NATIONAL MEDIATION BOARD

PUBLIC MEETING

NMB Docket No. 2003-01

Tuesday, January 11, 2005

9:00 a.m.

BEFORE:

HARRY R. HOGLANDER, Chairman
EDWARD FITZMAURICE, Member
READ VAN DE WATER, Member

-- CORRECTED COPY --

National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C.

ATTENDEES:

Harry Hoglander, Chairman, National Mediation Board
Edward Fitzmaurice, Member, National Mediation Board
Read Van de Water, Member, National Mediation Board
Mary Johnson, General Counsel, National Mediation Board
Roland Watkins, Director, National Mediation Board
Kate Dowling, Associate General Counsel, National Mediation Board
Jack Looney, Special Assistant to Chairman, National Mediation Board
Carol Conrad, Lead Program Assistant, National Mediation Board
Mark Filipovic, Railroad Coordinator, International Association of Machinist & Aerospace Workers
Dan Hamilton, Sheet Metal Workers
George Francisco, Jr., International President, National Conference of Firemen & Oilers, SEIU
Daniel Anderson, Jr., National Conference of Firemen & Oilers, SEIU
Dean Devita, National Conference of Firemen & Oilers, SEIU
James Farrigan, National Conference of Firemen & Oilers, SEIU
Benetta Mansfield, Senior Counsel, National Mediation Board
Michael S. Wolly, Counsel, Zwerdling, Paul, Kahn & Wolly
Daniel Elliott, Associate General Counsel, United Transportation Union
Fred N. Simpson, President, Brotherhood of Maintenance of Way Employees
Leon Fenhaus, Vice President, Brotherhood of Maintenance of Way Employees
Henry Wise, Vice President, Brotherhood of Maintenance of Way Employees
Dave Joynt, Brotherhood of Maintenance of Way Employees
Gary Cox, Executive Board, Brotherhood of Maintenance of Way Employees
Steven Powers, Director of Arbitration, Brotherhood of Maintenance of Way Employees
Dan Gates, National Legislative Director, Brotherhood of Maintenance of Way Employees
Wade Birnbaum, Brotherhood of Maintenance of Way Employees
Don Bartholomay, Brotherhood of Maintenance of Way Employees
Roy Robinson, Brotherhood of Maintenance of Way Employees
Tim Kreke, Brotherhood of Maintenance of Way Employees

ATTENDEES (Cont'd):

Gary Kinney, Brotherhood of Maintenance of Way Employees
Mark Schappaugh, Brotherhood of Maintenance of Way Employees
Edward R. Brassell, Brotherhood of Maintenance of Way Employees
Kent Bushman, Brotherhood of Maintenance of Way Employees
Mark Wimmer, Brotherhood of Maintenance of Way Employees
William Capik, Brotherhood of Maintenance of Way Employees
Stuart Hurlburt, Brotherhood of Maintenance of Way Employees
Jed Dodd, Brotherhood of Maintenance of Way Employees
Roger Sanchez, Brotherhood of Maintenance of Way Employees
Richard Loeb, Counsel, National Mediation Board
Laura Smith-Auletta, Regulatory Expert, General Services Administration
Rick Radek, Vice President, Brotherhood of Locomotive Engineers & Trainmen
John Tolman, Chief of Staff, Brotherhood of Locomotive Engineers & Trainmen
Marcu Ruef, Brotherhood of Locomotive Engineers & Trainmen
Francis L. McCann, President, American Train Dispatchers Association
M. David Vaughn, President, National Association of Railroad Referees
James Conway, Vice President, National Association of Railroad Referees
Charles M. Curtin, President, Independent Railway Supervisors Association
Gary E. Maslanka, Director, Railroad Division, Transport Workers Union of America
William R. Miller, Executive Director, Transportation Communications International Union
Mitchell M. Kraus, General Counsel, Transportation Communications International Union
W. Dan Pickett, President, Brotherhood of Railroad Signalmen
Walt Barrows, Brotherhood of Railroad Signalmen
Dennis Boston, Brotherhood of Railroad Signalmen
Jerry Boles, Brotherhood of Railroad Signalmen
Floyd Mason, Brotherhood of Railroad Signalmen
Charlie McGraw, Brotherhood of Railroad Signalmen

ATTENDEES (Cont'd):

Leonard Parker, Brotherhood of Railroad Signalmen
Joanna Moorhead, National Railway Labor Conference
N. Ray Cobb, Director, Railroad Department, International Brotherhood of Electrical Workers
Michael D. Bowgren, International Brotherhood of Electrical Workers
Bruce Burton, International Brotherhood of Electrical Workers
Charles J. Fraley, International Representative, Sheet Metal Workers International Association
Joseph J. Derillo, President, American Railway & Airway Supervisors Association/TCU
Richard S. Edelman, Counsel, O'Donnell, Schwartz & Anderson
Elizabeth Baker, Legislative Direct, Transportation Trade Department
Michael Buckley, Communications Director, Transportation Trade Department
Larry Willis, General Counsel, Transportation Trade Department
Edward Wytkind, President, Transportation Trade Department
Joshua M. Javits, Mediator and Arbitrator, Dispute Resolution Services
Ray Burney, Director, Labor Relations, Metro North Commuter Rail
Jennifer Esposito, U.S. House of Representatives, Congressman J.L. Oberstar, Committee on Transportation and Infrastructure
Judith Hoglander
Anne Woodson, Confidential Assistant to NMB Member Fitzmaurice, National Mediation Board
Francine Mack-Salvador, U.S. House of Representatives, Subcommittee on Labor, HHS, Education and Related Agencies

# A G E N D A

P R O C E E D I N G S

CHAIRMAN HOGLANDER: Good morning, ladies and gentlemen. Welcome to the Margaret A. Browning Hearing Room of the National Labor Relations Board. I will take this opportunity to thank the National Labor Relations Board for their hospitality.

I'm Harry Hoglander, the chairman of the National Mediation Board. To my right is my colleague Edward Fitzmaurice, and to my left is my colleague Read Van de Water, both Members of the National Mediation Board.

To my far left is Roland Watkins, our director of arbitration services, and to my far right is our counsel, Richard Loeb, who will be the timekeeper for today's hearing. We will proceed according to the agenda, which you should all have.

Mr. Watkins will ensure that the submissions will be made available on the NMB website.

We are here today to hear public comment upon the imposition of fees for the arbitration services provided by the NMB. Notice of this was published in the Federal Register Volume 69, No. 244, page 76423, on

December 21, 2004.

The chair notes for the record that the United States Senate and the United States House of Representatives in conference, when approving the Omnibus Reconciliation Act of 2005, inserted the following report language directed to the National Mediation Board:

"The conferees are concerned regarding the National Mediation Board's proposal to implement new fees for arbitration services in a notice of proposed rulemaking published in the Federal Register on August 9, 2004. Prior to implementing these new fees, the conferees strongly urge the NMB to hold additional public hearings to examine any potential negative impact of the proposed fees. The conferees request the NMB be prepared to discuss this matter during consideration of its fiscal 2006 budget."

For the record, the following will appear on behalf of the Rail Labor Division, Transportation Trades Department, AFL-CIO. The Rail Labor Division includes: American Train Dispatchers Association; Brotherhood of Locomotive Engineers and Trainmen, IBT;

Brotherhood of Maintenance of Way Employees, IBT; Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace Workers.

International Brotherhood of Boilermakers, Blacksmiths, Forgers, and Helpers; International Brotherhood of Electrical Workers; National Conference of Firemen and Oilers, SEIU; Sheet Metal Workers International Association; Transportation Communications International Union; and UNITE H.E.R.E.

Appearing on their behalf: Mitchell M. Krause, general counsel, Transportation Communications International Union; Richard S. Edelman, principal, O'Donnell, Schwartz & Anderson; William R. Miller, senior executive director, industrial relations department, Transportation Communications International Union; Richard K. Radek, vice president and director of arbitration, Brotherhood of Locomotive Engineers and Trainmen, IBT; and George J. Francisco, Jr., president, National Conference of Firemen & Oilers, SEIU and chair, Rail Labor Division.

Additionally, we will hear from: Daniel R. Elliott, III, associate general counsel, United

Transportation Union; M. David Vaughn, president, National Association of Railroad Referees; James Conway, vice president, National Association of Railroad Referees; and Joanna L. Moorhead, general counsel, National Railway Labor Conference.

Additionally, I will be entering a letter from my home state Senator, Edward M. Kennedy of Massachusetts, and Senator Harkin for the record.

In accordance with the agenda, each speaker will make their presentation. The Board may or may not have questions at the conclusion of each speaker's time, at the conclusion of each panel, or at the conclusion of the hearing.

We ask that you respect the court reporter's capabilities and that one person speak at a time and you identify yourself if you do speak.

I will now recognize the first panel.

MR. KRAUS: Chairman Hoglander, Members Fitzmaurice and Van de Water. Good morning. My name is Mitchell Kraus, and I am the general counsel of the Transportation Communications Union.

I appear before you this day on behalf of the

Railway Labor Division of the Transportation Trades Department of the AFL-CIO and its affiliated organizations. The Railway Labor Division has previously filed timely comments about the proposed rules which are incorporated herein by reference. The Railway Labor Division thanks you for this opportunity to present testimony on this important issue.

My testimony today will focus on the Board's claimed legal authority to issue the proposed rules on fees.

As the D.C. Circuit Court of Appeals noted in rejecting the NMB's merger rules, "An agency's power is no greater than that delegated to it by Congress." The NMB has claimed that it has authority to issue the proposed rules under Section 4, Third of the Act. That provision gives the NMB authority to expend funds for a variety of purposes, including salaries and compensation necessary for the execution of the functions vested in the NRAB.

