's going to be additional time allotted to report to a new position, and is there any compensation owed to that person that's forced to certain positions.

Q. So let's take each of those four differences in order. So starting with the first difference, when it comes to filling note bid assignments, you testify that that's the person who can be forced. How do the two parties' proposals differ when it comes to the person who could be forced to an assignment that was not filled through the normal bidding process?

A. So the carrier's proposal is much simpler and provides more flexibility. If the position's no-bid, there's really just two steps to fill that assignment, which means we can get that assignment filled quickly. We can go to the -- any -- so we can go to the junior person in the hub or the junior -- I'm sorry -- the junior employee with an expired bump or the junior person in the hub.

Q. And so you're referring to Article 6H of the carrier's proposal.

A. Correct.

Q. And that applies not just when there's a position that hasn't been filled through the bidding process, but where somebody has been displaced and then they haven't exercised seniority within 24 hours

of being properly notified, correct?
A. Yes. If they're junior, they could be forced. Yes.
Q. In Section H2, when it refers to the hub, it says, first, you can force them to any open assignment, and then, second, they could displace the junior train person in the hub. What is the hub?
A. It's referred to in different terms. So some are called a zone and some are called hubs, but, basically, it's the total territory that an employee holds seniority. So, you know, location or locations where they are required to protect assignments based on their seniority they have.
Q. In Section I1 where it says, "if a position goes no-bid, crew management will fill the position in the following manner." "Junior employee with an expired bump." The "expired bump." What is that again?
A. The expired bump is when someone was displaced and then they had a certain amount of time to place themselves, but they did not do that. So then their bump expired.
ARBITRATOR: I'm sorry. Displaced, but had that amount of time to do what?
WITNESS POWELL: So they're displaced,

and they're in that limbo. And we properly notify them. They then have 24 hours to go to a different assignment. If they don't have any bids in to go to another assignment, then they're considered -- their bump is expired after that 24-hour period.

BY MR. CHIAVETTA:

Q. So Slide 42. We saw -- Slide 42 had the carrier's proposal, when it comes to filter filling no-bid assignments. Slide 43 is the SMART TD proposal. And Jen, can you explain how this differs?

A. So Smart's proposal on how to fill assignments is much more restrictive to the carrier and would take more time to fill assignments. It requires the carrier to draw from a narrower group of individuals or pool of people. And it's -- essentially, we can only grab people from the location. So you see at location displaced or within the terminal, the protecting extra board. And you see, again, in the terminal. It doesn't allow the carrier to go outside, essentially, of the particular location where the vacancy exists into other areas within that same seniority hub or zone.

Q. And that's what I was going to ask. So earlier in the carrier's proposal. I'll go back a slide. We saw a reference to the hub, and you

testified that that's, basically, the seniority district, right?
A. Correct.
Q. And then in the union's proposal it talks about the terminal. And is it the case that there could be more than one terminal in a single hub?
A. Yes.
Q. So the employee would have seniority, not just to hold a job at his terminal, but also at other terminals within the hub?
A. Correct. A terminal would be something like Phoenix Yard here, but then they also hold seniority in other locations within their hub, not just in Phoenix.
Q. And so is it the case that under the union's proposal, I couldn't be forced outside of my terminal?
A. Correct.
Q. And would that be a change from the current rules?
A. Yes.
Q. Given that under the union's proposal, when we look at this language, it doesn't allow the carrier to force somebody to another terminal within their same seniority district. Is there any mechanism

in the union's proposal to get employees from a terminal where they don't hold seniority -- I'm sorry -- a terminal where they can't hold a position based on their seniority to another terminal within their seniority district where they could hold a position?

A. So, yeah. They provide for a mechanism to, you know, force employees to other locations, but, first -- you know, the carrier, first option is that if we have a need of manpower in a specific location, and we have no individuals to fill at that location, we would put up a bulletin to other locations in order to fill that position. So these are, again, our locations that these employees already hold seniority in, but this requires the carrier to, if someone was to bid -- put in a manpower bid, I guess you would call it, to this, they would get paid auto mileage, travel time, lodging, meals, and then a basic day in addition to guarantee for each day that they're at that location. So, again, this is already an area of seniority they're required to protect. Another option --

Q. So, Jen, let me just stop you just there. So in the -- in today's world, if I don't have seniority to hold a position at my terminal, but I could hold -- I do have the seniority to hold a position at another terminal within my same seniority district, the carrier could force me to that other terminal, correct?

A. Yes.

Q. If that happened in today's world, what if any compensation would I be entitled to?

A. So under this scenario, again, going back to the previous, we can't force that employee except for at the location. So then -- but we might have a need at a different location. So we would be posting this manpower bulletin, and then that employee would be able to bid to that and then get additional pay.

Q. And so under the union's proposal, it says, with these manpower bullets, you get mileage allowance, you get your travel allowance, you get lodging, and then you get the basic day in addition to guarantee. So in today's world, how does that compare to today's world where, if I don't have seniority to hold a position at my terminal, but the carrier can force me to a position in another terminal where I do have seniority?

A. Yeah. And the rules differ across the system, but, typically, you can force them to the next closest location or to an open position at another location.

Q. And what, if any, compensation would I get? Would I get a mileage allowance in that case?

A. No.

Q. Today? No?

A. No.

Q. Would I get travel time to and from the location, as the language in the union's proposal?

A. There are some agreements that do provide for some travel time, but it varies across the system. But in general, no. Unless there's a specific location that has that.

Q. So some places I get travel time, other places I get --

A. It varies.

Q. And then how about the lodging? If I get forced to another terminal today, would I get a lodging allowance like the union proposes?

A. There are some. Again, it varies. There are some agreements that do provide lodging for a specific amount of time. So, again, that varies as well, but, typically, you know, they get 75. If it's -- if they're being forced over 100 miles, they would get 75 stays in a hotel, and that's per calendar year. So, again, there's agreements that vary, but majority do not have that.

Q. And then how about the last piece where, under the manpower bulletin in the union's proposal, it says if I give forced to another terminal, I would get a basic day in addition to a guarantee for each day assigned at the location. First of all, can you just explain what is a basic day?

A. It's their daily rate of pay.

Q. It's basically a day's pay.

A. A day's pay. Yes.

Q. And then when it says "in addition to guarantee for each day assigned at the location," is the guarantee just the guarantee we've talked about? The earnings guarantee?

A. I'm assuming that's the extra board. If they're forced to an extra board, they're getting a guarantee off that extra board. So this would be over and above the guarantee that we're paying.

Q. And so the net effect of these aspects of the union's proposal where all employees would get mileage allowances, all employees would get travel allowances, all employees would get lodging, and then all employees would get this additional pay. What's the net effect of all those provisions as compared to the current state of affairs?

A. That would just all add additional costs.

Q. And those are costs that the carrier does not pay today?

A. Correct.

BY MR. CHIAVETTA:

Q. Doug, what about -- we've talked about the cost aspect of the union's proposal. What about the operational side of things? What's your view of the union's proposal? How would that affect operations? The way that they proposed to move employees -- the process, I should say, that they proposed to move employees from one terminal to another.

A. Yeah. So operationally, what we would see is this process would take longer than it even does today. It would be more difficult to get the position filled full time to actually get the employee there who would have the seniority to still hold there. It would actually also incentivize employees not to bid to locations because they could utilize these different options to get additional payment, travel time, lodging, that they are not afforded today.

Q. So we heard from Jen that the union's proposal would increase costs, and we heard from you the union's proposal would be more cumbersome from an operational standpoint. Is that fair to say?

A. Correct.

BY MR. CHIAVETTA:

Q. And all of this was proposed under Article 6, which is something that the carriers received under the national agreement; is that right, Jen?

A. Correct. Yes.

Q. Jen, is there any disagreement between the two sides when Article 6 changes would be implemented?

A. The carrier proposed -- our proposal is something that could be implemented right away. We have -- again, going back to what we do across the system, we're doing a lot of this today, and, in fact, we're doing a similar agreement on the other side of the cab. So the engineers all have a similar agreement to this. So this is something that we can implement today. On the other hand, the union's proposal proposed, you know, a two year delay in implementing any of these changes. Their proposal would require a lot of programming and things like that. And they did provide us two years to do that, but, again, that delay is unnecessary because our proposal is something we can implement right away.

Q. And you said, in terms of what we're proposing, we already have that, UP already has that with respect to the BLET, the union that represents the engineers.

A. Yes.

Q. So let's close. If you would just please walk us through. What are the key takeaways when it comes to these Article 6 proposals?

A. So, again, it standardizes a process across the system and for all types of assignments. So the process would be the same regardless of what assignment you work. It would reduce displacement time and it also simplifies the rules for filling assignments. It gets us employees in those assignments quicker, which is more efficient. The union's proposal does introduce a lot of inefficiencies and cost. Going back to this, you know, the manpower bulletin, forcing people that comes with additional -- additional pay that comes along with that, and it actually incentivizes people, like Doug mentioned, not to bid to assignments.

MR. CHIAVETTA: Unless The chairwoman has any -- does the chairwoman have any questions?

ARBITRATOR: I do not.

MR. CHIAVETTA: Okay. We would then move to the final topic, unless anybody needs a break.

ARBITRATOR: Is that a yes out there? No. Okay.

Please continue.

BY MR. CHIAVETTA:

Q. Okay, thank you. All right, so we're now moving to Article 5, which is scheduled days off for through freight road service. This is where we're going to talk about voluntary rest days. Before we do that, Jen, just to give us context for the discussion, would you just please describe at a high level what -- what time off do train persons currently get?

A. So, yes. Today, this slide here shows, basically, all the time off that's afforded to a train person today for vacation. Train persons have up to five weeks -- again, that's based on the years of service -- but up to five weeks of vacation. They can take up to 11 personal leave days based on -- for road service, based on your, again, seniority. But it's up to five. They are allowed five paid sick days a year. Under the federal rest requirement. Again, we talked about that earlier, but they get 48 hours of rest after working six consecutive starts. So there is a mechanism today that provides for rest if needed. And then, also, the last national agreement provided for what's called an additional day or it's, basically, an additional personal leave day, but they are allowed to take that. We call it on demand, so it can't be denied. And then finally, there is a reasonable amount of unpaid leave that is available to take. Again, we have an attendance policy, but if they keep it at a reasonable amount, they should not run afoul of that.

Q. And just as a reminder, I think you refer to this earlier, Jen, but when we talk about the six consecutive starts, is that without the 24-hour period in between those starts?

A. Correct. Correct.

Q. So, in other words, I work Monday through Saturday, and then at that point, I need to have at least -- under federal law, I need to have at least 48 hours of rest.

A. Yes.

BY MR. CHIAVETTA:

Q. All right. So Doug, Union Pacific has proposed a 5:1 work-rest schedule for through freight pools. And Doug, using the slide, this example, could you just explain how that 5:1 proposal would work in practice?

A. Yeah. So using the slide, what we see is, starting on week one, which would be, in this example, February 1st, this employee on their five and one schedule would have to have to be available and/or work, it would be Saturday through Wednesday. On Thursday they would have the option to take their voluntary rest day. Week two, which would begin on Friday, they would have to be available and/or work Thursday through Tuesday with the option to take Wednesday as their voluntary leave day. Then this pattern would continue throughout the year.

Q. And under the carrier's proposal, just to be clear, the rest day is voluntary; is that right?

A. Correct. The rest day is voluntary.

BY MR. CHIAVETTA:

Q. Earlier we talked about the difference between guaranteed and non-guaranteed pools, and there is a minority of pools that are guaranteed; is that right, Jen?

A. Correct.

Q. And under Union specific -- under Union Pacific's proposal with both employees on guaranteed proof-rate pool boards and employees on non-guaranteed proof-rate pool boards get the voluntary rest days?

A. Yes.

Q. Jen, how has Union Pacific proposed to integrate these new rest days with the existing guarantee on these guaranteed pool boards?

A. So a train person on the guaranteed pool board can voluntarily take that rest day, but if they do, that is considered unavailable time and their guarantee would be reduced for that day.

Q. And under today's rules, if a trainman takes unpaid leave and they're on a guaranteed board, how would that affect the guarantee?

