# REPORT

# TO

# THE PRESIDENT

# BY

# EMERGENCY BOARD

# NO. 219

Submitted Pursuant to Executive Order No. 12714,
Dated May 3, 1990,
and Section 10 of
The Railway Labor Act, as Amended

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Investigation of disputes between the railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by certain labor organizations.

(National Mediation Board Case Nos. A-11471, A-11472, A-11536, A-11538, A-11539, A-11540, A-11543, A-11545, A-11546, A-11547, A-11569, A-12117, A-12215, A-12217, A-12243, A-12252, A-12256, A-12264, A-12265, A-12266, A-12282, and A-12299)

Washington, D. C.

January 15, 1991

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The President
The White House
Washington, D. C.

Dear Mr. President:

On May 3, 1990, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12714, you established an Emergency Board to investigate disputes between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by certain labor organizations.

The Board now has the honor to submit its Report and Recommendations to you concerning an appropriate resolution of the disputes between the above named parties.

The Board acknowledges the assistance of Roland Watkins of the National Mediation Board's staff, and E. B. Meredith who rendered valuable assistance and counsel to the Board during the proceedings and in preparation of this Report.

Respectfully,

Robert O. Harris, Chairman

Richard R. Kasher, Member

Arthur Stark, Member

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## I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 219 (the Board) was established by the President pursuant to Section 10 of the Railway Labor Act, as amended, 45 U.S.C. §160, and by Executive Order 12714. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by certain labor organizations. Copy of the Executive Order is attached as Appendix "A".

On May 7, 1990, the President appointed Robert O. Harris of Washington, D. C., as Chairman of the Board, and Richard R. Kasher of Bryn Mawr, Pennsylvania, and Arthur Stark of New York, New York, as Members. The National Mediation Board appointed Roland Watkins, Esq., as Special Assistant to the Board. The Emergency Board retained E. B. Meredith of Linthicum Heights, Maryland, to assist in its mediatory functions.

## II. PARTIES TO THE DISPUTE

### A. The Carriers' Conference

The Carriers involved in this dispute include most of the Nation's Class I line haul railroads and terminal and switching companies. They are named in the attachment to Appendix "A". The Carriers are represented in this dispute through powers of attorney provided to the National Railway Labor Conference (NRLC) and its negotiating committee known as the National Carriers' Conference Committee (Carriers).

### B. The Labor Organizations

The disputes before the Board involve ten labor organizations that collectively represent most of the railroad employees involved in the current national bargaining round. They are:

American Train Dispatchers Association (ATDA)
Brotherhood of Locomotive Engineers (BLE)
Brotherhood of Maintenance of Way Employes (BMWE)
Brotherhood of Railroad Signalmen (BRS)
International Brotherhood of Boilermakers and Blacksmiths (IBB&B)
International Brotherhood of Electrical Workers (IBEW)
International Brotherhood of Firemen and Oilers (IBF&O)
Sheet Metal Workers International Association (SMWIA)
Transportation Communications International Union (TCU) and the Carmen Division TCU-Carmen Division)
United Transportation Union (UTU)

## III. ACTIVITIES OF THE EMERGENCY BOARD

Prior to the establishment of this Board, the parties agreed that the disputes would be divided into two categories: (1) Health and Welfare issues, and (2) wage and work rules issues.

### A. Health and Welfare Issues

On May 14-16, 1990, the Board conducted hearings regarding the Health and Welfare issues in Washington, D.C. The parties were given full and adequate opportunity to present oral testimony, documentary evidence and argument in support of their respective

positions. A formal record was made of the proceedings. Written rebuttal statements were submitted on June 14, 1990.