The NMB's responsibility to pay for the compensation of referees is not, however, discretionary, it is mandatory. Section 3, First (p)

of the Act states that the NMB "shall" pay such compensation. This mandatory language leaves no room for the NMB to condition its payment of referee compensation on the payment of fees.

Significantly, nothing in Section 3, Fourth either explicitly or implicitly authorizes the NMB to charge parties fees for using the service of the NRAB or Public Law Boards. The plain meaning of the provision authorizing the NMB to expend funds cannot be stretched to authorize it to charge the parties fees. The authority to expend does not encompass the authority to charge. They are two different functions.

The legislative history of the Act is consistent with the unambiguous language of the statute itself. It should be noted that the Supreme Court has found the congressional testimony of those involved in the drafting of the 1934 amendments to the Railway Labor Act are of particular importance in interpreting the meaning of the Act.

The Railway Labor Act was originally passed in 1926. That Act created the U.S. Board of Mediation, which was responsible for the mediation of major and

minor disputes. Under the 1926 Act, arbitration was not compulsory, and the U.S. Board of Mediation had no means of compelling arbitrations.

Thousands of grievances were deadlocked and left on the Board's docket, with no means of resolution. Under the 1926 Act, unions were not restricted from striking over minor disputes. They regularly threatened and in some instances did strike over such disputes.

The "most important part" of the 1934 amendments to the RLA, according to the testimony of Federal Transportation Coordinator Joseph Eastman, was the establishment of compulsory arbitration of minor disputes. Mr. Eastman, the principal draftsman of the 1934 amendments, characterized rail labor's agreement to compulsory arbitration as "a very important concession."

George Harrison, then the president of the Brotherhood of Railway Clerks and chairman of the Railway Labor Executives Association, in testimony quoted on page 6 of RLD's written comments stated that the unions were prepared to concede that grievances

must proceed to arbitration provided that the proposed amendment was passed in its entirety, and Congress did so.

Although the language of the Railway Labor Act as amended in 1934 does not explicitly prohibit strikes, the U.S. Supreme Court in its Chicago River decision found that it did so, relying principally on the testimony of Messrs. Eastman and Harrison.

The testimony of Mr. Eastman and the testimony of then-chairman of the U.S. Mediation Board Samuel Winslow, quoted in pages 5 and 8 respectively of RLD's written comments, made clear that under the 1934 amendments, all expenses of the Adjustment Board, other than those of its partisan members, were to be paid by the NMB.

This testimony regarding the most important part of the bill leaves no wiggle room for the NMB to now claim that the 1934 amendments contemplated that it could charge labor a fee for providing the services required by the Act.

The legislative history makes clear that the NMB was not only responsible for the payment of referee

compensation, but that it was responsible for any administrative costs incurred in the processing of such payment as well as any costs incurred in the appointment of referees.

It is disingenuous to urge that a bill designed to encourage the use of arbitration procedures in lieu of strikes implicitly authorizes the NMB to impose fees in order to discourage the use of those very procedures. Indeed, the Act explicitly gave the NRAB, not the NMB, authority to adopt procedural rules, and it is that agency, not the NMB, that is responsible for adopting procedures that effectively reduce the backlog of cases.

The deal embodied in the 1934 amendments as described in testimony to Congress and recognized by the U.S. Supreme Court was simple and straightforward -- labor gave up its right to strike over minor disputes. all minor disputes were subject to arbitration, and the government was to pay for all costs, except those of the partisan members of the NRAB.

The deal was not that government would pay all

costs except to the extent the NMB could figure out a way to charge fees to labor. Until now, for 70 years, the NMB's actions demonstrate that it fully understood this arrangement.

In 1966, the Act was amended to provide for the creation of public law boards. During the hearings on the 1966 amendments, the then-chairman of the National Railway Labor Conference, J.E. Wolfe, urged that Congress replace the existing system with party pay arbitration, a proposal rejected by Congress.

In a colloquy with Congressman Staggers, the principal sponsor of the bill, quoted on page 12 of RLD's comments, NRLC chairman Wolfe agreed with Mr. Staggers that under the 1934 amendments, all fees and expenses associated with the NRAB, except for the expenses of the partisan members, were to be borne by the NMB. The carriers' proposal was rejected by Congress and the 1966 amendment made no change in this system.

The NRLC's written comments herein are consistent with its chairman's testimony in 1966. The RNLC argument is no more persuasive now than in 1966,

when it was rejected by Congress and the case backlog was much greater.

It is noteworthy that while urging the imposition of fees are warranted for policy reasons, the NRLC agrees with labor that this Board has no authority under the Railway Labor Act to impose such fees.

While the NRLC has suggested that the NMB may have such authority under a different statute, upon which the NMB has not relied, the significant point here is that the carriers and rail labor are in agreement that the Railway Labor Act does not give the Board the authority it claims.

It strains credibility to assume that all involved parties -- the carriers, the unions, Coordinator Eastman, who drafted the 1934 amendments, the then-chairman of the U.S. Mediation Board, and key legislators -- understood that the NMB is responsible for all non-partisan costs of the NMB, but that sub silentio the Act authorizes this Board to charge unions fees for these services.

As set forth in detail in the RLD comments,

and as I have explained today, the NMB's claim that it has such authority under Section 4, Third of the RLA is unsupported by and contrary to the plain meaning of the Act, its legislative history, and the practices of the past 70 years.

In 1994, under similar circumstances, the Board's merger rules were rejected by the D.C. Circuit Court of Appeals in an en banc decision in which the court rejected the assertion that the NMB had any plenary authority to regulate in an area because Congress had given it some authority in that area.

Stripped to its basics, the NMB's claim of authority in the instant matter rests on the same discredited argument. That argument did not pass muster with the D.C. Circuit in 1994, and I respectfully suggest that it will not pass muster now.

Regardless of the NMB's authority, issuance of the proposed rules will inevitably detract from the Board's ability to meet its basic function, namely, the mediation of major disputes. As a practical matter, adopting rules opposed by both the rail unions and rail carriers and then engaging in litigation with these

parties inevitably will hamper the Board in its mediation function.

Even if the Board has the authority it claims, a proposition with which rail labor strenuously disagrees, it should not exercise that authority. As other witnesses will testify, there are other means to address the issues the NMB has raised in this rulemaking procedure than the imposition of rules opposed by rail carriers and rail labor.

I will be glad to answer any questions from the board members or staff.

CHAIRMAN HOGLANDER: Thank you, Mr. Kraus.

Read, do you have any questions?

Ed, do you have any questions?

MS. VAN DE WATER: No, thank you.

CHAIRMAN HOGLANDER: Thank you.

Mr. Edelman?

MR. EDELMAN: Good morning, Chairman Hoglander, Members Fitzmaurice and Van de Water. I'm Richard Edelman and I'm speaking today on behalf of the American Train Dispatchers Association, Brotherhood of Maintenance of Way Employees, a division of the IBT

Rail Conference, Brotherhood of Railroad Signalmen, the International Brotherhood of Electrical Workers, the National Conference of Firemen & Oilers, SEIU, and the Transport Workers Union of America.

These unions concur on the statements made on behalf of the Rail Labor Division, but would like to highlight several thoughts.

Simply put, the Board does not have authority to implement the proposed fees. The Railway Labor Act requires that the expenses of arbitration other than those of the partisan members be paid by the government.

The proposal also cannot be implemented under the so-called user fee statute, as some have suggested. Not only does the more specific Railway Labor Act control, the Board did not even invoke the statute in issuing its proposed rulemaking, and the proposal would not even qualify under the statute.

More fundamentally, imposition of the fees would negate a key element of the deal made among rail labor, the carriers, and the government for mandatory arbitration of minor disputes, which is the basis for

the prohibition against strikes over minor disputes. And it would damage the Board's credibility in performing its other functions.

Now, the Railway Labor Act requires the federal government to cover the cost of Section 3 arbitration other than the cost for the partisan members of the NRAB and public law boards. This was made clear by key testimony in the 1934 amendments to which Mr. Kraus has alluded. But I'd like to quote them.

Federal Coordinator Eastman stated: "The expenses of that national board" -- the NRAB -- "outside of the compensation of the members appointed by the two parties respectively would be borne by the government."

In later testimony, he stated: "As the members of the adjustment board are concerned, those who are selected by the carriers will be paid by the carriers, those who are selected by the labor organizations will be paid by the labor organizations. The neutral member, when one becomes necessary, will be compensated by the government. And it's my

recollection that other expenses are taken care of by the government."

The chairman of the then-Board of Mediation expressed the same understanding, stating: "Under the provisions of this Act" -- the proposed 1934 amendments -- "all operating expenses of all kinds of the Boards having to do with adjustment business have to be paid for by the government."

As Mr. Kraus noted, George Harrison, the chief spokesman for rail labor at the time, specifically stated that rail labor's acceptance of mandatory arbitration of minor disputes depended on passage of the entire bill with all of its features.

Now, some may say, well, these are just statements in congressional testimony. But that would ignore the history of the Railway Labor Act, the manner in which it was developed by agreement over the years, the identity of the speakers, and the importance of the legislative history in the Railway Labor Act over the years as it's been interpreted.

Mr. Eastman was the federal transportation coordinator, and he was the principal draftsman of the

1934 amendments. Mr. Harrison was the spokesman for all of rail labor, and Mr. Winslow was the chairman of the Board of Mediation. The Supreme Court has repeatedly relied on statements of the representatives of the unions and the carriers, and on Mr. Eastman, in applying the Act.

In the Chicago River case which we have cited here, the Supreme Court referred to Mr. Eastman as the principal draftsman of the 1934 bill, and Mr. Harrison as the chief spokesman for the railway labor organizations.

In fact, the Court relied on statements by Mr. Harrison and Mr. Eastman in holding that the provision for mandatory arbitration of minor disputes implicitly included a prohibition against strikes in such disputes.