A. It is reduced.

Q. And a rest date would also be unpaid under the carrier's proposal, right?

A. Correct.

Q. Under Union Pacific's proposal?

A. Correct.

Q. So by saying we're going to adjust the guarantee to reflect the rest days, is the carrier proposing anything different than applying existing rules to the new unavailable time in the form of rest days?

A. No.

Q. Union Pacific's proposal also provides that an employee assigned to a guaranteed board laying off in any non-compensated status, unavailable time, or unpaid sick status without their guarantee and bonus stay forfeited for the half and will only be paid actual earnings. So we've talked about the unpaid time. What about the paid sick? How does the paid sick leave currently affect the guarantee?

A. This would be a change. So today, compensated time, in general, does not reduce a guarantee day. We have carved out the paid sick leave in our proposal to consider that as an available day. We would carve that out, and that guarantee would be reduced for that day.

BY MR. CHIAVETTA:

Q. And Doug, why has the carrier proposed adjusting the guarantee rules when it comes to paid sick? What does that have to do with voluntary rest days?

A. So what it has to do with voluntary rest days is voluntary rest days is going to introduce additional unavailability in the pool. What we've seen since introducing paid sick last August of '23 was, at times, employees are not using it for what it's intended for. What this would do is incent employees to use it for what it's intended for, plus still give them the voluntary off days.

Q. And when you say "we've seen employees are not using paid sick for what it's intended for," what are you referring to?

A. Yeah. So just -- I mean, just an example from this past weekend. Looking at Kansas City Hub, on Friday the 17th, we saw, call it roughly 12% of the employees laid off -- or 12% of the train persons laid off across the hub. On Sunday, we saw that skyrocket to 22%, which coincided with the Kansas City Chiefs playoff game. We didn't see an additional -- there wasn't weather. There wasn't anything else that could have driven that. We see that across the system.

Q. And so when the paid sick agreements were agreed upon, that was in a context or an environment where employees did not get voluntary rest days, correct?

A. Correct.

Q. And both of those two types of things are forms of unavailability; is that right?

A. That is correct.

Q. Doug, one of Smart's criticisms of the 5:1 work rest proposal has been that it's a one size fits all approach. And we saw earlier when we were talking about regulation that you can have pools of all different lengths. Their rebuttal at page 11 says, "Well, it may be a schedule," referring to the 5:1. "Well, it may be a schedule that shorter mileage pools elect to utilize as they would need more work opportunities than longer pools. It would not be beneficial to medium or longer mileage pools."

Doug, when the union says that the carrier's 5:1 proposal might be appropriate for shorter mileage pools but would not be beneficial to medium or longer mileage pools, what do you understand their concern to be?

A. I understand their concern to be that an employee already has time off because of the length of the run or the number of starts that they would have to run based on their mileage regulation.

Q. And when you say they have time off, you know, we saw when we were looking at the longer mileage pools, the pools would be regulated under either side's proposal in such a way that the employees would get called to work less often, correct?

A. Correct. So if you look at, like, a short pool that has 22 to 24 starts versus a pool that only is going to run 16 to 18 starts, naturally, the short pool that has the 22 to 24 starts would be working more often than the longer pool that has to -- that only have 16 to 18 starts.

Q. But in those longer pools, even though there might be more time in between when I called to work, in the current world, that employee is still on-call, correct?

A. Correct. So that is not necessarily guaranteed time off. That would just be time off that occurs because of how the pool operates.

Q. So does the carrier's proposal, a 5:1 work-rest schedule, does it give to employees in these medium and longer range pools anything that they don't currently have today?

A. Yeah. So what that would give to employees in these medium to long range pools is, if we go back to that calendar example, they'd be able to go look at a calendar and plan when they would actually have that time off. Today, since you don't have that, they have the natural time off, but this gives you the ability to go look at a calendar and plan weeks or months ahead.

Q. And when you're on the board, if you're not marked up -- I'm sorry -- if you're not marked

off, then you're on-call, correct?
A. Correct.
Q. And can the board move at different speeds depending on operations?
A. Yeah. The board could move at different speeds based on the train demand or on other employees' behavior.
Q. And by other employees' behavior, do you mean other employees could lay off and then I'm going to be more likely to get called to work if I'm available?
A. Correct. You may move up the board faster. And where you thought you were going to go to work in 12 hours, you're going to work in, say, the next 8 hours.
Q. And even if I'm at the bottom of the board, in the current world, if both the pool board and the extra board are exhausted, or another pool board and an extra board are exhausted, could I get called to work to fill a vacancy?
A. Correct. You could be called to work.
Q. In the current world?
A. In the current world, yes.
Q. But if I had a voluntary rest day, in that same scenario, I would be off limits from the

carrier calling.

A. Correct. You would pull yourself off the available list of people to call.

Q. Doug, another criticism that SMART makes of Union Pacific's proposal for a 5:1 work-rest schedule is that it leaves employees worse off in so far as under federal law, if they work six consecutive starts, they're required to take 48 hours of rest. Whereas, under the carrier's proposal, you're available five straight days and then you get one day of rest. What's your response to that criticism?

A. Today most employees in the pool are not working six consecutive starts. And very similar, this would give the ability for an employee to look weeks ahead to plan that time off. Whereas, today, you can't look downline and assume you're going to run into 48 hours of rest to where you trigger FR.

Q. And if you're not working six consecutive starts and you're not getting that RSIA required 48 hours of rest, does that mean you're not working as much? So inherently, you're spending more time at home?

A. Yes. That would mean you have time off between trips.

BY MR. CHIAVETTA:

Q. All right. Jen, I want to -- We've talked about the carrier's 5:1 work rest proposal for through freight pools. I want to transition to the union's proposal. What has the union proposed with respect to work-rest schedules for pools?

A. So in the union's proposal, they actually have numerous work-rest models that they propose, and, with that, they have the sole discretion to choose which work-rest model they want on each particular board. And then, furthermore, they would have the ability to then change that work-rest model every 30 days. They just would have to provide us notice for that change.

Q. And is there any type of default work-rest schedule?

A. Yes. They do have a default option that it would be a 4:1 voluntary rest day.

BY MR. CHIAVETTA:

Q. All right. So let's go back for a second. So we see they have the default 4:1, but their agreement -- their proposed agreement terms would also let them choose from a number of options and then change that decision every 30 days at their own discretion. Doug, how would that impact operations?

A. By giving them the ability to continually change the schedule every 30 days. It would at times where we need more employees to support the change in the schedule or potentially less employees, so it could adversely affect employees. When you look at this, maybe on a certain board like we've talked about, it may seem like a small add, but you start to look at this, it starts to compound quickly. When you look at the seniority hub and the entire system where you could be needing hundreds of more employees to support a schedule that provides reduced availability.

Q. And with the regulation, you know, we see with the 30-day change, the regulation would be based on whatever work-rest schedule is currently in place; is that correct?

A. Correct.

Q. But under the union's proposal, if it's changing every 30 days, the regulation is not necessarily going to appropriately reflect the number of rest days for employees in the pool; is that right?

A. Correct.

BY MR. CHIAVETTA:

Q. All right, so let's move forward. Jen, you testified that, in addition to the options that the unit can choose from, there's this default 4:1 work-rest schedule. Are there any other differences between the two sides' proposals beyond the sheer number of rest days?

A. Yes. So while the -- SMART TD is proposing a 4:1 work schedule, they also have a provision in here where they can elect to extend their rest day up to 16 hours. So that, instead of a 24-hour period, now you're extending it to 40 hours off potentially. So that really becomes a 4:2 work schedule.

Q. And then we saw that the carrier's proposal for rest days, it also applied to employees on guarantee boards, correct?

A. Yes.

Q. And we saw that the carrier had proposed that, when you introduce rest days into those guaranteed pools as part of the implementation process, we're going to treat those rest days just like we do any other period of unavailability under existing rules, right?

A. Correct.

Q. And what has the union proposed with respect to the guarantee?

A. The union proposes that we do not reduce the guarantee for any time that they're observing a rest day.

Q. And would that be a change from the existing rules for periods of unavailability?

A. Yes.

Q. Is that appropriate -- why isn't that appropriate from the carrier's perspective, to essentially give the employment both a rest day and the guarantee?

A. Because, well, the carrier has -- we have a long standing arbitral precedent on that fact. In fact, when RSIA, the Rail Safety Improvement Act, came into effect, we started reducing guarantee for that rest period when -- back in 2008. And that was actually arbitrated and continues to be arbitrated today. And we've been successful in the arbitration. So -- I mean, we have established precedent to reduce and pay guarantee only for availability.

Q. All right. We've talked about each side's rest-day proposal for pools.

Unless the chairwoman has any questions, we would transition now, at this point, to each side's proposal when it comes to rest days for extra boards.

ARBITRATOR: You may continue.
BY MR. CHIAVETTA:
Q. All right. So Jen, what is the carrier's proposal for rest days for employees on road extra boards?
A. So on road extra boards, the carrier's proposing a 5 -- we're calling it a SMART rest option, a 5:1. But the 5 starts have to be consecutive. So again, back to the consecutive starts under RSIA rules, which is there's no break in between the starts, a break of greater than 24 hours. So if they hit that 5 consecutive trips or tours of duty, they would have the option to take an additional day off.
Q. And is that also what the carrier has referred to as a SMART rest?
A. Yes.
Q. We see that the carrier's proposal specifies road extra boards. Is it limited to road extra boards?
A. Yes.
Q. Why is the carrier not proposing to extend rest to yard extra boards?
A. PEB250 did not require that we extend rest days to yard extra boards. And in addition to that, yard extra boards are already protecting yard

service, which inherently has assigned rest days. So they have some sort of rest already built into their guaranteed board.

Q. Okay. Is it true that the yard extra board, there's a little more predictability than on the road extra board already because you're protecting three shifts a day instead of jobs that could be called anytime, 24/7?

A. Yes.

BY MR. CHIAVETTA:

Q. And the national agreement talks about extending rest days to employees in through freight road service. Doug, our employees who work on our yard extra boards, are they in through freight road service like a road employee would be or a road board employee would be?

A. No. Employees on a yard extra board would primarily protect the yard.

BY MR. CHIAVETTA:

Q. Okay. All right. And Jen, going back for a second, so, again, we saw, for pools, the carrier proposed a 5:1 work-rest schedule, for road extra boards, we're proposing SMART rest. Why is Union Pacific's proposal different for extra boards than it is for pool boards?

A. So one reason is that employees on the extra board are protecting all of that scheduled vacancy work. So again, remember, we're trying to -- the work that the extra board is doing is to protect those vacancies which typically occur on assigned service. So those jobs inherently will have a little bit more predictability, and extroverts also typically don't stay away from home if they're not protecting that pool service anymore. With self-supporting pools, they would no longer be doing that. So they would spend less time on the road, and they would be at home more.

BY MR. CHIAVETTA:

Q. Doug, SMART has criticized Union Pacific's proposal and said that employees working on extra boards, this is a quote from their submission, "may go weeks before they acquire five consecutive starts, thus preventing them from observing a rest day." What's your response to that criticism?

A. Just thinking that through. So if that's happening, that means the employee is naturally getting more time off or a 24-hour break in between their starts to where they would not be triggering that 5:1.

BY MR. CHIAVETTA:

Q. And we talked earlier about how the carrier proposed to integrate rest days and pools with existing guarantee rules. Jen, what has the carrier proposed in that respect for extra boards? How would SMART rest affect the guarantee for extra boards?

A. Our proposal is different than the non-guaranteed pool. We would not reduce guarantee board, these extra boards in these SMART-rest model for the day that they're unavailable. So there is a difference there.

Q. Why not? Why would the carrier leave the existing rules in place for guarantee boards and reduce it for the unavailability of the rest day on the guaranteed pool board but not dock the guarantee on the extra board?

A. A couple of reasons. One, like Doug had mentioned, they don't always -- they won't always hit that five consecutive starts at order to trigger that additional day off, so that day off may be less frequent than if you had a regular schedule. Additionally, if they are not hitting that, they are just naturally getting time off in between their trips.

