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1 ask a specific question and we can respond to the  
2 specific question.

3 Q I want to know your reasons for disagreeing.

4 A (WITNESS PEIFER) There are other forums to  
5 resolve those disputes besides arbitration.

6 Q Well, why don't you give me an example?

7 A (WITNESS PEIFER) Well, one forum would be  
8 reference back to the Interstate Commerce Commission.

9 Q Under what circumstances?

10 A (WITNESS PEIFER) I don't know. You would  
11 have to set up a hypothetical, and we would respond.

12 Q You obviously have a hypothetical in mind.  
13 Why don't you provide me with that?

14 A (WITNESS PEIFER) There are situations  
15 available to labor through their lawyers where they  
16 could go back and petition the Interstate Commerce  
17 Commission for some form of relief. That is one form of  
18 relief that is available. Arbitration would be  
19 another.

20 A (WITNESS FRESTEL) I could be wrong, but I  
21 think it is possible they could seek arbitration through  
22 the New York dock, but I want to emphasize that I think  
23 New York dock conditions read for themselves, and they  
24 would dictate what the rights of the employee would be.

25 Q Do I understand that you disagree with respect

1 to the answer?

2 A (WITNESS PEIFER) I don't think there is a  
3 disagreement.

4 Q I don't understand your answers.

5 A (WITNESS FRESTEL) I hope we agree the New  
6 York dock conditions would be the governing factor as to  
7 whether or not the employee would have the right to do  
8 something.

9 Secondly, it has been my experience over many  
10 years that labor representatives do not have difficulty  
11 finding some forum in which to have their grievances  
12 heard, so I am sure they will find one.

13 Q But I am specifically interested in relocation  
14 under the New York dock conditions, relocation  
15 obligations under the New York dock conditions. Do you  
16 believe that there might be other forums to resolve  
17 questions arising from that other than arbitration  
18 through the New York dock conditions?

19 A (WITNESS PEIFER) You may be misunderstanding  
20 my answer. I think the forum that would probably be  
21 selected by the individual employee would be arbitration  
22 under the New York dock, so in that respect it is  
23 certainly consistent with what Mr. Frestel is saying.

24 Q Mr. Peifer, I am having extreme difficulty  
25 hearing you. Could you repeat your answer for me?

1 A (WITNESS PEIFER) Why don't you ask the  
2 question again, and I will respond to it?

3 Q All right. My question is specifically  
4 targeted to relocation obligations of the employees  
5 under the New York dock conditions. Do disputes  
6 concerning the employees' relocation obligations under  
7 the New York dock conditions in rail labor's opinions  
8 would be sought through arbitration under the New York  
9 dock provisions?

10 Do you disagree with that?

11 A (WITNESS PEIFER) No, I don't.

12 Q Let's say hypothetically that following the  
13 merger, ten jobs are created in Kansas City, and there  
14 is a pool of currently furloughed employees at Kansas  
15 City. Now, the carrier, the merged carrier is going to  
16 recall employees prior to transferring any employees to  
17 fill those new positions at Kansas City, isn't it?

18 A (WITNESS PEIFER) That may be correct. It may  
19 not.

20 Q Why would it not be correct?

21 A (WITNESS PEIFER) Well, it is very possible  
22 that some of the other employees would have seniority  
23 over the furloughed individuals, and also have seniority  
24 encompassing that territory, in which case they would  
25 have a superior rate to it.

1                   If you are talking about point seniority in  
2 the example you gave earlier, that probably would be  
3 correct.

4           Q       So if the employees held point seniority, they  
5 could look forward to being recalled if positions were  
6 created at a certain location?

7           A       (WITNESS PEIFER) If there were vacancies at a  
8 given point.

9           Q       Let's say the circumstances were -- let me  
10 rephrase that.

11                   Then if an employee holds seniority or holds a  
12 right to a job in a particular location, that employee  
13 will be recalled before you transfer another employee  
14 into that location?

15           A       (WITNESS PEIFER) If you are talking about  
16 point seniority and the individual has more seniority  
17 than another person coming in without seniority, the  
18 answer would be yes.

19                   Do you agree?

20           A       (WITNESS FRESTEL) I would further ask the  
21 question if you are talking about employees in the same  
22 craft or class.

23           Q       Pardon me?

24           A       (WITNESS FRESTEL) Are you talking about  
25 employees in the same craft or class?

1 Q Yes.

2 A (WITNESS FRESTEL) Okay, then I would agree.

3 Q Then your answer would be the same?

4 A (WITNESS FRESTEL) Yes.

5 A (WITNESS PEIFER) I guess we ought to make the  
6 point for the record that there are relatively few  
7 instances where employees in either company have point  
8 seniority. You really selected a minority situation  
9 with respect to seniority arrangements.

10 Q If an employee was located at Kansas City and  
11 was furloughed at Kansas City, and he holds systemwide  
12 seniority, would that employee be recalled to the newly  
13 created position at Kansas City before you transferred  
14 another employee from another part of the system?

15 A We would have to know the seniority of both  
16 individuals involved.

17 A (WITNESS FRESTEL) And the craft. You are  
18 talking about an individual with system seniority. If  
19 he has got system seniority, he is not married to Kansas  
20 City, and if he exercised, he or she exercised it to  
21 hold a job at some other location, I don't see that they  
22 would automatically get back to Kansas City. It would  
23 depend on seniority or so forth. It is really difficult  
24 to answer those questions in a vacuum, counsel.

25 Q I guess what I am most concerned with is, you

1 have got these ten positions in Kansas City. How are  
2 you going to fill them?

3 A (WITNESS PEIFER) What positions are you  
4 talking about? What kind of positions? What class or  
5 craft are you talking about?

6 Q Let's take ten machinist positions.

7 A (WITNESS PEIFER) Okay. So you're talking  
8 about a class and craft where there is point seniority.  
9 I think we have already answered that question with  
10 respect to point seniority.

11 Q All right. Well, let's take, then, carman  
12 positions.

13 A (WITNESS PEIFER) Same answer for the carmen  
14 because they also have point seniority. But again  
15 you're picking minority examples. Most of the employees  
16 that have system seniority or division seniority, they  
17 have seniority that far transcends the points.

18 Q All right. Give me an example then of an  
19 employee that holds system seniority. Does Brackwood  
20 have division seniority?

21 A (WITNESS PEIFER) Brack has district seniority  
22 on the Southern Pacific Transportation Company. There  
23 are seniority districts broken down by the three  
24 respective properties -- Southern Pacific Transportation  
25 Company, western lines, eastern lines, and SSW. So you

1 are talking about a myriad of seniority districts  
2 extending over territories, depending upon the property  
3 involved.

4 Q Well, in that circumstance, how would you fill  
5 the ten positions?

6 A (WITNESS PEIFER) You are talking about ten  
7 clerical positions at Kansas City?

8 Q Um-hm. How would you fill them?

9 A (WITNESS PEIFER) And we had surplus employees  
10 who had more seniority than people at that location? We  
11 would use those senior surplus employees.

12 Q Those senior surplus employees who are  
13 currently on furlough?

14 A (WITNESS PEIFER) No, no, the senior employees  
15 who are made surplus by this hypothetical example or  
16 transaction.

17 A (WITNESS FRETEL) Can I add a caveat to  
18 that?

19 Q Sure.

20 A (WITNESS FRETEL) When I say hypothetical, we  
21 have yet to negotiate any implementing agreements  
22 whatsoever with the crafts, which primarily if not  
23 exclusively deal with selection of forces. As you know,  
24 seniority is near and dear to the hearts of our  
25 employees, and I am confident that that will be



1 addressed in these implementing agreements, so that when  
2 we are answering these questions without having gone  
3 through these negotiations, it is a little bit  
4 difficult.

5 Q All right, fine. But you do plan to negotiate  
6 this?

7 A (WITNESS FRESTEL) Over the selection of  
8 forces, yes.

9 A (WITNESS PEIFER) Yes.

10 Q Can you gentlemen tell me how much time each  
11 of you has in the labor management field,  
12 labor-management relations field?

13 A (WITNESS FRESTEL) You are going to make me  
14 confess that I used to be a lawyer. Do you count that,  
15 labor practice?

16 Q Really I want your experience on carriers, in  
17 terms of collective bargaining.

18 A (WITNESS FRESTEL) Well, if you exclude the  
19 negotiations conducted by lawyers, then my collective  
20 bargaining experience dates generally from January 1,  
21 1979.

22 Q 1979?

23 A (WITNESS FRESTEL) Yes.

24 Q Mr. Peifer?

25 A (WITNESS PEIFER) I have approximately 13

1 years within the labor relations function, working for a  
2 number of railroads, including the C&O, B&O, for a  
3 number of the Chicago, Rock Island, and Pacific. I was  
4 manager of labor relations for Western Pacific Railroad  
5 for a period of five of six years. I have been with  
6 Southern Pacific since September 1, 1977, exclusively  
7 within labor relations. I have negotiated many  
8 agreements with many crafts on a number of railroads.

