MEMORANDUM OF AGREEMENT

Between

VIA RAIL CANADA INC.
(hereinafter referred to as "the Employer")

And

TEAMSTERS CANADA RAIL CONFERENCE
(hereinafter referred to as "the Union")

WHEREAS the Minister of Labour strongly recommended that the parties resolve their dispute through binding arbitration; the parties hereby agree to the following Memorandum of Agreement:

In accordance with Section 79. (1) and (2) of the Canada Labour Code (Part I – Industrial Relations), the parties hereby agree to refer the following outstanding issues respecting the revision or renewal of the collective agreement *to* final and binding determination by the named arbitrator (Michel Picher).

The disputed issues outstanding between the parties are attached in Appendix "A';

Attached in Appendix "B" are mediated issues which will form part of the final and binding decision rendered by the arbitrator. The Arbitration will be held in Montreal, August 22-25, 2009. The parties further agree to share equally the cost of the above noted arbitrator. The arbitrator shall render a decision within thirty days after the final day of the arbitration hearing.

The parties further agree that the terms and conditions of employment in the collective agreement between the parties effective January 1, 2004 to December 31, 2006 will be in force and effect until the arbitrator renders *his* decision.

The Arbitrator's binding decision will constitute the renewal of the collective agreement between the parties. The foregoing changes will be in full and final settlement *of* all demands and requests served by and upon the Employer and the Union..

It is agreed that Union membership will return to work and the Employer shall resume operations in accordance with the Back To Work Protocol, ***(see*** attached Appendix "C")

10957(04)

Signed this 26th day *of* July 2009, in Montreal, Quebec.

On behalf of
VIA RAIL CANADA INC.

Edward Houlihan
Director, Labour Relations

Adrien Richard
Senior Advisor, Labour Relations

Gene Selesnic
Manager, Train O0perations

On behalf of
TEAMSTERS CANADA RAIL CONFERENCE

Dan Shewchuk
President

René Leclerc
General Chairman

Richard Dyon
General Chairman

Bruce Willows
General Chairman

Chris Smith
Vice-General Chairman

Steve Mitchell
Local Chairman

Phil Hope
Vice-Local Chairman

APPENDIX "A"
Disputed Issues

1. Wage rates for the years 2007, 2008, 2009 and 2010
   Union's position – 3% - 3% - 2% - 2%
   Employer's position – 3% - 3% - 1.5% - 1.5%

2. Article 25 - Material Change

   Minimum retirement credit of seventy thousand dollars

3. Provide transportation to the home terminal for Locomotive Engineers who book rest at the away from home terminal outside the parameters of Article 3.12

4. A Locomotive Engineer Training program as set out in the proposal dated June 23, 2009 (see attached copy)

5. Qualifying Standards

   - To be included in the Collective Agreement in accordance with the CN letter dated May 13, 2001 (see attached copy)

6. Two scheduled days off for spare board Locomotive Engineers

7. A local agreement for "Run to the meet" between Edmonton and Biggar

   Meet window between the terminals

8. Whether Capreol terminal should remain in the pool service

Modified Addendum 3 Draft June 23, 2009

Locomotive Engineers Training Program

■ Week Course

1. The Course will cover CROR and QSOC, First Aid, CPR, ERP, and Mechanical and Troubleshooting.
2. Training should be at least 5 days In length.
   - Calendar week would be Monday- Friday inclusive.
   - Starting time 09:00 -17:00 with ½ hr lunch break.
   - Day 1 and Day 2 could be CROR and QSOC instruction.
   - Day 3 mornings could be CROR +QSOC Exam. Day 3 afternoons E-Learning.
   - Day 4 First Aid + CPR.
   - Day 5 Mechanical, ERP and Troubleshooting.
3. Compensation: When attending the training program on their assigned workday, their guarantee or MOE will be protected, whichever is greater. When attending the program on their assigned rest day they will be compensated for 8 hrs O/A above their guarantee or MOE, whichever is greater.
4. Hotels will be provided for any Locomotive Engineers that are a greater distance of 100 kilometres from the regular starting location of the training center.
5. Training centres be Via Rail's Decision of location.
6. All reasonable expenses with receipts that will incur will be paid.

Human Resources

Canadian National
Box 8100
Montreal, Quebec
H3C 3N4

Ressources Humaines

Canadien National
C.P. 8100
Montréal, Québec
H3C 3N4

Toronto, Ontario, May 13, 2001

G Halle CCROU Chairperson

During this round of negotiations the qualification standards for the classification of locomotive engineers was discussed and the following standards agreed to:

Qualification Standards for *the* Classification *of* Locomotive Engineers

1. (a) This part prescribes minimum safety standards for the training, testing, qualification and monitoring of locomotive engineers.

(b) The locomotive engineer of a train is in charge of and responsible for the operation of the locomotive or group of locomotives of such train,

2. (a) A qualified locomotive engineer is one who has successfully completed all appropriate training and testing programs required by the railroad and have actual knowledge on the following subjects:

- Train Handling Guidelines
- Track/ Train Dynamics
- Locomotive Brake Systems
- Motive Power, Mechanical and Electrical Systems
- Air Brake Equipment

(b) A qualified instructor is one who has successfully completed all appropriate training and testing programs required by the Company for instructors and is a qualified locomotive engineer as defined in item 2(a).

3. (a) CN shall provide for the education of locomotive engineer candidates to ensure that each locomotive engineer possesses the necessary knowledge, skill and ability concerning personal safety, operating rules and practices, mechanical condition of equipment, and methods of safe train handling

(b) If CN elects to train a previously untrained person to be a locomotive engineer it shall provide initial training which, at a minimum:

(1) Is composed of classroom, skill performance, and familiarization with physical characteristics components consistent with safe train handling techniques,

(2) Includes both knowledge and performance skill testing

(3) Is conducted under the supervision of a qualified instructor

(4) Is conducted so that the performance skill component shall:

(i) Be under the supervision of a qualified instructor located in the same control compartment whenever possible

(ii) Place the student engineer at the controls of a locomotive for a significant portion of the time; and

(iii) Permit the student to experience a variety of types of trains that are normally operated by the railroad..

Yours Truly,

Senior Vice-president Vice-president

APPENDIX "B"
Mediated Issues

Article 21.1 (b)

Amend to "Appealto Regional Director Operations"

Article 114 & 122

Time Returns – Voucher to be issued if short paid at least 8 hours pay and paid less than 80 hours in the 2 week period

Article 251

There is no longer a two hour call for assigned Locomotive Engineers in the corridor

Term of Agreement

4 years

Benefits

	2009	2010
Weekly indemnity	$590	$600
Accidental Death	36K	37K
Life	45K	50K
Dental	$2300 maximum - New dental fee guide	

TV/746 - Pool

TV

- in accordance to June 23rd document – attached document

Pool

- Only available for terminals with 5 Locomotive Engineers or less
- If Corporation wishes to institute pool service they require the consent of the union failing which they require a decision of the CROA arbitrator based on the business justification
- No implementation prior to agreement or decision

Training allowance

From $34.00 to $40.00

Maintenance of Earning

No further increase for those holding an MOE from the McKenzie Award

Informal Discipline

In accordance with document dated July 16, 2009 (see attach letter)

Amalgamated Seniority Districts

- Principles for the amalgamation as in the attached document
- Final language to be completed by the parties within ninety (90) days of the award of the arbitrator.

