

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE No. 770

URGENT ISSUES IN FREIGHT RAIL SERVICE

EX PARTE No. 770 (Sub. No. 1)

URGENT ISSUES IN FREIGHT RAIL SERVICE

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**SUPPLEMENTAL COMMENTS OF THE BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES DIVISION/IBT; BROTHERHOOD OF RAILROAD SIGNALMEN;
INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS/MECHANICAL DIVISION; INTERNATIONAL
ASSOCIATION OF BOILERMAKERS; INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS DISTRICT #19;
NATIONAL CONFERENCE OF FIREMEN AND OILERS 32BJ/SEIU;
AND TRANSPORT WORKERS UNION OF AMERICA-
ONE YEAR AFTER THE OPENING OF THESE DOCKETS**

I. INTRODUCTION

The Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association Of Boilermakers; International Association Of Machinists And Aerospace Workers District #19; International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division; National Conference of Firemen and Oilers, 32BJ/SEIU, and the Transport Workers Union of America (“Unions”) submit these supplemental Comments regarding the progress, or rather lack of progress, of the Class I railroads in improving rail service since the Board’s hearings in this docket a little over a year ago.

The Class I’s continue to adhere to the ruthless cost-cutting business model that is marketed as “Precision Scheduled Railroading” (“PSR”). As part of that business model, the

the Class I railroads have dramatically reduced the numbers of employees in all rail crafts. The results have been reduced inspection, maintenance and repair work on rail infrastructure and equipment, requiring a reduced workforce to handle the responsibilities once handled by a significantly larger workforce for the same amount of infrastructure; insufficient train and engine service employees to meet the needs of shippers; reduction in the number of locomotives and reduced inspection and maintenance of the remaining locomotives; increased congestion on the networks; and less safe operations. But the profits of the Class I's have continued to increase, as have the stock repurchases, even though the level of carloadings has been essentially stagnant.

The Unions have previously described how the current service and safety problems in the industry have been driven by the demands of so-called “activist investors” and “private equity”, and the disregard those interests have for compliance with the common carrier obligation and the representations made by the Class I's that were relied upon by the Board and its predecessor in approving the transactions that created the current mega-carrier duopolies. It is the market concentration permitted by this agency and its predecessor that allow the “activist investors” and “private equity” to extract value from the industry, while diminishing service and safety, without adverse financial consequences for those interests. The Unions will not delve further into those points in these Supplemental Comments.

In these Supplemental Comments, the Unions will address levels of employment in the industry since the hearings last year, and changes in employment numbers since implementation of the cost-cutting business model. The Class I's have attempted to persuade the Board and industry stakeholders that they have increased employment. But they have not done so. As noted in prior filings by some of the Unions, the Class I's have provided spreadsheets, pie charts, and

graphs that show they have been hiring; but they have not provided information on net employment. The granular filings of the carriers are all noise and no signal. In reality, based on the reports the carriers file with the Board, the increase in employment has been anemic, about a 1% increase from 2021 to 2022. Union membership numbers also show negligible growth over that period. The Class I railroads' claims of hiring "binges" and "sprees" and increases in employment are simply misleading; and the manner of presentation of this information in Ex Parte 770-1 appears to be deliberate deception. Furthermore, comparing employment today to employment in 2021 is to compare against a very low bar- a time when volume was just beginning to recover after the initial shock of the pandemic. Carloadings are near 2019 levels, but employment is way below 2019 levels.

The Unions will also discuss the effects the reductions in employment have had on service and safety. They will also address those problems in the context of industry finances.

The Unions again urge the Board to exercise its full authority to enforce service standards generally, and the common carrier obligation in particular; and if the Board feels that it lacks sufficient authority to do what is necessary to compel restoration of safe, adequate and reasonable service, it should so advise Congress.

II. RAIL INDUSTRY EMPLOYMENT

Multiple measures of industry employment show that it is dramatically down for all crafts since implementation of the new business model, significantly down from employment levels just prior to the pandemic, and only insignificantly up since the Board decided that rail service had so deteriorated that extraordinary hearings and special reporting requirements were necessary. This is shown by employment data the carriers report to the Board, which is discussed

in materials provided by the Labor Bureau, Inc. (a labor economics and union finance consulting firm), and is shown on graphs prepared by the Brotherhood of Locomotive Engineers and Trainmen. Since employment reported to the STB is reported by department, not craft, the Unions are also providing membership numbers for most of the rail unions. The picture is completed by reference to U.S. Railroad Retirement Board data.

The graphs prepared by BLET from data reported to the STB (Exhibit 1) vividly illustrate how total rail employment was reduced from a little over 170,000 in 2015 to about 150,000 in 2019 to about 120,000 in January of 2023. For the Class I railroads, for reporting categories 300 (engineering-maintenance of way and signal), 400 (mechanical- maintenance of equipment), and 600 (train and engine), total employment went from about 121,000 in 2016, to about 107,000 in 2019 to about 96,000 in January of 2023. The graphs show dramatic downward movement for all departments across the carriers over the 2015-2023 period with only incremental upticks over the last year that come nowhere near employment levels in 2019. More specifically, the Labor Bureau charts for the Big 4 Class I's (BNSF, CSXT, NSR and UP) for engineering, mechanical and train and engine service departments (Exhibit 2) show the following numbers for those groups combined between 2019 and 2022:

2019 105,099

2020 88,004

2021 83,483

2022 84,690

That is a 19% decrease since 2019; and a mere .5% increase from 2021 to 2022. Since 2019, the reductions have been across all departments:

Year	Engineering	mechanical/shops	train and engine service
2019	28,316	23,437	53,346
2020	26,465	18,754	42,785
2021	25,149	16,180	42,153
2022	25,207	16,047	43,436

Every department across the Big 4 Class I's is significantly down from 2019; engineering and mechanical are actually down from 2021 to 2022; and train and engine service is only up 3% from 2021 to 2022 (and still down 19% from 2019).

Railroad Retirement Board data is consistent with the STB numbers. Exhibit 3 consists of three RRRB graphs: employment from January 2017 through December 2021, employment from January 2022 through January 2023, and employment from January 2017-February 2023 (the RRRB does not produce historical graphs until after the end of the year so the January 2022-February 2023 data was manually plotted onto the RRRB's 2017-2021 graphs). The RRRB shows 225,000 employees in January of 2017, 223,000 in January of 2019, and 184,000 in January of 2023. Moreover, these graphs show a mere 5,000 increase for the entire industry from December of 2021 to December of 2022 (Amtrak accounted for almost half of that increase). Accordingly, by the railroads own reporting to the STB and RRRB, there was a huge cut in employment since implementation of the new business model, employment is well below 2019 levels, and it is only up by a miniscule amount over the last year.

The reductions are shown with greater particularity on a craft basis. The Unions, and

several of the rail unions not signatory to these Supplemental Comments have provided their membership numbers for the period between 2016 and the present. The unions' membership numbers are truly demonstrative of the numbers of individuals employed by the carriers in the crafts/classes represented by the rail unions because they exclude non-craft department employees and include only actual, continually employed, workers who are paying union dues; and they are not inflated by trainees who do not actually start and maintain careers in the railroad industry. The membership numbers also show large cuts since 2016, and continuing cuts since 2019. The membership numbers also show actual reductions for all crafts from 2022 to 2023 except for SMART TD (up 7%) and NCFO (up 18%, but after a 50% drop from 2019-2022). The total Class I memberships of the reporting unions are at Exhibit 4. Those charts show that:

Total Class I BLET membership was 32118 in 2016, 29777 in 2019, 25897 in 2022, and 25514 in 2023.

Total BMWED Class I membership was 25854 in 2016, 22997 in 2019, 20682 in 2022, and 20506 in 2023.

Total BRS Class I BRS membership was 9037 in 2016, 7913 in 2019, 6944 in 2022, and 6937 in 2023.

Total IAM Class I membership was 6800 (approx.) in 2019, 5032 in 2022, and 4937 in 2023.

Total Class I IBEW membership (excl. CN and CP) was 5831 in 2016, 5362 in 2019, 3522 in 2022.

Total Class I NCFO membership was 2987 in 2016, 2699 in 2019, 1362 in 2022, and 1668 in 2023.

Total Class I SMART MD membership (BNSF, CSXT, NSR, UP) was 995 in 2016, 780 in 2019, 570 in 2022.

Total Class I SMART TD membership was 42014 in January 2016, 34157 in July 2016, 36271 in 2019, 24047 in 2020, 27014 in 2022, and 29051 in 2023.

Total Class I TWU membership (CSX, NSR, Conrail) was 960 in 2016, 672 in 2019, 650 in 2022, and 504 in 2023.

In response to the Board's opening of this docket; the hearings held last year; the Board's reporting requirements; and Congressional, financial analyst and journalist inquiries, the Class I's, especially the Big 4, have told the Board and industry stakeholders that they have stepped up hiring, and are attempting to increase their workforces. Executives of the largest Class I's have stated that they are hiring like crazy, and going on hiring sprees. But the absolute numbers of new hires who actually began work and continued to work are insubstantial. Furthermore, as the unions have noted in prior filings, the executives' remarks never discuss net employment; they only provide data on hiring, omitting other relevant data-- attrition. A complete picture of employment data shows that the Class I's have only imperceptibly moved the needle on increasing their workforces. As the data supplied by the Unions demonstrate, the net employment numbers indicate weak or surface efforts to give the impression of attempts to increase employment, and suggest efforts to placate critics by giving the appearance of action. The statements of the executives and the public relations statements of the railroads are negligent at best, and intentionally misleading at worst.

As noted in prior union filings, the Class I's have tried to characterize themselves as suffering from the same problems endured by other businesses that had difficulty staffing up after the onset of the pandemic; such as early retirements, declines of recalls, and recruitment problems. But other employers had not drastically shed workers in the years before the pandemic. Furthermore, as employment has continually increased nationally in the months after last year's hearings, it became apparent that other (non-railroad) companies have been able to hire.

The Class I's have argued that there are particular difficulties recruiting into the rail industry. But Amtrak has successfully increased its work force. BLET, BRS, BMWED, IAM, IBEW, and SMART TD have also provided their membership numbers for Amtrak. All of those unions show increases in their Amtrak memberships (some significant) from over the past year or year and a half (BLET [12/21-4/23]: 1463 to 1538, BMWED [12/21-4/23]: 2321 to 2866, BRS [12/21-3/23]: 778 to 882, IAM [12/21-1/23] 496 to 554, IBEW [12/21-3/23]: 1024 to 1196, SMART TD [7/22-4/23]: 1819 to 1919). So how did Amtrak do it? It did it by making real efforts to hire by committing to new and creative recruitment programs. Exhibit 5 is an explanation of the recruitment efforts undertaken by Amtrak that produced true increases in employment. It should also be noted that a very large percentage of Amtrak jobs are in the Northeast Corridor, where the cost-of-living is higher than most of the rest of the Country, and the wages and benefits of railroad workers do not stand out as vividly in comparison to other available jobs in other parts of the Country. The Class I's, particularly the Big 4, have been play-acting at recruitment, Amtrak actually did the work of recruitment. That Amtrak has been able to increase employment shows that the assertion that the railroad industry presents peculiar recruitment problems is just a false façade over a lack of desire to increase employment.

Another relevant comparator is the airline industry. It too suffered dramatic reductions in business and furloughed large numbers of employees at the start of the pandemic. And it too initially struggled with staffing as business returned. But the airlines managed to hire over 110,000 employees since November of 2020, and they are now at levels of employment that exceed pre-pandemic levels of employment. Exhibit 6 includes articles and reports regarding the increases in employment in aviation; indeed A4A, the aviation industry equivalent to the AAR,

proudly reports that the airline industry has increased employment to levels that exceed pre-employment levels. From the AAR all we hear is disingenuous whining that the railroads simply can't fill positions. It should also be noted that characteristics of rail industry employment that the railroads cite as impediments to recruitment, like much time away from home, irregular schedules, on-call work, and 24/7 operations are features of airline employment too. Like Locomotive Engineers, Conductors and Maintenance of Way workers, Pilots and Flight Attendants are often away from home. Like Locomotive Engineers and Conductors, Pilots and Flight Attendants work irregular schedules and are called to fill-in as needed. Like Locomotive Mechanics, Carmen and Shop Laborers, airline mechanics and baggage/ramp workers are employed in shops and stations that operate 24/7. There is no reason railroads can't fill positions while the airlines can, other than lack of will and refusal to respond to reduced supply as a market actor ought to react—by aggressive outreach and economic enticements.

The updated employment information provided with this submission, and the comparisons to Amtrak and the airlines, reinforces prior statements by the Unions--that the Class I's, particularly the Big 4, do not intend to rebuild their workforces in order to provide better and more reliable service; nor do they intend to improve their resiliency by staffing at a level where they will be able to respond to reasonably foreseeable events and actions (such as weather events and seasonal or circumstantial demand for service). The Big 4 appear to still be setting staffing targets at the leanest possible levels; levels that are only sufficient to provide the most basic service to the highest priority shippers, assuming that nothing will ever go wrong, and that workers can be compelled to work multiple days of overtime, on off-days and when they are sick. Furthermore, analysts report that some Class I's are curtailing hiring in anticipation of a

possible, but not certain, recession. See Exhibit 7. Railroad executives have said that if there is another recession, they do not plan to furlough employees as they did in the past. But they are also limiting hiring to below what is necessary to meet current demand for service. So, the supposed change in philosophy is not meaningful. To avoid the furlough-recall-furlough cycle, the railroads are understaffing as a hedge against a possible recession, not fully staffing for current needs, and they are again failing to maintain a cushion for a future increase in demand. If there is an actual recession, the Class I's will be so thinly staffed that they will again be unable to rebound once the demand for service is restored. Accordingly, despite their protests to the contrary, it is clear that the Class I's are focused primarily on their Operating Ratios and profit maximization, and not on what it takes to comply with their common carrier obligations.

III. CLASS I REVENUE, OPERATING RATIOS, PROFITS AND SHAREHOLDER GAINS

The materials provided by the Labor Bureau (Exhibit 2) reveal that the Class I's continue to roll up record profits, and that the publicly traded Class I's continue to dole out stock buybacks. Carloadings have nearly returned to pre-pandemic levels (they are now at 95% of pre-pandemic carloads), while employment is down by 19%, profits are up by 14% and stock repurchases have continued to increase (for CSXT, NSR and UP: \$3.37 billion since 2019). These trends are all shown on the graph on the first page of the Labor Bureau materials (Exhibit 2), which demonstrates that profits have increased dramatically since 2019, but carloadings are only slightly off while employment is dramatically down—this supports the conclusion that the increases in profits (and resulting stock buybacks) have been driven in large part by the cuts in employment, which, in turn, have adversely affected service and safety.

IV. PERFORMANCE OF THE BIG 4 CLASS I'S OVER THE LAST YEAR

Despite the Board's hearings last April; and its subsequent requirement for reporting data on service and employment; and despite the increased public attention on rail safety and service; the performance of the Class I's has not improved. As recounted in the Board's recent decision reviewing the performance of the Big 4 Class I's, except for CSXT, they have not even met their own unilaterally set service and employment targets. BNSF, NSR and UP are like a pole vaulter who sets the bar a foot off the ground and hits the bar while stepping over it. As the Board found in its May 1, 2023 Order in this Docket (Sub No.1) "BNSF has failed to achieve almost all of its one-year service targets for key performance indicators in recent weeks"; "NSR has occasionally met its targets for velocity and on-time delivery since its December 2022 Interim Update. In recent weeks however NSR has not met its targets for any key performance indicator"; and "UP's four most recent biweekly progress reports indicate that UP's performance is below its target for car velocity on average and that UP has met its target for cars per carload just once". The Board also noted that none of those three carriers had met all of their targets for employment for all departments. Again, it must be emphasized that the targets set by the Big 4 (including CSXT which met or nearly met all targets) are not objective targets, or targets demonstrably related to what is actually necessary to fulfill the common carrier obligations of those carriers, they are merely unilaterally set, arbitrary targets.

Indicative of the service problems are the high profile failures of NSR in safety, and UP in service (embargoes); and BNSF's failure to timely inspect its locomotive fleet- to comply with FRA inspection requirements and to perform basic maintenance necessary to operate a railroad. These specific failures of BNSF, NSR and UP are worth reviewing as illustrative of their overall

performance problems; and also how those problems have been causally related to inadequate staffing.

Union Pacific

The Board is, of course, well-aware of UP's extraordinary use of embargoes to cease or limit service. The facts adduced at the hearing in Ex Parte 772 were truly astounding: over 1000 embargoes in 2022 compared to 27 in 2017.

In that proceeding, BLET officers explained how the reduced work force and long trains had significantly contributed to UP's service problems and the system congestion that UP cited as the reason for the embargoes. A BLET General Chairman explained that UP had reduced the extra boards for his territory by 12%, while carloads were up by 6%. Another BLET officer explained how UP was operating 13,000' foot trains when the sidings on his territory are 9,000' to 10,000', and how this ties up the lines because trains can't pass each other; this, in turn, causes crews to expire under the Hours of Service law, requiring re-crewing which then uses up available crews. He also explained how trains have to be re-crewed when UP assembles 11,000' trains in a terminal that does not have yard tracks that long--preventing ingress and egress to the terminal. Another BLET officer described trains planned for servicing grain elevators showing up with "bad order" (not fully operational) locomotives and then being unable to pull the cars they were to pull. The unions noted that UP had dramatically reduced its mechanical forces, the workers who inspect and repair locomotives, who would prevent bad order locomotives going into consists. A BLET officer cited the situation in Sioux City IA, where the carrier had reduced the number of daily switch engine shifts from four to two which reduced the carrier's ability to keep up with classifying cars; and how at a refinery at Rosemount, MN where there had been 5

regularly assigned jobs, there was 1– this resulted in both substandard service for the shipper and a need for that shipper to use a contract switcher and to purchase 5 locomotives. All of this evidence demonstrated how UP's reduction in staffing and unswerving commitment to ever longer trains (which is driven in part by the desire to reduce the number of operating employees—two 12,000' trains theoretically require 2 crews whereas three 7,500' trains require 3 crews) led to the service problems and system congestion that UP cited as justification for the embargoes.

BMWED and BRS officers demonstrated how the reductions in maintenance of way and signal employees contributed to system congestion. They produced UP records showing increases in slow orders on UP. Slow orders are placed on tracks when a Signaller or Maintenance of Way worker detects a signal system or track or right of way defect, the defect is not immediately repaired, and trains can still safely operate on the tracks but not at customary speeds. Slow orders restrict the speed of train movements and thus increase congestion, since all trains moving through a section of track are moving more slowly. The fewer Signalmen and Maintenance of Way workers there are on a railroad, the harder it is for them to perform maintenance and repairs that prevent, or clear, slow orders. BMWED and BRS produced Union Pacific slow order reports for 2021 and 2022 that showed an increase in the number of slow orders in 2022, and track miles under slow orders. In October of 2022 over **22%** of UP's trackage was under slow orders. The principal reason for UP's inability to keep up with maintenance and repairs is insufficient staffing, particularly over time, as Signal and track conditions deteriorate over time. The cuts in Signal and Maintenance of Way employment on UP have negatively impacted its maintenance and repair of Signal systems and the track and right of way --which in turn, impedes the ability of UP to adequately and timely serve its customers.

Last year, Union Pacific was the subject of two emergency service orders issued in response to petitions filed by Foster Poultry Farms. BRS and BMWED provided evidence showing that UP's inability to adequately serve Foster Poultry Farms was caused in substantial part by the deterioration of the line UP used to serve that customer. UP had failed to perform basic maintenance on part of the line; in particular, the line had not been properly undercut for over 15 years (undercutting is a method for cleaning out the track ballast and ensuring proper drainage which is necessary to prevent early tie deterioration); and that sand fences along the right of way were in disrepair and disarray, resulting in sand covering the ties in some parts of the line. In addition to track problems, these conditions caused the signal system to malfunction (essentially short circuits) causing delays in train movements. BMWED and BRS further showed that the Signal and Maintenance of Way workforces assigned to the line had been reduced, so there were fewer workers assigned for regular inspections and maintenance to manage an undermaintained line, further contributing to UP's difficulties in serving Foster Poultry Farms. This situation is a graphic illustration of how cutbacks in engineering department forces, and engineering inspection and maintenance work, impairs the ability of a carrier to satisfy its obligations as a common carrier.¹

The Board has found that UP is failing to meet its own, meager service targets. The specific service failures of UP discussed above demonstrate that UP's drive to reduce headcounts

¹ In response to the Unions' filing in the Foster Poultry Farms case, UP submitted a statement that purported to show its efforts to fix the problems identified by the Unions. However, the line is still not in a condition sufficient for UP to adequately serve shippers and to comply with its common carrier obligation. Exhibit 8 to these Comments is a powerpoint presentation prepared by the BRS which shows that the line used to serve Foster Poultry Farms is still in decrepit condition; and that the FRA has cited UP for a number of violations on the line.

and to maintain low headcounts, has substantially contributed to those service failures.

Norfolk Southern

Derailments not only pose safety hazards, they impact service by closing lines, requiring rehabilitation, or necessitating slow orders. Preliminary findings on the derailment in East Palestine have focused on inadequate spacing of wayside “hotbox” detectors, and NSR’s unacceptable practice of keeping hotbox detector information from train crews. But it must also be noted that NSR had drastically reduced its workforce of Carmen--the employees who inspect rail cars in yards before trains are sent over the road. A proper inspection could detect problems like worn out wheel bearing boxes and dripping lubricant. As shown by the membership numbers for TWU (which represents NSR Carmen in Delaware, Maryland, Pennsylvania, Ohio, Indiana and Illinois), TWU’s membership was 601 in 2016, 376 in 2019 and is currently 228. See Exhibit 4. Additionally, as demonstrated before the Senate Committee on Commerce, Science and Transportation, NSR has guidelines for Carmen to inspect cars in 60 seconds, when it is not possible to even walk around a car in 60 seconds. Before this Board, TWU explained that its members were being required to work fast, cut-corners, and check brake systems while trains are rolling, that supervisors sometimes removed tags on cars employees found to have defects, and that employees were threatened with discipline if they sent cars to the shop for maintenance or repairs. Proper inspection of cars can prevent derailments and disasters, and can assure better service. NSR’s substantial reduction in the number of Carmen it employs, and the resulting pressure it put on remaining employees to work fast, have contributed to NSR’s service and safety problems.

BNSF

At the hearings in this docket last year, and in a subsequent filing, BNSF acknowledged (in something of an understatement) that its service had not been meeting its customers' expectations. BNSF pledged to make improvements. BNSF said that it would increase the number of active locomotives and was "surging resources" to its shops to get those units ready for active service. Well, service did not materially improve; and there was no meaningful increase in motive power or locomotive mechanics. And BNSF did not tell the Board that as part of its cost-cutting/profit maximization program, the Carrier had closed a number of its locomotive shops, dramatically reduced its locomotive shop mechanic work force and was not actually trying to increase that work force. Nor did BNSF reveal that since September of 2021 it had been limiting inspections of its locomotives to only Federally required inspections.

As a result of those actions, and during the period in which it was supposedly implementing its service recovery plan, BNSF found itself short of mechanics and shops, and ultimately short of locomotives that could be used to serve its customers. By December of 2022, BNSF was substantially behind on federally mandated inspections of its locomotives, and very far behind on general inspections and maintenance necessary to keep its locomotives in good working order. BNSF then announced a plan to contract-out inspection and maintenance work, that is the work of its shopcraft workers by contract and historical practice. That last action led to a lawsuit by the unions that represent BNSF's electrical workers, machinists and sheet metal workers (IBEW, IAM and SMART MD). The Unions assert that BNSF violated the Railway Labor Act by acting in bad faith to render itself incapable of performing the most basic locomotive inspections and repairs, effectively disabling it from complying with its contracts

with the Unions. But the facts in that dispute, set forth in the declarations of officers of the Unions (Exhibit 9)¹, also demonstrate how BNSF has impaired its own ability to provide adequate service to its customers. Those facts are summarized below.

In 2020, BNSF began permanently closing a number of its maintenance shops. BNSF also further reduced its workforce by over 400 locomotive maintenance employees. Even though BNSF's freight volumes had recovered to pre-pandemic volumes by the end of 2020, BNSF did not start recalling employees until late 2021 and early 2022. Many of those employees – some of whom had been furloughed for almost a year or more – declined to return. But BNSF did not immediately begin hiring to bring its staffing to levels sufficient to perform necessary locomotive inspections and maintenance. Across the three crafts, there has been a net loss of approximately 750 workers. BNSF also removed a significant number of locomotives from service and placed them in storage (recently over 1,700 of BNSF's 7,500 locomotives, more than 20% of its fleet, were in storage).

In September 2021, BNSF began deferring the regularly scheduled maintenance of its locomotives, limiting inspections and repairs only to “federal items” (just what is minimally required by federal regulations). Full inspections and maintenance necessary to ensure efficient and effective performance of the locomotives were deferred. As a result, over time, many locomotives were not operating in a state of good repair.

¹ Because of the size of the full declarations with attachments, the Unions are providing only the declarations themselves; the Unions would be glad to submit the full declarations if the Board requests them.

In late December 2022, BNSF announced a plan to implement a “0% overtime initiative” for 2023, in order to cut the mechanical budget by \$51 million dollars, even though BNSF was not only far behind schedule with respect to the inspections and maintenance necessary for effective operations of its locomotives, it was also behind on federally mandated inspections. BNSF requested and received from the Federal Railroad Administration temporary relief from the obligation to perform federal items inspections on hundreds of its locomotives. Then, on January 5, 2023, BNSF notified the Unions that it was going to outsource the full general inspection, maintenance, and repair on around 800 locomotives due to “a high out of service count and back log of scheduled maintenance events”. BNSF’s January 5th notice stated that outsourcing the general inspection, maintenance, and repair work was necessary due to lack of manpower and shop capacity to perform the work within the necessary time frame- even though both were results of BNSF’s cost-cutting program.

Rail carriers need motive power to provide the service that they sell, and their customers purchase: pick-up and delivery of rail cars. BNSF has had difficulty in meeting the needs of its customers after it deferred necessary inspections and maintenance and failed to ensure that it had a workforce sufficient to perform that work. BNSF has presented itself as victim of circumstances– the pandemic related slackening of demand, a more competitive labor market, and the weather; anything but its own actions. However, the difficulties BNSF has had with properly inspecting and maintaining its locomotive fleet, which have contributed to the decline in BNSF’s service to its customers, are a direct result of affirmative decisions made by BNSF in its drive to cut costs and increase profits, without regard for its common carrier obligations.

Accidents and Incidents

Derailments and other accidents and incidents have consequences for rail workers and the communities in which they occur, sometimes, very serious consequences. But they also affect service, as system fluidity and train movements in general are disrupted when there is a derailment or other serious incident, which means pick-ups and deliveries are delayed. In connection with the East Palestine derailment, the Class I's propounded a narrative that, in actuality, derailments have decreased in recent years. But, as with employment data, the derailment data relied on by the carriers does not tell the whole story, because it omits other relevant data. By citing just the number of derailments, the railroads have ignored the fact that they have been operating fewer but longer trains. If the number of train starts is down, then a reduction in the absolute number of derailments does not necessarily demonstrate a true decrease in frequency of derailments or increased safety. When the carriers cite the number of derailments per year, they never provide the number of train starts, or the percentage of derailments per number of train starts. One data source that does control for the longer but fewer trains is the FRA data for accidents/incidents per million train miles. For the Big 4 Class I railroads, the accidents/incidents per million train miles have increased since 2013. For those railroads, the data is as follows:

(FRA Rate of Accidents/Incidents per million train miles - controls for variation in length of trains)

CARRIER	ROAD DERAILMENTS		YARD DERAILMENTS	
	2013	2022	2013	2022
BNSF	7.3	7.9	16.6	18.7
CSXT	9.8	14	16.6	17.2
NSR	11.4	12.8	8.5	21.3
UP	10.5	13.9	12.7	23.1

Derailments are caused by various factors. Among them are policies adopted under the new business model that lead to reduced equipment inspection and maintenance; reduced capital investment; reduced inspection and maintenance of the infrastructure; and human error due to overwork and pressure to work quickly. All of those factors have been heightened by the new business model and the reductions in rail employment. Reversing aspects of the new business model, removing incentives for the sorts of policies adopted under the new business model, and creating disincentives against those sorts of policies will lead to a real reduction in derailments and thus better, more reliable, service.

V. THE RAIL SERVICE PROBLEMS CITED BY SHIPPERS AND THE RAIL UNIONS, THAT HAVE NOW BEEN EXTENSIVELY DOCUMENTED BY THE BOARD, ARE SUBSTANTIALLY A RESULT OF THE CUTS IN THE WORK FORCE AND THE NEW BUSINESS MODEL

The Class I's continue to deny that their service and safety failures have been caused by their dramatic reductions in their workforces and the new business model. In fact, they contend that the causes have nothing to do with the cuts in staffing and the new business model. They blame all sorts of factors that they say are outside their control—like the weather, the pandemic, and changes in work-life preferences of prospective employees. But the evidence in this docket, the emergency service order dockets, the common carrier obligation dockets and publicly available facts, demonstrate that the service failures are the result of affirmative decisions by the Class I's, and that their excuses designed to divert attention from their own actions are meritless.

There is no basis for the railroads' citation of factors outside their control as an excuse for their performance failures. The railroads are fond of saying that they have outdoor plants, and that railroading is an "outdoor sport". But when their service degrades, they blame the outdoors. For example, BNSF asserted that early snows in the northern Midwest in December of 2022

impacted its ability to move trains and to maintain equipment. These excuses should be dismissed as absurd. Early snows in the northern Midwest should not be a surprise. And rails buckling due to heat, and track and right of way being impacted by heavy rains are a consequence of having an outdoor operation. Before there were polar vortices, there were cold fronts. Part of doing what is necessary to provide common carrier service is to prepare for the reasonably foreseeable; which includes having the staffing to cope with reasonably foreseeable weather events. The railroads may note that climate change has resulted in more extreme weather events. But, by now, that should not be a surprise to anyone; the railroads should have been aligning their workforces to the demands of more extreme weather. If weather was the cause of the railroads' service problems, then they were derelict in their duty to prepare for it.

The railroads have also blamed the pandemic for their problems. But other businesses have comeback from the impact of the pandemic. Indeed, the data on carloadings shows that the customers of the railroads have nearly resumed the volume of shipments by rail—and the volume probably would have reached or exceeded pre-pandemic levels if the railroads hadn't disincentivized the use of rail. The railroads should not continue to be heard to rely on the pandemic as an excuse over three years since its start.

As noted above, the railroads also claim that their inability to staff up is a simply a symptom of a national change in people's desires with respect to employment. But, as the Unions demonstrated, this claim is without any merit because Amtrak and the airlines have been able to fill positions, and to even increase their workforces. The employment shortfalls of the Class I's are not something that happened to them; it is simply the result of lack of will.

The Unions submit that it is clear that the service problems of the Class I's are directly

related to the railroads’ deliberate and continued reductions in staffing. Most obviously, service began to decline, and the decline continued, as the Class I’s cut their workforces. A 30% reduction in staffing since 2016, and 19% since 2019, coincided with the degradation in service. While it is often said that correlation is not causation, railroading is ultimately a service industry and here the service declined as the number of people providing and supporting the service was cut. And the Unions have shown how reductions in train and engine service employees who directly serve shippers impedes the railroads’ ability to serve the shippers. The Unions have also shown how reductions in locomotive mechanics reduces the number of locomotives available to move rail cars, and how reductions in engineering forces reduces the speeds at which trains can operate and thus increase delivery times. And to expect 81% of a pre-pandemic workforce to move 95% of pre-pandemic carloads is not just unrealistic, but, irresponsible.²

VI. WHAT IS TO BE DONE

The STB is responsible for administering the Interstate Commerce Act as amended and enforcing commands of the statute, including those related to service standards and the common carrier obligation.

Carriers have bridled at any effort of the government to require better service and to provide remedies for service that falls short of what is necessary for national rail transportation and performance of the common carrier obligation. The Carriers criticize any STB or FRA performance of their statutory functions as a return to a pre-Staggers regulatory regime, and as

² Another principle of determining causation is “Occam’s Razor” –essentially, that when there are competing theories, the simpler one is preferred. Given the direct relationship between the employees who provide and support the service to the service, when service declines in tandem with reduction in the number of employees, it is logical to conclude that the reduction in employment is causal to the decline in service.

unacceptable government interference in the private sector. But no one has advocated a return to pre-Staggers levels of regulation; the Unions and many shippers instead advocate a regulatory regime that comports with the industry that exists today, not the one that existed 40 years ago. And, as Senator Vance noted in the recent Senate Commerce Committee rail safety hearings, the same railroads that loudly protest government action in response to rail safety failures came running to the government to intervene in, and settle, a dispute between those railroads and their employees last December.

Again, it must be recognized that the Class I railroads are not actors in a free and open market. Today's Class I's are duopolies that exist as a result of ICC and STB approvals of consolidations of previously separate carriers; they are immune from many legal challenges and are effectively impervious to market-based challenges and corrections. Additionally, creation or extension of rail lines comes at a significant capital expense. And entry to and exit from the industry requires Board approval or exemption. Furthermore, the merger and control transactions that created every one of today's Class I railroads required ICC or STB approval based on findings that the transactions were consistent with the public interest. In those cases, the railroads contended, and the ICC and STB agreed, that the mega-carriers would provide better and faster service through longer-end-to-end runs, reduced interchanges, and greater system velocity; that efficiencies would be achieved that would result in savings that would be passed along to shippers and the public in general; and that the economies of scale available to larger carriers would allow for increased investment in rail infrastructure. Those considerations outweighed concerns about concentration in the industry; as a result, the Class I's gained a degree of market dominance not permitted in other industries. For the carriers to assert that the Board has no place

in assessing whether the public interest is still being served by the railroads that resulted from those transactions, when the railroads are exploiting their size and lack of competition that flowed from the authorized transactions, is as hypocritical as their objections to the rail safety legislation co-sponsored by Senator Vance. Having reaped the benefits of Board approval of their creation, the railroads are in no position to object to the Board taking steps to ensure that they comply with their statutory obligations, and structure themselves (including as to staffing), to provide the public transportation benefits they represented would flow from Board approval of the transactions that created the mega- carriers and the industry that exists today.

The Unions urge the Board to do all it can to enforce service standards and the common carrier obligation. If the Board feels that it currently lacks sufficient authority to remedy service problems and enforce the common carrier, it should so advise Congress.

