STATEMENT OF THE NATIONAL RAILWAY LABOR CONFERENCE

Members of the Board:

My name is Joanna Moorhead. I am General Counsel of the National Railway Labor Conference ("NRLC") and am speaking for the NRLC today. As you know, the NRLC represents the nation's major freight railroads, including The Burlington Northern and Santa Fe Railway, CSX Transportation, Inc., Grand Trunk Corporation (Canadian National Railway), Kansas City Southern Railway, Norfolk Southern Railway, Soo Line Railroad (Canadian Pacific Railway), and Union Pacific Railroad, as well as many Class II and Class III railroads. Together, the carriers I represent are participants in most of the Section 3 arbitrations that are at issue in these proceedings. The railroads very much appreciate the opportunity to offer our views today, and I thank you for allowing us to do so.

The Board has limited today's meeting to issues relating to its proposed rule regarding the establishment of a fee schedule for certain arbitration services. This was one of a number of rules and procedures proposed by the Board in its recent notice of proposed rulemaking. 69 Fed. Reg. 48177 (Aug. 9, 2004). My statement today supplements the NRLC's written comments of September 20, 2004, which addressed all of the NMB's proposed rules and procedures, including the proposed fee schedule.

My remarks will address why the members of the NRLC believe that the introduction of user fees would be a constructive step to improving the resolution of minor disputes in the rail industry. I will not address the Board's legal authority to issue this proposal; the Board's authority to issue this and its other proposed rules and procedures was fully addressed in the NRLC's written comments. We do fully agree with the Board that user fees must be 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. Railroad management has long endorsed the principle that the parties in our industry, just as in all other industries, should bear the costs associated with the arbitration of their grievances. Requiring parties to internalize both the costs and the benefits of arbitration results in a more cost-effective and efficient arbitration system. While the limited fees proposed are far short of full cost-sharing of arbitration, the fee schedule is certainly a significant step in the right direction.

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 is no disincentive to filing a claim on any disagreement, no matter how lacking in merit. Thus, unlike in 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 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 of most of the delays and inefficiencies in railroad arbitration.

A comparison between the number of arbitrations in the airline industry, which has more than twice the number of unionized employees as in the railroad industry, is instructive. In recent years, the 15 largest airlines (accounting for more than 90% of passenger and cargo operations) only had between 250 and 300 arbitrations. Again, that is 250 to 300 arbitrations for the entire group, which employs between 300,000 to 350,000 unionized employees. In contrast, the NRAB alone, which only handles between 15-20% of the total number of railroad arbitration cases, has twice that number of arbitrations each year. In 2004, there were 576 awards issued in NRAB cases, not including the cases that were withdrawn . (The NMB's 2003 Annual Report puts the total number of docketed arbitration cases on the NRAB, PLBs and SBAs at around 4,300.) 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 the NRAB cases in 2004, more than 70% 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 the airlines. They would encourage a better balance between fair access to the arbitral system and reducing the unmanaged torrent of current claims which leads to abuse of the arbitration process.

The proposed fees would not deprive any employee or organization of the right to resolve disputes as contemplated under the Railway Labor Act. Instead, imposing even the minimal fees contemplated in the proposed rule would encourage the resolution of disputes by the parties. Moreover, 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 wherein party advocates and arbitrators must devote their time to sifting through an avalanche of dross in addition to resolving the meritorious case. Nor do the filing fees preclude arbitration of small dollar cases, as some of the unions have suggested. The parties routinely agree to arbitrate issues that do not rise to a significant monetary amount in any individual case by presenting a question designed to bring about a systemic resolution.

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 frivolous claims to a minimum. Indeed, such a step would reduce delays in the arbitration process and lead to far greater efficiency in the system -- the goals announced by the Board in initiating its proposed rulemaking.

We appreciate the NMB's consideration of these comments.