

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE No. 772

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January 17, 2023
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Public Record

**OVERSIGHT HEARING PERTAINING TO
UNION PACIFIC RAILROAD COMPANY'S EMBARGOES**

UNIONS' RESPONSE REGARDING EMPLOYMENT DATA

The Brotherhood of Maintenance of Way Employees Division/IBT, Brotherhood of Railroad Signalmen, International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division, International Brotherhood of Boilermakers, National Conference of Firemen and Oilers/32BJ SEIU and the Brotherhood of Locomotive Engineers and Trainmen (BLET) submit this supplemental filing regarding rail industry employment data and in response to questions asked by Board members regarding Union Pacific ("UP") employment and hiring.

1. In advance of the December 13, 2022 hearing in this matter, the Unions submitted data regarding recent UP employment trends and rail industry employment trends generally. They showed that for 2022 the number of rail workers covered by the two rail industry National Health and Welfare Plans ("National Plan") was 98,904 (averaged over twelve months); whereas the total in 2021 was 100,446, the total in 2020 was 108,417, the total in 2019 was 125, 693, and the total in 2016 was 134,898. The Chairman asked about the difference between the National Plan number for 2022 (98,904) and carrier computations of employees in the range of 115,000. Counsel for the Unions speculated that the difference might be made up by employees participating in a hospital association plan, and employees who had opted out coverage. The Chairman indicated that he would like to see a reconciliation of the employment numbers provided by the Unions and the numbers provided by the Carriers. Counsel for the Unions

investigated the question and can confirm that his speculation was correct.

There were 12,598 rail workers (employed by UP) whose health benefits were provided through Iron Road Healthcare, a hospital association. It should be noted that the number of employees covered by Iron Road is also precipitously down since implementation of the railroads' new business model. There were 18,314 participant employees in 2016, 17,590 in 2017, 17,453 in 2018, 16,400 in 2019, 13,734 in 2020, and 12,371 in 2021; a 31% decrease from 2106 to 2022—a larger reduction than for the National Plan over the same period. There were also about 1,100 Norfolk Southern employees in the Wabash Memorial Hospital Association, but due to reduced funding resulting from cuts in employment, those employees were transferred to the National Plan effective January 1, 2023. *See* attached Statement of Peter Kennedy.

Additionally, there are rail workers who avail themselves of an “opt-out” option under the National Plan because they are eligible for healthcare coverage under another health benefits plan (typically a plan covering a spouse); generally a couple thousand employees exercise this option. *Id.* If the number of Iron Road and Wabash Hospital Association covered employees, and the opt-outs from the National Plan, are added to the total employees covered by the National Plan, the Unions' industry-wide numbers and the carriers' industry-wide numbers are in the same general vicinity. But it must be recognized that, by all calculations, rail employment is dramatically down since 2016 and substantially down since 2019. And despite the carriers' assertions that they have been increasing employment since the hearings in *Ex Parte 770*, Union membership and National Plan data are to the contrary; and even if the carriers' data is accepted, it shows, at best, a slight uptick in employment, not the sort of increase that was advertised; and certainly not the surge that was needed.

2. When UP CEO Lance Fritz was questioned about the disparity between the Unions' employment numbers and the carriers' employment numbers, he quickly responded that "Our numbers are right, I sign a document that goes with the 10K and 10Q that says the numbers are accurate". Putting aside the question of whether Mr. Fritz signing a document that contains employment numbers (which he surely does not personally verify) means that the numbers are actually correct, the disparity may be explained by the fact that the carriers report department numbers which include first- and second- line managers, and exempt (*e.g.* confidential) employees, whereas the Unions are reporting craft employee numbers.

3. In response to questions about whether UP's service problems were a result of the dramatic reductions in the workforce (those who provide the service), Mr. Fritz responded that UP only eliminated "unnecessary" work. Of course, what is necessary is both subjective and dependent on the goal. If the goal is simply to reduce the Operating Ratio to 55, then a lot of work can be deemed "unnecessary". And if attainment of the goal is measured by how fast a train moves from terminal "A" to terminal "B" (but not whether cars are picked-up and delivered on time), then work that was eliminated may not have been "necessary" work. But if the goal is providing good, and responsive service to the shippers, and if success in attaining that goal is measured by whether cars are picked up and delivered in a timely and effective manner that meets the needs of the customers, then the work eliminated was necessary work (customers don't buy system velocity and reduced dwell time, they buy pickup and delivery of cars).

4. In response to questions about whether UP had a sufficient number of train, engine and yard (TE&Y) employees, Eric Gehringer stated that UP had reached its goal of hiring 1400 TE&Y employees. Of course, the 1400 hires goal was unilaterally set by UP; just because UP

attained its own goal does not mean the goal was reasonable. And, once again, UP has only provided hiring numbers, not net workforce numbers; it may have hired 1400 people, but that does not mean that it has actually increased its TE&Y workforce. As shown by the Unions, BLET membership on UP was actually down by 297 engineers between October of 2021 and September of 2022; and SMART TD conductor/trainmen membership on UP was down by 26 employees between October of 2021 and September of 2022. UP's own numbers show 13,554 T&E department employees in October of 2021 and 13,862 in October of 2022-- an increase of 308 employees (a 2.2% increase). At the hearing in this matter, Mr. Fritz said that UP was "hiring like crazy right now". To assert that UP's level of hiring constituted hiring like crazy is akin to comparing a creek to the Mississippi River.