Secondly, from an operational

standpoint, we do -- we would rather encourage an employee that is getting those consecutive starts to elect a to take that additional day off versus the potential of them getting the sixth start and then having their federal requirement, getting those 48 hours off. So we're gaining some availability, essentially a day of availability, by incentivizing them with the guarantee to take that additional day off.

BY MR. CHIAVETTA:

Q. So Doug, is it accurate to say that from an operational standpoint, SMART rest for extra board is not as disruptive as rest for pool boards?

A. That is correct because it's based on the number of times they have consecutive starts.

Q. And Jen, if the unions were to get anything other than SMART rest for extra boards, in the carrier's view, would you need to adjust the guarantee --

A. Yes.

Q. -- similar to what you're doing for pool boards?

A. Yes. Exactly. In any other scenario, if they have a set rest schedule, we would reduce the guarantee. Again, in this case, they don't necessarily have a set rest day every single week like they would under the other proposals.

Q. Before turning back to SMART TD's proposal, I want to discuss one additional aspect of the carrier's proposal. So Article 5C of the carrier's proposal, it says that, "In order to meet a customer's immediate service needs or to meet operation exigencies at a time of protecting crew is not present and available in the terminal for such service and time will not permit call calling arrested extra employee, a qualified employee may be used without penalty to perform such service."

Who would a qualified employee be in that scenario?

A. That would most likely be an engineer that was qualified to work as a conductor, but it's unrestricted.

Q. Jen, and why is that proposal important to the carrier?

A. Well, voluntary rest days will decrease the availability, and, with that, it makes it more difficult to meet our customers' demands and protect the service that we've agreed to protect for our customers. So by ensuring that we have a safeguard for that provides a little bit more options for us to be able to make sure that those assignments are filled.

Q. All right, so we've talked about the carrier's proposal for SMART rest, for extra boards, for road extra boards. Now let's turn to the union's work-rest proposal for extra boards. Jen, can you just walk us through the key differences between the two sides' work-rest proposals?

A. So the union's proposing a more scheduled, five day with two days off, work schedule for the extra board. They also provide that it applies to all yard, including hustlers and road extra boards. So that is a big difference between ours as well. We only apply it to the road extra boards. And then the other piece of it is that they have this ability to extend their rest days.

Q. And talk about that ability to extend. What -- first of all, what have they proposed? And then I'd like to get yours and Doug's thoughts on what that means in practice.

A. So there's a couple of things here. So they propose that they can begin their rest period at 18:00. So the day before the rest day -- scheduled rest day is actually going to begin. And then when they -- at the end of their rest days, they're going to mark up at 7:59 in the morning from that rest period. So, essentially, you can see in the chart here, if your off day begins and you don't elect to move it up to 18:00, but it ends at 7:59, that actually instead of 48 hours off, that's actually 56 hours off. If they do elect to move their rest up to 18:00 hours the night before, that's extending their rest up to 62 hours off.

And finally, if there's an assignment where we trespass into the rest day, and by saying trespass means they are working, maybe they're working back to a home terminal when their rest day is set to begin, we call that trespassing into their rest day, they'll be placed into the rest-day status for the two -- for the 48-hour period after their rest is completed at the home terminal. So remember the rest is 10 hours, so we're essentially adding 10 more hours to that to equal 58 hours.

Q. So when the union says it's proposing a 5:2 work-rest schedule for extra boards, is it really just two days off?

A. No, it's not. It's much more.

Q. How does the union propose to integrate the additional rest days with the guarantee for extra boards?

A. So the union's proposing what's called a compressed guarantee, essentially taking the 15-day -- a guarantee is paid over a 15-day period. And so today, the average rate of guarantee per pay period, which again is bi-monthly, usually the pay period ends on the 15th of every month, is $5,700. So today, that's divided out by a 15-day guarantee rate. So that comes out to be $380 a day when you take that divided by 15. So each day you're unavailable, you would have a $380 reduction for that unavailability.

Now, the union's proposal is unclear as to the rate that will be compressed into the 11-days period, but if we make the assumption that they're still talking about the 50 -- their current rate, which, again, is an average of $5,700. You take that, divided by that compressed period, which is 11 days, and they're going to be getting over $518 a day in guarantee. So, essentially, they're getting paid the same rate of guarantee for less days of required to be available.

Q. And, Jen, other than compressing the guarantee from 15 days into an 11-day period. And I don't mean to minimize the significance of that, but are there other changes to the guarantee as well that they proposed on top of that?

A. Yes. You'll see here -- and this is a very messy slide here, but we wanted to point out just how many changes were included in their proposal on the guarantee, many of which does nothing -- are not related to rest days at all. So you see on the right part of the slide the actual agreement, and all the highlighted is the change. But we have it that listed out here.

I'm not going to go through every single one at this time, but, you know, there's things like vacation and personal leave days to be paid over and above guarantee. And you'll hear that a lot, the over and above. That means it's paid in addition to the guarantee that they're already getting. Well, today, we include that as earnings in their guarantee. There's no reductions in guarantee. If they have two layoffs with no work events in between, today, we would be able to reduce that entire time in between the two layoffs. They have FMLA does not count towards forfeiture of guarantee.

Now, they do have where it would reduce guarantee, but it would not count towards forfeiture of guarantee. Today, the forfeiture rules, and they vary, but, typically, if you have more than two or more than three, depending on the agreement occurrences, you would forfeit your entire guarantee. They don't want us to deduct guarantee for the, again, RSA required rest. So if an employee chooses not to elect to take that additional day off, they could go into federal rest and still receive guarantee. And then there's just a number of other changes as you can see here.

Q. And Jen, just to go back for a second, so the provision, like we see in the second line, where it says vacation and personal leave will be paid over and above their guarantee, that's something that the union is proposing that's different than current rules, right?

A. Correct.

Q. And is it true that today, the way it would work is, let's say you've got the $5,700 guarantee that we'll just use that as the figure. If I take a day of vacation and I paid for that day of vacation, $700, that would reduce my guarantee down to 5,000, right?

A. Yes. Exactly.

Q. And the union's proposal is, I would get $700 plus my guarantee would stay at 5,700. So you're increasing my pay by $700?

A. Yes.

Q. What would the net effect of all of these proposed adjustments to guarantee rules be?

A. This would substantially increase cost to the carrier.

Q. All right. And Jen, just to sum up, could you just explain to us what are the key takeaways when it comes to the work-rest schedules -- the work-rest proposals for extra boards?

A. Sure. So the carrier's proposal is in line with PEB250 as it only applies to road boards. The union's proposal would apply to yard extra boards as well. Another key point and key takeaway is that paying guarantee for unavailability. In the carrier's proposal, we propose, when there's a scheduled rest day, we will not pay guarantee for unavailable time. The union's proposal provides for guarantee for that time unavailable. In addition to that, they included a number of miscellaneous pay increases with that guarantee payment.

And finally, this extending their rest, which we talked about earlier, where for each, the pool and the extra board, the employees would be allowed to start that rest earlier or extend it, which it makes the time that they have off actually greater than the 24 or 48 hours that they're proposing.

Q. And Jen, just to go back to the first point for a second, when you say that the carrier's proposal in extending rest days only to road extra boards is consistent with PEB250, are you referring to the 2022 National Agreement, which says that you voluntary rest days for employees in through freight road service?

A. Yes.

BY MR. CHIAVETTA:

Q. All right. And Doug, just to close, how would you summarize the union's rest-day proposal?

A. Yeah. So in short, it doesn't fully consider the impact that the rest days will add. And then it adds more pay for less time working in the forms of guarantee bonus days and the other various rules changes that Jen walked through.

Q. All right, thank you.

Unless the --

ARBITRATOR: Thank you. I have no questions.

MR. CHIAVETTA: Thank you. Yes, I conclude.

ARBITRATOR: Okay, is it time for a break?

MR. CHIAVETTA: Yes.

ARBITRATOR: Okay. Let's take 15 minutes, please.

(Whereupon, a break was taken at 2:24 p.m.)

(On the record at 2:40 p.m.)

ARBITRATOR: So it's been commented that it may be warm for some individuals in here. By all means, feel free to reasonably layer down. Like remove your jackets. That's fine. Reasonably.

So who wants to be first?

(Brief discussion.)

Feel free to remove jackets, sweaters, or whatever is comfortable.

Mr. Carrier, ready to proceed?

MR. MUNRO: Yes, ma'am, we are.

ARBITRATOR: How so?

MR. MUNRO: We will now turn to the last major element of our case in chief. If you thought the last part was exciting, you're going to love this.

We're going to talk about costing. And I'm initially going to introduce the witness, Grant Janke, who is Assistant Vice President for Capital Planning and Finance at Union Pacific.

Before you, Madam Chair and members of the Board, I provided a copy of what is Carrier Rebuttal Exhibit 42. It's exactly the same with a couple of title typo corrections as what was submitted previously. It's replicated up on the screen, and I will be scrolling along to keep up with Mr. Janke's testimony. You may find it easier to follow on the page.

There's an enormous amount of detail, and I anticipate that, all in, Mr. Janke's testimony will take between an hour and a half and an hour and 45. We have a built in break between the costing of the union's proposal and the costing of the carrier's proposal, but, of course, if the Chair wishes, we would stop at any point. But I think, all in, not including the break, we're looking at something in that ballpark. So I'm hoping to be done by 4:30 or so, including the break time. With that, I will turn it over to Mr. Janke.

(Witness sworn.)

ARBITRATOR: Please raise your right hand. Good afternoon. Do you solemnly swear or affirm that you will tell the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

ARBITRATOR: Okay. Put your hand down. And just for a sake of clarification, my understanding is that this is -- this may be the carrier's final witness for today, but there may be another. There's intended to be another witness so that no one's confused over what the plan is. Okay?

MR. MUNRO: Yes, ma'am.

ARBITRATOR: Whenever you're ready.

WITNESS JANKE: All right. Good afternoon. My name is Frank Janke. I currently serve as Union Pacific's Vice President of Capital Planning and Financing. My team has responsibility for managing and analyzing all the company's operating expenses and capital investments. Prior to working in finance, I spent 10 years in our Network and Capital Planning Group, where my team was responsible for developing and maintaining the company's operating metrics and longer-term resource planning for our five critical resources, including crews.

Today, I'm here to walk you through how we developed the head count and financial impact estimates that we provided in our original and rebuttal submissions. The page you see on the screen is a summary of our interpretation of Smart's Appendix B proposal, which they included in their original submission. Over the course of this afternoon, I will walk you through our analysis of those 16 different line items that they propose, line by line. To boil it down for you, based on our interpretation of the proposal, we believe that Appendix B will require Union Pacific to add -- approximately 1,450 employees and will cost the company $310 million per year.

To put this in perspective, in order to generate the revenue needed to cover $310 million of expense, this would require us to add an incremental 110,000 carloads per year, which equates to about 2,150 additional car loads every week above and beyond where we're at today. So it's a significant -- it's a significant hurdle. Upon finishing the review --

ARBITRATOR: Mr. Janke, please be sure to keep your voice up as much as possible.

WITNESS JANKE: Sorry. Upon finishing the review of Appendix B, I will also walk you through the proposal that Union Pacific offered in our original submission. This proposal offers a different work-rest model and a variety of ways to modify how employees are scheduled relative to today. These variations are offered in an attempt to find a win-win solution that was highlighted as part of the PEB award.

Even after factoring in the proposed scheduling variations, our proposal will require us to add a few hundred people and cost us approximately $2.5 million per year. This additional cost would be in addition to the 24% wage increase that was part of the PEP award. What you will see today in my presentation is that Union Pacific will have to add people to our workforce as a result of implementing any scheduled work-rest model in order to ensure we have the ability to maintain a fluid network.

These head count additions are needed even though we will not change the work, the crew starts, that will need to be covered by a SMART employee. We will need more people to cover the same amount of work. Any questions?

All right, moving on to Schedule 2 -- or excuse me -- page 2. I'm going to talk to you about scheduled rest. So this page has got a lot on it. The page in front of you, it includes three sections. Within each section, we analyze the three different work-rest models that were discussed as part of Smart's original submission, whether in their exhibits or Appendix B itself.

