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UNITED STATES OF AMERICA
NATIONAL MEDIATION BOARD

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In The Matter Of: :
Application of the UNITED :
TRANSPORTATION UNION alleging a : File No. CR6624
representation dispute pursuant :
to Section 2, Ninth of the Railway :
Labor Act, as amended involving :
employees of UNION PACIFIC RAILROAD :
COMPANY :

- - - - -x
National Mediation Board
East Tower
1301 K Street, N.W.
Room 250 East
Washington, D.C.
Friday, July 9, 1999

The above-entitled matter came on for hearing, before the
Honorable Benetta M. Mansfield, Senior Hearing Officer, assisted by
Richard Hanusz, Mediator, pursuant to notice, at 9:00 a.m.

BEFORE:
BENETTA M. MANSFIELD, Senior Hearing Officer

1 APPEARANCES:

2 On Behalf of the United Transportation Union:

3 CLINTON J. MILLER, III. ESQ.

4 General Counsel

5 United Transportation Union

6 14600 Detroit Avenue

7 Cleveland, OH 44107

8

9 JAMES L. LINSEY, ESQ.

10 Cohen, Weiss & Simon

11 330 West 42nd Street

12 New York, NY 100366901

13

14 At Counsel Table:

15 DR. RAY MARSHALL

16 Audre & Bernard Rapoport Centennial Chair in Economics and

17 Public Affairs

18 The Lyndon B. Johnson School of Public Affairs

19 The University of Texas at Austin

20 P.O. Box Y

21 Austin, TX 787138925

22

23 On Behalf of the Brotherhood of Locomotive Engineers:

24 GEORGE H, COHEN, ESQ.

25 APPEARANCES [cont'd]

1 DEVKI K. KIRK, ESQ.
2 Bredhoff & Kaiser, P.L.L.C.
3 1000 Connecticut Avenue, N.W.
4 Washington, D.C. 20036

5
6 HAROLD A. ROSS, ESQ.
7 Ross & Kravshaar Co., LPA
8 1548 Standard Building
9 1370 Ontario Street
10 Cleveland, OH 441131740

11
12 On Behalf of the Union Pacific Railroad Company:

13 RALPH J. MOORE, JR., ESQ.
14 DONALD J. MUNRO, ESQ.
15 Shea & Gardner
16 1800 Massachusetts Avenue, N.W.
17 Washington, D.C 20036

18
19 BRENDA J. COUNCIL, ESQ.
20 Kutak Rock
21 The Omaha Building
22 1650 Farnam Street
23 Omaha, NE 68102

24
25

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[9:00 a.m.]

HEARING OFFICER MANSFIELD: Let's go on the record.

MR. MILLER: I do have, Madame Hearing Officer, a preliminary matter. I was supposed to check with my office yesterday as to what the content of the UTU president's file was with respect to I believe what was BLE Exhibit 15.

HEARING OFFICER MANSFIELD: 15-C.

MR. MILLER: And I have received by facsimile transmission from my office overnight what appears as a stapled document that contains the attachment that was attached to 15-C, as well as two other attachments. And in discussing it with Mr. Cohen and Mr. Ross, I believe at the break they would like to duplicate this and substitute it for 15-C, to which I would have no objection.

MR. COHEN: That's fine with us.

HEARING OFFICER MANSFIELD: Okay. Can I see it?

MR. MILLER: Sure.

HEARING OFFICER MANSFIELD: I am assuming this was on letterhead.

MR. MILLER: Yes, but in the president's file room they only keep the file copy, which is not signed and not on letterhead.

HEARING OFFICER MANSFIELD: Okay. So after we Xerox that, we will receive it into evidence.

All right. Are you ready?

MR. ROSS: Yes.

1 HEARING OFFICER MANSFIELD: Do you want to call your
2 witness?

3 MR. ROSS: Yes. Marvin Mitchell. I have to go get him.
4 Whereupon,

5 MARVIN ALEX MITCHELL,
6 a witness, having been called for examination by counsel and, having
7 been first duly sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ROSS:

10 Q Would you please state your name for the record?

11 A Marvin Alex Mitchell.

12 Q And your address, sir?

13 A 9216 Bella Vista Place, Elk Grove, California.

14 Q And are you a General Chairman for the Brotherhood of
15 Locomotive Engineers?

16 A Yes, I am.

17 Q And how long have you been a General Chairman for the
18 Brotherhood of Locomotive Engineers?

19 A This time, two years and a month.

20 Q And what General Committee are you General Chairman of?

21 A Western Region for the Union Pacific Railroad.

22 Q And what geographic area or seniority district of the UP
23 does that cover?

24 A It covers from Seattle south to and including Eugene,
25 Oregon; east to, but not including Green River, Wyoming, via Napa --

1 Idaho, Pocatello, Idaho; Salt Lake City, south to and including Los
2 Angeles; and west to and including Elko, Nevada.

3 Q Does that also -- strike that. Would you briefly describe
4 for us your employment background starting with your railroad
5 employment?

6 A I hired as a switchman, Oakland, California, 1970. I held
7 various capacities, a switchman, yard foreman, brakeman, conductor, yard
8 master. 1974, I entered the engineers training class as an apprentice
9 engineer and promoted in '75.

10 Q And you were a locomotive engineer after that?

11 A Yes.

12 Q And how long did you actively work as a locomotive engineer?

13 A For the last -- from 1974 until 1981.

14 Q And what happened in 1981?

15 A I was elected General Chairman for the former Western
16 Pacific.

17 Q And how long did you hold that position as General Chairman
18 on the Western Pacific?

19 A From 1981 to and almost '90.

20 Q Does the area covered by you include Salt Lake City?

21 A Yes.

22 Q And that is the Salt Lake City hub?

23 A That's correct.

24 Q Have you ever made a request for an ebb and flow agreement
25 in the Salt Lake City hub?

1 A Yes.

2 Q And to whom did you make that request?

3 A I made it to a Labor Relations officer, Chuck Wise.

4 Q Has there ever been an ebb and flow agreement in that area
5 to your knowledge?

6 A Yes, there has been.

7 Q And how long has that existed?

8 A I think we -- we had an agreement, I think it was written in
9 1996, and it was in effect for about 12 or 13 months, little used,
10 though, because of the shortage of people.