Accommodation at the away terminal

Hotel room to be provided in Sarnia off train 85 returning train 88

APPENDIX "B"
Mediated Issues

Locomotive **Engineer Training Program**	Training and Seniority **as** set out in June 2009 document attached
Wages	Wage increases will be applied retroactively and will include those pensioners who retired in accordance with the Corporation Pension Plan since January 1, 2007. Backtime payment for pensioners will not trigger recalculation of their pension benefit.

TEMPORARY **VACANCIES**

East

- Applicable to known vacancies of 14 days or more
- Eliminate the first 7 days to the spareboard
- Post vacancies twice. a week – Monday/Thursday
- Post and close on the same days Monday/Thursday
- Vacancy effective *for* first *trip* at 0001
- Remain on previous job until able to pick up new job at 0001
- Remain on temporary vacancy until last trip or displaced
- Automatic book-on from vacation

West

- Change of card twice a year
- Eliminate permanent weekly board change
- Temporary vacancies posted twice a week · Wednesday and Sunday
- Post and close the same days
- Applicable to known vacancies 14 days or more
- Vacancy effective the first trip at 0001
- Remain on previous job until able to pick up new job at 0001
- Remain on temporary vacancy until last trip or displaced
- Automatic book-on from vacation

23-Jun-09

July 16, 2009

Dan Shewchuk
President
Teamsters Canada Rail Conference
Suite 1710, 130 Albert Street
Ottawa, ON
K1P 5G4

Bruce Willows
General Chairman,
Teamsters Canada Rail Conference
Suite 310, Building No. 2
Whitemud Business Park
9622, 42nd Avenue
Edmonton, Alberta
T6E 5Y4

René Leclerc
General Chairman
Teamsters Canada Rail Conference
602, 6th Avenue, Suite 360
Grand-Mère, Quebec
G9T 2H5

Richard **Dyon**
General Chairman
Teamsters Canada Rail Conference
5167 de Horta
Laval, Quebec
H7W 0A6

Dear Sirs:

Re: An Informal **Discipline** Process

In the current round of collective bargaining the Corporation and the Union discussed a pilot project to address issues that did not warrant the formal investigation process. It was agreed that there would be an informal discipline process in effect while the renewed Collective Agreement 1. 4 was in force under the following terms and conditions;

1. the informal discipline process will not be available for any individual who had 20 demerits or more **on** their discipline record at the time.
2. the maximum discipline that can be imposed in the informal discipline process would be 10 demerits.
3. the individual will receive written notice to appear for the meeting *in* accordance with Article 20.1, with a copy to the Union.
4. the employee will be paid for attending the informal discipline meeting in accordance with the Collective Agreement
5. the parties will use the Informal Discipline Meeting form attached as Appendix "**A**" as a record of meeting
6. the Corporation will deliver a written decision within 14 days
7. if any discipline is assessed in the informal process it can be the subject of a grievance in accordance with Article 21

The informal process will not be used for issues concerning the new uniform for Locomotive Engineers for a period of 6 months following implementation of the uniform standards During this time period the first recourse to address uniform problems will be consultation with the local chairman. The Corporation retains the right *to* conduct a formal investigation for a uniform issue when they deem it is necessary..

This agreement can be cancelled for a region by either the General Chairman responsible or the Director of Labour Relations upon 30 day written notice to the other citing the reasons for the cancellation..

FOR THE CORPORATION:

Edward Houlihan
Director, Labour Relations

FOR **THE UNION:**

Dan Shewchuk
President

Bruce Willows
General Chairman

René Leclerc
General Chairman

Richard Dyon
General Chairman

APPENDIX " A

Informal Discipline Meeting

Between VIA Rail Canada Inc.

And

Teamsters Canada Rail Conference

Employee Name _____ PIN _____

Allegation _____

Date of Occurrence _____ Location _____

Details _____

Employee Response _____

Date of Meeting: _____

Employee Signature, _____ TCRC per: _____

VIA Rail per: _____

TCRC TO VIA JUNE 25/09.

Locomotive Engineer Training Program Considerations

(prepared by TCRC during National Negotiations – June 2009)

GENERAL PRINCIPLES

1. Candidate Selection Process

- Candidates for locomotive engineer training will be selected by Via Rail Canada Inc.

- TCRC will not be a party to the candidate selection process,

2. Training

- All candidates will receive classroom and practical training.

- Candidates will become eligible for TCRC membership upon successful completion of the Student Locomotive Engineer training program.

- Classroom training and content will be developed and administered by Via Rail Canada Inc in consultation with Teamsters Canada Rail Conference

- TCRC locomotive engineers will (co-operate?) in providing practical training. ON THE JOB

- TCRC locomotive engineers will be compensated for providing practical training, ON THE JOB

3. Seniority

- Via Rail Canada Inc. will designate a SLE Class Number for each successive training class..

- No employee will be considered for promotion to locomotive engineer without training in a specifically identified SLE Course..

- The TCRC will be advised when each SLE Class is due to commence and be provided with a list of the course candidates. The list will include *the* information necessary to properly determine the eventual locomotive engineer seniority of each candidate.

- Seniority for all candidates (except those transferring under the Transfer Agreement) will be established by SLE Class Number, Within each SLE Class successful candidates will be added to the bottom of the appropriate locomotive engineer seniority list in the following ranking:

  (a) candidates employed elsewhere within Via Rail Canada Inc. at the time of selection will be ranked, among themselves, according to their earliest continuous service date with Via Rail Canada Inc., followed by:

  (b) candidates hired from outside railroads represented by the TCRC ranked, among themselves, according to their seniority date with such other railroad, followed by:

  (c) all other candidates ranked, among themselves, according to their date of hire with Via Canada Inc.

- Candidates failing to complete training due to bona fide illness or extreme extenuating circumstances will have their seniority protected within their original class if they subsequently successfully complete their training at next available opportunity. In the case of severe extenuating circumstances approval of seniority protection must be agreed in writing between the applicable General Chairman and the Company Director – Labour Relations.

Related Collective Agreement Provisions

- Article 102.5 Establishment of Seniority (West) pp 54

- Article 102.6 Establishment of Seniority (West) pp 54
- Article 202.1 Establishment of Seniority (East) pp 90

- Addendum 2 Locomotive Engineer Training Program (East and West) pp 146

- Addendum 7 Participation of Locomotive Engineers in Training of Students (East and West) pp 174

- Addendum 17 Union Dues Agreement (East and West) pp 205

- Addendum 103 Responsibility When Training Student (West) pp 215
  Note: This Addendum is in the West Section but it is addressed Nationally.

- Addendum 105 Allotting Vacation on Preponderance of Service (West) pp 219
- Addendum 222 Vacation for Employees Performing Service as Locomotive Engineer and Trainman (East) pp 301

- Addendum 106 Training Agreement (West) pp 220
- Addendum 207 Training and Qualification of Employees as Locomotive Engineers (East) pp 273

- Addendum 107 Reports on Locomotive Engineer Trainees (West) pp 223

- Addendum 109 Declaring Home Station on Completion of Training (West) pp 226
- Addendum 208 Establishment of Home Station (East) pp 276

Related Contract Demands

TCRC Demands

- D 1 Must be NEPO Qualified

- D 27 (i) (ii) 'Training Locomotive Engineers and Yardmasters

Company Demands

- Article 2 Rates *of* Pay

Suggested Action

- Delete Addendum 2. Create a new Addendum to reflect updated training provisions ensuring to negate potential conflicts between language currently found in the collective agreement.