Those three work-rest models for pool employees are as follows: A 6:3, a 5:2, Appendix B, which included a 4:1 model for road pool employees, even though SMART did not address a work-rest model for extra boards within the body of their original submission exhibits. When discussing the 6:3 and 5:2 models, we have included the 5:2 work-rest model for extra boards that were part of their Appendix B proposal for all three of the employee groups.

The top section in blue is our interpretation of Appendix B using SMART's data from their exhibits. The middle section in gray is our interpretation of Appendix B using what Union Pacific believes to be a more representative rest factor for each model and a different fringe benefit cost associated with adding head count.

The bottom section in green is our analysis of the scheduled rest for the 5:1 model that Union Pacific proposed in its original submission, and I'll talk about that here later on. Under any scenario, Union Pacific will have to add hundreds to almost 2,000 people, and the company will incur tens of millions of dollars of additional costs annually. Let's walk through the charts starting with smart's proposal using SMART's assumption at the top of the page in blue.

You can see the three work-rest models on the left, 6:3, the 5:2, and the Appendix B. Within each model is an analysis of the impact for the road pool, the road extra board, and the yard extra board. The employment numbers on the left you see, the second column in particular, those come directly from SMART's original submission and their exhibits. To the right of the employment numbers are the assumed work-rest models for each of the different groups of employees.

Next to the work-rest model is what we call the rest factor. This is the first difference that we have with SMART's analysis. We believe that they have understated the impact of the number of people that will not be available as a result of implementing a scheduled work-rest model and that came in their exhibits. But these are the factors that we pulled from that material.

When you multiply the employment for each of the groups by the representative rest factor, you are able to identify the number of additional people that Union Pacific calculated that would need to be added in order to cover the impact of scheduled rest. In the case of SMART's analysis, the three models we evaluated suggest that we would have to add anywhere between 1035 employees to almost 1300 employees depending upon the work-rest model.

Now, that -- that number of additional people that need to be added as a result of implementing scheduled work rest has been identified, we tried to quantify what that means from a financial perspective. In order to do this, we quantified two impacts. First, what are the fixed carrying costs of an employee on the payroll? Costs such as insurance, pay associated with holidays, vacation, training, just to name a few.

Second, because some of the proposals add employees to extra boards, we tried to quantify the potential additional guarantee that would be incurred for those employees as a result of having more people on the extra board. I want to note that the analysis in blue utilizes the employee carrying costs as identified in specific SMART's original submission and as Mr. Munro mentioned earlier today. We disagree with this number, and I will discuss our differences in more details on the next page.

However, when you see the fringe benefit provided by SMART in conjunction with Union Pacific's estimate of additional guarantee for the new employees on the extra board, we estimate that the three work-rest models will cost Union Pacific anywhere between an additional $100 to $120 million a year if we use SMART's numbers. I want to note that this cost does not include the 24% wage increase that was awarded through the PEB process. The costs considered within this analysis are just the costs associated with scheduled rest and how it is proposed to function.

The middle section is a review of the same work-rest models using the same employee counts provided in SMART's original submission, but we utilize the different, we believe, more accurate, risk factor. The math for the risk factor is simple and you heard it a little bit this morning with Doug and Jennifer, in that, when you look at the 6:3 model, as an example, in a 6:3 model, you have nine days. This cycle provides for three days of rest out of those nine total days. As a result, the employee has the ability to rest for 33% of the entire cycle.

In order to protect our service and the fluidity of our network, we have to assume that 100% of the proposed voluntary rest days will be utilized. If we plan our workforce with an assumption that assumes a utilization rate that is lower than what is realized, our network will back up and we will not have the ability to run trains that our customers and plans can call for.

Why do I believe 100% is appropriate? The best, most recent example we have are paid sick days. Paid sick days were implemented in August of 2023; they've been in effect for 18 months. And if you look at the utilization of paid sick days in 2024, here are some of the pertinent facts. 88% of our TE&Y population rightfully used 100% of the workdays that were allotted. If you look at all of the days that were allotted in totality, almost 95% of the days were utilized. Said another way, 42,343 days -- sick days were used out of the 44,634 days granted.

Finally, if you analyze utilization for our 28 crew hubs by hub, the hub with the lowest utilization of sick days still ended up using 90.2% of the days allotted. The hub with the highest utilization ended up using 99% of their allotment. This is why we believe using a rest factor that accounts for 100% of the days is appropriate. When utilizing our rest factor assumptions, this increases the need to add people from 1000 to 1300 that I mentioned before to between 1,360 and just over 1700 people.

That gap suggests that 350 to 400 more people will be needed when you use what we believe to be the more appropriate factor. We then use the same logic on our calculated head count to develop cost. One variation that we utilized -- what we believe to be a more appropriate carrying costs, which is $34,333 per employee versus the 77,000 used by SMART above. We then applied the same guarantee logic for the additional extra board head count for each respective group of employees. In total, Union Pacific's rest-factor -- using Union Pacific's rest-factor employee carrying costs, we estimate the cost of Appendix B in SMART's original submission to have an annual cost of $70 to $85 million.

So any questions on any of that?

ARBITRATOR: No.

WITNESS JANKE: All right. So the final section in green is how we analyze the impact of our proposal. This was on page 50 of our original submission. I'll talk about this in greater detail when I walk through Union Pacific's proposal after the break. But in summary, Union Pacific's scheduled work rest proposal would require us to add over 470 people to the employee base and has an annual cost of $18 million. This cost is comprised of $16 million of carrying costs and almost $2 million of additional guarantee for our extra board employees.

If you move to page 3, Fringe Benefits. So Don mentioned this earlier, and I talked about on the preceding slide. We view what is included as an employee carrying costs differently than SMART does, and what I want to do is walk you through that. So the snippet at the bottom of the page, the slide, is what SMART included as part of their original exhibits.

You see the $77,000 number on that slide, and you also see it then as you go up to the top. You see the same $77,000 number in the table. Next to the SMART column within the table are UP's respective numbers for each of those different categories. The largest difference at the top is where SMART has included Railroad Retirement Tier 1 and Tier 2 taxes. These taxes are paid on units of work or trips. They are not an employee based cost.

The Tier 1 and Tier 2 payments may go to different employees, but they are still going to be paid out by the company. This is a good reminder that our workload is not changing, just the number of people needed to get the work completed. We also see some other slight differences, and I'll walk you through why I think they exist. This is our interpretation.

First, Health and Welfare. Union Pacific rolled up our retiree, dental, and vision all into one number. From there, we believe, this is our assumption, that SMART may be including the employee contributions, but we're not sure. So that's what we believe is driving the difference there. For vacations, we are using the average number of days that a SMART employee receives as you prorate the various amount of vacations each of their employees gets.

It appears SMART has utilized the maximum vacation days that an employee can earn upon reaching the required years of service. And then for holiday and personal leave, it appears that SMART's assumed 11 personal days for everybody. We prorated the personal leave days similar to what we did on the vacations, based on the years of service and how many they each get. It might seem odd to some that we are utilizing a lower employee carrying cost number than what SMART has suggested. However, it's important to us that we try to use the most accurate numbers possible to give you the best information in order for you to make your decision.

Do you have any questions about the carrying costs?

ARBITRATOR: I do not.

WITNESS JANKE: All right. Okay. Moving on to page 4. This exhibit is a replication of Slide 7 within SMART's exhibits in their original submission. It was part of their supporting material. What we want to try to do here is to just give you a visual -- and a way to think about, kind of, what we view as being different and what we've taken exception with. All of the data that you see on this page is the same as what SMART provided.

We have added Union Pacific. We've added the red boxes to highlight where we have a difference, and we've added the red callouts to try to provide some context around what that difference is. And I'll walk you through what that is. So, first off, at the top, the head count, it's not significant, but when you see some of our analysis, you'll see us use a slightly different number than the 2633 that's on this page. That's strictly a function of the time frame that we both selected. So we have a 12 months ending May 31st. I believe they used a June or July timeframe for what the head count was.

Second, SMART's data only represented

pool employees. So when you look at the pool employees in Appendix B, they applied scheduled rest to, not only the pool, but also their extra boards. So this exhibit is just a portion of the employees that would end up with scheduled rest.

Third is the assumption around the impact. And on the prior page within their exhibits, there was some callout boxes talking about a 6:3 at 25% and a 5:2 at 22%. It would be the impact. We have applied that logic; we assume that that is how SMART has thought about this issue. And as I discussed earlier, Union Pacific used the straight math for the number of rest days relative to the total number of days in the cycle.

Talked about how we did this because we have to maintain the fluidity of the network, and if we make the wrong assumptions about that, it can have significant consequences on our service and take us down for a period of time. Finally, when you get to the bottom of the page, you get the wages in fringe benefit costs at the bottom that Don discussed earlier this morning. I already discussed, on the prior slide, the differences in the 77,000 at the bottom.

In addition to the fringe benefit differences, SMART's financial analysis included the use of wages. And we vehemently disagree with this approach. Our crew starts are going to remain the same. We have the same workload. We will not be firing or furloughing employees as part of this deal. In fact, as I mentioned earlier, we are going to need to add to our rosters. Where our analysis suggests the head count savings, that I will talk about here later on this afternoon, this means that we will be able to forego additional hiring to cover the need created by the implementation of scheduled rest. It doesn't necessarily mean that those employees go away.

And then lastly, some employees may eventually be working a different assignment, but they will have the opportunity to remain working for Union Pacific because the workload does not change.

BY MR. MUNRO:

Q. Mr. Janke, before we leave this slide, I understand what you're saying about not including freight earnings and some portion of the benefits in the calculation, but do we agree that the total compensation for train persons at Union Pacific is somewhere in the ballpark of $200,000 per year?

A. I hope. I believe so, yeah. So it might be a little lower. My bad. Probably closer to 150.

Q. And that's -- that's prior to the addition of any of the compensation asks in the proposal?

A. Yes. Yeah. That would be as of today.

Q. Please continue.

ARBITRATOR: So I'm looking for that figure on the chart.

WITNESS JANKE: The 150 is not on the chart.

ARBITRATOR: Okay.

WITNESS JANKE: The one -- it would be the -- I think Mr. Munro is referencing the 200 in -- in total between the 124 and the 177.

All right, moving on to the next slide. This is another exhibit that was provided by SMART. It's page 12 from their supporting materials. I had originally listed that as page 7 up at the top. That was wrong. It's one of the corrections that was made. Once again, this has got a similar format as what we discussed on the prior page, and I'll walk you through the differences here.

So besides the differences in the carrying cost and the inclusion of wages down at the bottom, I want to talk about the extra board reduction. So we vehemently disagree with how SMART used the comment about extra board reductions from prior negotiations and reflected them within their original submission. We have no math that supports SMART's suggestions that we would cut our extra boards by 60 to 80% and that's what's reflected in some of their exhibits.

Even if the extra boards end up getting cut by some percentage, these employees will still have the opportunity to remain working for the company, and they may need to shift from the pool to cover the additional head count needed to support scheduling -- need to ship to the pool to cover the additional head count to support scheduled rest. But they are still going to be needed to cover the work. As I noted in my kickoff and will discuss in greater detail in the presentation, even our proposal that includes changes in how employees are scheduled still requires that additional head count be added to the employee base.

To suggest that wages and employee carrying costs will be a savings to the company because the extra board is getting cut is not appropriate. Instead, we will need to be hiring hundreds of people to cover the impact of any proposed work-rest model that's implemented. The savings associated with reducing an extra board, in this case, the potential to reduce guarantee, there are savings. You will see that in our analysis, for some of the impacts where that -- that actually is true. So you'll be -- when we talk about that, you'll see that reflected in the coming slides.

Under no scenario will we save hundreds of millions of dollars by reducing extra boards. We will have the same number of crew starts after work rest is implemented, but we will have a need for more people to cover the same amount of work. Any questions on those two exhibits?

ARBITRATOR: No.

WITNESS JANKE: All right. Okay. Moving on to Slide 6. This is -- this is just a highlight. So we're going to go through the remaining 15 items. You'll see this page inserted a few times. It's, kind of, a -- to show you what we're going to talk about here in the upcoming -- upcoming slides. So we're going to start by talking about self-supporting pools.