Respectfully submitted,

/s/Richard S. Edelman

Richard S. Edelman

Mooney, Green, Saindon, Murphy and Welch PC

1920 L Street NW, Suite 400

Washington, D.C. 20036

Tel: (202) 783-0010

Fax: (202) 783-6088

Counsel for Brotherhood of Maintenance of Way
Employees Division/IBT, Brotherhood of Railroad
Signalmen, and International Association of Sheet Metal,
Air, Rail and Transportation Workers/Mechanical Division
International Brotherhood of Boilermakers, National
Conference of Firemen and Oilers/32BJ SEIU, and
Brotherhood of Locomotive Engineers and Trainmen

January 14, 2023

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STATEMENT OF PETER E. KENNEDY

I, Peter E. Kennedy, declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct and based upon personal knowledge:

1. I am the Director of Strategic Coordination and Research for the Brotherhood of Maintenance of Way Employees Division/IBT ("BMWED" or "Union").
2. One of my responsibilities has been to represent BMWED in dealings with rail carriers, health benefits insurers and health benefits administrators regarding rail industry health and welfare benefits. While that mostly involves work concerning the rail industry National Health and Welfare Plan (National Plan), there are some railroad workers, primarily ones employed by the Union Pacific Railroad, who are covered by a "Hospital Association" plan.
3. The Hospital Association plan in which certain Union Pacific employees participate is called Iron Road Healthcare. Iron Road Healthcare has reported that in 2022 there were 12,598 employees participating in that plan. In 2016 there were 18,314 employee participants, and in 2019 there were 16,400 employee participants. A copy of an email from the Iron Road Healthcare administrator that documents those membership numbers is attached to this declaration. There was another industry hospital association, the Wabash Memorial Hospital Association, that had about 1,100 Employee participants that were employed by Norfolk Southern. However, the Wabash Memorial Hospital Association Employee participants were transferred to the National Plan, effective January 1, 2023, due to the lack of adequate funding to continue the Wabash Memorial Hospital Association, which is partially attributed to the cuts to employment levels that also reduces the number of participants and thus, contributions, to the plan. Iron Road Healthcare representatives have also expressed concerns about funding for their plan as reductions of employees have reduced participants and the financial contributions to the plan.
4. Employees who are covered by the National Plan have the ability to "opt-out" of coverage if they are covered by another health insurance plan (e.g. the plan that covers a spouse) and provide proof of such coverage. Such employees receive a payment of \$100 per month because they have opted-out of the National Plan. Generally, there are a couple of thousand employees who opt out of the National Plan.

Date: January 13, 2023

/s/ Peter Kennedy
Peter E. Kennedy

Richard Edelman

From: Peter Kennedy <PeterK@bmwe.org>
Sent: Thursday, January 5, 2023 2:36 PM
To: Richard Edelman
Subject: FW: Iron Road Healthcare - Membership request

From: Rich Egan <regan@ironroad.com>
Sent: Thursday, January 5, 2023 2:28 PM
To: Dennis Albers <dralbersbmwe@aol.com>
Cc: Peter Kennedy <PeterK@bmwe.org>
Subject: Iron Road Healthcare - Membership request

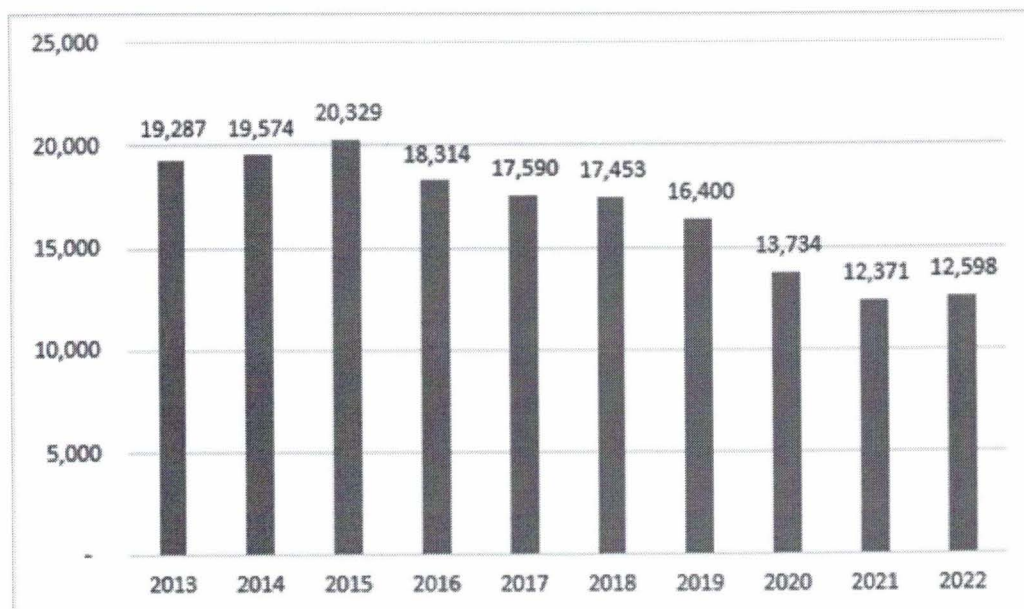
Dennis,

Here is information on our membership experience since 2013. The numbers are averages for the year. We have seen a slight increase in membership for 2022.

Please reach out anytime.

Best,

Rich



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