One simply can't brush off the statements of these speakers as mere congressional testimony. This was what the Act was about. This was what the deal was. This was what was enacted.

We also must point out that the RLA contains no express prohibition against strikes over minor

disputes. It was inferred from the statements of these same speakers that we have cited.

Since the Supreme Court found a prohibition of strikes without having express no strike language in the statute, because of the history of the Act, and the testimony supporting the 194 amendments, one cannot then discount the same history and the same testimony which show that the government must pay all the costs for Section 3 arbitration other than those of partisan members.

In this regard, it is clear by suddenly imposing fees for its administrative work under Section 3, the Board will be removing part of the quid pro quo in the historic deal that was the sole basis for the inference of a prohibition against strikes over minor disputes. If the Board proceeds with the proposed rule, it will undermine the rationale for the current view of the statute as prohibiting strikes over minor disputes.

My next point: Not only has the Supreme Court rejected the notion that the NMB has general authority to interpret and apply the RLA and oversee the RLA, as

Mr. Kraus has noted, the D.C. Circuit has specifically rejected the NMB's assertion that it could set general regulations under the RLA unless the statute specifically precluded it from doing so.

That view, that overarching authority, is the sort of thing that's stated as a premise for the proposed rulemaking, was rejected by the D.C. Circuit en banc.

And, as we pointed out on our papers, the Board's assertion of authority to impose fees for Section 3 is not supposed by cases that upheld the NMB's decision to discontinue paying for office space for partisan members or to discontinue paying for referees for boards not established under the second paragraph of Section 3, Second before its was amended.

In those cases, the courts held that specific provisions in the Railway Labor Act provided the NMB was not required to make certain expenditures, and that specific statutory supported the inference that the disputed payments were discretionary.

There is no comparable statutory support for the NMB's position here. You don't have authority to

generally decide to do this because you'd like to.

Now, some have suggested that the new fees could be imposed under 31 U.S. Code Section 9701, the so-called user fee statute. But even if the RLA itself did not preclude the proposed new filing fees, the Board did not even cite the user fee statute as a basis for the proposed rule, so it cannot now rely on that statute in adopting the rule.

In any event, the user fee statute would not support the proposal to change -- to charge parties for invocation of statutorily mandated Section 3 arbitration processes.

The Supreme Court has held that agencies may not levy charges that are effectively taxes, and they may not make assessments to generally defray the costs of their operations or to further general public policy goals, such as to create financial incentives or disincentives with regard to certain types of conduct. Nor may an agency assess fees to recover from regulated parties benefits that inure to the public generally.

When you look at the Board's stated reasons

for the proposal rule for the imposition of fees, they are: "To facilitate the more timely resolution of grievances." "To reduce the current case backlog." To create "incentives to process cases expeditiously." "To create financial incentives to process cases expeditiously." "To induce the parties to file and progress those cases having merit, and to consolidate as many grievances as possible." And "to encourage the parties to make most efficient use of the NMB's program of arbitration resources."

These statements are all taken from the notice of proposed rulemaking. By its own statements, the NMB is justifying its actions based on public policy goals, not on recruitment of costs for providing a private benefit.

Additionally, we have shown that Section 3 was amended in 1934 because of public concerns, for the public benefit. There had been a proliferation of strikes over accumulated unresolved grievances, heavy use of the Board of Mediation resources when minor disputes were not arbitrated, and appeals for presidential emergency boards over unresolved minor

disputes.

The amendment was described as a significant public benefit because it would unburden the major dispute processes of the Act and reduce interruptions of commerce.

Coordinator Eastman came forward with the 1934 amendments to advance the public interest. The rail unions acceded in return for mandatory, final and binding, and government-paid arbitration.

The unions were still free to strike over minor disputes. Then, perhaps, the unions' invocation of Board processes could be deemed voluntary in a private benefit. But that is not the case today.

The 1934 amendments were heavily freighted with the public interest, and assertions to the contrary simply ignore the context and history and purpose of the Act.

We also want to point out that the Board's Section 3 fees proposal would burden labor and favor the carriers. And this goes to your request in some -- because the fees will fall heavily on labor and because they will effectively bar arbitration of many cases

where the amounts charged by the Board would exceed the amounts that could be recovered in the claims.

Adoption of such a lopsided regime would undermine collective bargaining in the rail industry and would ultimately diminish the Board's credibility and effectiveness.

First of all, the vast majority of rail industry grievances are initiated by unions. Why? Because the statute permits carriers to act when challenged subject to the filing of a grievance that will later be determined on whether or not there's a contract violation.

This means unions are the ones filing the claims over disputed interpretations of the agreements. Accordingly, a system of fees for arbitration falls one-sidedly on labor and effectively favors the carriers.

The Board's proposal also favors the carriers because repeated contract violations for small amounts by carriers with thousands and thousands of employees would mean a substantial savings over the years that are not challenged because the filing fees exceed the

value of individual claims.

In our papers, we've noted examples of that, and I'm sure you'll hear some of that. Some claims are for several hours of overtime, reporting time, travel expenses, wash-up time, all kinds of things that effect individual employees.

But cumulated over thousands of employees day after day after day, that's a tremendous boon to the carriers. And if the cost of arbitrating those claims exceeds the value of those claims, they won't get arbitrated, which will fantastically favor the carriers.

And carriers often -- you can't say, oh, well, that's all right. You'll take one of those lead cases and the rule will be interpreted and they'll stop. They won't. A union cannot rely on a favorable ruling in one small dollar amount case to stop the carrier because arbitration decisions are generally not precedential, and carriers often continue disputed courses of action, requiring unions to arbitrate over and over and over and over again over the same issue.

Carriers could decide not to pay meritorious

claims, knowing full well that unions and individuals would be discouraged from pursuing them to arbitration because of the cost of the fees imposed by the board.

Additionally, by erecting a barrier to arbitration of many claims, the board would increase the complexity of term bargaining. Bargaining in the rail industry is already complicated enough, too complicated, because of the compulsion for national multi-party bargaining.

If issues that ought to be arbitrated are not resolved and are instead brought to the bargaining table, the term bargaining process will become even more difficult, just as what happened prior to the 1934 amendments.

Or if such cases are not arbitrated, nor in national bargaining, because attention is limited to more traditional national bargaining concerns, the effects of the entire RLA scheme will be undermined as carriers will continue to take disputed actions, and employees will have no process to resolve many of their problems.

Because imposition of the filing fees clearly

favors the carriers, there is a very real risk that the Board's overall appearance of neutrality will be impacted and it will become less credible and effective in its core functions like mediation and representation determinations.

We urge the Board to consider the potential impacts of this proposal that we've just outlined and refrain from taking action that would damage its credibility and effectiveness.

One last point: Some would attempt to justify imposition of the new fees by noting the government pays no costs of arbitration in other industries. But the courts have repeatedly cautioned that care must be used in drawing analogies between the Railway Labor Act and the National Labor Relations Act.

Additionally, there are major differences with respect to the government's role in labor law enforcement under the two statutes. The NLRA created the National Labor Relations Board, gave it responsibility for investigating, prosecuting, adjudicating unfair labor practice charges, for enforcing NLRB orders.

The NLRB has a general counsel staff, regional offices, administrative law judges, enforcement and contempt branches, and an appellate branch in this entire building here, or much of it. Similar structures exist under the federal sector labor relations and many state labor relations statutes.

I've had recent experience. I represent a group of nurses who work for the Postal Service. I filed two unfair labor practice charges in two regional offices. They were investigated by employees of the National Labor Relations Board, who contacted me, took statements from me, went on site, interviewed witnesses, created affidavits, brought them back, had them sign them, reported to their regional attorneys, sent stuff off to Washington, consulted with the contempt branch which was involved in enforcement of a similar matter on which my charges were related. And if it goes forward to an unfair labor practice, they will prosecute, adjudicate, enforce, and handle any appeal.

By contrast, the rail unions use their own resources to investigate, prosecute, and enforce the

Railway Labor Act equivalent of ULPs. It is simply specious to maintain that the rail unions have an anachronistic and disproportionate advantage over other unions in having the government administer and pay for arbitration without contribution by the rail unions. It is just inherent in the differences between the two statutes.

So to the extent that analogy to arbitration in other industries is cited as justifying the fees proposal and is a subtext for the proposed rules, that analogy is simply false.

In conclusion, the ATDA, BMWED, BRS, IBEW, NCFO, and TWU appreciate this opportunity to address the Board on this important issues. These unions feel certain the Board will realize that the proposed fees are in conflict with the Railway Labor Act and would negate the historic arrangement which is the foundation of a 70-year labor relations regime in the industry and the predicate for the prohibition against strikes over minor disputes.

We hope that the Board will realize that the proposed rules cannot be sustained and they should be

rejected. We hope the Board will instead work with the parties to try and fix perceived problems under Section 3 rather than engage in another fight with rail labor over the extent of the Board's authority.

Finally, we hope that the Board will avoid taking an action that will inflict very real damage on the Board itself and the Railway Labor Act scheme for resolution of contract interpretation disputes.

Thank you. If you have any questions now, I'd be glad to answer them.

CHAIRMAN HOGLANDER: Thank you, Richard.

I just have the same question that I asked Mr. Krause: How would the imposition of a fee schedule affect the filing of grievances under the current arbitration system in your view?

MR. EDELMAN: Again, if you look at a railroad industry collective bargaining agreement, there are numerous rules. All kinds of elements of everyday life are covered by this agreement -- these agreements. And it's everything, you know.

And again, two hours of overtime -- I mean, I can't speak to some of the cases that my colleagues can

who handle this stuff, and I'm sure they will, but, you know, so people don't get a couple hours of overtime. The right person doesn't get called out for a job. You know, people are told, you don't get to report, or you have to report here early and then go to the job site. You don't get certain allowances.