11 Q Have you attempted recently to reinstate an ebb and flow
12 agreement?

13 A I have asked the UTU -- I mean, yeah, the UTU for one, yes,
14 via a Labor Relations officer.

15 Q I would like to show you Exhibit 13-B. That is UTU Exhibit
16 13-B.

17 A I recognize it.

18 Q Do those documents signify the fact that you requested an
19 ebb and flow agreement at that location?

20 A Yes.

21 Q And what has happened to that request, to your knowledge?

22 A Nothing.

23 Q Why did you request an ebb and flow agreement be put in
24 place?

25 A Since 1986, since the UTU's '85 agreement, we have had a

1 terrible problem with the fact that the carrier would force engineers to
2 exercise their seniority throughout their entire district before they
3 could flow back to be a trainman. And there is many arbitration awards
4 where the UTU has won that position, and they insist that we flow back
5 before. Before we flow back, we have to exercise our seniority.

6 On the Western Region, it is terrible difficult. The region
7 I came off, we had a seniority district that was almost a thousand miles
8 long. And we would see engineers who could not hold -- for instance, in
9 Oakland, California, forced over to Salt Lake City to follow their
10 seniority. Once they got there, because the trainmen also had system
11 seniority agreement, once they got there, they would displace that
12 engineer, and that engineer would have to chase his seniority, more than
13 likely back to Stockton or Sacramento, California, five or six hundred
14 miles.

15 So to try to get some stability in these people's lives,
16 that is how we secured it the first time.

17 Q I gather that your request is being opposed at this time?

18 A I don't know if it is being opposed, but I haven't heard
19 anything from them. But I remember, this thing has been out for what, a
20 month, two months. I have lost my place here.

21 Q I believe it was in March.

22 A March.

23 Q How are applicants to enter the engineer training program
24 obtained in the seniority districts that you represent engineers on?

25 A Primarily from the ranks of trainmen, but not exclusive to

1 the trainmen.

2 Q You say but not exclusive to the trainmen?

3 A That's right.

4 Q Who else can be an applicant?

5 A I think anybody can be an applicant as long as they are
6 employed on the railroad. I have seen maintenance of way, clerical,
7 mechanical people make application and be accepted into the training
8 program.

9 Q How are they notified that there are openings in the
10 engineer training program?

11 A The Union Pacific has a job net, if you will, that comes
12 across the television screens of the computers, you can punch in to it.
13 And it tells you all available jobs, both collective bargaining and
14 non-collective bargaining jobs, management jobs.

15 Q And you say that employees from other crafts do apply for
16 that job?

17 A Oh, sure, yeah.

18 Q And can you give us some examples of when that occurred?

19 A Well, the property I came up off, the former Western
20 Pacific, they did a very good job of hiring people in the late '70s,
21 early '80s, so they didn't hire anybody till about 1988. So I went back
22 and I looked, and from 1988 they have had various classes and the least
23 amount of non-trainmen that were allowed to go in was like 15 percent.
24 The maximum we saw was 26 percent, and I averaged it out and it was
25 almost 21 percent were non-trainmen, didn't come from the trainmen's

1 ranks, and they came from the mechanical department and the clerical.
2 We have had people give up management jobs and come back in there,
3 exercise their seniority in the craft they came from.

4 Q Has that occurred within the last five years?

5 A Yes.

6 Q Do you have any examples of that?

7 A I gave you some. Do you want me to give --

8 Q Give us one exact example, if you can, specific example.

9 A In one of the classes there was a -- I can tell, I can
10 almost tell you, there was two CMS or crew management clerical people,
11 there was a signal maintainer. There was a carman, and they just came
12 from all different places.

13 Q In the event that the Union Pacific has been unable to fill
14 a class, do they force trainmen to apply or bid up on those openings?

15 A I have never seen that. In fact, when they didn't get
16 enough applications, as an example, maybe they had a class of 20 and
17 they could only get 18, they would just take a class of 18.

18 Q So they just didn't fill the class out?

19 A That's correct.

20 Q How many engineers are represented in the district that your
21 general committee covers?

22 A About 1,200, with joint jurisdiction of another 350 to 400.

23 Q Now you said joint jurisdiction. What do you mean by that?

24 A During the merger, we have overlapping jurisdiction between
25 Lee Pruitt off the former Southern Pacific, and we have a special

1 arrangement until we -- our international sets who's going to represent
2 them.

3 Q So you mean it's a jurisdictional divide between two general
4 committees of the Brotherhood of Locomotive Engineers.

5 A Yes.

6 Q And Mr. Pruitt is general chairman of what?

7 A Of Southern Pacific, now merged with the Union Pacific.

8 Q And he's a BLE representative.

9 A That's correct.

10 Q Would you please turn to binder 4 of the BLE exhibits.

11 Would you turn to tab 2-B.

12 MR. COHEN: Just one document in there. It's the -- show it
13 to the Hearing Officer. She's not sure --

14 HEARING OFFICER MANSFIELD: Just a second. I have to find
15 it. Is it something that hasn't been marked yet?

16 MR. ROSS: It's tab 2-B. It's in the middle of it.

17 MR. SIMMERMAN: That's 2-A, not 2-B.

18 MR. ROSS: 2-A, sorry. They found it.

19 MR. LINSEY: How many pages?

20 MR. ROSS: It's just two pages.

21 HEARING OFFICER MANSFIELD: Do you want mark this?

22 MR. ROSS: Yes, please.

23 HEARING OFFICER MANSFIELD: As Exhibit 22?

24 MR. LINSEY: 23.

25 HEARING OFFICER MANSFIELD: Okay. Sorry.

1 [BLE Exhibit No. 23 was marked for
2 identification.]

3 BY MR. ROSS:

4 Q Mr. Mitchell, I've handed to you what has been marked for
5 identification as BLE Exhibit No. 22.

6 HEARING OFFICER MANSFIELD: 23.

7 MR. ROSS: 23 is it? I'm sorry.

8 BY MR. ROSS:

9 Q Which is a document dated September 29, 1994, to all
10 Idaho-Utah trainmen over the signature of T. L. Dein, D-e-i-n, director,
11 CMS Western.

12 Have you previously seen this document?

13 A No.

14 Q You never have?

15 A No.

16 Q Does that apply in your territory?

17 A It does now. But I was the -- at the time, 1994, I was a
18 vice-chairman for our combined committee. Maybe I could explain that.