9 Q So if I use the term "domino effect" with you  
10 gentlemen, you would know what I was talking about?

11 A (WITNESS PEIFER) No.

12 A (WITNESS FRESTEL) We usually think of  
13 Vietnam. I am sorry.

14 Q Oh, dear. Let's not draw any analogies  
15 between this and Vietnam. All right. Domino effect as  
16 I understand it is the effect that the employees  
17 experience when a position is abolished and employees  
18 are then forced to exercise their seniority to displace  
19 them into other positions.

20 A (WITNESS FRESTEL) You are talking about  
21 displacement.

22 Q Basically.

23 A (WITNESS FRESTEL) Like bidding or dumping.

24 Q You have witnessed that when a job is  
25 abolished, that triggers job displacements or the

1 exercise of seniority by employees.

2 A (WITNESS FRESTEL) Assuming it is an agreement  
3 position, yes. It happens constantly.

4 Q And it is conceivable that if you abolish one  
5 job, two employees are going to be affected through the  
6 exercise of seniority, is it not?

7 A (WITNESS FRESTEL) It is conceivable, yes.

8 Q And it is conceivable that three employees may  
9 be affected, is it not?

10 A (WITNESS FRESTEL) Yes.

11 Q And even more than three?

12 A (WITNESS FRESTEL) Yes. We have, of course,  
13 addressed that in our labor exhibit.

14 Q But your tables for employee impact do not  
15 account for the exercise of seniority, do they?

16 A (WITNESS FRESTEL) Yes, they do.

17 A (WITNESS PEIFER) Yes, they do.

18 Q Where? Can you show that to me, please?

19 A (WITNESS FRESTEL) It is set forth in a  
20 summary fashion in the table. It is set forth in  
21 specific detail in the working papers.

22 Q How many employees are going to be exercising  
23 seniority?

24 A (WITNESS FRESTEL) Can I finish my answer? It  
25 is set forth in specific detail in the working papers.

1 Q It is? How many employees you anticipate will  
2 be exercising seniority as a result of the merger?

3 A (WITNESS FRESTEL) Yes. That is in the  
4 working papers.

5 Q That is in the work papers?

6 A (WITNESS FRESTEL) And the operative  
7 assumption was a 1.5 factor in the event of a  
8 displacement.

9 Q Now, I understand the operative --

10 A (WITNESS FRESTEL) That would be set forth in  
11 detail in the working papers.

12 Q But it is conceivable that the 1.5 is  
13 incorrect, and that it could be three employees per job  
14 abolished.

15 A (WITNESS FRESTEL) I think we had better  
16 clarify that. 1.5 is like -- obviously you can't have  
17 half a bump, so it is an average or an estimate. Now  
18 when you say it is incorrect, it is an estimate. It  
19 could be more. I have already said that. It could well  
20 be less, or zero.

21 What we took was an average based upon our  
22 experience, and I might further add that is the average  
23 and the assumption which was given by the labor  
24 witnesses, management-labor witnesses in the Union  
25 Pacific merger, the CSX merger, and the Norfolk Southern

1 merger, all of whom I have personally discussed this  
2 with.

3 Q But my question was, it is conceivable that  
4 more than 1.5 employees.

5 A (WITNESS FRESTEL) I have answered that  
6 twice. I will answer it a third time. Yes.

7 Q Thank you.

8 Now, on Page 6 of your verified statement, you  
9 say that the projected impact of the merger is  
10 insignificant. How do you define insignificant?

11 A (WITNESS FRESTEL) You are asking a definition  
12 of insignificant?

13 Q I am.

14 A (WITNESS FRESTEL) It is an observation in  
15 view of the numbers of employees who are affected in  
16 view of the total employment of 57,000 employees. We  
17 regard that as insignificant.

18 You have to bear in mind, counsel, that we are  
19 an industry which is beset by business cycles, and let  
20 me give you a specific example.

21 Q Well, I would like a definition of  
22 insignificant before you do that.

23 A (WITNESS FRESTEL) Not significant. I don't  
24 know that I can give you an express definition. It is  
25 not a material number. It is not a large number. It is

1 a relatively small number compared to the base number of  
2 employees.

3 Q If you lost your job, would you consider it to  
4 be a significant impact on you?

5 A (WITNESS FRESTEL) Certainly I would.

6 Q And Mr. Peifer, would you have the same  
7 feeling?

8 A (WITNESS PEIFER) Possibly.

9 (General laughter.)

10 A (WITNESS PEIFER) For those who know me in  
11 this room, you will understand that answer, but if you  
12 don't --

13 Q Turning now to the displacement cost figures  
14 listed on Page 6 of your verified statement, in  
15 comparison with the relocation, dismissal, and  
16 separation allowance figures, the displacement figures  
17 appear to be relatively low, do they not?

18 A (WITNESS PEIFER) The amount of money  
19 attributed to displacement allowances?

20 Q Yes.

21 A (WITNESS PEIFER) In comparison to some of the  
22 other numbers such as the relocation numbers, they are  
23 lower, yes.

24 Q Do you anticipate that all employees who are  
25 required to exercise their seniority will do so to

1 positions at a rate of pay equal to or exceeding the  
2 rate of pay prior to their displacement?

3 A (WITNESS FRESTEL) We assumed there would be a  
4 5 percent differential, which is a generous assumption.

5 Q On what did you base the 5 percent?

6 A (WITNESS FRESTEL) Experience. Let me give  
7 you an example.

8 Q All right.

9 A (WITNESS FRESTEL) Many employees will bid to  
10 another job and would have literally zero impact. Many  
11 of our clerical employees are on a daily rated  
12 position. The rates vary by as little as 25 to 50 cents  
13 per day, so we feel 5 percent is a generous assumption,  
14 and based on our experience.

15 Q Did you personally select the 5 percent  
16 figure?

17 A (WITNESS FRESTEL) I did, and Mr. Feifer, and  
18 I might add that was the same assumption that was made  
19 in the CSX, the Union Pacific, and the Norfolk Southern  
20 mergers.

21 Q And did you select the 5 percent figure  
22 because it was used in those other mergers?

23 A (WITNESS FRESTEL) No. I selected it because  
24 I saw that number, I discussed it with the respective --  
25 my respective counterparts on those railroads, and I

1 made in conjunction with Mr. Peifer an independent  
2 decision that was a realistic assumption.

3 Q But if I turn to your work papers, I could not  
4 find any kind of cost analysis or any study in which you  
5 actually went through and formulated this 5 percent  
6 figure?

7 A (WITNESS FRESTEL) I think you will see the  
8 effects of the assumption of 5 percent of displacement.  
9 You will not see a study set forth. I did discuss it  
10 with them after the merger, and they said that in their  
11 judgment it was a fair assumption.

12 A (WITNESS PEIFER) I might add that there is  
13 not a great variance in rates of pay, so people who  
14 would initially become displaced and are moved to  
15 another position for the most part, which is consistent  
16 with what Mr. Frestel just said, will obtain positions  
17 with at least as much compensation in terms of the rate  
18 of pay.

19 They may in many instances obtain positions  
20 with a higher rate of pay. It is very conceivable.

21 Q For the purposes of the calculation of these  
22 costs, how many employees did you predict would be  
23 separated or would choose separation allowance?

24 A (WITNESS PEIFER) We made a percentage  
25 prediction on the amount of separation allowances that



1 would be taken by the total number of people who would  
2 be eligible for separation allowances. Those would be  
3 people who are without jobs, who I guess the term would  
4 be "deprived of employment," who were not able to  
5 exercise seniority initially, and I think our assumption  
6 -- correct me if I am wrong -- was that 20 percent of  
7 the people who are entitled to make an option between  
8 either dismissal allowances or separation pay would  
9 elect to take separation pay.

10 Is that right?

11 A (WITNESS FRESTEL) I think there is also the  
12 assumption that 20 percent would elect not to transfer,  
13 even though it meant loss of protection.

14 A (WITNESS PEIFER) That is correct.

15 A (WITNESS FRESTEL) And that is also based on  
16 experience.

17 Q I understand that you have used the 20 percent  
18 figure, but what I am saying is that you had to take 20  
19 percent of something in order to come up with the cost  
20 figures. What is the something that you took 20 percent  
21 of? What is the number?

22 A (WITNESS FRESTEL) I think that would be shown  
23 in our work papers, and I think you might be able to  
24 extrapolate that from Table 1.

25

1 Q Table 1 doesn't show me how many employees are  
2 going to be furloughed or are going to choose  
3 separation.

4 A (WITNESS FRESTEL): Could you repeat that,  
5 please?

6 Q Table 1 does not show me how many employees  
7 are going to lose their jobs. It just shows how many  
8 jobs are going to be abolished.

9 A (WITNESS FRESTEL): That's correct. That data  
10 is in our work papers.

11 Q It would be. So again, if I went through your  
12 work papers, I could figure out how many employees you  
13 used in your calculations?

14 A (WITNESS FRESTEL): I don't mean to be  
15 facetious, but the data is in the work papers. I'm not  
16 sure if you can figure it out.