Some of those are small individual claims. But as I said, cumulated, the effect is a significant savings to the carrier. And it's important to recognize that the statutory scheme is set up that the carriers get to proceed.

They don't need an arbitrator to sanction their interpretation of the agreement before they go forward. The setup is they get to go; we grieve after the fact.

That's part of the overall deal, but part of that deal was that when we grieve after the fact and it goes to arbitration, that that part is paid other than for the partisan members of the board.

So the effect will chill the filing of many, many, many claims under various provisions of collective bargaining agreement.

CHAIRMAN HOGLANDER: Read, do you have any questions?

Ed, do you have any questions?

MS. VAN DE WATER: No, thank you.

CHAIRMAN HOGLANDER: Okay. Thank you.

Bill, I think you're next. William Miller.

MR. MILLER: Good day. My name is William R. Miller. I'm the senior executive director of the industry relations department of the Transportation Communications International Union, and I presently hold the position of vice chairman of the National Railroad Adjustment Board and the Third Division of the NRAB.

I would like to thank the National Mediation Board for the opportunity to address this forum regarding the administration of the Section 3 grievance process as published by the NMB in the Federal Register on December 21, 2004.

I have been employed by the Transportation Communications International Union since 1970. Since June 1084, I have been the labor representative for TCIU at the National Railroad Adjustment Board and have

been chairman or vice chairman of the Third Division and the full board since 1987.

A PARTICIPANT: Move the mike closer, please.

MR. MILLER: As TCU's senior executive director of the industry relations department, I review and approve, on behalf of TCU's international president, all submissions to public law boards and special boards of adjustment.

My comments will briefly summarize my written declaration of September 16, 2004 regarding NMB Docket No. 2003-01N in reference to the NMB's Notice of Proposed Rulemaking, and are being made on behalf of the labor members of the Section 3 committee.

I have been involved in the Section 3 process for 35 years as an advocate and have been an active participant of the Section 3 committee and chairman of the subcommittee since its inception.

Before I discuss the work of the Section 3 disputes committee, let me reiterate the position of rail labor. We believe that the good faith compacts made with both the government and the carriers is being placed in jeopardy because of the National Mediation

Board's proposed rulemaking.

The original social compact, perhaps better described as a covenant between the government, carriers, and unions, was forged in 1934 when the unions agreed to limit their right to strike as a quid pro quo for fidelity financed arbitration of grievances through the National Railroad Adjustment Board.

The compromise was clearly understood by the principals and explicitly placed before Congress that labor was giving up the right to strike over minor disputes in return for all rights set forth in the 1934 amendments to the Railway Labor Act.

That governmental responsibility and obligation has been honored by every administration, regardless of which party was in control, for 70-plus years.

In 1966, Congress passed an amendment to the RLA dealing with the problem of backlogged cases at the NRAB, the same problem allegedly being addressed by the NMB in its current proposal.

The 1966 amendments created public law boards as an option to the NRAB. Congress was well aware at

that time that the 1934 amendments required the NMB to pay all expenses of the NRAB except the partisan members' salaries and expenses.

The chairman of the National Railway Labor Conference, Mr. Wolfe, testified before Congress that the solution to the problem of backlogs was to require the parties to pay for the referee. Wolfe's proposal was rejected by Congress in 1966 because congress recognized the promise it had made in 1934 to rail labor had not changed, nor had the promise that the unions made changed. Seventy-one years later, the promise is still the same it should continue to be honored.

Congress recognized that public financing of the Section 3 arbitration is fully justified because it provides labor peace and prevents interruptions to commerce at a relatively insignificant cost.

Another commitment was made to strengthen that 1934 social compact when the unions and the carriers formed the Section 3 committee in 1985 for the express purpose of working together to streamline the grievance machinery and reduce the case backlog.

By agreement between the parties, reduced arbitration was never on the Section 3 committee's agenda. From all the rain unions' perspective, the imposition of user fees would violate the original social compact and 71 years of understanding that has followed.

It should be noted that in a series of three articles from the September 1983 Arbitration Journal that examined the history and debated the rationale of taxpayer funded arbitration in the railroad industry, one of the authors, Chuck Hopkins, former chairman of the National Carriers Conference Committee, stated, and I quote:

"It is my hope that rail labor and management will explore the possibilities in a collaborative and open-minded way and not continue to frustrate the effort by limiting their consideration to the financing question.

"A prompt and orderly system for settling disputes is intrinsic to a healthy labor relations environment in our industry. Rail labor and management owe it to themselves, to their constituents, and to the

public as well to find a better way. I think we can do it together."

Mr. Hopkins was prophetic. Just two years later, the Section 3 committee was established by rail labor and management for the precise purpose of working together to improve the Section 3 grievance handling process and reduce the backlog.

The special Section 3 disputes committee had its genesis in the October 1985 arbitration meeting held in Palm Springs, California. The original purpose of the committee, which is composed of representatives from various unions and management, was to analyze grievance handling within the railroad industry and to make recommendations for improvement.

In late 1986, the committee held its first scheduled meeting and then met many times through 1987. Subsequently, a report from the committee was presented to the Appropriations Committee of Congress.

The mission of the Section 3 committee was to improve the Section 3 grievance process, and that same task has continued. During the initial meetings, there was a free flow of dialogue between the participants,

including outside expert arbitrators who were retained for the purpose of assisting committee members.

It would be far too exhaustive to recapture all of the constructive comments and suggestions that became part of the finalized report to Congress. Suffice it is to say that many of those ideas have been incorporated into the Section 3 process and have resulted in greater efficiencies.

The Section 3 committee and its subcommittee has taken its work seriously and has continued to meet regularly and had periodically made recommendations that have been adopted by the NRAB. Those procedural changes have also generally been adopted by public law boards and special boards of adjustment.

Let me briefly discuss some of the changes instituted because of the Section 3 committee's work and its recommendations, which have resulted in greater efficiencies and lowered federal costs.

Originally, when cases were filed at the NRAB, one of the parties would file a notice of intent, that is, a declaration for the filing of a submission. The parties would then be given 90 days to file

submissions, after which submissions would be exchanged and the parties would be given an additional 90 days to file rebuttals. The parties could then request the opportunity to file sur-rebuttals, after which they would be given 60 days to file such.

Early on, the Section 3 committee recommended that rebuttals and sur-rebuttals be eliminated, which took 150 days of handling off the process and reduced the size of briefs. The recommendation was adopted by the NRAB on January 1, 1988.

Additionally, the committee recommended that Uniform Rules of Procedure be adopted for all four divisions of the NRAB for the first time at that period of time in its 53-year history.

In 1988, the committee also recommended several other changes, one of which required arbitrators to keep their undecided caseload below 50. The intention was to have arbitrators use their allocated workdays to decide cases rather than stockpile new ones.

Subsequently, in a few years the parties determined that the 50-case number was too arbitrary as

it did not take into consideration the fact that many arbitrators handle their cases very expeditiously, and that number limited their ability to provide greater services to the parties. Therefore, the committee came up with a better approach and recommended that all proposed decisions be issued within six months from the hearing.

It is interesting to note what the NMB stated in its memorandum of September 3, 1996 addressed to Robert Stone, director, national performance review. On page 9, the Board stated -- in discussing the work of the Section 3 committee, it wrote the following:

"The NMB has applied substantial NPR efficiency principles to this program area. For example, the Board has been working with the labor/ management parties to expand the use of more efficient case resolution methods, such as precedential setting boards, expedited arbitration, grievance mediation, and prioritizing cases by issues.

"A time limit has been imposed on arbitrators which requires that all proposed decisions be issued within six months from the hearing. This approach has

resulted in an increase in the timeliness of arbitration decisions."

Clearly, the NMB has consistently recognized that the parties have continued to institute greater efficiencies to the grievance process. The improvement to the system has always become more efficient each and every time changes have been made because it has involved the participation of labor, management, and the NMB. The NMB has never dictated an agenda; rather, until now, it has worked with the parties.

The work of the Section 3 committee continues. The committee, in conjunction with the NRAB members, revised the Uniform Rules of Procedure in June 2993 to permit the electronic filing of submissions. That action in and of itself saved the NMB tremendous monies, reducing office and storage space as files were reduced to diskettes.

In early 2004, the Section 3 committee established a consolidation committee that was working with the NMB and had actively engaged in discussions on adopting rules for the consolidation of cases.

As a member of the consolidation committee, it

is my judgment that we were very close to reaching an agreement on such rules when, in April of 2004, the NMB consolidated certain cases involving the CSX and the BMWE, resulting in pending litigation and the termination of any further discussion of consolidation among the committee.

Again, it is my opinion that if the NMB had not proceeded forward in that instance, the parties would have formulated a case consolidation process. Why do I come to that conclusion? It is very simple: Because the history of the Section 3 committee confirms that every problem it has addressed has been resolved through the mutual cooperation of the parties.

Last, but not least, to cite another example of how cooperation of this committee has proven successful, let me reiterate my testimony at the NMB's December 19, 2003 hearing wherein I quoted from the NMB's annual reports of 1985 and 2004 that the cases pending arbitration have been markedly reduced. In 1985, there were 22,173 pending cases before all Section 3 tribunals, and by 2004 that number had been reduced to 5,136 cases.

And that reduction was not just because the workforce had decreased. The facts, which have not been refuted, indicated that in 1985, 23 grievances per 1,000 employees were being filed on an annual basis, whereas in 2004, that figure had been reduced to 4.5 grievances being filed per 1,000 employees on an annual basis.

Therefore, when anyone suggests that the parties need the proposed regulation so as facilitate the timely resolution of disputes in the rail industry and eliminate the backlog of pending cases at the NRAB and other arbitral boards, they are mistaken. Again, history verifies that the parties have shown the ability to make the system more user-friendly and efficient, and they do not have to have regulations that are counterproductive thrust upon them.