19 Q Okay. Go ahead.

20 A I said I was chairman from 1981 to about 1990, and in 1990
21 we took four BLE committees and merged them into one, and we formed the
22 Western Region for the Union Pacific. At that time I was elected
23 vice-chairman for the region I represented, which was the former Western
24 Pacific, which ran from Salt Lake City to the Bay area, San Francisco.
25 We had similar job advertisements, but I've never actually seen this

1 one.

2 Q Do you administer that document now?

3 A Yes.

4 Q Was this document taken from your files?

5 A Yes.

6 Q And you say that you're familiar with similar ones? What
7 does this document purport to do?

8 A It puts out an advertisement for engineer positions and it
9 gives the location and the number of engineers needed.

10 Q Is that normally the way that Union Pacific posts --

11 A Yes.

12 Q Advertisements for application to engineer training?

13 A Yes.

14 Q Does the selection process include any requirements that
15 have to be filled by the individual in order to apply?

16 A They take in consideration the length of time. They take in
17 consideration discipline records, medical, that type of thing. Is that
18 what you're asking?

19 Q Well, basically, yes, that's right. If an individual had a
20 poor discipline record, let's say, would that be used to -- in the
21 consideration of his application?

22 A Yes.

23 Q What other situations or criteria are exercised by the
24 carrier in determining whether a person's qualified to be an applicant?

25 A Work record, meaning the amount of time he works, if he's a

1 good employee, comes to work. That would be one. Discipline we just
2 got through saying. That's all I can think of.

3 Q Would there be any problem if he had a medical situation?

4 A Yes, I've run into that one.

5 Q You have run into that one?

6 A Yes.

7 Q How have you run into that one?

8 A They've been not allowed to go into the engineers training
9 class for -- because of a medical record.

10 Q Okay. Now at this time I also would like to introduce or
11 identify the subsequent document in that tab, which is a Memorandum of
12 Agreement 2509159 --

13 A 429? I think that's in here.

14 HEARING OFFICER MANSFIELD: Is it --

15 MR. ROSS: It's selection process for engineer service
16 promotion.

17 HEARING OFFICER MANSFIELD: Okay. And do you want to mark
18 this BLE 24?

19 MR. ROSS: Correct. Actually, if you want to mark it 23-B,
20 that's fine too, with the other one being 23-A.

21 HEARING OFFICER MANSFIELD: Okay. Do you want to mark 23-A
22 and this one, the selection process for engine service promotion, will
23 be marked 23-B?

24 MR. ROSS: Correct.

25 MR. LINSEY: Is this identical to UTU Exhibit 11-A?

1 MR. ROSS: That's what I thought. I just said that to my --
2 is it 11-A? I think it's 11-A. It might say --

3 HEARING OFFICER MANSFIELD: Well, then, I don't -- why don't
4 you just rely on 11-A? Let's not mark this, and why don't you use 11-A
5 to question him?

6 MR. ROSS: Okay. I've got to find that.

7 BY MR. ROSS:

8 Q Would you look at what's been marked as UTU Exhibit 11-A,
9 sir? It a document called Memorandum of Agreement, Union Pacific, for
10 the territory Salt Lake City to Butte, Granger to Huntington, and Los
11 Angeles to Salt Lake City for the United Transportation Union.

12 Are you familiar with that document?

13 A Yes.

14 Q Does that document contain the qualifications required of a
15 trainman for promotion or selection as an engineer applicant?

16 A I believe it does; yes.

17 Q And to your knowledge does that document contain references
18 to the qualifications that you previously outlined which were as I think
19 discipline, work record, and medical requirements?

20 A Yes. I haven't seen this for a while, but I believe it
21 does. I don't find it right now.

22 HEARING OFFICER MANSFIELD: Mr. Ross, although there hasn't
23 been an objection, it seems to me the document contains whatever it
24 contains. It's already in evidence.

25 MR. ROSS: Okay. At this time I would like to move into

1 evidence BLE Exhibit 23.

2 HEARING OFFICER MANSFIELD: Okay. So it's no longer going
3 to be 23-A, it will be BLE 23.

4 Any objection?

5 MR. MILLER: No objection.

6 HEARING OFFICER MANSFIELD: BLE Exhibit 23 is received.

7 [BLE Exhibit No. 23 was received into
8 evidence.]

9 Q As General Chairman have you attended any of the
10 implementing agreement negotiations covering the various hubs that arose
11 out of the Union Pacific-Southern Pacific merger?

12 A Yes.

13 Q Could you just briefly identify those hubs that you
14 participated in the negotiations?

15 A As a Vice Chairman I participated in the Salt Lake City hub,
16 the Roseville hub, the Portland Zone 1 hub, and the Los Angeles hub.

17 Q At any of those negotiations, was any representative or
18 officer of the United Transportation Union present?

19 A I'm sorry, sir. I don't understand the question.

20 Q At any of those meetings or negotiations regarding those
21 hubs, in addition to the BLE and UP representatives, was any
22 representative or officer of the UTU present?

23 MR. MILLER: Madam Hearing Officer, I will stipulate that
24 with respect to the negotiation of the hub implementing agreements
25 incident to implementation of the Union Pacific-Southern Pacific merger,

1 no UTU representative negotiated with respect to locomotive engineers.

2 HEARING OFFICER MANSFIELD: Do you accept that stipulation?

3 A Yes, I will accept that, but there was -- that doesn't say
4 about presence and I think there was some testimony originally that
5 someone was present, one of your witnesses?

6 HEARING OFFICER MANSFIELD: I don't know if it was present
7 or aware, but there was some communication.

8 MR. MILLER: The only exceptions I will make to it, and
9 perhaps it will cover the situation, is with regard to the Spokane
10 International, which UTU does represent the engineers, and there was
11 some presence with regard to the Memphis Union terminal where UTU held
12 the contract for engineers but gave it up.

13 MR. ROSS: Okay. All I want to refer to at this point of
14 time is the Spokane International.

15 BY MR. ROSS:

16 Q Was any representative or officer of the UTU present at the
17 time that the BLE was negotiating implementing agreements with the Union
18 Pacific?

19 A No, but I would like to qualify that.

20 Q Would you please qualify it?

21 A We had an orientation from the carrier, their Labor
22 Relations officer, basically explaining what the carrier intended to do
23 and what they anticipated they might want to do in terms of runs, single
24 and in pools, that kind of thing, and at that time there was a UTU
25 General Chairman there for that orientation.

1 Q And what was that individual's name?

2 A Mr. Martin. Artie Martin.

3 Q To your knowledge, did Mr. Martin participate in any
4 negotiations concerning Spokane International -- or I guess that is part
5 of the Portland hub?

