NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5938

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
	)	Case No. 1
and	)	
	)	Award No. 1
CONSOLIDATED RAIL CORPORATION	)	

Martin H. Malin, Chairman & Neutral Member
S.V. Powers, Employee Member
J. H. Burton, Carrier Member

Hearing Date: May 19, 1997

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned an outside contractor (Hilltop Paving) to perform grade crossing paving work on the road crossing at Mile Post 199.1 on Thursday, June 23, 1994 (System Docket MW-3774).

2. The Agreement was violated when the Carrier assigned an outside contractor (Hilltop Paving) to perform grade crossing paving work on the road crossing at Mile Posts 166.4 and 169.4 on Monday, September 12, 1994 (System Docket MW-3775).

3. The Agreement was violated when the Carrier assigned an outside contractor (Hilltop Paving) to perform grade crossing paving work on the road crossing at Mile Post 170.9 on Wednesday, September 14, 1994 (System Docket MW-3776).

4. The Agreement was further violated when the Carrier failed to furnish the General Chairman with proper advance written notice of its intention to contract out said work and discuss the matter in good faith as required by the Scope Rule.

5. As a consequence of the violations referred to in Parts (1) and/or (4) above, Claimants R. E. Shaffer, M. E. Stocum, C. L. Stocum, R. L. Dietz, J. Lynch, and R. G. Jones shall each be allowed eight (8) hours pay at their applicable straight time rates.

6. As a consequence of the violations referred to in Parts (2) and/or (4) above, Claimants R. E. Shaffer, M. E. Stocum, R. L. Dietz, J. Lynch, T. B. Cottingham and R. G. Jones shall each be allowed ten (10) hours pay at their applicable straight time rates.

7. As a consequence of the violations referred to in Parts (3) and/or (4) above, Claimants R. E. Shaffer, M. E. Stocum, R. L. Dietz, J. Lynch, T. B. Cottingham and R. G. Jones shall each be allowed ten (10) hours pay at their applicable straight time rates."

FINDINGS:

Public Law Board No. 5938, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

The claims in this matter arise from Carrier's having contracted out the paving of certain railroad crossings. This is not the first time that Carrier's contracting out of paving work has come before a board. On April 5, 1991, Special Board of Adjustment 1016 issued Awards Nos. 10, 11, and 12, sustaining claims involving the contracting out of paving work. On November 9, 1994, the National Railroad Adjustment Board, Third Division, issued a series of awards, of which Award No. 30540 was the lead award, denying claims involving the contracting out of paving work. On June 2, 1995, SBA 1016 issued Awards Nos. 82, and 86-88, sustaining claims involving the contracting out of paving work. On July 25, 1996, the NRAB Third Division issued Award No. 31523 denying claims which included the contracting out of paving work.

The Organization contends that the awards of SBA 1016 control the instant case. The Organization argues that the Third Division awards are palpably wrong and should not be followed. The Third Division awards distinguished the SBA 1016 awards on the ground that the SBA awards did not involve hot asphalt work. The Organization contends that there is no significant difference between hot asphalt paving and cold patching. Furthermore, according to the Organization, the work at issue in the claims before SBA 1016, tearing out and rebuilding a crossing, was the same as the work involved in the instant case and in the claims before the Third Division. The Organization also contends that after the Third Division awards were issued, Carrier reargued the matter before SBA 1016, and SBA 1016 reaffirmed its prior rulings.

Carrier contends that two factors distinguish the SBA 1016

awards and make the Third Division awards controlling in the instant case. Carrier argues that SBA 1016 did not consider the differences between hot asphalt work and cold patching. Carrier concedes that Organization-represented employees historically have performed cold patching, but maintains that Carrier consistently has contracted out hot asphalt paving. Carrier maintains that it contracts out hot asphalt paving because of the skills and special equipment required, equipment that Carrier does not own and that would not make economic sense for Carrier to own. Carrier urges that when the differences between hot asphalt work and cold patching were presented clearly, the Third Division recognized them and held that the Organization was not entitled to perform the hot asphalt work. Carrier disputes the Organization's contention that SBA 1016 subsequently reaffirmed its position. Carrier argues that the later SBA 1016 awards dealt only with disputes over which employees were entitled to payment and did not consider the impact of the Third Division awards.