17 It's very complicated. There's quite a bit  
18 there.

19 Q I'd like the information, though.

20 A (WITNESS FRESTEL): It's been available for  
21 many months.

22 Q Even if I go to look at it, what I'd like to  
23 be able to figure out -- will someone be there to answer  
24 questions for me?

25 A (WITNESS FRESTEL): I'd yield to my counsel on

1 that.

2 MR. LANE: Certainly.

3 MS. MADIGAN: Thank you.

4 BY MS. MADIGAN: (Resuming)

5 Q Gentlemen, do you participate in the budgetary  
6 process on your individual carriers?

7 A (WITNESS FRESTEL): I do, to the extent of the  
8 budget for my department, certainly.

9 Q Mr. Peifer?

10 A (WITNESS PEIFFER): I do not.

11 Q You do not?

12 A (WITNESS PEIFFER): I do not.

13 Q Mr. Frestel, when you are preparing your  
14 budget statements, do you do it on a yearly basis?

15 A (WITNESS FRESTEL): We have both a yearly and  
16 a five-year.

17 Q And a five-year did you say?

18 A (WITNESS FRESTEL): Yes.

19 Q Now, in preparing your budget statement for --  
20 when was the last budget statement that you prepared?

21 A (WITNESS FRESTEL): I'd have to say it would  
22 be on the most recent five-year budget, covering the  
23 years 1985 through '89.

24 Q And in that statement, did you include any  
25 employee protection costs?

1 A (WITNESS FRESTEL): I did not.

2 Q You did not?

3 A (WITNESS FRESTEL): No.

4 Q Is that because you anticipate no employee  
5 protection costs during those years?

6 A (WITNESS FRESTEL): Quite frankly, I think in  
7 the field of labor relations, we're going to be short  
8 employees, and we will not have an excess of employees.

9 Q I'm sorry. I must be having a hearing problem  
10 or something. I can't hear your answer.

11 A (WITNESS FRESTEL): In my department, I do not  
12 expect to have redundant employees in the country. I,  
13 to the contrary, expect a shortage because of the age  
14 makeup of my department, and I can safely say for the  
15 Southern Pacific as well, I have some knowledge of  
16 that, and it's my expectation as a result of the merger  
17 and ongoing activity, and as a result of the fact we've  
18 had a hiring freeze on since 19 -- since December of  
19 1982 at Santa Fe, that we are short people now.

20 Q I think in response to questions by Mr.  
21 Birney, you both stated that you have no employee impact  
22 data for any year past the three-year period included in  
23 the summary.

24 A (WITNESS PEIFER): That's correct.

25 A (WITNESS FRESTEL): That's correct.

1 Q Do you have any employee protection cost data  
2 for any year after the three-year period?

3 A (WITNESS FRESTEL): No.

4 A (WITNESS PEIFER): No.

5 Q Would that be your decision not to prepare  
6 such an analysis?

7 A (WITNESS PEIFER): Excuse me?

8 Q Was that your decision not to prepare such an  
9 analysis?

10 A (WITNESS PEIFER): It wasn't a question of a  
11 decision. We merely complied with the regulations in  
12 putting together the labor impact exhibit. They did not  
13 require us to go beyond the three-year period.

14 Q None of your superiors at the railroad asked  
15 you to provide any kind of information like that?

16 A (WITNESS PEIFER): No, they did not.

17 A (WITNESS FRESTEL): No.

18 Q Let's go back to the 1.5 displacement figure  
19 that you had used in your calculations. Does this mean,  
20 on page 7, where you say that each position abolished  
21 would cause an additional 1.5 displacements, that 2.5  
22 displacements are going to occur?

23 A (WITNESS FRESTEL): I think displacement  
24 refers to -- does not refer to the first person. The  
25 position is abolished. And following that, there are

1 1.5 displacements.

2 Q So you're not including the person --

3 A (WITNESS FRESTEL): We didn't make an estimate  
4 of any adverse wage impact on the first individual and  
5 1.5 subsequent thereto.

6 Q So we're talking about an impact on one person  
7 and 1.5 additional people?

8 A (WITNESS FRESTEL): Yes.

9 Q And can you give me the specifics as to how  
10 you derived the 1.5 figure?

11 A (WITNESS FRESTEL): I think I said that this  
12 was based on our judgment, based on experience. It was  
13 based upon the position and the testimony of my  
14 counterparts for Union Pacific, Burlington Northern, the  
15 Norfolk Southern.

16 In preparing this, prior to, I discussed it  
17 with them and asked them if they thought that,  
18 subsequent to the merger, that figure, that assumption  
19 was still a valid one. They each individually told me  
20 that it was, in their opinion.

21 So that is why we utilized that, and again I  
22 say I discussed it with Mr. Peifer.

23 Q So the basis for your 1.5 selection is similar  
24 to the basis for your 5 percent reduction of pay  
25 selection?

1 A (WITNESS FRESTEL): Yes.

2 Q It had been used in prior mergers and it  
3 looked good in your judgment?

4 A (WITNESS FRESTEL): I'm sorry. I didn't  
5 understand you, counsel.

6 Q That figure had been used in prior merger  
7 proceedings, and in your judgment it appeared to be an  
8 adequate selection?

9 A (WITNESS FRESTEL): Yes.

10 A (WITNESS PEIFER): I think the answer that was  
11 given was (1) it had been used, and (2) it had been  
12 validated as a good assumption.

13 Q How do you know it had been validated?

14 A (WITNESS FRESTEL): I discussed this, as I  
15 mentioned, with my counterparts prior to preparing this  
16 statement because each of those three that I mentioned  
17 had gone through not only using this assumption, but had  
18 the ability to look back in time to see if they still  
19 thought it was a valid assumption.

20 And each of the three told me that they  
21 remained of the opinion that it was.

22 Q All right.

23 Now, earlier, we talked about a 20 percent  
24 calculation or 20 percent figure in the calculation of  
25 separation costs.

1                   Why was 20 percent used in determining  
2 separation costs?

3           A       (WITNESS FRESTEL): I believe that falls in  
4 the same category. I think that assumption has been  
5 made in prior labor impact exhibits in the mergers which  
6 I mentioned. And, similarly, I also discussed that  
7 figure with the gentlemen that I mentioned.

8           Q       With whom?

9           A       (WITNESS FRESTEL): With my counterparts on  
10 the three railroads who had gone through mergers in the  
11 prior three or four-year period.

12          Q       You said something following that, I thought.

13          A       (WITNESS FRESTEL): I said I also discussed  
14 this figure with them.

15          Q       And with Mr. Peifer?

16          A       (WITNESS FRESTEL): Yes, of course.

17          Q       And the same rationale applies to the 80  
18 percent figure that you used in the computation of the  
19 relocation costs?

20          A       (WITNESS PEIFER): You mean that 80 percent of  
21 the employees would accept relocation?

22          Q       Yes.

23          A       (WITNESS PEIFER) I think it generally falls  
24 in the same category.

25          A       (WITNESS FRESTEL): I think I can say the same



1 thing. And on that, we don't have to rely as heavily  
2 upon the advice or opinions of other carriers who have  
3 gone through the merger, because we have much greater  
4 independent experience in that regard.

5 We have a number of protective agreements  
6 under which employees may be required to transfer and  
7 thus we have an independent experience base as to  
8 roughly the percentage that will transfer and those that  
9 will stay, refuse the transfer, even though it means  
10 loss of protected benefits.

11 Q Was it an estimate, or do you have a  
12 calculation that backs up the 80 percent figure used?

13 A (WITNESS PRESTEL): I think it's more of an  
14 estimate in consultation with my staff, based on their  
15 experience as well.

16 Q Do the employee impact figures that you have  
17 in Table 1 and Table 2 take into account the impact on  
18 employees from the approval of the related  
19 applications?

20 A (WITNESS PEIFER): Impact on which employees?

21 Q On any employees? On any of the SFSP  
22 employees.

23 A (WITNESS PEIFER): Are you talking about the  
24 related sub-applications for trackage rights and things  
25 of that nature?

1 Q No. I'm talking about the related  
2 applications that the SFSP has filed in SFSP 6, the  
3 orange volume.

4 A (WITNESS PEIFER): Specifically, which ones  
5 are you talking about?

6 Q All of them.

7 A (WITNESS PEIFER): So, for example, you're  
8 talking about the motor carrier applications and things  
9 like that?

10 Q Well, right now -- I'll get to motor carrier.  
11 Let's leave motor carrier out for a moment. Let's just  
12 talk about the applications that are included in  
13 SFSP-6.

14 A (WITNESS PEIFER): You said all of them. We  
15 have not looked at those, so I'm not sure what you're  
16 talking about, all of them. At least I have not looked  
17 at all of them.

18 Q Does the employee impact statement and cost  
19 calculation take into effect the application which is  
20 entitled "St. Louis Southwestern Railway Company Merger,  
21 Southern Pacific Transportation Company, Notice of  
22 Exempt Transaction"?