6 A If I remember right, Artie Martin and the UTU represents
7 15-18 people of the Spokane International, which is a subsidiary of the
8 Union Pacific Railroad.

9 With that said, we had, as I said, an orientation where the
10 carrier explained what they are going to do, and that involved the
11 Spokane International.

12 Q And that is the only time that Mr. Martin was present?

13 A That's the only time, yes.

14 HEARING OFFICER MANSFIELD: Can I jump in just for a second?
15 Was that part of Portland Zone 1 negotiations?

16 THE WITNESS: Portland is broken down into three zones. We
17 negotiated Portland Zone 1 because -- I can't tell you what the
18 carrier's intention was -- and then we broke away from that and went to
19 Los Angeles, and now as of the June 16th --

20 HEARING OFFICER MANSFIELD: I am just trying to understand.
21 Were you in the Spokane International, because you said you did the Salt
22 Lake City hub negotiations, the Roseville, the Portland Zone 1, and the
23 L.A. hub.

24 Were you in the Spokane International negotiations?

25 THE WITNESS: They are ongoing. We have had our first

1 orientation with Mr. Martin, as I mentioned, was there for the
2 orientation. Our first negotiating meeting is on, if I remember right,
3 scheduled for July 25th, 26th, 27th, and 28th.

4 HEARING OFFICER MANSFIELD: So when you say they haven't
5 been in negotiating meetings, indeed there haven't been any negotiating
6 meetings?

7 THE WITNESS: That's correct.

8 HEARING OFFICER MANSFIELD: Okay, thank you.

9 BY MR. ROSS:

10 Q As to Spokane International?

11 A I'm sorry?

12 Q As to the Spokane hub or district, is that right?

13 A That's correct.

14 Q Okay -- and the Portland Zone 1 was something separate and
15 apart from that?

16 A That's correct.

17 Q And there was a reference at -- by someone -- Mr. Paul
18 Thompson testified as follows.

19 He was asked a question by Mr. Miller, "And where are they?"
20 He was referring to ongoing negotiations.

21 Answer: "Artie Martin is involved in negotiations at the
22 present time, I think up in Portland. They are in that area."

23 Mr. Martin: "The Portland hub?"

24 The Witness: "The Portland hub."

25 Now has Mr. Martin or was Mr. Martin involved in your

1 negotiations in the Portland hub?

2 A No. Zone 1.

3 Q He was not?

4 A That's correct.

5 Q Okay --

6 HEARING OFFICER MANSFIELD: Are there other Portland
7 negotiations than Zone 1? Are there like three -- there's three zones
8 in Portland, right?

9 THE WITNESS: Portland Zone 1 has been concluded.

10 HEARING OFFICER MANSFIELD: Okay.

11 THE WITNESS: And it has been implemented June 16th.

12 HEARING OFFICER MANSFIELD: Is this a new document?

13 MR. ROSS: Yes, it's Binder 3.

14 HEARING OFFICER MANSFIELD: Just tell me what it is.

15 MR. ROSS: It's Tab B. It's the Los Angeles - Salt Lake
16 Schedule Agreement.

17 [BLE Exhibit No. 24 was marked for
18 identification.]

19 BY MR. ROSS:

20 Q I am handing the witness what has been marked for
21 identification as BLE Exhibit 24.

22 It is the BLE Union Pacific Los Angeles to Salt Lake City
23 Schedule Agreement.

24 Would you please take a look at that, Mr. Mitchell?

25 A I recognize it.

1 Q You recognize that document? Would you explain to us what
2 that document is?

3 A It is the collective bargaining agreement. I would like to
4 call it the -- it's a collective bargaining agreement for the South
5 Central -- oh, why did I do that? I flipped it over, I'm sorry.

6 Q It's B.

7 A All right.

8 Q And what territory or geographic area does that cover within
9 your General Committee?

10 A Prior to the Salt Lake City Hub, the territory that it
11 covered was from Salt Lake City to and including Los Angeles for the
12 Union Pacific after the hub, because it was not selected as the
13 agreement, the collective bargaining agreement for the hub.

14 It only exists from Yermo, California west, and on August
15 14th, when the Los Angeles hub is implemented it no longer exists.

16 MR. ROSS: I would move for the receipt of BLE Exhibit 24.

17 HEARING OFFICER MANSFIELD: I just have a few questions.
18 This agreement will not be applicable after August 14th of this year?

19 THE WITNESS: That's correct. It's replaced with a similar
20 one.

21 HEARING OFFICER MANSFIELD: Okay -- are you going to put a
22 copy of the similar agreement into evidence?

23 MR. ROSS: The similar one, as I understand it -- you don't
24 have one? I think he is referring to the fact that it has been adopted
25 in the implementing agreement that we have introduced already.

1 HEARING OFFICER MANSFIELD: This agreement has been adopted
2 in its current state in the implementing agreement or there is a new
3 agreement?

4 THE WITNESS: The agreement that was accepted was the Idaho
5 agreement in the Salt Lake City hub. I can provide you with a copy if
6 you would like.

7 HEARING OFFICER MANSFIELD: Until August 14th my
8 understanding is that this is going to exist for a small portion --

9 THE WITNESS: That's correct.

10 HEARING OFFICER MANSFIELD: And just because I learned this
11 yesterday, are there several amendments of this?

12 THE WITNESS: Many.

13 HEARING OFFICER MANSFIELD: Many. See how smart I am
14 getting?

15 MR. MILLER: It's from being with lawyers.

16 MR. ROSS: That's exactly right.

17 [Laughter.]

18 HEARING OFFICER MANSFIELD: Well, do you have any objection
19 to Exhibit 24?

20 MR. MILLER: No, I don't, for what it may be worth, and
21 after August 14th apparently not much.

22 BY MR. ROSS:

23 Q But it will still be in existence, isn't that right?

24 A No.

25 Q August 14th it dies?

1 A It dies.

2 HEARING OFFICER MANSFIELD: Do you want to reconsider its
3 admission and replace it with a new agreement?

4 MR. ROSS: Yes, we would if we can find it.

5 HEARING OFFICER MANSFIELD: All right. Well, let's withdraw
6 Exhibit 24 for now until the one that is --

7 MR. MILLER: I have no objection to that.

8 [BLE Exhibit No. 24 was withdrawn.]