Respectfully submitted,

/s/ Richard S. Edelman

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Unions Supplemental Comments

EXHIBIT 1

Headcounts by Occupation Classification

January 2015 through February 2023

Occupation Classification Key

L100 - Executives, Officials, & Staff Assistants

L200 - Professional & Administrative

L300 - Maintenance of Way & Structures

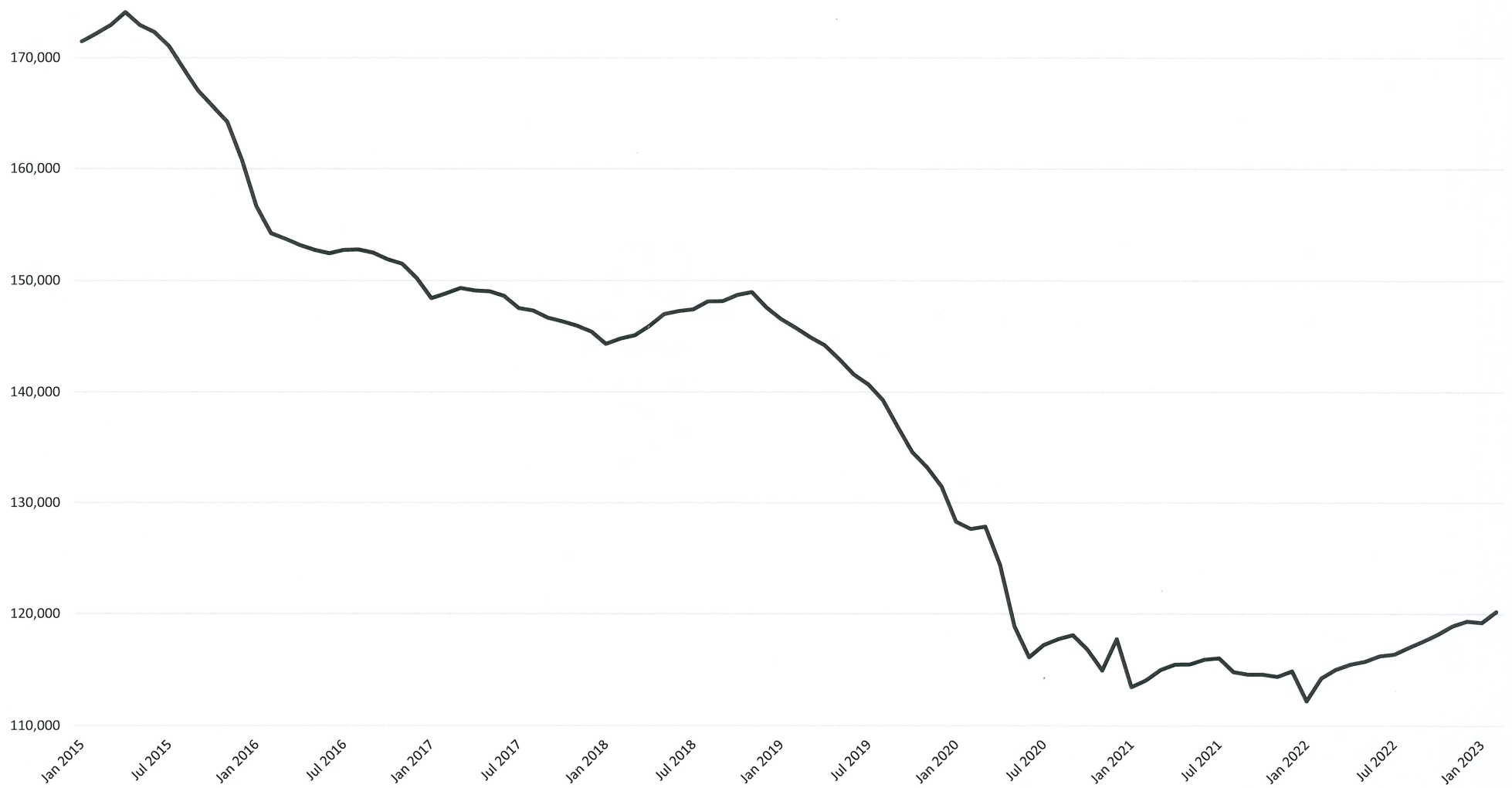
L400 - Maintenance of Equipment & Stores

L500 - Transportation (Other than Train & Engine)

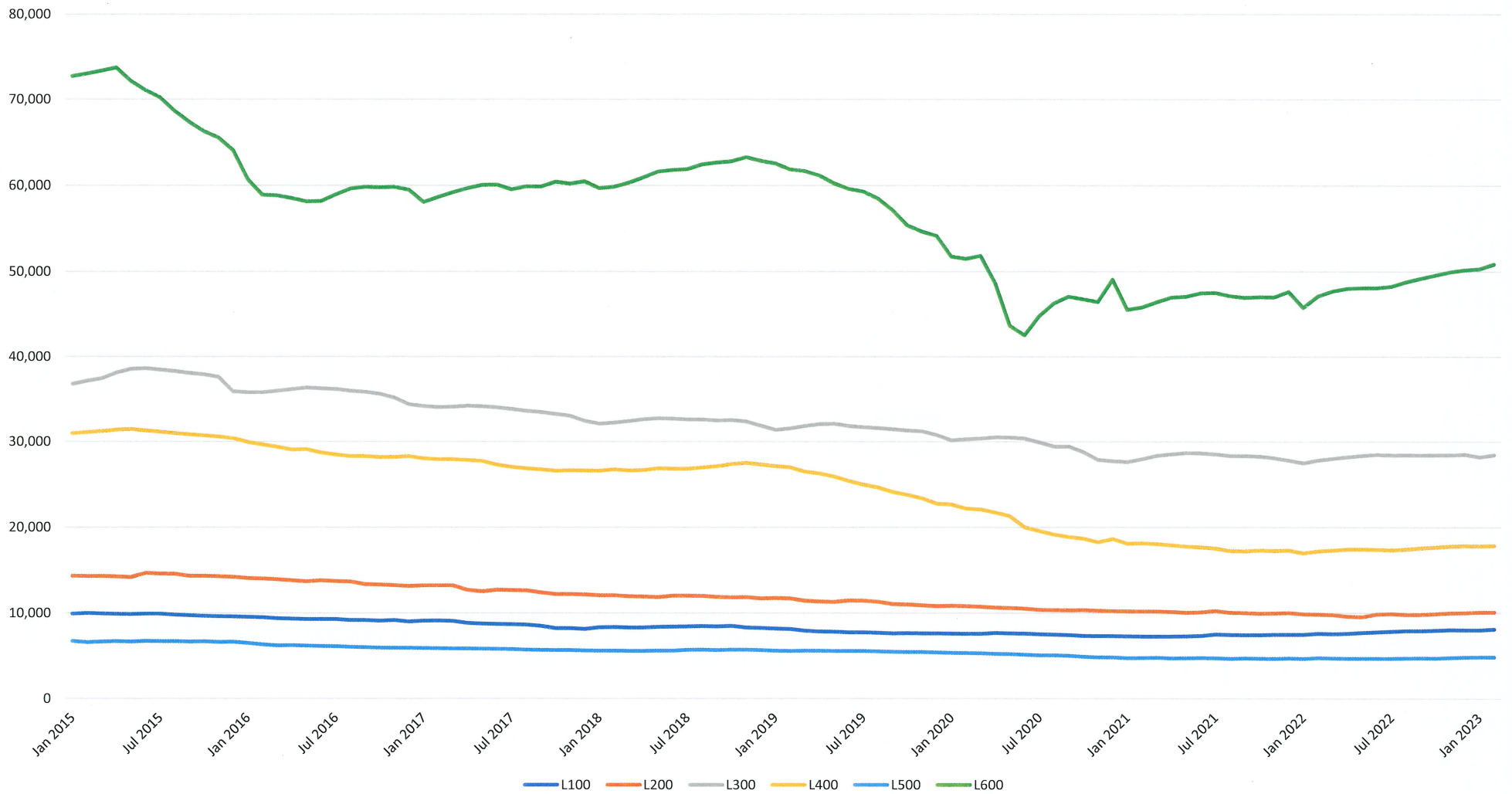
L600 - Transportation (Train & Engine)

Source: Surface Transportation Board M-350 Reports

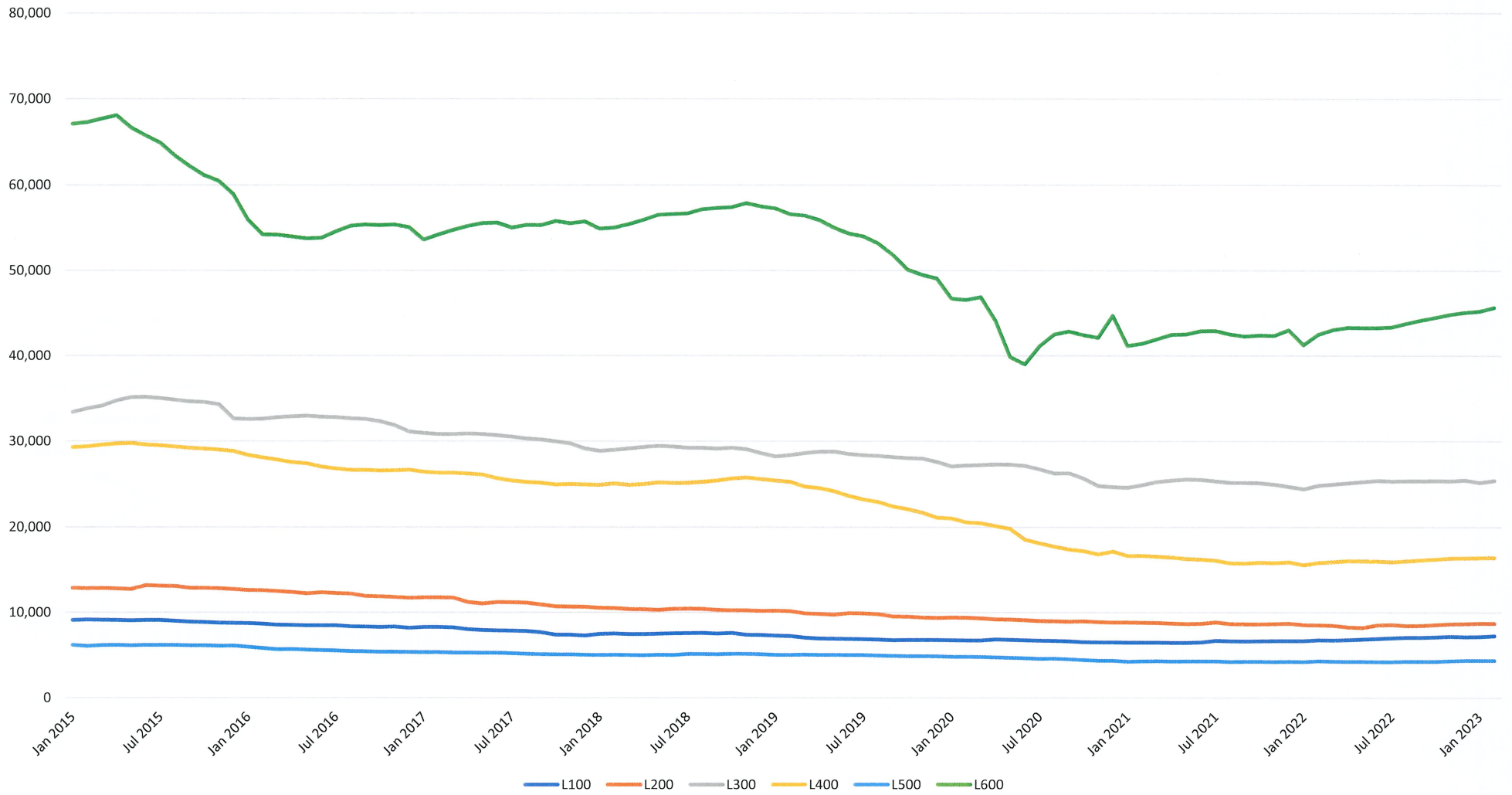
Class I Employment, All Classifications



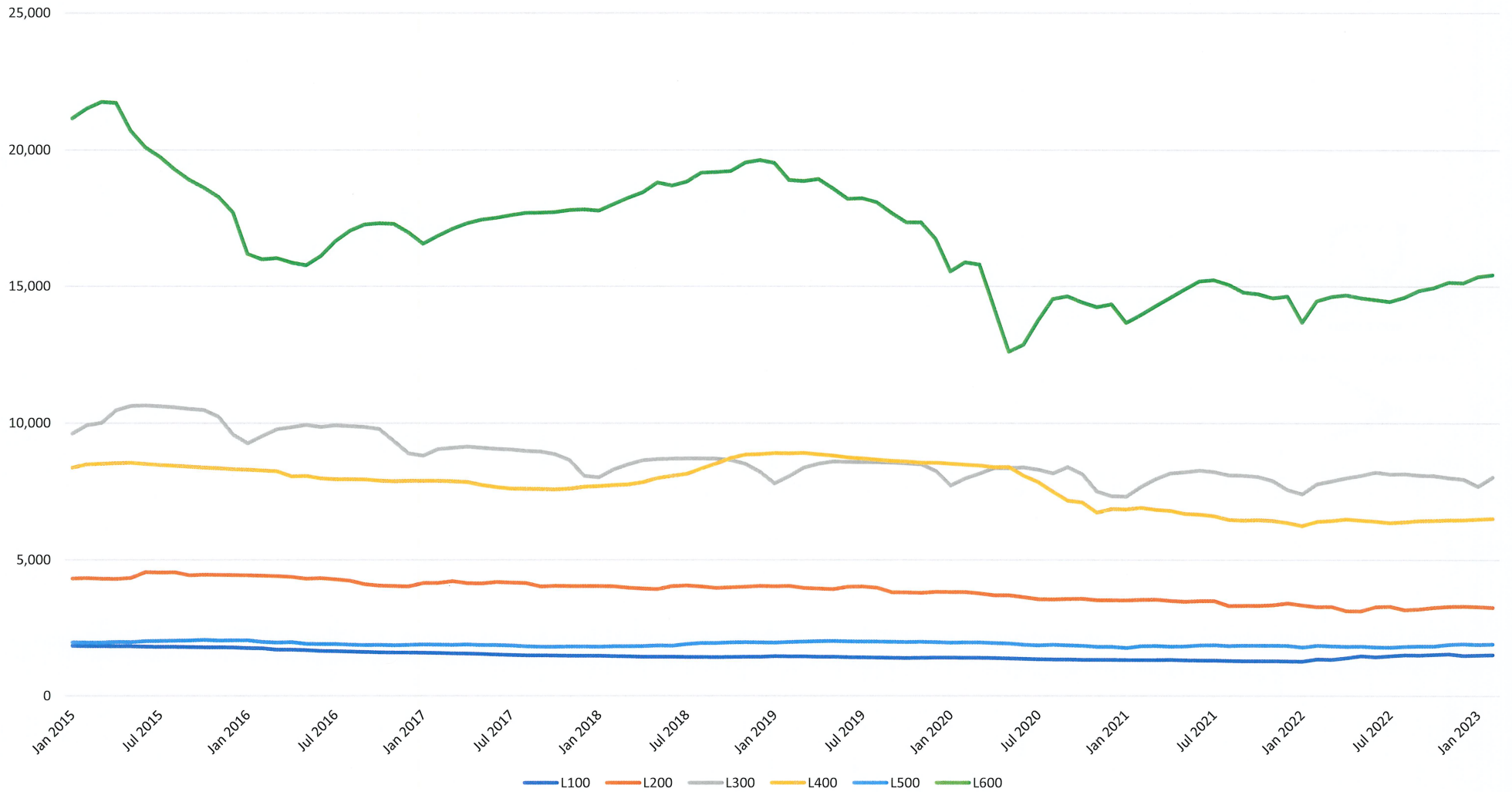
All Class I



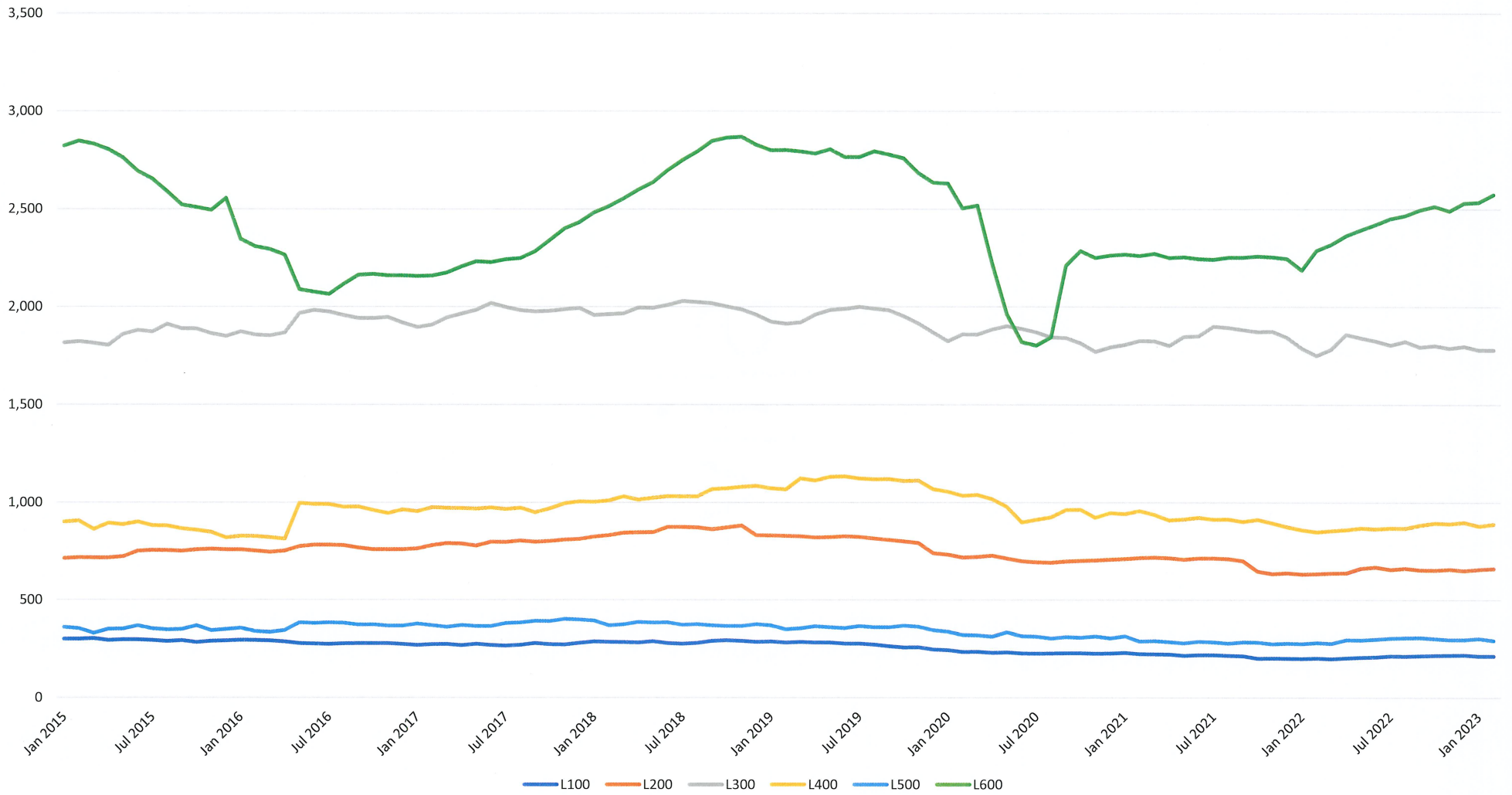
Big Four



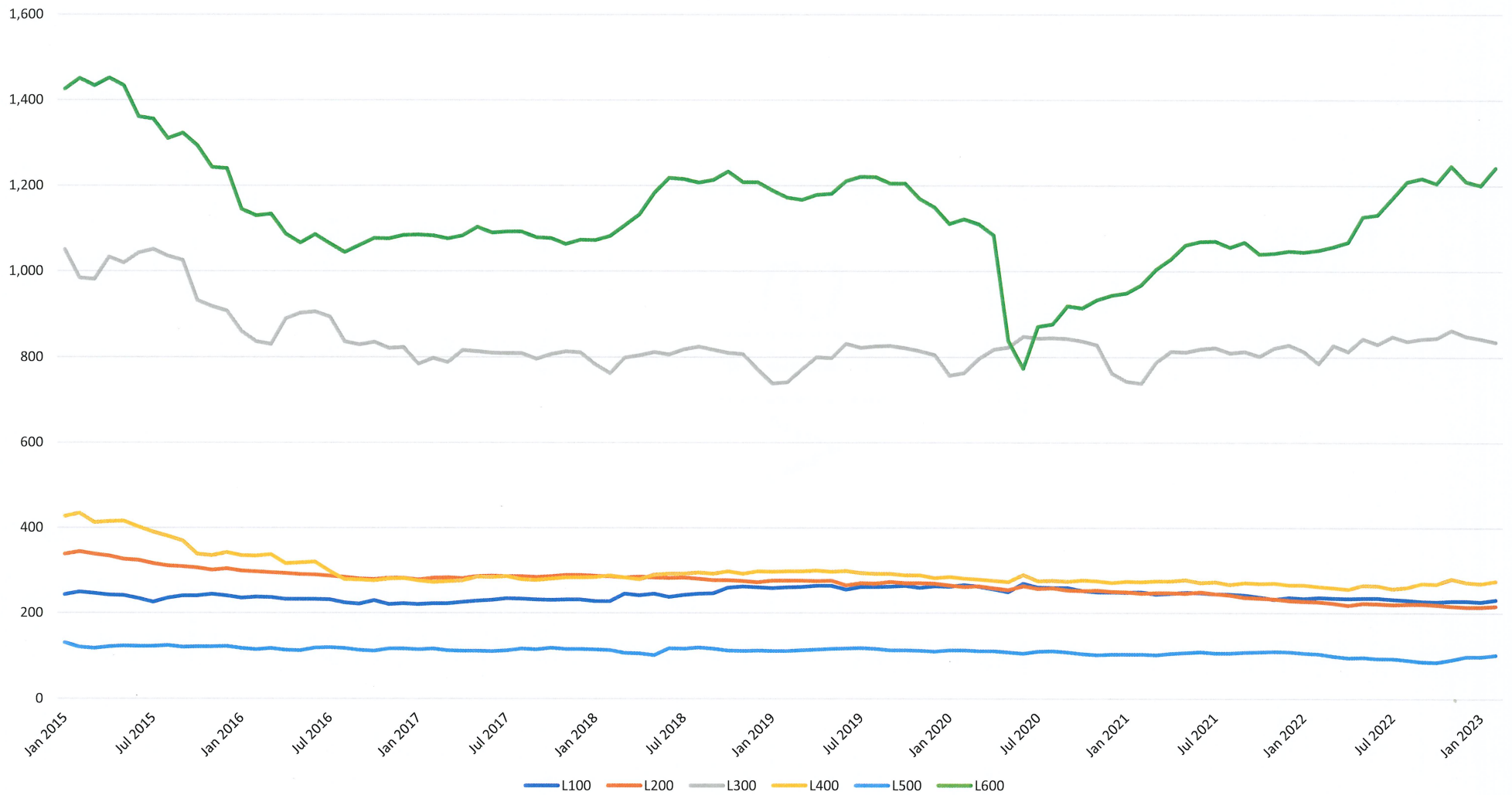
BNSF



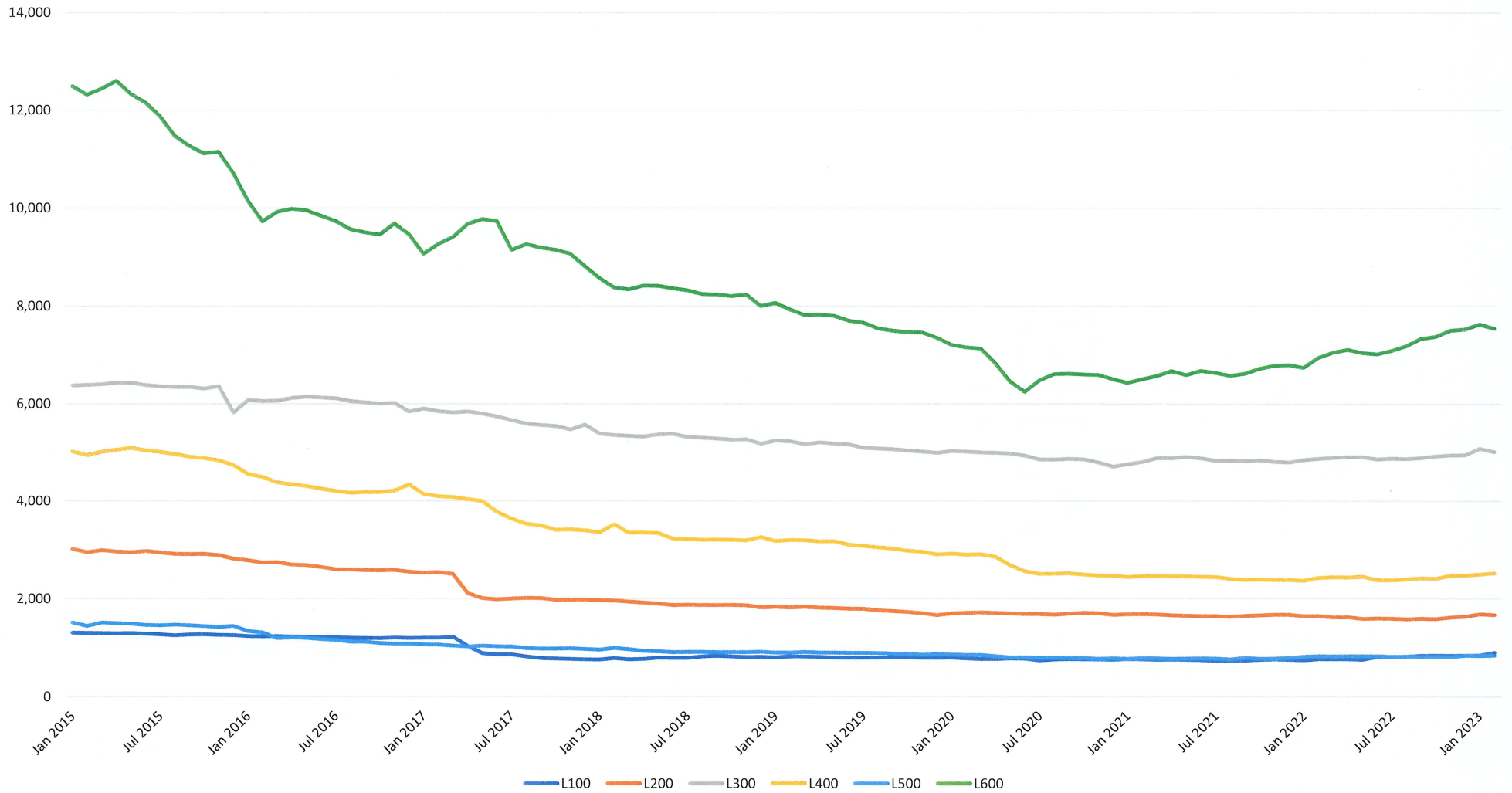
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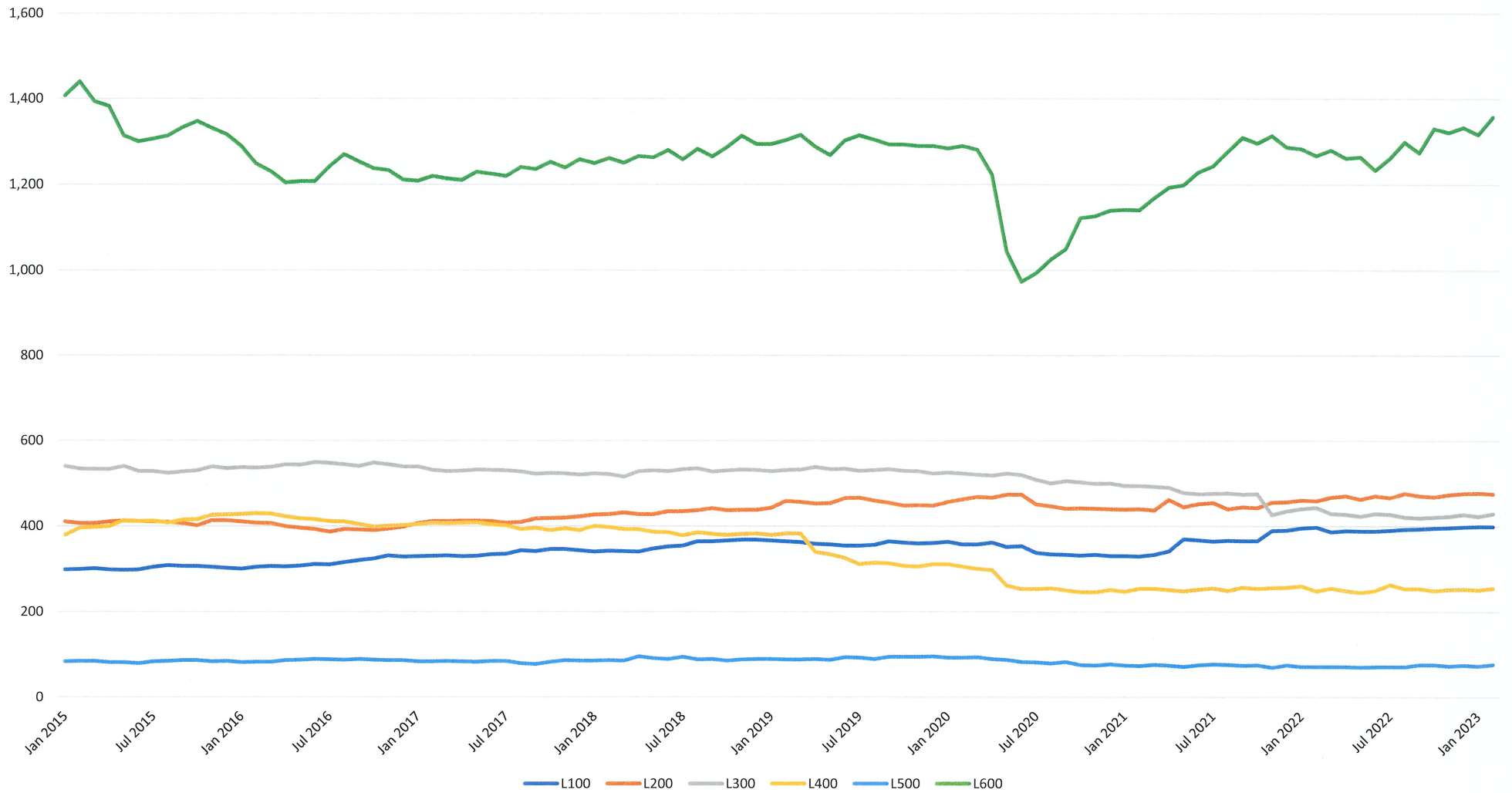
CP-Soo