23 A (WITNESS PEIFER): The labor impact exhibit  
24 does not take that specifically into consideration,  
25 although I think there's been an independent statement

1       made within that application that says that there is not  
2       expected to be any impact on either St. Louis  
3       Southwestern Railway Company employees or Southern  
4       Pacific Transportation Company employees as a result of  
5       that specific transaction.

6           Q       But you have conducted no actual analysis of  
7       that?

8           A       (WITNESS PEIFFER): With respect specifically  
9       to this labor impact exhibit, no.

10          Q       I'm sorry. You said no?

11          A       (WITNESS PEIFFER): With respect to this  
12       specific labor impact exhibit that we're talking about  
13       here, no.

14          Q       All right. Is that analysis somewhere else?

15          A       (WITNESS PEIFFER): What analysis?

16          Q       You said with respect to this specific labor  
17       impact analysis. I'm assuming that you meant the one  
18       that was presented to the Commission.

19          A       (WITNESS PEIFFER): I'm talking about this  
20       labor impact exhibit.

21          Q       You mean your verified statement and your  
22       labor impact exhibit which lists by location?

23          A       (WITNESS PEIFFER): That's correct.

24          Q       All right.

25                    Now, where -- perhaps I misunderstood you.

1 Have you done any kind of labor impact analysis as a  
2 notice of exempt transaction application to which I  
3 referred a moment ago?

4 A (WITNESS PEIFER): In connection with this  
5 specifically, no.

6 Q Have you conducted any such analysis?

7 A (WITNESS PEIFER): I think I answered that.  
8 And the statement was that Southern Pacific examined the  
9 transaction and stated -- and I believe it's contained  
10 within the application -- that we did not anticipate  
11 there would be any adverse effect on either SSW or SITCo  
12 employees as a result of that specific transaction.

13 There were no underlying studies done for  
14 that.

15 Q All right. That was my question.

16 Do you anticipate that?

17 A (WITNESS PEIFER): Yes, because there will be  
18 no internal shifting or anything that would affect  
19 employees.

20 Q I notice that in your answer you referred to  
21 an effect on the SSW or SPT employees. Could there  
22 possibly be an effect on any other group of SFSP  
23 employees?

24 A (WITNESS PEIFER): I cannot see how there  
25 would be; no.

1 Q All right.

2 I can go through each of these related  
3 applications and ask you the same questions. Do the  
4 labor impact analyses which you have presented to the  
5 Commission -- that specifically detail the location and  
6 the cost -- include an analysis of any of these related  
7 applications?

8 A (WITNESS PEIPER): Without seeing exactly what  
9 they are, the general answer would be no. This labor  
10 impact exhibit addresses, with the operating plan  
11 numbers that were provided to us by Mr. Owen as well as  
12 the staff department consolidations that relate to the  
13 merger of the two railroad companies.

14 Q If I may, I would like to present to you a  
15 copy of the related applications and have you look at  
16 them.

17 A (WITNESS PEIPER): I wish you'd done that  
18 before, but I'd like to see them now.

19 (Document handed to the witness.)

20 Q Please, if you have any questions, ask if  
21 you'd like to see something.

22 A (WITNESS PEIPER): Well, I said specifically,  
23 the ones you were talking about, you said all of them  
24 first, and then you came back and you said forget about  
25 the trucking companies.

1 JUDGE HOPKINS: There's no sense in arguing  
2 about that. Let's just look at it and move on.

3 MS. MADIGAN: Thank you, Your Honor.

4 JUDGE HOPKINS: I believe they're ready to  
5 answer. Are you?

6 A (WITNESS FRESTEL): Hopefully.

7 BY MS. MADIGAN: (Resuming)

8 Q I can rephrase the question if you want. I  
9 thin you know what the question is, though. Have you  
10 conducted any -- or do any of those applications --  
11 excuse me. Let me back up.

12 Does the employee impact of any of those  
13 applications appear in the employee impact analysis  
14 which you have presented to the Commission?

15 A (WITNESS PEIFER): I really can't answer that  
16 question because without going through these  
17 individually -- for example, 5, 6, and 7, I'm not sure.  
18 Generally, the answer would be no, I don't recall  
19 reading anything on any of the sub-related applications  
20 that would be included within the labor impact exhibit.

21 Q And you have done no independent analyses with  
22 respect to those related applications?

23 A (WITNESS PEIFER): Again, without knowing  
24 specifically what each one of these are, particularly 5,  
25 6, and 7, the answer would be not to my recollection.

1 Q Well, if you didn't do it, would anyone else  
2 connected with the Santa Fe or the Southern Pacific have  
3 performed such an analysis?

4 A (WITNESS PEIFER): I don't know.

5 A (WITNESS FRESTEL): I don't know either.

6 Q You mean there are other people who could have  
7 been performing labor impact analyses?

8 A (WITNESS PEIFER): Probably not. Not if they  
9 were truly labor impact analyses.

10 Q Now, with respect to the motor carrier  
11 application, have you provided, or have you done any  
12 employee impact analysis of the effect of the motor  
13 carrier application?

14 A (WITNESS PEIFER): No.

15 Q No?

16 Have either of you reviewed RLEA's suggested  
17 supplemental conditions in this proceeding?

18 A (WITNESS FRESTEL): Yes.

19 A (WITNESS PEIFER): I'd like you to clarify  
20 what supplemental conditions. I know RLEA has submitted  
21 conditions. What do you mean by supplemental  
22 conditions?

23 Q Attached to our second list of protective  
24 conditions, we have attached some supplemental  
25 conditions, and Mr. Firney is presenting those to you

1 right now.

2 A (WITNESS PEIFER): Is there a question  
3 pending?

4 Q I thought Mr. Frestel was reviewing them.  
5 Have you reviewed them?

6 A (WITNESS FRESTEL): Yes.

7 Q Have you reviewed them, Mr. Peifer?

8 A (WITNESS PEIFER): I've looked at them, yes.

9 Q Will the carriers accept the imposition of  
10 RLEA's proposed supplemental conditions?

11 A (WITNESS FRESTEL): No.

12 Q Mr. Peifer?

13 A (WITNESS PEIFER): No.

14 Q Have you performed any type of analysis of  
15 RLEA's supplemental conditions?

16 A (WITNESS FRESTEL): What do you mean by  
17 "analysis"?

18 Q Any kind of review, any type of --

19 A (WITNESS FRESTEL): I've reviewed that, yes.

20 Q Have you done any cost analysis?

21 A (WITNESS FRESTEL): No.

22 Q Mr. Peifer, have you?

23 A (WITNESS PEIFER): No, I haven't.

24 Q Have you directed anyone else to do such a  
25 cost analysis?



1 A (WITNESS PEIFER): No.

2 A (WITNESS FRESTEL): No.

3 Q Now, in the formulation of the employee impact  
4 exhibit, you reviewed the contents of the operating  
5 plan, did you not?

6 A (WITNESS PEIFER): I read the operating plan,  
7 yes.

8 A (WITNESS FRESTEL): I did also.

9 Q And you are familiar with its contents?

10 A (WITNESS FRESTEL): That's a stretch for me.

11 A (WITNESS PEIFER): It's a very complicated and  
12 detailed plan. I'm aware of it generally, but specific  
13 details about specific locations, without reading it  
14 again, I couldn't recall them for you right here.

15 Q Well, are there any proposals included in the  
16 operating plan which require changes in the employees'  
17 working conditions or work rules?

18 A (WITNESS FRESTEL): Yes, I would say so.

19 Q And can you give me a list of those changes?

20 A (WITNESS FRESTEL): I can't give you a list,  
21 no.

22 Q Can you give me some examples?

23 A (WITNESS FRESTEL): Sure. Changing crew  
24 districts. It's my understanding they contemplate  
25 operating with one crew. For example, a former Santa Fe

1 crew would operate on a former Santa Fe track and then  
2 with a connecting track, would then operate onto former  
3 Southern Pacific Transportation Company track.

4 This would not be possible under existing  
5 agreements, and that's part of our merger.

6 Q Can you think of any other examples?

7 A (WITNESS FRETEL): Oh, sure. I mean when you  
8 consolidate functions, when you consolidate forces at  
9 locations, shops, yards, there are -- the reason we have  
10 conducted the labor impact study is because there will  
11 be employees impacted as a result of these various  
12 changes.

13 Q Now, do you perceive the change in the crew  
14 districts to be material to the implementation of the  
15 merger?

16 A (WITNESS FRETEL): Yes, I would.

17 Q Why?

18 A (WITNESS FRETEL): I think it's necessary to  
19 realize the economies which are expected as a result of  
20 the operating plan. It's clearly so.

21 Q Do you believe that you could not implement  
22 the merger or not effectuate the merger without these  
23 crew district changes?

24 A (WITNESS FRETEL): I think in theory, it  
25 could be effectuated. You might have to run a couple

1 hundred miles out of the way to serve someone in  
2 practice. In reality, I don't think it can be  
3 effectuated.