After the close of these hearings, the Board met informally with the parties in an effort to narrow the issues. The Board then met in executive session to consider these specific issues. The parties agreed to and the President approved an extension of the time that the Emergency Board had to report its recommendations until September 15, 1990. (Appendix "B")

The Carriers presented their position through written statements and oral testimony of William H. Dempsey, President, Association of American Railroads; Charles I. Hopkins, Jr., Chairman, National Railway Labor Conference and Chairman, National Carriers' Conference Committee; Robert E. Upton, President, Upton and Associates, Inc.; Joseph J. Martingale, Principal at Towers, Perrin, Forster and Crosby; Howard R. Veit, Principal at Towers, Perrin, Forster and Crosby; James H. Brennan, Jr., Former Principal and Vice President at Towers, Perrin, Forster and Crosby; Richard E. Briggs, Executive Vice President, Association of American Railroads; and John Kittredge, former Executive Vice President, Prudential Insurance Company of America. The Carriers were represented by Benjamin W. Boley, Esq. and Ralph J. Moore, Jr., Esq., both of Shea & Gardner of Washington, D.C.

The Organizations made their presentation through written and oral testimony of Richard I. Kilroy, Chairman, Cooperating Railway Labor Organizations and President, TCU; Fred A. Hardin, International President, UTU; Thomas R. Roth, President, The Labor Bureau, Inc.; Thomas R. Harter, Vice President, Martin E. Segal Company; and Cynthia K. Hosay, Ph.D., National Practice Leader for Health Services, Martin E. Segal Company. The Organizations were represented by John O'B. Clarke, Jr., Esq., of Highsaw, Mahoney & Clarke.

The parties agreed to and the President subsequently approved another extension of the time that the Emergency Board had to report its recommendations until December 23, 1990. (Appendix "C")

## B. Wage and Work Rules Issues

The Board conducted hearings regarding the wage and work rules issues on September 26-28 and October 3-5, 9-11, 1990.

The Organizations presented their position through written statements and oral testimony by the various labor organizations. The Organizations' general position on the need for a wage increase was presented by Thomas R. Roth. On behalf of the UTU, written statements and/or oral testimony were presented by Fred Hardin, International President, UTU; G. Thomas DuBose, Assistant President, UTU and Chairman of the Negotiating Committee; Charles Little, Vice President, UTU; Donald R. Carver, Assistant to the President, Yardmaster Department of UTU; and R. L. Hart, General Counsel, UTU. BLE submitted written statements and oral testimony by Larry McFather, President, BLE; Thomas R. Roth; and Ron McLaughlin, First Vice President, BLE. The BLE was also represented by George H. Cohen, Esq., of Bredhoff and Kaiser.

John O'B. Clarke, Jr., Esq., presented written statements and oral testimony on the Organizations' proposal covering the issue of line sales.

The position of the Shop Craft organizations, the IBEW, TCU-Carmen Division, IBF&O, IBB&B, and SMWIA, was presented through written statements and/or oral testimony by Gary Silbers, sheet metal worker employed by the CSX Transportation Company; Jack Murphy, electrician employed by CSX Transportation Company; Lowell Cantrell, Assistant General President of TCU-Carmen Division; Jerry Conrad, boilermaker employed by Conrail; Dale Miller, electronic technician employed by the Burlington Northern Railroad; and James J. Kilgallon, President of Ruttenberg, Kilgallon and Associates. A separate presentation on behalf of TCU-Carmen Division was made by William G. Fairchild, President TCU-Carmen Division and its counsel who is C. Marshall Friedman, Esq. ATDA presented its position through written statements and/or oral testimony by Robert Irvin, President, ATDA; David Volz, train dispatcher for the Southern Pacific Railroad; and James J. Kilgallon. The shop crafts

and ATDA were represented by Michael S. Wolly, Esq., of Mulholland & Hickey.

BMWE's presentation consisted of written statements and/or oral testimony by Mac A. Fleming, President of BMWE; William A. Boss, Esq., General Counsel; Thomas R. Roth; and Ernie L. Torske, Vice President, BMWE. The Organization was represented by Harold A. Ross, Esq., of Ross & Kraushaar Co., L.P.A.

TCU presented its position through written statements and oral testimony by Richard I. Kilroy, President of TCU. Joseph Guerrieri, Jr., Esq., of Guerrieri, Edmonds & James represented TCU.

