

BEFORE A BOARD OF ARBITRATION

Pursuant to Article 1, Section 4 of
the New York Dock Conditions

Finance Docket No. 32760

R.D.M.

JUN 28 1999

_____)
In the Matter of Arbitration)
Between)
Brotherhood of Locomotive Engineers)
("BLE"))
And)
Union Pacific Railroad Company)
("UP"))
_____)

OPINION AND AWARD

Members of the Board of Arbitration

Eckehard Muessig, Chairman
Jim McCoy, Organization Member
Scott Hinckley, Carrier Member

OPINION OF THE BOARD

I. INTRODUCTION

On August 6, 1996, the Surface Transportation Board ("STB") in Finance Docket 32760 approved the common control and merger of the rail carriers controlled by the Union Pacific Rail Corporation (Union Pacific Railroad Company and Missouri Pacific Railroad Company) ("UP") and the rail carriers controlled by the Southern Pacific Rail Corporation (Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation and the Denver and Rio Grande Western Railroad Company) ("SP"). The STB imposed the labor protective conditions contained in New York Dock ("NYD").

II. BACKGROUND AND SUMMARY OF FACTS

On January 13, 1998, pursuant to conditions as imposed by the STB, the Carrier served a Section 4 NYD notices on the General Chairmen of the SP Western General Committee and the UP Western General Committee concerning its desire to initiate negotiations relative to the terms and conditions of an Implementing Agreement for the Los Angeles Hub ("LA Hub") directed toward consummation of the approved transaction.

In its Operating Plan filed with its merger application, the Carrier indicated that it would implement a "hub and spoke" operating scheme for the merged railroad. Instructive for this dispute is that the LA Hub was the fourth Hub to be negotiated that involved the above-cited committees. Earlier, the two committees successfully negotiated and had BLE membership ratification for NYD Implementing Agreements at the Salt Lake, Roseville and Portland Hubs.

Following its January 13 notice, the Carrier prepared two documents relative to its LA Hub negotiations. One document contained terms covering a number of subjects and conditions similar to those contained in the earlier Hub Implementing Agreements. The other document was based on standard NYD conditions. However, prior to beginning its negotiations to finalize the Implementing Agreement, the Organization was asked if it wished to continue to negotiate the Implementing

Agreement along the lines of the earlier Hub negotiations or whether standard NYD conditions would form the basis for the negotiations. The Organization chose the same process and procedures as the parties had used when successfully arriving at the three earlier Hub Agreements.

Following several negotiating sessions, the negotiators reached agreement on a merger Implementing Agreement for the LA Hub ("The Implementing Agreement") in mid-November 1998. It was then sent to the BLE membership for a ratification vote. However, unexpectedly, an undated four page document, titled LA Hub Proposed Agreement signed by Mr. J. R. Saunders, Local Chairman, Division 5 and D. W. Hannah, Local Chairman, Division 56 was distributed to the BLE membership. This document in effect asked the BLE members not to ratify the negotiated Implementing Agreement. Indeed, the Agreement then failed to be ratified.

The Carrier asserts that the Organization engaged in bad-faith bargaining. It contends that the agreed upon and initialed Implementing Agreement was obtained falsely. Therefore, it argues that it now is invalid.

Subsequently, the matter was advanced to arbitration pursuant to Section 4 NYD. Although Section 4 of the New York Dock Conditions contemplates the adjudication of a dispute by a single Arbitrator, the parties agreed to establish this three Member Arbitration Board to decide this dispute. The undersigned was selected by the parties to serve as its Chairman.

On April 8, 1999, a hearing was held in St. Louis, Missouri. The Chairman, at the outset, restricted each party to one spokesman who was to be limited to a thirty minute presentation to be used in any manner desired. At the conclusion of the presentation, each spokesman was allowed fifteen (15) minutes for rebuttal. The spokesmen were Mr. Scott Hinckly, the Carrier member of this Board, and Mr. Richard Radek, a BLE Vice President and Director of Arbitration for the BLE. Mr. Jim McCoy, the BLE Member of this Board and a Vice President of the BLE, was provided a rebuttal opportunity at the end of the hearing to address the Board in view of his role as a Board member.

The Board granted Mr. Radek's motion to file a post-hearing brief to be received by the Chairman no later than April 23. The Carrier also chose to file a brief, subject to the same time restrictions. The Parties' briefs were received in a timely manner and are a part of the record considered by the Board in arriving at this Award.

III. QUESTION AT ISSUE

What shall be the terms of the Implementing Agreement for the selection and assignment of forces within the Los Angeles Hub?

IV. POSITIONS OF THE PARTIES

The following is believed to be an accurate abstract of the parties' substantive positions in this dispute. The absence of a detailed recitation of each and every argument or contention advanced by the advocates in this arbitration does not mean that the issue was not fully considered by the Board.

THE CARRIER'S POSITION

Basic to the Carrier's position is its strongly held view that it sincerely attempted to reach a negotiated Implementing Agreement with the Organization. However, because the two Local Chairmen authored and distributed the four page letter, noted earlier, to its membership, the Carrier contends the Implementing Agreement failed to be ratified. The Carrier asserts that the Organization engaged in bad-faith bargaining. Specifically, the BLE had the option at the outset to bargain on essentially NYD conditions or to follow the pattern used to arrive at Implementing Agreements at the other hubs. They chose the latter.

Accordingly, the parties, by expanding beyond basic NYD, could now bargain, for example, over such major issues as automatic certification, seniority, vacations, relocation benefits, etc. The Organization accepted this choice. However, the Carrier points out, in its letter to its membership, the two Local Chairmen claimed that the Implementing Agreement, agreed on by its negotiators, was "shoved down our throats." The Carrier asserts that the action taken by the two Chairmen shows a failure to adhere to generally accepted bargaining practices. Therefore,

Carrier contends that the initialed Agreement "was obtained falsely and, thus, is invalid." Accordingly, the Carrier now has presented a proposed Implementing Agreement that it contends adheres to the generally accepted basic NYD standards.

The Carrier submits that the Arbitrator and, in this case, the Board derives its authority and serves as an extension of the STB. Therefore, the committee must carry out the STB's mandate. In this respect, the Carrier relies upon a number of authorities. Among these are Interstate Commerce Commission ("ICC") (the predecessor to the STB) decision of January 5, 1989 in Finance Docket No. 30965 when it stated:

"The arbitrator's duty, simply stated, is to fashion an implementing arrangement that will reconcile worker protections with the terms and the objectives of the transaction that we approved. If those terms and objectives cannot be achieved without modification of existing work rules and collective bargaining arrangements, he clearly has the authority to modify such arrangements to the extent necessary to carry out his mandate."

Accordingly, this decision established that the Arbitrator (in this case, a three Member Board) has broad authority in matters such as this.

The Carrier explained how the extensiveness and complexities of the geographic area in which the UP and SP operated required it to make a number of critical decisions to comply with the STB's mandate. In this respect, it argued and provided its reason for including the following major issues in the Implementing Agreement:

1. A consolidated engineers' seniority roster would be prepared by dovetailing the seniority of all engineers into a common roster, with certain work "prior righted" for a two year period.
2. A single CBA would be applicable. In the Salt Lake and Portland Hubs, the Carrier selected the UP Idaho Collective Bargaining Agreement as the single Agreement for both of the hubs. By selecting the Idaho Agreement for the Los Angeles Hub, the Carrier would have a single CBA for the three hubs, which the Carrier submits would contribute to greater efficiency.

3. Modified Pool Operations to comport with the various routing options now available because the merger would be created.
4. Operating plans for train and engine crews would be the same. Basically, this means that the crew would go on and off duty at the same location and, when required, would stay at the same lodging facilities.

In summary, the Carrier maintains that its proposal complies with the STB decision and that this Board should impose its proposed Implementing Agreement to settle this case.

THE ORGANIZATION'S POSITION

The Organization contends that resolution of the key issues in this case must take into account substantive actions taken by the parties before and after the merger application had been approved. One major consideration in this regard was the modification of the SP-Western Lines Schedule Agreement.

Following negotiations, on November 3, 1997, the Parties consummated an Agreement referred to as the "BLF/SP West Modification Agreement" ("The Modification Agreement"). The Organization contends that the Modified Agreement contemplated the selection of the SP-West Lines Agreement as the CBA for all engineers in the Los Angeles Hub. That Agreement preserved certain unique provisions of the SP-West Lines Agreement, including enhanced protection for SP engineers who probably would be affected by the eventual restructuring of work in the Los Angeles Basin. The Union strongly contends that the Carrier gained significant work rule concessions. Accordingly, the Union argues the SP-West Agreement now modified and effective for the large preponderance of LA Hub engineers became the foundation agreement for the Hub Implementing Agreement. The Union states: "The two simply must go together because they were designed as such, and the selection of the SP-West Agreement in the LA Hub was not a casual decision."

Moreover, the Organization points out that the Carrier selected the SP-West Agreement for Trainmen in the LA Hub. Therefore, extending it to the Engineers would be appropriate and consistent with the Carrier's earlier decision. It further argues that the Carrier may not select the Idaho Agreement, because it is not in force in any location within the LA Hub territory. In support of this contention, it relies upon a holding by Arbitrator Yost, dated April 14, 1997, in the Matter of Arbitration between the United Transportation Union and the UP.

Last, by way of substantive action taken prior to the finalization of the LA Hub Implementing Agreement, the Organization pointed out that the Carrier, in exchange for its support for the merger application, made certain commitments to the Organization. Particularly relevant to this dispute are two Carrier's letters, both dated March 8, 1996. The Organization notes that these letters made a number of commitments that should be considered in the matters at issue before the Board. In its letter, the Carrier stated (quoted verbatim) that:

1. Union Pacific will grant certification as adversely affected by the merger to the 1023 engineers projected to be adversely affected in the Labor Report Study and to all other engineers identified in any Merger Notice served after Board approval.
2. Union Pacific also commits that, in any Merger Notice served after Board approval, it will only seek those changes in existing Collective Bargaining Agreements that are necessary to implement transactions, meaning such changes that produce a public transportation benefit not based solely on savings achieved by Agreement change(s).
3. The final issue which was discussed pertained to integration of seniority as a result of post-merger consolidations and implementing agreements. BLE asked if Union Pacific would defer to the interested BLE committees regarding the method of seniority integration where the committees were able to achieve a mutually agreeable method for doing so. In that regard, Union Pacific would give deference to an internally devised BLE seniority integration solution, so long as; 1) it would not be in violation of the law or present undue legal exposure; 2) it would not be administratively burdensome, impractical or costly; and 3) it would not create an impediment to implementing the operating plan.

Accordingly, the Organization submits that the final LA Hub Implementing Agreement must give weight to the commitments briefed above.

Turning then to the specifics of the Implementing Agreement in this dispute, the Organization proposes the retention of the November 1998 Implementing Agreement in its entirety except as noted below.

The Organization, both in its detailed brief and before this Body, requests that the 25 mile zone provision (Article VI B-3 of the Implementing Agreement) be removed because it is unnecessary. It claims that the Yost Award previously cited came to the same conclusion, under a similar set of circumstances.

It further believes that application of Article III, Pool Operations/Assigned Service to the LA Hub is not practical or cost effective, asserting that the Carrier's proposal would only diffuse the workforce to too many points, a scheme that would not be operationally sound or in the public interest. The Organization rejects the practicability of the LA to Yermo/Yuma Pool service, stating that the same idea had been tried in the past and failed because of the distances involved and because of operational problems such as traffic density and special grade braking requirements in that territory. The Organization also suggests greater benefits would be achieved by adding two new pool provisions, as shown below:

1. On Duty: West Colton. May work to Gemco/Los Angeles/Dolores-Harbor/Anaheim & Return. Must tie up at the originating terminal. Home Terminal West Colton.
2. On Duty: Los Angeles/Dolores. May work to Gemco/West Colton/Anaheim. Home Terminal Los Angeles. May report to either Los Angeles or Dolores. Must tie up at the originating terminal.

In summary, the Organization contends that the changes it has proposed to the Implementing Agreement provide the merger benefits sought by the Carrier and is "in harmony with the applicable pre-negotiations commitments and the New York Dock conditions."