4 Q That's your opinion?

5 A (WITNESS FRESTEL): Pardon?

6 Q That's your opinion?

7 A (WITNESS FRESTEL): Yes, it is.

8 A (WITNESS PEIFER): It's my opinion as well.

9 It is a key ingredient of the operating plan to be able  
10 to do these things; yes

11 Q And for the same reason?

12 A (WITNESS PEIFER): For the same reason; yes.

13 Q Do you gentlemen intend to go through to  
14 collective bargaining negotiations before implementing  
15 any of these working conditions and work rule changes?

16 A (WITNESS FRESTEL): Let me back up and  
17 segregate that question a little bit.

18 We intend to conduct a negotiation with our  
19 labor representatives prior to implementing agreements  
20 regarding the selection of forces. That's contemplated  
21 by the New York dock conditions.

22 We do not contemplate labor negotiations over  
23 changing crew districts or other changes which are  
24 necessary to implement the merger. We believe that is  
25 encompassed in the plenary jurisdiction of the

1 Interstate Commerce Commission.

2 Q So are you telling us that if you can't  
3 achieve what you desire through collective bargaining,  
4 that you're going to implement what you desire anyway?

5 A (WITNESS FRESTEL): No, no, no. That's not at  
6 all what I said. I said we would negotiate prior to,  
7 with the goal of reaching implementing agreements  
8 affecting selection of forces.

9 My expectation is we'll be successful. If  
10 not, we'll arbitrate.

11 Q These negotiations will solely concern  
12 selection of forces?

13 A (WITNESS FRESTEL): Yes.

14 Q With respect to other changes?

15 A (WITNESS FRESTEL): I have to be careful  
16 there. On the Santa Fe and on the Southern Pacific, our  
17 operating unions have served what we call Section 6  
18 notices under the Railway Labor Act, seeking lifetime  
19 protection following the merger.

20 We have conducted meetings with their  
21 representatives, and the meetings are in recess. We  
22 have also, on the Santa Fe, had a number of Section 6  
23 notices served -- I don't want to say all of our  
24 operating crafts, but the overwhelming majority --  
25 seeking to enlarge their seniority districts so that if

1 they are affected following the merger, they would have  
2 a greater territory over which to exercise their  
3 seniority.

4 And these negotiations are ongoing.

5 Q They are ongoing?

6 A (WITNESS FRESTEL): Yes, they are. But I  
7 don't know if that's what you are addressing when you're  
8 saying will we negotiate over the merger. But I  
9 mentioned that so I could clarify it.

10 Q Let me ask you, are you asking the Commission  
11 in your application for an exemption from any of your  
12 Railway Labor Act obligations?

13 A (WITNESS FRESTEL): I think the necessary  
14 effect of the Commission's order, it has pointed out in  
15 the past, is that there be -- in furtherance of its  
16 plenary jurisdiction, as I mentioned, that the Railway  
17 Labor Act must yield to the extent necessary to  
18 implement the merger.

19 And I don't know that we've asked for that. I  
20 think it necessarily flows from the Commission's order.

21 Q Mr. Peifer, do you agree?

22 A (WITNESS PEIFER): I agree with that 100  
23 percent. Going just one step further, we understand  
24 what our obligations are if protective conditions are  
25 imposed.

1           If, for example, those protective conditions  
2 in New York Dock, we know what obligations we have with  
3 respect to negotiating implementing agreements, and we  
4 will negotiate those implementing agreements over the  
5 subjects that are covered within the New York Dock.

6           Q     Let me take it one step further. Are you  
7 asking, then, the Commission for an exemption from your  
8 collective bargaining provisions, collective bargaining  
9 agreement provisions?

10          A     (WITNESS FRESTEL): I think you just asked,  
11 and we've answered -- or I hope we have. We have not  
12 specifically asked the Commission for that. We think it  
13 flows from the Commission's order.

14                Otherwise, you would not be able to implement  
15 the merger.

16          Q     How long do you believe the Commission's  
17 authority exists? Ten years down the road, do you  
18 believe you can still effectuate what you believe is  
19 instrumental to the merger as a result of the  
20 Commission's order?

21          A     (WITNESS FRESTEL): I hate to toss it to my  
22 counsel, but it sounds like a legal question. I really  
23 don't know.

24                I think the merger -- we planned to move up on  
25 it a whole lot faster than that, but in theory I suppose

1 there could be something that has not yet been  
2 implemented ten years from now. I don't know if there  
3 is any time period in which the Commission loses  
4 jurisdiction, but I would certainly yield to my counsel  
5 on that.

6 Q Would you agree that each operational change  
7 identified in the operating plan will potentially result  
8 in employees handling or moving traffic other than that  
9 which they moved or handled as an employee of a  
10 constituent railroad prior to the merger?

11 A (WITNESS FRESTEL): When you say each  
12 operating change, as I understand it, there are many  
13 changes that have nothing to do with the operating  
14 employees.

15 For example, in the area of maintenance of way  
16 and shops and signals, there are many changes which are  
17 expected, if I recall correctly, which do not bear on  
18 handling traffic per se.

19 Now, maybe signals allow you to handle traffic  
20 more efficiently or more expeditiously or with greater  
21 volume of traffic, but I don't know exactly what you're  
22 pointing to.

23 So when you say every change in operations, it  
24 strikes me as rather broad.

25 Q But potentially

1           A       (WITNESS FRESTEL): I guess I have to repeat  
2 myself. I am not sure what the impact would be on, for  
3 example, changes in a shop at a particular location on  
4 handling more traffic.

5           I suppose, in theory, if your equipment is  
6 maintained in a better and more efficient condition or  
7 lower cost, that might enable you to lower your rates  
8 and thus attract more traffic. But it seems we're  
9 getting to be a bit indirect there.

10          Q       All right.

11           I'm going to have Mr. Birney hand to you the  
12 Southern Pacific or the SFSP's answers to our BLEA's  
13 interrogatories.

14           (Document was handed to the witnesses.)

15          MS. MADIGAN: Excuse me, Your Honor.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 BY MS. MADIGAN: (Resuming)

2 Q The second full sentence on the page?

3 A (WITNESS FRESTEL) What page, Counsel, I'm  
4 sorry?

5 Q Page 16.

6 A (WITNESS FRESTEL) The second full sentence at  
7 the top?

8 Q At the top.

9 A (WITNESS FRESTEL) Each operational change  
10 identified in the operating plan will potentially result  
11 in employees handling or moving traffic other than that  
12 which they moved or handled as employee -- I guess that  
13 should be plural -- of the constituent railroads prior  
14 to the merger.

15 Q Thank you.

16 Have either of you gentlemen prepared a study  
17 or an analysis of the effect of the primary applications  
18 on nonapplicant carrier employees?

19 A (WITNESS FRESTEL) No.

20 A (WITNESS PEIFER) No, we haven't.

21 Q Have you performed such an analysis with  
22 respect to nonapplicant carrier employees, with respect  
23 to the related motor carrier applications?

24 A (WITNESS PEIFER) No.

25 A (WITNESS FRESTEL) No.

1 Q Do you know whether any employee is going to  
2 be furloughed, displaced or relocated as a result of the  
3 crew district changes that you propose in the operating  
4 plan?

5 A (WITNESS PEIFER) I think as a general  
6 observation there will be some relocations. It will be  
7 necessary to move people to those new points. I think  
8 if you look at the operating plan there are something  
9 like 13 pairs of new points that will be involved in  
10 that. I think it is safe to say that some of the people  
11 we have shown in the labor impact exhibit will be  
12 relocated to those points.

13 Q Can you address my question with respect to  
14 furloughed or displaced?

15 Do you know?

16 A (WITNESS FRESTEL) Furloughed or what,  
17 counsel? I'm sorry.

18 Q Will employees be furloughed or displaced with  
19 respect to the crew district changes?

20 A (WITNESS PEIFER) Specifically as a result of  
21 those crew changes? I don't know.

22 A (WITNESS FRESTEL) I really can't say.  
23 Relocation, certainly. Again, that will depend upon the  
24 outcome of the implementing agreements to be negotiated  
25 covering selection of forces.

1           Q     The chief executive officers of the companies,  
2 upon cross examination, informed me that you gentlemen  
3 would be the people to whom I should address questions  
4 as to the acceptance by the carriers of the New York  
5 Dock conditions for certain groups of employees. For  
6 instance, will the carrier accept the New York Dock  
7 conditions for all SFSP employees affected by the  
8 trackage rights applications?

9           A     (WITNESS FRESTEL) I'm always cautious about  
10 answering questions in a vacuum, but I think it is safe  
11 to say the answer would be no because if I understand  
12 your question, this will extend to employees other than  
13 those covered by our application.

14           Now, I don't know the niceties of whether or  
15 not the New York Dock conditions would, independent of  
16 this application, apply to other applications. So, as I  
17 say, it is difficult to answer in a vacuum, and when you  
18 say SFSP, that covers employees in mining and lumber,  
19 and golly knows what else.