Amalgamation of Seniority Districts/Territories

Seniority Districts and Territories will be amalgamated pursuant to the following principles:

1 Seniority Districts 7 and 9 will be amalgamated to form the Western Seniority District
Seniority Districts 3, 4 and 6 will be amalgamated to form the Central Seniority District
Seniority District 2 will remain geographically but will known as the Quebec Seniority District
Seniority Territories D, F and K will be amalgamated to form the Atlantic Seniority District

2. All locomotive engineers with a seniority date on or prior to September 30, 2009 will retain homestead rights on their former District and or Territory.

3 The amalgamation of the above noted districts and territories is a seniority provision and will not be used as a vehicle to eliminate or modify established work jurisdictions currently in place

4. The amalgamation of the above noted districts and territories will not be used a vehicle to argue a Lesser adverse affect on employees pursuant to Article 25 - Material Changes.

5. All locomotive engineers transferring from CN under the Transfer Agreement will be deemed to have homestead rights on their applicable previous district or territory

6. Due to the complexities of the language required to accomplish the above noted amalgamations the Addendum required will be developed by the parties based on the above principles not later than ~~December 31, 2009~~ 90 days following the decision of the arbitrator

Informal Discipline Procedure

As per draft document dated July 16, 2009

Grievance Procedure – Article 21

Step 2 – Amend to "Appeal to Regional Director Operations"

Time Returns – Articles 114 and 222

Amend paragraphs 114 6 and 222 4 to provide that a voucher will be issued if short paid at least eight (8) hours and paid less than eighty (80) hours in the two week period

APPENDIX "C"
Back To Work Protocol

The Employer and the Union agree that the strike is at an end with execution of this Memorandum *of* Agreement.

All picket lines will be lifted as soon as possible after execution of this agreement but no later than 11:59, July 26, 2009. Eastern Daylight Savings Time.

The Employer agrees that there will be no disciplinary action for activity that took place on the picket line between 12:00 Friday July 24, 2009 and execution of this agreement

The Employer reserves the right to address activity of a criminal nature during the labour disruption for which a criminal conviction is registered..

The Employer will resume operations as **soon** as possible.

The employees represented by the Union will book on with the Crew Management Centre no later than 12:00, July 26, 2009.

The employees will be returned to their previous assignments and advised of the operation of their assignment or place on the spareboard when they book on.

The wage guarantee and benefit coverage will resume at 12:00, July 26, 2009

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN

VIA RAIL CANADA INC.'

AND

TEAMSTERS CANADA RAIL CONFERENCE

Sole Arbitrator: Michel G. Picher

There appeared on behalf of the Union:

James L. Shields	– Counsel
Daniel J. Shewchuk	– President, TCRC, Ottawa
Richard Dyon	– General Chairman, Laval
Bruce Willows	– General Chairman, Edmonton
René Leclerc	– General Chairman, Grand-Mere
William Michael	– Vice-General Chairman, Kitchener
Chris Smith	– Sr. Vice-General Chairman, Moncton

And on behalf of the Corporation:

Andre Giroux	– Counsel
Edward J. Houlihan	– Director, Labour Relations, VIA Rail, Montreal
Adrien Richard	– Sr. Officer, Labour Relations, VIA Rail, Montreal
Gene Selesnic	– Manager Train Operations, VIA Rail, Toronto
Gerry Kolaitis	– Director Strategy & Financial Planning, Montreal

Hearings in this matter were held in Montreal on August 22, 23, 24 & 25, 2009.

10957 (04)

INTERST ARBITRATION AWARD

I – BACKGROUND

This is the interest arbitration award resulting from the agreement of the parties to submit all outstanding issues with respect to the renewal of their collective agreement to final and binding arbitration, an agreement which brought to an end a two-day strike, as reflected in a memorandum of agreement signed July 26, 2009. The memorandum of agreement contains, among other things, Appendix "A", which is a list of the disputed issues to be resolved in this arbitration process and Appendix "B", which is a list of issues resolved with the assistance of a Federal mediator. In accordance with the provisions of the memorandum of agreement of July 26, 2009 the issues listed in Appendix "B" are taken to "… form part of the final and binding decision rendered by the Arbitrator."

For the purposes of clarity, the terms of Appendix "B" of the parties' memorandum of agreement are therefore hereby adopted and incorporated as part of this award, and the Arbitrator retains jurisdiction with respect to the completion of the terms of the collective agreement to the extent that the parties may be in disagreement concerning the language appropriate to give effect to the content of the agreed items listed within Appendix "B". Further, with respect to the items in dispute as contained in Appendix "A" of the collective agreement, the Arbitrator shall render decisions on each of them, remitting to the parties the question of the appropriate language to be inserted into the collective agreement, again retaining jurisdiction to finally resolve any issue should the parties be unable to agree in that regard.

At the outset, it is useful to reproduce the language of Appendix "A" which lists the issues to be dealt with by the Arbitrator. It reads as follows:

APPENDIX "A"
Disputed Issues

1. Wage rates for the years 2007, 2008, 2009 and 2010
   – Union's position 3% 3% 2% 2%
   – Employer's position 3% 3% 1.5% 1.5%

2. Article 25 – Material Change
   – Minimum retirement credit of seventy thousand dollars

3. Provide transportation to the home terminal for Locomotive Engineers who book rest at the away from home terminal outside the parameters of Article 3.12

4. A Locomotive Engineer Training program as set out in the proposal dated June 23, 2009 (see attached copy)

5. Qualifying Standards
   – Top be included in the collective agreement in accordance with the CN letter dated May 13, 2001 (see attached copy)

6. Two scheduled dates off for spare board Locomotive Engineers

7. A local agreement for "Run to the meet" between Edmonton and Biggar
   – Meet window between the terminals

8. Whether Capreol terminal should remain in the pool service

The Corporation, VIA Rail Canada Inc., was incorporated by the Parliament of Canada on January 12, 1977. It was created to take over various passenger services operated by CN and the Canadian Pacific Railway Company, an event which was officially implemented on September 29, 1978. Although initially VIA utilized employees of CN to operate its trains, in 1987 it became the employer of the running trades employees in its service. At that time, in accordance with the terms of a Special Agreement dated June 4, 1987 running trades employees had the ability to transfer to and from service in CN and VIA respectively, in accordance with the terms of what became known as the "Transfer Agreement". That agreement continues in effect to this

day. Significantly, Item 5 of the Special Agreement contemplates that employees who become unable to hold a regular assignment in road service at VIA have the ability to exercise their seniority at CN pursuant to the terms of the applicable collective agreement. Employees transferring back to CN retain their seniority and recall rights at VIA.

The predecessor to the Union, the Brotherhood of Locomotive Engineers, was the bargaining agent for those running trades employees employed as locomotive engineers, from the inception of the Corporation. Initially the United Transportation Union was the certified bargaining agent conductors, assistant conductors, yardmasters, flagmen, brakemen and baggagemen. In or about October of 1989 the Corporation implemented a material change with the abolishment of the crafts of flagmen, brakemen and baggagemen into the classification of assistant conductors. Some eight years thereafter, on March 7, 1997 VIA announced the abolishment of all conductors and assistant conductor positions within its service, delegating certain operating the functions of conductors to locomotive engineers and certain customer related responsibilities to on-train customer service employees represented by the CAW. In the result, from the inception of the New Era Passenger Operation (NEPO) announced on March 7, 1997 locomotive engineers became the only running trades employees of the Corporation, with two engineers being assigned to the operation of each train. Pursuant to a section 18 application made to the then Canadian Labour Relations Board on the same date as the announcement of the NEPO initiative, on October 31, 1997 the Brotherhood of Locomotive Engineers became the sole bargaining agent for all running trades employees of the Corporation. Finally, following the merger of the International Brotherhood of Teamsters and the Brotherhood of Locomotive Engineers, the Teamsters Canada Rail Conference, the Union now before the Arbitrator, received its charter from the International Brotherhood of Teamsters and, on July 2004, was certified by the Canadian Industrial Relations Board (CIRB) as the bargaining agent for all running trades employees of the Corporation.