In addition, Carrier contends that a key issue in the claims before SBA 1016 was Carrier's failure to notify the General Chairman of its intention to contract out the work. Carrier maintains that ever since the SBA 1016 awards, it has given notice and that it gave notice in the instant case. Carrier urges that when it has given notice, the Third Division has denied the claims. Carrier claims further support for its position in Third Division Award No. 31483, involving CSX Transportation, Inc., which, according to Carrier, found a mixed practice of using contractors and Organization-represented employees, and found no violation where the carrier gave proper notice of its intent to subcontract.

The Organization agrees that no notice was given in the claims before SBA 1016. The Organization counters, however, that SBA 1016's holding was not limited to Carrier's failure to give notice. Rather, in the Organization's view, SBA 1016 found the work at issue to be work historically performed by Organization-represented employees. The Organization maintains that an addendum to SBA 1016, Award No. 10 makes this clear.

The Scope Rule provides, in relevant part:

> These rules shall be the agreement between Consolidated Rail Corporation . . . and its employees of the classifications-herein set forth represented by the Brotherhood of Maintenance of Way Employees, engaged in work generally recognized as Maintenance of Way work, such as inspection, construction, repair and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences and roadbed, and work which, as of the effective date of this Agreement, was being performed by these employees, and shall govern the rates of pay, rules and working

conditions of such employees.

In the event the Company plans to contract out work within the scope of this Agreement, except in emergencies, the Company shall notify the General Chairman involved, in writing, as far in advance of the date of the contracting transaction as practicable, and in any event not less than fifteen (15) days prior thereto. "Emergencies" applies to fires, floods, heavy snow and like circumstances.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. Said Company and organization representatives shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached, the Company may nevertheless proceed with said contracting and the organization may file and progress claims in connection therewith.

In Award No. 10, SBA 1016, held as follows:

[T[he record as a whole persuades that the disputed work of paving (blacktop) and related clean-up at grade crossings . . . falls within the purview of the Scope Rule . . . and further that there is no question that the Carrier failed to give the MofWE General Chairman notice of the contracting out . . . . In these circumstances, the Board finds that the manner in which the Carrier effected the disputed contracting out of the paving and clean-up work at the two grade crossings in question, was violative of the confronting Agreement . . .

In other words, SBA 1016 found that because the work fell within the Scope Rule, Carrier's failure to give notice violated the Agreement. In finding that the work fell within the Scope Rule, SBA 1016 focused on and rejected Carrier's argument that the Organization had the burden to prove that it exclusively performed the work. In an addendum, after an executive session, the Board rejected Carrier's contentions that the Organization's evidence was weak and lacking in specificity. The Board reaffirmed its finding that the work fell within the Scope Rule and specifically observed that "several items in the Organization's evidence reflect that said paving work at grade crossings was being performed by MW Employees . . . as of the effective date of the BMWE Agreement."

SBA 1016, Award No. 10, did not hold that Carrier is prohibited from contracting out paving work at grade crossings. Rather, it held that the manner in which Carrier effected the contracting out, i.e. by not first giving the Organization notice

and an opportunity to meet and discuss the proposed contracting, violated the Agreement.

The Organization, however, contends that SBA 1016 did hold that the contracting out of the paving work in issue violated the contract independently of Carrier's failure to give notice. SBA 1016, Awards Nos. 82, 87 and 88 do state:

> "[I]n line with this Board's precedent Award No. 10, the Board finds that the paving and repair of crossings in dispute in this case is (sic) covered by the BMWE Scope Rule and that the Carrier provides no justifiable reason for contracting out said work. Therefore, the Board finds that the Carrier's actions in this matter violated the work jurisdiction provisions and the advance notice provisions of the Scope Rule in the Conrail-BMWE Agreement.
>
> . . . . .
>
> The Carrier's contention that the work of paving crossings has historically been performed by 'off-railroad' companies does not justify the contracting out of such work that is in dispute in this case. . . ."