BY MR. MUNRO:

Q. Mr. Janke, before you do that, I just want to clarify something. So we're talking about number of articles here. These are the union's

Appendix B articles, not the national agreement Articles, correct?

A. That is correct.

Q. Okay. Thank you.

A. And the page numbers that are referenced are -- come straight out of Appendix B as well.

ARBITRATOR: At the bottom of the page?

WITNESS JANKE: No. Right here. The source in the middle. That column.

ARBITRATOR: Okay.

WITNESS JANKE: So those are meant to reflect where we took them from within the Appendix B of their proposal.

All right. Moving on to the next slide. Self-Supporting Pools. So Doug and Jen took you through the nuances and the complexity of self-supporting pools as it was written -- or our interpretation of how it was written in Appendix B. In order to -- and there's -- because of the nuance, what we've done here is we've analyzed self-supporting pools and put it within SMART's Appendix B as to how we would see that it would operate with more of a Union Pacific slant to that.

So self-supporting pools is Article 1

within Appendix B. When you think about self-supporting pools by themselves, you could potentially have Union Pacific saving on the need to hire an additional 78 people and potentially save the company over $2.3 million. So how did we get to that conclusion? Let's start at the top of the page.

So when we start at the top of the page, you can see the number of starts a pool employee makes in a month. That's the 15.8. We then increase this by half a start per month as a result of being able to eliminate the inefficiencies of the current calling process by simplifying the calling process and eliminating the wait time that Doug displayed on the board, waiting for someone who's waiting for an extra board employee to get their turn back to the home terminal. Our assumption is that we'll get an extra half start out of an employee within the pool. That's the assumption for this.

In the middle of the page, we identified the current annual starts that the 2,534 pool employees would make if they turn 15.8 times. That's the 480,446 number. That's what it is at a 15.8 turns. If those same employees turned at 16.3 times, they would turn -- they would be able to cover 495,650 starts within the year. That incremental 200 -- or 15,200 starts, in order to get to a head count, we divide that 15,000 number by 12 in order to get to a monthly number and then divide it by 16.3 starts per month. And that's how you identify the 78 employees that we think we could potentially forego hiring for.

From there -- before I go on from there, do you have any questions about that?

ARBITRATOR: No.

WITNESS JANKE: Okay. From there we convert head count dollars -- head count to dollars and savings in this case by multiplying the head count saved by the fringe benefit cost, which is the 34,333. And when you take that times the 78, that's how you get to the $2.7 million. This is partially offset by what we believe will be an increase in guarantee for work that is now performed by the pool and no longer performed by the extra board. That math -- I'll walk you through the math. That math is not on the page, other than the outcome which is the $514,000.

So how we get to that math is, first off, we take the 78 employees and we take the difference between the number of extra board starts that we get today, which is 13.9, you see there on the right hand side, less the 16.3 we get in the future, times 12 for the 12 months in the year, times $458 for the daily guarantee rate. I think the number you saw earlier was 380. When you tax effect it at 20.75%, that's how you go from the 380 to $458.

And then from there, we reduce that number by 50% because we did not want to overstate -- or we did not want to -- we did not want to understate the potential savings that a self-supporting pool could generate. So that would be an understatement had we not reduced that by 50%. In reality, the savings could end up being less than what is identified on this page. But it's our best estimate of what we believe that -- could potentially be saved.

We also assumed, at the very bottom, that the current step up pay that is paid today is eliminated, which takes us to the 2.4 you see at the bottom. And I'll cover the 65-mile payment on the subsequent page.

Any questions?

ARBITRATOR: No.

WITNESS JANKE: All right. So Jennifer and Doug talked a lot about the 65-mile payment. This one's much simpler. In order to try to analyze the impact of this. If we were able to utilize self-supporting pools with SMART, we've assumed that we're going to have to make this payment. We used 2023 data to identify that there were 5315 instances when we asked an employee to step up in 2023. We then applied that current basic day rate to those employee counts to get to the $940,000. So when you -- and that would be a cost to the carrier. So when you net the 2.4 million and the 940, that's how you get to the 1.4 million savings for this part of our analysis of Appendix B that you saw on the summary page.

All right, moving on to prearranged layoffs. SMART's proposal is looking to increase the percentage of employees that could lay off in advance in conjunction. So we looked at this in conjunction with the look-ahead functionality provided for by Article 5 of Appendix B. Both SMART and Union Pacific have a variation of this proposal, which you heard about earlier. And I'll walk you through what the math looks like for each of those proposals.

So on the left hand side in blue is SMART. On the right hand side in gray is Union Pacific. Both SMART and Union Pacific have offered a proposal for modifying prearranged layoffs. SMART's prearranged layoffs was part of Article 1, and as I mentioned, we analyzed this in conjunction with the look-ahead functionality in Article 5. What the look-ahead functionality provides for is the ability to proactively add employees to the pool for known layoffs versus filling those layoffs off of the extra board.

And before I get to the math, I'll tell you, this one -- this one is tricky to think about from the standpoint of it's not, like, 25% can be laid off for the entire year. And we don't know -- we don't know what the layoff rates over the course of the year will look like. You know, will there be five weekends or seven or eight or nine or ten events. Where there's 25, and then there'll be significantly fewer with less. So for purposes of trying to quantify this, we have just assumed a straight increase to 25% for the entire year in order to show how the math will work.

As you look at this, we've assumed that the incremental pre range layoffs would now be called off the pool with an incremental 20% of the pool workforce laid off at a given time. If you have an additional 20% or 25% in total of the 2,534 employees laid off, the incremental impact is an additional 491 employees are going to be needed on the pool to protect service in the event of this -- if this layoff allotment's utilized.

And as Doug talked about, that's going to cause a lot of swings and people back and forth, which will create its own problems. Moving people from the extra board to the pool does provide the potential cost savings to Union Pacific of avoided guarantee on the extra board. However, this has to be analyzed simultaneously with the fact that pool employees work almost two more starts per month than an extra board employee does.

Over the course of a month, assuming 491 employees were shifted from the extra board to the pool for the entire month, we would expect that the pool would cover 940 starts that would have otherwise been the work for the extra board. We assume a portion of this guarantee saved by having more employees on the extra board would be partially offset by paying additional guarantee to the remaining employees on the extra board because of the improved cycle time for those 490 people being called off of the pool.

All of that math nets to a potential cost savings of about 5.2 million potential. If the boards were to be increased -- or excuse me -- the pools were to be increase by 490 people for the entire year. In reality, the adjustments from the extra board to the pool will be dictated by the utilization of the prearranged days. This will result in significant movement and swings week to week between the pool and the extra boards. Ultimately, developing the financial impact for this concept presents a significant number of challenges. And what we've shown you here could be significantly lower than projected.

And when you look at the summary slide on the -- on the prior page, what you see is we have listed that as a TBD because we don't necessarily have a great way of giving you an exceptionally accurate cost over the course of the year. That's for the pool. That's for the pool. When you go -- when you go to the bottom of the page, and you can see the thought process around the extra board, increasing the layoff allotment for the extra board is a slightly different animal.

The math to identify the population would be the same. However, if an extra board employee is laid off and I end up being short of people on the extra board, this creates a scenario where I don't have -- I don't have another place to go to. And so it creates a scenario where I potentially back up the network and our service product ultimately suffers if you have that much of the population laying off.

In order to potentially mitigate this risk, Union Pacific would likely have to hire additional employees. At this time, we do not have an estimate of how many people that would be. And as a result, we are not able to confidently estimate the cost of increasing prearranged layoff percentage on the extra board.

Any questions?

ARBITRATOR: You can continue.

BY MR. MUNRO:

Q. Mr. Janke, I do have one clarify -- clarifying questions about this.

So if I understand what you're saying, we could save money by moving people from the extra board to the pool and guarantee, that's the 5 million number?

A. That -- yes. Net of additional guarantee we would pay the remaining employees on the extra board.

Q. But then that has to be offset by the potential to hire more employees to cover absences on the extra board. And that's up to 307, is what you're saying?

A. So the 5.1 is strictly the potential guaranteed savings of getting 491 people off of the extra board. And then it's offset by the additional starts that are covered by the pool now versus the extra board. We don't have anything on this page that reflects potential hiring to cover elevated layoffs on the extra board, so that is not reflected on here. And it would be above and beyond what is on here. So it would potentially offset any theoretical savings that you see at the top of the page.

Q. At what point would the need to hire exceed the projected savings? In other words, how many of the -- let's assume 307 is the maximum. What's the rough number that would carry a cost associated with additional heads that would equal or exceed that?

A. Yeah. If you take the 5.2 million and you divide it by 34,333, which is the carrying cost we've been using, that's roughly 150 people. Thank you.

ARBITRATOR: I thought I heard you mention that that potential 5.177 -- $5 million savings is reflected on the following page.

WITNESS JANKE: No. No. On the prior

page.

ARBITRATOR: On the prior page.

WITNESS JANKE: It's not on. So you'll see it, if you can scroll up, Don, to the summary.

So because of the challenges here, we just put TBDs here on the carrier side on what the head count impact is and what the cost impact is. That's what I was referencing.

ARBITRATOR: I understand.

WITNESS JANKE: Okay. All right, Moving to Slide 11. Next, we want to cover the 12 additional items that we do not believe are covered as part of PEB Articles 5, 6 or 7. Most of the proposals that I'll discuss do not have a head count impact. Some do, but all of them have a significant, significant financial impact. And we estimate -- when you just add up the totals on the right-hand side and what's in red, we estimate that to be about $220 million per year of additional expense for Union Pacific. And that's $220 million of additional costs without any change in the workload that would need to be completed.

First, we'll go to earn days off. This is part of Article 3. This is a proposal that will add head count and cost. The additional head count is needed because this proposal would potentially provide additional time off beyond what is provided today and beyond what is provided for as part of the scheduled work-rest model. This article proposes that pool freight employees in non-guaranteed service be provided a day off if they have perfect attendance for a pay period.

This means that a pool employee could be granted 24 additional days off over the course of the year. So a pay period in this case is similar to what Doug described being a pay half. For purposes of this analysis, when we did it, we had evaluated the proposal assuming up to 12 additional days could be granted, but that number actually could effectively double to 24 if Appendix B is implemented as it's written.

And so let me walk you through the estimate of this proposal. So we start by identifying the potential population of days where an employee is currently available but may not be available if the proposal were implemented and the days were earned by employees. And so that's the 30,408 additional days off. That's just the 2534 times the 12. We evaluated 2023 employee behavior and identified that employees had perfect attendance for approximately half of the months in 2023. And so you see this, we haircut that number by 50%. So we are -- So we're already --

So we wanted to get to a more realistic number of, potentially, how much work is already being done and what could be lost. As a result, this would result in the company granting 15,000 additional days off to a pool workforce employee that they're otherwise working today. In order to convert that to head count, we used our 2023 availability rate of 82%. So 82%, that includes paid and unpaid leave. 82% of 365 is the 299 that you see on the page. And when you take the 15,200 number divided by 299, that's how you get to the 51 employees where we could potentially forego hiring.

Any questions on the head count math?

ARBITRATOR: No, sir.

WITNESS JANKE: All right. We then calculated the ongoing carrying cost for the employee carrying costs for these 51 employees, that's the 1.75 million down there at the bottom. That's just the 51 times the 34,333. Because these employees would be going to the extra board and SMART's proposal, we have added in the average guarantee that an extra board employee receives in addition to the penalty and arbitrary payments to identify an additional cost of 2.6 million, which you see down at the bottom underneath the incremental cost section.

And so when you add that all up, between the two different cost types, that's $4.3 million of additional cost for this earned days off proposal. I also want to discuss and address the claim that this proposal would improve attendance and thus generate additional availability. Our interpretation of SMART's analysis of this proposal, is that they assumed availability would improve by 10%, that was our interpretation of their exhibits.