Nonetheless, the Organization states that, if the Board decides otherwise, a number of other provisions should be part of any revised

Implementing Agreement. With respect to which CBA should be applied to the LA Hub, the Organization maintains that the SP-West Agreement be selected. Concerning the Seniority provision, the Organization agrees that the seniority provision contained in Article II of The Implementing Agreement meets the March 8, 1996 Carrier commitment letter and should, therefore, be in the Board's Award of an Implementing Agreement. The Organization urges that Article IV of the November 3, 1997 SP-West Modification Agreement concerning disability and life insurance benefits be retained. Likewise, Article II of the November 3, 1997 Modification Agreement pertaining to the calculation of Protective Period monthly TPA should be retained.

In summary, the Organization argues that it has made its case as to what should be contained in the Implementing Agreement. However, if the Board does not adopt its recommendation, it argues that the November 1998 Implementing Agreement which failed ratification should be awarded by this Board.

V. DISCUSSION

This Arbitration arose because the two former SP Local Chairmen in their four page letter previously cited urged the employees they represent to reject the Implementing Agreement. The Carrier asserts that the Organization engaged in bad-faith bargaining. In our opinion, the letter is extremely misleading and in many instances factually wrong. Their actions were clearly harmful to these parties collective bargaining now and perhaps in the future. Fundamental to successful collective bargaining are the intangible elements of confidence and trust. The letter undermined those essential elements, harming the ability of the parties to successfully bargain.

While the Board does not intend to belabor the point, it is instructive to briefly discuss the intent and scope of NYD Section 4 (a) bargaining. It is apparent that the authors of the four page letter misunderstood the Section 4(a) scope of bargaining provisions. Under Section 4(a), the parties are required to bargain about the selection of forces involved in the transaction, the equitable arrangement for the assignment of employees based on the surrounding circumstances of the transaction and how the New York Dock Conditions would be applied.

There is no legal obligation in the New York Dock Conditions for either party to bargain about a permissive bargaining subject. In the case at hand, the Organization was provided the choice of basic Section 4 bargaining as described above or enhanced bargaining that would include subjects that are not mandatory bargaining under Section 4(a). The BLE selected the latter. Implicit in the selection of the accredited representatives was that the scope of bargaining would be expanded. These representatives obviously were aware of this fact because they are seasoned and extremely well-qualified bargainers. The give and take of bargaining is well-understood by these persons.

Indeed, the Organization leaders attempted to inform its membership of the difference between negotiating an Implementing Agreement and a Collective Bargaining Agreement. In its Summary Letter that transmitted the LA Hub ballots, the following observations were made (quoted verbatim):

In order to fully understand this Implementing Agreement and the enormous amount of effort put into negotiating these provisions it is necessary for you each to understand that bargaining over an Implementing Agreement under New York Dock provisions is very different from negotiating collective bargaining conditions.

First of all mergers are not made to benefit the employees of the railroads involved but are done to provide cost savings to the railroad and increase dividends for the stock holders. Therefore it is necessary for you to understand that this is not the proper forum to conduct negotiations to improve your collective bargaining agreement or address the unjust treatment of our post 1985 engineers.

If a voluntary Implementing Agreement is not reached under the terms and conditions of New York Dock the issue is then placed before an Arbitrator who - after hearing the case - issues a decision that becomes the Implementing Agreement. The Arbitrator is limited by the New York Dock conditions in what he can and can not rule on and that is significant when it comes to blanket certification and relocation benefits.

Ironically, some of the bargaining issues complained of in the four page letter were raised by the Local Chairmen (e.g., the 25 mile zone issue). To agree to bargain about certain issues and when those issues

are not resolved to one's satisfaction does not mean that an Implementing Agreement was "shoved down our throats" as stated in the letter.

Throughout the four page letter, reference was made to the Modification Agreement, implying that somehow a vote on the initialed Implementing Agreement could reverse the earlier Agreement. This notion was clearly misleading and wrong. The authors of the four page document, for whatever reason, chose to ignore the guidance contained in the Ballot Transmittal Letter noted above. Likewise, the comments about extra boards certification of engineers and Union dues are not accurate and mislead as to what the negotiators had agreed to when they initialed the Implementing Agreement.

In summary, on this issue, the Carrier's charge of bad-faith bargaining is understandable. However, good-faith bargaining is difficult to define. It is a shapeless or formless principle. Apparently, the action by the two Local Chairmen was an unilateral one. In any event, the Board has no proper basis for rejecting the Organization's official explanation as provided in its post-hearing brief.

Before turning to the substance of the question before the Board, it should be noted again that this Board is a quasi-judicial extension of the STB and, thus, is bound to apply to the transaction at hand, the STB's interpretation of its controlling legislation and the New York Dock Conditions. Among many precedents on this point, see United Transportation Union v. Norfolk and Western Railway Co., 882 F.2d 1114, 1120 (D.C. Cir. 1987).

Certain key provisions of Finance Docket No. 32760 to which the various proposals of the parties would be applied are worthy of note. As stated in that Docket, these are (identified by page number):

Union Support. The merger is supported by seven unions representing approximately 55% of the union-represented employees on the combined UP and SP systems: the United Transportation Union; the Brotherhood of Locomotive Engineers; the International Association of Machinists and Aerospace Workers; the International Brotherhood of Electrical Workers; the International Brotherhood of Boilermakers and Blacksmiths; the Sheet and Metal Workers International Association; and the International Brotherhood of Firemen and Oilers. The UP/SP merger is the first major merger since the Staggers Act that has received

widespread union support, and applicants are correct in their assessment that such extensive "labor support in a major rail merger case is unheard of in recent years, and stands as a testament to the compelling benefits of this merger." Page 171

We find that the statutory protections provided in New York Dock are appropriate to protect employees affected by the merger, the lines sales, and the terminal railroad control transactions, and we further find that, subject to such protections, approval of the merger (in the lead docket), the lines sales (in the Sub-No. 2 docket), and the terminal railroad control transactions (in the Sub-No. 3, 4, 5, 6, and 7 dockets) will be consistent with the public interest insofar as carrier employees are concerned. No unusual circumstances have been shown in this case to justify additional protection. Page 173

The Immunity Provision. An arbitrator acting under Article I, Section 4 of the New York Dock conditions imposed in the lead docket, the Sub-No. 2 docket, and the Sub-No. 3, 4, 5, 6, and 7 dockets will have the authority to override CBAs and RLA rights, as necessary to effect, respectively, the merger in the lead docket, the line sales in the Sub-No. 2 docket, and the terminal railroad control transactions in the Sub-No. 3, 4, 5, 6, and 7 dockets. This authority derives ultimately from 49 U.S.C. 11341(a), the "immunity" provision. Page 173

Certain Requests Denied. We will not impose several additional labor-related conditions that have been requested by parties to this proceeding. Page 174

Cherry-Picking. We will deny ARU's request that we order that any CBA "rationalization" be accomplished by allowing UP/SP's unions to "cherry-pick" from existing UP or SP agreements. This is a matter committed to the implementing agreement procedures established by the New York Dock conditions. See New York Dock, 360 I.C.C. at 85 (Article I, Section 4). Page 174

Reimbursements. We will deny ARU's request that we require UP/SP to repay SP employees their forgone lump sum payments and their deferred wage increases. SP has already "paid" its employees for their wage concessions by giving up productivity concessions achieved by the nation's other railroads. Page 174

Turning then to the specific proposals of the parties, the Board has carefully reviewed the record, the briefs submitted by the parties and the oral arguments presented at the hearing. The Board concludes that, under the circumstances, it would be ill-advised to change the initialed proposed Implementing Agreement which we find meets the STB's goal of a more economic and efficient operation as envisioned by its approved transaction.

Fundamental to our holding in this matter is the principle that the reviewing third party should apply the same factors to the issues as the negotiating parties did when they bargained and reached an agreement. Also, it is well-settled that third parties should not disturb agreements reached unless it can be demonstrated that factors not relevant to the bargaining process were given weight by the parties during their negotiations. Accordingly, it is the third party's role to impartially weigh all of the evidence adduced with respect to the various factors considered by the parties when trying to reach their agreement. For this Board, given the circumstances, to change the negotiated Implementing Agreement, it must find that all relevant information was not considered or not given proper weight by the negotiating parties.

There is no evidence in the extensive record developed in this matter that the negotiating parties did not consider all relevant factors. The negotiators also recognized certain unique characteristics of the Company and its business issues and concerns. Moreover, it was shown that the parties' negotiators were aware of the current and future highly competitive business environment in which the railroad functioned. There is a sense that the parties also were aware that certain changes had to be forthcoming within the framework of the collective bargaining process. Accordingly, the Board concludes that the parties to these proceedings had before them all proper factors when they initialed the proposed Implementing Agreement.

As for the question of whether these factors were properly applied during the negotiating process, the Board finds that there is no evidence to the contrary. This conclusion is given greater substance by noting the lengthy process that led to the proposed Implementing Agreement and the experience of the individuals involved. The persons involved in this process were seasoned negotiators who have years of

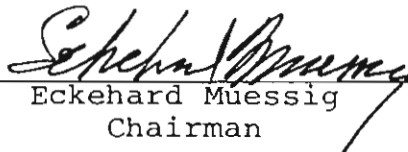
experience addressing and resolving complex rule, benefit and wage issues. The evidence of record before this Board demonstrates that the negotiators were keenly aware of the various factors that influenced and lead to successful bargaining. They clearly took into account that their efforts could not be conducted in a vacuum and that success depended upon properly based compromises.

The proposed Implementing Agreement reflects the give and take of the bargaining process. It meets the STB authorized transaction goal in a manner serving the interests of both parties.

Obviously, the Implementing Agreement does not address or solve all individual needs or desires of the Organization. Nor does it meet all the Carrier's. However, for the reasons stated and, given the circumstances, this Board will not modify what the seasoned negotiators agreed upon when they initialed the Implementing Agreement in mid-November 1998. Any other Award would lead to further controversy and tend to undermine future collective bargaining by these parties.

AWARD

The negotiated initialed Implementing Agreement will serve as this Board's Award.


Eckehard Muessig
Chairman

Dated: MAY 10, 1999

IN THE MATTER OF INTERPRETATION
OF THE MAY 10, 1999 NEW YORK
DOCK ARBITRATION AWARD

BETWEEN

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
("BLE")

AND

UNION PACIFIC RAILROAD COMPANY
("UP")

INTERPRETATION

BACKGROUND

On May 10, 1999, the undersigned issued an Arbitration Award which imposed a Tentative Agreement that had been reached by the Parties as the Agreement which would govern work rules and working conditions in the newly formed Los Angeles Hub of the merged Carrier ("LA Hub Agreement").

By letter dated December 13, 1999, the Carrier advised the Organization of its intent to implement the LA Hub Agreement effective with January 16, 2000. The letter announced a number of operational changes that the Carrier intended to make. One of these changes triggered the Request for Interpretation now before me. Specifically, the Carrier announced that it would: "Establish road switchers with an on duty point of Spence Street at East Los Angeles."

On January 12, 2000, in a letter to the Carrier, the Organization advised the Carrier that the establishment of road switchers at Spence Street violated the LA Hub Agreement. Following discussions between the parties, as well as an extensive exchange of views on the matter by correspondence, the parties were unable to resolve their differences. Consequently, the Carrier, on March 16, 2000, requested an interpretation of the May 10, 1999 Arbitration Award.

On April 1, 2000, the undersigned requested the parties to provide "their arguments on the question" presented by the Carrier no later than April 17, 2000. The Organization requested, and was granted an extension of time for its submission until June 22, 2000.

The matter is now before me for resolution.

ISSUE TO BE DECIDED

The Carrier has stated the issue as follows:

"Does the Los Angeles Hub NYD Award prohibit the use of other than pool freight service to handle traffic between the Los Angeles area and the Dolores Harbor area?"

On the other hand, the Organization has posed the issue in the following manner:

"May the Carrier supplant the Article III, Section C 'Pool Operations' which were negotiated in connection with the Los Angeles Hub Agreement with Road Switcher assignments?"

I conclude that the Carrier's statement of the issue is the most appropriate of the two.

POSITION OF THE PARTIES

The following is believed to be an accurate abstract of the parties' substantive positions in this dispute. The absence of a detailed recitation of each and every argument or contention advanced by the advocates does not mean that the issue was not fully considered by the undersigned.