However, almost immediately thereafter, each award reiterated the importance of the absence of advance notice of intent to subcontract: "In view of this finding, it follows that the Carrier was subject to the Scope Rule's requirement to give the General Chairman fifteen (15) days advance notice of a contracting out transaction." Furthermore, the lack of advance notice was central to SBA 1016's finding that Carrier could not provide a "justifiable reason for contracting out said work." As SBA 1016 stated in Award No. 82, and reiterated in Award No. 86:

> "The Carrier's argument that contracting out was necessary due to a lack of Carrier-owned equipment is rejected for lack of record support. The Carrier violated the Scope Rule's requirement to give notice to the Organization of contracting out and thereby precluded a meeting by the parties to discuss the proposed contracting out transaction. The leasing of equipment, and possibly other alternatives, could have been presented to the Carrier by the Organization at such a meeting, but, as noted, the Carrier failed to give the required notice and no meeting was held."

Thus, the failure to give notice was central to the sustaining of all of the subcontracting of paving work claims before SBA 1016.

In Award No. 30540, the Third Division initially found that Carrier complied with the notice requirements of the Scope Rule. Specifically, the Third Division found:

> The record shows that the Carrier provided advance notice of its intention to contract for work at a number of grade crossings. The Organization argues that such notice is insufficient . . . . The Board finds, however, that the notice and subsequent meeting fulfilled the contractual requirements of the Scope Rule . . .

Turning its attention to SBA 1016, Award No. 10, the Board observed that the Award did not describe the type of paving at issue with sufficient specificity to address Carrier's argument that its employees had not performed hot asphalt paving on a regular basis. The Board reviewed the evidence and concluded that, although the Organization had established that Maintenance of Way employees regularly performed paving in general, it had not established that they regularly performed hot asphalt work. The Board concluded, "There is convincing evidence that the 'hot asphalt' work has not been regularly performed by Carrier forces and is not contractually reserved to them."

It is unclear what the Board in Third Division Award No. 30540 meant by "not contractually reserved to them." It may have meant that the Organization failed to prove that the Agreement precluded Carrier from contracting out the work in the case before the Board. Such a meaning follows from the order in which the Board considered the issues. The Board first held that Carrier satisfied the Scope Rule's notice and meeting requirements. With such a finding, the only other live issue that the Board might possibly have faced would have been whether, in spite of complying with the notice and meeting requirements, Carrier was precluded from contracting out the work.

The Scope Rule's notice and meeting requirements include a requirement that the Carrier and Organization "make a good faith attempt to reach an understanding concerning said contracting." The meeting thus presents the parties with the opportunity to discuss the proposed contracting out, including such factors as the degree to which the employees have performed the work in the past and the availability of alternatives to contracting out the work under consideration. That the results of these discussions may be reviewed by a subsequent board is made clear by the Rule's provision that "if no understanding is reached . . . the organization may file and progress claims in connection" with the subcontracting.

We read the Third Division's statement that the work was not contractually reserved to the employees as a finding that the Organization's claim to the work in spite of the notice and conference was particularly weak in light of the evidence concerning the lack of regularity with which they had performed the work of hot asphalt paving.

Read this way, we are unable to agree with the Organization

that the award is palpably wrong. Comparing the claims before SBA 1016 with the claims before the Third Division makes it clear that they involved the same type of paving, i.e., hot asphalt paving. However, it also is clear that SBA 1016 never addressed the question whether it was significant that the paving involved hot asphalt. Third Division Award No. 30540 was the first authority to address that question on this property. Indeed, the thrust of the Labor Member's dissent was to the effect that the use of hot asphalt was irrelevant:

> "It should be recognized that the cold asphalt used for patching material is simply hot mix asphalt which has been allowed to cool and is usually surplus asphalt which is left over from a previous (hot) paving job. Hot asphalt is much more easily spread, compacted and smoothed and adheres much more readily to existing paving than cold asphalt. For these reasons, although it is the exact same material and exactly the same skills and equipment are used for cold patching and hot paving with asphalt, hot asphalt is strongly preferred for paving work, including patching. The reason that cold asphalt is often used for patching is simply because it is impractical to keep hot asphalt readily available for use in small quantities."