9 MR. ROSS: That is all I have for the witness. I tender him
10 for cross.

11 MR. MILLER: I have no questions for this witness.

12 MR. ROSS: Can we have a three-minute break?

13 HEARING OFFICER MANSFIELD: You can have five.

14 MR. ROSS: We may? Thank you very much.

15 HEARING OFFICER MANSFIELD: You are excused.

16 [Witness excused.]

17 [Recess.]

18 HEARING OFFICER MANSFIELD: Back on the record.

19 Please swear in the witness.

20 Whereupon,

21 EDGAR L. PRUITT, JR.,

22 a witness, was called for examination by counsel for the BLE and, having
23 been first duly sworn, was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. ROSS:

1 Q Would you please state your name?

2 A Edgar L. Pruitt, Jr.

3 Q And how do you spell your last name, sir?

4 A P-r-u-i-t-t.

5 Q And your address, please?

6 A 11930 Heritage Oak Place, Suite 1, Auburn, California.

7 Q And you are a general chairman of the BLE at the present
8 time?

9 A Yes, I am.

10 Q And on what property or districts of the Union Pacific are
11 you general chairman?

12 A Where the Southern Pacific Western Line's agreement as
13 modified was selected and continues to hold jurisdiction.

14 Q Okay. What geographically does that cover?

15 A Currently it covers from Chemult, Oregon to El Paso, Texas,
16 Tucumcari, New Mexico, and as far east out of Oakland to Benmont,
17 including Elko, Nevada.

18 Q You said that it's -- would you please look at BLE binder --
19 exhibit binder number 3 at tab B, please.

20 MR. SIMMERMAN: D.

21 MR. ROSS: D? D. Okay. Yes, D.

22 HEARING OFFICER MANSFIELD: Do you want to mark this as BLE
23 Exhibit 25?

24 MR. ROSS: That's correct.

25 [BLE Exhibit Number 25 was marked for

1 identification.]

2 BY MR. ROSS:

3 Q Is that the agreement that you're referring to, the Western
4 Lines as modified?

5 A Yes, it is. This would be the agreement that was modified
6 subsequent to the 1986 national agreement.

7 Q But it's presently in force?

8 A Yes, sir.

9 Q And will continue in force?

10 A Yes, sir.

11 MR. ROSS: At this time, I would move receipt of BLE Exhibit
12 25.

13 MR. MILLER: No objection.

14 HEARING OFFICER MANSFIELD: Hearing no objection, BLE
15 Exhibit 25 is received.

16 [BLE Exhibit Number 25 was received in
17 evidence.]

18 BY MR. ROSS:

19 Q How long have you been general chairman?

20 A May 1st, 1990.

21 Q And prior to that, did you hold any office in the
22 Brotherhood of Locomotive Engineers?

23 A Prior to that, I was vice general chairman from 1986 to
24 1990. I was chairman from 1984 until 1987 on the Southern Pacific
25 Western Lines, and also local chairman from 1979 on Division 126.

1 Q Do you hold seniority in any craft of service on the Union
2 Pacific?

3 A Yes, sir.

4 Q What craft is that?

5 A Locomotive engineer.

6 Q And when were you hired or promoted to locomotive engineer?

7 A June 1972.

8 Q And since June 1972, have you been actively employed as a
9 locomotive engineer?

10 A Until May 1st of 1990, when I took a leave of absence as a
11 full-time general with the Brotherhood of Locomotive Engineers.

12 Q Now, based upon your experience and data that's available to
13 you, are you familiar with the ebb and flow of the employees between the
14 crafts of locomotive engineers and any other craft?

15 A I would have some knowledge in that area, yes.

16 Q Why would you have knowledge in that area?

17 A Because there is a certain amount of people that have in the
18 past during certain periods of time during the year flow from the craft
19 of engineer to fireman and/or train service.

20 Q And based upon your experience and the data that's available
21 to you at the present time, is there any ebb and flow that you're aware
22 of between the craft of locomotive engineers and the train service
23 crafts in the territory covered by your general committee?

24 A There has not been any on my territory since 1986 other than
25 for one emergency case which was up in Eugene where they needed a

1 qualified retarder operator that was a promoted locomotive engineer, and
2 over our objections, they cut our extra board so that they would have a
3 qualified retarder operator, and they begged and pleaded with us to
4 allow them to have that qualified retarder operator for a period of time
5 during the rebuild of the Roseville Yard.

6 Q So what you're saying is, do I understand that correctly,
7 that once an individual becomes an engineer, he rarely if ever works in
8 the train service crafts?

9 MR. MILLER: Well, that's a very leading question.

10 HEARING OFFICER MANSFIELD: Sustained.

11 MR. ROSS: I'm just trying to say if that's what he's trying
12 to tell us.

13 MR. MILLER: Well --

14 HEARING OFFICER MANSFIELD: Well, he has already testified
15 that in his experience, there hasn't been any ebb and flow since 1986.

16 MR. COHEN: In his territory.

17 HEARING OFFICER MANSFIELD: In his territory.

18 BY MR. ROSS:

19 Q Have -- on your property, has the carrier had to hire or
20 train a number of individuals or persons to become locomotive engineers?
21 Let's say since 1990.

22 A Yes, they have. They have hired several.

23 Q By several, what do you mean?

24 A We have probably hired 3- or 400 people since 1990.

25 Q Are they all taken out of the trainman's craft, or where do

1 they obtain them from?

2 A If they have sufficient volunteers, they will take them all
3 out of the trainman's craft. If there is insufficient volunteers,
4 they'll take from other classes of service, such as clerical and/or
5 Maintenance of Way or other classes, and if they don't have sufficient
6 volunteers and they have people that qualify to be forced, they will
7 force.

8 Q Now, how often have they, to your knowledge, had to force
9 people to apply for engineer training positions?

10 A I'm only knowledgeable of one time in the early '90s.

11 Q And since the early '90s, you're not aware of any such thing
12 on your property?

13 A I'm not aware of them having to force since then.

14 Q Has there been -- since 1996, has there been a need to hire
15 switchmen-trainmen in your territory?

16 A Yes, there has.

17 Q At what locations has the carrier hired such employees, if
18 you're aware of that?

19 A El Paso, Tucson, Los Angeles, Bakersfield, Roseville,
20 Oakland, Reno, Portland, Eugene.

21 Q So it's generally been true that they've had to hire
22 switchmen-trainmen?

23 A Yes, sir.

24 Q Now, how long do the individuals that are hired as
25 switchmen-trainmen work in that craft?

1 A They hire a sufficient amount -- they were lacking in train
2 service along with engine service, and they have hired a sufficient
3 amount to where they would take a group, after having a switchman's date
4 or a trainman's date for one or two days, and immediately put them into
5 class for training to be engineer, and then the remainder of the people
6 they hired, they left in the train service or switching service.