Position of the Carrier

The Carrier's underlying position is that the establishment of the Spence Street road switchers does not violate any portion of the LA Hub Agreement. The Carrier cites Article III, Pool Operations/Assigned Service of the LA Hub Agreement as the framework for its position in this dispute. That Article, in relevant part, reads as follows:

III POOL OPERATIONS/ASSIGNED SERVICE

The following operations may be instituted:

A. West Colton-Yermo and West Colton-Yuma -
These operations will be run as separate pools. Trains originating or terminating at Mira Loma may be operated by West Colton engineers with the on and off duty point at West Colton. Engineers in this pool that take trains to and from Mira Loma shall be governed as follows:

1. This only applies when engineers go through Riverside and does not permit West Colton pool engineers to run through West Colton to Pomona and then back down the Riverside line to Mira Loma.
2. Engineers in the West Colton-Yuma pool shall be paid actual miles between Mira Loma and Yuma.
3. Engineers in the West Colton-Yermo pool with a trainman/engineman seniority date subsequent to October 31, 1985 shall be paid a 30 minute arbitrary in addition to all other payments when delivering or receiving trains at Mira Loma. Should the engineer receive the train on the outbound trip and deliver one on the return trip then they shall be entitled to two 30 minute payments.
4. Engineers on duty time shall begin and end at West Colton and not at Mira Loma.
5. If pool engineers hostler their power to and from Mira Loma they shall be paid the mileage from West Colton to Mira Loma.
6. For those eligible engineers, ITD shall be computed from the time on duty at West Colton until departure is made from Mira Loma and FTD shall be computed from the time the engineer "yards" the train at Mira Loma and ties up at West Colton. This does not change the method used to calculate ITD and FTD but identifies that Mira Loma will be considered "in the terminal" for these calculations.

B. LATC/EAST YARD-YERMO/YUMA - These operations shall be run as two separate pools, one to Yuma and one to Yermo.

NOTE: The parties recognize that traffic disruption due to track work, and potential temporary line closures for other reasons, may result in several trains using alternate routes in A and B above. In these instances, CMS shall contact the Local Chairman, and engineers from the route with reduced traffic shall be called to operate on the other line with calls being alternated between the two pools.

C. WEST COLTON-BASIC - These operations shall be run as one pool or a combination of pool service, with the home terminal at West Colton, and assigned service. Assigned service shall designate the home and away from home terminal. Assigned service shall have a single away from home terminal for each assignment. The pool shall have three away from home terminals of, the combined SP/UP LATC/LA East Yard terminal/LA/Long Beach Harbor area, Anaheim, and Gemco. This pool may be run as straight away with engineers tying up at the far terminal or as turn around. Service to City of Industry shall be run as turn around service with the engineer working or being deadheaded in combination service back to West Colton at the end of the tour of duty.

NOTE: The Carrier shall give a ten day notice for the implementation of service in (A), (B) and (C), above if not given in the notice to implement this Hub agreement. Notice may be given individually or for more than one operation. Operations in place prior to the implementation of this Agreement shall continue until the Carrier serves notice to implement new operations and abolish old operations or the BLE exercises the cancellation clauses of the flat rate agreements.

D. Any pool freight, local, work train, hostler or road switcher service may be established in accordance with the controlling CBA.

E. None of the engineers in (A) through (D) above shall be restricted, in or between the terminals of their assignment, as to where they may set out or pick up cars or leave or receive their train. The type and amount of work shall be governed by the controlling CBA. All engineers may operate over any and all tracks and alternate routings between locations.

The Carrier relies mainly upon Sections D and E of Article III. It submits that Section D specifically provides for the establishment of "any" road switcher service in the LA Hub. Moreover, the Carrier argues that Section E directly states that there is no restriction on the "type of work which may be performed by engineers in the pools" or assigned service that is provided for in Sections A through D of Article III. It further points out that "assigned service" has been defined by Question and Answer Number 56 in the LA Hub Agreement as: "Local freight and road switcher service."

Finally, the Carrier contends that there is no provision in the controlling Collective Bargaining Agreement ("CBA") that would restrict road switchers from handling traffic between the Dolores Harbor area and Los Angeles. The controlling CBA is the former SP-West BLE Agreement. The parties had negotiated a road switcher rule pursuant to Article VII of the May 19, 1986 Award of Arbitration Board No. 458, which became Article 19½, effective August 25, 1986. The Carrier contends that Rule 19½ does not restrict where road switchers may be established or the type of traffic they may handle.

Accordingly, in light of the above reasoning, the Carrier requests that its position in this matter be affirmed.

Position of the Organization

As highlighted by its statement of the issue, the Organization contends that this dispute centers upon a very narrow issue, which can be summarized as: "May the work now performed by the West Colton-Basin Pool be performed by Road Switchers established solely for that purpose?"

The Organization submits that, to understand this dispute and to dispose of it in its favor, it is necessary to understand what the parties discussed and what work elements were particularly significant during the negotiations that finally led to the LA Hub Agreement. It asserts that the question of how trains would be shuttled between the Los Angeles and Harbor areas was a major element of discussion during the negotiating process. As a result, the parties agreed to establish the West Colton-Basin Pool with three separate "away-from-home" terminals. The Organization maintains that it is critical to this dispute to understand that it was in the context of pool service alone that the parties negotiated the LA Hub Agreement with respect to shuttling freight trains between West Colton and the Harbor area.

To support this fundamental portion of its position that such freight train movements were to be exclusively vested in the pool, the Organization also relies upon the express language of Article III,

however, it contends that Section C controls as well as Article IV, Section B, and Question and Answer Number 10 of the LA Hub Agreement. Article III has been previously quoted. The other two citations relied upon read as follows:

IV. EXTRA BOARDS

A. The Carrier may establish extra boards at any location in accordance with the governing CBA. The Carrier will give a thirty day notice of the consolidation of pre-merger extra boards and the notice provisions of the governing CBA shall be used in the establishment of new extra boards.

B. If there are no rested and available West Colton pool engineers at the away from home points LATC and the Harbor area, then the closest extra board may be used to work trains back to West Colton. When so used they will not be tied up at West Colton but will deadhead back to their on duty point. If sufficient traffic exists to warrant a pool to protect this service then a pool shall be established. The use of this pool shall be ahead of using a West Colton engineer in combination deadhead service.

C. Agreement Coverage - Engineers working in the Los Angeles Hub shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the SP WEST modified BLE Agreement.

QUESTION AND ANSWER NUMBER 10

Will West Colton-Basin engineers be tied up a second time at an away from home point?

No, if they take a train to some point other than the home terminal they will be transported to the home terminal. For example, if a West Colton-Basin engineer whose previous tour of duty took him/her to the Harbor, takes a train from the Harbor to LATC after they have obtained their rest, they will not be tied up at LATC, which would be a second tie-up at a far terminal but shall be transported back to West Colton.

Accordingly, the Organization contends that because the LA Hub Agreement was negotiated "around the exclusive use of pool crews to handle the train movements at issue here, and since the Agreement was reached and structured with the handling of pool crews in mind," the Carrier should be required to stand by its commitments to implement an operating scheme which was a part of the negotiations that led up to the LA Hub Agreement.

The Organization also contends that the Carrier's contention that it has the "unfettered right to establish road switcher assignments" is clearly misplaced. Moreover, it argues that, even if the Carrier had the right to set up road switcher assignments, it cannot do so in connection with the work at issue here because that work is vested by negotiated rule in the West Colton-Basin Pool.

Finally, the Organization submits that, based upon its analysis of the Carrier's reports, the work that is being performed by the Spence Street crews (a pool engineer and a road switcher trainman) is predominantly shuttling coal trains to and from the harbor and dock areas. It contends that the movement of unit trains or container trains has not been historically the work of road switchers on the Carrier's property.

The Organization also contends that its position is supported by the Carrier's actions. In late calendar year 1999, the Carrier sought to negotiate an agreement to allow road switchers to do the very work that caused this Request for Interpretation to arise. Thus, the Organization submits that, if the Carrier already had the right to assign the work involved here, it would not have engaged in bargaining to obtain a right it already had.

In summary, for all of the foregoing as further detailed in its brief, the Organization requests that the Carrier's Question at Issue should be answered in the affirmative, and the Question posed by the Organization should be answered in the negative.

FINDINGS AND CONCLUSION

After a review of the entire record, I conclude, for the reasons that follow, that the Carrier's position in this matter must be sustained.

At the outset, a few comments are needed about the claim by the Organization in its letter of January 12, 2000 that toward the end of 1999 the Carrier requested an agreement for road switcher assignments to work shuttle trains between Dolores and Los Angeles. If factually accurate, the Carrier's request obviously would give support to the Organization's position in this dispute.

The evidence shows that on January 14, 2000, the Carrier responded to the Organization's claim, noting that there had been several meetings to discuss agreement modification desired by the BLE. Nevertheless, the Carrier's participants in these meetings assert that they do not recall any such a request by the Carrier. The Carrier in this same letter requested that additional information be provided "if there was such a request" made.

Although there continued to be a number of letters exchanged between the parties, the Organization did not provide any additional support for its claim. Indeed, the issue was not raised again on the property. Accordingly, I conclude that whatever took place was a misunderstanding and has no relevance to my deliberations in arriving at this interpretation.

With respect to the merits, the Organization on the property has failed to legitimize its position in this dispute. Its construction of the LA Hub Agreement, relying upon Section E, Articles III and IV and Question Number 10 is simply misplaced. I am not unmindful of the well-stated points made in the Organization's Memorandum Brief. However, its arguments cannot overcome what I find to be a reasonable construction by the Carrier. There is no language in the LA Hub Agreement which precludes the use of engineers in assigned service, such as road switcher, to handle traffic in the LA Basin. This dispute has dragged on for months providing the Organization with ample time and opportunity to counter the Carrier's position. However, at

no time were concise arguments presented on the property to refute the Carrier's reliance upon Section D and E of Article III and Question Number 56 to the LA Hub Agreement. The Organization has not explained why the Carrier's position was wrong. The Carrier, on the other hand provided a detailed analysis of the Organization's position stating specifically on each key issue why it considered it not on point to the issue at hand.

The Organization argues that the proposed road switchers are protected by the provision of Section C, Article III because the description of the work that was "allocated to this pool freight assignment by example in Question and Answer No. 10" as identified earlier and Section B, Article IV.

However, with respect to Question Number 10, I find the language clear as to its purpose. Specifically, that engineers operating in that pool will not be tied up a second time at an away-from-home terminal.

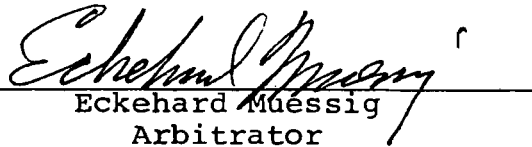
With respect to Section B, Article IV, the Carrier in its letter, in relevant part, stated as follows:

The Company's interpretation of the Los Angeles Hub implementing agreement has remained constant. Since our meeting on January 7, I have reviewed this matter in depth with Scott Hinckley, the Company's negotiator for the Los Angeles Hub, and he confirms that interpretation. The Company's position is that establishment of the Spence Street road switcher jobs to shuttle trains between Los Angeles and the Harbor does not violate any portion of the Los Angeles Hub implementing agreement. One of the away-from-home terminals of the West Colton-Basin pool is an area defined in the Los Angeles Hub implementing agreement as "the combined SP/UP LATC/LA East Yard terminal/LA/Long Beach Harbor area." Article IV, Section B of that agreement refers only to the handling of traffic between this away-from-home terminal and West Colton. In other words, Article IV, Section B refers to east-west traffic between the greater Los Angeles/Harbor area and West Colton, and not north-south traffic between Los Angeles and the Harbor.

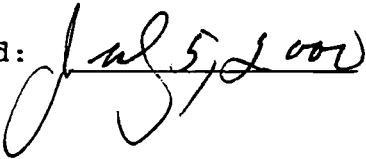
I agree with this interpretation.

Article III of the LA Hub Agreement provides for the creation of pools and defines assigned service in Question Number 56. Section D provides that "any" road switcher service may be established in the LA Hub "in accordance with the controlling CBA." The controlling CBA is the former SP-West BLE Agreement. Effective August 25, 1986, the parties negotiated a road switcher rule, Article 19½. I find that this rule contains no restriction on where road switchers may be established or the type of traffic they may handle.

In summary, the Carrier's argument on the issue presented are persuasive and accepted. The Carrier's construction of the LA Hub Agreement as applied to the Question at Issue is reasonable. Accordingly, the Question at Issue is answered in the negative.


