

**WRITTEN STATEMENT OF
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**BEFORE THE
SENATE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON TRANSPORTATION, HOUSING AND URBAN
DEVELOPMENT AND RELATED AGENCIES**

April 3, 2008

Thank you for your invitation to testify this morning about Amtrak's budgetary outlook, and specifically about the recent labor settlements on Amtrak and their impact on Amtrak's financial needs.

I am testifying on behalf of the Transportation Communications Union, TCU, an affiliate of the International Association of Machinists. TCU is the union which represents the most workers on Amtrak, approximately 7,500 Clerks, Carmen, On-Board Service Workers, Mechanical Supervisors, Maintenance of Way Supervisors, and Product Line Supervisors.

I have served as lead negotiator for TCU on several contracts with Amtrak since 1984. In the just-completed bargaining round I served as spokesman for a coalition of Shopcraft unions, which included the International Brotherhood of Electrical Workers, the International Association of Machinists, the Transport Workers Union and TCU. I was also the lead witness for all eight unions that were before Presidential Emergency Board 242.

I want to begin by thanking this Subcommittee for its historic support for Amtrak funding. The members we represent have had to endure the uncertainty of working for a company whose survival was never assured beyond the upcoming year. Every year we faced a serious attempt to underfund Amtrak, or in the case of the current Administration, to zero fund it. This funding uncertainty not only fostered job insecurity and concomitant low morale, but also was a direct contributor to the unprecedented nadir in collective bargaining that marked the last eight years on Amtrak.

The Administration has attempted every year to dismantle Amtrak by starving it of the federal resources it needs or pursuing risky privatization initiatives. Through those efforts the White House demonstrated its complete lack of understanding of the importance of Amtrak to our national economy and our competitiveness. It also demonstrated the Administration's disregard for the growing transportation needs of cities and states that are on the front-lines of addressing major congestion and environmental challenges. And by pursuing a reckless funding plan for Amtrak every

year, the Bush Administration exacerbated Amtrak's already enormous backlog of much needed equipment, infrastructure and safety and security upgrades.

Fortunately, each year this Subcommittee has stepped to the plate and funded Amtrak at levels adequate to keep a national system running. You have done this even though Congress as a whole has failed to pass an authorization bill since 2002. For that steady support I again want to thank you on behalf of all of the men and women we represent.

I am especially appreciative of you, Madame Chair, for calling an early hearing last year to highlight the plight of Amtrak employees who had worked for up to eight years without new contracts and a general wage increase. And I want to thank you and your committee colleagues for including forceful Report Language in last year's appropriations bill that called on Amtrak to negotiate fair and equitable collective bargaining agreements.

Amtrak's accomplishments have been remarkable given its year to year funding scramble for survival. Ridership records continue to be set, and service levels continue to improve. This is largely due to the dedication and professionalism of Amtrak workers, who have refused to let adverse working conditions and terribly bitter labor negotiations deter them from their work of making sure train sets, even terribly antiquated ones, run safely and efficiently, and that service to the passenger be of the highest caliber possible.

But year to year funding can never be the real answer to this nation's need for a technologically advanced coast to coast rail passenger system. The greatest obstacle to Amtrak's long term success is the absence of a permanent funding source. At this time of soaring gas prices, energy dependence, and the need for environmentally friendly modes of transportation, there is a growing public consensus that Amtrak can play a major positive role in all three areas. Amtrak President Alexander Kummant has laid out an exciting vision of growth in those markets where Amtrak service is now woefully inadequate but where the demand for decent speed rail passenger service clearly exists. To realize that vision will take consistent investment and planning, which is contingent on long term funding certainties.

That is why TCU and the rest of rail labor wholeheartedly endorses a multi-year funding plan that provides no less than \$2 billion a year with adequate allocations for both capital and operating needs. We will work with Senators and House Members to achieve long-term financial stability permitting Amtrak and its workers to produce the first-class national rail passenger system Americans deserve.

It is our sincere hope that the Senate and House will not only fund the current needs of Amtrak including the costs associated with newly signed collective bargaining agreements, but will adopt a multi-year blueprint for a truly national Amtrak system. Hopefully, a congressional blueprint for Amtrak will:

- provide multi-year federal funding of at least \$2 billion a year;

- restructure and pay-down Amtrak's debt, which is a product of 30 years of underfunding and neglect;
- reform the make up of Amtrak's Board to include a rail labor member and to ensure it is comprised of strong advocates of the company and its mission; and
- fund critically important security and safety upgrades.