BRS's presentation was based on written statements and/or oral testimony by V.M. Speakmen, Jr., President of BRS; Walter A. Barrows, regional signal maintainer employed by Norfolk Southern Corporation; Jerry E. Havrilla, Electronic Technician employed by Conrail; Curt Witte, electronic signal specialist employed by CSX Transportation; Jeff Barton, Director of Research, BRS; Floyd Mason, Assistant to the Director of Research, BRS; and Thomas R. Roth. BRS was represented by Michael S. Wolly, Esq.

The Carriers presented their position through written statements and oral testimony by Michael H. Walsh, Chairman and Chief Executive Officer, Union Pacific Railroad Co.; Robert W. Anestis, President of Anestis and Company; Carl S. Sloane, Chairman and Chief Executive Officer of Temple, Barker & Sloane, Inc.; John F. Roberts, Assistant Vice President-Labor Relations, CSX Transportation Company; William E. Greenwood, Chief Operating Officer, Burlington Northern Railroad; Thomas L. Finkbinker, Assistant Vice President of International Intermodal Marketing, Northern Southern; Charles I. Hopkins, Jr., Chairman, National Carriers' Conference Committee; Robert E. Swert, Vice President-Labor Relations, Conrail; James B. Dagnon, Senior Vice President-Labor Relations, Burlington Northern; William E. Honeycutt, Manager of Systems and Procedures, Norfolk Southern Corporation; Eugene Greene, General Road Foreman, Norfolk Southern Corporation; Norman R. Lange, Vice President, The Hay Group; Aileen O'Callaghan, Senior Consultant, The Hay Group; Lawrence Myslewski, Consultant, The Hay

Group; Robert Schmiege, President and Chief Executive Officer, Chicago & North Western Transportation Company; Robert E. Upton, President, Upton and Associates, Inc.; Jerry Davis, President, CSX Rail Transport; Richard K. Davidson, Executive Vice President-Operations, Union Pacific Railroad Company; E. Hunter Harrison, Vice President and Chief Transportation Officer, Illinois Central Railroad; Paul A. Lundberg, Vice President-Labor Relations, Chicago North Western Transportation Company; Thomas L. Watts, Vice President-Labor Relations, Union Pacific Railroad Company; Robert Spenski, Senior Assistant Vice President-Labor Relations, Norfolk Southern Corporation; Thomas Sheller, Vice President-Labor Relations, Norfolk Southern Corporation; Lynard Whitaker, Assistant Vice President-Mechanical, Norfolk Southern Corporation; Edward L. Bauer, Assistant Chief Mechanical Officer, Burlington Northern Railroad; Harold Bongarten, Independent Consultant; Kenneth R. Peifer, Assistant Vice President, Southern Pacific Transportation Company; Stanley J. McLaughlin, Vice President-Engineering, Union Pacific; Earl J. Currie, Vice President of Engineering, CSX Rail Transport; William E. Glavin, System Chief Engineer, Burlington Northern Railroad; and Robert G. Richter, Vice President-Labor Relations, Illinois Central Railroad. The Carriers were represented by David Lee, Esq., Vice Chairman/General Counsel, NRLC and Ralph J. Moore, Jr., Esq., of Shea & Gardner.

After the close of the hearings the parties submitted written statements of position.

Thereafter, the Board met informally with the parties in an effort to secure agreements. As a result of these meetings, the parties agreed to and the President approved an extension of the time that the Emergency Board had to report its recommendations until January 15, 1991. (Appendix "D") The Board continued to meet with the parties on an informal basis, but its efforts to resolve the disputes were unavailing.

The Board then met in executive session to prepare its Report and recommendations. The entire record considered by the Board

consists of approximately twenty-one thousand (21,000) pages of transcript, exhibits and briefs.