We have no data in our history that supports this assumption. If you look at non-comp layoffs for SMART employees by year since 2019, the average non-comp layoff rate ranges from 1.5% to 2.7% of the active workforce. This is nowhere close to 10%. Another way to think about that is that, on average, SMART employees take 10 unpaid days off per year.

If this proposal were implemented, the company would gain 10 days of availability, so those unpaid days would go away. That's from what they took in 2023. And instead of having 10 unpaid days, now the company is granting 12 days off. And so in reality -- and then if, you know, you could -- that reality, that could end up being 24 days off.

ARBITRATOR: Excuse me, Mr. Janke, is the narrative that you're reading now included in this report?

WITNESS JANKE: No.

ARBITRATOR: Okay.

WITNESS JANKE: This is -- this is just as we're sitting there thinking about trying to understand and evaluate their proposal. There was a -- there was -- our interpretation was, there is a discussion about we could get additional availability. And so we wanted to factor that into the thinking around -- just so you were aware of how we were thinking about that.

So even if we get all of their unpaid days back, with what's being asked for, they would end up receiving anywhere from 2 to 14 additional days off beyond what they take unpaid today. And so that's still going to have a cost for us. We're still going to have -- we're still going to have to hire employees in order to cover -- to cover the work that's still going to be there.

ARBITRATOR: Thank you.

BY MR. MUNRO:

Q. Mr. Janke, just to clarify, the 10% reduction in head count due to improved attendance that you're referencing in the union materials, that's in their Exhibit 43, correct?

A. Yes. That was our interpretation of what was in there. Yes. So not factored in this analysis are two things. First, Section H of Article 3 provides for days to be paid out as a basic day rate at the last service performed for each earned day off that's not utilized. Because we don't know how many of them would be utilized, that is not part of the 4.3 million of costs, but there is potential risk there that we could have additional cost.

And then second, the behavior associated with how these days are used is important. As I'll discuss later on, if all of these days end up getting grouped around peak layoff times -- so think major holidays and weekends -- we may need to hire some amount of people to give us additional capability for these peak layoff times so we don't create a backlog on our network. We're not wanting to build the church for Easter Sunday, but we may -- in reality, we may end up needing to hire slightly more in order to cover these peak times if that is how those days would end up being used.

All right. Moving on to page 13. This covers a -- starts to talk about some of the requests on differences in treatment of vacation. It was part of Article 6. This proposal has a financial and head count impact due to how vacation would be use going forward. And it's got three components. It's got an increased use of vacation days as single days. It's got some floating weeks of vacation. And then there's a factor in here for not forcing employees to take vacation in January or February.

The impact of this proposal was developed based on our experience with a similar, but not the same, but it's a similar agreement for the BLET on our Missouri Pacific Upper Lines territory. The analysis basically included studying for that territory, studying the relationships of engineers to trainmen and then comparing that to what the relationships of engineers to trainmen are across the rest of our network.

We then applied that to the SMART craft and we've identified that we will have an additional need of about 20 people we believe associated with implementing what's being requested. What you can see, on the left-hand side, you can see the different categories. We've tried, to the best of our ability, to allocate what we think the biggest drivers are. You can see here, the largest driver would be the increase use of single days vacation. The cost for those 20 people is estimated to total about $1.7 million. That's calculated by applying our carrying costs to the additional employees. So that's the 34,333 times the 20 additional employees, and then the additional guarantee -- the $1 million guarantee is the head count times the additional guarantee and over above, down below, times 12. And so that's where you come up with a million dollars.

And the reason that you see us talk about the over and above pay, it's noted in there that it would no longer be included in the guarantee-offset calculation. And so that's why we're applying that against the head count when thinking about the total cost.

Q. Mr. Janke, could I ask you, you have a reference here to the compressed guarantee there, towards the bottom of the page, the 2794 number. Why are you using a compressed-guarantee number?

A. Yeah. We're using the compressed-guarantee number because that's what was in the SMART proposal. And that goes back to the one divided -- you know, rather than a day relative to 15-day cycle, it's -- that 5700 divided by 11.

Q. So, is what you're saying that our costing incorporates compressed guarantee where appropriate in costing each of their individual proposals, and that's why there's not a separate line item for compressed guarantee in the summary page?

A. It does. So it's all baked within the independent proposals.

Any questions?

ARBITRATOR: So the union alluded to it as a compressed base monthly-guarantee rate and you adopted that to here?

WITNESS JANKE: Yes.

ARBITRATOR: Okay.

BY MR. MUNRO:

Q. And that's because you're costing their proposal?

WITNESS JANKE: Correct.

ARBITRATOR: Correct.

WITNESS JANKE: All right. Moving to page 14. This is vacation for new hires. This is Article 5. I apologize. On the exhibit, it indicates that it was Article 6; it's actually Article 5. So my apologies. This proposal also has a head count and financial impact due to more time off being granted. This is for full vacation immediately for new hires from the time they mark up for train service. This analysis is driven off of the schedule provided by SMART's Appendix B submission on page 96 of their original submission.

That 8200 days that's at the top is a proration of additional vacation days that would be granted based on the timing of actual new hire graduates between October '23 and September of '24 and the schedule that's on page 96. These are the additional days that we would have to pay, and so the cost of those additional 8,200 days of vacation, we took them times the average vacation day rate of $383. And you see the $3.14 million, that's the cost of paying for additional vacation days.

In order to get to the head count impact, we reduced the number of additional vacation days granted by one third to identify a population of employees that will no longer be available to cover train service moves if this concept is implemented. This means we would have an additional 5,422 days that are worked today but will not be worked tomorrow. And we'll need someone to be available for this work because the demand to move the trains is not changing.

In order to identify the head count, we divided the days that need to be worked. The 5,422 divided by the time an employee is available today adjusted for paid time off. So you go from 365 to 331 by removing the paid days that they get, and that takes you to the need for 16 additional employees -- or 16 additional employees in this case. The carrying cost of the 16 employees, when you multiply it by the 34,000 fringe benefits number is 560,000. That takes you to the 3.7 million that you see at the bottom of the page. We have not included additional guarantee in the loss of the over and above offset in this calculation, but it's likely an expense that's there that we have not accounted for.

ARBITRATOR: "We," referring to whom?

WITNESS JANKE: What?

ARBITRATOR: You say we have not accounted for it.

WITNESS JANKE: Within this analysis, we have not accounted for a potential additional guarantee that may be paid because employees could potentially end up on the extra board.

Any other questions on that?

ARBITRATOR: No, sir.

WITNESS JANKE: All right. Moving to

page 15, personal leave days. This is Article 7. Article 7 provides for 11 personal leave days for all crafts and all classes of service and regardless of experience. So once again, this is a proposal that has a head count and financial impact due to employees having more time off while the railroad's workload does not change. And I would mention that all of these items that I've talked about here in the last four pages, all of this is time off. It's over and above scheduled rest. So you've got the scheduled rest model and then the last four items, this is time off in addition to scheduled rest.

In order to identify the impact, we get to that 8,860 employees, which is the 2024 SMART employee base. The 53,933 days is what the employee base receives today based on tenure and prorating the personal days that they're eligible to receive. When we analyze the current workforce and our 2023 new hires, including the time of their graduations, we estimate that we will have to provide an additional 34,769 days off to what is worked today.

We converted these additional days off by dividing by the days off an employee is available, excluding their paid time off. And that's how -- so it's the 34,789 divided by the 331 gets you to an incremental need of 105 employees. When thinking about the cost components of this proposal, there are two primary categories. One, carrying costs. That's the incremental number of employees, the 105 times the 34,000, gets you to the 3.6 million you see towards the bottom of the page.

The second component is the additional cost for the personal leave days. We've applied the SMART 2025 personal leave day cost to the 34,769 incremental days that are being asked for. One other thing, you see the $80,000 there at the bottom. We've also netted out existing holiday pay that is paid on some yard assignments that we make today as a potential savings as employees eligible for personal leave days are not also eligible for holiday pay.

So in the end, when you think about the cost of additional personal leave days and everyone going up to 11, that cost totals about $16.6 million.

Okay. All right. Moving on to page 16. Held-away-from-home terminal. This is Article 9. What this proposal does is it modifies the rules -- well, so first off, held-away-from-home terminal. So the way it works today is that when an employee from the time an employee ties up at an away-from-home terminal and if they are not on duty within 16 hours of being tied up, the clock then starts and then we pay a held away-from-home terminal payment.

What this does is it modifies the rules as to when the clock starts, and it, ultimately, while not having a head count impact, costs about $30 million. And I'll walk you through how that is. So rather than following the rules that are in place today, what SMART's proposal does is it changes the duration of time before payment starts and it would change when the clock stops. So SMART's proposal would measure from tie up, which is the same thing, but it would start at 12 hours versus 16 hours.

And then the other thing that it does is it changes when the clock stops. So rather than stopping the clock from when an employee goes on duty, the clock will stop at the time an individual departs on an outbound train. So there's a lot going on in this proposal. So, ultimately, what it does is it's going to increase the hours paid for employees already receiving held-away pay. There's going to be a population of employees in hours that will be paid for now that are not paid for today.

That's the population of people who have become rested, and from 12 to 16 hours, today there's no held away pay, tomorrow there would be. And then the standard that stops the clock is pushed out because you're changing it from on-duty time to the time that the deployment -- the train gets out of the terminal.

The top of the analysis depicts the instances and hours that we paid in 2023. So we had 134,000 instances where we paid held-away pay, and it was 500 -- almost 600,000 hours that we paid on. We went back and analyzed the 2023 data to identify the incremental hours and instances that we would pay based on the proposed rules. So on the exhibit, I say "future state." That is improperly labeled.

And what we are showing you are the incremental hours, not a future state hour. The instances where an employee becomes eligible increases by about 100,000 instances, and we would pay an additional 145,000 hours of held away-from-home terminal pay. And in order to then convert hours to dollars, we assume that the rate that is paid in 2023 would remain the same, and so we multiplied the incremental hours by the rate to come up with a $30 million impact.

ARBITRATOR: Did you modify the numbers for the incremental hours which was changed from future state?

WITNESS JANKE: Help me out here. Did I modify the hours.

ARBITRATOR: It says "instances total" and "hours paid."

WITNESS JANKE: So -- So -- I -- I incorrectly identified that. As that should be incremental. It's not future state.

ARBITRATOR: Okay. But the numbers remain the same?

WITNESS JANKE: Yes. Yes. The label is wrong.

ARBITRATOR: How do we get to the 30 million?

WITNESS JANKE: So you get -- to get to the 30 million. So it's the 739,000 hours paid incrementally times the 40 -- No.

ARBITRATOR: Hourly rate?

WITNESS JANKE: No. No. It's -- it's the seven -- that is wrong. The numbers that you have there, are the 739 minus the 593 times $40-ish an hour. No. No. No. I'm wrong. 739 times the 4092. That's the 30,000,241. My bad. So it's the, it's the 739 times the 4092 equals the 30.2 million.

ARBITRATOR: Thank you.

WITNESS JANKE: Sorry about that.

Moving on to meal allowances. This is Article 10 of Appendix B. This proposal changes the amount paid for a meal when an employee is in an away-from-home terminal and, potentially, the basis for paying for that meal. So once again, no head count impact, but it does cost the company money, and we use 2023 data.

So let me start by, today, an employee gets a meal allowance if they are rested at an away-from-home terminal for more than 4 hours but less than 12 hours. And then they can get a second allowance payment if they are rested in an away-from-home terminal for more than 12 hours. So when you look at the 2023 data, it's the 573,000 meals allowances that we paid times the $8. That totaled $4.5 million.

We took some liberties with our interpretation of what is being proposed based on discussions during prior negotiations. What's reflected on this page is a $25 payment for the day. And that's where you see the count of days paid is 293,000 times the $25. And this means that an employee would only receive one payment while being away from home. So using this methodology, we would pay $7.4 million of meal allowances, and that would be a $2.8 million dollar increase from what we paid today.

And then we added in a general wage factor that's noted in the proposal that was based on the last five years. That number is elevated with where inflation's been here recently and can very well be lower in the future depending upon what happens with inflation. So this -- what I'm about to say is not on the page. So if I take a literal interpretation of the language in SMART's original submission, and it does not say anything about converting to a daily rate, and I had to pay $25 for all 573,000 instances, that would increase the cost of 14.3 million or a difference of almost $10 million from what's paid today.