Let me also mention that over the past year, we have discussed a variety of NMB proposed regulations other than user fees. Each and every one of those presentations should be left for the handling of the Section 3 committee, working with the NMB. Simply stated, those matters should be left in the hands of

the daily practitioners.

I would next briefly talk about user fees. User fees, as proposed by the NMB, should not be used as a tool to limit the number of grievances that are to be arbitrated. That is precisely the effect that the present proposal seeks to accomplish.

Valid grievances require adjustment without regard to their dollar value. Grievance settlements shape working rules and contribute to the common law of the workplace, and the institution of filing fees might cause valid grievances to be abandoned.

This would result in those grievances that were not handled having a disproportionate influence on the administration of the working agreement. Failure to handle a single case because of the imposition of an inappropriate user fee would be a disservice to the parties to the agreement.

Because of time constraints, I will not go through the particulars of why each and every fee should not be imposed, as they have been explicitly set forth in TTD's comments to the Board, but instead will summarize why they should be abandoned.

They should not be imposed because:

(1) The NMB has no statutory to impose such fees.

(2) NMB has authority to pay expenses, not impose fees on the parties.

(3) NMB has no authority to charge the parties for functions that track an arbitration case so that it can pay referees, especially in view of the fact that at the end of the year the parties provide the NMB with an audit of all of their cases.

(4) The NMB has failed to establish a reasonable connection between the fees being charged and the cost of service being provided.

(5) The fees unfairly give carriers an advantage in declining claims involving small amounts of money. And,

(6) The proposed fees unfairly place a disproportionate share of fees on unions and employees.

The imposition of filing fees would clearly favor carriers and be detrimental to unions. Carriers will remain unburdened in acting upon disagreements of the collective bargaining agreements.

The imposition of filing fees for arbitration not only appears to be slanted in favor of the carriers, it runs the real risk of indicating that the Board does not intend to be impartial in its handling of grievance arbitration.

And perhaps my next comments will address your comments to the preceding folks, Chairman Hoglander, as I say ultimately, I believe that the user fees proposed by the NMB may very well have the unintended consequence of increasing the backlog rather than reducing it because if carriers know that unions will have to be user fees on each case submitted to arbitration, there will be little incentive for claim settlement on property.

Instead of settling claims with the general chairmen at conference as the carriers presently often do, the carriers will be encouraged to refuse to settle so as to force the unions to expend resources on various filing fees as contemplated by the NMB proposal.

This will cause backlog of cases to increase rather than decrease, as it has been doing over the

past two decades under the cooperative efforts of the Section 3 committee.

In closing, let me state that the labor members of the Section 3 committee are strongly opposed to the proposed regulations. Some of the concerns as expressed earlier with the proposed regulation, again, are:

(1) Under the current law, NMB has no authority to issue procedural rules for the NRAB, PLBs, and SBAs, nor does the NMB have the authority to condition referees' compensation on compliance with those rules.

(2) The NMB has no authority to establish or collect user fees for arbitration services. The RLA states that the federal government, not the parties, is responsible for the payment of referees' compensation and other authorized expenses.

(3) Imposition of user fees will discourage unions and individuals from pursuing grievances, as some of the fees may exceed the value of the grievance.

(4) The backlog of pending cases, the supposed reason for the proposed regulations, has

already been significantly reduced by the parties. The proposed regulation will only result in unions and individuals being discouraged from pursuing legitimate grievances.

Also troubling as we sit here today is the fact that the NMB proposed regulations has united the unions, rail carriers, and arbitrators in opposition to the plan. Simply put, those who know the system and use it on a daily basis understand that the proposed regulations are defective and counterproductive to the process.

The primary purpose of the National Mediation Board is set forth in its title. Mediation is the agency's primary purpose, wherein you help to settle differences between the parties.

The parties are not at odds with one another over these proposed regulations, but they are with you, and by being at odds with you as we now approach a time period when Section 6 notices have been final for contract changes, you increase the likeliness of greater difficulty in that area as well.

When one or both of the parties believe that

the NMB has lost its neutrality, it is replaced with distrust. And I believe this loss of credibility will be caused by the institution of your proposed regulations.

I must again state that the public interest necessitates that Congress and the NMB continue to provide full funding for the adjustment of railroad grievances. I do not agree with the proposal for the institution of user fees by whatever term they may be called.

I do not suggest that the present system for the adjustment of railroad grievances is perfect and requires no change. Like any other institution created by mankind that has survived 71 years, the system can be improved.

Yet history tells us it has been improved many times by the parties through the work of the Section 3 committee and subcommittee. The grievance handling system of today is not the same as that of 1985. And if those committees are allowed to continue their work, the system will to improve. Improvement in the system should be instituted by the parties' cooperative

efforts and not by governmental dictate.

I would respectfully request that the proposed regulations should not be adopted, and that the NMB should continue working with the Section 3 committee to assist in adopting appropriate procedures to improve the efficiency of grievance handling.

All of labor appreciates your concerns. Our hope and suggestion is that we come away from this meeting working together to address those concerns. The tools and means for the constructive changes are already in place in the forms of the Section 3 committee and subcommittee and the NRAB.

With that said, I again thank you for the opportunity to appear before this Board, and I would be glad to answer any questions from the board members.

CHAIRMAN HOGLANDER: Thank you, Bill. I was going to ask you the question, but I see you've anticipated it. Would you like me to ask that question, or do you feel comfortable with your answer?

MR. MILLER: Well, I can reiterate that I'm concerned that the institution of these fees will actually have a negative and reverse effect, and will

simply increase the backlog that -- and at the same time not only increasing the backlog, but the system is not going to be nearly as efficient as it is today.

And you're going to -- by the imposition of these fees, you place a distrust in those that handle the system day to day as to the neutrality of this Board. And I think we want to come away from this meeting with that kind of feeling.

CHAIRMAN HOGLANDER: Read, do you have any questions?

MS. VAN DE WATER: No, thank you.

CHAIRMAN HOGLANDER: Edward?

MR. FITZMAURICE: Nothing, thank you, Bill.

MR. MILLER: Thank you very much.

CHAIRMAN HOGLANDER: Mr. Radek?

MR. RADEK: Thank you, Mr. Chairman, members of the Board. My name is Richard K. Radek, R-a-d-e-k, and I serve as vice president and director of arbitration for the Brotherhood of Locomotive Engineers and Trainmen headquartered in Cleveland, Ohio.

I have served as vice president since 1996, as director of arbitration since 1991, and as a member of

the National Railroad Adjustment Board since 1982, which makes me now the senior member of that board.

I'm also a charter member of the Section 3 committee. I believe my tenure as a board member, my activity on the Section 3 committee and its various working groups, and my experience as a union officer specializing in arbitration all allow me a fairly comprehensive perspective of how the proposed rulemaking may adversely impact the Section 3 process.

I would like to briefly discuss some thoughts I have had concerning the rulemaking, and ask you to consider them before the Board will proceed with the rulemaking.

Labor relations in the railroad industry has been described by interested observers through the years as unique, esoteric, and sometimes in less ingratiating terms. The Railway Labor Act, or the Act, as I'll refer to it, as you well know, came into being by an agreement of the parties, and in the estimation of most practitioners working under it has since its inception accomplished its intended purposes quite reasonably well.

With respect to Section 3 in particular, there has been some fine-tuning over the years that has greatly contributed to the Act's longevity, such as the important 1934 and 1966 amendments, just to mention two, and more recently, certain administrative measures formulated to streamline and boost the efficiency of the Section 3 process.

This current national mediation board, like previous boards, has taken an active interest in the administration of the process, and such interest, when it's embodied in a spirit of responsible, user-responsive, and cooperative custodianship, is commendable.

The Section 3 committee, established at the behest of the Board to explore ways to improve the cost-effectiveness of the process, is a good example of the manifestation of that spirit.

I will not further elaborate here concerning the Section 3 committee because other commentators, notably Bill Miller, has remarked about the benefits derived from such cooperative approaches. And moreover, the Board, I am sure, is familiar with the

successes the Section 3 committee has achieved in the past.

However, the Board now seems intent upon an abandonment of the cooperative approach, and is considering unilaterally imposing user or filing fees on the parties, hoping to quell the number of disputes being fed into the Section 3 machinery.

I am not going to engage in argument here whether there are too many cases, not enough cases, frivolous cases, unnecessary cases. I simply want to say I don't think the imposition of a fee, assuming for discussion the imposition of such a fee is legal, would in itself result in any significant reduction of the number of cases entering the process.

The only way to reduce the number of cases coming into the system is to have fewer cases unresolved on the properties. And that is a matter that the parties themselves must address.

If the parties are going to substantially reduce the number of unresolved disputes, they must overcome parochial political obstacles and freely infuse their grievance handling with good faith.

This is possible. For example, new grievance handling agreement provisions between my organization and three CN U.S. carriers, the Illinois Central, Wisconsin Central, and Grand Trunk, reduced the number of cases reaching arbitration by more than 80 percent as compared to the time prior to these new agreements.

Unfortunately, the opposite could also come true. Hundreds upon hundreds of cases were filed in 2001 and 2002 involving my organization and the Union Pacific Railroad Company.

All these hundreds of cases turned on the same handful of issues and could easily have become a few pilot or lead cases. Unfortunately, because of the carrier's refusal to do so, none of the cases were combined into lead cases.

Indeed, not even an abeyance agreement, an arrangement where time limits on claims are waived while one case to control the lot goes forward, could be reached. Not even the good offices of this Board, although things looked promising for an hour or two, could dissuade the carrier from its recalcitrance.