But while we work to see a long term authorization passed, we must necessarily also focus on making sure Amtrak receives an adequate appropriation to not only fund next year's operations, but also to live up to the settlement terms of the just-negotiated contracts that ended an unprecedented eight years of negotiations without a strike. On the first count, TCU and rail labor support the \$1.8 billion for FY 2009 that the House and Senate Budget Committees provided. On the second, we strongly urge the Senate to appropriate an additional \$114 million that is needed to fulfill the economic terms of the recent contracts.

It is to that issue that I will devote the balance of my testimony.

To understand the need for the additional \$114 million, it is first necessary to understand why negotiations dragged on for eight long years, why a Presidential Emergency Board appointed by President Bush overwhelmingly decided on recommendations that were largely consistent with labor's proposals, and why the unions agreed to allow Amtrak to pursue additional funding to meet its contractual obligations rather than striking when the law permitted.

Negotiations for contracts opened on January 1, 2000. From almost the first day, Amtrak stated that no contract was possible without far-reaching, unprecedented concessions. In the eight years that followed, Amtrak never wavered from that position. While making take-it-or-leave-it demands that it knew the unions would never voluntarily accept, Amtrak also pronounced another departure from traditional bargaining: it would never agree to a dime of back pay. Under this strategy, the longer negotiations dragged on, the more money Amtrak saved. Amtrak had no incentive to compromise to reach a negotiated deal. As months turned into years, the ever-growing amount of back pay due itself became an obstacle to settlement.

Under the Railway Labor Act, there is no time limit to negotiations. The parties cannot resort to self-help until released by the National Mediation Board (NMB). Repeated requests over the years by several of the unions for release from mediation were opposed by Amtrak, and ignored by the NMB.

Finally, on October 18, 2007, almost eight full years since bargaining began and in some cases seven years after the NMB had assigned mediators to the disputes, the NMB proffered binding arbitration to the eight unions who were then in mediation. (Four unions had elected not to be in mediation and they were therefore not subject to the proffer of arbitration.) The involved unions were: the Brotherhood of Maintenance of Way Employees – Teamsters; the International Brotherhood of Electrical Workers; the International Association of Machinists & Aerospace Workers; the Brotherhood of

Railroad Signalmen; the Joint Council of Carmen, comprised of the Transport Workers Union of America and TCU; the American Train Dispatchers Association; the National Conference of Firemen & Oilers/ Service Employees International Union; and two ARASA (Supervisors) crafts of TCU.

After the involved unions all rejected the proffer of arbitration, President Bush, on November 28, 2007, created Presidential Emergency Board (PEB) 242. Under the Act, the Board had thirty days to investigate the dispute and issue non-binding recommendations, after which there would be a thirty day cooling off period at the end of which the parties would be free to exercise self-help.

President Bush appointed the following individuals to serve on the PEB: as Chairman, Peter Tredick; as Members, Ira Jaffe, Joshua Javits, Annette Sandberg, and Helen Witt. Four of the five had previously served on other PEB's appointed by President Bush. Chairman Tredick had served as Chairman of PEBs 240 and 241, which made recommendations in 2007 to settle disputes on Metro North Commuter Railroad and several of its unions. Joshua Javits and Helen Witt were former Chairmen of the National Mediation Board, appointed by President Reagan. Annette Sandberg had been an official in the Department of Transportation under President Bush.

The Board held three days of hearings in December, 2007, at which the parties fully presented their positions. All eight unions presented a common position to the Board.

The Board issued its Report to the President on December 30, 2007.

The Report for the most part recommended the proposals for settlement that had been advanced by the unions. It advocated adoption of the wage terms of the last two national freight railroad settlements to cover the period January 1, 2000 through December 31, 2009. Wages would be paid retroactively to the dates the increases in the freight contracts were effective, to be offset by retroactive health insurance contributions and COLAs already paid. There would be no changes in work rules.

To address Amtrak's argument that Congress had not appropriated enough funds to allow them to pay retroactive wages, the Board recommended two divergences from the national freight agreements. First, it recommended that the back pay component of the settlements be paid in two installments: 40% at the time of signing, and the remaining 60% one year later. Secondly, the Board limited back pay to employees in service with Amtrak on December 1, 2007, the day the Board was established. By doing so, the Board eliminated all employees who had retired or died between January 1, 2000 and December 1, 2007 from receiving any compensation for the work they had performed. The Board stated it did this in response to Amtrak's inability to pay argument as a way to "reduce somewhat the cost of the retroactivity pay..." (P. 40 of Report of PEB 242).