ARBITRATOR: So are you referring to the second portion as future state here?

I'm still in 17.

WITNESS JANKE: Yeah. So if you see on this "future state," like I said, we use the understanding from the negotiations that have been taking place is that the $25 rate would be applied on a daily basis. And so you come up with your new cost in a future state of 7.4 million. The 7.4 million less the 4.5 is the 2.7 million there you see at the bottom of the page.

The trick is, is that when you go back and read the language in their submission, there is nothing that indicates that the allowance will be paid on a daily basis. And so if -- if the intent is to pay that on an instance basis like it is today -- so the rate would go from $8 to $25 -- that's where your new cost is closer to $14 million. And the potential increase would be upwards of 10. So it's literally a very -- I would encourage you to study that language and look at it relative to what we've got on this page.

ARBITRATOR: And the justification behind using the 2023 data?

WITNESS JANKE: It's -- So a lot of this analysis has come together over the course of negotiations. And so it was -- when we started this, it was the last full year of data that we had. And so that is ultimately why you see some of this is 2023 data. And there are times where you'll see a different time period. And some of that -- you know, it happened. And you know, that concept or proposal probably came about, you know, later on in the negotiation.

BY MR. MUNRO:

Q. Mr. Janke, if you use 2024 data, do you happen to know whether that would increase or decrease the cost?

ARBITRATOR: I'm sorry. I can't hear you.

MR. MUNRO: I was just asking to follow up on your question, Madam Chairman --

ARBITRATOR: Yes.

MR. MUNRO: -- whether Mr. Janke knows whether using 2024 data would increase or decrease the size or the cost of this for both of them?

WITNESS JANKE: I don't, but we can get -- get that for you if that's something that you would like to see.

ARBITRATOR: I don't have any requests at this time.

WITNESS JANKE: Okay. All right.

Moving on to page 18. Pay differential. This is Article 11. It's comprised of three components. First component being getting paid for working on the weekend by type of service. The next component, pay for working at night. And the final component would be additional pay for working on the holiday. This is another proposal that does not have a head count impact, but it does have a significant financial impact. Once again, we use 2023 data here, and we utilize the counts for each of those different categories and apply the applicable rates that were included within Appendix B. The math's straightforward; it's just counts times the respective rates.

When you look at it, the request for weekend pay accounts for about 60% of the total. Nights and holidays, obviously, make up the remainder in almost equal amounts. Once you tax effect this, the cost of this proposal is about $40 million. This is -- once again, the work hasn't changed. There's not more starts. It's the same amount of work, just more pay for doing what we're doing today. And also, to my knowledge, this isn't asked; it's something that no other crafts currently receive.

All right. Moving to page 19. Article 12. Once again, not a head count impact because there's no time off, but we have a change in pay for the same amount of work that's being performed. Today, overtime is paid and starts at various times per each respective agreement. The proposal here is to pay overtime for all classes of time and service after eight hours. Got a similar format here to what we've used on prior slides.

At the top of the page. You can see here, we paid 415,000 hours of overtime in 2023. That equated to about $19.4 million. Based on if we were to start overtime at 8 hours in the future, we estimate that we would pay an incremental 1.1 million hours of overtime. So that's the 1.5 million hours paid in a future state less the 415 hours paid today. When you multiply that by the implied rate, you're looking at an additional $67 million of cost after including the impact of taxes.

In order to make this calculation, what we did is we analyzed each respective territory and then aggregated the results up independently. And so that's how we developed the $67 million. Because of the language in Article 16, we have assumed that these additional payments would not be allowed to offset guarantee in the future. So this is all added cost to the company.

All right. Moving to page 20. This is Article 13. What this one has to do is the rate progression for new employees. This proposal, once again, it's not a head count game here, but it does have to do with what employees are paid and the timing for when an employee is paid a full rate. So when we analyzed the first half of 2023 data and evaluated our total payout for each respective step, and that's here, the second column on the left, 75% of the rate, 88.5 and so forth. We then prorated -- you see what we paid each of those steps. So those were actual wages here in the third column from the left. These are actual wages paid in each respective step in the first half of '23.

We then just prorated each of those steps to reflect what we would have paid had we paid a hundred percent rate immediately and gotten rid of these various steps. And so the far right column is just the difference between the two columns to the left. And that difference is 8.8 million tax effected for the first half of '23. In order to develop an annualized number, we multiplied that by 2 to get to the $17.6 million. So once again, the work being done is not changed, just what employees are being paid for the same amount of work.

All right. Moving on to page 21. This is the penalty for being delayed at lodging. This is one that we don't have history with. And so this is an estimate of $75,000. Effectively, if a crew has to wait for more than 30 minutes for a room at an away-from-home terminal, a clock would start and we would begin paying a penalty payment. And this is something that is not common across our system, and so this is our best guess as to what that cost would be.

ARBITRATOR: What does it represent?

WITNESS JANKE: This is the penalty payment that's being requested that when an employee ties up and they go to lodging at an away-from-home terminal, if lodging is not ready within 30 minutes, we would begin paying a penalty for that wait time that an employee has until they get a room.

All right. Last one before we get to the to the summary. So this is the increase in the certification and RCL allowance that's being requested. This is Article 15. This proposal has two parts, which I just mentioned. The first part, is certification pay. So everyone that gets a start, gets a certification pay today of $5 per start. What the proposal is here is that we would increase the allowance paid from $5 to $20. When we used 2023 data, we identified 1.1 million instances where we paid this pay. We multiplied those instances by the incremental $15 to get to the 16.8 million before tax -- tax affected. Increasing certification pay by -- up to $20 takes you to a cost of almost $20 million of additional expense for the company.

On the remote control allowance, what's requested here is that when you use a remote control device in a yard to operate a train today, there is a 45-minute allowance that an employee will receive based on the hourly rate for the applicable job. The request is to increase that to two hours. And so the incremental hours that we would end up paying on is 321,000 incremental hours paid times the rate tax effected. The proposal for the increased pay for RCL cost the company about $15 million. So the two proposals on this page is a total of about $35 million for another instance where the work hasn't changed, just what we would be paying to get the work done would change.

All right. So on page 23, I'll just close out our analysis of Appendix B here. So I've walked you through our thought process on how we calculated the head count and financial impacts. From my perspective, here are the key things to remember.

ARBITRATOR: Council, is this where you indicated a break would take place?

WITNESS JANKE: Right after this slide. No one's more excited than I am.

ARBITRATOR: Just checking.

WITNESS JANKE: All right. So the key

things that I would encourage you to remember. One, Union Pacific would have to add over 1,450 employees to have enough employees available to cover our workload, which will not change. The impact of scheduled rest and the other items being proposed, that would be all inclusive of the 1450. Between scheduled rest and all of the wage increases requested, Union Pacific would incur $310 million of additional expense each year.

As I noted in my opening remarks, in order to cover $310 million of additional expense, we would need to convert 2,150 carloads of freight each week from the highway to the railroad in order to generate the revenue needed to cover this. The additional expense proposed would reduce our ability to compete with trucks and thus make the conversion of this freight from truck to rail less likely. I also want to reemphasize one last time that the $310 million that I noted above is only the cost of what's in Appendix B. It does not include the impact of the 24% wage increase provided for by the PEB. And so this is above and beyond. So with that, that is all I have for the analysis of Appendix B.

BY MR. MUNRO:

Q. Mr. Janke, one follow up question.

This Appendix B total, does that include all of the cost items that Ms. Powell and Mr. Svatos were talking about this morning with respect to the Appendix B proposal?

A. So it includes the main one; it doesn't include some of the ancillary items that they talked about with additional time off and some of the other items that they pointed out in the details of nuances that were being asked for. So this is a higher level overview of what we think those impacts would be.

Q. Does it include, for example, the trip-rate penalty for falling outside of the target pool regulation?

A. It does not.

Q. So while it's 310 million, this could understate the cost of the union's Appendix B proposal?

A. That potential definitely exists.

ARBITRATOR: So your position is that it doesn't include those things that were described as being -- excuse me.

WITNESS JANKE: I'm sorry.

ARBITRATOR: It doesn't include those items that were evaluated as being beyond scope?

WITNESS JANKE: Yeah. It doesn't

include some of those nuanced items like Mr. Munro referenced on paying a trip rate to get up to the midpoint range. It doesn't include some of that.

MR. MUNRO: Just to clarify, Ms. Arbitrator, the items that we have contended are beyond the scope of this board are everything except scheduled rest, self-supporting pool, and prearranged layoffs. So what Mr. Janke is talking about, I believe, is additional ancillary or secondary items in Appendix B that we just didn't include because it would extend this analysis beyond what we've already done.

WITNESS JANKE: That is correct.

ARBITRATOR: Okay. I have nothing further.

MR. MUNRO: With the board's permission, then we propose to take a short break. And then come back and we'll finish up with Mr. Janke's costing of Union Pacific's proposal.

I estimate that that will take roughly 30 to 40 minutes.

ARBITRATOR: Okay. We'll take a ten-minute break.

MR. MUNRO: Thank you.

(Whereupon, a break was taken

at 4:00 p.m.)

(Back on the record at 4:15 p.m.)

ARBITRATOR: Parties ready?

MR. MUNRO: Yes, ma'am.

MR. EDINGTON: Yes.

ARBITRATOR: Okay. Back to you, Mr. Munro.

BY MR. MUNRO:

Q. Thank you, Madam Chair. We're going to return to Mr. Janke and the conclusion of the costing testimony.

A. All right. So if you -- if you look at page 24, this is just the summary of -- at the bottom is a summary of our proposal. And that's what I want to walk you through and how we analyze this proposal, which was provided on page 50 -- on the table, on page 50 of our original submission. The objective of the proposal is to provide a win-win. Whereby, employees obtain preferred schedules with more control over their personal lives, and the carriers obtain both operational benefits and cost savings.

And that's what you'll see in our proposal. You will see that even our proposal requires us to add head count and has an annual cost to Union Pacific Railroad, but it is orders of magnitude less than SMART's Appendix B proposal. Even though you will see it say at particular times that we'll have a reduced need for head count, that does not mean that a particular employee would be furloughed or let go.

Effectively, the head count savings associated with our scheduling proposals only reduces our hiring need to cover the impact of scheduled rest. At the end of the day, SMART's employee base will be larger after implementing Union Pacific's proposal than it was before we implemented the proposal. So let's begin walking through the nine items.

Page 25, this chart should look familiar. We walked through the top portions of this exhibit earlier when we were talking about our analysis of SMART's proposal. If you look at the bottom section in green, you can see the analysis for Union Pacific's proposal. To start with, we used a base period for the 12 months ending May 31st to establish our head count of 2,535 employees in the pool versus the 2,633 you see above. This is about 100 fewer employees than what SMART used. You can see that we go across on -- to the right. The work-rest model we proposed is a 5:1 work-rest model for the pool and SMART rest for the pool Extra board, which Doug and Jennifer discussed earlier.

While we used a slightly different head count number for each respective group, the primary driver of the head count difference is the impact of the proposed models and the fact that we have only offered scheduled rest for the pool and SMART rest for -- for the pool extra board. Within our head count math for the pool boards, we did include an assumption that almost 360 employees would be added to the pool to cover hours-of-service relief and the impact of offering more prearranged layoffs off of the pool versus the extra board.

So that's how you end up at the 482. If you just did the 2534 times 16.7%, you end up with a number that's more like 422. But when we factored in with -- behind the scenes in our math, we factored in the impact of having more employees on the pool for hours-of-service work and prearranged layoffs. So that's where you get to the 482. You can also see that there's an impact of about 11 people, we believe, that we could save from the SMART rest. And I'll walk you through that logic on the next page.

When we apply the fringe-benefits factor to the 471 additional employees required, this will result in over $16 million of employee and carrying costs on an annual basis. In addition to the carrying costs, we believe that we have some additional guarantee on our extra boards that adds an additional 1.5 million of cost to the proposal. In the end, the work-rest model proposed by Union Pacific will require us to add 470 employees and cost in excess of $18 million per year.