7 Q So after one or two days, you're saying they then enter the
8 engineer's training program?

9 A Yes. Basically immediately after they have received that
10 date.

11 Q How long does it take them to qualify as a locomotive
12 engineer after that point?

13 A On our property, it depends on the territory and the demands
14 of the territory and skills that they're going to have to have, and it
15 can be anywhere from six months to a year and a half.

16 Q After they enter this engineer training program, are you
17 aware of whether they worked as switchmen trainmen?

18 A I have not had the experience where they have flowed back
19 into train service. We have had some experiences where they flow back
20 to hostling, but not to train service.

21 Q Now, how many of these individuals that were hired for one
22 to two days and then became engineer trainees do you have in let's say
23 the Tucson area?

24 A There's probably close to 80 in the last couple of years in
25 Tucson; another 65 in El Paso; 30 with Tucumcari; got another 120 or so

1 in Los Angeles.

2 Q And these individuals that we're talking about, somewhere
3 around 250 individuals except for the first two days of their employment
4 have never worked in train service, to your knowledge?

5 A I have had nobody flow back into train service. I have had
6 flow back into hostling service.

7 Q How many engineers are represented by your General Committee
8 of Adjustment?

9 A Approximately 1500.

10 Q You were general chairman at the time that the UP-SP merger
11 took place, correct?

12 A That is correct.

13 Q Did you participate in the negotiation of any hub agreement?

14 A I did.

15 Q And were you ever invited by the UTU to participate in any
16 negotiations or any kind of sessions involving those hubs?

17 A I was invited after a regional meeting the UTU had in Los
18 Angeles to attend the original meetings in Kansas City where they were
19 doing an overview of the merger to meet with the UTU at that time, then
20 after arriving in Kansas City, the UTU met amongst themselves and
21 decided that they wanted to withdraw that invitation and did not want us
22 there -- did not want me there.

23 Q So you didn't sit in on any of the orientation or
24 negotiation sessions?

25 A They decided they didn't want the BLE in.

1 Q Would you please turn to BLE exhibit binder 4, and would you
2 please look at tab 2-B, and please turn to the document starting with
3 the fourth page.

4 HEARING OFFICER MANSFIELD: Is that Northeastern Seniority
5 District Number 2? Is that what that says?

6 MR. ROSS: No, I think we're getting all messed up.

7 HEARING OFFICER MANSFIELD: Okay.

8 [Discussion off the record.]

9 HEARING OFFICER MANSFIELD: Go ahead, please.

10 MR. ROSS: Okay. At this time, I would like to have marked
11 for purposes of identification BLE Exhibit 26-A, which is Union Pacific
12 Railroad Company, service unit, Los Angeles, General Notice Number 059,
13 May 4, 1998; a similar General Notice Number 064, June 26, 1998, which
14 should be marked as BLE Exhibit 26-B; and finally, a similar General
15 Notice Number 072, July 27, 1998, which should be marked for
16 identification as BLE Exhibit 26-C.

17 [BLE Exhibits 26-A, 26-B and 26-C were
18 marked for identification.]

19 BY MR. ROSS:

20 Q Mr. Pruitt, I would like you to take a look at those
21 documents and tell me if those -- what they are, what they purport to
22 be.

23 A The first document, which is General Notice Number 059 dated
24 May 4th, 1998, is a notice that goes out to all engineers on the
25 Southern Pacific Western Lines which advertise the need for additional

1 engineers at different locations, and by seniority order, those
2 engineers have first rights to go to those locations where there is a
3 need before they hire.

4 The June 26, 1998, which is General Notice Number 064, that
5 is a notice that goes out to active trainmen, switchmen and system
6 hostlers governed by the SP agreement which says that after the first
7 notice and we haven't -- engineers were insufficient to fill the needs
8 and locations, they then advertise to those people to take promotion to
9 engineer.

10 The document July 27, 1998, which is General Notice Number
11 072, is a list of applicants -- of applications and applicants who were
12 received by CMS for engineer service promotion, and those are the names
13 of whom were selected for promotion to locomotive engineer in the
14 different territories on the following three pages.

15 Q And those documents would -- cover a portion of the
16 territory represented by your General Committee?

17 A Sparks, San Jacquin, Fresno, Fresno, Stockton, Oakland,
18 Portland were all a portion of the SP West territory. On June the 16th,
19 they implemented the Portland hub agreement, so on June 16th, the
20 Portland hub agreement went to the Idaho agreement for Portland areas.
21 So just recently, that territory left my jurisdiction and went to a
22 joint jurisdiction with General Chairman Mitchell.

23 Q Now, the first document was directed solely to locomotive
24 engineers?

25 A That is correct.

1 Q And why would it only be directed to locomotive engineers at
2 that point in time?

3 A There is a consolidated seniority agreement whereby
4 engineers hold seniority over the entire territory but only have use of
5 seniority from one region to another by application which this complies
6 with. You apply from one territory to another territory for use of
7 seniority in another territory with this application.

8 If there's insufficient people and/or because too many
9 engineers want to leave one location to go to a location and it creates
10 a need for engineers at a specific location, then they go to the
11 application process where they put the application out to the switchmen,
12 hostlers, trainmen for promotion, and in addition, if they don't receive
13 sufficient amount of volunteers from there -- in this particular case,
14 they did, but if they don't receive sufficient volunteers from there,
15 then they go to other crafts such as Maintenance of Way, clerical and
16 train dispatchers, et cetera.

17 Q Okay.

18 A That would be the second process.

19 HEARING OFFICER MANSFIELD: Can I just ask a few questions?

20 THE WITNESS: Yes, ma'am.

21 HEARING OFFICER MANSFIELD: Can you tell me if you recall
22 situations where there haven't been sufficient volunteers out of the
23 trainmen?

24 THE WITNESS: Yes.

25 HEARING OFFICER MANSFIELD: And can you give me some

1 examples?

2 THE WITNESS: In I believe it was around '93 we had
3 insufficient people that volunteered on our property, and then it went
4 to the other classes of service such as train dispatchers and clerical,
5 et cetera. And they took those applications from those other crafts and
6 promoted them to engineers.