The process of bargaining which has led to this arbitration was lengthy and complex. The Corporation gave notice to bargain to the Union on September 6, 2006. Following an exchange of initial proposals on April 18, 2007 the parties met on some thirteen occasions for multi-day bargaining sessions extending from June 19, 2007 through July 24, 2009. Significantly, some of the bargaining meetings involved the constructive efforts of a federal mediator. With continuing impasse in relation to a number of issues at 12:00 on July 24, 2009 the Union commenced a strike which continued for two days. On July 26, 2009 the parties entered into an agreement to submit all remaining issues in dispute to final and binding arbitration, as a result of which this process was initiated.

Before addressing the principles which should guide a board of interest arbitration, it is useful to reflect briefly on the nature of the Corporation's status. VIA Rail Canada Inc. is a Crown corporation under the ownership and control of the Government of Canada. In practical reality, however, it is compelled to operate much as a private enterprise, subject only to certain operating funding provided to the Corporation on an annual basis by the Government of Canada. The Corporation's government operating funding and capital investment funding, as well as the impact upon it of the current financial crisis and recession, are well resumed within the Corporation's brief submitted to the Arbitrator, part of which reads as follows:

> **VIA's Government Operating Funding**
>
> VIA's Government Operating Funding has essentially been fixed at about $170 million since 1999, with no provision for inflation. Since 2003, general inflation, wage increases, major increases in the price of fuel, and delays in obtaining government funding for capital investments, has caused costs to rise significantly faster than revenue. At the same time, revenue growth has slowed due to heavy competition from airlines, an increase in the Canadian dollar of about 40%, poor on-time performance due to heavy freight rail congestion and VIA equipment failures due to an aging fleet, and delays in obtaining capital investments needed to grow the business.
>
> These factors were recognized by the Federal Government which in 2007 approved the 2007-11 Corporate Plan which included temporary additional operating funding of $176 million for the period 2007-2011. In 2008, VIA's operating funding requirement (deficit) was $214 million, as revenues of $299 million were exceeded by operating expenses of $513 million. By 2012, however,

VIA's Government operating funding will return to the $170 million level, and in fact has been cut back further to $166 million for 2012 and 2013.

Impact of the Financial Crisis and Recession

Early in 2009, VIA's 2009-13 Corporate Plan called for deficits to exceed government operating funding available by $144 million (unfunded deficits) over the five year period due to large increases in fuel costs, increased pension costs due to worsening financial markets, and fewer benefits than planned due to delays in obtaining capital investment funding. In addition to the projected unfunded deficit of $144 million in the 2009-2013 Corporate Plan period, VIA faces additional pressures that will make the five year unfunded deficit far worse, or about $450 million. Amongst these additional pressures is the collapse of the travel market and VIA's ridership and revenue. For example, revenue is not expected to return to 2008 levels until at least 2012. Also, VIA will be facing much higher pension contributions starting in 2010 versus what was already factored into the 2009-13 Corporate Plan, due to the deterioration of the state of VIA's employee pension plans, in line with virtually all other private pension plans as a result of the financial crisis.

VIA's Capital Investment Funding

In 2007 and 2009, the Government of Canada approved capital funding of $516 million and $407 million, respectively, for specific capital investments in rolling stock (locomotives and cars), rail infrastructure (track and signalling), stations, plus information technology and other necessary capital investments. The $407 million in capital funding was part of the Federal Government's 2009 Budget Stimulus package and has a very high profile. The entire capital investment program is quite specific on what projects (or class of projects in the case of smaller ones) are to be undertaken. For example, the capital investment program was approved by Cabinet and Treasury Board Ministers by individual project, (or class of project), by amount and by year. Under the *Financial Administration Act* by which the Government of Canada and VIA run their financial affairs, VIA does not have the legal right to use these funds for any other purpose that for what they were approved. VIA reports quarterly to the Government on how the capital investment program is progressing and there is great interest to ensure that the expected costs, scope, timing and benefits are achieved.

Despite over $923 million of capital funding, VIA's capital investment requirements will not be fully met. For example, by 2011 there will be no capital funding available for anything other than the major rolling stock and infrastructure projects. This means that there will be no capital available for important items, such as information technology, stations, etc. In addition, there will still be a requirement for additional major rolling stock and infrastructure investments if VIA is to remain competitive and meet the needs of travelers in a highly competitive market.

There is no possibility of moving capital funding to help close VIA's unfunded operating deficit without explicit approval from Cabinet, which would require following the Government's formal approval process, would take many months to

> achieve and is not within **VIA's** control. Given that **VIA** needs more, not less, capital funding to maintain its operations and to achieve its mandate and succeed in its mission, this approach would not be seen favourably by **VIA's** Board Directors or the Government of Canada.

As can be seen from the foregoing, and as the parties essentially agree, the Corporation is something of a hybrid as between a public service employer and a private sector employer. It has a substantial degree of discretion and latitude in the manner in which it conducts its operations, but, as in normal among many national passenger rail services worldwide, it is nevertheless dependent upon government subsidies for both operating and capital purposes. The Corporation must, however, compete within the broader field of private sector passenger transportation, making its services and prices competitive with other carriers such as air and bus lines, as well as making its services attractive to people who might otherwise use personal automobiles.

II – GOVERNING PRINCIPLES

The parties are not in substantial dispute with respect to the guiding principles of interest arbitration. Specifically, they acknowledge that it is the role of the Arbitrator to replicate, as best he or she can, the outcome which would reasonably have resulted from the parties freely bargaining their own collective agreement outcome. That approach, referred to as the principle of replication, involves a number of factors, significantly including comparisons with freely negotiated collective agreements for similarly situated employees within the industry, with due allowance for current economic conditions and the financial status of the employer, to the extent that it can be compared to a private sector enterprise. In the Arbitrator's view the governing principles are well reflected in the Arbitrator's own decision in **Air Canada and National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-CANADA)** [2006] C.L.A.D. **No.** 263; 86 C.L.A.S. 293, an interest arbitration award dated July 17, 2006. At paras. 66-68 of that award the following comments appear:

What principles should guide the Arbitrator in resolving this dispute? I am satisfied that, in the case of an interest arbitration which involves a private sector employer, rather than a public sector employer which may be differently situated with respect to its ability to pay, the decision of Arbitrator Burkett in *Bruce Power LP and Society of Energy Professionals* (2004), 126 L.A.C. (4th) 144 provides important guidance. At pp. 151-52 Arbitrator Burkett commented on the importance of carefully evaluating an employer's financial situation for the purposes of a private sector interest arbitration:

> I start by addressing the issue between the parties as to whether the Employer's financial situation is a relevant consideration in respect of the debate concerning an appropriate salary increase. Collective bargaining is an exercise that has as a necessary and critical backdrop the financial well-being of the employer. While it may be that in public sector interest arbitration (where tax dollars underwrite labour costs) it has long been held that an employer's asserted inability to pay is not a relevant consideration, that rationale has no application to a private sector dispute. The issue arises in the public sector where an employer argues that it lacks the financial resources to provide its employees with a normative salary increase. Arbitrators have rejected this argument on the basis that public sector employees ought not to subsidize the public purse by receiving substandard wage increases. In other words, public sector interest arbitrators have ruled that tax revenues must be tapped (whether directly or indirectly) to the extent of providing normative salary increases to public sector employees. A whole different set of considerations applies in the private sector. Firstly, the normal dispute resolution mechanism is strike/lockout. It is only in rare cases, such as this, that private sector collective agreement renewal disputes are subject to interest arbitration. Secondly, the wage bill is paid not from the public purse but from the financial resources of the employer, which are determined by the employer's success or lack thereof in the marketplace. It is not surprising, given the foregoing, that when faced with a strike or lockout in circumstances where the economic well-being of the employer (and by necessary implication that of its employees) hangs in the balance, concessions and/or below market value increases are sometimes negotiated. The bargaining in connection with the recent spate of private sector bankruptcies illustrates the difficult choices that must be made.

Arbitrator Burkett was clear that in his view, a view which this Arbitrator shares, it will be the role of an interest arbitrator to determine whether increases either above or below an identified normative standard will be justified, with close regard to the employers economic viability. At p. 152 of the *Bruce Power award* he stated:

> One of the guiding principles of interest arbitration, whether public or private sector, is replication. It is accepted that an interest arbitrator ought to attempt to replicate the result that would most likely flow from free collective bargaining. It follows from all of the foregoing that when the subject matter of an interest arbitration is a private sector dispute, as here, the financial well-being and economic viability of the employer are relevant considerations. This is not to say that normative increases are to be ignored. Rather, normative increases form a baseline from which deliberations commence. The decision as to whether or not to adopt or to deviate from the baseline is thus made, in part, on the basis of the economic viability of the enterprise, both real and projected.

See also *Re All-Way Transportation Corp. Wheel-Trans Division and A.T.U., Local 113*, (1986), 25 L.A.C. (3rd) 321 (Brown).

> I am also satisfied that in approaching a dispute such as the case at hand, it is important for an arbitrator to look beyond wage to wage comparisons when considering the relative position of the employees who are the subject of the award. It is also important to have some regard to the totality of their wage and benefit package, and the cost of that overall package, which must be borne by the employer in a competitive environment. In that regard non-wage factors such as benefits and the employer's pension contributions are not insignificant, and must be weighed in the balance. (See, *SEIU and 46 Participating Hospitals,* an unreported award of Arbitrator Paul Weiler, quoted with approval in *Golden Dawn Senior Citizens' Home v. Service Employees international Union, Local 210* (Wages Grievance), [2000] O.L.A.A. No. 5 (Beck) (QL) at paragraph 8.)

While I recognize that the Corporation is a hybrid, having both public sector and private sector aspects, I am satisfied that the above stated principles give appropriate guidance in the case at hand.

III – ISSUES IN DISPUTE AND DECISION

A

Wage Rates for the Years 2007 – 2008 – 2009 & 2010

The Union seeks increases of 3% for 2007 and 2008 and 2.0% for 2009 and 2010, respectively. The Corporation agrees to offer 3% for the years 2007 and 2008. However, its position is that an offer of 1.5% for each of the years 2009 and 2010 is appropriate given its ability to pay and current economic conditions.

The Corporation draws to the Arbitrator's attention the provisions of Bill C-10, as tabled on February 6, 2009 under the title of an **Act to Implement Certain Provisions of the Budget Tabled in Parliament on January 27, 2009 and Related Fiscal Measures.** That bill received Royal Assent on March 12, 2009 and Part 10 enacted the **Expenditure Restraint Act.** The Corporation cites to the Arbitrator's attention the provisions of section 16 of the **Expenditure Restraint Act** which provides as follows:

> Despite any collective agreement, arbitral award or terms and conditions of employment to the contrary, but subject to the other provisions of this Act, the rates of pay for employees are to be increased, or are deemed to have been increased, as the case may be, by the following percentages for any 12-month period that begins during any of the following fiscal years:
>
> (a) the 2006-2007 fiscal year, 2.5%;
>
> (b) the 2007-2008 fiscal year, 2.3%;
>
> (c) the 2008-2009 fiscal year, 1.5%;
>
> (d) the 2009-2010 fiscal year, 1.5%; and
>
> (e) the 2010-2011 fiscal year, 1.5%.

The Corporation acknowledges that it is not among the Crown corporations designated in Schedule 1 of the **Expenditure Restraint Act,** and that it is therefore not legally bound by the terms of section 16 of that statute. It submits, however, that it feels morally bound by the **Expenditure Restraint Act,** at a minimum as a guideline. Indeed, it advises the Arbitrator that within its own budgeting it allocated a global increase of 1.5% to the salaries of management in 2009, although it notes that in fact, by reason of the incremental increase system in effect for management, some managers did not get any raise in 2009.

The Corporation notes that the current period of restraint is not unlike that faced by Mr. Justice Mackenzie who, in 1995, chaired the Mediation–Arbitration Commission which then rendered an interest award to these parties dealing, among other things, with wage increases. In that case the Union sought 2% increases for all five years while the Corporation offered a freeze for the first three years and 2% in only the last two

years, in keeping with federal guidelines. The Corporation notes that the board of arbitration was sympathetic to the Corporation's position, as reflected in the following passage from its award:

> **Wage Increases and Terms *of* Agreements**
>
> VIA has offered a 5 year contract with 2 percent increases in each of the last 2 years, when the federal government wage freeze has expired. Management has received a directive from the Treasury Board that it should adhere to the federal guidelines. That directive is not binding on these Commissions which receive their mandate from Parliament in the legislation. Nonetheless, the financial exigencies of the federal Treasury cannot be ignored, particularly in the light of the magnitude of VIA's subsidy. VIA has already imposed the 3 year federal freeze on management and administrative compensation. VIA has offered a 2 percent lump sum payment of 1995 earnings in January 1996 which represents some encroachment on the federal freeze.
>
> The unions make a comparison to the other railways and point out that both CN and CP have offered 2 percent increases in each year of the collective agreements. The unions stress that the concessions in the workplace, which involve longer hours and more demanding work, will significantly increase operational efficiency. The increases offered provide no reward for efficiency. They will not even allow employees to keep up with inflation. Private sector linkage between productivity and compensation is missing.
>
> The arguments of both VIA and the unions are sound. Unfortunately, VIA is hybrid. Any decision involves an uneasy compromise between public sector and private sector standards where the two diverge, as they do here. VIA's offer in our view represents a realistic compromise in the current circumstances and we intend to adopt it with this qualification. The unions oppose the extension of these collective agreements beyond the minimum mandatory period imposed by the legislation, ending December 31, 1997. VIA would like a longer term in part to distance future negotiations from those at CN and CP and help to emphasize differences between VIA and the freights railways. However, as these are imposed agreements, we do not think they should be extended beyond the mandatory term in the face of union opposition.