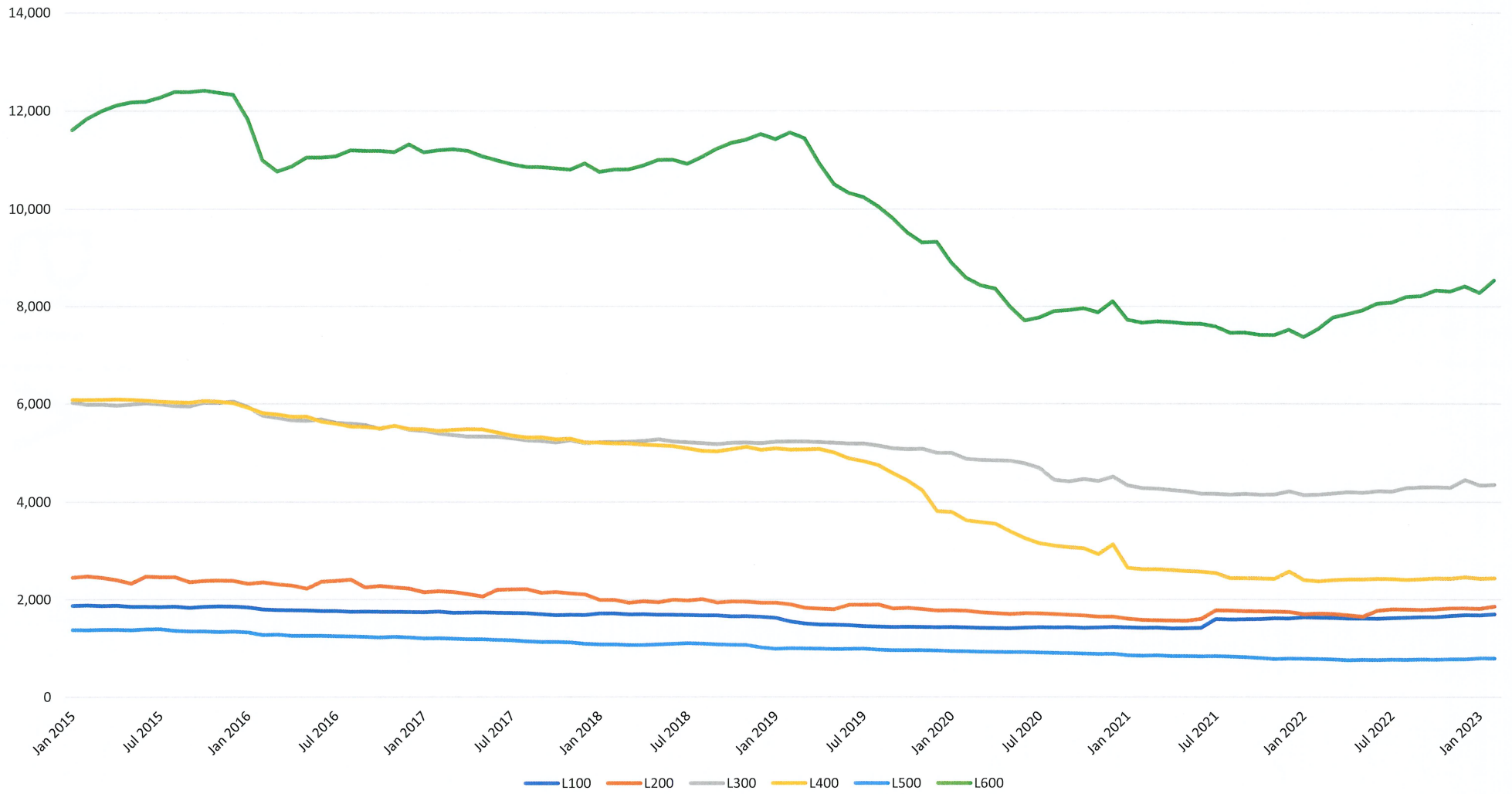
CSX



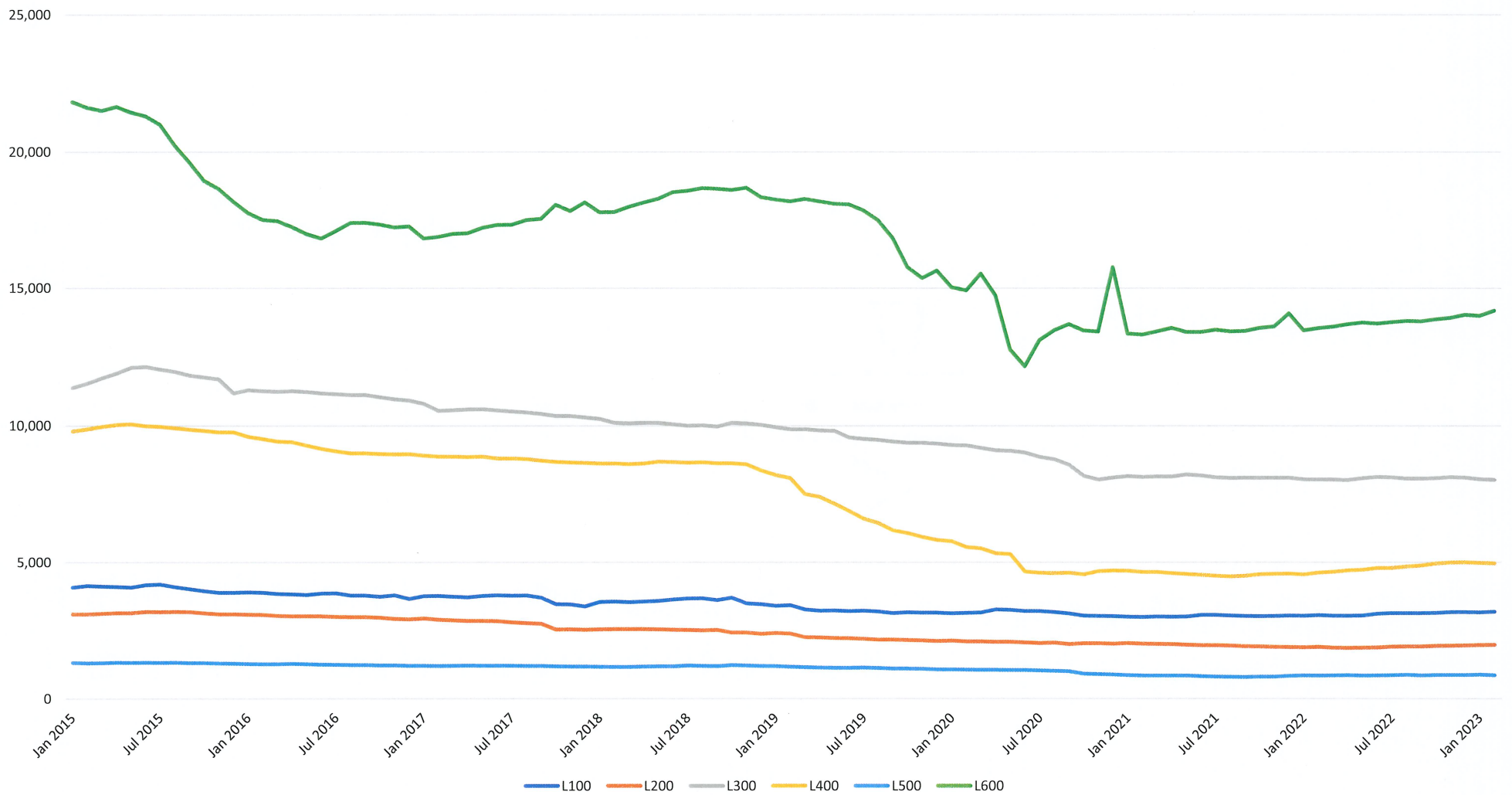
KCS



NS



UP



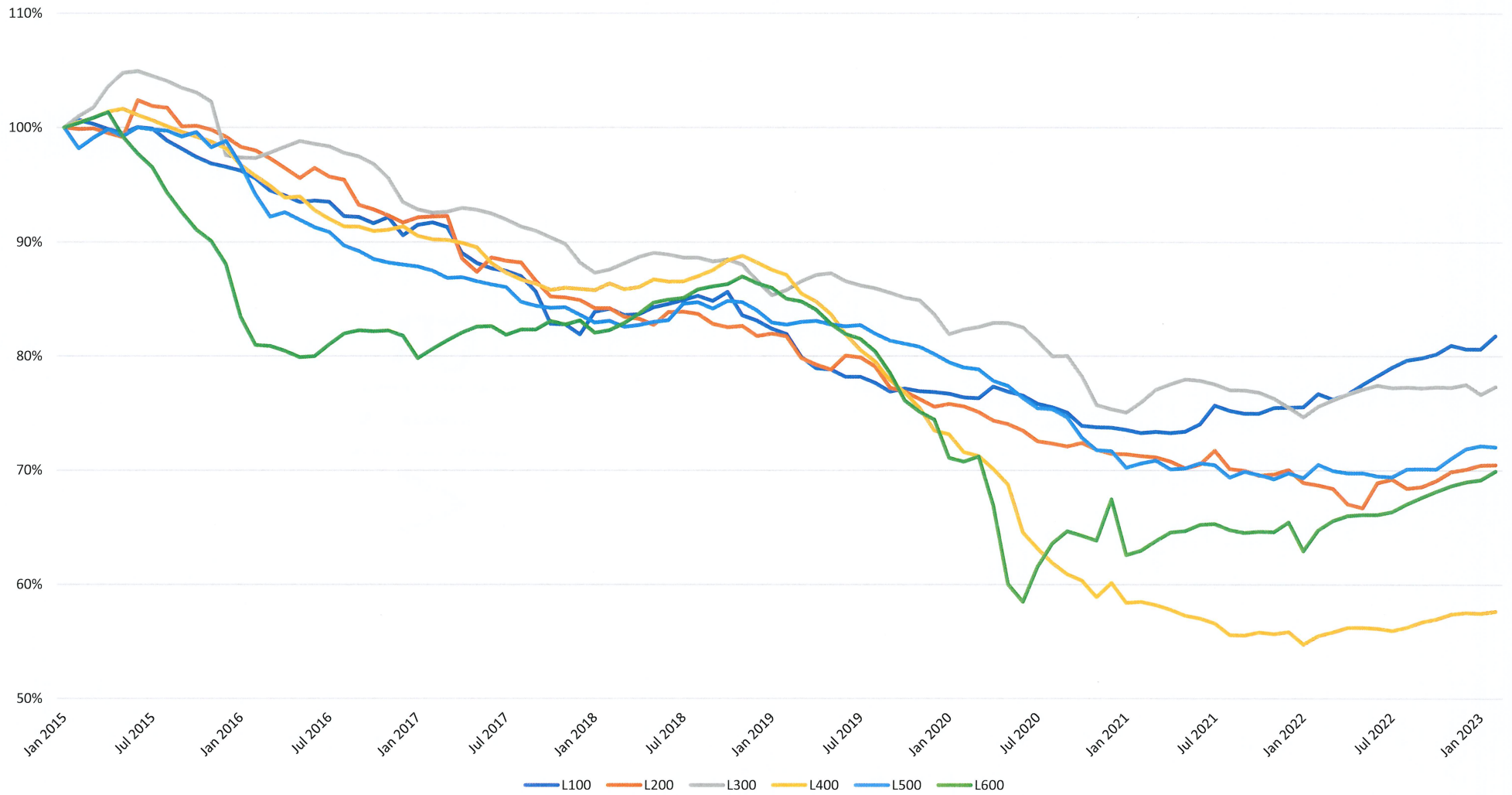
Percentage Change by Occupation Classification

January 2015 = 100%

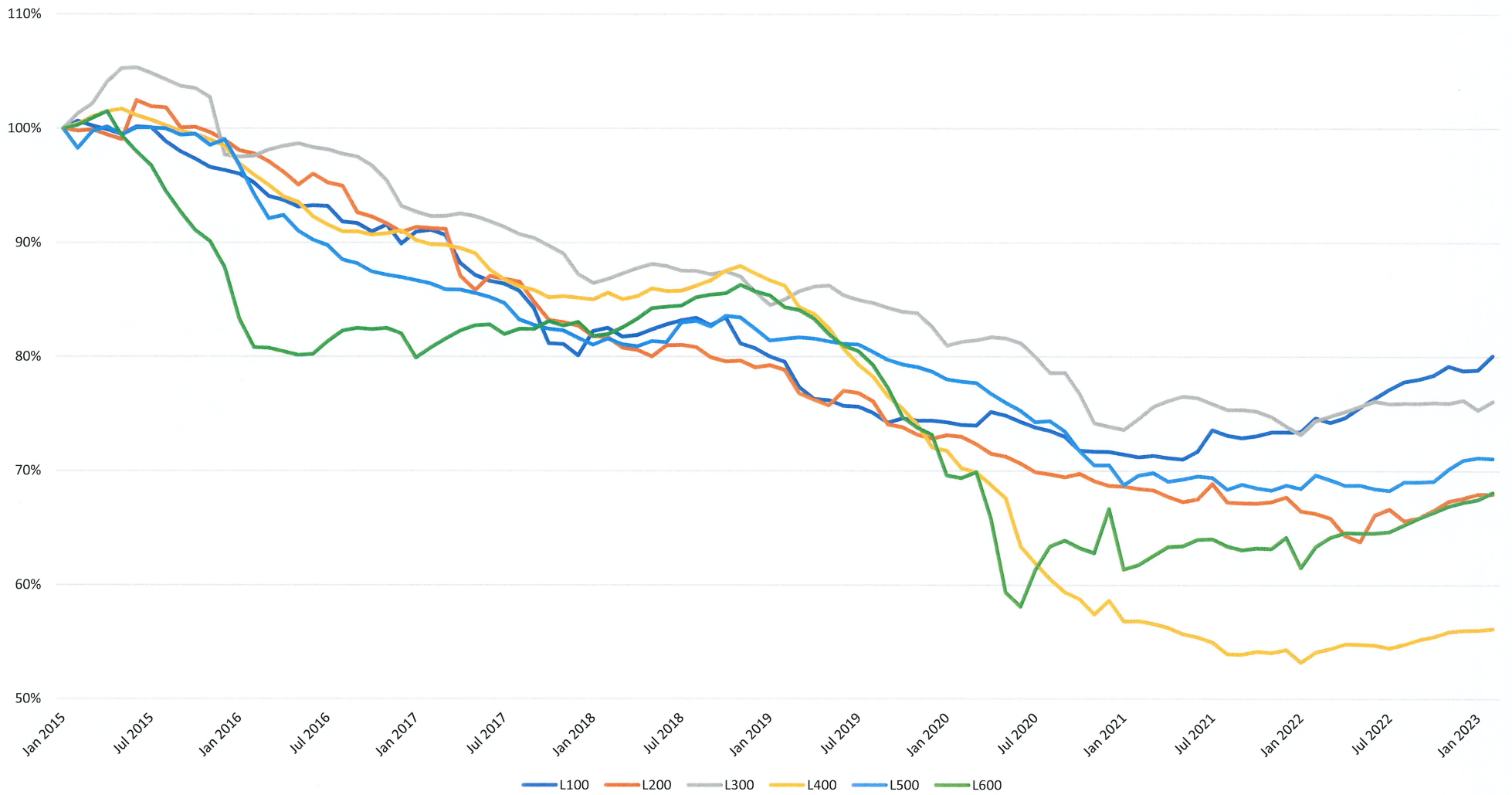
Class I Employment, All Classifications



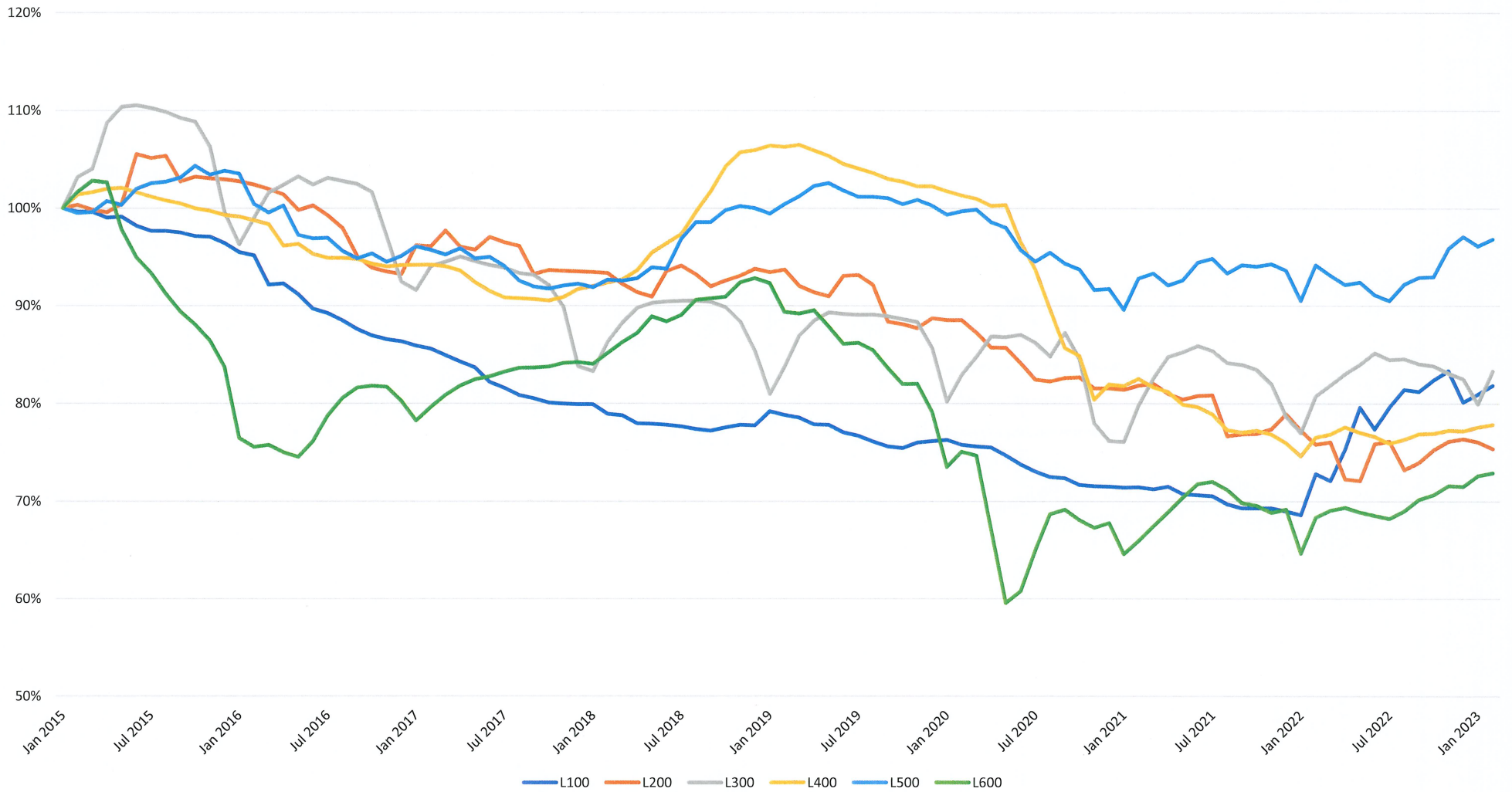
All Class I



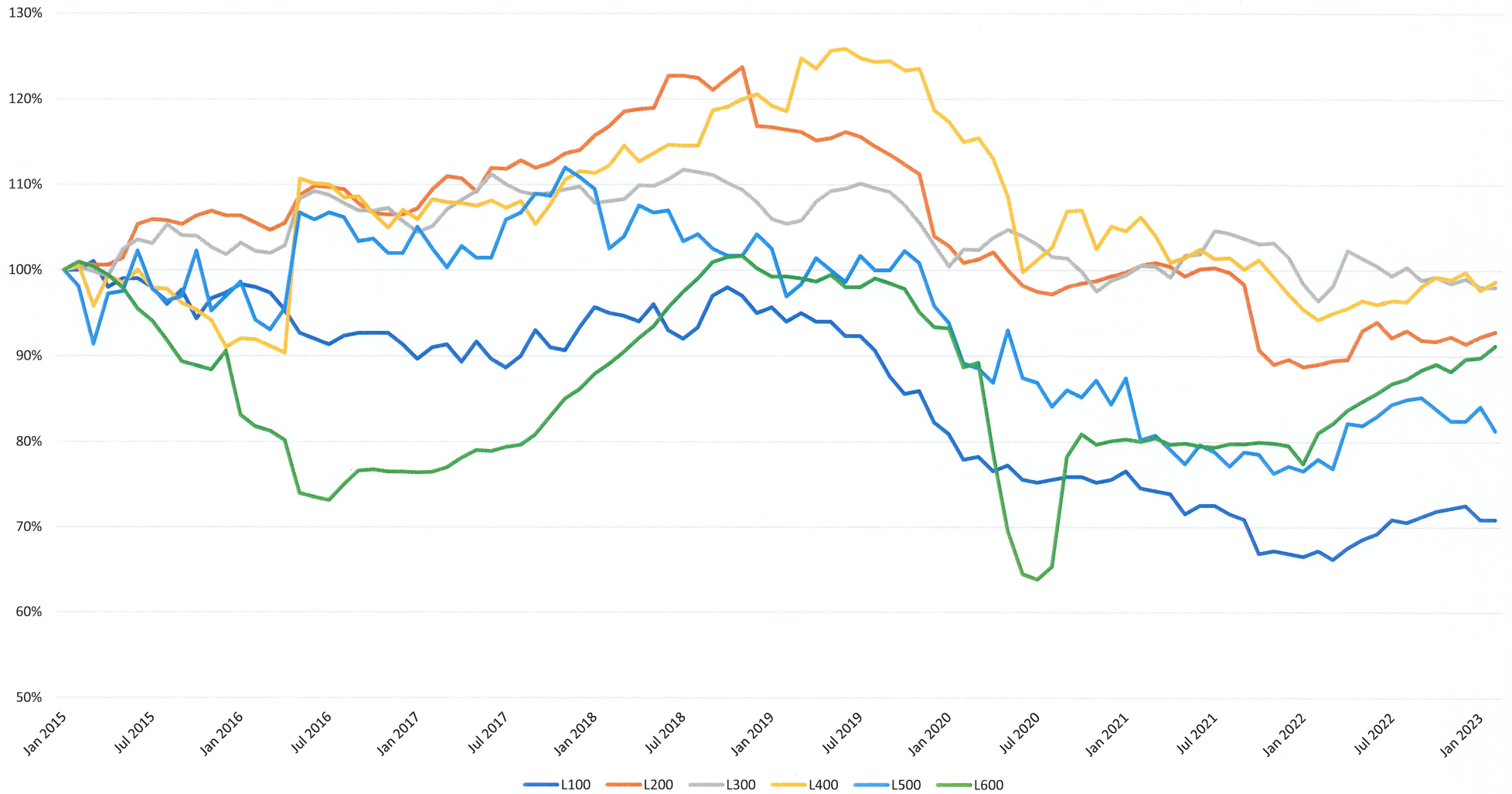
Big Four



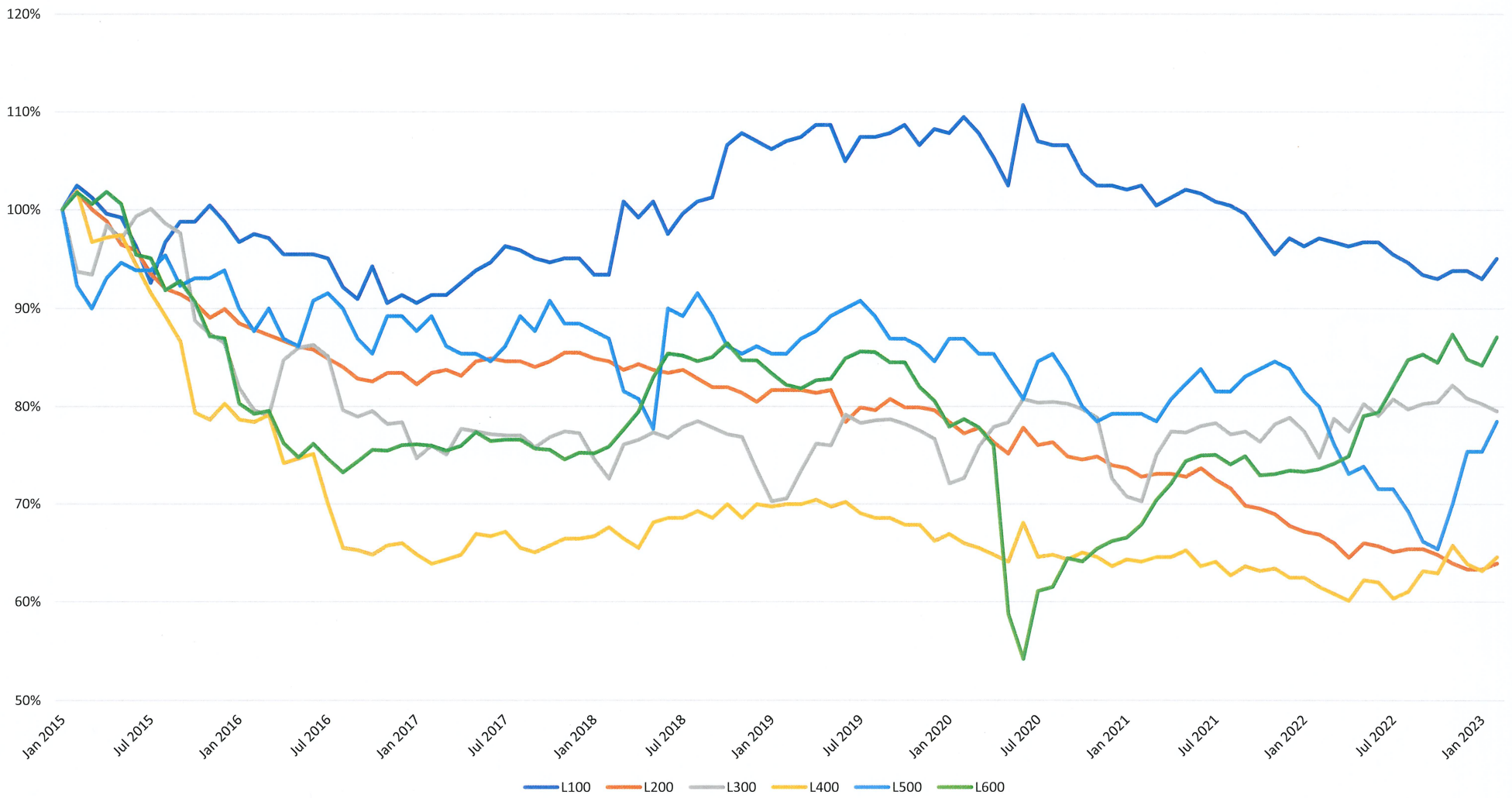
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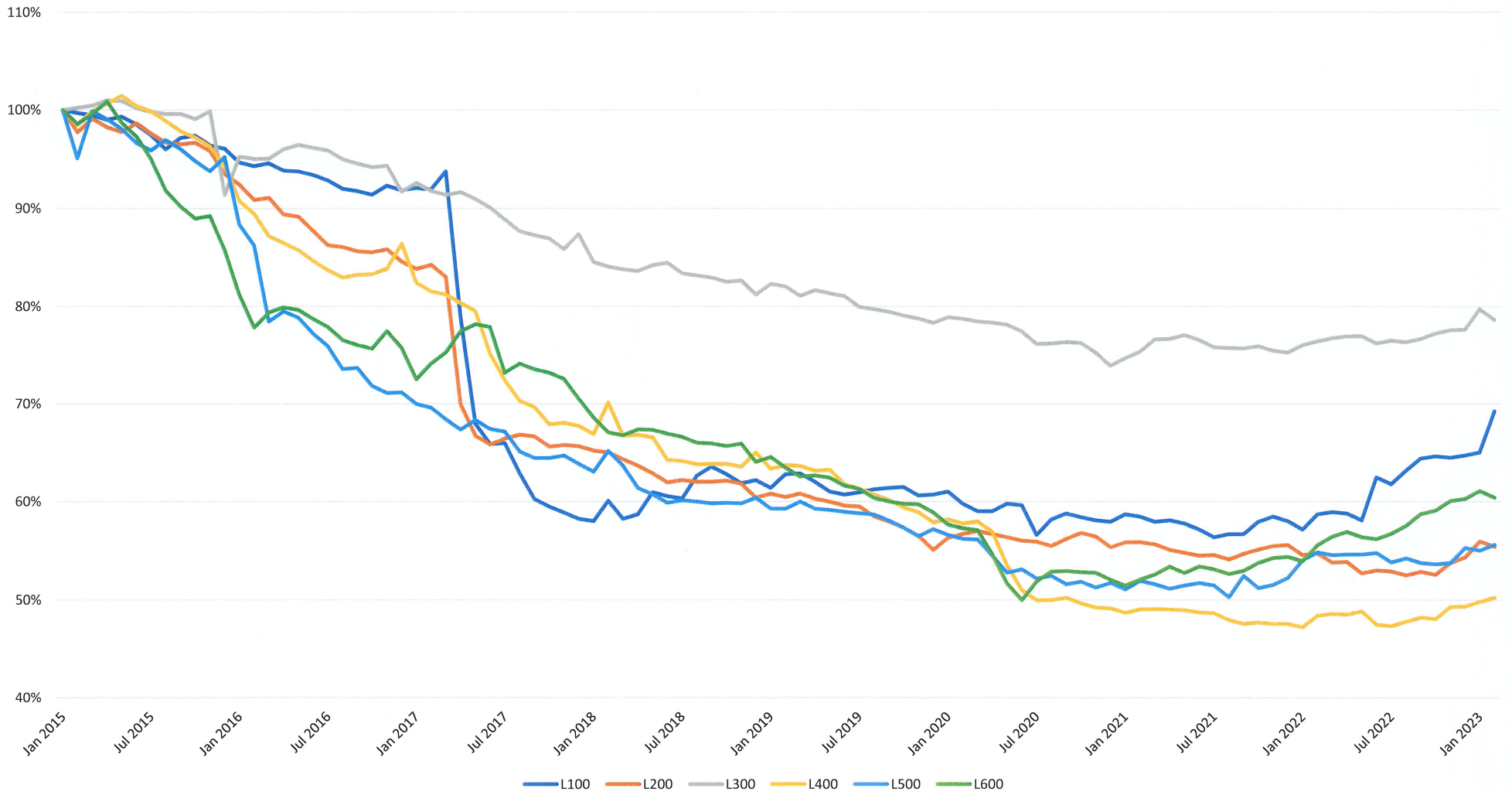
CN-US



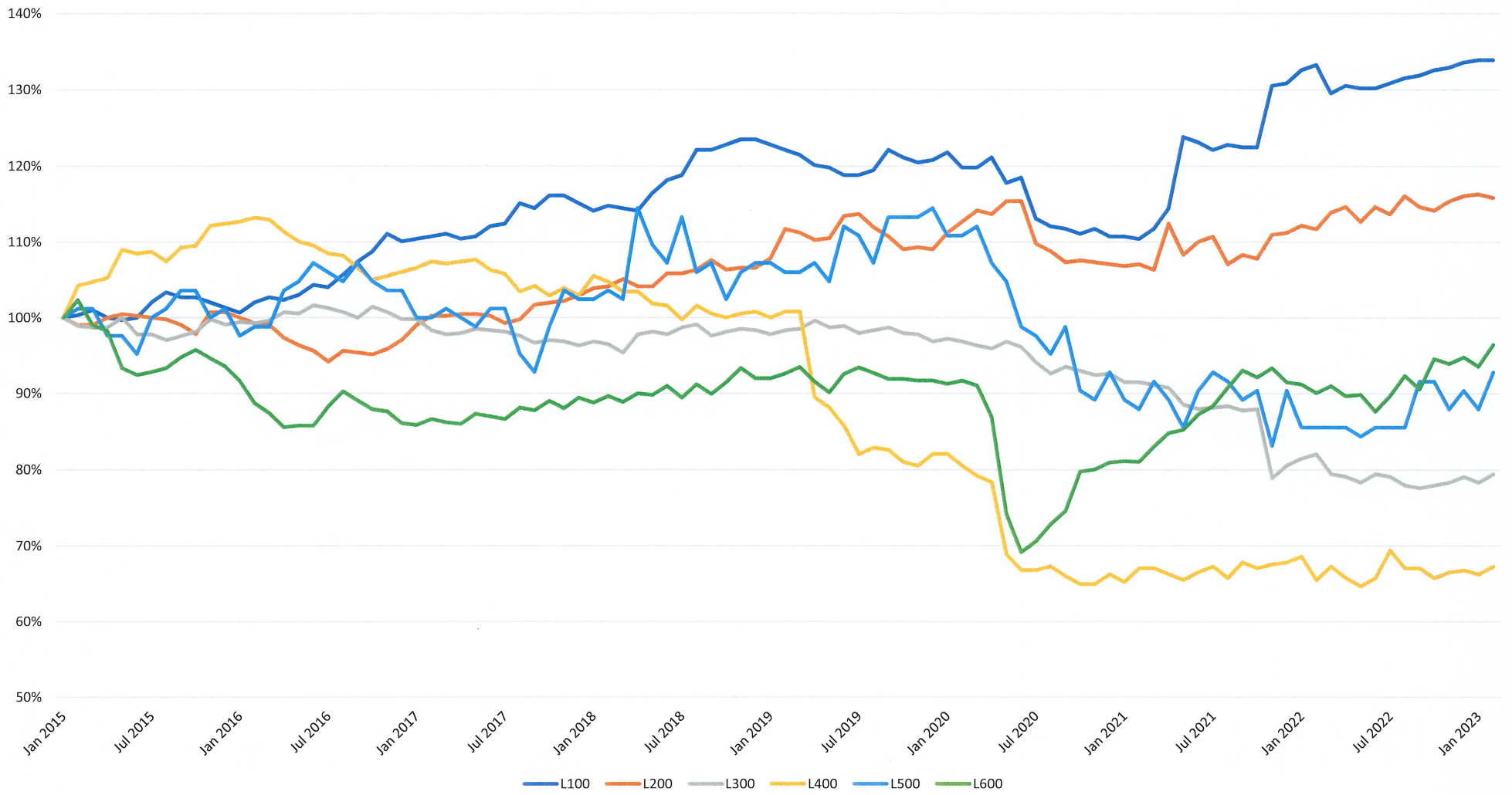
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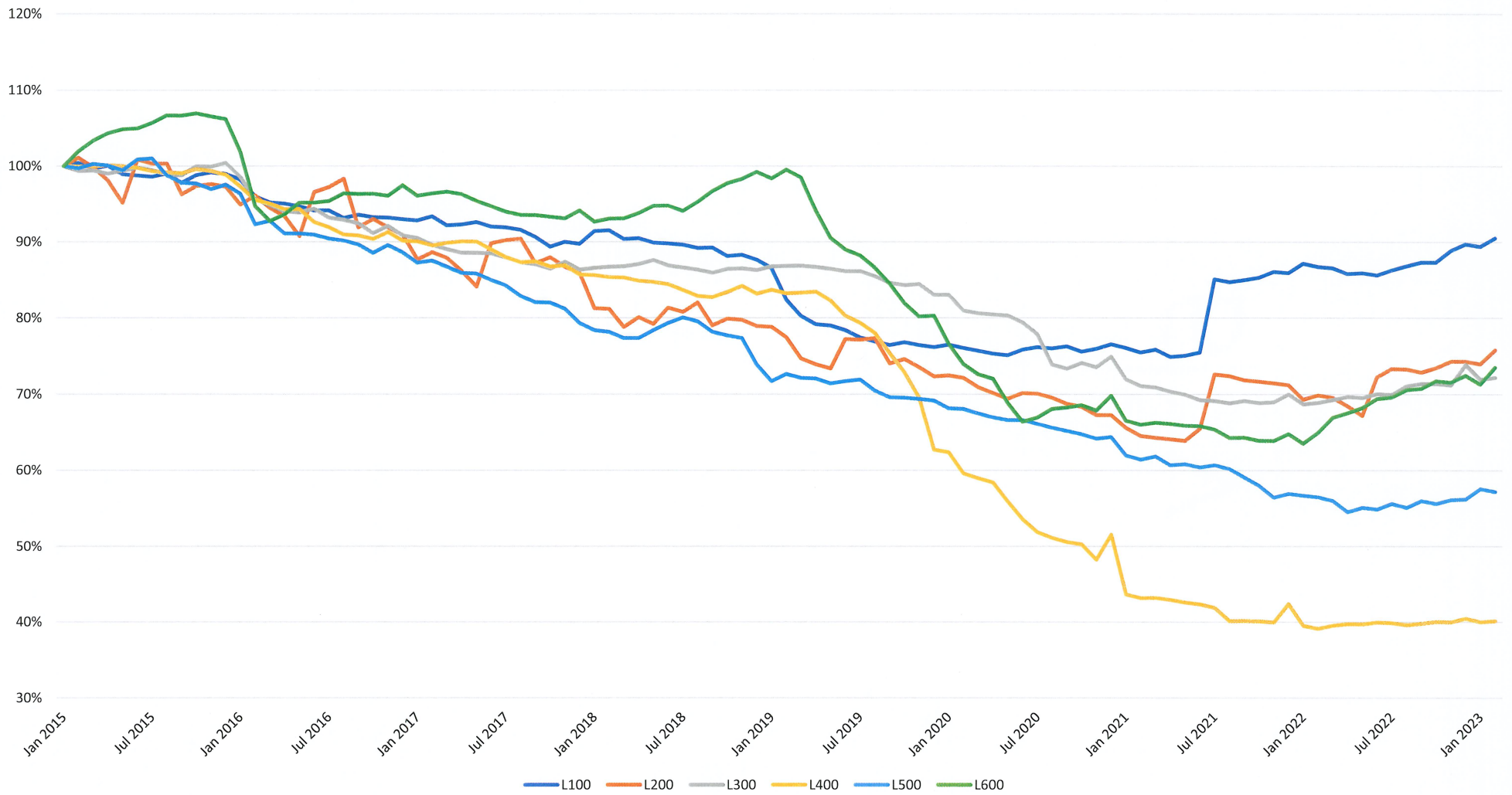
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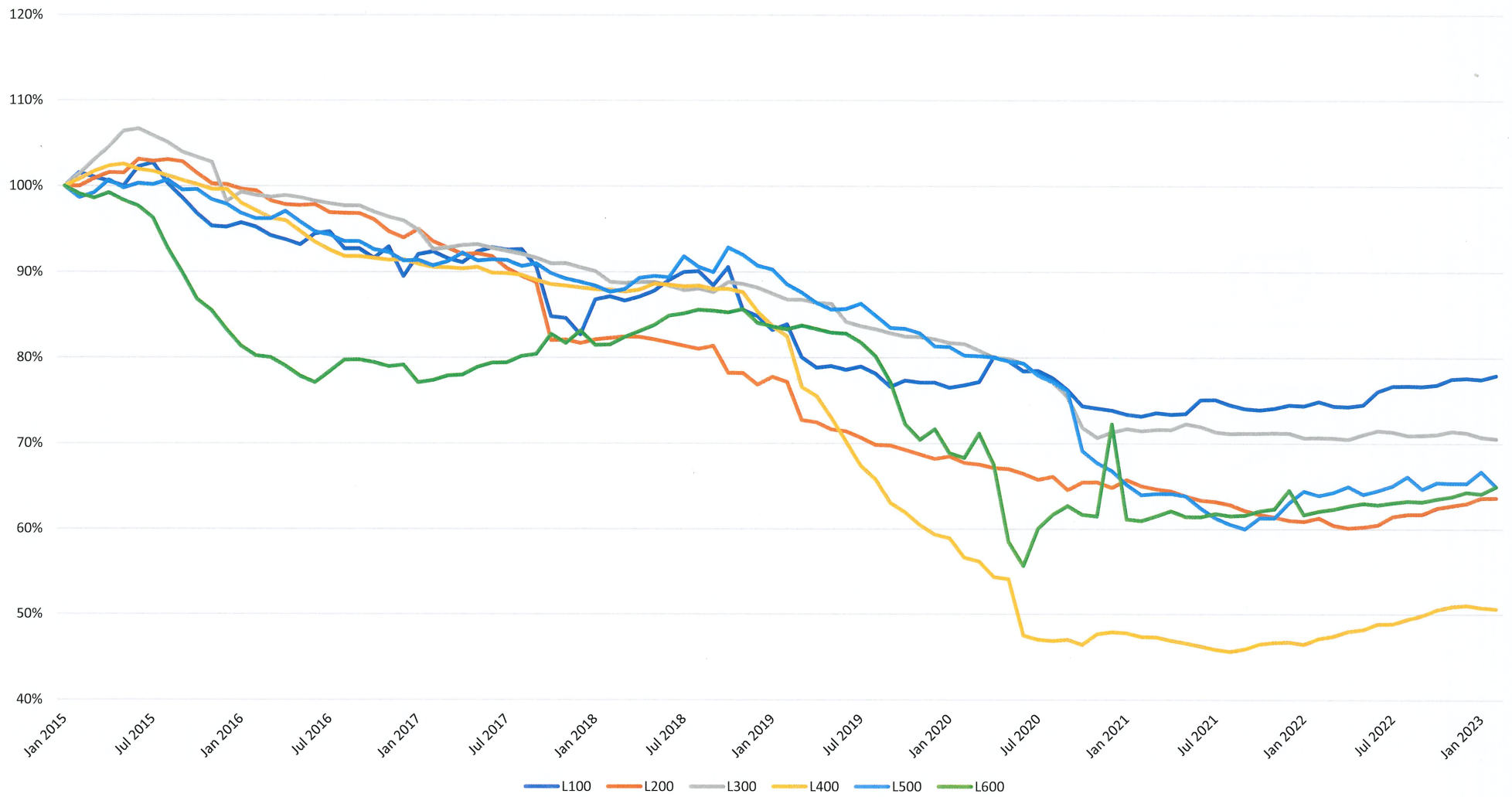
KCS



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COMPILED BY THE BROTHERHOOD OF
LOCOMOTIVE ENGINEERS AND TRAINMEN,
A DIVISION OF THE TEAMSTERS RAIL
CONFERENCE



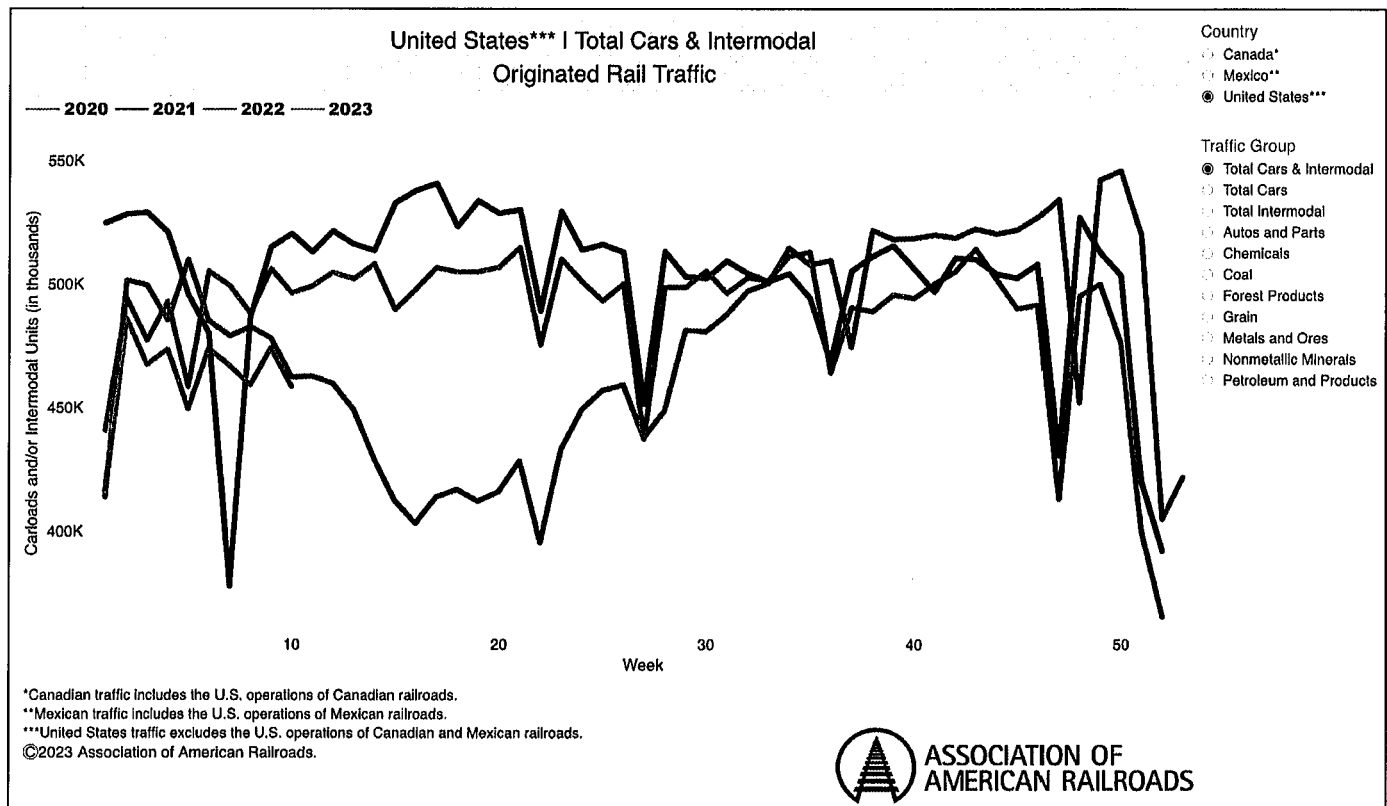
Unions Supplemental Comments

EXHIBIT ☐

12 Months Freight Revenue Ton-Miles (Millions)				
	2019	2020	2021	2022
CSX	199,211	183,815	194,323	193,818
NS	194,045	164,056	178,085	178,629
UP	423,433	384,976	411,273	420,752
BNSF	665,033	588,919	621,451	605,226
Total	1,481,723	1,321,766	1,405,131	1,398,425

12 Months Revenue Carloads (Thousands)				
	2019	2020	2021	2022
CSX	6,220	5,892	6,253	6,218
NS	7,554	6,684	7,032	6,835
UP	8,346	7,753	8,038	8,169
BNSF	10,221	9,481	10,135	9,549
Total	32,341	29,810	31,458	30,771

- These are the two measures of traffic/volume.
- RTM's are down 5.6% from pre-pandemic levels.
- Carloads are down 4.9%
- However, MoW employment is down 11%; shops down 32% and T&E down 19%.