20           Q     An employee, any SFSP employee affected by the  
21 transaction.

22           A     (WITNESS FRESTEL) I guess my answer would be  
23 is I will accept New York Dock when it applies to the  
24 employees of the applicants.

25           Q     All right.

1 Mr. Peifer, is your answer the same?

2 A (WITNESS PEIFER) Oh, yes.

3 Q Will the carriers accept the New York Dock  
4 conditions for nonapplicant carrier employees affected  
5 by the SFSP applications?

6 A (WITNESS FRESTEL) As difficult as it is for  
7 me to foresee that happening, my answer would be no.

8 Q Mr. Peifer?

9 A (WITNESS PEIFER) Mine is the same.

10 Q And the same would be true as to the effect of  
11 the related applications on nonapplicant carriers'  
12 employees?

13 A (WITNESS FRESTEL) I would repeat my last  
14 answer.

15 Q Mr. Peifer?

16 A (WITNESS PEIFER) Yes, the same.

17 Q Are the carriers willing to accept the New  
18 York Dock conditions for all motor carrier employees  
19 affected by the transation?

20 A (WITNESS FRESTEL) I repeat my last answer.

21 A (WITNESS PEIFER) The same.

22 A (WITNESS FRESTEL) Maybe I should clarify that  
23 somewhat.

24 You asked for my opinion, and I have given it,  
25 as has Mr. Peifer. But I think as Mr. Schmidt

1 testified, the way it works on a railroad and the  
2 holding company generally is on a policy matter, which  
3 is what I regard this question involving, it would be a  
4 situation where I would make a recommendation, in this  
5 instance probably to Mr. Cena, and no doubt he and I  
6 would discuss it with Mr. Schmidt.

7 So you are asking me to answer a question  
8 again which is hypothetical, and no doubt there might be  
9 some other factors which come to bear, and the ultimate  
10 decision would be made, I am sure, by Mr. Schmidt.

11 But if you are asking me if I would accept, my  
12 recommendation would be negative.

13 Q Your recommendation would be no?

14 A (WITNESS FRESTEL) My recommendation would be  
15 negative, would be no.

16 Q And you, Mr. Peifer?

17 A (WITNESS PEIFER) Mine would certainly be no.

18 Q I'm going to turn your attention to the labor  
19 impact data exhibit.

20 Do you have that with you, the one that lists  
21 the locations?

22 A (WITNESS FRESTEL) Yes.

23 Q Upon my review of that, I can find no job  
24 abolishment or transfer figures planned for engineers or  
25 firemen at Hutchison, Kansas.

1                   Would you like to verify that?

2                   Am I correct?

3                   A       (WITNESS PEIFER) You are correct, yes.

4                   A       (WITNESS FRESTEL) Yes.

5                   Q       Are you familiar with the operating plan? Do  
6 you know that in the operating plan it states that the  
7 Santa Fe yard at Hutchison will serve the merged  
8 railroad at that point? Are you aware of that?

9                   A       (WITNESS PEIFER) I'm generally familiar with  
10 that.

11                  Q       Mr. Frestel?

12                  A       (WITNESS FRESTEL) Yes.

13                  Q       Now, presently the Cotton Belt, the SSW, has  
14 one switch engine engineer and one local engineer at  
15 Hutchison, Kansas.

16                         Can you tell me what the carrier's plans are  
17 for these engineers at Hutchison?

18                  A       (WITNESS PEIFER) Specifically, no. I would  
19 imagine that the local engineer will probably stay  
20 there. I don't know about the yard engine. It may very  
21 well be at the time that this impact was prepared that  
22 there was not one yard engineer there and there is now.  
23 I don't know at what point in time you are talking  
24 about.

25                  Q       No.

1           A       (WITNESS PEIFER) Well, it may very well be  
2 that as of December 1983 there was not a yard engineer  
3 there. That's one explanation. That may not be the  
4 right explanation, but it's one.

5           Q       I'm intrigued. You are going to keep the SSW  
6 employee, works in the SSW yard, you are going to keep  
7 him working at this yard even though you intend to have  
8 the merged carrier operate out of the Santa Fe yard?

9           A       (WITNESS PEIFER) No. You said there were two  
10 engineers based on your current count, one in local  
11 service and one in yard serve. I said it's very  
12 possible the one in local service may continue to work  
13 at that geographical location. If that be correct, he  
14 is working at the same geographical location, insofar as  
15 this labor impact is concerned, it wouldn't  
16 differentiate between SSW or Santa Fe.

17          Q       So he would then, in your opinion, start work  
18 at the Santa Fe yard?

19          A       (WITNESS PEIFER) The geographical location is  
20 one and the same.

21          A       (WITNESS FRESTEL) Again I will add the caveat  
22 of subject to the implementing agreements which govern  
23 that sort of thing.

24          Q       Can you look at again in the operating plan it  
25 says that the SSW Hodge yard will no longer be in active

1 service.

2 Are you aware of that?

3 A (WITNESS FRESTEL) I'm not specifically, no.

4 Q Do you want to take my word for it?

5 A (WITNESS FRESTEL) Sure.

6 Q Can you look at the labor impact study under  
7 the Fort Worth category?

8 Do you see any job transfers or abolishments  
9 in the engineer classification at Fort Worth?

10 A (WITNESS FRESTEL) I don't.

11 A (WITNESS PEIFER) I don't.

12 Q Now, it is my understanding that presently  
13 there are two SSW engineer-firemen at Hodge.

14 What are the carriers' plans for these two  
15 employees following the merger?

16 A (WITNESS FRESTEL) Could I interject here?

17 First of all, everything we have done here  
18 deals with positions, not employees, and I am going to  
19 say it for the fourth or fifth time, that's what the  
20 implementing agreements are for. They cover specific  
21 individuals and address their seniority. We have dealt  
22 with positions all throughout this.

23 Secondly, that sort of information is the sort  
24 of information that is defined specifically in our work  
25 papers.



1 Q So I can find it -- because you understand  
2 that we are of course interested in the jobs. We are  
3 also interested in how this relates to the employees.

4 A (WITNESS FRESTEL) So are we, counsel, but my  
5 point is we cannot possibly at this time tell sometime  
6 in the future which could be one to two to three, four  
7 years from now who will be holding those jobs, what the  
8 economic conditions will be, whether that yard engine or  
9 road engine will in fact still be operating.

10 So at this time you cannot possibly deal with  
11 employees. You can only deal with positions.

12 Q But in the work papers I could find  
13 information as to the actual impact on employees?

14 A (WITNESS FRESTEL) You can find information as  
15 to the impact on positions. There are no employees  
16 named in those work papers except as it may be  
17 coincidental or something. We deal with positions. I  
18 have got to emphasize that.

19 A (WITNESS PEIFER) Let me clarify one thing for  
20 you insofar as the work papers are concerned. Our work  
21 papers will show you where new positions were created by  
22 geographical locations. They will also show you where  
23 employees were transferred from one geographical  
24 location to another. It may very well be that you are  
25 going to have to reach into the work papers of Mr. Owen

1 to find out some of these other details. I don't want  
2 us to confuse you on this. That's number one.

3 Number two, in every instance where you pick  
4 these examples, like Hutchison and Fort Worth, remember  
5 what we are talking about is a geographical location  
6 where there are common facilities; there are two  
7 facilities, the Santa Fe facility and the SP facility.  
8 All we are saying is that one will be phased out in  
9 preference to another in some instances, and in some  
10 instances we have said they will both be retained. But  
11 the labor impact exhibit only details things by  
12 geographical locations. It doesn't say, information,  
13 Hodge Yard, Fort Worth as opposed to whatever the name  
14 is of the yard of Santa Fe at Fort Worth.

15 Q It is my understanding of your response to the  
16 other questions that you said that I could discern how  
17 many employees would be furloughed by reviewing your  
18 work papers, is that correct?

19 A (WITNESS PEIFER) I think that you could get  
20 most of that information from either our work papers or  
21 you may have to reach back and look at the operating  
22 plan work papers.

23 Q Which are also located in the document  
24 depository?

25 A (WITNESS PEIFER) I have no idea whether they

1 are or not. I would assume they are.

2 MR. STEPHENSON: They are.

3 MS. MADIGAN: Thank you.

4 Your Honor, may I have your indulgence for  
5 just one moment?

6 (Pause)

7 MS. MADIGAN: Your Honor, that's all I have.

8 JUDGE HOPKINS: Off the record.

9 (Discussion off the record.)

10 JUDGE HOPKINS: We will take a ten minute  
11 recess.

12 Thank you.

13 (A brief recess was taken.)

14 JUDGE HOPKINS: Let's get back on the record.

15 CROSS EXAMINATION

16 BY MR. MURRAY:

17 Q My name is Steve Murray, and I represent the  
18 International Brotherhood of Teamsters, and we are an  
19 Intervenor in this proceeding.

20 For Mr. Peifer, your present position is the  
21 Assistant Vice President of Labor Relations for Southern  
22 Pacific Transportation Company?