The Corporation further notes that Statistics Canada confirms that the Canadian average annual earnings in the rail transportation industry, including overtime earnings, increased by an average of 2.9% over the last three years. Its counsel further refers to the following table with respect to the recorded and predicted Consumer Price Index (CPI), as compared with the wage increases agreed to between 2004 and 2008, and as further proposed by the Corporation for 2009 and 2010:

YEAR	CPI	AGREEMENT 1.4
2004	1.8%	3%
2005	2.2%	3%
2006	2.0%	3%
2007	2.2%	3%
2008	2.3%	3%
2009	.43% (forecast)	1.5%
2010	2.0% (forecast)	1.5%

With respect to the issue of ability to pay the Corporation stresses that current economic conditions have seen it suffer a $30 million shortfall in revenues to date in 2009. It forecasts a funding gap of $100 million for 2010. It submits that in these circumstances this Board of Arbitration should be guided by the principles in the **Expenditure Restraint Act** and that for 2009 and 2010 wage increases should be limited to 1.5% in each year.

The Union submits that its wage demand is entirely appropriate, and does take into account the current economic downturn. According to counsel for the Union a review of settlements in the railway industry reveals a relatively consistent pattern of increases generally in the range of 3%, and occasionally 4% for employees within the industry, including the years 2009 and 2010. On that basis, counsel submits that the normative baseline for the consideration of any wage adjustment should be viewed as being 3%. He emphasizes that the Union's demand of 2% for the years 2009 and 2010 involves going below that base line, an adjustment which he maintains the Union is prepared to accept in recognition of the financial circumstances currently facing the Corporation. He maintains, however, that to allow the Corporation's proposed increase of 1.5% in each of those years is to effectively disregard the principle of comparability and wage relativity within the industry, to an unreasonable degree. Counsel notes that the Union's original wage demands, tabled on April 18, 2007, called for wage increases of 4% and 5% in 2009 and 2010 respectively. He notes that following the unforeseen economic downturn which struck the economy in 2008 the Union unilaterally adjusted its demands downward for both years. Its counsel submits that it did so responsibly and in

recognition of the impact of the recent recession, a recession which appears to be now waning.

Counsel for the Union does stress comparability, arguing that the Union's own wage demand for the two years in question is substantially below wage increases previously negotiated in virtually all other parts of the railway industry. In that regard he tables before the Arbitrator the following wage increases negotiated between other unions and railways:

IBEW & CN RAIL:		
5 years –	2008	–3%
	2009	–3%
	2010	–3%
	2011	– 4%
	2012	– 4%
USWA & CN RAIL:		
4 years –	2008	– 3.25%
	2009	– 3.25%
	2010	– 3.25%
	2011	– 4.00%
IBEW & CP RAIL:		
5 years –	2005	– 3%
	2006	– 3%
	2007	– 3%
	2008	– 4%.
	2009	– 3%
CAW & CP RAIL:		
3 years –	2008	– 3%
	2009	– 3%
	2010	– 3%
CAW & VIA RAIL:		
3 years –	2007	– 3%
	2008	– 3%
	2009	– 3%

TCRC & BNSF:		
6 years –	2005	– 3%
	2006	– 3%
	2007	– 3%
	2008	– 4%
	2009	– 3%
	2010	– 3%
TCRC & GSR:		
4 years–	2010	– 3%
	2011	– 3%
	2012	– 3%
	2013	– 3%

Counsel for the Union submits that the Union's demand of 2% for 2009 and 2010 leaves it in substantial arrears of virtually all of the above noted bargaining units within the same industry. Significantly, he notes that the on-board employees of VIA Rail, represented by the CAW, will in fact have a reduction in the wage differential between themselves and the locomotive engineers, even under the wage proposal put forward by the Union in this arbitration.

The Corporation questions the validity of the data in respect of other settlements advanced by the Union. While it does not deny that the bargaining units in question are appropriate comparators, the Corporation stresses that the settlements relied upon by the Union are, for the most part, older contracts essentially negotiated before the onset of the recessionary conditions which emerged in late 2008. These figures, its counsel submits, do not reflect any recognition of the adverse financial conditions which have emerged since these collective agreements were negotiated and signed. On that basis the Employer submits that substantial reservation should apply to any comparison with these settlements.

Having carefully reviewed these and other arguments in respect of the wage issue placed before the Arbitrator, I am satisfied that the position of the Union on the

issue of the overall wage increase is more compelling than that of the Corporation. I find it difficult to reject the submission of counsel for the Union that a normative baseline for the purposes of commencing consideration of the wage adjustment to the employees in the bargaining unit at hand is in effect 3%. That figure is indeed well supported by the settlement rates which have been applied by other unions and employers in at least six comparable sets of bargaining within the railway industry. Indeed, if the object of this exercise was to merely preserve the relative relationship between the locomotive engineers of VIA Rail and other employees within the industry, and indeed within VIA itself, an award of 3% as a wage increase in each of 2009 and 2010 would be entirely appropriate. However, as the Union has clearly recognized, changing circumstances do not fully justify a wage increase to the employees in the instant bargaining unit that would maintain that relationship, by reason of the economic recession and, more particularly, the decline in revenues and ridership experienced by the Corporation since those other settlements were made.

In essence, the issue is whether the wage increase in this case should fall below the normative rate of 3% by one percentage point, as the Union argues, or by one and one-half percentage points as the Corporation would have it. While the Arbitrator does not dismiss out of hand the Corporation's reliance on the moral suasion of federal wage restrictions under the **Expenditure Restraint Act,** in my view to strictly apply the rules imposed upon federal government employees would unduly erode the relative position of the Corporation's locomotive engineers vis-a-vis other running trades employees in the industry, as well as employees within the railway industry in other crafts and classifications, including other classes of employees of **VIA** Rail itself. Nor, in the Arbitrator's view, should the employees in the bargaining unit at hand be compelled to effectively subsidize the Corporation's overall revenue situation in the face of what has been a decline in business. That is particularly so when regard is had to the Employer's own use of the projected increase in the Consumer Price Index, provided by Statistics Canada. The prediction of Stats Can is that the CPI will show an increase of 2% in 2010. That increase in the Consumer Price Index would exceed the 1.5% 'wage increase which is proposed by the Corporation.

On balance, when regard is had to the Employer's issues of ability to pay as a result of a recent decline in business attributable to a downturn in economic conditions, coupled with settlements reached in other segments of the railway industry, albeit the majority of them were made before current economic conditions emerged, and the present indications that the recession appears to be ending, with prospects for some economic recovery in 2010, I am satisfied that wage increases of 2% in each of 2009 and 2010 are appropriate in all of the circumstances and it is so ordered.

B

Article 25 – Material Changes

The Union proposes that the collective agreement be amended to replace paragraph 25.10, which deals with material changes, to read as follows:

> A locomotive engineer whose position is abolished by a change made under the provisions of article 25.1, or who is displaced by a senior employee, such displacement being brought about directly by and at the time of implementation of such change will, if eligible for retirement in accordance with the VIA Pension Plan rules, receive a lump sum payment of seventy thousand dollars ($70,000) upon retirement.
>
> At the employee's request such payment will be paid out in two instalments over thirteen (13) months.

The Union maintains that the $70,000 lump sum minimum retirement credit is appropriate, pointing to the fact that it was the sum agreed in a relatively recent material change settlement negotiated between the parties concerning the abolishment of certain positions at Dauphin, Manitoba. It would seem that the Union's concern is driven, in substantial part, by the fact that in the same relative time period an arbitration award resulted in retirement credits of $17,500 in relation to the closure to a terminal at Toronto North.

