

NATIONAL RAILROAD PASSENGER CORPORATION

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Vice President, Labor Relations

January 9, 2006

Mr. Freddie N. Simpson - Via Fax and U. S. Mail
President
Brotherhood of Maintenance of Way Employes
Division of the International Brotherhood of Teamsters
10 G Street NE, Suite 460
Washington, DC 20002

RE: BMWED Bargaining

Dear Mr. Simpson:

I am glad that you had an opportunity to read my **Op-Ed** piece in the New York Times this past **Monday**. I am sure that you understand that there is no connection to arbitration under the Taylor Law in the New York City Transit arena and negotiations under the Railway Labor Act.

The transit employees are considered public employees and are prohibited from striking. I was involved on behalf of the Governor during the 1980 illegal transit strike in New York City. Under the Taylor Law, striking employees are fined two days gross pay subtracted from their net pay. The union is subject to dues deduction loss and court fines (as the TWU is facing now with the \$ 1 million/day court fine to be finally determined at the end of this month). It was within the context of the 1980 illegal strike that the financial and government communities decided to have arbitration as a resolution to impasses in negotiations to **avoid** such a strike in the future.

I negotiated with both union leaders, representatives of the financial community and the MTA on a **bill** which ultimately became law in 1985 - to provide binding interest arbitration by law if directed by the state Public Employment Relations Board or agreed by the parties. The Taylor Law penalties remained if an illegal strike still occurred.

Under mat arbitration law, the **arbitrator(s)** must consider the ability of the employer to **pay**, any impact on fares and the public interest as well as comparable wages and benefits of the employees involved. Additionally only mandatory subjects of negotiation may be brought into the arbitration, not permissive ones. **And**, the public employer may take actions that do not continue provisions of an agreement if they do not survive a

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termination date or are permissive. Further, the Taylor Law provides for an improper practice procedure to adjudicate questions similar to the unfair labor practice procedure under the National Labor Relations Act, also avoiding potential "wildcat" strikes.

I go into all this to point out the unique differences between the Taylor Law and the Railway Labor Act and the specific environment that created arbitration in the transit negotiations for the last twenty years. Obviously voluntary arbitration as set out in the law did not prevent an illegal strike. The result was the Op-Ed article, which stated basically that, if the parties and PERB will not use the law as written, it should be amended to make the arbitration procedure mandatory.

As to your point on arbitration in the BMWED negotiations, I can only reiterate what Mr. Gunn and Mr. Laney have previously written to you. The BMWED has not negotiated with Amtrak; rather it has simply rejected Amtrak's proposals. Amtrak does have agreements which cover 35% of its employees for the period the BMWED is seeking an agreement. There is a pattern: a fair wage increase, health insurance cost containment and work rule reform. Amtrak has presented proposals to BMWED to reach an agreement within this pattern including work rule reform needed in the maintenance of way area which have been summarily rejected. I do not agree that arbitration is appropriate to resolve these negotiations; there is no impasse until fruitful and meaningful negotiations have occurred. Even the TWU and the MTA had intense negotiations and, apparently, disagreed on one major issue which led to the illegal strike. Once that issue was taken off the table after the strike ended, an agreement came together.

Amtrak is ready to continue negotiations within mediation under the National Mediation Board. We have indicated our willingness to do that over the last number of months.

Thank you for your letter. I urge you to take whatever steps that you think are appropriate to have the BMWED enter into meaningful negotiations with us,

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph M. Bress", written in a cursive style with a long horizontal flourish extending to the right.

Joseph M. Bress
Vice President - Labor Relations