The contention that there was no significant difference between hot and cold asphalt was answered on the property and in the Carrier Members' response to the dissent. They pointed out that hot asphalt requires equipment, such as an asphalt paving machine, roller and insulated dump truck, not needed when cold asphalt is used. Accordingly, we cannot find that Award No. 30540's distinction between hot and cold asphalt is palpably wrong.

We have examined with considerable care the more than 100 employee statements that the Organization submitted to demonstrate that employees routinely performed hot asphalt paving. Most of the statements were of very limited probative value because they referred simply to paving in general and some of those specifically mentioned cold asphalt work or pot hole patching. Some statements did refer specifically to hot asphalt work performed by employees. However, many of those referred to work performed in the 1970s, and a few in the 1960s. Such statements could not establish that the employees were performing the work as of the effective date of the 1982 Agreement. A few statements did refer to hot asphalt work performed in the early 1980s, but a number of others indicated that Carrier began contracting out such work in 1979. In light of this record, we cannot say that Award No. 30540's finding that the Organization did not establish that the employees regularly performed hot asphalt paving is palpably wrong.

Award No. 30540 also found that the Organization failed to

carry its burden of proof with respect to Carrier's rejection of the alternative of leasing the needed equipment. The Third Division wrote:

> "The parties are in dispute as to whether equipment could be leased in order to have Carrier forces perform the work. Given the extent of the hot asphalt paving program at the time, it is unreasonable to assume that leased equipment could be made available for this paving project encompassing many different locations."

This finding also is not palpably wrong.

We agree with Carrier that the subsequent awards from SBA 1016, i.e., Awards Nos. 82, and 86-88, do not represent a reconsideration of Award No. 10 in light of Third Division Award No. 30540, and do not represent a rejection of Award No. 30540. The subsequent SBA 1016 awards did not discuss Award No. 30540 at all. The were concerned with arguments over whether specific employees were entitled to payment, and, if so, to how much compensation. They reaffirmed the Board's prior holding that exclusivity was not required to trigger the notice provisions of the Scope Rule. They also reiterated the importance of Carrier's failure to give notice, rejecting Carrier's argument that it had to contract out the work due to a lack of equipment because Carrier's failure to give notice precluded the Organization from discussing other options, such as leasing the needed equipment.

Two subsequent Third Division awards reiterate the importance of notice. In Award No. 31523, the Board denied the claim and specifically found that the notice provided sufficiently encompassed the paving work involved to satisfy the requirements of the Scope Rule. In Award No. 31483, the Board found that CSX Transportation, Inc., satisfied the requirements under its Agreement with the Organization where, when faced with a mixed practice concerning paving work, it gave proper notice to the Organization of its intention to contract out-such work on specific jobs.

In the instant case, the Organization has argued that Carrier did not meet its notice obligations. Based on our review of the record, however, we cannot agree. It is clear that notice was given and a meeting was held. Furthermore, we find that the Organization has not carried its burden of showing that Carrier acted inappropriately in rejecting the option of leasing the needed equipment. Indeed, the record is devoid of evidence as to what occurred at the meeting. Only after the claim was filed did the Organization suggest one specific company that, it maintained, could have rented Carrier the equipment. Carrier, however, soundly refuted this suggestion, averring that its investigation revealed that the company suggested by the Organization did not stock a sufficient number of items to assure

that Carrier could dependably rent the equipment with a set work schedule. Carrier has consistently throughout all of the paving cases maintained that leasing equipment is not a practical option. The Organization failed to prove otherwise.

To summarize our holdings, because the work involved paving, it was scope covered and Carrier was obligated to give notice and meet with the Organization upon request. Carrier did give such notice and did conduct the required meeting. Because the record does not establish that the employees regularly and customarily performed hot asphalt paving, however, the Organization had a relatively heavy burden to show that Carrier was precluded from contracting out the work following a good faith discussion of alternatives with the Organization. The Organization failed to carry that burden in the instant case. Therefore, the claim must be denied.

The Employee Member of the Board raised a concern that denying the instant claim could be interpreted as authorizing Carrier to fail to maintain or divest itself of its maintenance of way equipment and contract out work that maintenance of way employees have regularly performed, thereby undermining the Agreement. No such result was intended or should be implied.

AWARD

Claim denied.

Martin H. Malin, Chairman

J.H. Burton,
Carrier Member

S.V. Powers,
Employee Member I dissent, written dissent to follow.