The Corporation stresses that the collective agreement has for many years contained language dealing with material changes, including a formula found within article 25.10 with respect to retirement credits. That provision reads as follows:

> 25.10 A locomotive engineer whose position is abolished by a change made under the provisions of Article 25.1, or who is displaced by a senior employee, such displacement being brought about directly by and at the time of implementation of such change will, if he is eligible to receive an early retirement pension with an actuarial cutback, be entitled to receive:
>
> (a) An allowance of $60 per month commencing in the month immediately following last month in which the employee received wages and continuing each month until the date at which he would have been eligible for the pension without a cutback.
>
> The maximum period allowance is 5 years; or
>
> (b) A lump sum payment calculated as follows:
>
> | Age at Retirement | Lump sum equivalent of the total value of monthly allowances he could have received under this provision |
> |---|---|
> | 55 | 75% up to 60 months entitlement |
> | 56 | 80% up to 48 months entitlement |
> | 57 | 85% up to 36 months entitlement |
> | 58 | 90% up to 24 months entitlement |
> | 59 | 95% up to 12 months entitlement |
>
> (c) An employee who elects benefits under this Article 25.10 will not be entitled to any other benefits provided elsewhere in this Article.
>
> (d) The early retirement allowance will cease upon the death of the employee.

The unchallenged evidence before the Arbitrator is that in fact the formula contained in article 25.10 of the collective agreement is rarely, if ever, used when material change is implemented. Rather, the parties have resorted to the negotiation process contemplated within article 25.1 of their collective agreement as well as the Board of Review and arbitration procedures established under article 25.4.

In considering this aspect of the dispute the Arbitrator has some difficulty with the Union's position. It is generally accepted that interest arbitration should not be the forum for achieving breakthrough gains. There is, to the Arbitrator's knowledge, no collective

agreement in the industry which puts forward a flat figure which can be claimed by the employee merely on the basis that his or her position is abolished or that they have been displaced by a senior employee in the wake of a material change. It would appear that such a provision is to be found nowhere within the industry.

Additionally, it is not, in my view, insignificant that many locomotive engineers in the employ of VIA Rail have, in the event of the abolishment of their position and consequent inability to hold work at VIA Rail Inc., the option of reverting to employment with CN, by the operation of the *Transfer Agreement.* Considering that fact, and that the Arbitrator has not been made aware of any generalized inequity or unfairness in the operation of the material change provisions of the collective agreement, it would be entirely inappropriate, in my view, to grant the demand of the Union in respect of material changes. The Arbitrator therefore directs that the status quo of article 25.10 be maintained.

C

Providing Transportation to the Home Terminal for Locomotive Engineers who Book Rest at the Away From Home Terminal Outside the parameters of Article 3.12

It is common ground that the Corporation pays the transportation of locomotive engineers back to their home terminal when they are compelled to book rest by reason of exceeding their permissible hours of work. In that circumstance accommodation at the away from home terminal and the cost of transportation back to the home terminal is assumed by the Corporation.

It also does not appear disputed that employees do have the contractual right to book rest, quite apart from the prohibitions against exceeding the permissible hours of work. When employees book rest voluntarily in such circumstances the Corporation does provide accommodation to them. It does not, however, provide to them the cost of transportation back to their home terminal, presumably on the basis that their situation

is dictated by their own choice to book rest, and not by any directive of the Corporation or consequence of their assignment.

In the presentation of this issue the Union indicated to the Arbitrator that one of the concerns of employees who book rest voluntarily is that the Corporation's position places them in a questionable position should they be injured during the course of their travel back to their home terminal, if that travel is legally considered to have been undertaken "on their own". The Corporation also suggested that the position tabled by the Union is to some degree outside the parameters of the issues properly submitted to the Arbitrator, in what is tantamount to a jurisdictional objection.

I consider it unnecessary to deal with the jurisdictional objection given my disposition of this issue. Firstly, it should be stressed that the circumstance giving rise to this issue occurs on a relatively infrequent basis. I find it difficult to dismiss the suggestion of the Corporation that that is due in part to the fact that transportation costs are not covered by the Corporation when individuals do resort to their personal right to book rest. On the whole, I am satisfied that the issue of compensation is one which should be left for further negotiation between the parties and possible resolution at a future round of bargaining. I do consider, however, that there is greater urgency with respect to the protection of employees as regards their workers' compensation entitlements while travelling back to their home terminal from an away from home terminal where they exercised their right to book rest. It would appear to the Arbitrator that that travel, like the period of accommodation which is at the expense of the Corporation at the away from home terminal, must be viewed contractually as part and parcel of the employment relationship and the obligations of the employee to the Corporation. There should, in that circumstance, be clear language in the collective agreement to confirm that employees who exercise their right to book rest at an away from home terminal continue to be functioning in the course of their employment from the time they go off duty until such time as they return to the home terminal, by whatever means, when they do so without unreasonable delay.

The Arbitrator therefore finds, in part, in favour of the Union on this issue, and directs the parties to fashion language within the collective agreement to confirm that employees who book rest voluntarily at the away from home terminal and are compelled to return to their home terminal at their own expense nevertheless remain in the service of the Corporation for the purposes of workers' compensation protections, from the time they book rest until they return *to* their home terminal, where they do so without unreasonable delay. Should the parties be unable to agree on appropriate language the matter may be further spoken to.

D

Locomotive Engineers' Training Program

The material before the Arbitrator confirms that in 1999 the Corporation fashioned a training program, reference to which is now made in Addendum 3 of the collective agreement. That program contemplated employees attending a two-week training session in Montreal once every three years, to undergo refresher training and their rules examination.

In December of 2006 the Corporation indicated that it was no longer going to follow that training system and that it would be introducing a new mentoring program, largely on the model of a program adopted by CN. Implementation of the mentoring alternative for training commenced in March of 2007. Under that new method of training employees attend a day of one-on-one orientation for one day of each year with a supervisory officer and write their CROR and QSOC rules every third year. While the first and second year monitoring is with a local VIA manager, the rules recertification is conducted with an CN rules instructor.

From the Corporation's standpoint the mentoring program affords substantial cost savings and efficiencies. It maintains that there is no contractual obligation in the collective agreement to maintain a formal two-week training program, and it strenuously

resists the Union's alternative proposal for a one-week training program annually, whether such program be held in Montreal or be conducted locally.

The Union submits that safety concerns justify continuing the pre-existing classroom training program, albeit it would accept a reduction of that program to one week per year.

The parties appear to be in disagreement as to the meaning and application of the training program language found within Addendum 3 of the collective agreement. As the Corporation would have it, the language found there does not obligate the Corporation to any particular form of training, or indeed to hold training sessions on the model of the training described in that addendum. It maintains that in fact the only substantive provisions of the addendum concern compensation to be paid to employees in the event that they are compelled to attend such training as is described therein. The Union maintains, on the other hand, that the addendum as it stands would compel the Corporation to conduct training as it has done, on the basis of classroom training in Montreal, since 1999.

The Arbitrator considers it unnecessary to deal with that dispute. It is clear on the material before me that the parties brought the issue to this table to be resolved as a discrete item upon which they cannot agree in bargaining. Having carefully reviewed the submissions of the parties, the Arbitrator is compelled to prefer the position of the Corporation with respect to this issue.