23 A (WITNESS PEIFER) That's correct.

24 Q Is Pacific Motor Trucking a subsidiary of  
25 Southern Pacific Transportation Company?

1 A (WITNESS PEIFER) Yes, it is.

2 Q Would the proposed merger involve PMT, Pacific  
3 Motor Trucking?

4 A (WITNESS PEIFER) There is an application that  
5 relates to Pacific Motor Trucking, yes.

6 Q Could you describe the manner in which the  
7 merger would relate to PMT?

8 A (WITNESS PEIFER) I can't.

9 Q Would the merger affect PMT employees?

10 A (WITNESS PEIFER) I have no idea.

11 Q Do you have any idea of the facilities where  
12 PMT employees are presently employed?

13 A (WITNESS PEIFER) Not specifically, no. The  
14 railroad company has no direct involvement insofar as  
15 labor relations is concerned with PMT.

16 Q Okay.

17 The basis of our motion to intervene, which  
18 was granted, is our representation of employees at PMT  
19 as well as two other motor carrier companies, so I am  
20 going to ask these questions. If you do not know the  
21 answer, say you do not know, and if you know where the  
22 answer can be located, if you could point that out.

23 A (WITNESS PEIFER) Perhaps it might save time  
24 if I could tell you right off the top that I have no  
25 knowledge of the trucking company sub-application, nor

1 have I had any involvement in anything relating to  
2 that.

3 Q Let me ask you, does your verified statement  
4 and your labor impact exhibit take into account the  
5 employees of PMT?

6 A (WITNESS PEIFER) That question was asked by  
7 Ms. Madigan, and I answered no.

8 Q I may have been out of the room. I'm sorry.

9 A (WITNESS PEIFER) The answer is no.

10 Q Let me ask you, the PMT presently has several  
11 contracts with local unions of the International  
12 Brotherhood of Teamsters.

13 Do you know who will assume the administration  
14 of those contracts after the merger?

15 A (WITNESS PEIFER) I do not.

16 Q So you are stating that -- let me just  
17 summarize, and it can save us time -- neither your  
18 verified statement nor the labor impact exhibit address  
19 any of the employees of PMT?

20 A (WITNESS PEIFER) That's correct.

21 Q And you have no knowledge of how the merger  
22 will impact on employees of PMT?

23 A (WITNESS PEIFER) That's also correct.

24 Q Do you have any knowledge of the ramping  
25 operations which PMT presently performs?

1 A (WITNESS PEIFER) No, not in any detail.

2 Q Would you have any idea whether any of PMT's  
3 operations will be consolidated as a result of the  
4 merger?

5 A (WITNESS PEIFER) No, I wouldn't.

6 Q Do you have any idea whatsoever how -- strike  
7 that.

8 Do you have any idea whether any labor  
9 protective provisions would be imposed on PMT?

10 A (WITNESS PEIFER) Do I have any idea, did you  
11 say?

12 Q Right.

13 A (WITNESS PEIFER) No, I don't.

14 Q Okay, Mr. Frestel?

15 A (WITNESS FRETEL) Yes, sir.

16 Q I want to ask some similar questions to you  
17 regarding Santa Fe Terminal Services.

18 Is Santa Fe Terminal Services a subsidiary of  
19 the Atchison, Topeka and Santa Fe Railway Company?

20 A (WITNESS FRETEL) That's my understanding.

21 Q Would the proposed merger involve terminal  
22 services?

23 A (WITNESS FRETEL) I have no idea. It was not  
24 studied by us.

25 Q Does the verified statement and the labor

1 impact exhibit take into account the impact of the  
2 merger on the employes of Terminal Services?

3 A (WITNESS FRESTEL) No, sir, they do not.

4 Q Do you know who would administer the  
5 collective bargaining contracts between labor unions and  
6 Terminal Services subsequent to the merger?

7 A (WITNESS FRESTEL) No, sir, I do not.

8 Q Do you know if any of Terminal Services'  
9 present operations would be consolidated as a result of  
10 the merger?

11 A (WITNESS FRESTEL) I do not.

12 Q Are you familiar with the ramping operations  
13 which Terminal Services presently performs?

14 A (WITNESS FRESTEL) I have general knowledge  
15 that they exist.

16 Q Would you have any idea how many ramps of  
17 Terminal Services would be closed as a result of the  
18 merger?

19 A (WITNESS FRESTEL) I have no knowledge of how  
20 many, if any.

21 Q Do you know where such information would be  
22 located?

23 A (WITNESS FRESTEL) No, sir, I do not.

24 Q Do you know who will control the present  
25 Terminal Services ramping operations at Oakland,

1 California and Richmond, California after the merger has  
2 been completed?

3 A (WITNESS FRESTEL) No, sir, I don't.

4 Q Do you know what impact, if any, the merger  
5 will have on Terminal Services employees?

6 A (WITNESS FRESTEL) No, sir.

7 Q Do you know if any labor protective provisions  
8 will be provided to Terminal Services employees  
9 subsequent to the merger?

10 A (WITNESS FRESTEL) Subsequent to this merger,  
11 I do not know if that will be addressed.

12 Q This is a question to both of you in regard to  
13 both PMT and Terminal Services.

14 Have you performed any analysis of the impact  
15 of this merger on, on, the operations of PMT and  
16 Terminal, and two, the employees of PMT and Terminal in  
17 the context of this merger?

18 A (WITNESS PRIFER) No, we have not.

19 Q Neither of you have?

20 A (WITNESS FRESTEL) I have not as well.

21 Q Mr. Frestel, are you familiar with an entity  
22 entitled Santa Fe Trail Transportation Company?

23 A (WITNESS FRESTEL) I am or I was, I am not  
24 sure which. By that I mean there was such an entity  
25 which was sold. I don't know if it retained the same



1 corporate name, and I'm not sure which entity to which  
2 you are referring.

3 Q Let's go back to the period of time prior to  
4 the sale of Trail.

5 A (WITNESS FRESTEL) Yes.

6 Q Was Trail at that time a subsidiary of  
7 Atchison, Topeka & Santa Fe Railway Company?

8 A (WITNESS FRESTEL) I'm going to confess  
9 ignorance on that. It's my understanding that it may be  
10 at varying times subsidiaries of both Atchison, Topeka &  
11 Santa Fe Railway and Santa Fe Industries. That's my  
12 belief, but I'm not certain, counsel.

13 Q You mentioned that Trail has been sold.  
14 Do you know to what entity it has been sold?

15 A (WITNESS FRESTEL) No, sir, I don't. I  
16 believe it's a trucking company based in Chicago, but I  
17 really don't know any details.

18 Q Do you know if the sale of Trail was part of  
19 the overall merger plan between the applicants?

20 A (WITNESS FRESTEL) It is my understanding that  
21 it was unrelated to the merger, and I can say that with  
22 some certainty because they were attempting to sell it  
23 for quite some period of time, long antedating the  
24 merger plans announced by the applicants.

25 Q Excuse me?

1           A       (WITNESS FRESTEL) It was losing money for a  
2 long time.

3           Q       Excuse me. Did you say unrelated?

4           A       (WITNESS FRESTEL) Unrelated to the merger  
5 application.

6           Q       To the best of your knowledge, do you know of  
7 any correspondence or any documents that would support  
8 your claim that the applicants had planned to sell the  
9 company a long period prior to the merger?

10          A       (WITNESS FRESTEL) I do not have knowledge of  
11 any specific documents or what was the other question?

12          Q       Correspondence?

13          A       (WITNESS FRESTEL) Correspondence. I know  
14 that it was being considered.

15          Q       Could you elaborate on your statement that it  
16 was unrelated to the merger?

17          A       (WITNESS FRESTEL) That's based on my  
18 understanding over a long period of time that they have  
19 considered selling that corporation or entity.

20          Q       To the best of your knowledge, is Trail still  
21 a corporate entity performing the same type of services  
22 it performed prior to its sale?

23          A       (WITNESS FRESTEL) I don't know if it is  
24 organized as a corporation or an independent operator or  
25 what the corporate entity is, if any, and I am not

1 familiar with the present operations they are  
2 conducting, whether they are the same, similar, or what  
3 have you.

4 Q Does Trail presently -- strike that.

5 Does PMT presently provide services in  
6 connection with the Applicant's rail operations?

7 A (WITNESS PEIFER) I think there is some  
8 interrelation of services, but I can't specifically  
9 answer that question and tell you where and to what  
10 extent.

11 Q Could you describe those services?

12 A (WITNESS PEIFER) No, I really can't.

13 Q Does Terminal Services presently provide  
14 services in connection with the applicants' rail  
15 operations?

16 A (WITNESS FRESTEL) It's my understanding they  
17 provide ramp and deramp services as generally described  
18 for the Atchison, Topeka some locations.

19 Q Are those locations addressed in your labor  
20 impact exhibit?

21 A (WITNESS FRESTEL) I don't know.

22 Q Does Trail or its entity, its present entity,  
23 provide services in connection with applicants' rail  
24 operations?