Ekehard Müessig
Arbitrator

Dated:



**MERGER IMPLEMENTING AGREEMENT
Los Angeles Hub**

between the

**UNION PACIFIC
SOUTHERN PACIFIC TRANSPORTATION COMPANY
and
BROTHERHOOD OF LOCOMOTIVE ENGINEERS**

In Finance Docket No. 32760, the U.S. Department of Transportation, Surface Transportation Board ("STB") approved the merger of the Union Pacific Corporation ("UPC"), Union Pacific Railroad Company/Missouri Pacific Railroad Company (collectively referred to as "UP") and Southern Pacific Rail Corporation, Southern Pacific Transportation Company ("SP"), St. Louis Southwestern Railway Company ("SSW"), SPCSL Corp., and The Denver & Rio Grande Western Railroad Company ("DRGW") (collectively referred to as "SP"). In approving this transaction, the STB imposed New York Dock labor protective conditions.

In order to achieve the benefits of operational changes made possible by the transaction, to consolidate the seniority of all engineers working in the territory covered by this Agreement into one common seniority district covered under a single, common collective bargaining agreement.

IT IS AGREED:

I. Los Angeles Hub

A new seniority district shall be created that encompasses the following area: UP territory including milepost 164.42 East of Yermo westward to end of track in the Los Angeles Basin and SP territory from (not including) Santa Barbara and milepost 460.0 at (including) Hivolt, and between Burbank Jct and Palmdale Jct, East to milepost 731.5 at (not including) Yuma including all tracks in the Los Angeles Basin and shall include all main and branch lines, industrial leads and stations between the points identified.

NOTE 1: Engineers with home terminals within the hub may work to points outside the Hub without infringing on the rights of other engineers in other Hubs and engineers outside the Hub may work to points inside the Hub without infringing on the rights of engineers inside the Los Angeles Hub. The Hub identifies the on duty points for assignments and not the boundaries of assignments. (This note is further explained in side letter No. 3)

II. Seniority and Work Consolidation.

The following seniority consolidations will be made:

A. A new seniority district will be formed and a master Engineer roster(s) shall be created for the Los Angeles Hub for the engineers on the current SP seniority roster and the current UP Seniority roster and PE Seniority roster or on a SP auxiliary board from a point inside the Hub but working outside the Hub or UP engineer borrowed out to other locations that will return to the Hub upon release. It does not include borrow outs or auxiliary board engineers to the Hub, if any. All such engineers must be on one of these rosters or in training on January 13, 1998.

B. The new roster will be created as follows:

1. UP, SP and PE Engineers will be dovetailed based upon the current engineer seniority date within the Hub. This shall include any engineer working in trainman/fireman service with an engineer's seniority date. If this process results in engineers having identical seniority dates, seniority ranking will be determined by the engineer's earliest retained hire date with the Carrier.
2. All engineers who entered training after January 13, 1998 and are promoted in the Hub after January 13, 1998 will be considered common engineers(holding no prior rights), and placed on the bottom of the roster. Those engineers who entered training prior to January 13, 1998 and are promoted after that date will be entitled to any prior rights set forth in this agreement. This includes those who entered training and have been hostling.
3. All engineers placed on the rosters may work all assignments protected by the roster in accordance with their seniority and the provisions set forth in this Agreement.
4. Engineers placed on the Los Angeles Hub Roster shall relinquish all seniority outside the new roster area upon implementation of this Agreement and all seniority inside the Los Angeles Hub held by engineers outside the Hub shall be eliminated.
5. For the purposes of prior rights, SP San Joaquin engineers who remain in the LA Hub, SP Los Angeles and PE engineers will be dovetailed into one SP prior right roster.

NOTE: San Joaquin engineers who have a right in the Roseville Hub Agreement to bid and relocate on assignments where work is moved will

continue to do so in accord with those agreement provisions. Until that time they shall remain on the LA Hub roster.

C. Engineers who are on an authorized leave of absence or who are dismissed and later reinstated will have the right to displace to the appropriate roster, provided his/her seniority at time of displacement would have permitted him/her to hold that selection. The parties will create an inactive roster for all such engineers until they return to service in a Hub or other location at which time they will be placed on the appropriate seniority rosters and removed from the inactive roster.

D. Prior rights and dovetail rights shall be governed by the following:

1. Until new extra boards are established the current ones shall be prior righted and protect the same assignments that they protected pre-merger. Once new extra boards are established they shall be filled from the dovetail rosters.
2. Road switchers and work trains that go on duty at pre-merger points that were clearly an SP or a UP point shall be filled using the prior right roster.
3. Road Switchers, local freights and work trains that go on duty at a pre-merger point that was a joint location or at a point where on duty points are consolidated, shall be filled as follows:

Harbor area:	70% SP and 30% UP
City of Industry	75% SP and 25% UP

Engineers will be required to fill their prior right positions in the pre merger part of the above two areas first. For example, UP engineers will fill Paramount and Mead positions if available prior to former SP positions in the Harbor area.

NOTE: When on duty points of the two former Carriers are consolidated a ten (10) day advance notice will be given.

4. Locals that run to or from Yermo shall be prior righted to the UP roster regardless of the on duty point. Locals that run West (such as Oxnard, Gemco, Palmdale and Santa Barbara) to pre merger SP destinations shall be prior righted to the SP roster regardless of the on duty point. This does not apply to locals that run to the Harbor area as that has been a joint area. All other locals shall be prior righted based on the on duty point.
5. Extra work trains shall be filled from the extra boards.

6. Victorville helpers shall be UP prior righted and Colton Helpers shall be SP prior righted.
7. Except as otherwise provided for in this agreement, all assignments at LATC/East Yard shall be prior righted on a 50/50 percentage basis per shift, at West Colton they shall be SP prior righted and at Yermo they shall be UP prior righted. Any new facility assignments established at other locations after the merger shall be filled from the dovetail roster. (This does not apply to expansions of existing facilities)
8. Pools that run only to Yermo shall be UP prior righted and pools that run only to Yuma and/or Indio shall be SP prior righted up to the baseline number for the specific destination. The baseline number shall be 99(SP) and 37(UP). (The numbers 99 and 37 come from the number of pool turns the respective properties have had for the past two years). Turns above the baseline number shall be filled in one of the two following methods:
 - a. If either the UP or SP drop below the baseline by a minimum of three turns and the other pools increase by a minimum of three then the Local Chairman may request that the increase in turns, up to the number decreased in the other pools, be prior righted to the roster that lost the turns. These turns will be the first ones whose prior rights are phased out in **E, 2**, below.
 - b. All increases not filled by **a**, above shall be filled from the dovetail roster.
9. In determining the baseline, the SP shall add up the number of turns that go to Indio and Yuma, whether from West Colton or LATC/East Yard and subtract from that 35 (which represents their premerger portion of the West Colton-Basin Pool). The UP shall add up the number of turns that go to Yermo, whether from the West Colton or LATC/East Yard and subtract 9 (which represents their premerger portion of the West Colton-Basin Pool). Since there is more than one pool the Local Chairman shall designate how the prior right turns are allocated between the pools and once designated they cannot be changed.

Example: The SP baseline is 99. After implementation the West Colton-Yuma pool has 45 turns and the LATC/East Yard-Yuma pool has 25. The total is 70. When one adds the 35 allocated to the West Colton-Basin pool the total comes to 105. This is 6 over the baseline. The Local Chairman must designate how many of the 45 and 25 turns are prior righted leaving six non prior right turns. If he designates all 25 in the LATC/East Yard and 39 in the West Colton pools then he cannot later change the designation.

10. The West Colton-Basin pool shall be prior righted on an 80(SP)/20(UP) basis up to the number 44 and shall be filled on a dovetailed basis after that number. The attached chart shows the specific job allocation.
11. Assignments at Yuma, both regular and extra board, protected by the West Colton source of supply shall be governed as follows:
 - a. The assignments shall be prior righted to SP engineers holding seniority in the Los Angeles Hub on the day this agreement is implemented.
 - b. If an assignment goes no bid/application then it shall be filled by an engineer from the adjoining Hub.
 - c. LA Hub SP prior right engineers shall have bid/application rights to vacancies on these assignments and shall not have displacement rights to them if they are held by an engineer from the adjoining Hub for a period of time not to exceed 6 months from the date the engineer from the other Hub holding the assignment is assigned, unless the 6 month period of time is waived by the engineer holding the assignment.

NOTE: These provisions shall become applicable when the adjoining area is under a merger agreement/award.

12. Engineers who are on assignments on the day of implementation shall remain on those assignments unless they make application to another vacancy or are displaced by engineers with displacement rights under the controlling CBA. This agreement does not create displacement rights due to its implementation.

E. Prior rights shall be phased out on the following basis:

1. Non pool freight prior right assignments shall have the prior rights phased out at the rate of 25% per year beginning with the start of year eight and 25 % with the start of year nine. The local chairman shall designate in writing 30 days prior to the end of each year the assignments that will no longer be prior righted the next year. Failure to do so will result in the Carrier selecting the assignments. The remaining prior rights (50%) shall be phased out through attrition.
2. Pool freight prior right assignments shall have the prior rights phased out at the rate of 25% per year beginning with the start of year eight and 25 % with the start of year nine. The remaining prior rights (50%) shall be phased out through attrition.

3. Yuma positions shall be prior righted until attrited.

III. POOL OPERATIONS/ASSIGNED SERVICE

The following operations may be instituted:

A. West Colton-Yermo and West Colton-Yuma - These operations will be run as separate pools. Trains originating or terminating at Mira Loma may be operated by West Colton engineers with the on and off duty point at West Colton. Engineers in this pool that take trains to and from Mira Loma shall be governed as follows:

1. This only applies when engineers go through Riverside and does not permit West Colton pool engineers to run through West Colton to Pomona and then back down the Riverside line to Mira Loma.
2. Engineers in the West Colton-Yuma pool shall be paid actual miles between Mira Loma and Yuma.
3. Engineers in the West Colton-Yermo pool with a trainman/engineman seniority date subsequent to October 31, 1985 shall be paid a 30 minute arbitrary in addition to all other payments when delivering or receiving trains at Mira Loma. Should the engineer receive the train on the outbound trip and deliver one on the return trip then they shall be entitled to two 30 minute payments.
4. Engineers on duty time shall begin and end at West Colton and not at Mira Loma.
5. If pool engineers hostler their power to and from Mira Loma they shall be paid the mileage from West Colton to Mira Loma.
6. For those eligible engineers, ITD shall be computed from the time on duty at West Colton until departure is made from Mira Loma and FTD shall be computed from the time the engineer "yards" the train at Mira Loma and ties up at West Colton. This does not change the method used to calculate ITD and FTD but identifies that Mira Loma will be considered "in the terminal" for these calculations.

B. LATC/EAST YARD-Yermo/Yuma - These operations shall be run as two separate pools, one to Yuma and one to Yermo.

NOTE: The parties recognize that traffic disruption due to track work, and potential temporary line closures for other reasons, may result in several trains using alternate routes in **A** and **B** above. In these instances, CMS shall contact the Local Chairman, and engineers from the route with reduced

traffic shall be called to operate on the other line with calls being alternated between the two pools.

C. West Colton- Basin - These operations shall be run as one pool or a combination of pool service, with the home terminal at West Colton, and assigned service. Assigned service shall designate the home and away from home terminal. Assigned service shall have a single away from home terminal for each assignment. The pool shall have three away from home terminals of; the combined SP/UP LATC/LA East Yard terminal/LA/Long Beach Harbor area, Anaheim, and Gemco. This pool may be run as straight away with engineers tying up at the far terminal or as turn around. Service to City of Industry shall be run as turn around service with the engineer working or being deadheaded in combination service back to West Colton at the end of the tour of duty.

NOTE: The Carrier shall give a ten day notice for the implementation of service in (A),(B), and (C), above if not given in the notice to implement this Hub agreement. Notice may be given individually or for more than one operation. Operations in place prior to the implementation of this Agreement shall continue until the Carrier serves notice to implement new operations and abolish old operations or the BLE exercises the cancellation clauses of the flat rate agreements.

D. Any pool freight, local, work train, hostler or road switcher service may be established in accordance with the controlling CBA.

E. None of the engineers in (A) through (D) above shall be restricted, in or between the terminals of their assignment, as to where they may set out or pick up cars or leave or receive their train. The type and amount of work shall be governed by the controlling CBA. All engineers may operate over any and all tracks and alternate routings between locations.