Week	2020	2021	2022	2023
1	413,973	524,895	440,799	416,489
2	501,640	528,400	494,227	486,000
3	499,611	529,053	477,270	467,485
4	485,556	521,017	492,944	473,650
5	509,967	495,790	458,505	449,586
6	485,291	480,356	505,299	473,972
7	479,090	377,905	499,222	466,932
8	482,769	486,776	488,149	459,233
9	478,269	515,050	506,262	474,191
10	462,478	520,491	496,470	458,629
11	462,842	513,046	499,362	
12	460,041	521,537	504,817	
13	449,372	516,274	502,194	
14	429,471	513,714	508,343	
15	412,526	533,023	489,801	
16	403,394	537,982	498,011	
17	414,026	540,933	506,819	
18	417,028	523,422	504,927	
19	412,331	533,908	505,120	
20	416,209	528,787	506,976	
21	428,546	530,262	514,934	
22	395,544	489,235	475,513	
23	433,275	529,595	510,295	
24	449,298	514,007	501,207	
25	457,160	516,250	493,374	
26	459,401	513,040	500,285	
27	438,045	451,709	437,600	
28	449,033	513,384	498,899	
29	481,505	503,174	498,901	
30	481,005	502,423	505,409	
31	487,877	509,626	496,526	
32	497,436	504,479	502,775	
33	500,511	501,178	501,548	
34	514,840	504,391	511,574	
35	508,108	494,652	513,087	
36	509,847	468,694	464,261	
37	474,678	505,552	490,654	
38	522,038	511,514	489,111	
39	518,406	515,812	495,868	
40	518,699	506,451	494,413	
41	520,206	497,029	500,304	
42	518,983	510,752	505,322	
43	522,659	510,238	514,457	
44	520,570	504,359	502,106	
45	522,242	502,696	490,350	
46	527,292	508,309	491,794	
47	534,606	430,879	413,305	
48	452,395	527,328	495,472	
49	542,601	513,220	500,310	
50	546,206	503,784	476,232	
51	520,349	420,622	400,289	
52	405,205	392,341	365,553	
53	422,065			

Employment (Actual)					
Group		2019	2020	2021	2022
CSX	MoW	5,105	4,903	4,829	4,883
	Shops	3,087	2,649	2,432	2,420
	T&E	7,645	6,622	6,630	7,161
NS	MoW	5,160	4,680	4,203	4,244
	Shops	4,739	3,307	2,542	2,420
	T&E	10,372	8,126	7,576	8,004
UP	MoW	9,647	8,819	8,163	8,099
	Shops	6,881	5,010	4,585	4,802
	T&E	17,123	13,636	13,318	13,648
BNSF	MoW	8,404	8,063	7,954	7,981
	Shops	8,730	7,788	6,621	6,405
	T&E	18,206	14,401	14,629	14,623
Total	MoW	28,316	26,465	25,149	25,207
	Shops	23,437	18,754	16,180	16,047
	T&E	53,346	42,785	42,153	43,436

Source: STB

Employees Per Carload					
Group		2019	2020	2021	2022
CSX	MoW	1,218	1,202	1,295	1,273
	Shops	2,015	2,224	2,571	2,569
	T&E	814	890	943	868
NS	MoW	1,464	1,428	1,673	1,611
	Shops	1,594	2,021	2,766	2,824
	T&E	728	823	928	854
UP	MoW	865	879	985	1,009
	Shops	1,213	1,548	1,753	1,701
	T&E	487	569	604	599
BNSF	MoW	1,216	1,176	1,274	1,196
	Shops	1,171	1,217	1,531	1,491
	T&E	561	658	693	653
Total	MoW	1,142	1,126	1,251	1,221
	Shops	1,380	1,590	1,944	1,918
	T&E	606	697	746	708

Source: 10-K's

- With traffic rebounding from the pandemic effects and the railroads continued struggle to increase employment, the carloads per employee have climbed.

THE LABOR BUREAU, INC.



Unions Supplemental Comments Ex. 2

Previous Year
Prev Prev Year

		Group Total <i>CLASS I</i>						Total
*** Compilations include revisions from previous months		L 100	L200	L 300	L 400	L 500	L 600	
Employees By Company and Job Description	Date	Executives, officials, and staff assistants	Professional and administrative	Maintenance of way and structures	Maintenance of equipment and stores	Transportation (other than train and engine)	Transportation (train and engine)	
September 2016	Sep-16	9,189	13,415	35,887	28,292	6,004	59,831	152,618
October 2016	Oct-16	9,140	13,360	35,641	28,177	5,959	59,764	152,041
November 2016	Nov-16	9,193	13,281	35,187	28,209	5,939	59,822	151,631
December 2016	Dec-16	9,035	13,190	34,412	28,305	5,927	59,481	150,350
January 2017	Jan-17	9,129	13,256	34,182	28,042	5,915	58,043	148,567
February 2017	Feb-17	9,150	13,274	34,073	27,949	5,892	58,650	148,988
March 2017	Mar-17	9,110	13,288	34,106	27,934	5,852	59,191	149,481
April 2017	Apr-17	8,885	12,753	34,224	27,859	5,857	59,688	149,266
May 2017	May-17	8,799	12,591	34,164	27,732	5,833	60,072	149,191
June 2017	Jun-17	8,760	12,762	34,048	27,309	5,814	60,098	148,789
July 2017	Jul-17	8,738	12,722	33,855	27,045	5,799	59,544	147,703
August 2017	Aug-17	8,692	12,697	33,626	26,864	5,712	59,886	147,477
September 2017	Sep-17	8,560	12,467	33,490	26,750	5,687	59,882	146,836
October 2017	Oct-17	8,280	12,272	33,276	26,576	5,675	60,425	146,504
November 2017	Nov-17	8,275	12,257	33,065	26,640	5,679	60,200	146,116
December 2017	Dec-17	8,187	12,223	32,463	26,608	5,634	60,466	145,579
January 2018	Jan-18	8,392	12,195	32,141	26,571	5,590	59,684	144,573
February 2018	Feb-18	8,421	12,199	32,244	26,753	5,600	59,847	145,064
March 2018	Mar-18	8,362	12,097	32,439	26,597	5,564	60,297	145,356
April 2018	Apr-18	8,358	12,027	32,650	26,653	5,573	60,891	146,152
May 2018	May-18	8,416	11,948	32,776	26,865	5,591	61,593	147,189
June 2018	Jun-18	8,447	12,117	32,723	26,809	5,601	61,787	147,484
July 2018	Jul-18	8,478	12,124	32,623	26,811	5,698	61,891	147,625
August 2018	Aug-18	8,518	12,094	32,618	26,957	5,707	62,442	148,336
September 2018	Sep-18	8,470	11,969	32,499	27,119	5,669	62,641	148,367
October 2018	Oct-18	8,555	11,927	32,563	27,381	5,714	62,780	148,920
November 2018	Nov-18	8,352	11,946	32,397	27,505	5,707	63,280	149,187
December 2018	Dec-18	8,299	11,823	31,882	27,325	5,658	62,950	147,937
January 2019	Jan-19	8,260	11,818	31,417	27,129	5,587	62,545	146,756
February 2019	Feb-19	8,268	11,810	31,592	26,991	5,575	61,848	146,082
March 2019	Mar-19	8,075	11,568	31,874	26,489	5,590	61,673	145,269
April 2019	Apr-19	7,976	11,489	32,082	26,264	5,596	61,139	144,546
May 2019	May-19	7,970	11,424	32,130	25,919	5,576	60,256	143,275
June 2019	Jun-19	7,909	11,593	31,876	25,376	5,566	59,597	141,917
July 2019	Jul-19	7,913	11,566	31,739	24,946	5,573	59,291	141,028
August 2019	Aug-19	7,866	11,459	31,641	24,638	5,523	58,491	139,618
September 2019	Sep-19	7,778	11,197	31,496	24,128	5,485	57,115	137,199
October 2019	Oct-19	7,800	11,147	31,342	23,788	5,468	55,361	134,906
November 2019	Nov-19	7,777	11,055	31,252	23,377	5,448	54,636	133,545
December 2019	Dec-19	7,771	10,955	30,790	22,755	5,405	54,133	131,809
January 2020	Jan-20	7,764	10,983	30,161	22,652	5,355	51,709	128,624
February 2020	Feb-20	7,733	10,945	30,315	22,175	5,326	51,451	127,945
March 2020	Mar-20	7,722	10,882	30,395	22,067	5,316	51,801	128,183
April 2020	Apr-20	7,823	10,769	30,529	21,716	5,247	48,658	124,742
May 2020	May-20	7,785	10,731	30,512	21,294	5,216	43,660	119,198
June 2020	Jun-20	7,749	10,648	30,377	19,990	5,145	42,536	116,445
July 2020	Jul-20	7,681	10,512	29,938	19,554	5,085	44,772	117,542
August 2020	Aug-20	7,647	10,484	29,441	19,170	5,079	46,253	118,074
September 2020	Sep-20	7,601	10,451	29,453	18,862	5,031	47,037	118,435
October 2020	Oct-20	7,483	10,500	28,791	18,685	4,912	46,749	117,120
November 2020	Nov-20	7,473	10,420	27,869	18,247	4,840	46,434	115,283
December 2020	Dec-20	7,472	10,366	27,727	18,627	4,832	49,069	118,093
January 2021	Jan-21	7,454	10,373	27,628	18,089	4,734	45,521	113,799
February 2021	Feb-21	7,431	10,369	27,961	18,117	4,759	45,794	114,431
March 2021	Mar-21	7,445	10,349	28,367	18,023	4,776	46,404	115,364
April 2021	Apr-21	7,433	10,299	28,544	17,898	4,724	46,951	115,849
May 2021	May-21	7,454	10,218	28,702	17,736	4,730	47,044	115,884
June 2021	Jun-21	7,525	10,261	28,659	17,663	4,760	47,444	116,312
July 2021	Jul-21	7,506	10,264	28,525	17,522	4,740	47,498	116,055
August 2021	Aug-21	7,460	10,033	28,345	17,208	4,668	47,109	114,823
September 2021	Sep-21	7,436	10,013	28,334	17,198	4,702	46,927	114,610
October 2021	Oct-21	7,435	9,952	28,264	17,278	4,683	47,000	114,612
November 2021	Nov-21	7,485	9,968	28,072	17,234	4,658	46,978	114,395
December 2021	Dec-21	7,489	10,021	27,782	17,292	4,694	47,611	114,889
January 2022	Jan-22	7,492	9,862	27,470	16,950	4,686	45,767	112,207
February 2022	Feb-22	7,608	9,832	27,812	17,186	4,743	47,096	114,277
March 2022	Mar-22	7,558	9,788	28,017	17,285	4,707	47,697	115,052
April 2022	Apr-22	7,603	9,592	28,207	17,406	4,693	48,009	115,510
May 2022	May-22	7,687	9,543	28,365	17,407	4,693	48,076	115,771
June 2022	Jun-22	7,763	9,859	28,492	17,382	4,675	48,080	116,251
July 2022	Jul-22	7,838	9,905	28,417	17,324	4,671	48,252	116,407
August 2022	Aug-22	7,900	9,791	28,437	17,410	4,716	48,760	117,014
September 2022	Sep-22	7,919	9,810	28,408	17,556	4,718	49,173	117,582
October 2022	Oct-22	7,954	9,888	28,442	17,639	4,716	49,569	118,208
November 2022	Nov-22	8,030	9,998	28,429	17,774	4,779	49,934	118,944
December 2022	Dec-22	7,997	10,028	28,520	17,814	4,836	50,178	119,373
January 2023	Jan-23	7,998	10,081	28,205	17,794	4,854	50,313	119,245
February 2023	Feb-23	8,114	10,086	28,454	17,851	4,847	50,858	120,210
March 2023	Mar-23	0	0	0	0	0	0	0

BIG FOUR RAILROAD CORPORATIONS CONSOLIDATED FINANCIAL REVIEW

2010 – 2022

(Millions of Dollars except Per Share Values)

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Railway Operating Revenue	\$53,023	\$61,686	\$64,207	\$66,786	\$70,995	\$65,536	\$60,727	\$64,586	\$70,395	\$68,456	\$60,774	\$68,750	\$78,361
Percent of Total Revenue	98.7%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Railway Operating Expense	\$38,074	\$44,429	\$44,911	\$45,942	\$48,012	\$43,234	\$40,417	\$42,308	\$45,250	\$42,877	\$37,352	\$40,573	\$49,012
Non-recurring items	\$0	\$0	\$0	\$0	\$0	\$0	\$0	(\$98)	\$0	\$0	\$0	\$0	\$0
Rail Operating Income	\$14,949	\$17,257	\$19,296	\$20,844	\$22,983	\$22,302	\$20,310	\$22,278	\$25,145	\$25,579	\$23,422	\$28,177	\$29,349
Exc. Non-recurring items	\$14,949	\$17,257	\$19,296	\$20,844	\$22,983	\$22,302	\$20,310	\$22,376	\$25,145	\$25,579	\$23,422	\$28,177	\$29,349
Rail Operating Ratio – Exc. Non-recurring	0.718	0.720	0.699	0.688	0.676	0.660	0.666	0.654	0.643	0.626	0.615	0.590	0.625
Total Operating Income	\$15,191	\$17,257	\$19,296	\$20,844	\$22,983	\$22,302	\$20,310	\$22,278	\$25,145	\$25,579	\$23,422	\$28,177	\$29,349
Exc. Non-recurring items	\$15,191	\$17,257	\$19,296	\$20,844	\$22,983	\$22,302	\$20,310	\$22,376	\$25,145	\$25,579	\$23,422	\$28,177	\$29,349
Other Income - Net	\$233	\$316	\$356	\$444	\$339	\$523	\$419	\$505	\$339	\$686	\$548	\$548	\$705
Interest Expense	\$1,709	\$1,652	\$1,651	\$1,670	\$1,695	\$1,746	\$2,832	\$2,831	\$3,107	\$3,461	\$3,557	\$3,557	\$3,730
Provision for Income Tax	\$5,224	\$6,007	\$6,726	\$7,185	\$8,058	\$7,868	\$6,598	\$6,465	\$5,217	\$5,351	\$4,763	\$5,869	\$6,113
Non-recurring items – After Tax	\$0	\$0	\$0	\$0	\$0	(\$58)	(\$115)	(\$85)	\$0	\$0	\$0	\$0	\$0
Net Income	\$8,491	\$9,914	\$11,275	\$12,433	\$13,569	\$13,153	\$11,184	\$13,402	\$17,160	\$17,453	\$15,650	\$19,299	\$20,380
Exc. Non-recurring items	\$8,491	\$9,914	\$11,275	\$12,433	\$13,569	\$13,211	\$11,299	\$13,585	\$17,160	\$17,453	\$15,650	\$19,299	\$20,380
Net Income Margin	15.8%	16.1%	17.6%	18.6%	19.1%	20.2%	18.6%	21.0%	24.4%	25.5%	25.8%	28.1%	26.0%
Return on Shareholder's Equity	12.5%	12.3%	13.6%	14.1%	14.5%	13.6%	11.5%	13.8%	18.1%	19.4%	17.6%	21.9%	23.7%
Pre-Tax Net Income (exc. non-rec. items)	\$13,715	\$15,921	\$18,001	\$19,618	\$21,627	\$21,079	\$17,897	\$20,050	\$22,377	\$22,804	\$20,413	\$25,168	\$26,324
Pre-Tax Net Income Margin	25.5%	25.8%	28.0%	29.4%	30.5%	32.2%	29.5%	31.0%	31.8%	33.3%	33.6%	36.6%	33.6%
Average Shares Outstanding (Basic)*	4,793	4,566	4,381	4,295	4,209	4,117	3,967	3,819	3,600	3,356	3,232	3,151	2,994
Earnings Per Share*	\$1.22	\$1.45	\$1.72	\$1.90	\$2.18	\$2.00	\$1.92	\$2.27	\$3.32	\$3.57	\$3.24	\$4.22	\$4.82
Exc. Non-recurring items*	\$1.22	\$1.45	\$1.72	\$1.90	\$2.18	\$2.02	\$1.95	\$2.31	\$3.32	\$3.57	\$3.24	\$4.22	\$4.82
Dividends*	\$0.32	\$0.44	\$0.54	\$0.61	\$0.72	\$0.80	\$0.82	\$0.89	\$1.08	\$1.29	\$1.36	\$1.48	\$1.73
Stock Price (Yr. End) *	\$19.77	\$22.22	\$23.24	\$31.65	\$42.28	\$28.36	\$38.62	\$52.43	\$54.10	\$70.52	\$83.90	\$102.69	\$84.51
Dividends Yield*	1.64%	1.97%	2.32%	1.92%	1.70%	2.83%	2.12%	1.69%	2.00%	1.82%	1.62%	1.44%	2.05%
P/E Ratio (Exc. Non-recurring)*	16.2	15.3	13.5	16.7	19.4	14.1	19.8	22.6	16.3	19.8	25.9	24.3	17.5
Total Assets	\$166,089	\$171,725	\$178,204	\$186,772	\$194,629	\$203,376	\$207,799	\$213,779	\$217,208	\$226,427	\$228,813	\$233,986	\$238,857
Long-term Debt	\$26,175	\$26,736	\$27,902	\$28,553	\$30,612	\$35,784	\$36,890	\$59,529	\$69,205	\$74,456	\$76,369	\$79,322	\$85,913
Shareholders Equity	\$80,240	\$80,895	\$84,398	\$91,432	\$95,771	\$97,887	\$98,173	\$98,945	\$91,014	\$88,750	\$88,765	\$87,398	\$84,563
Debt to Capital	24.6%	24.8%	24.8%	23.8%	24.2%	26.8%	27.3%	37.6%	43.2%	45.6%	46.2%	47.6%	50.4%

* Excludes BNSF

Source of data: Form 10-K, and Annual Report to Shareholders for CSX, NSC, BNSF, UP.

COST OF SHARE REPURCHASE PROGRAMS

Millions\$

	2016	2017	2018	2019	2020	2021	2022
UP	\$3,105	\$4,013	\$8,225	\$5,804	\$3,705	\$7,291	\$6,282
NSC	\$803	\$1,012	\$2,781	\$2,099	\$1,439	\$3,390	\$3,110
CSX	\$1,056	\$1,970	\$4,671	\$3,373	\$867	\$2,886	\$4,731
Big-3 Total	\$4,964	\$6,995	\$15,677	\$11,276	\$6,011	\$13,567	\$14,123

Source: SEC 10-K's

- In 3 years since pandemic Big-3 spent \$3.37 billion on stock buy-backs.

ADDITIONAL OBSERVATIONS

- The monthly employment data show that the Railroads' aggressive hiring is barely keeping up with attrition. For example, train crew employment in February 2023 is up only 3,762 positions industry wide from a year ago. Shops up 665; and MoW up 642 over the past 12 months. All headcounts well below the pre-pandemic levels in December 2019.
- The PEB 250 retro payments were made in 2022. This caused a spike in expense for the big-4 – up 21% – and a bite into the operating ratio – up to .625 from .59 in 2021.
- Notwithstanding the above, revenue increased to an historic \$78.4 billion, and PROFITS rose 5.6%; The \$20.4 billion in 2022 profit was the greatest in history.
- All measures of financial performance in 2022 exceeded pre-pandemic 2019:

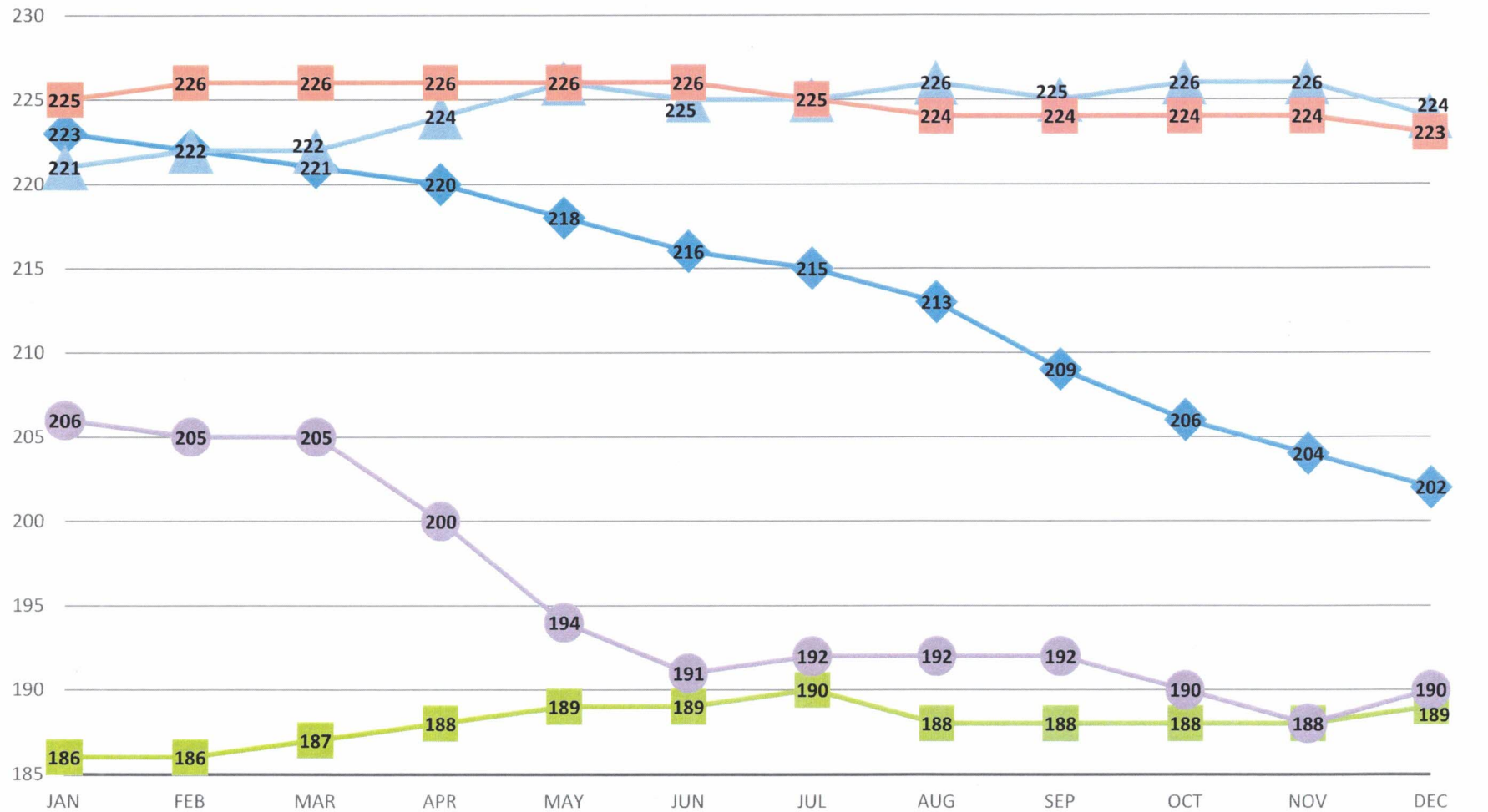
	<u>2019</u>	<u>2022</u>
OR	0.626	0.625
Profits	\$17.5B	\$20.4B
Profit Margin	25.50%	26.00%
Return on Equity	19.40%	23.70%
EPS	\$3.57	\$4.82
Stock Price	\$70.52	\$84.51
Dividends/share	\$1.29	\$1.73

- The Big-3 spent \$14.1B on stock buy-backs in 2022.

Unions Supplemental Comments

EXHIBIT ☐

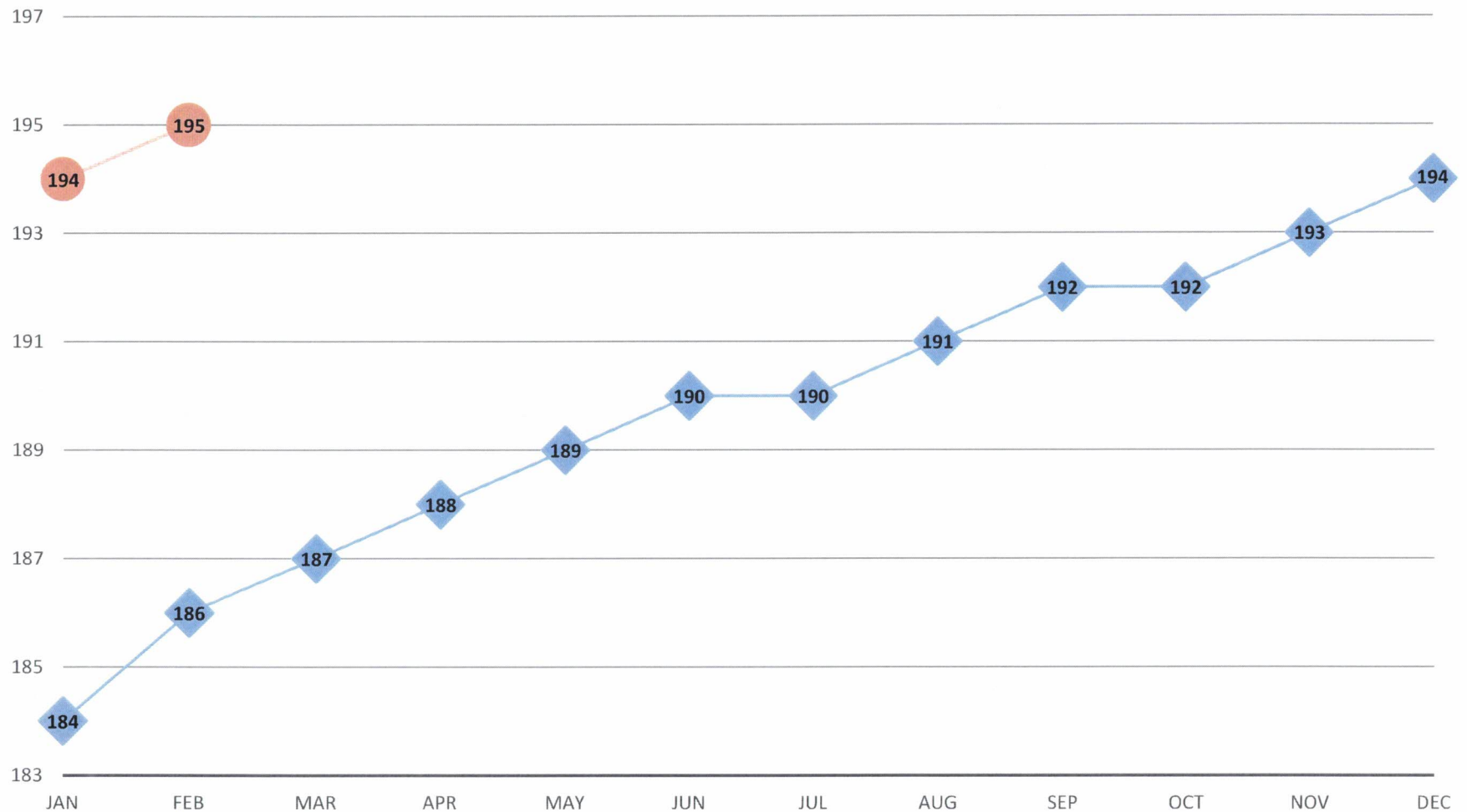
AVERAGE RAILROAD EMPLOYMENT (IN THOUSANDS) JANUARY 2017 - DECEMBER 2021



The calendar year average employment was 225,000 in 2017, 224,000 in 2018, 217,000 in 2019, 195,000 in 2020, and 188,000 in 2021. Calendar year 2021 data will be finalized in December 2022.

—■— 2021 —●— 2020 —◆— 2019 —▲— 2018 —■— 2017

AVERAGE RAILROAD EMPLOYMENT (IN THOUSANDS) JANUARY 2022 - FEBRUARY 2023

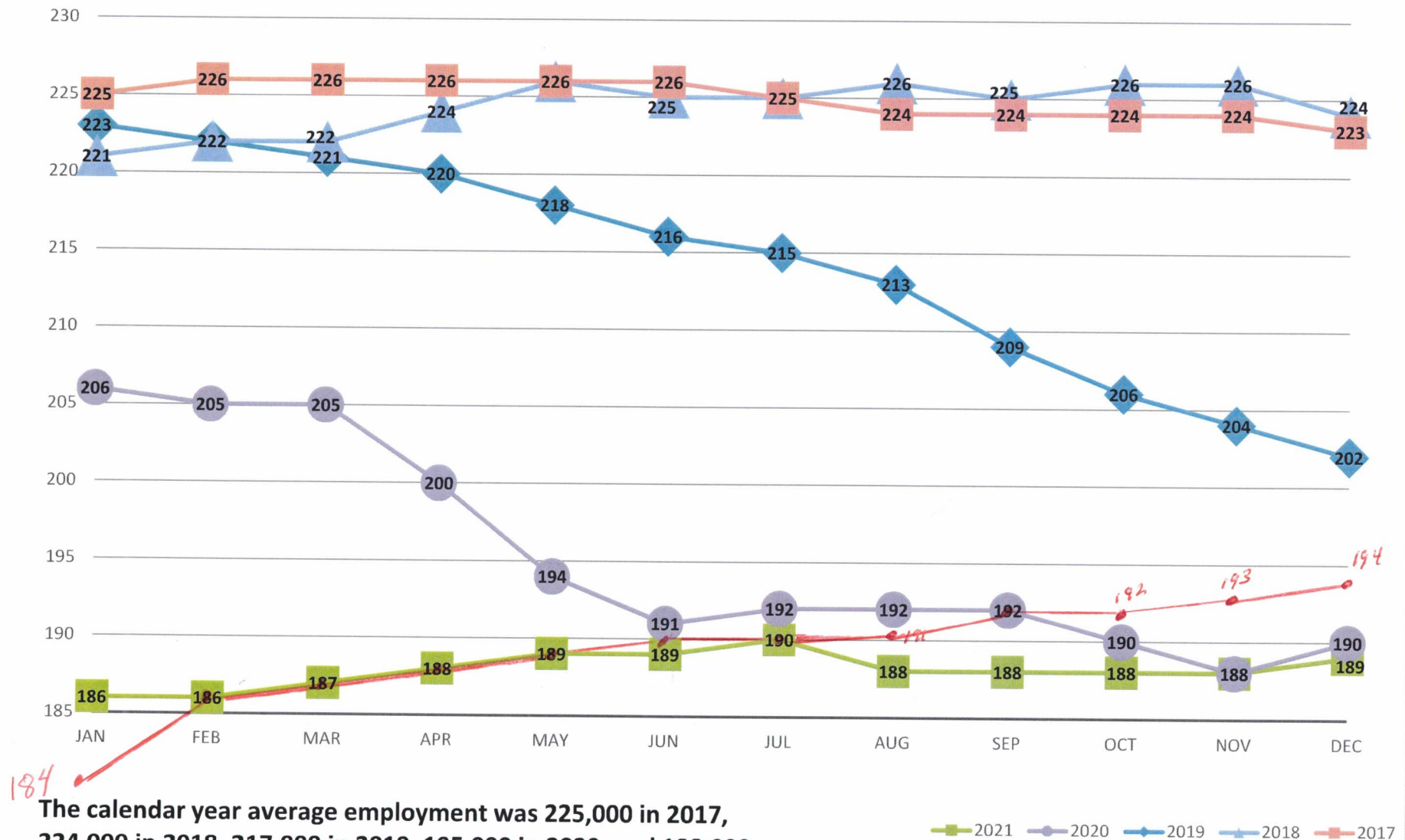


The preliminary calendar year 2022 average was 190,000. In December 2023, all data will be revised when 2022 data is finalized.