25 A (WITNESS FRESTEL) I don't know that,

1 Counsel.

2 Q Do the employees of PMT work under the  
3 supervision of the applicants' rail carriers?

4 A (WITNESS PEIFER) PMT has its own chairman and  
5 its own individual supervisors, so it would work under  
6 the supervision of PMT people.

7 Q Subsequent to the merger, would PMT employees  
8 work under the supervision of the applicants' rail  
9 carriers?

10 A (WITNESS PEIFER) I have no idea.

11 Q Do the employees of Terminal Services  
12 presently work under the supervision of the applicants'  
13 rail carriers?

14 A (WITNESS FRESTEL) Do the employees of SPTS  
15 work under the supervision of the railroad?

16 Q Yes.

17 A (WITNESS FRESTEL) It is my understanding that  
18 they have separate supervisory forces which direct the  
19 activities of the employees.

20 Q Subsequent to the merger, would the  
21 applicants' officers direct the Terminal Services  
22 employees?

23 A (WITNESS FRESTEL) I don't know.

24 Q You mentioned that Terminal Services engages  
25 in ramping and deramping.

1 Do you have an idea or can you tell me where  
2 such information is located in regard to the percentage  
3 of Terminal Services operations that consist of ramping  
4 and deramping services?

5 A (WITNESS FRESTEL) I guess I have to say no on  
6 both counts. I do not know that, and I am not sure  
7 where you would find that information.

8 Q Would either of you know the number of  
9 TOFC/COFC ramps at which Terminal Services employees  
10 work?

11 A (WITNESS FRESTEL) I don't.

12 A (WITNESS PEIFER) I certainly wouldn't.

13 Q Do you know the date of the sale of Trail?

14 A (WITNESS FRESTEL) No, sir, I don't. It was  
15 earlier this year I believe, but I'm not sure.

16 Q Trail is presently signatory to the National  
17 Master Freight Agreement with several teamster local  
18 unions.

19 Do you know the corporate entity that would  
20 administer the contract and succeed Trail as a signatory  
21 to the freight agreement subsequent to the merger?

22 A (WITNESS FRESTEL) When you say that SPTI is  
23 presently signatory to the National Master Freight  
24 Agreement, and then you talk about an entity which  
25 succeeds it, I'm a little bit confused. It is my

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1 understanding that SFTT was sold to a new entity. I  
2 have no knowledge of whether they are signatory or  
3 remain signatory to that agreement or who administers  
4 it.

5 Q Then let me ask you this.

6 Subsequent to the merger -- strike that.  
7 Would the merger affect the operations of  
8 Trail in its present form?

9 I'm sorry, go ahead.

10 A (WITNESS FRESTEL) I don't know.

11 Q Do you know if it would have any impact on the  
12 employees of Trail

13 A (WITNESS FRESTEL) I don't know that, sir.

14 Q Do you know if the ramping operations of PMT  
15 will in any way be affected by the merger?

16 A (WITNESS PEIFER) I have no idea.

17 Q Do you know if any of the ramping operations  
18 in PMT will be consolidated as a result of the merger?

19 A (WITNESS PEIFER) I have no idea.

20 Q Do you know if any of the ramping operations  
21 of Terminal Services will be consolidated?

22 A (WITNESS FRESTEL) I do not know that, sir.

23 Q In order to sum up, you are stating that  
24 the -- correct me if I misspeak -- the operations of  
25 PMT, Trail and Terminal Services have not been analyzed

1 by either of you in this merger process.

2 A (WITNESS FRESTEL) That's a fair statement for  
3 me.

4 A (WITNESS PEIFER) That's correct.

5 Q The impact on the labor conditions of those  
6 three entities, PMT, Trail, Terminal Services, you have  
7 not analyzed the impact of this merger on the  
8 employees?

9 A (WITNESS FRESTEL) No, I have not.

10 Q Of those three entities?

11 A (WITNESS PEIFER) No.

12 Q And are either of you aware of any materials  
13 that includes such an analysis?

14 A (WITNESS FRESTEL) I am not.

15 A (WITNESS PEIFER) No.

16 MR. MURRAY: I have no further questions.

17 JUDGE HOPKINS: Thank you.

18 Any redirect?

19 REDIRECT EXAMINATION

20 BY MR. LANE:

21 Q Gentlemen, earlier in your testimony, I  
22 believe it was in response to Mr. Birney's questions,  
23 you answered some questions about Table 1 in your  
24 verified statement at page 3.

25 You will recall that Mr. Birney asked you



1 about a discrepancy between the first version of the  
2 testimony and the version that was contained in the  
3 errata.

4 A (WITNESS FRESTEL) I recall that, yes.

5 Q Let me ask you a question about the general  
6 preparation of this exhibit.

7 When a job is identified as being created, did  
8 you make any assumptions about where the employee would  
9 come to fill a created position? Did you make any  
10 assumptions about that?

11 A (WITNESS PEIFER) There were assumptions  
12 made. They weren't made specifically either by Mr.  
13 Frestel or myself, but they were made, yes.

14 Q Okay. How were those new jobs assumed to be  
15 filled?

16 A (WITNESS PEIFER) For which craft are we  
17 talking about?

18 Q Let's take the agreement positions, for  
19 example, for instance, in the operating crafts.

20 As I understand your testimony, Mr. Owen's  
21 analysis showed additional jobs at certain locations.

22 A (WITNESS PEIFER) That's correct.

23 Q Did you make any assumptions about filling  
24 those additional positions?

25 A (WITNESS PEIFER) Specifically I didn't, but

1 they were done by a gentleman within Southern Pacific  
2 Transportation Company's Labor Relations Department.

3 Q Do jobs transferred in any way relate to the  
4 jobs created?

5 A (WITNESS PEIFER) Yes, they do.

6 Q How do they relate.

7 A (WITNESS PEIFER) As far as the operating  
8 craft positions are concerned, all the jobs transferred  
9 are also included in the number of jobs created.

10 Q Does that mean, then, that any job that is  
11 transferred at one location in this as a result of this  
12 operating plan is shown as a job created at some other  
13 location?

14 A (WITNESS PEIFER) That's correct.

15 Q Does that mean, then, that the number of jobs  
16 created, as summarized in Table 1, includes the number  
17 of jobs transferred?

18 A (WITNESS PEIFER) To the operating crafts,  
19 that's correct.

20 Q So when you were talking about the net impact  
21 on employment as a result of the operating plan, and Mr.  
22 Birney compared the number of jobs created with the  
23 numbers of jobs abolished with you and concluded that  
24 the number of jobs actually increased, did that analysis  
25 fail to include the impact of jobs that were

1 transferred?

2 A (WITNESS PEIFER) I didn't specifically answer  
3 that question. I think Mr. Frestel did.

4 A (WITNESS FRESTEL) If I understand what we are  
5 trying to address here, counsel, when I testified as a  
6 result of Mr. Birney's questioning that the errata  
7 reflected primarily in my mistaken belief the change in  
8 the jobs transferred because of the misconception that a  
9 yardman only had seniority in a yard and could not go on  
10 the road, for example, when they corrected that, they  
11 corrected the number of jobs transferred. What they  
12 also corrected, what I was unfamiliar with or I had  
13 forgotten was that they also corrected the jobs  
14 created.

15 If I can draw your attention to Table 1 under  
16 agreement positions, year cre for operating crafts, they  
17 originally had estimated that 702 jobs would be  
18 created. The errata following the change would shows  
19 628 jobs, which is a difference of 74. Following what  
20 Mr. Peifer has testified to, when we reduced the number  
21 of jobs transferred, that also resulted in a reduction  
22 to 470, an identical number of 74.

23 So this is the explanation of why the number  
24 of jobs created is lesser as a result of the errata.

25 Q Thank you.

1 Does that then change your conclusion in your  
2 testimony with respect to whether the total number of  
3 jobs in the merged entity would be increased or  
4 decreased?

5 A (WITNESS FRESTEL) I believe then the net  
6 effect would be a decrease because counsel was adding up  
7 jobs created.

8 Q All right.

9 Does that mean, then, that the statement you  
10 made in your verified statement originally was correct?

11 A (WITNESS FRESTEL) Yes.

12 MR. LANE: No further questions.

13 JUDGE HOPKINS: Anything further, Mr. Birney?

14 MR. BIRNEY: Not this late in the day, Your  
15 Honor.

16 JUDGE HOPKINS: You are excused.

17 WITNESS FRESTEL: Thank you, Your Honor.

18 (The witnesses were excused.)

19 JUDGE HOPKINS: You move the admission of the  
20 testimony?

21 Any objection?

22 It will be received in evidence.

23 MR. NELSON: Your Honor, before we go off the  
24 record, I don't suppose the shippers are going to take  
25 all day tomorrow. At least I am hoping they won't.

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We intend to put Mr. Champion on.

JUDGE HOPKINS: Champion.

We will be in recess until 9:00 o'clock  
tomorrow morning back in Hearing Room A.

(Whereupon, at 5:45 o'clock p.m., the hearing  
in the above-entitled matter was recessed, to reconvene  
at 9:00 o'clock a.m., Friday, October 26, 1984.)