Dated at Chicago, Illinois, February 10, 1998.

LABOR MEMBER'S DISSENT
TO
AWARD NO. 1 OF PUBLIC LAW BOARD NO. 5938
(Referee Malin)

This dissent is submitted with the utmost respect for the Neutral Member's ability and integrity. However, even the best of us get it wrong sometimes and in this case his award represents a departure from the decisional paradigm established in decades of contracting out precedent as well as the seminal awards by Referee Blackwell which decided the grade crossing hot paving issue on this property (SBA 1016, Award Nos. 10, 11, 82, 84, 85, 86, 87 and 88). While the Neutral Member's award is a departure from decades of well-reasoned and consistent precedent, it is recognized that he had the misfortune of wandering into the morass created by the unsound and self-contradictory reasoning of Third Division Award 30540 and its companion awards. At the outset, the Neutral Member set for himself the impossible task of reconciling the seminal SBA 1016 awards with the irreconcilable Third Division Award 30540. No one questions the good faith of the Neutral Member of PLB 5938, but the task he set for himself was like pounding a square peg into a round hole. It simply could not be done without mangling the peg and the hole. Consequently, Award No. 1 of PLB 5938 should be afforded no precedential value not only because it departs from established precedent, but because it is founded on Award 30540 which itself rests on false premises and is the fruit of blatant forum shopping. The Labor Member does not stand alone in this analysis. Fortunately, the very next arbitrator to confront the morass (Arbitrator Eischen) issued Third Division Awards 32505 and 32508 which clearly cut through the confusion created by Third Division Award 30540 and set the parties back on a course consistent with the facts, the rules and well-reasoned precedent, including the seminal grade crossing paving awards on Conrail issued by SBA 1016.

The lead award on hot paving of grade crossings on Conrail, Award No. 10 of SBA 1016, was the subject of an extensive executive session where Conrail's primary complaint was the alleged weakness of BMWE's argument and evidence that paving grade crossings was reserved to BMWE by the Scope Rule. After reviewing all of the evidence and argument for a second time, Arbitrator Blackwell wrote a special Addendum to Award No. 10 where he held:

> "*** ***In this regard the Board observes that the preponderating evidence in the record as a whole has been assessed as establishing that the disputed work comes within the BMWE Scope Rule's coverage of work generally recognized as Maintenance of Way work, such as '...construction, repair and maintenance of... tracks'. It is further noted that several items in the Organization evidence reflect that said paving work at grade crossings was being performed by MW Employees on February 1, 1982, that is, as of the effective date of the BMWE Agreement.***" (Emphasis added)

Award Nos. 11, 82, 84, 85, 86, 87 and 88 of SBA 1016 followed similar reasoning. Hence, it is clear that SBA 1016 determined that hot asphalt paving of grade crossings was Scope covered not only because it was being performed by Maintenance of Way employes in 1982, but because it was work generally recognized as Maintenance of Way work, such as construction, repair and maintenance of tracks.

Even after the extensive executive session which resulted in the special Addendum to Award No. 10, Conrail refused to accept this precedent and, in a blatant example of forum shopping, Conrail progressed another set of BMWE's grade crossing claims to a new forum (the NRAB) instead of settling them based on the existing precedent. Apparently, Conrail believes precedent is binding only when it favors the carriers. In any event, after successfully shopping for a new forum, Conrail set about misleading the Neutral Member in those cases (NRAB Docket MW-30707 and companion cases) by asserting that the SBA 1016 awards concerned cold patch work and were of no precedential value in cases involving hot paving of grade crossings. This argument was patently untrue and is clearly disproven by a careful reading of the SBA 1016 awards and case records. Nevertheless, the Neutral Member in NRAB Docket MW-30707 was misled and rendered Award 30540 based on this false premise. After confusing the facts and essentially reversing SBA 1016, Award 30540 goes on to contradict itself by stating that "*** [t]his finding is not intended to contradict the Special Board of Adjustment No. 1016 Awards...." Then, to compound its errors, Award 30540 determined, without supporting evidence or sound reasoning, that a simple asphalt roller was special equipment requiring special skills and could not reasonably be leased. This finding was in conflict with both specific and general precedent concerning special skills and equipment. Specifically, Third Division Award 8756 established long ago that, "[b]lacktopping is not a new process and there is no showing of a special skill requirement or special equipment being needed." The general precedent (typified by Third Division Awards 7836, 9612 and 13237) is that the carrier has an obligation to prove that it made a good-faith attempt to obtain the necessary equipment by lease or other means. No such proof existed in the record of Award 30540.