Now throw filing fees into the stew pot. As

we understand the proposal, the organization would be required to pay a filing fee for each case. Carriers, we have seen, can force many, many claims to be handled as discrete, separate cases regardless of their commonality. This practice could escalate.

The cost to the organization to arbitrate the totality of these cases, even if they were eventually combined after they were filed at the adjustment board or a public law board, could be enormous.

The organizations do not have the deep pockets of the carriers, and large amounts of money going to filing fees could cause undue financial burden or destabilization and impair the organization's ability to effectively engage in activities such as organizing and collective bargaining.

This in turn would frustrate a fundamentally important provision of the Act, that the organizations be able to carry out the Act's purposes. We do not believe that the Board intended to propose a fee that could lead to financial over-burdening of the organizations. But as you can see now from the example of the Union Pacific cases, the necessary elements for

such an eventuality have already occurred.

Filing fees could create another problem of a practical or legal nature for the organizations with fair duty of -- fair representation implications. Many of these claims handled for our membership involve bona fide contractual violations but relatively small monetary claim amounts.

General committees could be placed in a position where filing a case could cost ten or fifteen times the amount of the claim. For example, a claim might involve a $5 shortage for an engineer's certification payment.

Is the organization correct to decline handling of the claim because it would be fiscally damaging or irresponsible to do so? How does the organization balance its responsibility to protect individual members' rights under the collective agreement against the need to have sufficient resources to represent its membership collectively?

There are times that procedures enacted to accomplish something that might be viewed as desirable have unexpected or unintended consequences that are not

desirable at all, or cause more damage than they do good. I believe this would be true of the imposition of user or filing fees for Section 3 arbitration cases.

While I would echo the concerns of others opposed to the imposition of fees on a variety of grounds, I strongly urge the Board to think about the potential for deleterious practical effects on the process that the fees will likely provide. Please consider prevention of such consequences by abandoning the notion of imposing filer or user fees for Section 3 arbitrations.

Thank you for extending me the opportunity to speak and for your attention.

CHAIRMAN HOGLANDER: Thank you, Richard.

I'll ask you again the same question I've asked your predecessors. How would the imposition of a fee schedule affect the filing of grievances under the current arbitration, in your view?

MR. RADEK: Well, I agree with what Bill Miller said, that you're providing an incentive to the railroads not to settle cases on the local level or on the property level because they know the organizations

would have to subsume the cost of filing to advance those cases.

We have general committees that make up our organization. Most all of us in labor in this room are structured like this. And those committees vary in size.

Even though they all administer separate collective bargaining agreements, some of the committees are small. Some might have only 100 or 200 members. A carrier could force, let's say, 500 arbitration cases in a single year. That cost would have to be subsumed by a small membership. It would an incredible, relatively speaking, financial burden for them.

The Union Pacific cases that we dealt with -- and Roland Watkins here and others, I'm sure, on the Board as well are aware of the history and the efforts that we made.

Attached to the transcript of my written comments, you will find two examples that point out how vexatious it was trying to deal with the resolution of those similar cases.

There were, I think, six or seven issues that were tied up in over 1,000 separate grievances that the railroad forced the organization to handle as discrete, individual cases. There should only have been six or eight cases in the lot rather than the huge number that actually were filed.

With the help of the mediator, we tried to work out an agreement for lead cases or an abeyance of grievance. The railroad appeared to be cooperating and an agreement, we thought, had been hammered out, only after lunch that same day to have the railroad pull the plug on it.

All of those grievances had to be handled as separate cases. Now, can you imagine 1,000 cases at $75 would be $75,000 to file what should have been six or eight claims. That, I think, would proliferate if the user fees were enacted.

And that is why I think the user fees is not a good idea for quelling the number of cases that are generated. I would rather see the Board direct its resources to trying to get the parties to reach the point where they could resolve the cases on the

property and they would not have to enter the system in the first place.

CHAIRMAN HOGLANDER: Thank you.

Read, do you have any questions?

MS. VAN DE WATER: No, thank you.

CHAIRMAN HOGLANDER: Ed, do you have any questions?

MR. RADEK: Thank you very much.

MR. FRANCISCO: Good morning, Chairman Hoglander and Members Fitzmaurice and Van de Water. My name is George J. Francisco, Jr. I appear before you today as both the president of the National Conference of Firemen and Oilers, SEIU, and as chair of the rail labor division of the Transportation Trades Department of the AFL-CIO.

The rail labor division is comprised of the twelve rail unions in the AFL-CIO that together represent several thousand workers at freight railroads, Amtrak, and commuter rail operations across the country.

We are vehemently opposed to the Board's proposal. The imposition of fees for the NMB's

performance of administrative functions associated with Section 3 arbitration is unlawful and is nothing more than a hostile federal tax on our members' right to speak out.

The Board has no authority to impose these fees, and in fact to do so would violate the Railway Labor Act. The tax would negate the historic agreement for mandatory arbitration of contract interpretation disputes that was the foundation for the 1934 amendments to the Act, and that the deal made in 1934 is the sole basis for the prohibition against strikes over minor disputes.

Our Section 3 committee representatives, whose job it is to handle claims and grievances, have explained how the proposed fees will deter the filing of arbitration of many valid claims, impede enforcement of agreements, and ultimately undermine collective bargaining agreements and the collective bargaining process. In short, contract terms that cannot be enforced are not meaningful.

It must be remembered that collective bargaining and arbitration are parts of a single

process. If resolution of contract interpretation disputes is thwarted, there will be more issues for term bargaining and more complicated negotiations and mediation.

The inability to resolve disputes in arbitration will only add to the issues for term bargaining that will make it even harder for the parties to reach agreements.

The Board claims that the imposition of fees is necessary to clear the backlog of Section 3 cases. I guess by this reasoning, the voting lines we saw this past November can be solved by an imposition of poll tax. Just discourage enough workers from participating in the process. Then all the so-called problems will go away.

Well, if you define efficiency in this misguided and unfair manner, the railroads get an upper hand over their employees and even greater incentive to ignore the collective bargaining agreement.

And I can understand, while the railroads would like this new deal -- what's not to love from their perspective? But of course, the Board is not

charged with serving the railroads' interests. It is charged with serving the public interest. And quite simply, this proposal doesn't even come close.

In fact, the fees could have the unintended consequences of actually exacerbating backlogs as carriers refuse to settle claims to force the unions to pay filing fees just to take cases to arbitration. In other words, the fees could have precisely the opposite effect as the NMB intended.

The effects of the proposed fees will fall most heavily, if not exclusively, on labor. The reality is that in labor relations, management acts and the union must grieve and arbitrate.

As the Railway Labor Act has been interpreted, management does not need to obtain an arbitrator's sanction before proceeding under a disputed interpretation of the parties' agreement.

The result, we are typically the plaintiffs, while management can simply act. If we disagree with management's interpretation of the agreement, we have to move the case to arbitration, and this means labor, not management, will typically be paying the fees the

Board is seeking to impose.

So this is why we view the proposal as hostile to working people and hostile to meaningful collective bargaining. If the Board proceeds with this proposal, I must tell you that we will bring all of our resources to bear to fight in all possible forums. Please, please, do not doubt our resolve to fight this if you go ahead in spite of all that has been presented.

We of course are not alone in our opposition to this proposal. Over 125 members of the House of Representatives, including the chair and ranking member of the Rail Subcommittee and the ranking member of the full Transportation Committee, have signed a letter to this Board urging you to reconsider the imposition of filing fees.

The chairman and ranking member of the Senate Appropriations Subcommittee that funds the Board has sent a similar letter, as has the ranking member of the Senate Labor Committee. And most recently, Congress required the NMB to hold hearings on the negative implications of this proposal.

And as late as last night, Senators Kennedy

and Harkin submitted statements in opposition of filing fees. I should also note that members of Congress would have liked to testify today, but the Board scheduled this hearing when Congress was in recess and refused a request from Congressman Oberstar to postpone the proceeding.

In any event, it should be clear that there is strong political opposition to the federal tax the Board is proposing. And we will continue to enlist members of Congress to stand with us against this misguided scheme.

However, we also want to be clear that we would like to avoid a fight if at all possible. We are prepared to work with the Board and the carriers on resolution of the issues that have been identified as problems with the current Section 3 process.

There is a history of cooperation of rail labor and the carriers with the government to make rail industry labor relations more effective. We have cooperated on amendments to the Act and on administrative processes to improve collective bargaining processes and dispute resolution.

The Railway Labor Act was a negotiated statute. The 1934 amendments and other amendments were negotiated or adopted with the consent of both sides. Significant changes have been made in the administration of Section 3 by joint committee recommendations, and those recommendations have resulted in a dramatic reduction in case backlogs over the past two decades.

We are prepared to work cooperatively to address current concerns, just as we were cooperatively in the past, and we are confident that such cooperation can continue to yield positive results.

Whatever problems exist in current processing of cases under Section 3, they can be effectively addressed by unilateral and unfair action by the board. It would harm the credibility and effectiveness of the board which, as the Supreme Court has emphasized, must maintain its neutrality and the confidence of the parties.

If this Board takes sides, as it seems poised to do in these rules, its overall credibility and effectiveness will be undermined. The Board cannot

mail rail labor pay for a basic dispute resolution mechanism that is fundamental to meaningful collective bargaining, and then expect to be viewed as a neutral actor in its other functions.

Rail labor is united on this issue and prepared to take whatever action is needed, whether it be in the halls of Congress, in the courts, or mobilizing our members to thwart this greedy act of the National Mediation Board.

We urge you to reject this proposal, and instead maintain the mandated and historic function of the Board with respect to Section 3.

Thank you for your time and attention.

CHAIRMAN HOGLANDER: Thank you.

I again will ask you the same question I've asked the others. How would the imposition of the fee schedule affect the filing of grievances under the current arbitration system, in your view?