## IV. HISTORY OF THE DISPUTE

### A. NMB Case History

On or about January 20 and again on April 18, 1988, the IBEW, in accordance with Section 6 of the Railway Labor Act, served notice on the individual railroads of its demands for changes in the provisions of numerous existing collective bargaining agreements. The railroads, on or about August 17, 1988, served their notices on the IBEW. After receiving a communication dated October 5, 1988 from the IBEW stating that the negotiations were at an impasse, the NRLC, on October 13, 1988, applied to the National Mediation Board (NMB) for its mediatory service. The application was docketed as NMB Case No. A-12117.

The BLE served notice on the railroads of its demands for changes in its agreements on June 1, 1988. The Carriers' Section 6 notice was served on the BLE on or about June 10, 1988. The BLE and NRLC met on several occasions in an attempt to reach agreement. On February 23, 1989, the BLE applied to the NMB for its mediatory services. This application was docketed as NMB Case No. A-12215.

The ATDA served four Section 6 notices in 1988. The first, dated February 16, 1988, sought changes in the existing collective bargaining agreement to provide for protection for employees affected by any abandonment, discontinuance or cessation of operations, or by the sale, lease or transfer of lines, property, or operations, in whole or in part, to any person or entity. The second, dated May 13, 1988, sought protection for employees affected by any partial or complete abandonment, sale, merger, trackage rights, lease, technological change or decline in business. The third, dated June 1, 1988, sought changes in wage rates and other working conditions. NRLC served counterproposals for concurrent handling with the above ATDA proposals on or about June 10, 1988. The last ATDA notice, dated July 1, 1988, sought

changes in existing agreements pertaining to Health and Welfare benefits.

On March 29, 1989, ATDA applied to the NMB for mediatory services. This application was docketed as NMB Case No. A-12217. On June 29, 1989, ATDA filed with the NMB an application covering "various proposals and counterproposals served by the parties in National Health Insurance movements on or about July 1, 1988, and various dates, respectively." This application was docketed as NMB Case No. A-12282.

UTU served its Section 6 notice on or about July 25, 1988. It sought changes in various provisions of numerous existing collective bargaining agreements covering "rates of pay, rules or working conditions." NRLC, on or about October 7, 1988, served a Section 6 notice also seeking numerous changes. The UTU and NRLC filed a joint application seeking the NMB's mediatory services on April 11, 1989. This application was docketed as NMB Case No. A-12243.

BMWE informed the railroads of its demands for changes in the collective bargaining agreements by a Section 6 notice dated June 2, 1988. A counterproposal was served by the NRLC on or about June 10, 1988. The parties met several times in the early months of 1989 but were unsuccessful in reaching an agreement. On May 8, 1989, BMWE applied to the NMB for mediation. This application was docketed as NMB Case No. A-12252.

TCU served notice on the railroads of its demands for changes in the existing collective bargaining agreements by a Section 6 notice dated on or about May 27, 1988. TCU-Carmen Division informed the railroads of its demands by a Section 6 notice dated on or about May 31, 1988. The Carriers notified TCU including the Carmen Division) of its demands by proposals dated March 8, 1989. TCU (including its Carmen Division) and the NRLC, on May 12, 1989, jointly applied to the NMB for its mediatory services. This application was docketed as NMB Case No. A-12256.

BRS informed the railroads of its demands for changes in the existing agreements by a notice dated May 25, 1988. On June 10,

1988 and March 8, 1989, the railroads served their counterproposals. The parties met several times during 1988 and 1989 in an attempt to reach an agreement but were unsuccessful. BRS, on May 30, 1989, applied to the NMB for mediation. This application was docketed as NMB Case No. A-12264. On July 28, 1989, BRS supplemented its notice to include a short line proposal.

IBB&B served a Section 6 notice on the railroads on or about May 31, 1988. Counterproposals were served by the railroads on August 5, 1988 and March 8, 1989. The parties met on May 19, 1989 to discuss the notices. Unable to reach an agreement, IBB&B, on May 30, 1989, applied to the NMB. The application was docketed as NMB Case No. A-12265.