Upon issuance of the Board Report, negotiations between Amtrak and each of the eight unions immediately commenced, and contracts were reached with each union on

January 18, 2008. The contracts followed almost to the letter the recommendations of the PEB. However, there was one significant departure. Amtrak insisted that it could not agree to the second back pay payment until sufficient funds were appropriated by Congress. In order to avoid a strike, which would have been legally permissible on January 30, 2008, the unions agreed to a contingency provision. Under that provision, the 60% second retroactive payment would be due one year from the first retroactive payment, which will occur within sixty days after contract ratification. If Amtrak determined that it lacked the money to pay that installment, it would notify the unions and, after a sixty day negotiation and cooling off period, the unions would be free to strike.

All of the contracts involving the eight unions before the PEB have now been ratified by their memberships. The four unions who also had not reached agreements since 2000 but were not before the PEB have also reached agreements that mirror the Board's recommendations. Those contracts have either been ratified or are in the process of being ratified. Three crafts (clerks, on-board service workers, and product line supervisors) reached agreements in 2003 for the period January 1, 2000 through December 31, 2004, but are without agreements for the period 2005 through 2009. They are now in negotiations with Amtrak, and I am confident agreements will be reached in the immediate future.

In summary, then, what has been the most difficult and contested negotiations in Amtrak's history are finally on the verge of being resolved with a fair outcome. Only one outstanding issue remains, and that is payment of the second back pay installment. Amtrak estimates that it requires an additional specific appropriation of \$114 million to be able to pay that second back pay installment.

I am here today on behalf of all of rail labor to urge this Subcommittee, and Congress as a whole, to bring this bargaining round to a fair conclusion by appropriating the \$114 million to allow Amtrak to fulfill its back pay obligation to its employees.

As Congress considers this request for appropriation, I believe certain facts should be front and center. First, the \$114 million needed for back pay covers an eight year period, which amounts to less than \$15 million a year.

Most importantly, the contract is the product of recommendations by a well-respected group of neutral experts, none of whom could be accused of harboring a pro-labor bias or background. They were guided by the evidence before them, and concluded there could be no rationale for Amtrak workers to be paid less than their counterparts in the rail industry simply because the company they worked for received public subsidies. The Board adopted the traditional pattern for Amtrak workers – the national freight agreements.¹ In doing so, the Board noted that had it looked at contracts of rail workers

¹ "There is no dispute that ... the Freight Agreements have served over the years as the historical pattern referenced for establishment of wages, benefits, and working conditions, at Amtrak." (P. 14 of Report of PEB 242)

that worked for other subsidized carriers, namely commuter rail workers, its recommendations on wages would have been significantly higher.²

As to the prolonged nature of negotiations, the Board found the blame lay squarely at Amtrak's door. "... the evidence paints a fairly clear picture that places much greater responsibility on Amtrak for the failure to ink a deal over the prolonged period since December 31, 1999, than on the Organizations." (P. 37 of Report of PEB 242.)

In fashioning its recommendations, the Board noted the "tremendous gains in productivity in recent years by the employees represented by the Organizations." (P. 30 of Report of PEB 242.)

On the back pay issue, the Board unequivocally wrote, "We are persuaded that, in this case, nothing short of full retroactivity is fair and equitable and appropriate to begin to restore to employees the lost wages that resulted from their inability to obtain a successor Agreement over the unprecedented eight year period that these employees have continued to work without a new agreement. Even an award of full retroactivity will result in Amtrak having had the benefit of an interest-free "loan" of the pay that would have been granted on an ongoing basis if the Freight or other applicable pattern had been timely incorporated as part of an Agreement." (P. 38 of Report of PEB 242.)

Because Amtrak could not credibly point to collective bargaining settlements in the rail industry, freight or commuter, to justify its no back pay position, it relied principally on an argument that it simply could not afford to pay retroactive wages without jeopardizing its operations.

Amtrak failed to mention that not once over the course of the eight years had it asked Congress to appropriate money to fund an eventual settlement, including back pay. In the absence of such a request, I submit it was disingenuous for Amtrak to suggest that Congress' failure to appropriate such money in advance as evidence of congressional intent that Amtrak workers should work for lower wages than comparable workers in the rail industry.

In fact, the PEB cited this very Committee as evidence that Amtrak's arguments on this score were remiss. On page 11 of their Report, the Board wrote that "the Senate Committee on Appropriations recently noted that most of Amtrak's employees have gone more than seven years (now 8) without a general wage increase, and that consequently many craftsmen have fallen further and further behind craftsmen conducting identical work for freight and commuter railroads. This report went on to state that 'Amtrak's failure to reach a labor settlement is not a result of inadequate Federal funding.'"