—◆— 2022 —●— 2023

Note: Employment estimates rely on monthly Class I reports to the Surface Transportation Board.

AVERAGE RAILROAD EMPLOYMENT (IN THOUSANDS) JANUARY 2017 - DECEMBER 2021



The calendar year average employment was 225,000 in 2017, 224,000 in 2018, 217,000 in 2019, 195,000 in 2020, and 188,000 in 2021. Calendar year 2021 data will be finalized in December 2022.

Unions Supplemental Comments

EXHIBIT ☐

Brotherhood of Locomotive Engineers and Trainmen
Membership Totals - Class I Railroads

RAILROAD	2016	2017	2018	2019	2020	2021	2022	CURRENT
Burlington Northern - Santa Fe	8,811	8,561	8,583	8,719	8,523	8,248	7,879	7,885
Canadian National (WC, IC, GTW)	1,274	1,250	1,330	1,381	1,223	1,322	1,321	1,329
Canadian Pacific (D&H, Soo Line)	755	408	396	396	387	369	356	356
CSX Transportation Inc	5,943	5,650	5,285	5,068	4,770	4,477	4,310	4,251
Kansas City Southern	419	433	437	410	402	398	416	419
Norfolk Southern	6,647	6,425	6,213	6,183	5,666	5,104	4,766	4,773
Union Pacific	8,269	7,879	7,705	7,620	7,254	6,822	6,549	6,501
Amtrak	1,651	1,552	1,502	1,512	1,485	1,463	1,529	1,538
Total	33,769	32,158	31,451	31,289	29,710	28,203	27,126	27,052

(totals are end of year totals)

**BMWED Class I Membership Data By Year
2016-2022 + Jan-Feb'23**

List 1 - No Officials									2023
	2016	2017	2018	2019	2020	2021	2022	23-Jan	23-Feb
BNSF	7,417	6,824	6,575	6,471	5,986	5,749	5,798	5,762	5,733
CN	1,376	1,380	1,382	1,396	1,337	1,341	1,306	1,311	1,305
CP	468	454	447	431	426	412	402	394	367
CSXT	4,505	4,156	4,022	3,917	3,849	3,863	3,881	3,802	3,870
KCS	431	417	423	415	402	379	379	371	370
NS	3,677	3,393	3,369	3,401	2,978	2,887	2,882	2,883	2,873
UP	7,980	7,512	7,257	6,966	6,034	6,028	6,034	6,058	5,988
TOTALS	25,854	24,136	23,475	22,997	21,012	20,659	20,682	20,581	20,506

**BMWED Class I Membership Data By Year
2016-2022 + Jan-Feb'23**

List 2 - With Officials								
								2023
	2016	2017	2018	2019	2020	2021	2022	23-Jan 23-Feb
BNSF	7,797	7,197	6,930	6,796	6,299	6,065	6,169	6,133 6,108
CN	1,461	1,464	1,468	1,481	1,412	1,420	1,385	1,391 1,384
CP	513	493	485	468	463	447	434	424 397
CSXT	4,639	4,260	4,141	4,051	3,981	3,997	4,023	3,946 4,013
KCS	442	433	438	431	415	393	383	384 383
NS	3,863	3,568	3,532	3,574	3,145	3,074	3,062	3,063 3,053
UP	8,843	8,338	8,076	7,756	6,740	6,719	6,713	6,556 6,675
TOTALS	27,558	25,753	25,070	24,557	22,455	22,115	22,169	21,897 22,013

BMWED NRPC Membership Data By Year
2016-2022 + Jan-Feb'23

<u>List 1 - No Officials</u>								2023	
	2016	2017	2018	2019	2020	2021	2022	23-Jan	23-Feb
NRPC	2,599	2,508	2,493	2,393	2,369	2,325	2,695	2,755	2,866

BRS Class I Membership

	12-2016	12-2017	12-2018	12-2019	12-2020	12-2021	12-2022	01-2023	02-2023	03-2023
BNSF	2262	2154	2136	2150	2022	1897	1907	1924	1907	1920
CN	475	481	480	435	422	404	407	407	406	403
CP	190	178	177	178	177	168	179	177	177	175
CSXT	1938	1825	1713	1580	1477	1411	1400	1395	1390	1399
KCS	117	118	113	117	114	108	107	109	112	112
NSR	1498	1425	1405	1326	1109	966	1026	1034	1035	1034
UP	2557	2434	2265	2127	2011	1933	1918	1918	1901	1894
Total	9,037	8,615	8,289	7,913	7,332	6,887	6,944	6,964	6,928	6,937

BRS Amtrak Membership

	12-2016	12-2017	12-2018	12-2019	12-2020	12-2021	12-2022	01-2023	02-2023	03-2023
NRPC	783	766	745	793	829	778	879	879	874	882

IAM District 19 Class 1 Membership

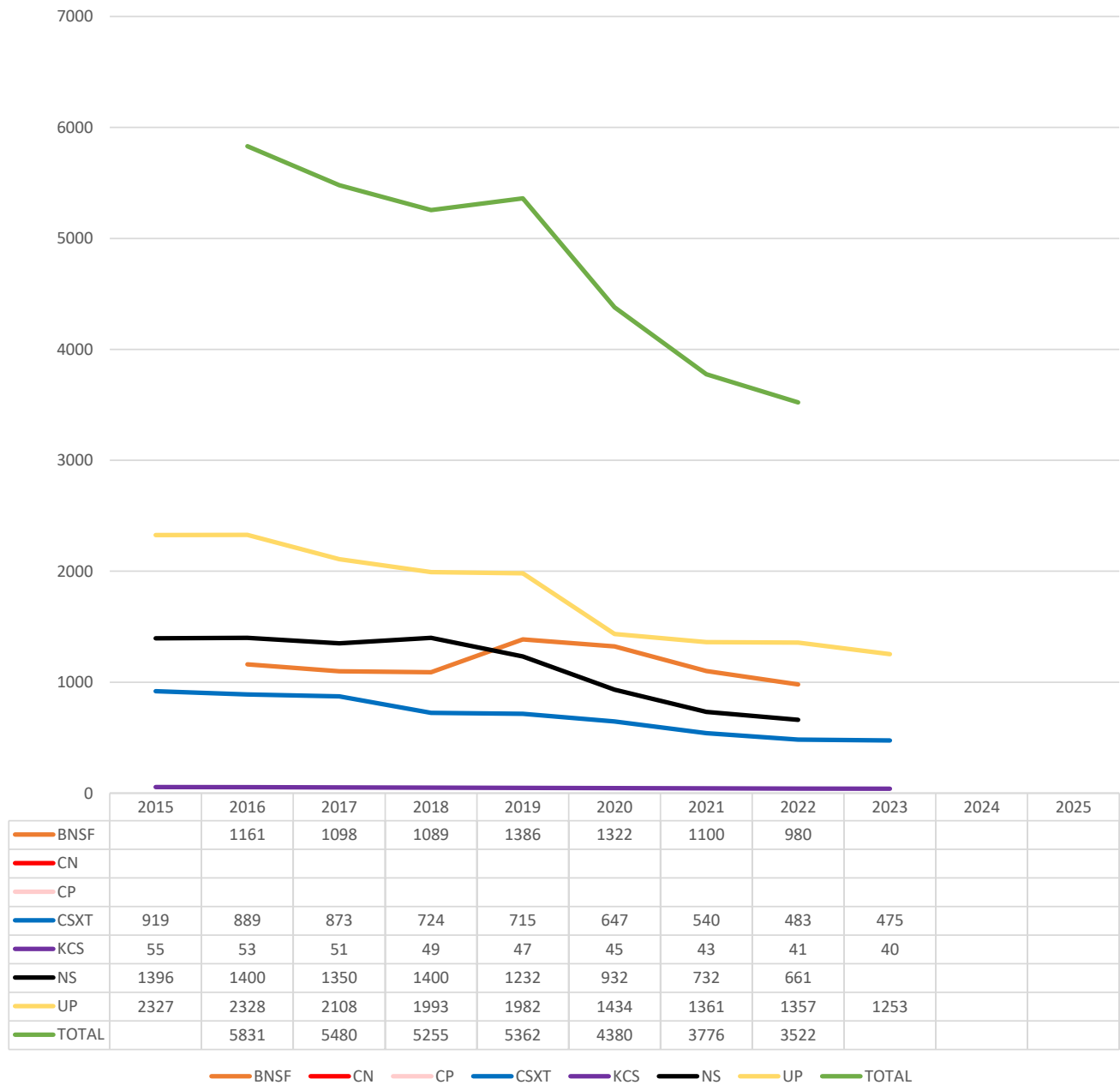
Carrier	Jan-23	Jan-22	Jan-21	Jan-20	Jan-19	Jan-18	17-Jan	16-Jan	Decrease
BNSF	1810	1797	1954	2226	2393	2057	2043	2132	322
CP	65	69	77	72	78	78	88	93	28
CN	219	229	237	218	212	206	196	183	36
CSX	699	710	725	530	610	642	1093	1160	461
KCS	71	91	90						
NS	682	711	794	831	1103	1122	1147	1190	508
UP	1427	1425	1466	1620	2317	2558			1131
Total	4973	5032	5343	5497	6713	6663			2510

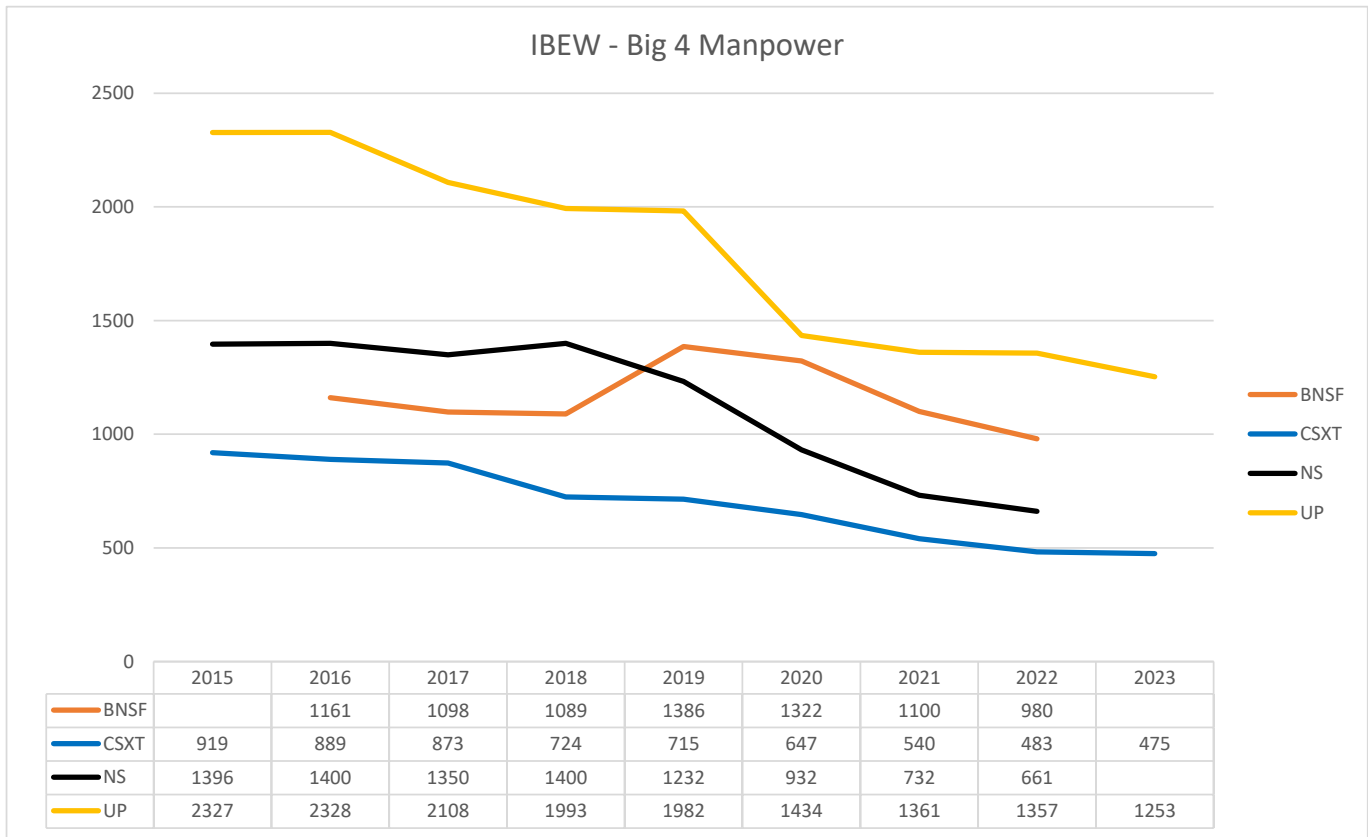
IAM Amtrak Membership

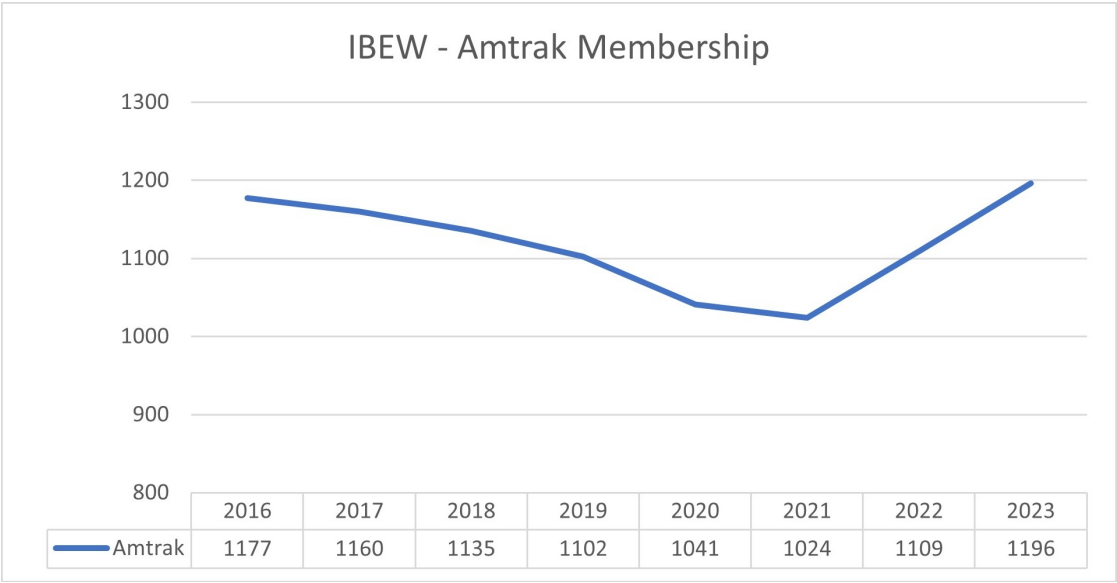
Year	IAM January Headcount
2023	556
2022	489
2021	496
2020	501
2019	521
2018	513*

* 2018 number from July

IBEW - Class I Manpower

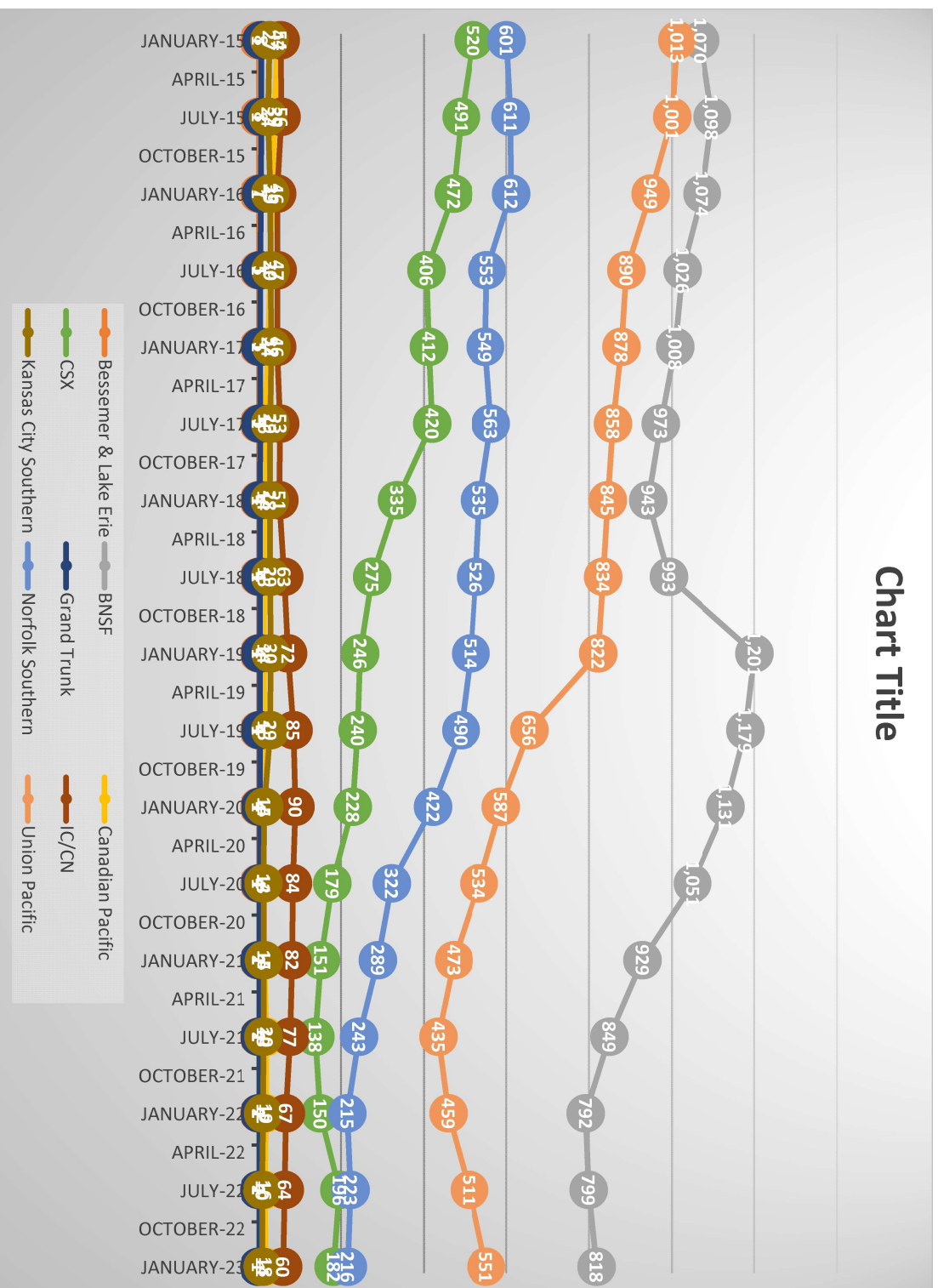






NCFE Class I Membership

Chart Title

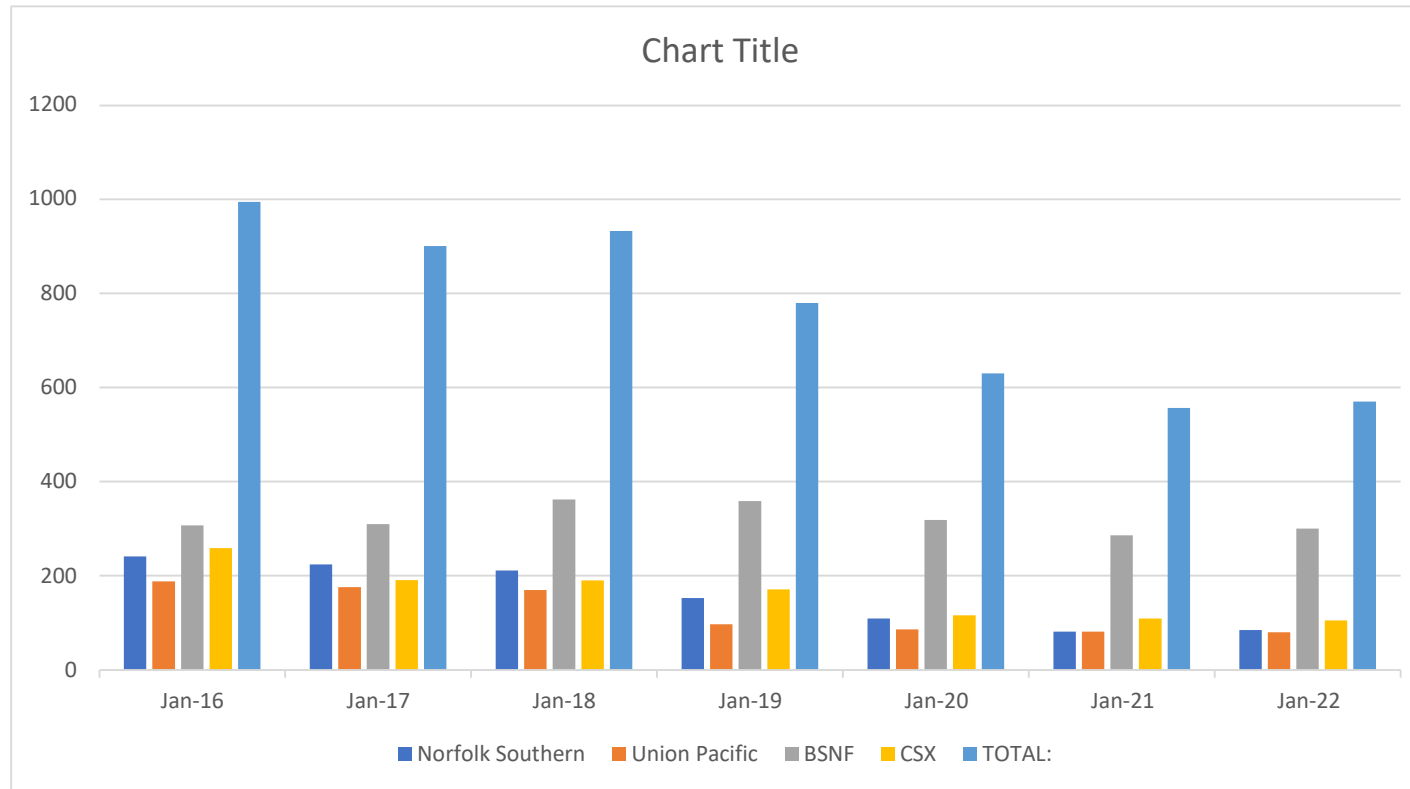


NCFO Class I Membership

Railroad	January-15	July-15	January-16	July-16	January-17	July-17	January-18	July-18	January-19	July-19	January-20	July-20	January-21	July-21	January-22	July-22	January-23
Bessemer & Lake Erie	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	1
BNSF	1,070	1,098	1,074	1,026	1,008	973	943	993	1,201	1,179	1,131	1,051	929	849	792	799	818
Canadian Pacific	47	39	33	29	24	16	14	15	14	15	14	14	15	20	19	16	18
CSX	520	491	472	406	412	420	335	275	246	240	228	179	151	138	150	196	182
Grand Trunk	8	8	7	5	5	5	4	4	4	4	4	4	2	2	2	1	1
IC/CN	54	56	46	47	46	53	51	63	72	85	90	84	82	77	67	64	60
Kansas City Southern	27	24	29	30	32	29	28	29	30	29	15	13	14	13	12	10	11
Norfolk Southern	601	611	612	553	549	563	535	526	514	490	422	322	289	243	215	223	216
Union Pacific	1,013	1,001	949	890	878	858	845	834	822	656	587	534	473	435	459	511	551

SMART MD Class I Membership

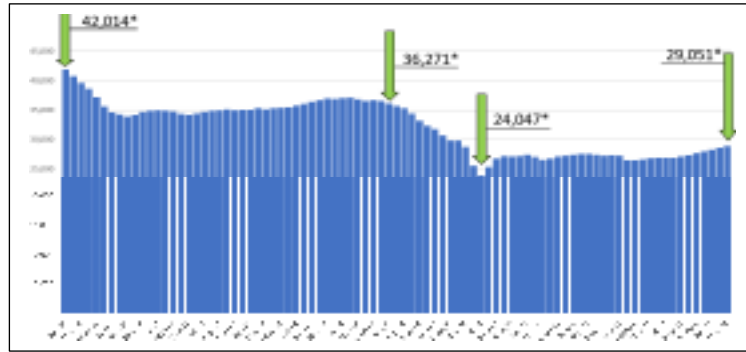
	Dec-16	Dec-17	Dec-18	Dec-19	Dec-20	Dec-21	Dec-22
Norfolk Southern	241	224	211	153	109	81	85
Union Pacific	188	176	170	97	86	81	80
BSNF	307	310	362	359	319	286	300
CSX	259	191	190	171	116	109	105
TOTAL:	995	901	933	780	630	557	570



SMART-TD Membership Numbers Jan, 2016 – March 2023

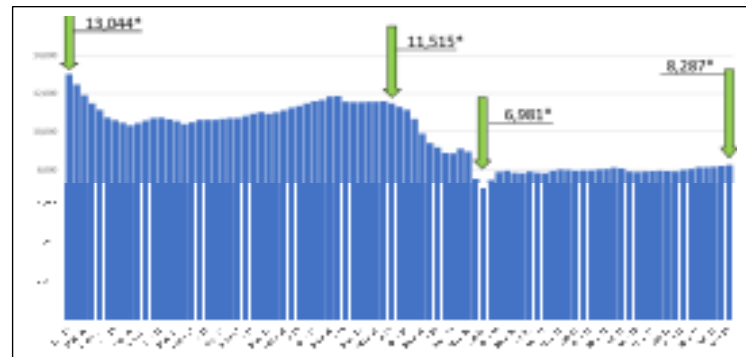
Membership Numbers Jan-2016-March 2023 – All Class One Railroads

Jan-16	42,014*
Jul-16	34,757
Jul-17	34,825
Jul-18	35,890
Jul-19	36,271*
Jul-20	24,047*
Jul-21	27,535
Jul-22	27,014
Mar-23	29,051*



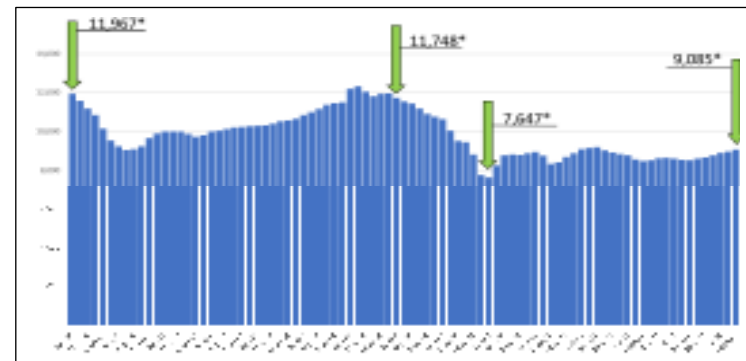
Membership Numbers Jan-2016-March 2023 – Union Pacific

Jan-16	13,044*
Jul-16	10,636
Jul-17	10,661
Jul-18	11,374
Jul-19	11,515*
Jul-20	6,891*
Jul-21	7,999
Jul-22	7,974
Mar-23	8,287*



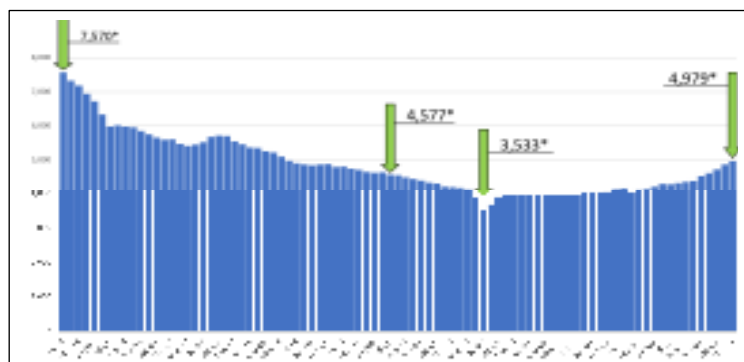
Membership Numbers Jan-2016-March 2023 – Burlington Northern Santa Fe

Jan-16	11,967*
Jul-16	9,266
Jul-17	10,022
Jul-18	10,861
Jul-19	11,748*
Jul-20	7,647*
Jul-21	9,120
Jul-22	8,623
Mar-23	9,085*



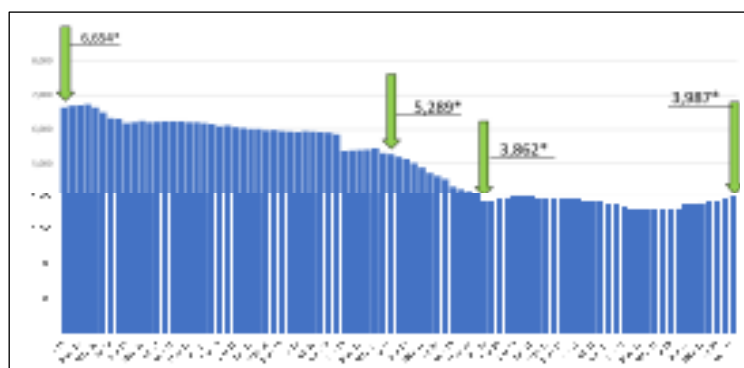
Membership Numbers Jan-2016-March 2023 – CSX Transportation

Jan-16	7,570*
Jul-16	5,995
Jul-17	5,529
Jul-18	4,921
Jul-19	4,577*
Jul-20	3,533*
Jul-21	3,972
Jul-22	4,305
Mar-23	4,979*



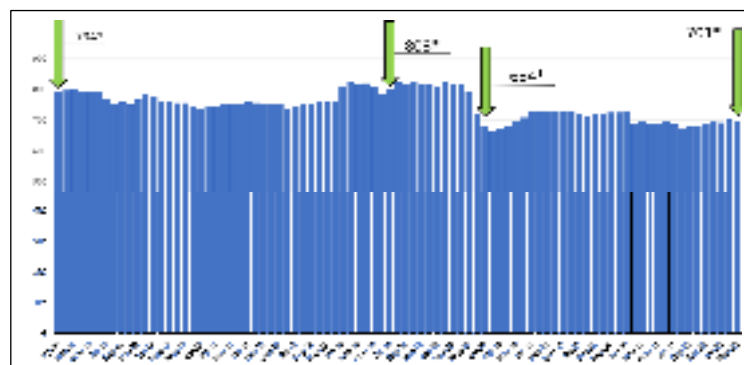
Membership Numbers Jan-2016-March 2023 – Norfolk Southern

Jan-16	6,654*
Jul-16	6,339
Jul-17	6,201
Jul-18	5,932
Jul-19	5,289*
Jul-20	3,862*
Jul-21	3,884
Jul-22	3,600
Mar-23	3,987*



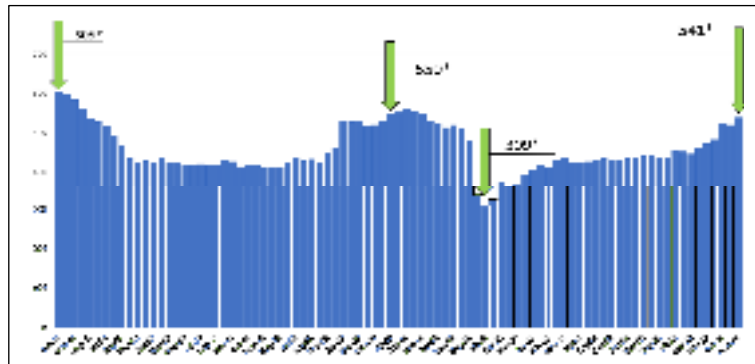
Membership Numbers Jan-2016-March 2023 – Kansas City Southern

Jan-16	794*
Jul-16	770
Jul-17	742
Jul-18	745
Jul-19	803*
Jul-20	684*
Jul-21	726
Jul-22	688
Mar-23	701*



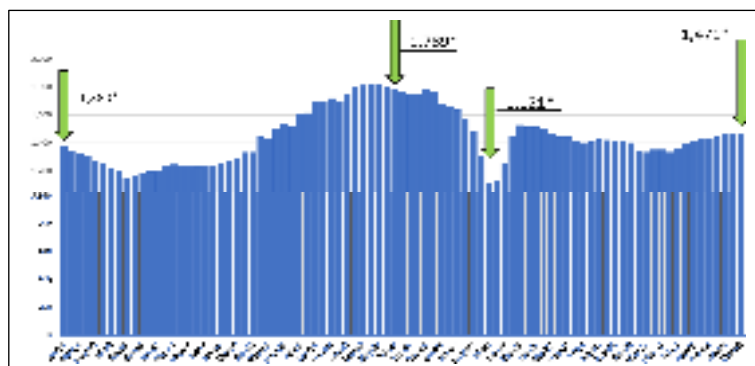
Membership Numbers Jan-2016-March 2023 – Canadian Pacific

Jan-16	605*
Jul-16	521
Jul-17	423
Jul-18	440
Jul-19	550*
Jul-20	309*
Jul-21	428
Jul-22	455
Mar-23	541*



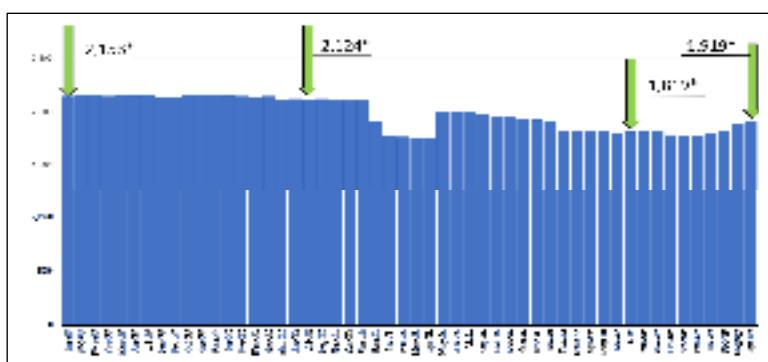
Membership Numbers Jan-2016-March 2023 – Canadian National

Jan-16	1,380*
Jul-16	1,230
Jul-17	1,247
Jul-18	1,617
Jul-19	1,789*
Jul-20	1,121*
Jul-21	1,406
Jul-22	1,369
Mar-23	1,471*



Membership Numbers Jan-2019 – April 2023 – Amtrak

Jan-19	2,153*
Jul-19	2,163
Jul-20	2,124*
Jul-21	1,617
Jul-22	1,819*
Apr-23	1,919*



TWU								
	16-Aug	Sep-17	Sep-18	Sep-19	Sep-20	21-Aug	22-Apr	23-Feb
CSX	281	260	240	235	229	228	253	220
NS	601	484	430	376	280	333	335	228
Conrail	78	70	65	61	55	56	62	56
Total	960	814	735	672	564	617	650	504

Unions Supplemental Comments

EXHIBIT ☐

From: Gansen, Andrea R <Andrea.Gansen@amtrak.com>
Sent: Thursday, May 4, 2023 5:24 PM
To: Richard Edelman <REdelman@mooneygreen.com>
Subject: Amtrak Hiring

Good afternoon, Rich –

I've attached a PPT slide regarding our hiring events, but also wanted to add some other data points on where we currently are and what we are doing to help attract new employees:

- At the midpoint of FY23 (Oct-Mar), Talent Acquisition added nearly 2,300 new employees to the organization, with attrition of ~900, for a net gain of ~1,400.
 - Over 420 new hires in track
 - 70 new hires in Signal
 - Almost 100 new hires in ET
- One tool we use to help attract applicants includes a \$2,500 referral bonus paid to Amtrak employees who refer an applicant who is hired and stays for six months.
- As shown on the slide, on June 15th, we will host an Amtrak National Hiring Day including career expos in Washington, D.C and Philadelphia, as well as a coordinated virtual event to support hiring needs across the country.
- Union leaders are key partners for Amtrak at hiring events. They participate in interview panels to assist in reviewing talent and meet potential members of their union.
- Talent Acquisition also attends and presents at the Quarterly Labor Leadership meeting to inform the union on hiring initiatives and progress.
- We made significant investment in paid advertising and post fresh, vibrant, and sleek organic social media campaigns. As a direct result, our application numbers increase to match our hiring needs increase. We experienced an average of over 23,500 applications received per month in fiscal year 2023 –growth of almost 5,000 per month year-over-year as compared to fiscal year 2022 which retains our applicant-to-hire ratio at 54:1 year-over-year.
- Production for a TV commercial has been completed with paid advertising running across 14 metropolitan markets. Distribution includes streaming TV, Total Traffic News and Weather TV, YouTube TrueView, In-Story advertising on popular news and gaming sites, and mobile geo-fencing ads

targeting partner Universities. We expect a strong return for these advertisements, based on historical growth of 15% website traffic following radio and social media campaigns.