Any questions on that?

Okay. Moving to page 26. SMART rest for the extra board. Our SMART rest proposal is intended to help reduce the chance that employees will trigger federal hours of service mandatory rest by allowing them to choose to take a day off and thereby avoid hitting those limits. Extra board employees will have the option to take that day of rest after working five consecutive starts. By not triggering federal rest, additional availability would be created which means fewer people would be needed. And we've estimated that impact to be approximately 11 employees. By utilizing SMART rest and avoiding federal rest, an employee would not lose their guarantee as they would if they triggered federal rest. Because more employees will avoid federal rest, we anticipate that extra board employees will receive approximately 1.9 million more in guarantee, and you can see that on the page.

Any questions?

All right. Moving to page 27, enhanced standing bids, which Jennifer and Doug talked about. This is the concept that will generate savings by eliminating the need for daily preference boards. In order to identify the savings, we evaluated 326 daily preference assignments across the 10 locations on our network that Doug indicated earlier today. After evaluating the work of those assignments, we believe 286 people, employees, could be shifted to an assigned yard board and complete the work as an assigned yard job.

We believe the work rules allow for these jobs that are being called off of the daily preference board to be called off of an assigned yard board. We also have other work currently being performed by employees called off of daily preference boards that we believe would need to be called off of a yard extra board. As a result, 29 employees currently on a daily preference board would need to be added to the respective yard extra board rosters.

This leaves us with 11 positions relative to what we started with that could be reassigned and allow us to avoid having to hire more people to cover the impact of scheduled work. By not having 11 additional employees, we save the carrying costs of $34,000 a year, which is the $380,000 that you see at the bottom of the page. It's just the 11 times the 34,332.

All right. Moving on to displacement. This concept is the concept that if we reduce the time an employee is not marked up to work after being bumped from an assignment, employees who are in the process of displacing are not available to work. And if you reduce the displacement time from 48 hours to 24 hours, like was discussed this morning, this would mean that more of the existing workforce would be available.

And so when you look at the analysis on the page, we looked at the 12 months ending September of 2024, we had almost 12,048 hour-displacement events. If you reduce the displacement time to 24 hours, you've effectively created almost 12,000 additional days of availability. We divided those days by the 365, 365 days in a year. We estimate that we would be able to forego hiring up to 32 employees. That's just the 11,680 divided by the 365. And then when you apply the carrying cost to the 32 employees, that equates to the 1.1 million you see at the bottom of the page.

It should be noted that this does not assume a change in the notification or the pass-up provisions that were discussed this morning. Neither does it include, they talked about, the travel time and how -- if that would change. Neither does it include any assumptions about change in the behavior of travel time to the new assignment. So this is one of those where there's some nuances in the proposal and we have not included any of that because this is our analysis of our proposal.

Moving to hours-of-service relief. Here I'll review the financial benefits of calling hour-of-service relief off of the pool versus the extra board that Doug described earlier. We believe this concept could save almost 900 -- just over $900,000 per year. When you look back to the table on page 50 of our original submission, this was included within the self-supporting pool category. And so this is really a subset of what you see on that table.

Just a quick reminder, on page 7 of the exhibits that I went through earlier, we did review the impact of self-supporting pools. If implemented without the 65-mile penalty payment, that that would save the company about $2.3 million and allow the company to forego the hiring of 78 people. I tell you all of that, in the event that you're trying to tie this all back to the table that we originally submitted. If you added hours-of-service work to the pool, we believe that 230 people would be transferred from the extra board to the pool.

Our logic to develop the 230 people estimate is as follows: First, at the top of the page, you can see the 5 -- almost 52,500 relief jobs that were called for the 12 months ending May 31st, 2024. We divided those relief jobs that would now be called off of the pool versus being called off the extra board by the average SMART rate regulation factor -- pool-regulation factor of 19 starts per month. This identifies the 230 people that would be needed to be transferred to the pool. So that's the 52,495, divided by 19, divided by 12. And that's to get -- to get you down.

Because the 230 people are now on the pool and not on the extra board, we can avoid the cost of guarantee -- and this is just guarantee as it is today, it's not compressed guarantee -- for the entire year. And that total is a total of about $4.8 million. And you can see that there in the middle of the page. That's the 1756 per month. That's the average base guarantee an employee on the extra board receives, times the 230 employees that have been moved, times the 12 months.

The guarantee savings are partially offset by the difference between the trip rate you would get, that we pay an employee if they were called off of the pool board versus the conventional rate paid for hour-of-service relief for employees called off the extra board. That's about $75 difference. And so we applied that $75 difference to the 52,500 events where we did this to identify the $3.9 million of additional costs that we would incur.

When you net the 4.8 million of savings against the 3.9 million of additional earnings that would be paid to the employee base due to the change in the rate being paid because of where they're being called, this equates to $934,000 of savings that was included on our -- page 50 of our original submission.

Any questions on any of that?

ARBITRATOR: No, sir.

BY MR. MUNRO:

Q. Mr. Janke, I have a question to clarify here. You recall the testimony from earlier today regarding the percentage of work performed by the extra boards that is hour-of-service relief?

A. Yes.

Q. And what's your recollection as to what that is?

A. It was 14%. It's called off of the extra board. And something about 80% of the employees or something like that.

Q. So if you take 80% of 14%, what's the math on that?

A. It's roughly 12%.

Q. And what is roughly 12% of the extra-board population?

A. The 230 relative to the extra board population of 1900 is like 12.9. So what we've got here is in line with what you -- was discussed this morning and the math that Doug and Jennifer walked you through.

Q. So the carrier's proposal then, as you view it, would require transferring about 230 people from the extra board to the pool to provide the hour-of-service relief?

A. Correct.

Q. Thank you.

A. All right. Moving to page 30. The last two proposals here have to do with abolishing extra boards. This first page here that I'm going to walk you through, this is the opportunity to abolish extra boards. But before I get into this, when you go back and you look at page 50 of the original submission, you will also see a line for pool regulation by starts. That was the math that we discussed on page 10 when we reviewed the impact of changing the prearranged layoff rate and allowing for prearranged layoffs to be called off the pool. So once again, I just wanted to try to tie it all up for you as you go back and look at the original table we provided.

On the abolishing the extra boards, this first page is to look at abolishing and combining extra boards where we have more than one extra board at a specific location. And that's what we've depicted here on page 30. In order to identify the impact, we evaluated October of 2024 data for 22 locations where we have more than one extra board at a location. Those 22 locations had 805 people assigned to the various road-pool extra boards that currently exist there. Based upon our experience of combining extra boards together at Wichita, Kansas, in 2017, we realized a head count efficiency of about 2.5% when we did something similar.

We applied the same efficiency by location to arrive at a head count savings of about 18 people. So that's roughly the math of 805 times 2 and a half, but it was literally done by the 22 locations and we aggregated it up. The $618,000 of carrying costs for this concept is just the 18 times the 34,333. In addition, we've identified savings of about $491,000 of extra board guarantee because the extra-board workforce will be reduced by 2.5%.

In order to do this, we looked at the 22.6 million of annualized guarantee that we actually paid these 22 boards, and we strictly reduced it by the corresponding percentage. So that's -- it's just math on the 22.6 times the approximately 2.5%. Between the two savings buckets, we project that calling hour-of-service relief off the pool could save the company upwards of $1.1 million.

All right. Last one. Abolishing supplemental extra boards. So this is the largest impact item that we have. In 2023, we had, on average, 149 people assigned to supplemental boards across 70 locations that have those assignments. After analyzing the start count by location by board and factoring in the average availability of the workforce, both paid and unpaid, so we assume that they're going to work 299 of the 365 days, we identified the number of additional employees needed on the extra board to protect this work going forward.

This means that we believe 66 employees would need to be added to the extra boards to cover the work being done by these supplemental boards. This would result in Union Pacific having the ability to forego hiring 83 employees at some point in the future. We converted this to the financial impact by identifying the employee carrying cost of 2.8 million that you see towards the bottom of the page. That's just the 2.8 times -- or excuse me. The 83 times the 34,333.

The second savings component is the reduced guarantee that would be paid even though we are adding employees to an extra board. In 2023, Union Pacific paid the 149 employees on a supplemental board, on average -- on average, $51,653 per person. So we paid $7.6 million of guarantee on those boards. So it's $51,000 -- almost $52,000 per person. If you assume the additional employees added to the extra board make the system average guarantee rate in 2023, you see a slightly different guarantee rate here because we were analyzing a 2023 data.

If you assume that those employees make

the system average annual guarantee of 26,628 people, you reduce that from the 7.6 today, and you get a savings of $5.5 million. When you add those together between the carrying costs, the foregoing hiring, and the guaranteed savings from paying less guarantee per employee, you get the $8 million of savings by abolishing supplemental extra Boards.

Any questions on that?

ARBITRATOR: I do not.

THE WITNESS: Okay. All right. In summary, that's the overview of Union Pacific's proposal and the logic we used to develop the estimate that we would need to add approximately 250 people at a cost of $2.5 million per year, which includes a 5:1 work-rest model for the pool and SMART rest for the extra board. This factored in, not only the work-rest models, but also all of the additional scheduling concepts that we believe will provide operational benefits and cost savings in order to make this a win-win deal for everyone.

I would close with the following thoughts. First, thank you for your time and letting me explain this today. Second, our analysis does not include the impact of the 24% wage increase provided for by the PEB250. Scheduled rest requires Union

Pacific to add cost and head count even though the workload does not change. Even though some of the proposed concepts for changing how employees are scheduled indicates that we can save on head count, that does not mean that we will be furloughing or letting go of employees as a result of this implementation. We will just be able to forego a portion of hiring required to cover scheduled rest. Because of the demands of scheduled rest, we will be adding people to the employee base. And then finally, our intent with this proposal is to identify a win-win solution that the PEB provides for, whereby employees obtain a preferred schedule with more control for their personal lives, and the carrier obtains both operational benefits and cost savings.

Thank you for your time.

MR. MUNRO: Madam Chair, that concludes today's presentation from the carrier. As I had indicated earlier, and I believe the board recognized, we have one additional witness for our case in chief who is not available today, and we will work with our counterparts on the union side to ensure that that individual can be scheduled in at a time that will work for both sides.

ARBITRATOR: Okay.

Just for clarification purposes, it sounds like the -- your final witness is more than likely -- or the agreement is that that person will be called after the union puts on their case.

MR. MUNRO: I believe his availability would most likely fall after their case in chief tomorrow. Tomorrow afternoon would be the most likely window. But again, I'm happy to negotiate that and see what -- what arrangements we could come to. I will note again that Mr. Branon's testimony is essentially limited to what is incorporated in his declaration and will not be responsive to anything that would be in the union's case. And frankly, he won't be present to hear it anyway.

ARBITRATOR: In that regard, we'll be starting with the union tomorrow. And that'll be in your opening statement.

MR. EDINGTON: Yes.

ARBITRATOR: Okay.

Are there any further matters today?

Mr. Munro.

MR. MUNRO: No, ma'am.

MR. EDINGTON: No.

ARBITRATOR: Okay. Then we will resume tomorrow.

(Brief discussion with the board.)

ARBITRATOR: For clarification purposes, we will be starting at 9:00 tomorrow. There will be an executive session at 8:30.

(Whereupon, proceedings concluded at 4:40 p.m.)

C E R T I F I C A T E

I, Macy Thompson, a Court Reporter and a Notary Public within and for the County of Maricopa, State of Arizona, do hereby certify that I caused the proceedings in the above-captioned cause to be reported in verbatim shorthand that the foregoing is a true, complete, and correct transcript of said proceedings as appears from my stenographic notes so taken and transcribed under my personal direction.

I further certify that I am not related by blood or marriage to any of the parties to said suit, nor am I an employee of any of the parties or of their attorneys or agents, nor am I interested in any way, financially or otherwise, in the outcome of said litigation.

IN WITNESS WHEREOF I do hereunto set my hand and affix my notarial seal at Phoenix, Arizona, this 4th day of February, 2025.

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MACY THOMPSON

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