IV. EXTRA BOARDS

A. The Carrier may establish extra boards at any location in accordance with the governing CBA. The Carrier will give a thirty day notice of the consolidation of pre-merger extra boards and the notice provisions of the governing CBA shall be used in the establishment of new extra boards.

B. If there are no rested and available West Colton pool engineers at the away from home points LATC and the Harbor area, then the closest extra board may be used to work trains back to West Colton. When so used they will not be tied up at West Colton but will deadhead back to their on duty point. If sufficient traffic exists to warrant a pool to protect this service then a pool shall be established. The use of this pool shall be ahead of using a West Colton engineer in combination deadhead service.

C. Exhausted extra boards.

1. If one of the above extra boards is exhausted, then another (secondary) extra board may be used prior to using other sources of supply. Secondary extra boards shall be identified by bulletin.
2. An engineer called from his/her extra board for an assignment in another area not principally covered by their extra board shall be handled as follows:
 - a. Pay received for this assignment shall not be used as an offset for extra board guarantee but shall be in addition to, however, it shall be used in computing whether the engineer is entitled to protection pay at the end of the month.
 - b. An engineer unavailable at time of call for secondary assignments shall have a deduction made in their extra board guarantee in accordance with the extra board agreement and shall have an offset to their protection in accordance with the protection offset provisions. If miss called for secondary calls, the engineer shall not be placed on the bottom of the board but will hold his/her place.
 - c. An engineer unavailable at time of call for secondary assignments shall not be disciplined.

D. On a temporary basis, until the Yuma area is under a merger agreement/award that provides for the consolidated Yuma extra board to cover El Centro vacancies and Yuma based assignments, The LA Hub extra board at Yuma will continue to protect all assignments that it protected pre-merger.

V. TERMINAL AND OTHER CONSOLIDATIONS

A. The SP LATC and UP LA East Yard shall be combined into a single terminal covering the existing terminal limits for each Carrier and the connecting trackage between the two terminals. Yard engineers shall not be restricted as to where in the terminal they can operate.

B. The provisions of **A** above will not be used to enlarge or contract the current limits except to the extent necessary to combine into a unified operation.

C. In the LA Hub, prior to this implementing Agreement, there existed several trackage rights, stations and Harbor areas used by both Carriers. With the implementation of this Agreement all areas, trackage, stations and facilities in the Hub shall be common

to all engineers as a single unified system. Engineers shall not be restricted in the Hub where they can operate except on the basis of CBA provisions that set forth limits of an assignment such as the radius of a road switcher.

D. Riverside Line - When heading west, trains that pass Colton Crossing onto the Riverside line may be operated by West Colton-Basin crews as if "in the terminal". When heading East, trains that reach Streeter, a point directly south of West Colton on the Riverside line, may be operated by West Colton-Yuma or West Colton Yermo crews as if "in the terminal". This does not apply to Mira Loma trains as those trains have separate provisions.

VI. AGREEMENT COVERAGE

A. General Conditions for Terminal Operations.

1. Initial delay and final delay will be governed by the controlling collective bargaining agreement, including the Duplicate Pay and Final Terminal Delay provisions of the 1986 and 1991 National and Implementing Agreements and awards.
2. Engineers will be transported to/from their trains to/from their designated on/off duty point in accordance with Article VIII, Section 1 of the May 1986 National Agreement. The Carrier shall designate the on/off duty points for engineers.
3. The current application of National Agreement provisions regarding road work and Hours of Service relief under the combined road/yard service Zone, shall continue to apply. Yard engineers at any location within the Hub may perform such service in all directions out of their terminal.

B. General Conditions for Pool/Assigned Operations in Article III.

1. The terms and conditions of the pool operations set forth in Article III (A), and (B) shall be the same except where specifically provided otherwise in those Sections. The terms and conditions are those of the surviving collective bargaining agreement as modified by subsequent national agreements, awards and implementing documents and those set forth in this Agreement.
2. The terms and conditions of the pool and assigned service in Article III (C) shall be as follows:
 - a. The pool shall operate first in/first out at the home terminal.

- b. Engineers, if operated in pool service to Gemco and Anaheim, shall be operated first in/first out at each away from home location.
- c. Engineers operated to LATC/LA East yard and the Harbor shall be treated as one pool, stay at the same lodging facility and shall operate first in/first out from the far terminal for calls to either LATC/LA East yard or the Harbor to return to West Colton. The lodging facility shall be the on and off duty point for this pool when at the away from home point.
- d. Pool engineers shall be paid in accordance with Sections 1,2,5, and 6 of the flat rate road switcher agreement effective September 16, 1996. The flat rate for these assignments shall be \$300.00/engineer. These payments shall be inclusive of any payments for not stopping to eat. When given a call and release, the call and release rules shall apply for engineers in this pool in lieu of the flat rate.
- e. In addition, that agreement shall be amended so that the cancellation clause shall be a one year notice unless the hours of service is changed from the current 12 hour provisions, in which case the cancellation notice shall be a 30 day notice. If canceled then the engineers shall be paid in accordance with pool freight service conditions based on the miles of the assignments.
- g. Other payments made to the pool engineers will be in accordance with the held way from home provisions, overtime after 12 hours, the 25 mile zone payments, payments that are applicable when another person is in the cab such as an employee in training and runarounds of the governing CBA. The held time payment shall be made at the rate as provided in section 5(a) of the agreement (156.11) subject to all future wage and cola adjustments.
- h. If there is both pool service and assigned service to the same location, they shall not be combined at the far terminal but shall operate independently from each other for the return trip.
- l. Local freight assignments shall operate under local freight work and pay rules.
- j. Separate and apart deadheading shall be paid in accordance with the National Agreement provisions and shall not be paid the flat rate. Separate and apart deadheading shall be from the home or away from home point to the away from home or home point when not

connected with service. It does not include any deadheading in connection with service that would be covered in the flat rate.

- k. Unless canceled sooner than the implementation date of this agreement, Agreement E&F 188-138 dated January 5, 1995 and all side letters and Questions and Answers to it are cancelled with the implementation of this agreement.

- 3. **Twenty-Five Mile Zone** - As provided in the note below, pool engineers may receive their train up to twenty-five miles on the far side of the terminal and run on through to the scheduled terminal. Engineers shall be paid an additional one-half ($\frac{1}{2}$) basic day for this service in addition to the miles run between the two terminals. If the time spent in this zone is greater than four (4) hours, then they shall be paid on a minute basis.

NOTE 1: This provision will apply at Yermo and Yuma for all pool engineers and at West Colton for LA Hub and Bakersfield pool engineers (only on trains that have not reached West Colton from Bakersfield, Yermo and Yuma). It does not apply to trains that have not reached West Colton from the West.

NOTE 2: The Twenty five mile zone towards Yermo and Yuma shall be measured from Colton Crossing which shall extend to milepost 563.7 towards Yuma.

- 4. **Turnaround Service/Hours of Service Relief**. Except as provided in (3) above, turnaround service/hours of service relief at both home and away from home terminals shall be handled by extra boards, if available, prior to using pool engineers. Engineers used for this service may be used for multiple trips in one tour of duty in accordance with the designated collective bargaining agreement rules. Extra boards may handle this in all directions out of a terminal.
- 5. Nothing in this Section B (3) and (4) prevents the use of other engineers to perform work currently permitted by prevailing agreements, including, but not limited to yard engineers performing Hours of Service relief within the road/yard zone, ID engineers performing service and deadheads between terminals, road switchers handling trains within their zones and using an engineer from a following train to work a preceding train and payments required by the controlling CBA shall continue to be paid when this work is performed.

C. Agreement Coverage - Engineers working in the Los Angeles Hub shall be governed, in addition to the provisions of this Agreement, by the Collective Bargaining Agreement selected by the Carrier, including all addenda and side letter agreements pertaining to that agreement and previous National Agreement/Award/Implementing Document provisions still applicable. Except as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail. None of the provisions of these agreements are retroactive. The Carrier has selected the SP WEST modified BLE Agreements.

VII. PROTECTION.

A. Due to the parties voluntarily entering into this agreement the Carrier agrees to provide New York Dock wage protection (automatic certification) to all prior right engineers who are listed on the Los Angeles Hub Merged Rosters and working an assignment (including a Reserve Board) on January 13, 1998. (The term working shall also include those engineers disciplined and later returned to work and those full time Union Officers should they later return to service with the Carrier.) This protection will start with the effective (implementation) date of this agreement. The engineers must comply with the requirements associated with New York Dock conditions or their protection will be reduced for such items as layoffs, bidding/displacing to lower paying assignments when they could hold higher paying assignments, etc. Protection offsets due to unavailability are set forth in the Questions and Answers and side letter #1.

B. This protection is wage only and hours will not be taken into account.

C. Engineers required to relocate under this agreement will be governed by the relocation provisions of New York Dock. In lieu of New York Dock provisions, engineers required to relocate may elect one of the following options:

1. Non-homeowners may elect to receive an "in lieu of" allowance in the amount of \$10,000 upon providing proof of actual relocation.
2. Homeowners may elect to receive an "in lieu of" allowance in the amount of \$20,000 upon providing proof of actual relocation.
3. Homeowners in Item 2 above, who provide proof of a bona fide sale of their home at fair value at the location from which relocated, shall be eligible to receive an additional allowance of \$10,000.

(a) This option shall expire five (5) years from date of application for the allowance under Item 2 above.

(b) Proof of sale must be in the form of sale documents, deeds, and filings of these documents with the appropriate agency.

4. With the exception of Item 3 above, no claim for an "in lieu of" relocation allowance will be accepted after two (2) years from date of implementation of this agreement.

NOTE:The two (2) year provision of this paragraph (4) shall be extended for engineers if operations affecting those engineers are not instituted until less than ninety (90) days remain in the two year period. If not instituted within 21 months of implementation then affected engineers shall have a one year extension from the date operations are instituted to request an "in Lieu of" payment.

5. Engineers receiving an "in lieu of" relocation allowance pursuant to this implementing agreement will be required to remain at the new location, seniority permitting, for a period of two (2) years.

6. In addition to those engineers required to relocate, engineers at the location where assignments are relocated from shall be treated as required to relocate under this Agreement, seniority governing, on a one for one basis equal to the number of assignments transferred. Once the number of in lieu of allowances are granted equal to the number of assignments transferred all other moves associated with the specific number of assignments transferred will not be eligible for any moving allowance. The following is a list of assignments that will be transferred:

- a. Assignments to West Colton for the West Colton-Basin pool/assigned service.
- b. Assignments to West Colton for the West Colton-Yermo pool.
- c. Assignments to LATC for the LATC-Yuma pool.
- d. Extra board assignments in connection with the above moves. Engineers who are augmenting an extra board from a regular extra board shall be considered as assigned at the regular extra board point for determining whether relocation provisions shall apply.

D. There will be no pyramiding of benefits.

E. National Termination of Seniority provisions shall not be applicable to Engineers hired prior to the effective date of this agreement.

F. Engineers will be treated for vacation, payment of arbitraries and personal leave days as though all their service on their original railroad had been performed on the

merged railroad. Engineers assigned to the Los Angeles Hub seniority roster with a seniority date prior to January 13, 1998 shall have entry rate provisions waived and engineers hired after that date shall be subject to the rate progression provisions of the controlling CBA. Those engineers leaving the Los Angeles Hub will be governed by the CBA where they then work.

VIII. FAMILIARIZATION

A. Engineers involved in the consolidation of the Los Angeles Hub covered by this Agreement whose assignments require performance of duties of a new geographic territory not familiar to them will be given familiarization opportunities as quickly as possible. Engineers will not be required to lose time or ride the road on their own time in order to qualify for these new operations.

B. Engineers will be provided with a sufficient number of familiarization trips in order to become familiar with the new territory. Issues concerning individual qualification shall be handled with local operating officers. The parties recognize that different terrain and train tonnage impact the number of trips necessary and an operating officer will be assigned to the merger that will work with the local managers of Operating Practices in implementing this Section. If disputes occur under this Agreement they may be addressed directly with the appropriate Director of Labor Relations and the General Chairman for expeditious resolution.

C. It is understood that familiarization required to implement the merger consolidation herein will be accomplished by calling a qualified engineer (or qualified Manager of Operating Practices) to work with an engineer called for service on a geographical territory not familiar to the engineer.