It goes without saying that safety is a high priority in the railway industry, and particularly in respect of locomotive engineers responsible for the operation of passenger trains. There is nothing before the Arbitrator, however, to suggest that the Corporation is not fully conscious of that concern or that it has not properly weighed safety considerations in fashioning the alternative mentoring program which it prefers for the purposes of ensuring the ongoing retraining and recertification of its locomotive

engineers. Indeed, it would appear that the mentoring program which the Corporation has adopted was first applied within the operations of CN Rail. There is no objective evidence to suggest that the training which the Corporation has opted to implement is in some way deficient as being contrary to public policy, patently unsafe or otherwise unreasonable. Most significantly, it would appear to the Arbitrator that an issue as sensitive as the training and retraining of employees who exercise the critical duties of a locomotive engineer in passenger service is a matter primarily for the Employer's judgement and discretion. It is not an area upon which a board of arbitration should lightly interfere.

For these reasons the Arbitrator rejects the demand of the Union with respect to the locomotive engineers' training program and confirms that the Corporation can, quite apart from the provisions of Addendum 3 of the collective agreement, continue with the mentoring model of training which it has more recently put in place. The Arbitrator leaves it to the parties to determine whether language should be placed into the collective agreement in relation to this issue and if so, what that language should be. Should they fail to agree in respect of either issue, the matter may be brought back to the Arbitrator for final resolution.

E
Qualifying Standards

The Union seeks to include within the collective agreement a statement of qualifying standards. Its position is that the Corporation should follow the model of CN which has adopted a statement of qualifying standards as reflected in a letter of May 13, 2001.

For many years the instant collective agreement has contained no such document. The Corporation submits that there is no reason to include any statement as to qualifying standards within the collective agreement. It submits that the issue of standards is sufficiently addressed by the rules adopted by the Railway Association of

Canada to which the Corporation is subject. Its counsel notes that Transport Canada, on or about June 23, 2009, approved the Rule Respecting Minimum Qualification Standards for Railway Employees which was issued by the Railway Association of Canada. Additionally, the Corporation stresses that its operations remain under the overall oversight of Transport Canada and that there are no reasons, particularly at interest arbitration, to now include what would effectively be a new article within the collective agreement. Indeed, the Corporation stresses that the qualifying standards letter at CN does not form part of the collective agreement, albeit it is reflected in addenda found in collective agreements 1.1 and 1.2 at CN.

The Arbitrator is again more persuaded by the position of the Corporation with respect to this issue. While it is true that interest arbitration can be the forum for introducing a new provision into a collective agreement, such an initiative should only be resorted to where there are compelling reasons to do so. In the case at hand I do not see any such compelling reasons.

For these reasons the Union's request with respect to qualifying standards is denied.

F
Scheduled Days Off for Spare Board Employees

The collective agreement does not currently provide for scheduled days off for spare board employees. As it happens, however, in the majority of locations where spare boards of significant size operate, employees are scheduled in such a way as to know what their days off will be, with reasonable notice. That, however, does not appear to operate in certain smaller locations, such as Moncton, for example. In those circumstances locomotive engineers on the spare board do not know with any certainty when they will have their days off. While the Union suggests that on occasion extremely short notice of days off is given to an employee, as for example late on the night of the day immediately preceding the day off itself, the Corporation submits that in fact that is

not a frequent occurrence, and that the employees in question do, insofar as possible, get reasonable notice. It also notes that they have other days during which they may remain available for call, but in fact perform no work.

In support of the Union's position it is noted that running trades employees at CN in Eastern Canada who are on spare boards, do have the advantage of scheduled days off. It stresses that there is nothing inherently complex or difficult or fashioning such an arrangement and that the Corporation should be compelled to do so in the interest of allowing employees a degree of certainty with respect to their days off. For its part the Corporation expresses concern that where spare board employees do have scheduled days off the result sometimes involves employees being compelled to work at premium rates over and above their normal wages.

The Corporation also suggest that there is a jurisdictional objection to the position tabled by the Union, to the extent that its demand would go so far as to request two consecutive days off. The Employer maintains that the right to consecutive days off is not an issue contained within the parameters of Appendix "A" of the memorandum of agreement of July 26, 2009 which gives jurisdiction to this Arbitrator.

Again, given my disposition of this issue I find it unnecessary to deal with the jurisdictional issue. The Arbitrator is satisfied that it is appropriate to make an award, albeit a partial one, with respect to this issue. I therefore direct that the collective agreement be amended to include a provision which stipulates that employees on spare boards will be assigned not less than two scheduled lay off days per two week period. That provision is obviously not in derogation or limitation of the hours of service and overtime provisions of article 3 of the collective agreement.

G

Provisions for "Run to the Meet" between Edmonton and Biggar

The parties are agreed that for the purposes of efficiency, on a twice weekly basis, it is appropriate for crews operating from Edmonton to Biggar and Biggar to Edmonton to exchange trains at a meet point, so that the crews operate from and to their own home terminals on the same assignment, thereby returning to their home terminals and saving the Corporation the time and expense of deadheading. To that end they have identified Wainwright as the normal meet point where crews would exchange trains. However, because one or other of the trains may run either ahead or behind schedule, the actual meet point may vary. They therefore agreed on establishing a "meet point window" which would encompass territory beyond Wainwright where the meet can occur. However, by their understanding, should the meet occur outside the agreed or arbitrated window, employees will be entitled to over and above compensation for the time spent further than meet point window limitation.

Having reviewed the respective positions of the parties, considering that the average speed of passenger trains proceeding across the Wainwright Subdivision is approximately 70 miles per hour, I am satisfied that a meet window which would encompass the territory between Kinsella and Dunn, inclusively, would constitute an appropriate window for the purposes of crews running to the meet. Any exchange of crews at locations beyond Kinsella or Dunne will attract the over and above payments for any time spent operating beyond that window.

The matter is therefore referred back to the parties on the basis of the foregoing direction, it being understood that the Arbitrator retains jurisdiction in the event that they cannot agree upon the necessary contractual language.

H

Union's Demand to Remove Capreol Terminal from Pool Service

The Union submits that the operation of pool service between Capreol and Toronto works a hardship on the three employees who are home terminalled at Capreol.

During the negotiation of the renewal of their collective agreement the parties did agree to provisions whereby the Corporation would discontinue certain chain gang or pool service, albeit not at Capreol. In that regard the following language was agreed to:

> Pool and/or Chain Gang Service may be implemented in the future at a terminal with five (5) locomotive engineers or less with the consent of the TCRC. If such consent is not secured, the matter will be referred to CROA for an interest based arbitrated decision. Implementation cannot occur prior to the arbitration process being completed.

As is apparent from Appendix " A of the memorandum of agreement, the parties nevertheless agreed to have the interest arbitrator separately address the question of whether pool service should operate at Capreol.

Having regard to the submissions of the parties the Arbitrator is satisfied that it is appropriate to find in favour of the Union with respect to this issue. The Corporation is therefore directed to establish a complement of employees at Capreol which will allow for the administration of assigned service from that home terminal. The matter is referred to the parties for the purposes of such language as may be appropriate, it being understood that the Arbitrator retains jurisdiction in the event of any dispute.

IV – RETENTION OF JURISDICTION

As indicated above, the Arbitrator retains jurisdiction for the purposes of the interpretation or implementation of the terms of this award, including the fashioning of

language in respect of which the parties may not be able to reach agreement, for the purposes of finalizing their collective agreement.

Dated at Ottawa this 11th day of September 2009

(Original signed by) MICHEL G. PICHER

ARBITRATOR