Please let me know if you have any questions – thanks!

- Andrea

Andrea Gansen (she/her)

Vice President, Labor Relations

Amtrak | 1 Massachusetts Ave. NW | Washington, DC 20001

Email: andrea.gansen@amtrak.com | Mobile: 202.731.4398

Hiring Events

Completed Agreement Hiring Events

Event Date	Event Location	Positions Targeted	Positions	Candidates Prescreened	Candidates Interviewed	Offers Accepted
Sep 28	Philadelphia	Call Center Chat/Voice/Mechanical	110	280	297	191
Oct 25	Boston	High Speed Rail Event	15	73	42	11
Nov 3	Washington, DC	HSR DC Hiring Event	18	41	35	18
Jan 9	Washington, DC	Assistant Conductors	18	225	160	67
Jan 24	Seattle	OBS, and Mechanical	35	250	75	53
Mar 9	DC	Mechanical, OBS/Customer Service, IMCS	60	275	120	78
Mar 29	Chicago	OBS, and Mechanical	60	149	215	163

Upcoming Agreement Hiring Events

Event Date	Event Location	Positions Targeted
May 3	New York	Mechanical/OBS/CS/IMCS
May 18	Albany	Mechanical
June 1	Boston	Mechanical/OBS
June 14	Washington, DC & Philadelphia (National Hiring Day)	All Positions



Unions Supplemental Comments

EXHIBIT ☐

**Airlines for America®**

A BETTER FLIGHT PLAN

WORKING FOR YOU

U.S. Airlines Continue Hiring Spree as Industry Surpasses Pre-pandemic Employment

NOVEMBER 21, 2022

Every day, more than 2 million people are traveling to see loved ones, go on vacation or take a business trip and as we approach the busy holiday season, airports across the country are preparing to welcome even more travelers – some even flying for the first time since the pandemic. What many passengers don't see are the more than 777,000 passenger and cargo airline employees who are working hard throughout the holidays to ensure you and your packages to your destination safely and efficiently.

A4A carriers have adapted to new post-pandemic employment realities and launched aggressive hiring campaigns – establishing new pilot training academies, to supporting programs to address financial hurdles and ramping up recruiting initiatives – to hire for positions across the

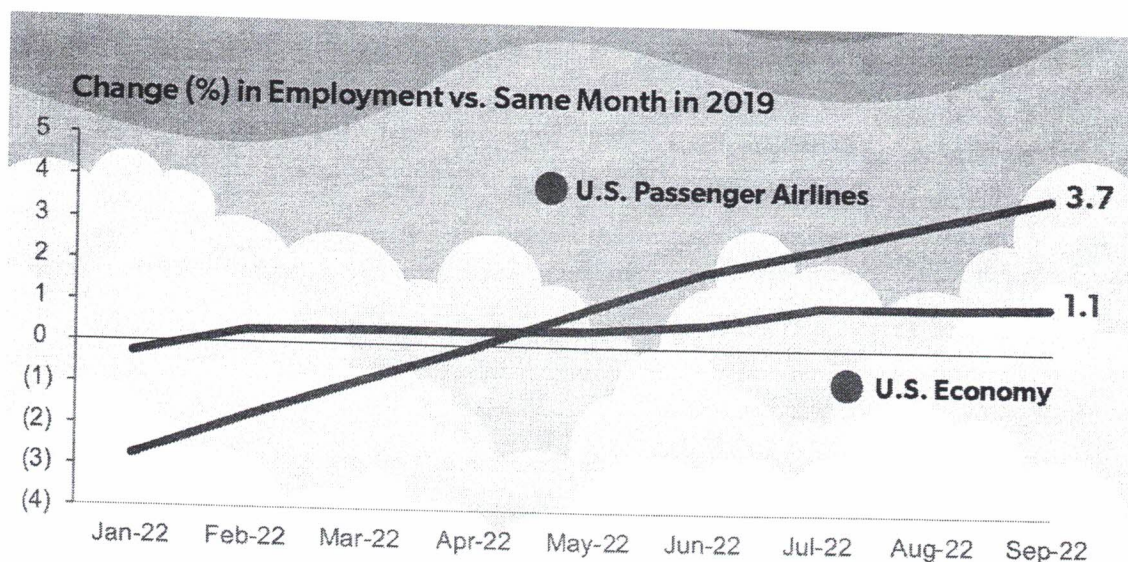
Unions Supplemental Comments Ex. 6

industry. As the industry announces record high employment, it's clear



Airlines for America®

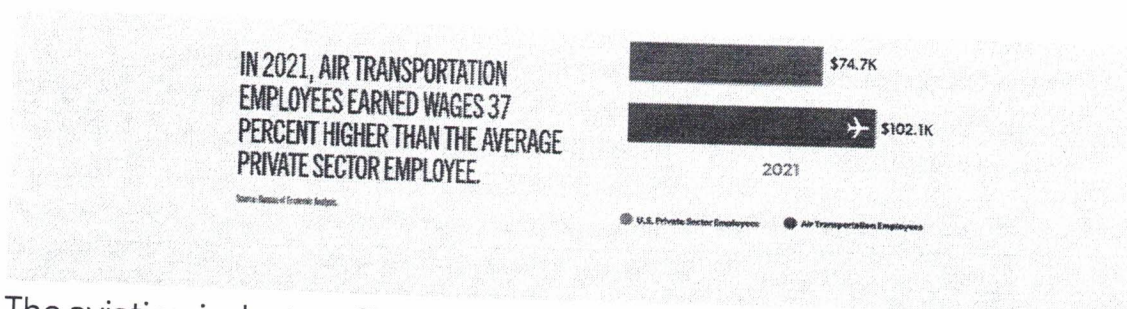
U.S. passenger airlines now employ the most employees in nearly two decades — adding nearly 5,000 employees per month from November 2020 to September 2022. In fact, U.S. passenger airline job growth from 2019 has been significantly outpacing overall job growth in the United States. There has truly never been a better time to join this industry.



And, carriers are not stopping here – we understand the importance of securing a pipeline of employees across the industry to accommodate future demand for air travel. This is why carriers have invested heavily in new programs, including apprenticeships, pilot academies, partnerships with universities.

Not only do jobs in the aviation industry provide the opportunity to work in the intricacy of the operation and experience the magic of flying, but U.S. airlines are proud to offer high-quality, career track jobs that are well-paying and provide great benefits. In fact, in 2021, air transportation employees earned wages 37 percent higher than the average private

sector employees

**Airlines for America®**

The aviation industry offers a wide range of opportunities – from interacting with customers at the gate, providing the highest levels of service onboard, being on the flight deck as a pilot, working on an engine as an aviation maintenance technician and so much more.

For more information on our members' commitment to hiring and employment opportunities, visit A4A's Airlines Jobs page and the links below:

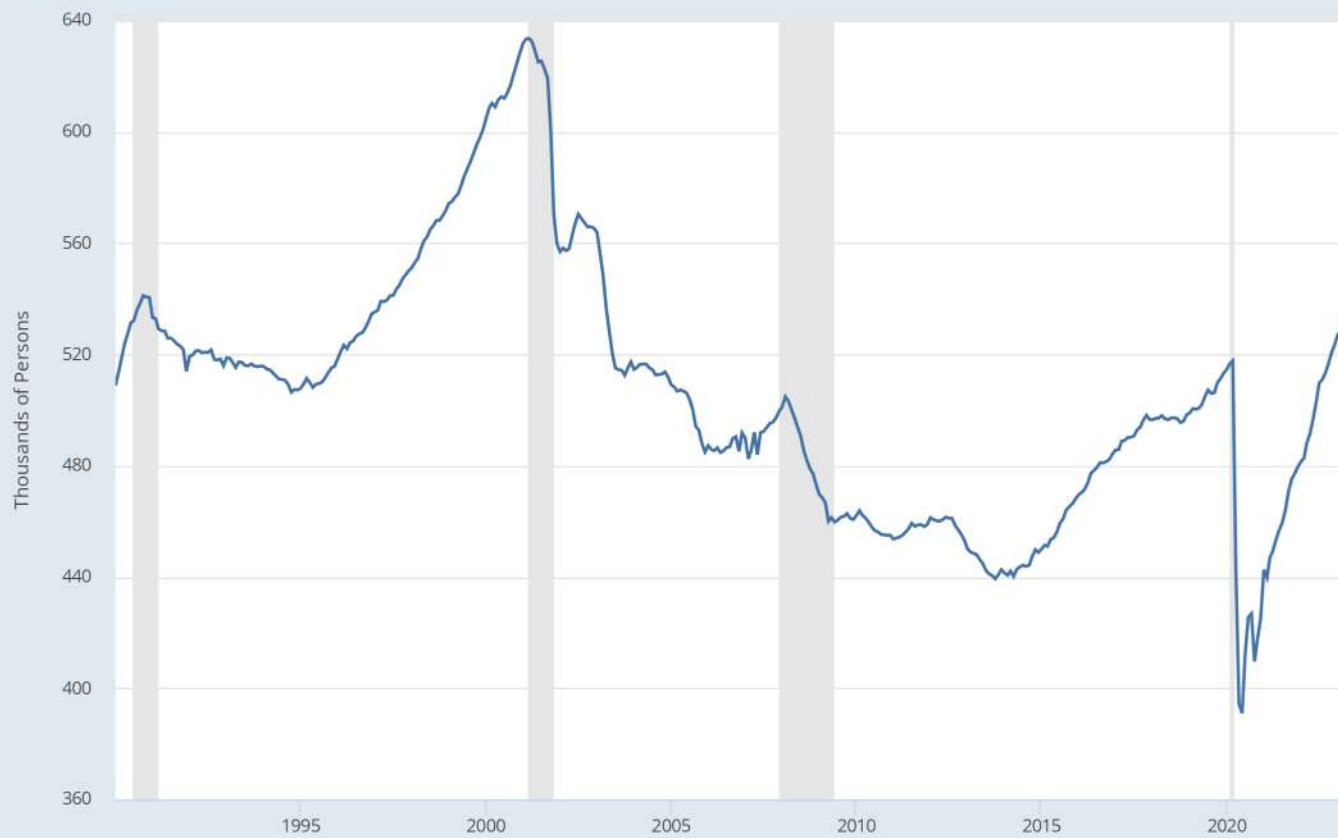
- Alaska Airlines
- American Airlines
- Atlas Airlines
- Delta Air Lines
- FedEx Express
- Hawaiian Airlines
- JetBlue
- Southwest Airlines
- United Airlines
- UPS Airlines

Employment, Hours, and Earnings from the Current Employme

Original Data Value

Series Id: CES4348100001
Seasonally Adjusted
Series Title: All employees, thousands, air transportation,
Super Sector: Transportation and warehousing
Industry: Air transportation
NAICS Code: 481
Data Type: ALL EMPLOYEES, THOUSANDS
Years: 2013 to 2023

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2013	450.1	448.9	448.5	448.0	446.3	444.8	442.4	441.1	440.5	439.3	440.8	442.6
2014	441.4	440.6	442.1	440.2	442.7	443.6	444.2	443.8	444.2	447.3	449.8	448.8
2015	450.0	451.4	451.0	453.5	454.1	456.1	459.3	460.8	464.0	465.2	466.3	468.0
2016	469.5	470.4	471.5	473.8	477.2	478.3	479.4	481.1	481.0	481.5	482.3	484.2
2017	485.7	485.8	488.8	489.1	490.1	490.2	490.7	492.9	493.9	496.4	498.1	496.6
2018	496.5	497.0	497.1	498.0	496.9	496.5	497.1	497.2	496.9	495.5	496.0	498.2
2019	499.0	500.5	500.3	500.6	502.0	504.9	507.2	506.0	506.2	509.8	511.3	513.2
2020	514.6	516.7	517.7	441.3	394.3	391.0	412.3	425.5	426.8	409.6	418.0	425.3
2021	442.6	439.7	446.8	449.5	453.4	456.8	459.4	463.9	470.6	475.1	477.1	479.5
2022	481.4	482.7	488.2	491.5	496.6	502.8	509.7	511.0	513.4	516.8	520.7	523.6
2023	527.1	528.6	534.1	537.4								



Source: U.S. Bureau of Labor Statistics

fred.stlouisfed.org

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U.S. Cargo and Passenger Airlines Added 3,093 Jobs in January 2023



Nevistas News

2 months ago



U.S. Cargo and Passenger Airlines Added 3,093 Jobs in January 2023

Employment Remains 7.8% Above Pre-Pandemic January 2019

U.S. Airline Employees Headcount (Full-time and Part-time Employees)

U.S. airline industry (passenger and cargo airlines combined) employment increased to 787,328 workers in January 2023, 3,093 (0.39%) more workers than in December 2022 (784,235) and 56,944 (7.80%) more than in pre-pandemic January 2019 (730,384).

U.S. scheduled-service passenger airlines employed 503,754 workers in January 2023 or 64% of the industry-wide total. Passenger airlines added 4,583 employees in January 2023 for a twenty-first consecutive month of job growth dating back to May 2021. Delta led scheduled passenger carriers, adding 1,499 employees; United added 1,256; and Southwest added 1,058.

U.S. cargo airlines employed 279,337 workers in January 2023, 36% of the industry total. Cargo carriers lost 964 employees in January. FedEx, the leading air cargo employer, decreased

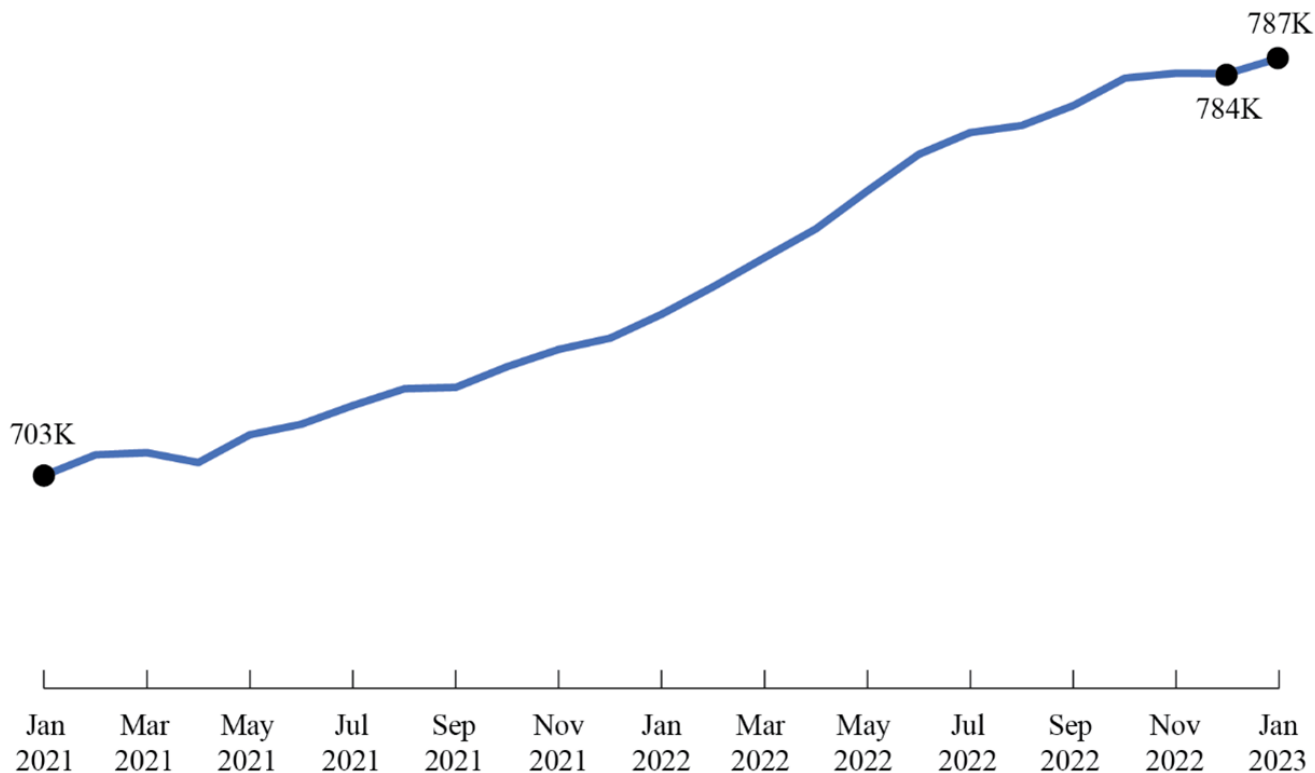
Unions Supplemental Comments Ex. 6

employment by 910 jobs.

Total U.S. Airline Industry Employment: January 2021–January 2023

Full-time and part-time employees

Based on payroll near the 15th of the month



Scheduled passenger airlines add 4,380 full-time equivalents in January 2023 for 21st consecutive month of job growth

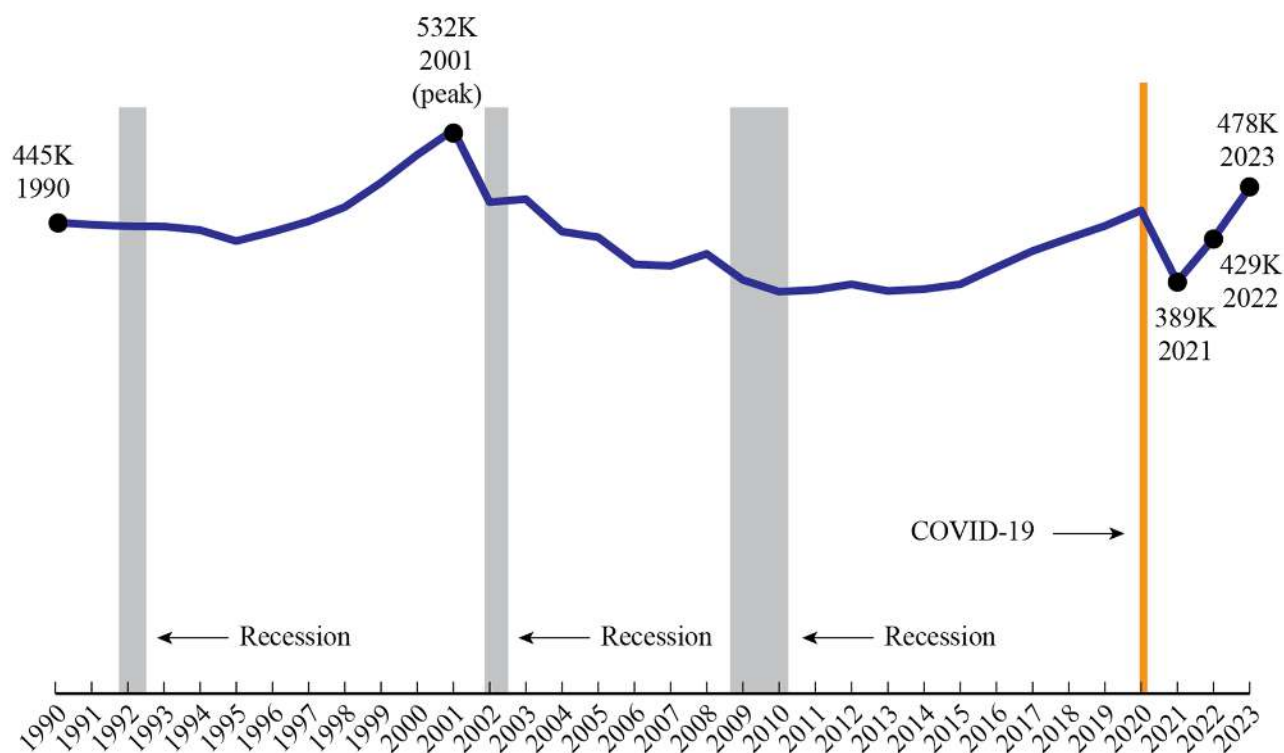
U.S. Airline Full-Time Equivalents (FTEs)

BTS calculates FTEs by dividing the number of part-time employees by 2 and adding that figure to the number of full-time employees. The January 2023 industry-wide numbers include 676,184 full-time and 111,144 part-time workers for a total of 731,756 FTEs, an increase from December of 3,003 FTEs (0.41%). January 2023's total number of FTEs remains just 9.05% above pre-pandemic January 2019's 671,039 FTEs.

The 26 U.S. scheduled passenger airlines reporting data for January 2023 employed 477,728 FTEs, 4,380 FTEs (0.93%) more than in December 2022. January 2023's total number of scheduled passenger airline FTEs is 36,208 FTEs (8.20%) above pre-pandemic January 2019. Data by passenger carrier category can be found in the accompanying tables.

U.S. cargo airlines employed 249,834 FTEs in January 2023, down 921 FTEs (0.37%) from December 2022. U.S. cargo airlines have increased FTEs by 24,423 (10.83%) since pre-pandemic January 2019.

Employees at U.S. Scheduled Passenger Airlines in Month of January, 1990–2023 (Full-time equivalents)



Categories: [Employment](#)

HTrends Mobile Edition

[Back to top](#)

Unions Supplemental Comments

EXHIBIT 1

North American Railroads

February Labor Productivity Update: Paths Diverging as Labor Additions Still Waiting on Volume Growth

The Surface Transportation Board (STB) released U.S. railroad head count data for February today. Industry carloads increased +1.8% MoM but registered the second lowest February for industry originated carloads in the last 11 years. T&E head count increased +110bps MoM while productivity came in negative, down -3.6% MoM on a 3M MA basis for the industry (see Figure 1). We view the update as negative as two consecutive months of historically weak volumes will pressure 1Q23 margin as overall labor moves higher including T&E posting the 13th consecutive month of additions, which we expect to continue as all U.S. rails are tracking behind their May 2023 Active T&E Goals (see Figures 13-14.) CSX was the only rail to shed T&E labor, down -1.1% MoM, and has yet to post positive net T&E growth in 2023 (see Figure 9). Overall Trainee Pipeline showed mixed trends as Eastern rails are slowing and Western rail are flat to positive (see Figure 2).

- **CSX not standing by while volume and labor disconnect.** Industry efficiency levels remained negative for the fourth consecutive month as the weak demand backdrop persists, but CSX appears to be trying to right-size labor with four months of pipeline contractions and net T&E growth down for the second month. The rails will need to find some offsets for the lower volume as head count will remain sticky and on watch by regulators as the May 2023 labor goals draw near. UP reported a graduation run rate of ~250 per month as the pipeline remained robust in February, and the network remains focused on reducing fragility and building resiliency. Norfolk continues to roll out sick leave agreements with 1,350 additions this week now covering eight of the 12 unions benefiting a total of 5,900 employees. The expenses related to these programs are not expected to be significant as mentioned by CSX in our Industrials Conference this week (see full note [here](#)).
- **KCS picking up CP's volume slack and CN holding in.** Network statistics for the non-U.S. rails represent the reported U.S. head count and carload data, which provides the best available monthly proxy for the entire network. The U.S. portion of KSU outperformed on strong volumes, up +4.9% due to intermodal and chemical carloads, while also making a sizable labor addition of +3.1% MoM. CP moved in the opposite direction; the sizable -4.7% MoM contraction is worth watching, especially in U.S. grain, which was down -35% MoM on a daily carload basis. CN was less impacted by the grain drop-off, down -11% MoM and nearly matching head count with volume growth in February.

Airfreight & Surface Transportation

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North American Railroads

April Labor Productivity Update: CSX Stays in the Lead, Western Railroad Trainee Pipelines Surge

The Surface Transportation Board (STB) released U.S. railroad head count data for April today. Industry carloads were the second lowest in the last 11 years for the month of April, although carloads were up +1.2% MoM on a daily carload basis from a weak March. T&E head count increased +99bps MoM, while industry-wide productivity was down -1.1% MoM on a 3M MA basis although CSX continues to outperform the group (see Figure 1). This trend is not a complete surprise considering volumes continue to lag headcount gains as T&E increased MoM for the 15th consecutive month. The STB recently extended the bi-weekly reporting requirement for enhanced service data through the end of the year for U.S. Rails but excluded CSX after the network showed consistent progress meeting its service improvement targets. CSX also is no longer required to disclose its monthly trainee pipeline. UNP and BNSF were unable to meet their one-year labor targets as noted by the STB and the Western rail trainee pipelines increased significantly during April. Norfolk entered into a tentative agreement on quality of life benefits with SMART-TD late last month, providing new schedule flexibility regarding weekly assignments, vacation and paid time off. We view this as a positive step for Norfolk, but one that likely carries some near term cost, and other carriers may follow suit in their efforts to hire and retain employees.

- **CSX avoids the productivity squeeze impacting the rest of the group.** Industry-wide efficiency levels turned negative again after a brief expansion last month, as weaker volumes persisted. Norfolk was the worst performer as volumes fell -1.8% MoM on a daily carload basis as the railroad continues to recover from completely reassessing the consist for every train on each line of the network following the second derailment in Ohio during March. However, Norfolk did not let labor get too far ahead of volume levels as overall labor remained flat MoM. CSX continued right-sizing their T&E head count with weaker volumes for the third consecutive month making them the only U.S. rail with positive labor productivity in the month.
- **Matching volumes with head count growth getting challenging.** Network statistics for the non-U.S. rails represent the reported U.S. head count and carload data, which provide the best available monthly proxy for the entire network. The CAD rails have increased their U.S. based head count back to pre-COVID levels but are struggling to match it with weaker volumes resulting in labor productivity losses.

Airfreight & Surface Transportation

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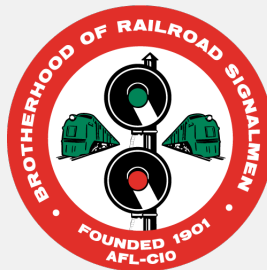
Unions Supplemental Comments

EXHIBIT 8

Winnemucca Subdivision

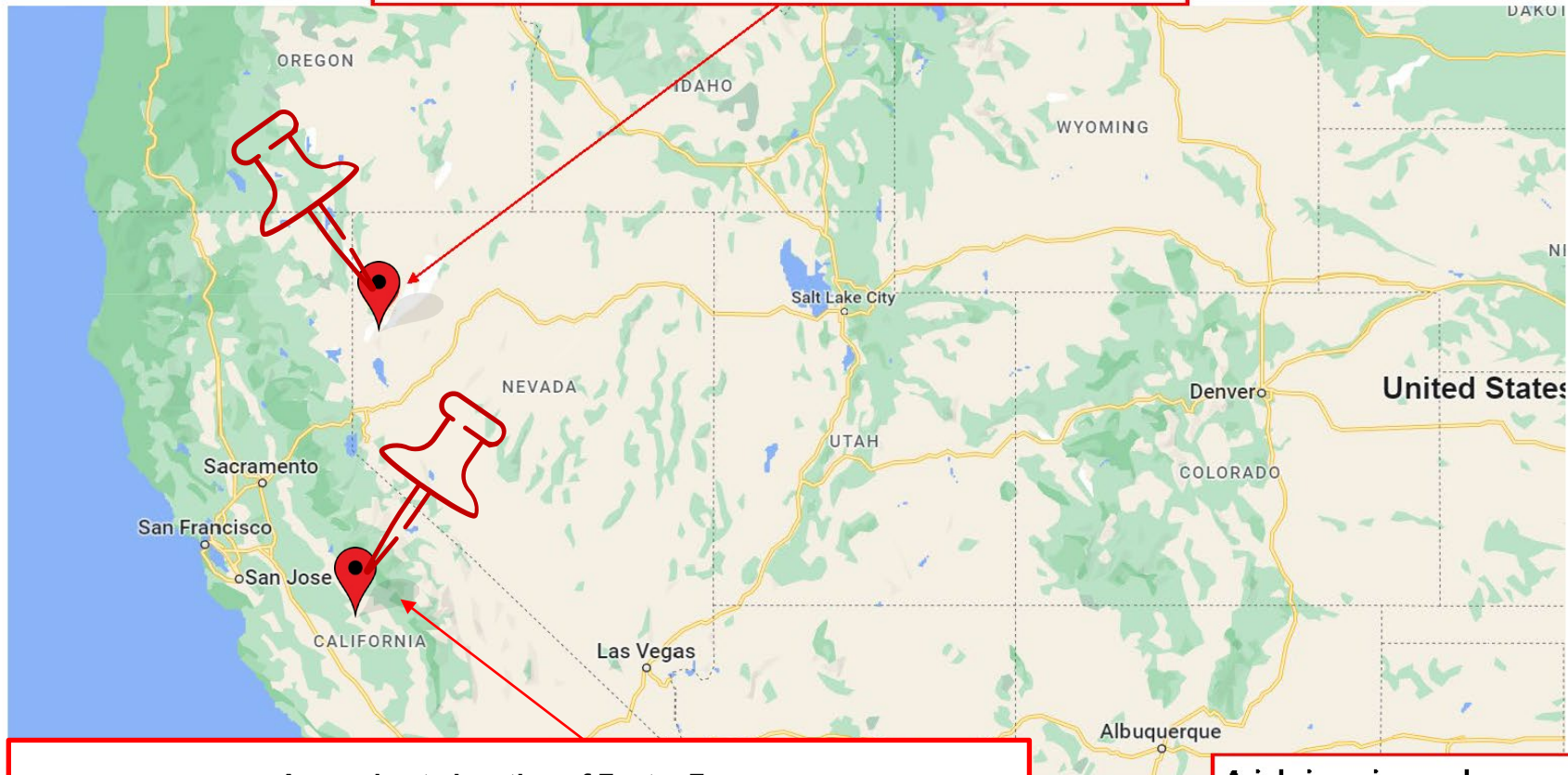
Emergency Block Signal Application
DOT APP. NO. 979

Brotherhood of Railroad Signal employees are responsible for inspecting, installing, constructing, repairing, and maintaining all signal systems and highway-rail grade crossings on Union Pacific's Winnemucca Subdivision.



Unions Supplemental Comments Ex. 3

Approximate location of trackage in question marked with red pin drop.



Approximate location of Foster Farms

Arial view via google maps



Winnemucca Subdivision
Approximate limits of
trackage in question
highlighted in red.

Alternate route to Foster Farms

**SAN FRANCISCO
BAY AREA**

Approximate location of Foster Farms

Via Roseville Timetable

CP F417 Reynard and CP F430 Phil locations marked with blue pins from GPS information. Trackage in question highlighted in blue.



Track conditions have deteriorated between CP F405 to CP F416

Arial view via google earth maps

History

Union Pacific encountered this same condition from 1999 through 2000.

The Maintainer stated that the sand was so bad underneath the rail, it was lifting the rails off the plates!



Past Issues

- **OSHA Case 20109**

Filed by BRS General Chairman

- **Same Issue, Same Location**

Contaminants preventing the track circuits from functioning.

- **Harassment Claim**

UPRR Settled a harassment claim for the Signal Maintenance Foreman, for \$12,000 on this exact property.



Current Issues

- **Contaminated Ballast**

Preventing the track circuits from functioning.

- **Ballast**

Not enough clean ballast between ties.

- **Ties Replaced**

Yet issues still remain.



Evidence

Picture of the Winnemucca Subdivision where Union Pacific claims they have been trying to mitigate the issues. Between CP Reynard (F417) to CP Phil (F430).

Contaminates prevent the track circuit from working.

This location needs sand fences and regular maintenance.



Proper Maintenance

An undercutter cleaning system, typically equipped with a track lifting and slewing mechanism would allow the track to be lifted to reduce the cutting depths and to be shifted laterally as required to clear trackside obstacles and result in a more substantial structure.

The attached slew able discharge conveyor would remove the sand and contaminated waste.



Their Solution

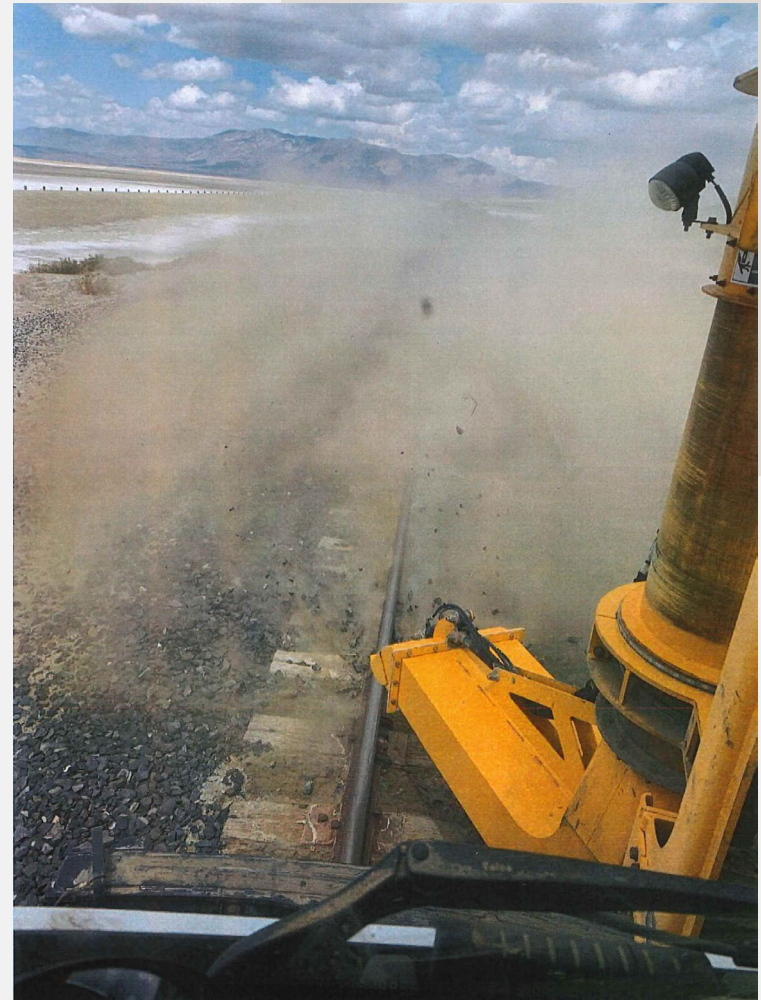
Union Pacific is using a blower to try and remove the contaminants in the ballast, which is only driving the contaminants deeper into the ballast.