D. Engineers who work their assignment (road or yard) accompanied by an engineer taking a familiarization trip shall be paid one (1) hour at the pro rata rate, in addition to all other earnings for each tour of duty. This payment shall not be used to offset any extra board payments. The provision of 3 (a) and (b) Training Conditions of the System Instructor Engineer Agreement shall apply to the regular engineer when the engineer taking the familiarization trip operates the locomotive.

E. Locomotive engineers will not be required to make the decision on whether or not an engineer being familiarized is sufficiently familiarized for the territory.

F. An engineer concerned about familiarization on his/her assignment must contact a Manager Operating Practices prior to being called to resolve the concerns.

IX. IMPLEMENTATION

The Carrier shall give 30 days written notice for implementation of this agreement and the number of initial positions that will be changed in the Hub. Thereafter implementation provisions of the various articles shall govern any further changes.

X. HEALTH AND WELFARE

A. Engineers currently are under either the National Plan or the Union Pacific Hospital Association. Engineers coming under a new CBA will have six months from the implementation of this agreement to make an election as to keeping their old coverage or coming under the coverage of their new CBA. Engineers who do not make an election will have been deemed to elect to retain their current coverage. Engineers hired after the date of implementation will be covered under the plan provided for in the surviving CBA.

This Agreement is entered into this ____ day of _____ 1998.

For the Organization:

For the Carrier:

MA M 11-18-98
General Chairman BLE UP

WJA 11-18-98
General Director Labor Relations

[Signature] 11-18-98
General Chairman BLE SPWest

HSA 11-23-98
General Chairman BLE PE

[Signature] 11-20-98
Vice-President BLE

[Signature] 11-23-98
Vice-President BLE

BLE QUESTIONS AND ANSWERS LOS ANGELES HUB

Article I - LOS ANGELES HUB

Q1. How far east of Yermo may a LA Hub engineer work?

A1. This Question is answered in detail in side letter No.3

Q2. When the language says "not including" a point may engineers work into that point and if so what work may they do.

A2. Yes, engineers may work into those points. For example, LA Hub pool engineers may work into Yuma and perform any work permitted by applicable agreements for that class of service with Yuma as their final terminal. The "not including" refers to putting assignments with a home terminal on duty at that location. Both West Colton and Las Vegas pool engineers may work into the common terminal of Yermo, however only LA Hub engineers have seniority to hold yard, local, road switcher and extra board assignments that go on duty with Yermo as a home terminal.

Article II - SENIORITY AND WORK CONSOLIDATION

Q3. How long will prior rights be in effect?

A3. These will be phased out at differing times depending on the type of service.

Q4. Are full time union officers including full time state legislative board representatives, Company officers, medical leaves and those on leave working for government agencies covered under Article II, C?

A4. Yes.

Q5. How many engineers are covered by the inactive roster referenced in Article II.C?

A5. The "inactive roster" noted in Article II.C, refers to the status of engineers who are not in active service who pre-merger were on a UP roster in the Los Angeles Hub or at a location on SP West Lines during the qualifying period set forth in the assorted Hub Agreements. Such engineers include those on leave of absence for government, union and company service, medical leave including disability, etc. Because those engineers have rights to exercise seniority upon return to active service but may not do so from inactive status, such engineers will be required to select a Hub upon their return to active service. It is not possible to predict the number of people who may return from inactive status and, thereafter, the Hub that such people may select upon their return. Therefore, eligibility to mark up in a Hub must be determined for each individual upon that individual's return to active status.

ARTICLE III - POOL/ASSIGNED SERVICE OPERATIONS

Q6. What will be the mileage paid in West Colton-Yermo pool service?

A6. The actual mileage between those two points with a minimum of a basic day for service or combination deadhead/service. If the engineer receives or leaves a train at Mira Loma then engineers with a post October 31, 1985 trainman/engineer seniority date are entitled to a one-half hour arbitrary payment.

Q7. What will be the mileage paid in the West Colton-Yuma pool?

A7. Same as the pre merger mileage, 198 miles. If the engineer goes to Mira Loma then additional mileage will be paid.

Q8. Will existing pool freight terms and conditions apply on all pool freight runs?

A8. No. The terms and conditions set forth in the surviving collective bargaining agreements and this document will govern.

Q9. Will there be both assigned service and pool service at the same time in the West Colton-Basin operations?

A9. The Carrier has the right to establish the type of service needed to service its customers. As such it may have assigned service to some areas and pool service to other areas at the same time.

Q10. Will West Colton-Basin engineers be tied up a second time at an away from home point?

A10. No, if they take a train to some point other than the home terminal they will be transported to the home terminal. For example, if a West Colton-Basin engineer whose previous tour of duty took him/her to the Harbor, takes a train from the Harbor to LATC after they have obtained their rest, they will not be tied up at LATC, which would be a second tie-up at a far terminal but shall be transported back to West Colton.

Q11. Are there any van miles paid for riding to and from Mira Loma?

A11. No, since ITD and FTD is applicable or the half hour arbitrary van miles are not paid.

Q12. Does payment of miles run to Mira Loma from Yuma or the arbitrary from Yermo extend "free time" before ITD and FTD time is paid for?

A12. No.

ARTICLE IV - EXTRA BOARDS

Q13. How many extra boards will be established at implementation?

A13. The number is not known at this time. There will be a phase in of the familiarization process and they will consolidated and established as this process proceeds.

Q14. Are these guaranteed extra boards?

A14. Yes. The pay provisions and guarantee offsets and reductions will be in accordance with the surviving CBA guaranteed extra board agreement.

Q15. When will the Yuma extra board cover all the assignments provided for in this agreement.

A15. If after merger discussions with those engineers representatives from the adjoining Hub an implementing agreement/award so provides it will take place with the implementation of that agreement/award.

Q16. In Article IV B, will engineers be worked back from West Colton to their original on duty point?

A16. No, these engineers are made up extra board or pool engineers handling an imbalance of trains when no rested and available away from home engineers, and will be deadheaded back to their on duty point.

Q17. How will these engineers be paid?

A17. They will be paid under the flat rate provisions and their trip to West Colton and deadhead back shall be considered as one tour of duty.

ARTICLE V - TERMINAL CONSOLIDATIONS

Q18. Are the national road/yard Zones covering yard engineers measured from the new terminal limits where the yard assignment goes on duty?

A18. The new terminal/station limits where the yard engineer goes on duty will govern.

ARTICLE VI - AGREEMENT COVERAGE

Q19. When the surviving CBA becomes effective what happens to existing claims filed under the other collective bargaining agreements that formerly existed in the LA Hub?

A19. The existing claims shall continue to be handled in accordance with those agreements and the Railway Labor Act. No new claims shall be filed under those agreements once the time limit for filing claims has expired for events that took place prior to the implementation date.

Q20. How will vacations for 1999 be handled?

A20. They will continue to be handled under the CBA that covered them at the beginning of the year. Vacations for 1999 will be scheduled at the end of 1998 under the provisions of the then prevailing agreements.

Q21. If an engineer in the 25 mile zone is delayed in bringing the train into the original terminal so that it does not have time to go on to the far terminal, what will happen to the engineer?

A21. Except in cases of emergency, the engineer will be deadheaded on to the far terminal.

Q22. Is it the intent of this agreement to use engineers beyond the 25 mile zone?

A22. No.

Q23. In Article VI, is the ½ basic day for operating in the 25 mile zone frozen and/or is it a duplicate payment/ special allowance?

A23. No, it is subject to future wage adjustments and it is not duplicate pay/special allowance.

Q24. How is an engineer paid if they operate in the 25 mile zone?

A24. If a pre-October 31, 1985 engineer is transported to its train 10 miles East of Yermo and he takes the train to West Colton and the time spent is one hour East of Yermo and 9 hours between Yermo and West Colton with no initial or final delay earned, (total time on duty 10 hours) the engineer shall be paid as follows:

- A. One-half basic day for the service East of Yermo because it is less than four hours spent in that service.
- B. The road miles between Yermo and West Colton with a minimum of a basic day .
- C. Overtime based on the governing CBA. Since the trip is less than 130 miles, overtime will commence after 8 hours on duty so one hour will be paid at overtime.

Q25. Would a post October 31, 1985 engineer be paid the same?

A25. In this case yes. The National Disputes Committee has determined that post October 31, 1985 engineers come under the overtime rules established under the National Agreements/Awards/Implementing Agreements that were effective after that date for both pre-existing runs and subsequently established runs. As such, the post October 31, 1985 engineer would receive the overtime in C above because the overtime provisions on runs of less than a basic day are the same for both pre and post October 31, 1985 engineers.

Q26. How will initial terminal delay be determined when performing service in the 25 mile zone?

A26. Initial terminal delay for engineers entitled to such payments will be governed by the applicable collective bargaining agreement and will not recommence when the engineer operates back through the on duty point. Operation back through the on duty point shall be considered as operating through an intermediate point.

Q27. Are any payments retained that are triggered by a West Colton Basin engineer turning or performing work that prevents them from turning?

A27. No

Q28. Are any payments retained for any engineer receiving or leaving a train dockside?

A28. No.

Q29. Can you give some examples of deadheads that would and would not be eligible for the flat rate pay and what is the deadhead rate?

A29. The deadhead rate is \$156.11/daily and \$19.51/hourly. The following would govern:

Example 1: A West Colton engineer is called to deadhead to the Harbor and obtain rest. This would not be eligible for the flat rate. If the engineer was called one hour after tying up and told to take a train back this would not be combined with the first deadhead because he had been instructed to tie-up and had done so. He/she would be paid the flat rate for the return trip separate from the deadhead over.

Example 2: A West Colton engineer is at the away from terminal and after rest is deadheaded back to West Colton. This would not be eligible for the flat rate.

Example 3: A West Colton engineer takes a train to LATC then is driven to Dolores and takes a train to City of Industry and is deadheaded back to West Colton without a break in service. This is covered under the flat rate agreement and no additional payment is made.

NOTE : When an employee is being paid under the flat rate provisions then the wording used to tell an engineer that they are being transported or deadheaded as part of their tour of duty is not material and does give rise to a separate and apart claim.

Q30. Does the language of VI B 4 prohibit the use of pool freight engineers in straight away combination deadhead/service from picking up a train whose engineer had earlier expired under the Hours of Service Act?

A30. No, the language of Article VI B 5 clearly preserves that service. The language of VI B 4 provides that extra boards will be used before pool engineers in turnaround service and does not require that they be used prior to pool engineers in straight away service.

Q31. May engineers run through their destination terminal up to 25 miles?

A31. No, the twenty-five mile provisions are only for obtaining a train on the far side of a terminal and not for running through their destination terminal.

ARTICLE VII - PROTECTION

Q32. What rights does an engineer have if he/she is already covered under labor protection provisions resulting from another transaction?

A32. Section 3 of New York Dock permits engineers to elect which labor protection they wish to be protected under. By agreement between the parties, if an engineer has three years remaining due to the previous implementation of Interdivisional Service the engineers may elect to remain under that protection for three years and then switch to the number of years remaining under New York Dock. It is important to remember that an engineer may not receive duplicate benefits, extend their protection period or count protection payments under another protection provision toward their test period average for this transaction.

Q33. How will reductions from protection be calculated?

A33. In an effort to minimize uncertainty concerning the amount of reductions and simplify this process, the parties have agreed to handle reductions from New York Dock protection as follows:

1. **Pool freight assignments** - 1/15 of the monthly test period average will be reduced for each unpaid absence of up to 48 hours or part thereof. Absences beyond 48 hours will result in another 1/15 reduction for each additional 48 hour period or part thereof.
2. **Five day assignments** - 1/22 of the monthly test period average will be reduced for each unpaid absence of up to 24 hours or part thereof. Absences beyond 24 hours will result in another 1/22 reduction for each additional 24 hour period or part thereof.
3. **Six & seven day assignments** - The same process as above except 1/26 for a six day assignment and 1/30 for a seven day assignment.

NOTE: There shall be no offset from protection for rest days on five day and six day assignments,.

4. **Extra board assignments** - 1/30 of the monthly test period average will be reduced for each unpaid absence of up to 24 hours or part thereof. Absences beyond 24 hours will result in another 1/30 reduction for each additional 24 hour period or part thereof.

NOTE: Absences on the extra board shall be calculated from the time of unavailability (layoff, missed call, etc) until the next time called for service. For example: If a engineer lays off on Monday at noon, marks up the next day, Tuesday, and does not work until 2 AM on Wednesday, then they shall be off for protection purposes for thirty-eight (38) hours and shall be deducted 2/30 of their protection.