MR. FRANCISCO: I think my answer can only be -- I think your question can only be answered one way, in my opinion. Since it been asked four other times and answered the same way each time, my answer is

the same as everyone else. If you haven't got it by now --

CHAIRMAN HOGLANDER: Well, I'm just giving you the opportunity to be on the record.

MR. FRANCISCO: Okay. I'm sure you've gotten it.

CHAIRMAN HOGLANDER: I got it.

MR. FRANCISCO: Thank you.

CHAIRMAN HOGLANDER: Wait a minute. Just a minute.

Do you have any questions, Read?

MS. VAN DE WATER: No, thank you.

CHAIRMAN HOGLANDER: Ed?

MR. FITZMAURICE: No.

CHAIRMAN HOGLANDER: Okay. That's it.

MR. FRANCISCO: Thank you very much.

CHAIRMAN HOGLANDER: I think what we'll do here -- I was just looking over the agenda, and I think what we'll do, we had a break scheduled in here. We'll shorten the break to five minutes and then come back and hear the remaining parties. And we should still be able to conclude on time.

(A brief recess was taken.)

CHAIRMAN HOGLANDER: I'm going to reconvene the meeting. Back on the record.

Daniel R. Elliott will be our next presenter -- witness.

MR. ELLIOTT: May it please the Board, my name is Daniel Elliott. I'm here on behalf of the United Transportation Union.

Mr. Clinton Miller apologizes for not being able to attend. He was earlier scheduled to speak, and he had a conflict that he was not able to change under such short notice. However, I will attempt to present the matter half as well as him.

First of all, I'd like to thank the Board, Chairman Hoglander, Member Fitzmaurice, and Member Van de Water, for the opportunity to present to you opposition to the proposed fee schedule.

Obviously, in the interest of expediting the proceeding and not being entirely redundant, I will move off of our written statement and just try and emphasize the important points, considering that Mr. Krause and Mr. Edelman basically said most of the

things that I was going to say today in my statement.

First of all, I just want to emphasize with respect to the statutory language, UTU believes that the statutory language is quite clear and unambiguous and that there is no statutory authority for the proposed fee schedule as outlined in the rulemaking.

As you know, Section 3, First and 3, Second require the Board to pay for the referees and arbitrators and fix the pay, and that is the authority that is given to the Board.

And in using Section -- apparently in using Section 4, Third of the Act for its authority to implement the proposed fee schedule, it's obviously setting up a condition which has to be reached before you can get that. And obviously, that conflicts -- it appears to obviously conflict with the statute as written, the statutory language that I just cited.

With respect to Section 4, Third, it seems quite clear in reading Section 4, Third -- admittedly, I haven't read 4, Third quite often -- but in reading it, it seems quite clear that it merely authorizes the Board to make expenditures and does not provide any

authority to charge money for arbitration proceedings.

In addition to that, with respect to the statutory history, which further bolsters this position -- and, as noted previously, the statutory history of the Railway Labor Act is used and favored by the courts -- in interpreting the Railway Labor Act, it appears quite evident that the statutory history also is against any proposed fee schedule in this circumstance.

As mentioned, the 1934 amendments, the statutory history is quite clear that rail labor made a huge concession, in that instance, giving up the right to strike, which as we all know is a huge weapon in labor relations -- gave up the right to strike for the minor dispute -- mandatory minor dispute procedure and the government funding of arbitration, which obviously is a huge benefit to rail labor.

As you can see, on the other side of the Act, the National Labor Relations Act, where that is not provided, I believe that does chill the filing of arbitrations due to the expense.

In addition, the 1966 amendments, which also

dealt with a considerable backlog -- and as I understand it, not as severe -- I mean, more severe than the backlog at issue here -- proposals were made to end government spending, and those -- I mean, government funding of the arbitration procedure, and those proposals were not enacted by the Congress because that would run counter to the purposes of the Railway Labor Act, which is obviously to resolve disputes between the parties.

Just in closing, I just want to note that what we seem to be doing here is heading down the same path we did with respect to the merger procedures, which will end up either in the D.C. Circuit Court or in the Supreme Court, considering how important this issue is, I believe, and as you can tell that you've obviously struck a nerve with respect to rail labor. And it seems to the United Transportation Union that these fees are an actual attack at the basis of labor relations in the railway system, labor system.

And I just want to note, I think the best way that that can be done to handle this, like has been done in similar situations in the past, is through a

Section 3 committee.

UTU obviously commends the Board in its efforts to improve the system and deal with the backlog of cases. But the best manner would be a unified approach to that problem.

And I think that can be resolved because I believe that it is in the interest of all the parties to resolve that. The quicker the cases are resolved, obviously, the happier the parties are.

Moreover, I just want to point out, I think what we're dealing with here also with respect to the fees is a possible slippery slope. You have fees. Obviously, at some point if you're running low on funding, the fees may be raised, and as the fees get higher, obviously that will further chill the ability of rail labor, who are obviously the ones that are going to file for arbitration in almost 99 percent of the cases since we bring grievances.

And so I believe that what we're on here is a slippery slope where rail labor will gradually go downward in its power and strength as the fees increase, which is a logical event in the scheme of

things.

It also seems with respect to it, while it's not emphasized or stated clearly, but I assume it's the party that brings the suit -- I mean, the action, a grievance for arbitration -- will be the one that pays.

And United Transportation Union believes that that should not occur. It should actually occur where the parties split the pay in the event that there is any fees imposed. However, UTU obviously does not believe that that will occur based on the legal precedent that I earlier stated.

In closing, I would just like to also point out that as -- and as was pointed out earlier, some of these local committees and smaller committees do not have a considerable amount of money. So while these fees may appear somewhat small to the Board, these fees could be quite significant to the smaller committees.

And the one thing that I don't believe I heard noted here today was that under the Railway Labor Act, as implied by the Railway Labor Act, there is a duty of fair representation that the rail unions have.

And under that, if committees are deterred

from filing suites -- I mean, filing for arbitration, there may be instance of a problem with that duty because I don't believe saying that we don't have enough money to file would be an adequate defense to that. And that could pose significant problems down the road for rail labor.

In closing, again, I would just like to thank the Board for the opportunity to present UTU's position, and I'd be happy to take any questions at this time.

CHAIRMAN HOGLANDER: Thank you. I'll ask you again, like I've asked all the others, how would the imposition of a fee schedule affect the filing of grievances under the current arbitration system, in your view?

MR. ELLIOTT: Just a similar response as the other parties. First of all, I believe it would have a chilling effect on the individuals bringing the -- the committees bringing the arbitrations.

And as I noted earlier, there would also be the slippery slope issue. As the fees get higher, the less likely that people will be able to bring the

smaller money cases and focus on the discharge.

I see the same exact effect in my handling. We have quite a few members under the National Labor Relations Act, and committees are quite -- have a very difficult time bringing arbitrations. And as the fees go up, the more difficult that will become.

So I think that similar to what everyone else said, it would have that chilling effect.

MS. VAN DE WATER: Mr. Elliott, did I understand you correctly to state that you thought it would be fair if the fee was split between the carrier and the union?

MR. ELLIOTT: Well, no. I mean, I think in the -- hypothetically, if this didn't go forward -- I do not believe, A -- well, two points. One, legally, I don't believe a fee is appropriate. And B, I think the fee policy-wise should not go forward, either.

However, in the event that the fee goes forward and survives scrutiny by the D.C. Circuit, I think it would be fairer if the fee was split. I don't believe -- I'm not in favor of the fee. I certainly want to make that clear.

MS. VAN DE WATER: Thank you, Mr. Elliott.

CHAIRMAN HOGLANDER: Ed, do you have any questions?

Thank you, Dan.

David Vaughn is next, please.

MR. VAUGHN: Chairman Hoglander, distinguished Members Fitzmaurice and Van de Water, I'm David Vaughn. I'm president of the National Association of Railroad Referees. Attending with me is James Conway, a distinguished arbitrator and the vice president of NARR, and also in the audience, NARR member and former NMB member Josh Javits.

We appreciate the opportunity to comment on the Board's proposal to begin charging fees for certain arbitration services. I have furnished to the Board copies of our written comments. Some additional copies are available.

NARR is, as you know, an association of professional arbitrators who hear and decide disputes arising under Section 3. Founded in 1990, the association has 83 dues-paying members, and in year 2003-2004 represent a majority of referees who hear and

decide labor-management disputes in the rail industry.

Our membership includes four previous members of the National Mediation Board and numerous members of prior presidential emergency boards. We have a profession interest, and hopefully a professional expertise, in the effective and proper functioning of Section 3.

A description of NARR's activities with which I believe the Board is generally familiar appear on our written statement. I will not repeat them here.

To promote the resolution of minor disputes on a more timely and expeditious basis, the NMB previously proposed sweeping changes in the administration of its Section 3 responsibilities. NARR previously addressed those proposed changes in writing. Our comments today will be limited to the Board's proposal to establish fee payments for a variety of administrative duties it has previously historically provided to the parties at no cost.

NARR continues to share the Board's interest in improving the Section 3 arbitration process. We have, for example, supported initiatives involving

video conferencing and electronic voucher submissions. We stand ready to continue our cooperation in the future.

While NARR applauds the NMB'S overall goals and has worked with the Board toward those goals, we believe that the proposed rules relating to fees exceed the scope of authority granted to NMB by Congress, as expressed in our previous comments, and frustrate both the spirit of the Act and the stated intent behind the proposal.

Indeed, we are persuaded that the imposition of fees would have a material adverse impact on the structure and functioning of the Section 3 arbitration process.

From the time the RLA was amended in 1934 to provide for compulsory arbitration, labor and management have relied on the administrative staff of the NMB to supply panels of arbitrators, confirm the establishment of public law boards, and provide other ministerial services as a routine aspect of the Board's statutory obligations in administering the Act.