² The Board found that if the freight pattern was not used as the basis of settlement, "One would then be compelled to more closely examine similarities between Amtrak's operations and those of Commuter Rail and Urban Transit in which wages and benefits are significantly higher." (P. 23 of Report of PEB 242)

The PEB also referenced your counterpart committee in the House who in 2007 reported that “Amtrak’s wages, in many cases, are well below market...”

Labor did not rely on those reports to make our economic case to the PEB. The facts of the wage comparisons spoke for themselves. But the reports did demonstrate that underpayment of Amtrak workers was not necessarily congressional intent, as Amtrak tried to suggest.

But in fashioning what they considered a fair settlement based on traditional comparators such as pattern settlements in the industry, wages paid for comparable work, and economic trends such as inflation, the Board did in effect punt one part, albeit a small part, of the settlement to Congress: the second back pay installment.

In doing so, the Board wrote that its “role is to find a fair and reasonable basis for agreement. We must consider traditional factors relevant to the collective bargaining process but cannot tailor those recommendations to a prediction of Congressional action. We are cognizant of the political and financial constraints facing Amtrak, and have recommended adoption of contractual terms that are reflective, in part, of those realities. But we agree with PEB 234 (the last Amtrak PEB) that Congress should be informed of the “true cost” of Amtrak’s service. It is then for Congress to determine whether to provide the funding necessary for passenger train service.” (P. 11 of Report of PEB 242.)

Labor believes that it was never Congressional intent to base Amtrak’s survival on having Amtrak workers endure substandard wages and working conditions. Just as Amtrak suppliers, vendors and contractors expect to be fully compensated, Amtrak workers deserve to be treated fairly, and to not have to discount their labor as the price of keeping a national rail passenger service funded.

Now the decision is squarely in Congress’ hands. Appropriating the \$114 million will bring this round of bargaining to a long overdue conclusion. Failure to appropriate will foment another year of labor unrest, at the end of which once again Amtrak workers will have to contemplate a strike as the only legal means to obtain the settlement that the Board recommended and to which Amtrak agreed.

Amtrak admits that the lion’s share of the settlements is payable based on current and anticipated funding action – that is, Amtrak is not requesting additional funds to pay the wage increases over the ten year life of the agreement, nor the 40% of the back pay due payable in 2008. The only piece that Amtrak says it requires additional funding is for the 60% back pay component payable in 2009, which Amtrak calculates as \$114 million.

All of labor on Amtrak strongly urges this Subcommittee, and Congress as a whole, to appropriate that additional \$114 million.

There is one other issue I would like to address before concluding. I mentioned before that in an attempt to reduce the amount of back pay due, the PEB recommended

that employees who retired and the estates of employees who died between January 1, 2000 and December 1, 2007 would not be eligible for any back pay. All of the unions vigorously disagreed with this recommendation, but Amtrak would not agree to ignore it without funding to pay for it. Amtrak estimates the cost of funding the back pay for retired and deceased employees as between \$13 and \$14 million.

We believe that it is extremely unfair that these employees who contributed so much to Amtrak's success be arbitrarily excluded from any consideration for the time they worked during the seven year period. Amtrak didn't even propose this as a resolution. The Board came up with it out of thin air, arbitrarily picking the date of its appointment as the cut-off date for back pay. Its only stated reason was to reduce costs. Many of the affected workers had been there from Amtrak's creation. Excluding them is both inequitable and bad public policy. As a result of this action, their railroad retirement annuities were permanently reduced. We don't believe that Congress ever intended that retirees be treated in such a manner. For an additional \$13 to \$14 million, this unfair situation could be rectified. We urge Congress to give it serious consideration.

In conclusion, it is time to move beyond the bitter labor relations of the past eight years. That will be impossible until the issue of funding the second back pay installment is resolved, since a lack of resolution will throw the parties back into impasse and a possible strike. We believe that it was never congressional intent to embark on such a course, and past Amtrak management used it as a smokescreen to justify their confrontational agenda.

But we believe that there are valid reasons for optimism going forward. Amtrak President Alex Kummant has said he wants to establish a new partnership with Amtrak workers and their unions. He was not there when Amtrak's bargaining strategy was devised. Nor were most of the current Board of Directors. Amtrak unions wholeheartedly seek a cooperative relationship with Mr. Kummant and his management team. We want to work together to strive for the best possible service to the riding public and the expansion of service to new areas and along existing routes so that Amtrak fulfills its promise as a major transportation alternative. Working together, we can accomplish so much for the public good.

It is time to embark on that positive journey, and to put the strains of the past behind us. That must begin with fulfillment of the contractual terms just agreed to, which includes the second back pay installment. I urge Congress to appropriate the necessary \$114 million to finally bring this round to a fair and equitable conclusion. Thank you.