In Case No. 1 of PLB 5938, the Neutral Member, for all the right reasons, got off to the wrong start and got mired in confusion. That is, it normally makes sense to reconcile precedent, but in this case Award 30540 was so fundamentally mistaken on the basic facts and the burden of proof that reconciliation with the well-reasoned SBA 1016 precedent was not logically possible. The SBA 1016 awards clearly and unequivocally held that the disputed work, hot paving of grade crossings, was within the Scope of the Agreement. In an effort to square Award 30540 with the findings of

SBA 1016, the Neutral Member in this case seems to suggest that there are degrees of Scope coverage that confer differing burdens on the parties. This is akin to suggesting a partial pregnancy. Just as a woman is pregnant or not, work is Scope covered or it is not. Once Scope coverage is established, as it was in this case, the overwhelming precedent (typified by Third Division Awards 4920, 5470, 6109, 6905, 7836, 8148, 9612, 13237, 19337 and 29823) holds that the burden is shifted to the carrier to prove any affirmative defense it raises to support its decision to contract out. Conrail presented no such proof to show that it was unable to obtain the necessary equipment through lease or rental.

The final attempt to reconcile the differing results of Award 30540 and the SBA 1016 awards centered on the notice and conference issue. However, the fact that the carrier notified the union of its intention to contract out the disputed work and held the required conference in this case is simply further confirmation that the work was within the Scope of the Agreement, i.e., the notice and conference requirements apply only to "work within the scope of this Agreement". Providing the required notice and conference did not relieve the carrier of the obligation to prove its affirmative defenses, nor did it distinguish the instant case from the SBA 1016 precedent. Once again, the Labor Member does not stand alone in this analysis. The very next arbitrator to confront the grade crossing paving issue on Conrail plainly held in Third Division Award 32508 that Conrail had complied with the notice and conference requirements and then went on to sustain BMWE's claim as follows:

> **"Turning to the merits of this dispute, it is patent to all concerned that there are now two lines of cases on the central question presented in this record. The seminal decisions by Special Board of Adjustment No. 1016 (Referee Blackwell), Awards 9, 10, an arbitration tribunal between these Parties on the property, held unequivocally as follows: 'the disputed work of paving (blacktop) and related clean-up at grade crossings . . . falls within the purview of the Scope Rule of the confronting Maintenance of Way Agreement.' The determinations of SBA No. 1016 on this point were ostensibly distinguished, but expressly not reversed, by the Third Division in Award 30540 (Referee Marx), as follows (Emphasis added): 'There is convincing evidence that the "hot asphalt" work has not been regularly performed by Carrier forces and is not contractually reserved to them. This finding is not intended to contradict the Special Board of Adjustment No. 1016 Awards, but it is based on the particular aspect of crossing work which is involved here.'**

> **"The 'convincing evidence' ostensibly relied upon by the Board in Award 30540 (Referee Marx) and a series of some 13 companion cases, (all but one of which were decided by the same Referee who decided Award 30540), is not persuasively made out on the record before us in the instant case. Accordingly, we find no adequate basis for declining to treat the decisions of SBA No. 1016 (Referee Blackwell) in Awards 9, 10 *et al* as dispositive of the present case."** (Emphasis in bold added)

The Neutral Member in this case happened upon a universe which included the SBA 1016 awards and Third Division Award 30540. Because of the fundamental contradictions and flaws in Award 30540, his good-faith intentions to make sense of this universe resulted in an award that departs from decades of general precedent as well as the on-property precedent that preceded (SBA 1016 awards) and followed (Third Division Awards 32505 and 32508) this Award No. 1 of PLB 5938. For all of these reasons, I respectfully dissent.

Respectfully submitted,

Steven V. Powers

Steven V. Powers
Labor Member