SMWIA served the railroads with its demands for changes in the existing collective bargaining agreements by a Section 6 notice dated May 24, 1988. A counterproposal was served by the NRLC on or about August 9, 1988. The parties met on October 12, 1988, to discuss their respective demands. An additional proposal was served by NRLC on or about March 8, 1989. The parties met again on May 19, 1989. On June 7, 1989, SMWIA applied to the NMB. The application was docketed as NMB Case No. A-12266.

IBF&O served the railroads its demands for changes in the existing collective bargaining agreements by notices dated May 27 and June 10, 1988. On August 14, 1989, the Organization applied to the NMB for its mediatory services. The application was docketed as NMB Case No. A-12299.

By letter dated January 12, 1988, the NRLC advised the NMB that the Health and Welfare issues from the previous 1984 Section 6 notices were unresolved and requested that those cases remain open for further mediation. On October 27, 1989, the NMB notified the parties that it would commence mediation of the remaining Health and Welfare issues in the following cases:
A-11471, A-11472, A-11536, A-11538, A-11539, A-11540, A-11543, A-11545, A-11546, A-11547, and A-11569.

The NMB subsequently decided to conduct the mediation of the unresolved 1984 and the current 1988 Health and Welfare issues

concurrently. Mediation of the cases (non-Health and Welfare issues) involving the UTU and BLE was undertaken by NMB Chairman Joshua M. Javits and Mediators Robert J. Cerjan and Thomas R. Green. Mediation of all the other cases (involving only the non-Health and Welfare issues) was undertaken by Chairman Javits and Mediators Samuel J. Cognata and Richard A. Hanusz. The separate mediation on the Health and Welfare proposals involving all of the Organizations and the NRLC was handled by Chairman Javits and Mediators Cerjan and Green. All of these efforts were unsuccessful.

### B. The March 6, 1990 Agreement

On March 6, 1990, the parties to these disputes entered into an historic agreement. The terms of that agreement are as follows:

> In preparation for the establishment of a Presidential Emergency Board, the parties agree to the following:
>
> 1. The NMB will proffer arbitration on Health and Welfare, and Wages and Rules.
>
> 2. An Emergency Board shall be established on Health and Welfare, and Wages and Rules with the Health and Welfare issues to be heard and reported on first.
>
> 3. The Health and Welfare report and recommendations will be issued but not subject to self-help by any party until permitted by paragraphs 5 & 6. Wages and Rules issues shall be submitted to the same Board as soon as possible following its report on Health and Welfare.
>
> 4. The NMB is requested to conduct further and expedited mediation on Wage and Rules issues, as and when it deems appropriate.
>
> 5. No party will resort to self-help until after the RLA statutory "cooling off" period following he report by the Emergency Board on the Wage and Rules issues.
>
> 6. No party will resort to self-help during any period Congress is not in legislative session.

7. The parties request that all reports and recommendations by the Emergency Board be issued by September 15, 1990, and agree to any reasonable request for an extension of time of the Emergency Board to allow ample time for hearings, mediation and formulation of recommendations.

The parties' March 6 Agreement provided a useful mechanism for resolution of these disputes. It reflects their good faith efforts to approach the difficult issues before them in an innovative manner. Thus, they realized that the issues before this Emergency Board would be so numerous that a period longer than 30 days would be necessary to investigate the issues and make recommendations. Moreover, the unique provision which allowed additional mediation under the auspices of the NMB is a reflection of the enormous contributions made by that agency in assisting the parties' efforts to resolve these disputes. And, finally, the agreement evidences an intent on the part of the Organizations and the Carriers to resolve these difficult issues in a manner that would not disrupt interstate commerce in full accordance with the purposes of the Railway Labor Act.

## C. Proffer of Arbitration

On April 2, 1990, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered all the Organizations and the NRLC the opportunity to submit their controversy to arbitration. The Carriers and the Organizations declined the proffer of arbitration. Accordingly, on April 5, 1990, the NMB notified the parties that it was terminating its mediatory efforts.