7 HEARING OFFICER MANSFIELD: Okay.

8 THE WITNESS: What happens is is they get a tentative
9 fireman's date, and the tentative fireman's date is based upon them
10 successfully passing the promotion test. And when they do successfully
11 pass the promotion, then that tentative date becomes their permanent
12 date. So when that permanent date becomes permanent, then they also get
13 a trainman's date that corresponds with that.

14 HEARING OFFICER MANSFIELD: Okay.

15 THE WITNESS: They don't get a trainman's date --

16 HEARING OFFICER MANSFIELD: I am not sure I understand how
17 it's responsive, but I understand what you're saying.

18 Other than 1993, do you recall any other time when there
19 haven't been sufficient trainman volunteers?

20 THE WITNESS: I don't have a ready recollection of that,
21 although there could have been, but I just don't have a ready
22 recollection of that.

23 HEARING OFFICER MANSFIELD: Okay. Thank you.

24 MR. ROSS: Before the witness is released or tendered for
25 cross-examination, may I move for receipt of Exhibits 26-A through C?

1 HEARING OFFICER MANSFIELD: Objection?

2 MR. MILLER: No objection. Also no questions of this
3 witness.

4 HEARING OFFICER MANSFIELD: Okay. BLE Exhibits 26-A through
5 C are received.

6 [BLE Exhibit Nos. 26-A through 26-C were
7 received into evidence.]

8 HEARING OFFICER MANSFIELD: Mr. Pruitt, you're excused.

9 [Witness excused.]

10 MR. COHEN: Well, maybe we should go on the record, and I
11 want to make one preliminary statement before we call this witness.

12 Mr. Radek does not appear on our list of witnesses for our
13 case in chief. We don't -- subject to what Mr. Miller intends to do on
14 rebuttal -- we don't intend to have a surrebuttal case, so we thought
15 just for the continuity of it we would put Mr. Radek on now.

16 You understand he is not listed as a witness, nor have we
17 identified any exhibits that would have come in with him. He will be
18 responding to testimony that has already been given in the case in chief
19 by the UTU, and if that's acceptable, that's fine. If you would prefer
20 to wait to the so-called rebuttal case, we'll do that as well.

21 HEARING OFFICER MANSFIELD: But this is a witness you were
22 going to put on on rebuttal anyway.

23 MR. COHEN: Yes.

24 HEARING OFFICER MANSFIELD: I don't see a problem.

25 Do you have a problem with putting this witness on in the

1 case in chief?

2 MR. MILLER: And this is your only rebuttal witness?

3 MR. COHEN: Reserving the right to have a rebuttal witness
4 if Mr. Miller causes us to do that by any rebuttal testimony he has,
5 with that, other than that condition, the answer is no.

6 MR. MILLER: The only reason I asked that is that with
7 respect to witnesses that were on in case in chief, we had the rule of
8 separation, and Mr. Radek has not been separated from the hearing. That
9 doesn't apply with respect to rebuttal witnesses by agreement. If he's
10 your only rebuttal witness, obviously I give consideration to having him
11 go. But if you're going to have a rebuttal case, I would prefer that we
12 go with what's been agreed upon, which is --

13 MR. COHEN: Fine.

14 HEARING OFFICER MANSFIELD: It is true that he's been in
15 this room?

16 MR. COHEN: I understand he was at some point earlier in the
17 proceedings.

18 MR. ROSS: Because there was no intent to use him in the
19 case in chief.

20 MR. COHEN: And I didn't plan to do that, but let's --

21 HEARING OFFICER MANSFIELD: Then let's stick with the
22 program --

23 MR. COHEN: Fine.

24 HEARING OFFICER MANSFIELD: We previously outlined. Do you
25 have anybody else?

1 that we wanted to just call to the attention of the Hearing Officer,
2 there's been some discussion about BLE Exhibit No. 3, which is the
3 United Transportation Union Transportation Occupation Handbook, which
4 has been received in evidence, but there was a certain characterization
5 of it.

6 I would like the record to show, and we would like to have,
7 if it's necessary to have an exhibit, that currently on the UTU Illinois
8 State Legislative Board web site, this document appears. If one hits
9 the Illinois State Board web site today, this document in fact appears.
10 And I have here a copy of that web site printout.

11 If Mr. Miller would like that to be in evidence, that's
12 fine. If he would prefer to stipulate to that, that's fine, but there
13 was some indication that this was not either in circulation or currently
14 in circulation or it was, it should be thought of as a public relations
15 department document. The document speaks for itself, but it is being
16 circulated and distributed as we speak.

17 MR. MILLER: Well, I mean --

18 HEARING OFFICER MANSFIELD: Can I see the web site printout,
19 please?

20 MR. COHEN: Yes, this is the portion that was -- this is the
21 portion that goes to the -- those pages in the exhibit that I
22 cross-referenced. They are the pages beginning on page 17 and going
23 through page 23.

24 MR. MILLER: Just a moment.

25 [Recess.]

1 HEARING OFFICER MANSFIELD: We are on the record.

2 MR. MILLER: We have no objections to this if it is going to
3 be marked. I would note that it is essentially duplicative because it
4 is noted that its source is our public relations series. So, I just
5 comment upon the duplication, but we have no objection to it.

6 HEARING OFFICER MANSFIELD: My understanding was the point
7 of requesting admission was that this appeared on the legislative web
8 site, on the Illinois legislative web site, and to that extent, I
9 believe that the document is relevant and I would admit it. Let's mark
10 it 27.

11 MR. COHEN: 27.

12 HEARING OFFICER MANSFIELD: Okay. I am going to mark it as
13 BLE Exhibit 27 and receive it into evidence. But I need copies.

14 [BLE Exhibit Number 27 was marked for
15 identification and was received into
16 evidence.]

17 MR. COHEN: I believe we haven't made a copy of that. We
18 could bring the web site in, but we are not going to do that as part of
19 case.

20 HEARING OFFICER MANSFIELD: That is quite all right.

21 MR. COHEN: Okay.

22 HEARING OFFICER MANSFIELD: Okay. Anything else?

23 MR. COHEN: Yes. As we have gone through all of the
24 documents that are contained in our four binders, Roman numeral I
25 through IV, the one item that we know we have not formally withdrawn, we

1 did not pursue it here, was Item Number 5 is Exhibit Binder Roman
2 numeral I which is excerpts from R. Richardson's, the locomotive
3 engineer. I know you have all read it and been quite intrigued by it
4 all, but we are prepared to withdraw that from the exhibit list.