- Q34. Why are there different dollar amounts for non-home owners and homeowners?
A34. New York Dock has two provisions covering relocating. One is Article I, Section 9, Moving Expenses and the other is Section 12, Losses from Home Removal. The \$10,000 is in lieu of New York Dock moving expenses and the remaining \$20,000 is in lieu of loss on sale of home.
- Q35. Why is there one price on loss on sale of home
A35. It is an in lieu of amount. Engineers have an option of electing the in lieu of amount or claiming New York Dock benefits. Some people may not experience a loss on sale of home or want to go through the procedures to claim the loss under New York Dock.
- Q36. What is loss on sale of home for less than fair value?
A36. This refers to the loss on the value of the home that results from the Carrier implementing this merger transaction. In many locations the impact of the merger may not affect the value of a home and in some locations the merger may affect the value of a home.
- Q37. If the parties cannot agree on the loss of fair value what happens?
A37. New York Dock Article I, Section 12(d) provides for a panel of real estate appraisers to determine the value before the merger announcement and the value after the merger transaction.
- Q38. What happens if a engineer sells the home for \$20,000 to a family member?
A38. That is not a bona fide sale and the engineer would not be entitled to either an in lieu of payment or a New York Dock payment for the difference below the fair value.
- Q39. What is the most difficult part of New York Dock in the sale transaction?
A39. Determine the value of the home before the merger transaction. While this can be done through the use of professional appraisers, many people think their home is valued at a different amount.
- Q40. Who is required to relocate and thus eligible for the allowance?
A40. A engineer who can no longer hold a position at his/her location and must relocate to hold a position as a result of the merger. This excludes engineers who are borrow outs or forced inside the Hub and released and engineers who have to exercise seniority due to a non merger event.

Example : Due to the new West Colton-Yermo pool an engineer can no longer hold a position at East Yard and must work at West Colton. Since this is a result of the merger transaction then the engineer may be eligible.

Q41. Are there any seniority moves that will be treated as required to relocate?

A41. Yes and the following are examples:

Example 1: Ten turns are reduced in the West Colton-Yuma pool and ten turns are added in the LATC-Yuma pool. Ten senior engineers at West Colton may make application for those positions and be entitled to a relocation allowance should they meet the mileage criteria.

Example 2: The same ten turns are moved, however, a more senior engineer on a City of Industry road switcher makes application for one of the turns. Since the senior engineer is not following his/her work nor required to relocate the application is a seniority move and does not trigger a relocation allowance.

Q42. Are there mileage components that govern the eligibility for an allowance?

A42. Yes, the engineer must have a reporting point farther than his/her old reporting point and at least 30 highway miles between the current home and the new reporting point and at least 30 highway miles between reporting points.

Example 1: If the on-duty point for road engineers is relocated from East Yard to LATC, both within the same Terminal, this does not trigger a relocation allowance.

Example 2: An engineer lives in Long Beach, 18 miles from his/her on duty point and as a result of the merger must report at West Colton, 70 miles from their residence. If they relocate then they would be eligible for a relocation allowance.

Example 3: An engineer resides at Ontario and works at Gemco. Due to the merger they are required to report to West Colton. Since West Colton is closer than Gemco they are not entitled to a relocation allowance.

Q43. At what time did an engineer need to be a home owner to qualify as a home owner for relocation purposes?

A43. New York Dock protects home owners due to loss on sale of home that are caused by the merger. A person who purchases a home after the merger was approved in September 1996 would not be affected by the merger because they were not a home owner at that time.

Q44. Will engineers be allowed temporary lodging when relocating?

A44. Engineers entitled to a relocation allowance shall be given temporary lodging for thirty (30) consecutive days as long as they are marked up.

- Q45. Are there any restrictions on routing of traffic or combining assignments?
A45. There are no restrictions on the routing of traffic in the Los Angeles Hub once the 30 day notice of implementation has lapsed. There will be a single collective bargaining agreement and limitations that currently exist in that agreement will govern (e.g. radius provisions for road switchers, road/yard moves etc.). However, none of these restrictions cover through freight routing. The combining of assignments between the Carriers is covered in this agreement and is permitted.
- Q46. Will the Carrier offer separation allowances?
A46. The Carrier will review its manpower needs at each location and may offer separation allowances if the Carrier determines that they will assist in the merger implementations..
- Q47. What period will be used for the TPA?
A47. Calendar year 1998 for engineers not electing to retain SP West modification/engineer protection.
- Q48. How will Union Officers TPA's be established?
A48. The Carrier will average the two above and two below (on the pre-merger rosters) in any service. If greater than their regular TPA it shall be used. Engineers with unusually high or low TPA's will not be considered.
- Q49. Since UP engineers hired after January 13, 1998 have a five year entry rate rule and the SP engineers have a three year entry rate rule how will the UP engineers be treated at implementation?
A49. They will come under the SP rule and will have their entry rates adjusted upward.

Article IX -FAMILIARIZATION

- Q50. Are there a set number of trips that an engineer will take in learning new territory?
A50. No, since engineers have differing experiences the number of trips will vary and the local chairmen will work with local operating officers on the number and type of trips needed.

Article X - IMPLEMENTATION

- Q51. On implementation will all engineers be contacted concerning job placement?
A51. No, the implementation process will be phased in and engineers will remain on their assignments unless abolished or combined and then they may place on another assignment. When the Carrier posts the notice on pool changes and increases and decreases in extra boards Local Chairman will assist in handling the bidding, application and placement process at that time and engineers may be contacted for placement if insufficient bids/applications are received. The new seniority rosters will be available for use by engineers who have a displacement.

- Q52. What is meant by the term "harbor area"
- A52. The harbor area is the area from Dominguez Jct (SP) and Douglas Jct (UP) and dockside. Engineers that report to an on duty point within this area may leave or receive their train anywhere between these two points and dockside.
- Q53. If any existing road territory is turned into a switching territory would prior rights still exist?
- A53. Yes
- Q54. Are the road switchers that go on duty in the Imperial Valley remaining in the LA Hub?
- A54. Yes, pursuant to the provisions of IV D.
- Q55. Is the road switcher agreement E&F1-2248 going to apply for road switchers currently governed by it?
- A55. Yes except that the cancellation clause has been amended to one year and the rate of pay is as provided in this agreement. The agreement will also now apply to all road switchers west of West Colton in the LA Hub.
- Q56. What is meant by assigned service?
- A56. Local freight and road switcher service.

November 6, 1998
Side Letter No. 1

Dear Sirs:

During our discussions on New York Dock and extended Protection we discussed the issue of a pool engineer taking a single day paid absence such as a Personal Leave day or single day vacation and the impact it will have on his/her protection. In an effort to simplify the process and to provide the pool engineer with an alternative the parties agree that a pool engineer shall have one of the following options:

- (1) Elect a single paid personal leave or vacation day and hold their turn so that if it obtains a first out status they will be first out when they are marked up no less than 24 hours later, with no deduction from their protection; or
- (2) Elect a minimum of two consecutive days paid personal leave days on pools whose round trip district miles are 400 or less or a minimum of three consecutive days on pools whose round trip district miles are more than 400 miles and not hold their turns. If the minimum number of consecutive days are met for each round trip, then no deduction will be made in their protection.

Question #1: If the round trip district miles of a run are 390 miles and initial and or final terminal delay make a payment over 400 miles how many personal leave days must be used.

Answer #1: Only the district miles are used for determining the number of personal leave days to be used. In this case two personal leave days would qualify for no deduction.

Question #2: If the round trip district miles are over 400 miles how is a deadhead counted.

Answer#2: Deadheads are already taken into account by using a 1/15th offset for pools. Since most pools do not average 15 round trips per month a 1/15th offset is less than using the average for each pool. As a result the round trip district miles are used for determining the number of personal leave days that would substitute for no offset and in this case three personal leave days would qualify.

Question #3: If the Yuma pool returns to Mira Loma, employees in that pool will not know if their trip would have gone over 400 miles at the time of layoff. How will they be governed?

Answer #3: The round trip district miles of the pool is the determining factor and trips that take a West Colton-Yuma pool to Mira Loma will not change the minimum two consecutive personal leave or vacation days since the regular pool round trip is 396 miles.

(3) Elect a single paid personal leave or vacation day and not hold their turn resulting in payment of a single day with a corresponding 1/15th deduction from protection.

The option must be selected by the engineer at the time the personal leave or vacation day is granted. Engineers must file the protection form each time they take paid days in accordance with the above options.

Yours truly,

W.S. Hinckley

Agreed:

General Chairman BLE

General Chairman BLE

General Chairman BLE

November 6, 1998
Side Letter No.2

Dear Sirs:

This refers to our several discussions concerning Yuma and the Carrier's plans for assignments at that location and the extra board plans for that area.

Currently Yuma is the away from home terminal for West Colton crews. In addition there are a couple of assignments (local/road switcher) that work east and a couple of assignments (local/ road switcher) that work west from Yuma. Sometimes the Carrier has run the Imperial Valley assignments from Yuma and sometimes from West Colton.

In addition to the provisions of this agreement, the following will apply:

1. The two extra boards will be consolidated on a 50/50 basis with the LA Hub entitled to prior rights to the even number assignments up to the number of assignments on their extra boards when the extra boards are consolidated. For example, if there are three extra board assignments at time of consolidation then the LA Hub shall have prior rights to numbers 2, 4, and 6. There will then be one extra board at Yuma and the extra board at Yuma will be used to fill short term vacancies on all assignments that have Yuma as a home terminal whether LA Hub vacancies or the Hub that includes Tucson, and EL Centro assignments.
2. The extra board will perform hours of service relief/turnaround service as far west as Niland (MP 667) in the LA Hub and as far east as is negotiated in the next Hub.
3. These prior rights are to be attrited and are not under the phase out provisions

Yours truly,

W.S. Hinckley

Agreed:

General Chairman BLE

General Chairman BLE

General Chairman BLE

Gentlemen:

During negotiations the parties spent considerable discussion concerning the intent and meaning of NOTE 1 of Article I. It was agreed that further detail would be provided in a side letter explaining how different types of operations would be affected.

Therefore, the following is meant to give further definition to the NOTE.

Road Switchers: Road Switcher agreements in the controlling CBA provide for a 25 mile limit unless specifically provided otherwise. A road switcher that goes on duty inside the Hub and covered by the 25 mile provisions, would be limited by those provisions even though the 25 miles would take the assignment into the adjoining Hub. For example, a road switcher at Yermo (LA Hub assignment) would therefore be limited to 25 miles from the station limits in either direction. Similarly a road switcher that goes on duty in another Hub may work to its limits even if those limits include part of the LA Hub.

Locals on duty inside the Hub: Current locals that go on duty inside the Hub may continue to operate to points outside the Hub. New locals that go on duty in the Hub that will work in two or more Hubs will be established in accordance with CBA provisions including Article IX national ID provisions.

Locals on duty outside the Hub: Current locals that go on duty outside the Hub may continue to operate to points inside the Hub. New locals that go on duty in the Hub that will work in two or more Hubs will be established in accordance with CBA provisions including Article IX national ID provisions.

Current Pools and Pools established by Merger Agreements: These pools may operate between their designated terminals even if outside the Hub. At Yermo and Yuma they may operate up to 25 miles beyond the terminal when picking up a train in accordance with the 25 mile provisions of Article VI B 3. Bakersfield pool crews will be governed by their 25 mile provisions for trains East of West Colton but not for trains that are West of West Colton including the area between LATC and the Harbor area.

New Pools created after this Agreement: New pool operations not covered in this implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award.

Extra Boards: LA Hub extra boards may go as far as Santa Barbara on the Coast Line, as far as Hivolt on the line to Bakersfield from West Colton and Palmdale from LATC and as far as Kelso towards Las Vegas to perform hours of service relief. The Yuma extra board may go as far as Niland in the LA Hub to perform hours of service relief.

NOTE: It is not the intent to supersede the provisions of 3(c) of Article 6 of the controlling CBA. Hours or service relief required west of M.P. 667 (Niland) will continue to belong to the West Colton Pool.

Example 1: A road switcher on duty at Yermo may work in any direction up to the limits of its radius as set by the road switcher agreement without infringing on the rights of Salt Lake Hub crews.

Example 2: A West Colton pool freight crew would continue to operate through freight from West Colton to Yuma and perform the same work as it performed pre-merger.