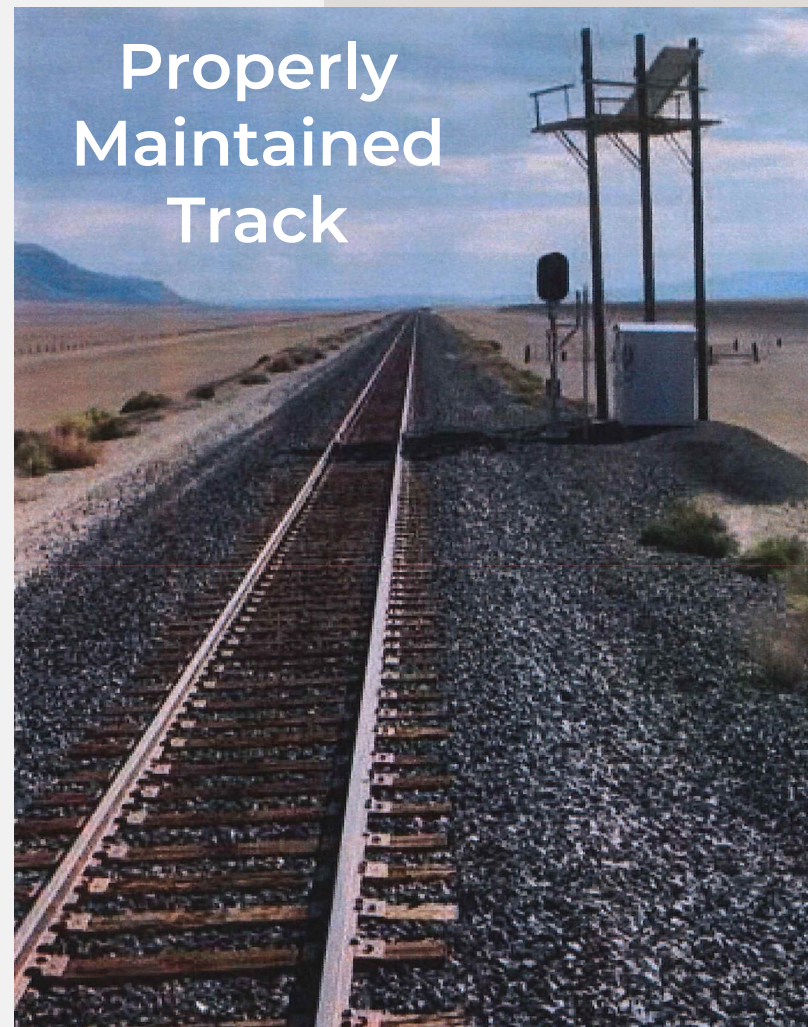
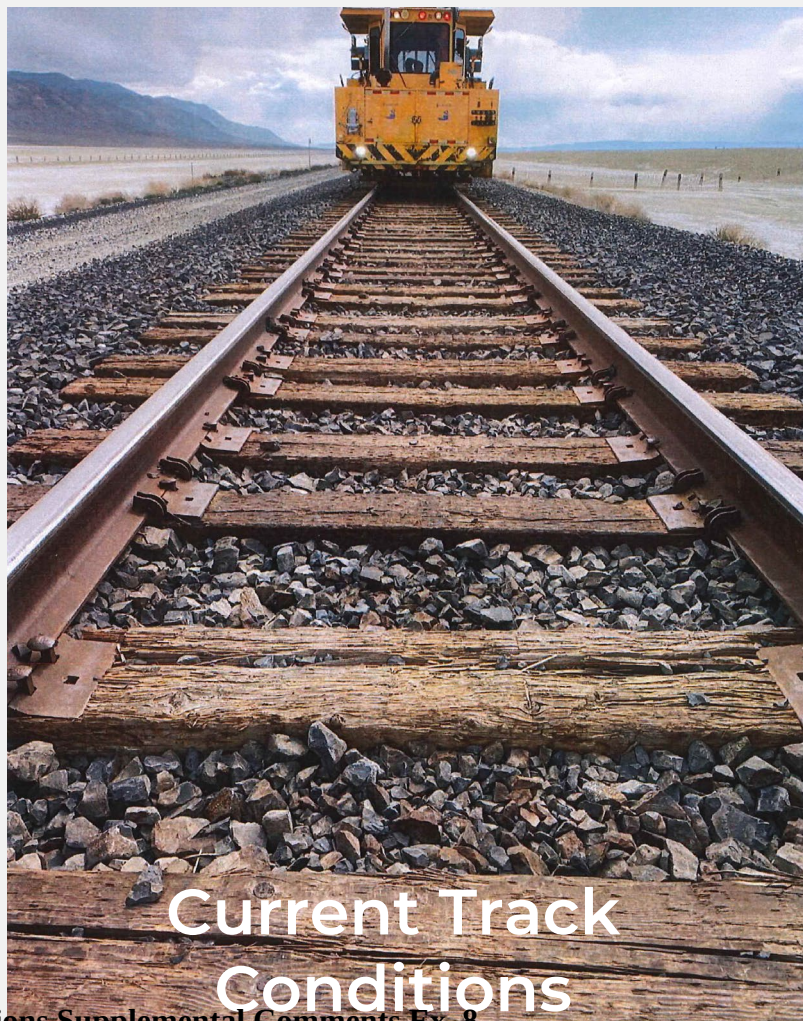


Current Conditions

Jet blowers blast the sand and debris deeper into the ballast and re-contaminate the track surface.

All remedial efforts by Union Pacific have been shown to be temporary due to the reoccurrence of the debris that has re-contaminated the track surface.







UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

The Federal Railroad Administration (FRA) received a complaint, on March 20, 2023, which noted several non-compliance issues involving multiple railroads from the Brotherhood of Railroad Signalmen (BRS). This included issues involving crossings and signals on the Union Pacific Railroad Company (UP) in both California and Nevada.



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

The complaint noted the following issues on UP:

- **Valley Road Crossing** — Out-of-service since summer 2022.
- **A24 Crossing out-of-service** — Island wires meggered bad. I have been informed that I am to megger again when the snow melts and the ground is dry. If they pass at that point UP wants it back in service. (12/2022)
- **Golden Valley Road** — Out-of-service Branch line crossing and is being ignored. (12/2022)

continued on next slide



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

The complaint noted the following issues on UP:

- **Old 395 - XH order** — Broken crossing mechanism, bad joints, rail is rough. Branch line and being ignored. (Summer 2022)
- **CPF 362** — Bad track wires to the siding. Bad wires made it so the signal wouldn't light for westbound out of the siding. I temped the lights on constant. Since the trains no longer complain it's been forgotten. (2021)



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

The complaint noted the following issues on UP:

- **CPF 372** — Bad track wires to mainline between switches. Put a temp wire on to get track up. Since they can't see it on the CAD, signal design took it upon themselves to close the ticket, and had to fight to open a new one. (2021)
- **Winnemucca Subdivision BSAP** — Signal System still not in use.
- **Nevada Subdivision** — There are a few switches that need replacing.



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

FRA Signal and Train Control Inspector Adolfo Rodrigues contacted the UP Director of Signal Compliance, on March 21, 2023, and requested information associated with the subject locations that included credible report records of a warning system malfunction, crossing disabling tickets, track bulletins, general orders, signal trouble tickets for switches and signals, test records, and circuit plans.



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

Inspector Rodrigues made an on-site visit the week of March 27–March 30, 2023, on the UP, and conducted inspections of the locations stated within the received non-compliance document.

Photographs and visual inspections of all equipment were conducted. The field and records review confirmed multiple highway-rail grade crossings have been out of service dating back to 2022 on both the UP Winnemucca Subdivision and Reno Industrial Lead.



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

The investigation resulted in the following non-compliant conditions under Title 49 Code of Federal Regulations (CFR) throughout the subject locations:

- **Three (3) violations under 49 CFR §234.207 — Adjustment, repair, or replacement of component.**
- **One (1) defect under 49 CFR §234.207** — Adjustment, repair, or replacement of component.
- **One (1) defect under 49 §236.74** — Protection of insulated wire; splice in underground wire.
- **One (1) defect under 49 CFR §236.1** — Plans, where kept.
- **One (1) defect under 49 CFR §236.11** — Adjustment, repair, or replacement of component.

**ACTION
TAKEN**



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

Detailed breakdown of location:

**ACTION
TAKEN**

Beckworth Loyalton Road — Winnemucca Subdivision — Beckworth, CA

- Out-of-Service on 12/13/2022
- Due to defective underground cable/wires for the island circuit. All island wires megger bad. The DSM instructed signal forces to plug the hold clears, remove the bell wires, and open test switch. The crossing flashing lights flash continuously flash nonstop.
- Out-of-Service at the time of inspection
- **Violation under CFR §234.207 Adjustment, repair, or replacement of component**



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

Detailed breakdown of location:

Valley Road Crossing — Reno Industrial Lead — Reno, NV

- Out-of-Service on 06/06/2022
- Due to defective underground cable/wires associated with the Southeast Signal “B”
- Out-of-Service at the time of inspection
- **Violation under CFR §234.207 Adjustment, repair, or replacement of component**

**ACTION
TAKEN**



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

Detailed breakdown of location:

Old US 395 Crossing — Reno Industrial Lead — Reno, NV

- Hold 4Parts on 11/28/2022 and XH order placed
- Due to damaged/broken spring within gate mechanism (southeast gate) that limits gate to horizontal position. South gate is pinned up. Crossing not functioning as intended — southeast gate pinned up due to damaged spring within gate mech at the time of FRA inspection
- Violation under CFR §234.207 Adjustment, repair, or replacement of component.

**ACTION
TAKEN**



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

Detailed breakdown of location:

Golden Valley Road Crossing — Reno Industrial Lead — Reno, NV

- Out-of-Service on 12/21/2022
- Due to island track circuit shorting out intermittently from saturated track (ice/snow and salt that's spread from the road authority trucks). UP reported issues with the roadway authority spreading salt in the area of the crossing to melt snow/ice frequently throughout the winter months.
- Out-of-Service at the time of inspection
- **Defect 49 CFR §234.207 Adjustment, repair, or replacement of component.**

Unions Supplemental Comments Ex. 8

**ACTION
TAKEN**



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

Detailed breakdown of location:

CP F372 Herlong — Winnemucca Subdivision — Herlong, CA

- Bad underground cable/wires associated with the 40 ATR Track (mainline track circuit in-between switches at Herlong. Temporary fix with new wires however they are exposed on the north side of the tracks. Track circuit was up and functioning as intended at time of inspections
- **One (1) defect under 49 CFR §236.74 Protection of insulated wire; splice in underground wire.**

**ACTION
TAKEN**



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

Detailed breakdown of location:

CP F362 Doyle — Winnemucca Subdivision — Doyle, CA

- Initial trouble call was westbound signal dark coming out of the siding. Due to bad underground cable/wires. Currently wired in which the lights are constantly lit.
- **One (1) defect under 49 CFR §236.1 Plans, where kept. Circuit plans do not match field conditions.**

**ACTION
TAKEN**



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

Detailed breakdown of location:

Winnemucca Subdivision BSAP

- The Winnemucca BSAP area, trains are operating on signal indication, however the track circuits are currently down due to the current storms in the area. They are operating at lower speeds, and there is no broken rail protection which is a downgrade in safety

**ACTION
TAKEN**



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

Detailed breakdown of location:

Winnemucca Subdivision BSAP

- On January 13, 2023, FRA conducted onsite inspections at all locations listed within the subject trackage area. The inspections included track circuit level measurements, shunt, and ground tests at each signal location. There were two track circuits that were de-energized (track circuit margins were at 0) at milepost (MP) properly due to contaminated track conditions from windblown high alkaline soil/sand that has received a seasonally high amount of rain and moisture.

**ACTION
TAKEN**

continued on next slide



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

Detailed breakdown of location:

Winnemucca Subdivision BSAP

- As of today's date, no repairs have been made, and the track circuits within the subject limits continue to not function properly due to the ongoing issues of contaminated track conditions.
- **One (1) defect under 49 CFR §236.11 Adjustment, repair, or replacement of component.**

**ACTION
TAKEN**



UNION PACIFIC

Non-Compliance Issue Summary

COMPLAINT NO: RRS-230405-008

Detailed breakdown of location:

Nevada Subdivision

- A few switches need to be replaced on this subdivision. Unable to determine what switches needed replacing on the Nevada Subdivision due to the vague details provided. Records were requested of tests for all power switches on the Nevada Subdivision. The review of the received records did not reveal any switches out of service or noted issues.

On March 31, 2023, Inspector Rodrigues held a meeting with the UP Manager of Signal Maintenance via phone and discussed the non-compliant issues and issued FRA inspection reports via email.

Unions Supplemental Comments Ex. 8

**ACTION
TAKEN**



UNION PACIFIC

Solution

Union Pacific is sending crews to work on the affected area —
They have also decided to install additional equipment,
between signals, approximately every $\frac{3}{4}$ of a mile.

Union Pacific has failed to bring the undercutter back to the site location to complete the required maintenance and repair the integrity of the track. Due to a lack of maintenance, the track conditions have worsened beyond 13 miles and now cover approximately 25 miles of track.

The FRA has been notified of the additional deteriorating track conditions.

Unions Supplemental Comments

EXHIBIT 9

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, et al.,	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 3:23-cv-5012
	)	
BNSF RAILWAY CO.,	)	
	)	
Defendant.	)	

**DECLARATION OF JEFF ALLRED IN SUPPORT OF PLAINTIFFS' SUGGESTIONS
IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

1. My name is Jeff Allred. I am of legal age and competent to provide this Declaration. I have personal knowledge of the facts in this Declaration related to the allegations set forth in Plaintiffs' Complaint for Declaratory and Injunctive Relief ("Complaint"), and the collective bargaining agreements between the International Brotherhood of Electrical Workers and BNSF Railway Company ("BNSF"). I also relied on business records made publicly available by BNSF and other documents provided to me in my role as General Chairman. I have reviewed BNSF's brief in support of its motion to dismiss, as well as the Declaration of Derek Cargill and the exhibits attached to that document in preparing to give this Declaration.

2. I am the current General Chairman of System Council No. 16, International Brotherhood of Electrical Workers ("System Council 16"), which represents all Mechanical Electricians employed by BNSF. I was first hired by System Council 16 as an Assistant General Chairman in November 2015. I was appointed Vice General Chairman in November 2018 to fill a vacancy, elected Vice General Chairman in October 2019, and appointed General Chairman in June 2020. I was the Local Chairman for IBEW Local Union 778, which is based in Springfield,

Missouri, from 2004 to 2015. Prior to working for System Council 16 full-time, I worked as a Mechanical Electrician at BNSF for approximately 18 years.

3. BNSF is a freight rail carrier. Its business involves shipping its customers' freight between various points along its rail network. According to BNSF, it has a total of approximately 35,000 employees. It also has roughly 7,500 locomotives and a rail network of 32,500 miles across 28 states and 3 Canadian provinces. BNSF is a wholly owned subsidiary of Berkshire Hathaway, Inc. [Exhibit A](#) is a company fact sheet from BNSF's website showing these figures/information.

4. Locomotives are integral to BNSF's business. They provide the motive power to move trains and haul freight. BNSF must have enough functional, inspected, and maintained locomotives to meet customer shipping demands. BNSF's locomotive fleet includes approximately 7,500 locomotives. All locomotives can be used in road service, and lower horsepower locomotives are regularly used for local runs and industry switching. Importantly, all of BNSF's locomotives require the same routine inspections, maintenance, and repairs.

5. BNSF employs mechanical employees who are responsible for inspecting, maintaining, and repairing BNSF's locomotives at approximately 25 different maintenance shops across its rail network. Different crafts of BNSF mechanical employees are represented by different labor unions, including the plaintiff unions in this case – the International Brotherhood of Electrical Workers (“IBEW”); International Association of Machinists and Aerospace Workers, District 19 (“IAM”); and International Association of Sheet Metal, Air, Rail & Transportation Workers – Mechanical and Engineering Department (“SMART-MD”).

6. [Exhibit B](#) is a map of BNSF's system indicating the location of various mechanical shops that perform locomotive maintenance. All Level 1 through 4 locomotive maintenance and

service locations indicated on the map are equipped to perform routine locomotive inspections, maintenance, and repairs, as well as Level 5 shops that have inspection pits.

7. My duties as General Chairman include overseeing and/or handling all union affairs, both internal and external, for System Council 16. This includes overseeing the enforcement of the IBEW's collective bargaining agreements with different carriers, including BNSF. This requires me and my staff to constantly gather information and investigate events occurring out in the field, as well as any actions BNSF takes that might affect our members' health or safety, contractual rights, or other terms and conditions of employment.

8. When contractual disputes with a carrier arise, I delegate officers or representatives to hold a conference with the carrier to meet and confer over the dispute, assuming I do not attend the conference myself. Those officers report all developments directly to me. I also oversee System Council 16's submission of claims to arbitration.

9. The IBEW has been the exclusive bargaining representative of the Mechanical Electricians employed by BNSF and its predecessors – including Burlington Northern Railroad and Atchison, Topeka & Santa Fe Railway – for decades. Currently, the IBEW represents more than 1,100 Mechanical Electricians employed by BNSF across its network. Of those Mechanical electricians, the number who perform locomotive inspection, maintenance, and repairs is approximately 965.

10. The “bread and butter” of Mechanical Electricians’ day-to-day work is performing the regularly scheduled inspection, maintenance, and repair of BNSF’s locomotives.

11. Regularly scheduled locomotive inspection, maintenance, and repair includes inspection and maintenance of both “federal items” and “general items.” Federal items are what we call the inspections and tests required by the Federal Railroad Administration’s (“FRA”)

regulations. 49 C.F.R. § 229.23 requires a periodic inspection of BNSF's locomotives every 184 days, which we sometimes call M184 inspections. 49 C.F.R. § 229.27 requires an annual test of BNSF's locomotives every 368 days, which we sometimes call M368 inspections. A locomotive cannot legally operate if it has not passed all required federal items inspections. Mechanical Electricians and members of the other unions (IAM and SMART-MD) conduct federal items inspections and perform any necessary maintenance and repairs so a locomotive passes inspection.

12. Federal items are a bare minimum. Although they may allow a locomotive to continue to legally operate, they do not adequately address all of a locomotive's maintenance needs. So in addition to federal items, M184 and M368 inspections include a list of other general maintenance items that are inspected, maintained, and repaired, if necessary. Inspecting, maintaining, and repairing a locomotive for these general items – in addition to federal items – makes sure that the locomotive is running at peak performance, power, and efficiency and helps to avoid any safety issues that might arise while the locomotive is out on the road in between inspections. [Exhibit C](#) is an example task list of an M368 inspection taken from the computer program “My Shop,” which is used by BNSF mechanical employees to track which inspection tasks have been completed and which still need to be performed. Electrical tasks performed by Mechanical Electricians are highlighted in green. Note that only the last three pages of the 66-page list are federally required items – the rest are general maintenance items.

13. Because of the FRA's regulations, every BNSF locomotive must go to a maintenance shop at least every 184 days for its regularly scheduled inspection and maintenance. When a locomotive is in the shop for its federal items inspection(s) (either its M184 or M184 and M368 – which are performed simultaneously), the locomotive historically has received a full inspection and maintenance. In other words, BNSF locomotives have traditionally been inspected

for federal items as well as BNSF's own general maintenance items in the same shop visit before the locomotive goes back out on the road. Those inspections, as well as any necessary maintenance and repairs, have historically been performed by Mechanical Electricians and members of the other crafts. The regularly scheduled M184 and M368 inspections are also the only guaranteed source of work for our members as they're predictable and required every 184 days.

14. A full locomotive inspection – including both federal items and BNSF's general maintenance items – can often be completed in under 24 hours, but it is almost always completed in well under a week. An M184 inspection typically takes about eight Mechanical Electrician staff-hours to complete, and an M368 inspection typically takes about 12 Mechanical Electrician staff-hours. These times are approximate. A locomotive in need of significant extra maintenance or repairs will take longer. Again, those are staff-hours – two Mechanical Electricians performing an M184 inspection can complete the electrical tasks in about four hours.

15. When a locomotive enters the shop for an inspection, the locomotive is “inbounded,” which means checking for horsepower, electrical grounds, and any visual defects. Defects are noted for repair in the shop. Next the locomotive is shut down and “shopped,” which is when the actual inspection, repair of defects, and any projects are completed. The electrical portion of the inspection, which is performed by one or more Mechanical Electricians, basically includes the entire electrical system aboard the unit. Once the inspections, repair of defects, and other projects are finished, the locomotive is “outbounded,” which consists of checking for correct horsepower, any remaining defects, and that all electrical systems are working as they should. As noted above, [Exhibit C](#) is a full task list for an M368 inspection with the electrical portion highlighted.

16. Mechanical Electricians and other mechanical employees use a computer system called “My Shop” to sign off on inspection items as they’re completed. If all the inspection items have not been “signed off” or marked as completed for a locomotive, the My Shop system auto-generates a “defect.” A defect can only be cured by returning the locomotive to a maintenance shop so the rest of the unfinished maintenance items can be completed.

17. The IBEW and BNSF are parties to multiple collective bargaining agreements. Among other things, those agreements include Scope Rules and rules regarding subcontracting.

18. The Scope Rules of the IBEW’s collective bargaining agreements with BNSF encompass the regularly scheduled inspection, maintenance, and repair of all the electrical facets and components of a locomotive. Historically, the regularly scheduled inspection, maintenance, and repair of a locomotives’ electrical facets and components has been performed by, and generally recognized as work belonging to, those BNSF employees represented by the IBEW. [Exhibit D](#) includes copies of the agreements’ classification of work provisions (Rules 76 and 88).

19. Both of the IBEW’s collective bargaining agreements with BNSF – which together cover all BNSF Mechanical Electricians – include general rules on subcontracting. Section 2 of Appendix G-2 states: “Work set forth in the classification of work rules of the crafts parties to this agreement or work generally recognized as work of the crafts as referred to therein *will not be subcontracted except* in accordance with the terms of this agreement.” Section 3 goes on to list the limited circumstances under which BNSF may subcontract work. [Exhibit E](#) is a copy of Article I of Appendix G-2, which applies to subcontracting on old Burlington Northern properties.

20. Likewise, Article II of the 1964 Shopcraft Agreement, as amended by PEB 219, states that the “work set forth in the classification of work rules of the crafts...[or] in the scope rule...and all other work historically performed and generally recognized as work of the

crafts...*will not be contracted except* in accordance with the provisions of this” article. Section 1 restates that general rule: “Subcontracting of work, including unit exchange, *will be done only when genuinely unavoidable.*” Article II then goes on to list the limited exceptions under which BNSF may subcontract work. [Exhibit F](#) is a copy of Article II of the 1964 Shopcraft Agreement, as amended by Article VI of PEB 219, which governs subcontracting on old Santa Fe properties.

21. Importantly, BNSF has not disputed that the subcontracting language in both agreements establishes a general rule against subcontracting.

22. The number of Mechanical Electricians at BNSF has steadily declined in recent years. Below are the approximate yearly numbers (from 2019 to present) of IBEW-represented Mechanical Electricians employed by BNSF who perform locomotive inspections, maintenance, and repairs. My staff and I gathered these numbers from System Council 16’s records.

2019: 1386
2020: 1322
2021: 1100
2022: 980
2023: 965

23. BNSF’s freight volumes initially suffered during the first part of 2020 due to the COVID-19 pandemic. By the end of the year, however, BNSF’s freight volumes had recovered to pre-pandemic levels. [Exhibit G](#) is a copy of BNSF’s Fourth Quarter 2020 Financial Performance summary, which states that “the COVID-19 pandemic...severely impacted volumes through the first half of the year. Volumes sequentially improved from earlier periods and recovered overall to pre-pandemic levels by the end of the year.”

24. [Exhibit H](#) includes monthly New Hire and Termination Reports for 2020, 2021, and 2022. These reports are generated by BNSF monthly and delivered to the IBEW. Over those three years, BNSF furloughed nearly 300 Mechanical Electricians. As the reports show, however,

the IBEW has seen a total net loss of well over 300 Mechanical Electricians since 2020. The reports also show that BNSF did not significantly begin recalling furloughed employees until late 2021 and early 2022 – long after freight volumes had bounced back from the pandemic.

25. Also, throughout 2020 and 2021, BNSF notified the mechanical unions that it was permanently reducing the workforce at various shops along its network and/or permanently closing shops altogether. [Exhibit I](#) is a non-exhaustive list of correspondence I have received from BNSF regarding force reductions and/or shop closures. Affected locations include Birmingham, Alabama; Barstow, California; Commerce, California; Richmond, California; Chicago, Illinois (Corwith Locomotive); Sioux City, Iowa; Kansas City, Kansas (Argentine Yard); Topeka, Kansas; Glendive, Montana; Alliance, Nebraska; Tulsa, Oklahoma; Memphis, Tennessee; Dayton, Texas; Fort Worth, Texas; Houston, Texas; Galveston, Texas; Silsbee, Texas; Spokane, Washington; Superior, Wisconsin; Donkey Creek, Wyoming; and Guernsey, Wyoming.

26. Many of these shops affected by closures and/or workforce reductions either perform(ed) or are/were capable of performing the regularly scheduled inspection, maintenance, and repair of locomotives. All that's needed to perform regularly scheduled inspections, maintenance, and repairs is an inspection pit and craft workers.

27. In addition, the Topeka, Kansas facility is a “back shop” used primarily for major locomotive overhauls and rebuilds, but it can be used to perform routine locomotive inspection, maintenance, and repair, and has occasionally been used for that purpose in the past. [Exhibit J](#) includes past work orders showing locomotive inspections have been performed at the Topeka facility, despite what BNSF says to the contrary.

28. In September 2021, BNSF began deferring regularly scheduled inspection, maintenance, and repair of its locomotives. Instead of performing the standard full inspection,

BNSF instructed employees to limit inspection and maintenance of locomotives to federal items only (“FIO”). As I noted above, federal items are the bare minimum, and do not adequately address all of a locomotive’s maintenance needs. Nevertheless, BNSF instructed Mechanical Electricians and other mechanical employees to perform FIO inspections on locomotives and to defer all other maintenance. [Exhibit K](#) is a September 2, 2021 email from James Brackett of BNSF, which instructs maintenance shop field leaders to complete federal items only inspections on locomotives. Specifically, the email states: “Sign off the general maintenance items; they do not need to be performed. This is to prevent an FIO defect from being auto-generated.” Brackett’s email went on to provide detailed instructions on how employees should sign off on general inspection and maintenance items and mark them as completed in BNSF’s computer system to avoid generating a defect, even though those maintenance items were never performed. [Exhibit L](#) is a substantially similar email from BNSF General Foreman Paul McLeod, dated September 21, 2021, to mechanical employees at the Alliance, Nebraska facility instructing those employees to sign off on general maintenance items even though they had not been completed.

29. As a result, since September 2021, BNSF locomotives have largely gone without much needed general maintenance. Just a few of the electrical general maintenance items that BNSF has chosen to ignore for a year or more on some locomotives include: checking the security of electrical connections; verifying the functioning of the call button and alarm bell; checking the calibration of dynamic brakes and the brake warning feature; checking low-voltage grounds; and checking operation and control of dynamic brakes. Although these items are not required to be inspected by federal regulations, they are still critically important to the performance of a locomotive. See [Exhibit C](#) for a full list of M368 inspection items.

30. As I mentioned above, federal items are the bare minimum. In the past, FIO inspections were typically only performed when it was necessary for a locomotive to continue to legally operate so it could lawfully travel directly to its designated maintenance shop where it would undergo its full inspection, maintenance, and repair routine.

31. In addition to drastic staff reductions, BNSF has removed many locomotives from service and placed them in storage, the industry-term for which is “laid up.” As of February 2023, BNSF had approximately 1,750 laid up locomotives. As of April 5, 2023, the laid-up count was 1,720 locomotives. Generally speaking, laid up locomotives cannot be quickly reintroduced into the active fleet. Returning a laid up locomotive to service often requires more rigorous inspections and repairs than are performed on an in-service locomotive due to a variety of reasons. These could include prolonged periods without operating or vandals dismantling and stealing expensive materials and components, or a number of other reasons that might render a laid up locomotive unusable.

32. BNSF has seen a simultaneous increase in profits in conjunction with its business decisions to cut its workforce and defer basic locomotive maintenance. For fiscal year 2021, BNSF reported an operating income of nearly \$8.8 billion and a net income of nearly \$6 billion, a 14% and 16% increase from 2020, respectively. Those increases were accompanied by a 7% increase in total volume of freight compared to 2020. [Exhibit M](#) is a copy of BNSF’s Fourth Quarter 2021 Financial Performance summary showing these figures. Warren Buffet, CEO of Berkshire Hathaway, announced in his letter to shareholders, as part of Berkshire Hathaway’s 2021 Annual Report, that BNSF’s net income in 2021 was a record for the railroad. [Exhibit N](#) is a copy of Buffet’s letter to shareholders from Berkshire Hathaway’s 2021 Annual Report.

33. [Exhibit O](#) is a copy of BNSF's Fourth Quarter 2022 Financial Performance summary. For fiscal year 2022, BNSF's operating income and net income declined only 2% and 1% from 2021, respectively. That decline largely appears to be caused by the sharp increase in fuel prices – which impacted the entire country in 2022. Notably, total freight revenues per car/unit increased 19% over 2021 levels even though the total volume of freight decreased 6% compared to 2021.

34. Another cost-cutting measure came at the end of 2022. On December 29, 2022, Henry Schafer of BNSF sent an email to mechanical employees announcing that BNSF was planning to implement a “0% overtime initiative” in 2023 as part of BNSF's efforts to reduce the mechanical budget by approximately \$51 million across its rail system. [Exhibit P](#) is a copy of Schafer's email.

35. I later learned that around the same time in December 2022, BNSF sought and obtained an “enforcement discretion” from the FRA to defer the M184 and M368 inspections on hundreds of its locomotives. 49 C.F.R. § 211.45 provides a process for carriers to petition the FRA for an “Emergency Waiver of Safety Rules” in the case of certain “emergency events.” If the Administrator of the FRA declares that an emergency event exists, a railroad may submit a petition for an emergency waiver through the process outlined in § 211.45.

36. On about December 15, 2022, BNSF submitted a request to the FRA for an “enforcement discretion” that would temporarily relieve BNSF from its obligation to perform M184 and M368 inspections on hundreds of its locomotives. The FRA Office of Safety granted BNSF's request, citing a “winter storm” as the reason for granting BNSF temporary relief. On December 27, 2022, again in response to BNSF's request, the Office of Safety extended the “enforcement discretion” period until January 14, 2022. Interestingly, although the FRA granted

BNSF an “enforcement discretion,” the procedures for petitioning the FRA for an emergency waiver of safety rules under 49 C.F.R. § 211.45 were never triggered because the FRA Administrator never declared an emergency event in December 2022. The FRA has since affirmatively stated that no waiver of the FRA’s safety rules was ever issued to BNSF. [Exhibit Q](#) is a letter from the IBEW’s attorneys to the FRA Administrator expressing concern over the “enforcement discretion,” along with attachments of a letter from the FRA Office of Safety to BNSF granting the “enforcement discretion,” and an email from the FRA Office of Safety to IBEW Railroad Department Director Al Russo explaining that BNSF was granted an “enforcement discretion” excusing it from performing required M184 and M368 inspections on hundreds of locomotives until January 14, 2023.

37. On January 5, 2023, Derek Cargill, BNSF’s General Director of Labor Relations, sent a letter to me and representatives of other unions giving notice of BNSF’s intent to “contract out for work needed to reduce the number of out of service locomotives in the system.” [Exhibit R](#) is a complete and accurate copy of that letter. In that letter, BNSF asserted that the need to contract out regularly scheduled maintenance was “driven by locomotive demand being beyond plan for over 12 months and early winter weather, resulting in a higher than normal number of bad order locomotives on the road and in the shop.” As a result, BNSF claimed that “it is necessary and essential to outsource up to 30 locomotives per week to third party vendors for the next 3-6 months.” Derek Cargill further noted that “[t]here are currently approximately 1,000 units currently FIO’d [inspected for federal items only] which need their full maintenance completed... BNSF currently does not have the necessary manpower and shop capacity available on the property to perform this work within the necessary time frame, as there is an immediate need to address the high number of bad order locomotives on the road and in the shop.”

38. BNSF's January 5 notice included a list of locomotives that would be sent to subcontractors for their regularly scheduled inspections and maintenance. Interestingly, all of those locomotives were included among the locomotives granted an "enforcement discretion" by the FRA in December 2022. Again, although an emergency waiver of the FRA's safety rules was never invoked or granted, the "enforcement discretion" BNSF received from the FRA's Office of Safety provided BNSF with the time needed to redirect a number of those locomotives overdue for their inspections to subcontractors' maintenance shops.

39. Members of my staff and SMART-MD held a conference with BNSF over its January 5 notice to subcontract out the regularly scheduled inspection, maintenance, and repair work on January 18, 2023.

40. I received a follow-up letter from Derek Cargill on January 27, 2023. He stated that "BNSF does not have the necessary manpower and shop capacity available on the property to address the unusually high out of service count and back log of scheduled maintenance events." He also acknowledged that the "job market for electricians and other skilled crafts has been unusually tight over the last several years, resulting in a slower hiring pace at specific locations." A full and accurate copy of Derek Cargill's January 27 letter is attached as [Exhibit S](#).

41. BNSF has not hired a sufficient number of Mechanical Electricians capable of performing the necessary locomotive inspection, maintenance, and repair work. In addition to the furlough numbers, as the New Hire and Termination reports show, a number of Mechanical Electricians have resigned or refused recall. Since 2016, BNSF has consistently reduced its mechanical workforce, including Mechanical Electricians. BNSF also has not indicated any willingness to hire or retain workers in those positions sufficient to meet BNSF's basic maintenance needs. That practice pre-dates the pandemic. The results of that practice have not only

been incredibly thin staffing levels in maintenance shops, but also furloughs of unpredictable duration.

42. Workers are keenly aware of BNSF's business practices. Although BNSF may have finally recalled furloughed workers in a time of supposed dire need, based on BNSF's business practices, workers fear that BNSF will simply use them to address the present need and furlough them again and return to its business model of reduced staff levels. Many Mechanical Electricians have communicated to me and my staff that they have had enough and have made the personal decision to take their electrical skills and knowledge to another employer or industry with better treatment and more predictability. Derek Cargill admitted in his January 27 letter that he knew the job market for electricians was tight over the past several years. Nevertheless, BNSF did not attempt to immediately shore up its mechanical workforce by hiring Mechanical Electricians, knowing it would be extremely difficult to replace them.

43. To my knowledge, BNSF has not previously subcontracted the regularly scheduled inspection, maintenance, or repair of locomotives, even to address high numbers of out-of-service locomotives. In the past, when the out-of-service count was high, Mechanical Electricians and employees represented by the other unions worked forced overtime and even gone to mandatory six-day work weeks to reduce the out-of-service count.

44. In fact, just recently, BNSF forced Mechanical Electricians to work their first rest day until the locomotive out-of-service count was below 450. BNSF expected this to last for two weeks. However, it only took employees four days. [Exhibit T](#) is an email thread from Paul McLeod regarding forced overtime for Mechanical Electricians starting April 3, 2023 in order to address the high out of service count.

45. The previous outsourcing notices cited by BNSF's brief and in Derek Cargill's declaration are entirely different in scope and scale from the subcontracting here. The January 5 notice anticipated nearly 800 locomotives would be subcontracted out. The next highest in any of the outsourcing notices cited by Cargill contemplated less than 200. Additionally, all the previous outsourcing notices cited by BNSF involved major repair work or upgrades. This is the first time BNSF has announced the subcontracting of the most basic inspection and maintenance work – which, as I mentioned, is the bread and butter of the work Mechanical Electricians and other mechanical employees perform on a daily basis.