5 MR. MILLER: Thank you. That will save an objection.

6 HEARING OFFICER MANSFIELD: There are a number of exhibits
7 that haven't gone in.

8 MR. COHEN: We are going through -- anything else that
9 hasn't gone in, let's go through that.

10 HEARING OFFICER MANSFIELD: Yes.

11 MR. COHEN: Madame Hearing Officer, in that same Exhibit
12 Binder Roman numeral I, at Roman numeral II, Item 1, there are three
13 parts of 49 CFR, they are 229, 232 and 240. 240 has already been
14 received in evidence and I am not sure how it happened, but, Clint
15 Miller, we didn't request that Parts 229 and 232 be received in
16 evidence.

17 Do you have any objection to that?

18 MR. MILLER: No, except you could have saved yourself the
19 trouble and just cited them. But I have no objection.

20 HEARING OFFICER MANSFIELD: I mean I don't have a problem
21 doing this, George, but, you know, these are federal regulations.
22 Nothing requires them to be in evidence.

23 MR. COHEN: Fine.

24 HEARING OFFICER MANSFIELD: All right. So we will only put
25 in 240 and these you can just cite?

1 MR. COHEN: Absolutely. And that to the best of my
2 understanding --

3 THE REPORTER: Do you have an exhibit number for 240?

4 HEARING OFFICER MANSFIELD: It is already in.

5 THE REPORTER: Thank you.

6 HEARING OFFICER MANSFIELD: I have several other documents.

7 MR. COHEN: All right. Let's go through them together.

8 Binder II. We withdraw the UTU National Agreement excerpts, which is
9 Item Number 5. They are already -- we will withdraw that.

10 HEARING OFFICER MANSFIELD: Okay. Everything, is there --

11 MR. COHEN: Everything else has been received.

12 HEARING OFFICER MANSFIELD: I have a Chicago and
13 Northwestern schedule of wages.

14 MS. VIRK: That is Binder III.

15 HEARING OFFICER MANSFIELD: Okay.

16 MR. COHEN: Binder III. So we are up to Binder III. In
17 Binder Roman numeral III, Exhibits C and E are being withdrawn, C and E.
18 A has been received. B, we are going to endeavor to replace the
19 agreement that is scheduled to expire on August 14th, I believe it is.
20 And D has been received. So we are withdrawing C and E. Chicago and
21 Northwestern is C, they are schedule agreements for UP property.
22 Schedule agreement --

23 HEARING OFFICER MANSFIELD: I have got it.

24 MR. COHEN: You got them. Okay. Great.

25 And Binder Number IV, we have already agreed as to how to

1 handle Timetable Number 2, so we are --

2 HEARING OFFICER MANSFIELD: Timetable Number 2. Okay. That
3 has already been marked and received as a UTU exhibit.

4 MR. COHEN: Okay. And in Item 2, Tab 2, examples of
5 invitations to apply for engineer training, we are withdrawing D, the
6 Northeastern District, in light of what has happened in the receipt of
7 A, B and C.

8 HEARING OFFICER MANSFIELD: Okay.

9 MR. COHEN: Okay.

10 HEARING OFFICER MANSFIELD: That takes care of everything.

11 MR. COHEN: Okay.

12 HEARING OFFICER MANSFIELD: Is there anything else?

13 MR. COHEN: That -- no, we are going to wait to see if there
14 is a rebuttal case by the UTU and, as I said, we have one rebuttal
15 witness.

16 HEARING OFFICER MANSFIELD: Okay. Let's take -- are you
17 planning to put on rebuttal?

18 MR. MILLER: I have two witnesses.

19 HEARING OFFICER MANSFIELD: Okay. Let's take a 10 minute
20 break and then start rebuttal.

21 [Recess.]

22 HEARING OFFICER MANSFIELD: Can we go back on the record?
23 Do you want me to wait?

24 MR. MILLER: No, we can go ahead.

25 HEARING OFFICER MANSFIELD: All right. You were going to

1 start your rebuttal.

2 MR. MILLER: Yes.

3 HEARING OFFICER MANSFIELD: Okay. Would you please --

4 MR. MILLER: We would recall John Babler.

5 HEARING OFFICER MANSFIELD: Mr. Babler, you have already
6 been sworn in, you remain under oath.

7 Whereupon,

8 JOHN BABLER,

9 a witness, having been recalled for examination and, having been
10 previously duly sworn, was examined and testified further as follows:

11 THE WITNESS: Yes.

12 DIRECT EXAMINATION

13 BY MR. MILLER:

14 Q Mr. Babler, without going through all of the David
15 Copperfield of your working life, as I recall when you were first here,
16 you were a working first brakeman, yard man, then conductor, then
17 fireman, then engine man on the property of the former Chicago
18 Northwestern and in 1995 and '96 when that property was merged in the
19 Union Pacific, up until August of 1998 when you were elected full-time
20 General Chairman, correct?

21 A That's correct, Mr. Miller.

22 Q Mr. Babler, you were in the room yesterday when BLE Exhibit
23 17-B, which was a video of Union Pacific's daily engine inspection, was
24 shown, were you not?

25 A Yes, I was.

1 Q And have you had occasion to perform such and be part of
2 such daily inspections when you were inservice as an engineer for Union
3 Pacific prior to August of 1998?

4 A Yes, it was required on mine.

5 Q Did that video accurately reflect such inspections as you
6 have been involved in on Union Pacific?

7 A The video is a general overview, Mr. Miller. It is not
8 complete. Virtually everything you saw was accurate, but in the real
9 world, there is other things that are required of a locomotive engineer.
10 The video showed it at a crew change point where it is basically a step
11 on, step off and leave operation.

12 The video lacked a complete brake test. You will notice at
13 the beginning of the video, she started the brake test, but it never
14 showed the actually walking or the releasing of the brakes to make sure
15 that they all released. There was no testing that the brakes were
16 released or anything like that.

17 Normally, what needs to be done also, an example, like if
18 you have a heavy coal train, a 16,000 ton coal train, and you need three
19 locomotives to operate that coal train over a subdivision because of the
20 grades on the subdivision, you have to know that those locomotives are
21 working properly before you leave the terminal, otherwise, when you get
22 to the hill, you are not going to make the hill, you will stall, and
23 that results in substantial delays to delivery of the coal train and the
24 trains behind you.

25 So, as a locomotive engineer, what I would usually do is