Example 3: A Bakersfield pool freight crew would continue to operate through freight from Bakersfield to West Colton and perform the same work as it performed pre-merger.

Example 4: LA Hub crews would work the Dolores unit oil train that runs to Mojave and back to the Basin if the home terminal is in the Basin.

Yours truly,

W.S. Hinckley

Agreed:

General Chairman BLE

General Chairman BLE

General Chairman BLE

November 6, 1998
Side Letter No. 4

Gentlemen:

During our negotiations we discussed several times running a pool from the harbor area to Yermo and Yuma. Several points were discussed including having these operations combined with the LATC pool and having dual reporting points for the combined pools. Due to several uncertainties in how the Alameda corridor would operate once it was completed and any operating restrictions that would be placed on this area by government entities that are involved in its planning, building and operations, the Carrier agreed to remove this item from our negotiations. This withdrawal was without prejudice to either parties position on the appropriateness of the operations and aspects of this service and does not otherwise affect the merger of the two Carriers in the Harbor area.

If this service is instituted in the future then the Carrier will serve an Article IX Interdivisional Notice to cover its implementation.

Yours truly,

W.S. Hinckley

Agreed:

General Chairman BLE

General Chairman BLE

General Chairman BLE

November 6, 1998
Side Letter No. 5

Gentlemen:

The parties recognize the need to coordinate the implementation of this Hub with that of the Roseville Hub and to allow sufficient time to properly set up pools and extra boards that an interim period is needed to assist in these matters. The following shall govern.

1. The interim period shall begin with the implementation of this agreement.
2. New York Dock wage protection shall not begin until the interim period is over except it shall be no longer than one year from the implementation date. Wage Protection during the interim period shall be known as interim protection and shall be governed by all the applicable provisions of this agreement.
3. During the interim period San Joaquin engineers in the LA Hub will be required to continue to work pool assignments to Bakersfield and San Luis Obispo and supporting extra boards and will be considered as holding the highest paying position they can hold until the work is relocated. This will not negatively impact their rights to a relocation if otherwise eligible.
4. Pool assignments and extra boards shall be established gradually to provide time to familiarize engineers on new assignments and still keep operations fluid. For example: When the West Colton-Yermo pool is established a temporary separate extra board will be set up to cover this service and to familiarize on the other West Colton assignments. When the two extra boards are sufficiently familiarized then they may be combined. Also the West Colton- Basin pool may be established a few assignments at a time to properly familiarize engineers.

5. All pay provisions as established in this agreement shall go into effect on implementation day, even for the remaining LATC/Dolores pool as it is phased out. Prior to implementation the Carrier will advise the single on duty point for the LATC/Dolores pool until phased out.

Yours truly,

W.S. Hinckley

Agreed:

General Chairman BLE

General Chairman BLE

General Chairman BLE

November 30, 1998

Mr. M.A. Mitchell
General Chairman BLE
9216 Bella Vista Place
Elk Grove, CA 95624

Mr. E.L. Pruitt
General Chairman BLE
2414 Edison HWY
Bakersfield CA 93307

Mr. H.F. Stewart
General Chairman BLE
335 N. Arroyo Drive
San Gabriel, CA 91775

Mr. D.M. Hahs
Vice-President BLE
1011 St Andrews
Kingwood, TX 77339

Mr. J.L. McCoy
Vice-President BLE
5050 Poplar Ave Suite 501
Memphis TN 38157

Gentlemen:

This letter is a supplement to the Los Angeles Hub BLE Agreement. As the Hub Agreement was being reviewed, requests for further clarifications were made. Upon reviewing these requests the parties have developed the following additional Questions and Answers:

Question 57: Does this Agreement provide for West Colton-Basin crews to run through Gemco and Anaheim or provide service under the 25 mile zone provisions at these points?

Answer 57: No. Pre-merger service operates to Gemco and Anaheim and this Agreement provides continued service to those same locations, except under the West Basin-Pool and assigned service provisions. The 25 mile zone provisions of Article VI, B, 3, do not apply at points west of Gemco and Anaheim. If the Carrier later needs to run through these points with the West Basin-pool they will handle it in accordance with Article IX of the 1986 National Arbitration Award.

Question 58: Article III, C provides that service to City of Industry will be turnaround service with the engineer being returned home at the end of their tour of duty. Since this pool has more than one away from home terminal how will the engineer know that he/she is called for this location?

Answer 58: At time of call the employee will be told they are going to City of Industry so they will not have to bring an overnite grip.

Question 59: What happens if while en route to City of Industry, the engineer is told to take the train to East Yard by the dispatcher?

Answer 59: The engineer should comply with instructions, however he/she will not be tied up at East Yard but will be returned to West Colton after completing their work at East

Yard.

Question 60: Are engineers called to City of Industry and then used beyond that entitled to an additional basic day payment in addition to the flat rate payment?

Answer 60: Of the several far terminals that the West Basin Pool can work to, only City of Industry is not a layover point. By Agreement between the parties, work beyond it would entitle the engineer to this additional payment. The payment is not applicable to a crew initially called beyond City of Industry that changes trains or sets out a train at City of Industry and proceeds on to another terminal nor to crews called to other points beyond City of Industry that work in other parts of the basin. Example 3 of Question and Answer 29 sets forth in detail some of the work that can be performed without additional pay when called beyond City of Industry and those principles govern non City of Industry calls.

Question 61: Question Answer 29 discusses when flat rate payments are applicable. could you explain in further detail when a "release" would trigger a separate payment?

Answer 61: If an employee is "released" from their assignment for the purpose of obtaining rest under the hours of service act then another payment is applicable when recalled to service. It is immaterial whether this release is for 4, 8 or more hours. The new payment would depend on whether the next call is service or a separate and apart deadhead. If the engineer is "released" for the purpose of updating computer records for CMS and timekeeping purposes then no additional payment is provided. An example would be an engineer takes train ABC from West Colton to East Yard, is "released" from that train and assigned to take train DEF back to West Colton with no hours of service break between the handling of the two trains. This "release" is for CMS and timekeeping purposes and does not result in an additional payment.

Question 62: After the 30 day notice of implementation is given may new assignments that are going to be part of the initial implementation be pre-advertised prior to implementation?

Answer 62: Yes, assignments may be bulletined 7 days prior to implementation for assignment on implementation day.

Question 63: Yuma and Yermo are both away from home terminals for two pools. Does this Agreement provide for those pools to be combined at the far terminals for return trips to the Home Terminal?

Answer 63: No, and West Colton based crews will not be called to go beyond West Colton on the return trip. While LATC/East Yard crews will return to their home terminal on the return trip, they may be used in combination service dropping off trains en route and deadheading on to LATC/East Yard.

Question 64: A review of the 25 mile zone payment provisions indicates that in very few circumstances it is possible that engineers would be paid less than if paid under normal pay provisions. For example; An engineer picks up a train 10 miles East

of Yermo and spends 4 hours in the 25 mile zone and 8 hours between Yermo and West Colton, which is less than 130 miles. The 25 mile provisions would provide for 12 hours straight time and since less than a basic day run would otherwise start overtime after 8 hours, the overtime would pay more. Are there alternate pay provisions in this type of circumstance?

Answer 64: Yes, if the time spent within the Zone, if factored into the computation of overtime, would produce road overtime earnings for the tour of duty in excess of the minimum four (4) hour payment, they shall be paid the higher amount in lieu of the separate 25 mile payment.

Question 65: Will the parties revisit this rule for the purpose of amending payment in these few circumstances?

Answer 65: Yes, they will review the issue for the Hubs that the signature General Chairmen are involved in. In addition to the overtime issue, there are other payment benefits covering engineers that need to be taken into account. For example; all deadheads between the initial and final terminal when work is performed in the 25 mile Zone is combination which pays more than separate and apart. It is believed that the instances in Question 64 are minimal, however these instances will be addressed.

Question 66: What is the Carrier's position on engineer familiarization in the 25 mile zone?

Answer 66: This issue was raised in another area on the Union Pacific System and the Carrier reissued instructions to its officers and sent a copy to the BLE International offices. Attached is a copy of that letter.

Yours truly,

W. S. Hinckley

Agreed:

General Chairman BLE

General Chairman BLE

General Chairman BLE

UNION PACIFIC RAILROAD COMPANY

Western Region - Transportation

Frank A. Tamislea
Dir. Labor Relations
Tel: (916) 789-6345

10031 Foothills Blvd.
Roseville, CA 95747



October 27, 2009

LOU# 1705180918
(390.60)

Mr. D.W. Hannah
General Chairman BLET
404 North 7th St. Suite A
Colton, CA. 92324-2941

Dear Sir

This refers to our discussions concerning the pilot project in which all pool employees are permitted to hold their turn first out should it become first out when taking a single day vacation and/or a single day personal leave day as provided by Side Letter No. 1 of the Roseville, Los Angeles and Southwest Hub Agreements.

As we discussed, this pilot project turns out to be beneficial for both employees, as well as the Carrier, enabling employees to work their assignment and at the same time ensuring the availability of manpower to protect the service. Therefore, the parties agree to implement this understanding on a permanent basis.

The specific language under discussion is incorporated in each side letter as Section (1) and provides, in pertinent part, as follows:

“Elect a single paid personal leave or vacation day and hold their turn so that if it obtains a first out status they will be first out when they are marked up no less than 24 hours later...”

This language applied exclusively to merger protected engineers.

Accordingly, it is understood at Roseville, Los Angeles and the Southwest Hub territories, all pool employees, and not just protected pool employees, will be permitted to utilize Section (1) of Side Letter No. 1. In other words, any pool employee taking a single personal leave or single day vacation will automatically be handled in accordance with Section 1 of the controlling Side Letters.

Except as specifically provided above, no other changes are made in Side Letter No. 1 of the respective Hubs.

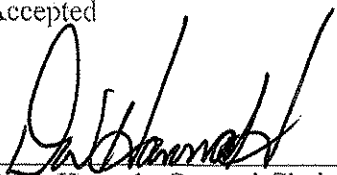
H:DATA/WORD/DWH.390.60.HOLDTURN-FT

Mr. D.W. Hannah
October 27, 2009
LOU# 1705180918

It is understood either party may cancel this understanding by serving a 30-day written notice upon the other. It is understood that each of the identified Hubs have stand alone rights to terminate the understanding as it applies to them and to withdraw from this understanding. Similarly, the Company may cancel this understand at all three (3) Hubs or separately at each location.

To indicate your acceptance, please sign in the space provided below. Upon receipt of your acceptance, the revised process will be implemented.

Accepted



D.W. Hannah, General Chairman
Brotherhood Of Locomotive Engineers
& Trainmen

Sincerely,



Frank A. Tamisiea
Director, Labor Relations

Cc: Tony Leazenby, CMS
Kelly Mitchel, CMS
Jon Degraw, CMS
Cliff Johnson, TK
Greg Cox, TK
Terry Stone, LR
Frank Tamisiea, LR
Marilyn Ahart - LR
Lucy Ruf, LR

UNION PACIFIC RAILROAD COMPANY

Western Region - Transportation

Frank A. Tamisica
Dir. Labor Relations
Tel: (916) 789-6346

10031 Foothills Blvd.
Roseville, CA 95747



November 4, 2009

LOU# 1705180918
(390.60)

Mr. D.W. Hannah
General Chairman BLET
404 North 7th St. Suite A
Colton, CA. 92324-2941

Refs Holding Turn First Out

Dear Sir:

This refers to our discussions on November 2, 2009 concerning LOU# 1705180918 dated October 27, 2009 and the application of engineers holding their turn first out as provided in the Letter of Understanding.

This will confirm our discussions and further understanding that any pool engineer taking a single personal leave or single day vacation may elect to hold their turn first out when they return (mark-up) to service after the expiration of the mark off.

It is understood should the October 27, 2009 LOU# 1705180918 be canceled by either party, this understanding will also automatically terminate in conjunction therewith. It is understood that each of the identified Hubs have stand alone rights to terminate the understanding as it applies to them and to withdraw from this understanding. Similarly, the Company may cancel this understand at all three (3) Hubs, or separately at each location.

To indicate your acceptance, please sign in the space provided below. Upon receipt of your acceptance, I will forward to the affected Departments for their handling.

Accepted

A handwritten signature in black ink, appearing to read "D.W. Hannah".

D.W. Hannah, General Chairman

Sincerely,

A handwritten signature in black ink, appearing to read "Frank A. Tamisica".

Frank A. Tamisica
Director, Labor Relations