46. BNSF's outsourcing ceased on April 12, 2023. Based on information BNSF provided to System Council 16, as of February 8, 2023, my staff and I calculated that BNSF's subcontractors were completing the regularly scheduled inspection, maintenance, and repair of locomotives in 10.34 days per locomotive, on average. That is significantly longer than the time it takes Mechanical Electricians and members of the other unions to complete a full inspection and maintenance routine – which is often completed within a 24-hour period. The 10.34 days also does not account for the added time it takes to transport the locomotives to and from the subcontractors.

47. The IBEW has filed a claim over BNSF's subcontracting notice. Our claim expressly stated, however, that we were only filing the claim in order to preserve our right to pursue it. We also expressly stated that the submission of the claim was not to be construed as an admission that the dispute was within the arbitrator's exclusive jurisdiction or that the dispute was minor. The lawsuit does not allege a breach of the subcontracting provisions of the agreements, but alleges BNSF violated the Railway Labor Act by acting in bad faith.

As required by 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 20, 2023.



Jeff Allred

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS,)

and)

INTERNATIONAL ASSOCIATION OF)
SHEET METAL, AIR, RAIL &)
TRANSPORTATION WORKERS –)
MECHANICAL AND ENGINEERING)
DEPARTMENT,)

and)

INTERNATIONAL ASSOCIATION OF)
MACHINISTS AND AEROSPACE)
WORKERS, DISTRICT 19,)

Plaintiffs,)

v.)

BNSF RAILWAY CO.,)

Defendant.)

Case No. 3:23-cv-5012

DECLARATION OF LARRY J. HOLBERT

I, Larry J. Holbert, declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct and based on personal knowledge.

1. I am an International Representative for the International Association of Air, Rail and Transportation Workers (“SMART”). The SMART Mechanical and Engineering Department (“SMART MD”) is exclusive bargaining representative under the Railway Labor Act of Sheet

Metal Workers employed by BNSF Railway (“BNSF”). I have been an International Representative since May 01, 2011. Before that I was a General Chairman between June 01, 2008 and May 01, 2011.

2. SMART MD represents approximately 300 Sheet Metal Workers who perform mechanical inspection, maintenance, and repair of locomotives in numerous shops across BNSF’s rail system. Those Sheet Metal Workers inspect, maintain, and repair locomotives. They perform tasks from repairing fuel leaks to completing a major overhaul of a locomotive. They maintain and repair locomotive cab equipment, including cab windshield wipers, locomotive horns, and sanders, and also ensure all requirements are met regarding the cab sanitation compartment.

3. BNSF employs mechanical employees who are responsible for inspecting, maintaining, and repairing BNSF’s locomotives at approximately 25 different maintenance shops across its rail network. Different crafts of BNSF mechanical employees are represented by different labor unions, including: International Association of Machinists and Aerospace Workers, District 19 (“IAM”) the International Brotherhood of Electrical Workers (“IBEW”); and SMART-MD.

4. SMART MD and BNSF are parties to multiple agreements that together constitute the collective bargaining agreement (“CBA”) covering BNSF Sheet Metal Workers.

5. The Classification of work rule in the CBA covering former Burlington Northern territories describes Sheet Metal Worker work (in pertinent part) as follows:

(a) Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings and on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter, including brazing, soldering, tinning, leading, and babbitting, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil, sand and steam pipes; the operation of babbit fires; oxyacetylene, thermit and

electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work.

(b) On the territory of the former Frisco, now included within seniority districts 14W, 15W, and 16W; the Classification of Work for Water Service Mechanics and Water Service Helpers shall be as set forth in former Frisco Rules 138 and 139:

The Classification of work rule in the CBA covering former Atchison, Topeka and Santa Fe territories describes Sheet Metal Worker work as follows:

Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings and on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling for repairs and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter, including brazing, soldering, tinning, leading, and babbitting, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes; pouring of brass; oxyacetylene, thermit and electric welding on work generally recognized as sheet metal workers' work; and all other work generally recognized as sheet metal workers' work.

A copy of these Classification Rules are Exhibit A to this Declaration

6. Consistent with the CBA, regularly scheduled Federal inspections and other “state of good repair” inspections, maintenance, and repairs, and other work of the type described in the Classification Rule, performed for and on BNSF locomotives (and those of its predecessor railroads) have historically been performed by, and have generally been recognized as work belonging to Sheet Metal Workers.

7. The SMART MD and BNSF are also parties to the September 25, 1964 National Agreement (the “1964 Agreement”). Article II of the 1964 Agreement, as amended, mandates that work within Scope and classification rules of the CBA and other work “historically performed and generally recognized as work of the crafts...*will not be contracted unless* certain criteria are met.”

A copy of relevant portions of the 1964 Agreement is Exhibit B to this Declaration.

8. Article II, Section 1, of the 1964 Agreement, as amended, provides:

Subcontracting of work, including unit exchange, will be done only when *genuinely unavoidable* because (1) managerial skills are not available on the property but this criterion is not intended to permit subcontracting on the ground that there are not available a sufficient number of supervisory personnel possessing the skills normally held by such personnel; or (2) skilled manpower is not available on the property from active or furloughed employees; or (3) essential equipment is not available on the property; or (4) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed and provided further that if work which is being performed by railroad employees in a railroad facility is subcontracted under this criterion, no employees regularly assigned at that facility at the time of the subcontracting will be furloughed as a result of such subcontracting.

9. The business of BNSF is pick-up and delivery of rail cars; motive power is required for BNSF to provide its services to its customers. Locomotives are therefore a basic necessity for BNSF's business and for its performance of its obligations as a common carrier because locomotives provide the power to transport the freight of BNSF's customers. Having a sufficient fleet of functional, well inspected and maintained locomotives is integral to BNSF's provision of rail service and performance of its common carrier obligation.

10. Federal regulations (49 C.F.R. § 229.23(a)) require "periodic inspection" and maintenance of locomotives every 92 days. Certain BNSF locomotives are equipped with advanced on-board electronic monitoring systems; Federal regulations (49 C.F.R. § 229.23(b)) only require a periodic inspection of those components every 184 days.

11. Every periodic inspection requires a locomotive to pass certain tests, listed in 49 C.F.R. § 229.25. If a locomotive fails any given test of the periodic inspection, it must be repaired

before returning to service. *See* 49 C.F.R. § 229.23(a). Locomotives that have not been timely inspected or have not been repaired after a failed inspection must be taken out of service.

12. Federal regulations also require locomotives to undergo an “annual test” every 368 days. *See* 49 C.F.R. § 229.27. If a locomotive fails any portion of the annual test, the error(s) must be corrected. *Id.* The annual test is traditionally performed simultaneously alongside the periodic inspection.

13. Because of these federal regulations, every BNSF locomotive should be inspected and, if necessary, repaired every 184 days by employees represented by the Unions.

14. Federal regulations also provide a process for carriers to petition for an “Emergency Waiver of Safety Rules” in the case of certain “emergency events.” 49 C.F.R. § 211.45. If the Administrator of the FRA declares that an emergency event exists, a railroad may submit a petition for an emergency waiver through the process outlined in § 211.45.

15. In addition to the Federally required periodic inspections and annual tests – commonly referred to as “federal items” – locomotives also routinely require other “full maintenance” to ensure their efficiency and performance; to be in a state of good repair and functional operating capability. Locomotives that have passed “Federal Items Only” (FIO) inspection, *i.e.*, the periodic inspections and annual tests, are legally permitted to operate, but they still require other regularly scheduled maintenance not covered by federal law in order to operate reliably and effectively.

16. Historically, when a BNSF locomotive has been sent to a shop for inspection and repairs (“shopped”), it is inspected for federal items as well as BNSF’s own general maintenance items. Once each item is inspected and repaired, if necessary, the employee(s) performing the work marks the item as completed using a computer tracking system. If all inspection items have not

been “signed off,” *i.e.*, marked as completed; if an inspection reveals problems that should be repaired but have not been repaired, the computer system auto-generates a “defect,” which can only be cured by returning the locomotive to a maintenance shop so all maintenance items can be completed. In other words, BNSF locomotives were traditionally inspected for federal items as well as BNSF’s own general maintenance items in the same shop visit before the locomotive went back out on the road.

17. In the past, BNSF limited inspections to Federal Items Only inspections only when necessary for the locomotive to operate legally while it traveled to a designated mechanical shop destination, where it would then undergo its full regularly scheduled inspection, maintenance, and repair routine.

18. BNSF Sheet Metal Workers have historically performed the regularly scheduled inspection, maintenance, and necessary repairs of both federal and general maintenance items on BNSF locomotives that is work within the Classification Rule of the SMART MD-BNSF CBA.

19. To my knowledge, BNSF has never contracted-out regularly scheduled maintenance, even to address high numbers of out-of-service locomotives in need of their regularly scheduled full maintenance.

20. In the past, there have been occasions when the number of out-of-service BNSF locomotives in need of regularly scheduled maintenance has been high. In such instances, BNSF Sheet Metal Workers have worked overtime and even switched to mandatory six-day work weeks to reduce the number of out-of-service locomotives.

21. In recent years, BNSF has removed a number of locomotives from service and placed them in storage. Returning a stored or “laid up” locomotive to service often requires more rigorous inspections and repairs than are performed on an in-service locomotive due to a variety

of reasons, such as prolonged periods without operating or vandals dismantling and stealing expensive materials and components, which render “laid up” locomotives unusable. Accordingly, “laid up” locomotives normally cannot be quickly reintroduced into the active fleet. As of early February 2023, the number of BNSF locomotives that were “laid up” in storage was approximately 1,750.

22. Although BNSF freight volumes suffered during the first part of 2020 due to the COVID-19 pandemic, according to BNSF’s own financial reports, volumes had recovered to pre-pandemic levels by the end of 2020.

23. Since 2020, BNSF has furloughed 32 Sheet Metal Workers across BNSF’s network. Many furloughed Sheet Metal Workers were not recalled to service for many months even as demand for rail service returned starting in the summer of 2020. When BNSF finally started recalling furloughed employees in late 2021 and early 2022, many declined to return. As employees declined recall, BNSF did not immediately begin hiring to fill the positions those employees would have held.

24. BNSF has dramatically reduced its Sheet Metal Worker work force since 2017. In 2017 there were around 310 BNSF Sheet Metal Workers; in 2019 there were around 359 BNSF Sheet Metal Workers; in 2021 there were around 286 BNSF Sheet Metal Workers; and currently there are around 300 BNSF Sheet Metal Workers.

25. Since 2019, 32 Railroad Sheet Metal Workers represented by SMART-MD were furloughed at some point in time. SMART-MD has seen a net loss of 59 employees it represents since 2020.

26. Beginning around September 2021, BNSF also began deferring regularly scheduled maintenance of its locomotives, limiting inspections and repairs to federal items only. In other

words, locomotives that were in the shop were only inspected and repaired to meet the minimum standards required by federal law so they could continue to legally operate. All other necessary regularly scheduled maintenance was otherwise deferred.

27. On September 2, 2021, James Brackett of BNSF instructed BNSF's maintenance shop field leaders to complete federal items only inspections on locomotives entering the shops for their regularly scheduled inspection and maintenance, and to defer all other inspections. Mr. Brackett also included detailed instructions on how employees should mark general inspection and maintenance items as completed in the computer system – even though those items were not performed – to avoid a “defect” from being generated in BNSF's computer system indicating that the locomotive needed to be “shopped” for additional inspection and maintenance. A copy of that correspondence is Exhibit C to this Declaration.

28. On September 21, 2021, BNSF General Foreman Paul McLeod forwarded a substantially similar email from James Brackett to employees at the Alliance, Nebraska facility with instructions to “*Sign off the general maintenance items; they do not need to be performed.*” A copy of that correspondence is Exhibit D to this Declaration.

29. As a result, of these directives, since September 2021, BNSF locomotives have largely gone without much needed general maintenance.

30. On about December 15, 2022, BNSF submitted a request to the FRA for an exercise of “enforcement discretion” that would temporarily relieve BNSF from its obligation to timely perform periodic inspections and annual tests for hundreds of locomotives. BNSF cited a “winter storm” as justifying its request for temporary relief from the due dates for Federal inspections. This would mean that a number of BNSF locomotives would operate despite missing the deadline for completion of their Federal inspections. The FRA granted that request; and on about December

27, 2022, FRA granted a BNSF request to extend the “enforcement discretion” period until January 14, 2022.

31. Although the FRA granted BNSF an “enforcement discretion,” the procedures for petitioning the FRA for an emergency waiver of safety rules under 49 C.F.R. § 211.45 were not followed because the FRA never declared an emergency event in December 2022. And the FRA has affirmatively stated that no waiver of the FRA’s safety rules was issued to BNSF.

32. On December 29, 2022, Henry Schafer of BNSF circulated an email to mechanical employees announcing that BNSF was planning to implement a “0% overtime initiative” in 2023 as part of BNSF’s efforts to reduce the mechanical budget by approximately \$51 million across its rail system. A copy of Mr. Schafer’s December 29 email is Exhibit E to this Declaration.

33. As a result of BNSF’s instructions to perform only Federal inspections, many of its locomotives did not receive the full inspections, maintenance and repairs to remain in good working order, were not functioning properly and therefore had to be taken out of service.

34. On January 5, 2023, Derek Cargill, BNSF’s General Director of Labor Relations, sent a letter to representatives of SMART MD, and the other unions representing BNSF shop workers giving notice of BNSF’s intent to “contract out for work needed to reduce the number of out of service locomotives in the system.” A copy of that letter is Exhibit F. to this Declaration.

35. The January 5 letter asserted that the need to contract out regularly scheduled maintenance was “driven by locomotive demand being beyond plan for over 12 months and early winter weather, resulting in a higher than normal number of bad order locomotives on the road and in the shop.” As a result, BNSF claimed that “it is necessary and essential to outsource up to 30 locomotives per week to third party vendors for the next 3-6 months.”

36. More specifically, BNSF's January 5 letter indicated that "[t]here are currently approximately 1,000 units currently FIO'd [inspected for federal items only] which need their full maintenance completed... BNSF currently does not have the necessary manpower and shop capacity available on the property to perform this work within the necessary time frame, as there is an immediate need to address the high number of bad order locomotives on the road and in the shop." One thousand locomotives that had only been inspected for compliance with Federal regulations but did not receive the level of inspection and maintenance sufficient to be in good working order constituted about a fifth of BNSF's motive power. Of those 1000 locomotives, 550 were described as out of service; that constituted over a tenth of BNSF's motive power.

37. All the locomotives that BNSF indicated in its January 5 letter to the Unions would be sent to contractors for their regularly scheduled periodic inspections and maintenance were included among the locomotives for which BNSF sought an exercise of "enforcement discretion" from the FRA in December 2022.

38. Although the emergency waiver of the FRA's safety rules was never invoked or granted, the "enforcement discretion" BNSF received from the FRA nevertheless allowed BNSF ample time to redirect a number of locomotives overdue for their regularly scheduled inspections, maintenance, and necessary repairs to contractors' maintenance shops.

39. In correspondence with SMART MD and other unions that represent BNSF shop workers, Mr. Cargill stated that "BNSF does not have the necessary manpower and shop capacity available on the property to address the unusually high out of service count and back log of scheduled maintenance events." BNSF did not address, however, how permanent shop closures, force reductions, placing locomotives in storage, and deliberately deferring regularly scheduled maintenance likely affected the out of service count or maintenance backlog.

40. Mr. Cargill also asserted that the job market for skilled crafts such as Sheet Metal Workers has been unusually tight over the last several years, resulting in a slower hiring pace at specific locations. But BNSF has not hired a sufficient number of employees to fill the Sheet Metal Worker positions required for performing the locomotive inspection, maintenance, and repair work necessary for BNSF to meet its motive power needs. Since 2020 BNSF has reduced the SMW craft by 17%, currently there is no hiring process being conducted at the Alliance Nebraska facility, and there are no job postings for Sheet Metal Workers anywhere on the BNSF system.

41. In response to questions by union representatives as to why BNSF would not attempt to clear the backlog of locomotives due for inspection by assigning more overtime work, as has been done in the past, BNSF responded that it did not intend to assign more overtime work. BNSF's response was consistent with its "0% overtime initiative" for 2023.

42. In his Declaration, Mr. Cargill asserts that BNSF has a past practice of contracting-out locomotive repair work. But BNSF has never contracted-out work at the scale of the current plan and it has never before contracted-out Federal inspection work.

Date: April 19, 2023

/s/ Larry J. Holbert
Larry J. Holbert

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS,)

and)

INTERNATIONAL ASSOCIATION OF)
SHEET METAL, AIR, RAIL &)
TRANSPORTATION WORKERS –)
MECHANICAL AND ENGINEERING)
DEPARTMENT,)

and)

INTERNATIONAL ASSOCIATION OF)
MACHINISTS AND AEROSPACE)
WORKERS, DISTRICT 19,)

Plaintiffs,)

v.)

BNSF RAILWAY CO.,)

Defendant.)

Case No.3:23-cv-5012

DECLARATION OF KYLE LOOS

I, Kyle Loos, declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct and based on personal knowledge.

1. I am the President Directing General Chairman of the International Association of Machinists and Aerospace Workers District #19 (IAM District #19), which is a division of the International Association of Machinists and Aerospace Workers (“IAM”). IAM is exclusive

bargaining representative under the Railway Labor Act of Machinists employed by BNSF Railway (“BNSF”). IAM District #19 is authorized to provide IAM, representation to BNSF Machinists. I have been President Directing General Chairman since July 1, 2022; before that I was a General Chairman between October 1, 2013, and June 30, 2022.

2. IAM represents approximately 7,780 Machinists who perform mechanical inspection, maintenance, and repair of locomotives in numerous shops across BNSF’s rail system. Those Machinists inspect, test, maintain, repair, and overhaul the mechanical and pneumatic systems on locomotives, as well as rebuild airbrake parts and the trucks that hold up locomotives. Machinists also use wheel truers to restore locomotive and car wheels back to Federal Railroad Administration (“FRA”) specifications and machine various parts. Machinists also maintain and repair in-plant machines used to repair locomotives and other equipment.

3. BNSF employs mechanical employees who are responsible for inspecting, maintaining, and repairing BNSF’s locomotives at approximately 25 different maintenance shops across its rail network. Different crafts of BNSF mechanical employees are represented by different labor unions, including: IAM, the International Brotherhood of Electrical Workers (“IBEW”); and International Association of Sheet Metal, Air, Rail & Transportation Workers – Mechanical and Engineering Department (“SMART-MD”).

4. IAM and BNSF are parties to multiple agreements that together constitute the collective bargaining agreement (“CBA”) covering BNSF Machinists.

5. The Classification of work rule in the CBA, describes Machinist work (in pertinent part) as follows:

I. Former BN locations - At former BN locations, Machinists' work shall consist of:
(1) Operating machinery, equipment and tools used in turning, boring, drilling (including plain, ratchet, radial and other skilled drilling), reaming, tapping, shaping, polishing, milling, slotting, grinding and laying out of all metals or other materials,

including synthetics, of mechanical equipment or components thereof; fitting, inspecting, adjusting, repairing, building, assembling, aligning, dismantling and maintaining (including removing, repairing, and applying) mechanical equipment or mechanical components of:

(a) Steam, electric, diesel-electric, gas and diesel hydraulic locomotives; selfpropelled wrecker cranes;

* * * *

(c) Generator plants and power houses, shop cranes, internal combustion engines, external combustion engines, air compressors, turbines, mechanical drive mechanisms, blowers, super chargers, turbo-chargers, steam generators, traction motors, pumps, jacks, hoists, elevators, cranes, car retarder mechanisms when sent to mechanical shops, locomotive air brake systems and hydraulic brake systems, fuel injector systems, lubricator systems, automatic train control systems on locomotives, air motors, steam engines, rubber-tired platform equipment, pneumatic tools, mechanical tools, hydraulic tools, electrically operated tools, internal drive systems, turbines used to drive electric generating units or to provide power or propulsion for any purpose; refrigeration compressors, air conditioning compressors and blowers; turntables, transfer tables, drop tables and other machinery;

(d) Equipment, components and appurtenances such as, but not limited to, pinions, belt sheaves, mechanical couplings, shafting, governors, speed indicators and recorders, fuel pumps and motors, bells, horns, fans, fan drives, windshield wipers and motors, traction motors, main generators, auxiliary generators, axle-driven alternators and generators, locomotive draft gears and couplers.

* * * *

(3) Machining by any process, pressing and repairing wheels, axles and bearings; removing and applying wheel sets from locomotives and from power trucks on self-propelled equipment.

(4) Applying and removing locomotive equipment, components and appurtenances such as main generators, alternators, starter motors, auxiliary generators, traction motors, journal boxes, roller bearing adapter boxes, end caps and adapters for axle driven equipment, blower motors, shop electric motors on shop machinery, cooling fan motors, grab irons, railings, pilot beams, guards, exhaust systems and manifolds.

(5) Fastening metals together by any method such as, but not limited to, welding, fusing, brazing, metalizing, banding and cutting of metals with such processes as oxyacetylene, electric, thermit, heli-arc, tig, or any other process, on work that is Machinists' work.

* * * *

(8) Removing, replacing, grinding, bolting and breaking of joints on super heaters.

(9) Repairing hydraulic locks and door checks when removed from cars and sent to shops.

* * * *

(13) All other work generally recognized as Machinists' work.

* * * *

II. Former ATSF locations:

At former ATSF locations, Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery, ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, axle, wheel and tire turning and boring, engine inspecting, air equipment, lubricator and injector work; removing, replacing, grinding, bolting and breaking of all joints on superheaters; oxyacetylene, thermit and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus; and all other work generally recognized as machinists' work.

A copy of the Classification Rule is Exhibit A to this Declaration.

6. Consistent with the CBA, regularly scheduled Federal inspections and other “state of good repair” inspections, maintenance, and repairs, and other work of the type described in the Classification Rule, performed for and on BNSF locomotives (and those of its predecessor railroads) have historically been performed by, and have generally been recognized as work belonging to BNSF Machinists.

7. The IAM and BNSF are also parties to the September 25, 1964 National Agreement (the “1964 Agreement”). Article II of the 1964 Agreement, as amended, mandates that work within Scope and classification rules of the CBA and other work “historically performed and generally recognized as work of the crafts...*will not be contracted unless* certain criteria are met.” A copy of relevant portions of the 1964 Agreement is Exhibit B to this Declaration.

8. Article II, Section 1, of the 1964 Agreement, as amended, provides:

Subcontracting of work, including unit exchange, will be done only when *genuinely unavoidable* because (1) managerial skills are not available on the property but this criterion is not intended to permit subcontracting on the ground that there are not available a sufficient number of supervisory personnel possessing the skills normally held by such personnel; or (2) skilled manpower is not available on the property from active or furloughed employees; or (3) essential equipment is not available on the property; or (4) the required time

of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed and provided further that if work which is being performed by railroad employees in a railroad facility is subcontracted under this criterion, no employees regularly assigned at that facility at the time of the subcontracting will be furloughed as a result of such subcontracting.

9. The business of BNSF is pick-up and delivery of rail cars; motive power is required for BNSF to provide its services to its customers. Locomotives are therefore a basic necessity for BNSF's business and for its performance of its obligations as a common carrier because locomotives provide the power to transport the freight of BNSF's customers. Having a sufficient fleet of functional, well inspected and maintained locomotives is integral to BNSF's provision of rail service and performance of its common carrier obligation.

10. Federal regulations (49 C.F.R. § 229.23(a)) require "periodic inspection" and maintenance of locomotives every 92 days. Certain BNSF locomotives are equipped with advanced on-board electronic monitoring systems; Federal regulations (49 C.F.R. § 229.23(b)) only require a periodic inspection of those components every 184 days.

11. Every periodic inspection requires a locomotive to pass certain tests, listed in 49 C.F.R. § 229.25. If a locomotive fails any given test of the periodic inspection, it must be repaired before returning to service. *See* 49 C.F.R. § 229.23(a). Locomotives that have not been timely inspected or have not been repaired after a failed inspection must be taken out of service.

12. Federal regulations also require locomotives to undergo an "annual test" every 368 days. *See* 49 C.F.R. § 229.27. If a locomotive fails any portion of the annual test, the error(s) must

be corrected. *Id.* The annual test is traditionally performed simultaneously alongside the periodic inspection.

13. Because of these federal regulations, every BNSF locomotive should be inspected and, if necessary, repaired every 184 days by employees represented by the Unions.

14. Federal regulations also provide a process for carriers to petition for an “Emergency Waiver of Safety Rules” in the case of certain “emergency events.” 49 C.F.R. § 211.45. If the Administrator of the FRA declares that an emergency event exists, a railroad may submit a petition for an emergency waiver through the process outlined in § 211.45.

15. In addition to the Federally required periodic inspections and annual tests – commonly referred to as “federal items” – locomotives also routinely require other “full maintenance” to ensure their efficiency and performance; to be in a state of good repair and functional operating capability. Locomotives that have passed “Federal Items Only” (FIO) inspection, *i.e.*, the periodic inspections and annual tests, are legally permitted to operate, but they still require other regularly scheduled maintenance not covered by federal law in order to operate reliably and effectively. In other words, BNSF locomotives were traditionally inspected for federal items as well as BNSF’s own general maintenance items in the same shop visit before the locomotive went back out on the road.

16. Historically, when a BNSF locomotive has been sent to a shop for inspection and repairs (“shopped”), it is inspected for federal items as well as BNSF’s own general maintenance items. Once each item is inspected and repaired, if necessary, the employee(s) performing the work marks the item as completed using a computer tracking system. If all inspection items have not been “signed off,” *i.e.*, marked as completed; if an inspection reveals problems that should be repaired but have not been repaired, the computer system auto-generates a “defect,” which can

only be cured by returning the locomotive to a maintenance shop so all maintenance items can be completed.

17. In the past, BNSF limited inspections to Federal Items Only inspections only when necessary for the locomotive to operate legally while it traveled to a designated mechanical shop destination, where it would then undergo its full regularly scheduled inspection, maintenance, and repair routine.

18. BNSF Machinists have historically performed the regularly scheduled inspection, maintenance, and necessary repairs of both federal and general maintenance items on BNSF locomotives that is work within the Classification Rule of the IAM-BNSF CBA.

19. To my knowledge, BNSF has never contracted-out regularly scheduled maintenance, even to address high numbers of out-of-service locomotives in need of their regularly scheduled full maintenance.

20. In the past, there have been occasions when the number of out-of-service BNSF locomotives in need of regularly scheduled maintenance has been high. In such instances, BNSF Machinists have worked overtime and even switched to mandatory six-day work weeks to reduce the number of out-of-service locomotives.

21. BNSF currently employs Machinists, at approximately 25 different maintenance shops across its rail network where regularly scheduled inspection, maintenance, and necessary repair of locomotives is performed.

22. Other shops along BNSF's network – such as the Topeka, Kansas facility – are “back shops” primarily used for major overhauls and rebuilds of locomotives. These shops, however, do still occasionally perform routine inspection, maintenance, and repair work and have,

in the past, temporarily halted overhauls and rebuilds to assist in addressing high locomotive inspection and maintenance backlogs.

23. In recent years, BNSF has removed a number of locomotives from service and placed them in storage. Returning a stored or “laid up” locomotive to service often requires more rigorous inspections and repairs than are performed on an in-service locomotive due to a variety of reasons, such as prolonged periods without operating or vandals dismantling and stealing expensive materials and components, which render “laid up” locomotives unusable. Accordingly, “laid up” locomotives normally cannot be quickly reintroduced into the active fleet. As of early February 2023, the number of BNSF locomotives that were “laid up” in storage was approximately 1,750.

24. Since 2020, BNSF altogether closed or decreased its workforce at numerous maintenance shops across its network, including shops in Birmingham, Alabama; Barstow, California; Commerce, California; Richmond, California; Chicago, Illinois; Sioux City, Iowa; Kansas City, Kansas; Topeka, Kansas; Glendive, Montana; Alliance, Nebraska; Tulsa, Oklahoma; Memphis, Tennessee; Dayton, Texas; Fort Worth, Texas; Houston, Texas; Galveston, Texas; Silsbee, Texas; Spokane, Washington; Superior, Wisconsin; Donkey Creek, Wyoming; and Guernsey, Wyoming.

25. Although BNSF freight volumes suffered during the first part of 2020 due to the COVID-19 pandemic, according to BNSF’s own financial reports, volumes had recovered to pre-pandemic levels by the end of 2020.

26. Since 2020, BNSF has furloughed over 296 Machinists across BNSF’s network. Many furloughed Machinists were not recalled to service for many months even as demand for rail service returned starting in the summer of 2020. When BNSF finally started recalling

furloughed employees in late 2021 and early 2022, many declined to return. As employees declined recall, BNSF did not immediately begin hiring to fill the positions those employees would have held.

27. BNSF has dramatically reduced its Machinist work force since 2017. In 2017 there were around 2,043 BNSF Machinists; in 2019 there were around 2,393 BNSF Machinists; in 2021 there were around 1,954 BNSF Machinists; and currently there are around 1,810 BNSF Machinists

28. Since 2020, 296 Machinists represented by IAM were furloughed at some point in time. IAM has seen a net loss of approximately 416 employees since 2020.

29. Beginning around September 2021, BNSF also began deferring regularly scheduled maintenance of its locomotives, limiting inspections and repairs to federal items only. In other words, locomotives that were in the shop were only inspected and repaired to meet the minimum standards required by federal law so they could continue to legally operate. All other necessary regularly scheduled maintenance was otherwise deferred.

30. On September 2, 2021, James Brackett of BNSF instructed BNSF's maintenance shop field leaders to complete federal items only inspections on locomotives entering the shops for their regularly scheduled inspection and maintenance, and to defer all other inspections. Mr. Brackett also included detailed instructions on how employees should mark general inspection and maintenance items as completed in the computer system – even though those items were not performed – to avoid a “defect” from being generated in BNSF's computer system indicating that the locomotive needed to be “shopped” for additional inspection and maintenance. A copy of that correspondence is Exhibit C to this Declaration.

31. On September 21, 2021, BNSF General Foreman Paul McLeod forwarded a substantially similar email from James Brackett to employees at the Alliance, Nebraska facility with instructions to “*Sign off the general maintenance items; they do not need to be performed.*”

32. As a result, of these directives, since September 2021, BNSF locomotives have largely gone without much needed general maintenance.

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34. Although the FRA granted BNSF an “enforcement discretion,” the procedures for petitioning the FRA for an emergency waiver of safety rules under 49 C.F.R. § 211.45 were not followed because the FRA never declared an emergency event in December 2022. And the FRA has affirmatively stated that no waiver of the FRA’s safety rules was issued to BNSF.

35. On December 29, 2022, Henry Schafer of BNSF circulated an email to mechanical employees announcing that BNSF was planning to implement a “0% overtime initiative” in 2023 as part of BNSF’s efforts to reduce the mechanical budget by approximately \$51 million across its rail system. A copy of Schafer’s December 29 email is Exhibit D to this Declaration.

36. As a result of BNSF's instructions to perform only Federal inspections, many of its locomotives did not receive the full inspections, maintenance and repairs to remain in good working order, and therefore were not functioning properly and had to be taken out of service.

37. On January 5, 2023, Derek Cargill, BNSF's General Director of Labor Relations, sent a letter to representatives of IAM District #19, and the other unions representing BNSF shop workers giving notice of BNSF's intent to "contract out for work needed to reduce the number of out of service locomotives in the system." A copy of that letter is attached to this Declaration as Loos Exhibit E.

38. The January 5 letter asserted that the need to contract out regularly scheduled maintenance was "driven by locomotive demand being beyond plan for over 12 months and early winter weather, resulting in a higher than normal number of bad order locomotives on the road and in the shop." As a result, BNSF claimed that "it is necessary and essential to outsource up to 30 locomotives per week to third party vendors for the next 3-6 months."

39. More specifically, BNSF's January 5 letter indicated that "[t]here are currently approximately 1,000 units currently FIO'd [inspected for federal items only] which need their full maintenance completed... BNSF currently does not have the necessary manpower and shop capacity available on the property to perform this work within the necessary time frame, as there is an immediate need to address the high number of bad order locomotives on the road and in the shop." One thousand locomotives that had only been inspected for compliance with Federal regulations, but did not receive the level of inspection and maintenance sufficient to be in good working order constituted about a fifth of BNSF's motive power. Of those 1000 locomotives, 550 were described as out of service; that constituted over a tenth of BNSF's motive power.

40. All the locomotives that BNSF indicated in its January 5 letter to the Unions would be sent to contractors for their regularly scheduled periodic inspections and maintenance were included among the locomotives for which BNSF sought an exercise of “enforcement discretion” from the FRA in December 2022.

41. Although the emergency waiver of the FRA’s safety rules was never invoked or granted, the “enforcement discretion” BNSF received from the FRA nevertheless allowed BNSF ample time to redirect a number of locomotives overdue for their regularly scheduled inspections, maintenance, and necessary repairs to contractors’ maintenance shops.

42. In correspondence with IAM District #19 and other unions that represent BNSF shop workers, Mr. Cargill stated that “BNSF does not have the necessary manpower and shop capacity available on the property to address the unusually high out of service count and back log of scheduled maintenance events.” BNSF did not address, however, how permanent shop closures, force reductions, placing locomotives in storage, and deliberately deferring regularly scheduled maintenance likely affected the out of service count or maintenance backlog.

43. Mr. Cargill also asserted that the job market for skilled crafts such as Machinists has been unusually tight over the last several years, resulting in a slower hiring pace at specific locations. But BNSF has not hired a sufficient number of employees to fill the Machinist positions required for performing the locomotive inspection, maintenance, and repair work necessary for BNSF to meet its motive power needs.

44. In response to questions by union representatives as to why BNSF would not attempt to clear the backlog of locomotives due for inspection by assigning more overtime work, as has been done in the past, BNSF responded that it did not intend to assign more overtime work. BNSF’s response was consistent with its “0% overtime initiative” for 2023.

45. On January 31, 2023, I wrote to Mr. Cargill, objecting to the BNSF plan. I asserted that BNSF had not taken sufficient steps to attempt to do all the inspection and maintenance work with its own employees (such as adding a sixth day of work at overtime rates); I asked BNSF to meet to discuss ways to perform the work with BNSF forces. A copy of that letter is attached to this Declaration as Loos Exhibit F.

46. Despite BNSF's previous assertion that it would not clear the locomotive inspection and maintenance backlog by assigning additional overtime to its mechanical department employees, BNSF recently imposed a mandatory sixth day of work on overtime for Machinists and Electrical Workers. A copy of an email and questions and answers for BNSF Machinists and Electrical Workers is Exhibit G to this Declaration. By email dated April 12, 2023, BNSF advised us that it was discontinuing the mandatory sixth day of work on overtime and the outsourcing announced in January. A copy of that email is Exhibit H to this Declaration.

47. In his Declaration, Mr. Cargill asserts that the shops that it closed in recent years could not have handled the federal inspection work that BNSF has contracted-out. But many of the closed shops either performed or were capable of performing the regularly scheduled inspection, maintenance, and repair of locomotives. All that's needed to perform regularly scheduled inspections, maintenance, and repairs is a pit and craft workers. In addition, the Topeka, Kansas facility is a "back shop" used primarily for locomotive overhauls and rebuilds, but can be used to perform routine locomotive inspection, maintenance, and repair, and have occasionally been used for that purpose in the past.

48. In his Declaration, Mr. Cargill asserts that BNSF has a past practice of contracting-out locomotive repair work. But BNSF has never contracted-out work at the scale of the current plan and it has never before contracted-out Federal inspection work.

Date: April 19, 2023

/s/ Kyle Loos
Kyle Loos