That congressionally established system has

been well accepted and understood by rail labor and management alike, and has functioned essentially intact since adopted.

The Association believes that now shifting some of the costs in resolving rail labor-management disputes to the parties and claimants could alter the nature of the arbitration process in ways that would significantly diminish their rights.

We note that the railroad industry has undergone significant technological and economic changes in recent years. Those changes, which are likely to continue into the future, have impacted heavily on the manner in which railroads conduct their business, and have resulted in significant restructuring of the terms and conditions of employment for rail employees. As a result, serious pressures on collective bargaining relationships have been brought to bear.

While those changes have been taking place, the courts have been narrowing the scope of Section 6 bargaining. The result has been that many issues which might otherwise have been topics for negotiations have

been diverted by the courts to Section 3 arbitration.

Arbitration is, of course, an extension of collective bargaining, and the carriers and organizations have expended significant resources to address claims, file to test the transformative adjustments resulting from those industry changes, as well as to determine the rights and obligations of the parties and claimants under the existing agreements.

NARR respectfully suggests that erecting impediments to the use of arbitration under such circumstances would be misguided policy. In the NARR's view, the use of restrictive fees is not a formula for either improving rail labor-management relations or advancing the statutory purpose of avoiding interruptions in interstate rail commerce.

Some who have examined Section 3 activities have implied that a large volume of frivolous or duplicative claims are being arbitrated, possibly prompting considerations of fee assessments.

While we understand that the views of advocates may differ, our experience in recent years does not generally bear out that assumption. NARR

believes that the parties are doing a better job of screening and settling claims than previously, and that the number of marginal claims in particular has declined significantly.

However, even if large numbers of disputes are pending at any one time, the submission of such claims is not proof of process problems calling for regulatory responses such as those proposed. Other less sweeping alternatives may be available to address specific situations.

Reference has been made to the work of the Section 3 committee before. The Association is also willing to continue to work with the Board and the parties to attempt to address such situations.

We note that pending disputes, even those which may appear to be duplicative, may serve valid and important purposes, sometimes enabling the parties to focus or deflect politically charged issues, and often functioning as symbolic actions to signal important bargaining issues.

Many such cases are never intended to reach arbitration. Relatively few do. Thus, NARR believes

the imposition of fees to reduce grievance backlogs is unnecessary and, as indicated, may be destructive of the broader system of dispute resolution in the industry.

The Association is strongly of the view that in the absence of demonstrated abuse by the parties, significant cost savings to the Board, or material enhancement of the collective bargaining -- of the arbitration process, the charges envisioned, including charging fees to establish new public and special law boards, will distorted to serve the process. We believe that extreme caution should be exercised before imposing such potentially far-reaching changes.

Should the board have any questions, Mr. Conway and I would be pleased to respond. This otherwise concludes our presentation. We thank the Board for its consideration.

CHAIRMAN HOGLANDER: Thank you, David. I will ask you the same question I've asked the others: How would the imposition of a fee schedule affect the filing of grievances under the current arbitration system?

MR. VAUGHN: I think the Association would defer to the parties in that regard. They're much more aware of their budgets and their decision-making process.

I would simply note that as you erect a barrier to the filing of cases, you may have unintended impacts downstream before you get to arbitration in terms of the willingness and ability of the parties to settle cases and even consolidate cases that the Board would like to encourage in order to reduce the number of cases coming before it.

CHAIRMAN HOGLANDER: Thank you, David.

Read, Ed, do you have any questions?

MR. VAUGHN: Thank you.

CHAIRMAN HOGLANDER: And Joanna Moorhead is next, and I think last.

MS. MOORHEAD: I want to thank all of the board members today. I am Joanna Moorhead. I'm the general counsel of the National Railway Labor Conference.

The NLRC represents the nation's freight railroads, all the Class 1s and many smaller Class 2

and Class 3 railroads. And collectively, the carriers I represent are participants in most of the Section 3 arbitrations that are at issue in these proceedings. We very much appreciate the opportunity to offer our views today and thank you for allowing us to do so.

My oral statements today are a supplement to our written comments that we filed in September, which addressed all of the NMB's proposed rules and procedures, including this fee schedule, as well as all issues relating to the Board's authority to issue the regs.

My remarks will address why the members of the NLRC believe that the introduction of the fee schedule as proposed would be a constructive step to improve the resolution of minor disputes in the rail industry. We fully agree with the Board that fees much be a part of any reform of the Section 3 arbitration process.

Under the RLA, carriers and employee organizations are the beneficiaries of public funding for arbitrations, a benefit received by no other industry groups, including the airline industry that is also covered by the RLA.

It's been noted before how unique the railroads are and unique our Act is. We do not believe that the legal constraints in other industries, and certainly not in the Railway Labor Act on airlines which share this Act, are significant enough to justify the market difference.

We have long endorsed the principles that the parties in our industry, just as in all other industries, should bear the costs associated with the arbitration of their grievances. Requiring the parties to internalize both the cost and the benefits of arbitration results in a more cost-effective and efficient arbitration system.

While the limited fees proposed are far short of the full cost-sharing of arbitration that we advocate, the fee schedule is certainly a significant step in the right direction.

We believe that the current system imposes few restraints on pursuing any grievance, regardless of its merit, to arbitration. The existing system is like a lottery, where everyone gets a free ticket and you can play as much as you like. There's no disincentive to

filing a claim on any disagreement, no matter how lacking in merit.

Thus, unlike other industries, the likelihood of prevailing is not an important factor in pursuing a railroad case to arbitration because the arbitrator's fees and expenses, the most significant part of the case, are not borne by the parties.

The volume of cases generated by a system in which a frivolous case stands on equal footing with a meritorious one is, in our view, the root cause for most of the delays and inefficiencies in railroad arbitration.

Now, I'd like to make a comparison between the number of arbitrations in the airline industry, which has substantially more organized employees than in the railroad industry currently.

In recent years, the 15 largest airlines only averaged between 250 and 300 arbitrations. Again, that's 250 to 300 arbitrations for the entire group. This group represents about 90 percent of airline passenger and cargo operations.

In contract, the NRAB alone, and which we

understand from your statistics handles only between 15 to 20 percent of the case Section 3 disputes that go to arbitration, has twice that number of arbitrations each year. In 2004, there were 574 awards issued in NRAB cases, not including the cases that were withdrawn.

Now, I would add that in the vast majority of cases, the claims heard in rail arbitrations are denied or dismissed in their entirety. For example, of the 576 awards issued in those NRAB 2004 cases, more than 70 percent were denied or dismissed.

Filing fees would impose at least a nominal check on this flood of claims. The proposed fees are certainly far below the costs paid by parties in other industries, including again the airline industry. They would encourage a better balance between fair access to the arbitrable system and reducing the unmanaged torrent of current claimed.

The fee schedule would not deprive any employee or organization of the right to resolve disputes as contemplated by the Railway Labor Act. Instead, imposing even the minimal fees suggested in the proposed rule would encourage the resolution of

disputes by the parties.

And I would note the fees fall on carriers as well as they do on organizations, and both sides have incentives to resolve claims themselves, and could work together as they have worked. And I think everyone has recognized that they've worked effectively in improving the Section 3 system.

Grievances would be screened more carefully prior to submission to arbitration, with the end result that more cases of merit can be given the attention they deserve, as opposed to the current system whereby party advocates and arbitrators devote their time to sifting through an avalanche of cases in order to resolve the more meritorious claims.

And nor do these filing fees preclude arbitrations of small dollar cases, as has been suggested here. The parties routinely agree to arbitrate issues that do not rise to a significant monetary amount in any individual case by presenting a case designed to bring about a systemic resolution.

We've heard anecdotes today. Carriers have anecdotes as well. The bottom line is this system

would make us all work together more effectively.

At the end of the day, the parties must be given some financial incentive to resolve claims by themselves and to keep the filing of nonmeritorious claims to a minimum. Such a step would reduce delays in the process and lead to a far greater efficiency, goals announced by the Board in initiating its proposed rulemaking.

We appreciate your consideration of our comments today.

CHAIRMAN HOGLANDER: Thank you, Joanna. Again, how would the imposition of a fee schedule affect the filing of grievances under the current arbitration system, in your view?

MS. MOORHEAD: In our view, it would improve the system and put us on a more equal footing with all the other industries in the United States. Thank you.

CHAIRMAN HOGLANDER: Thank you.

Read, do you have any questions?

Ed?

MR. FITZMAURICE: Thank you, Joanna.

CHAIRMAN HOGLANDER: Is Mitchell Kraus gone?

I don't see him.

MR. KRAUS: No. I'm right here.

CHAIRMAN HOGLANDER: Oh, there you are. I wanted to in fairness, because as I understand the court reporter wasn't here when I asked the question I've asked everyone here, would you like to respond to that for the record? Because he's here now.

MR. KRAUS: Okay.

CHAIRMAN HOGLANDER: You know what the question is?

MR. KRAUS: Yes. Yes. I think I do know. I'm trying to remember what I said. I don't think I can reproduce it exactly, but I think I said two things, one, that I would certainly defer to Bill Miller, who's a practitioner speaking on behalf of the Section 3 subcommittee; but from my own perspective, that I thought that the effect of fees, contrary to my colleague Ms. Moorhead, would in fact reduce the ability to take smaller claims to arbitration, and that that would have a negative impact on rail labor and the employees.

Thank you very much for that opportunity.

CHAIRMAN HOGLANDER: And for anyone here, do either of the board members have any further questions?

MS. VAN DE WATER: No.

CHAIRMAN HOGLANDER: Ed, do you have any questions?

Then I deem this hearing closed, and we're off the record.

(Whereupon, at 11:27 a.m., the hearing was adjourned.)

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