On April 11, 1990, pursuant to Section 10 of the Railway Labor Act, the NMB advised the President of the United States that, in its judgment, the disputes threatened to substantially interrupt interstate commerce to a degree such as to deprive various sections of the country of essential transportation service.

The President, in his discretion, issued Executive Order 12714 on May 3, 1990 to create this Board to investigate and report concerning these disputes.

## V. THE POSITIONS OF THE PARTIES

### A. The Organizations' Position

#### 1. Basic Wage Increases and Cost-of-Living Adjustments

The specific wage proposals made by the individual Organizations vary in detail, but generally share the following two elements: (a) increase all basic rates of pay by 5.0 percent per year of contract, commencing retroactively on July 1, 1988; and (b) provide additional adjustments in all rates of pay each 6 months, also effective July 1, 1988, by application of an automatic cost-of-living escalator clause based on a formula providing a 1-cent increase in hourly rates for each .3-point rise in the CPI-W. This proposal is exclusive of the special or equity adjustments called for under certain of the individual Organizations' proposals.

The Organizations claim that inferior wage settlements have been made in the recent past, and particularly over the course of the last agreement. That settlement has caused rail workers to fall steadily behind the wage progress achieved by other American workers. Consequently, cumulative retroactive adjustments through July 1, 1990, averaging 12 percent, are required to replicate the historically established wage relationships between railroad workers and key outside industry groups.

The Organizations contend that rail workers also have seen the value of their wages (i.e., their "real pay") diminish considerably in recent years. A wage increase of 9.8 percent is thus required simply to match the rise in inflation between July 1988 and July 1990.

The Organizations also assert that wage level comparisons with similarly situated employees in other industries, even assuming

that there are considerable differences in job content, cannot possibly justify the enormous wage gap between the employees before this Board and those of relevant comparators.

Moreover, the need for significant catch-up is fully supported by the pace of wage change under current bargaining settlements as well as the present rate of change in the cost-of-living.

The Organizations discern a distinctive upward trend in the yield of non-railroad collective bargaining settlements. Thus, agreements reached in 1990 are averaging 4.2 percent compared with 1.2 percent in 1986 -- when the Carriers and the organizations last reached a wage agreement. Settlements in the current period are providing for wage adjustments far greater than those reached by the same parties during their previous round of negotiations. According to BLS data, new contracts in 1989 provided wage increases of 3.8 percent per year over the contract term, compared with 2.5 percent the last time those same parties bargained. Significantly, agreements renewed in other industries in 1989 and 1990 are following prior settlements which produced wage increases far exceeding those in the railroad industry's last bargaining round.

The Organizations insist that cost-of-living has been the most widely accepted wage criterion in collective bargaining and arbitration in this industry as well as others. Over the past year, the CPI has risen 5.4 percent; moreover, the prospect for inflation rates greatly exceeding that number are likely since the annualized rate over recent months is nearly 8.0 percent.

Emergency Boards and rail negotiators in this industry have always have been guided by the principle of improving real wages. Thus, the Organizations point out, between 1947 and 1988 there were 18 wage agreements involving the non-operating crafts, of which 15 provided real wage gains and 2 others were essentially break-even contracts. While the factual circumstances were different in each wage movement, the annual inflation rate over the term of these contracts varied from over 11.0 percent to under 1.0 percent. Over the long run, however, real pay has increased at the rate of

approximately 2.0 percent per year. In sum, there has been a mutual understanding that railroad workers are entitled to reasonable increases in real pay.

In addition, the Organizations emphasize that railroad workers are among the most productive in the nation. Over the past 5 years the rate of productivity growth in this industry has been greater than that in 93 percent of all other American industry. Although annual productivity growth has exceeded the national average for decades, rail labor productivity has risen at a rate nearly seven times the national average since the commencement of deregulation. And rail productivity since 1978 has risen more than twice the rate experienced in the airline, pipeline, or trucking industries.

While productivity has soared, the Organizations state total labor costs -- including wages and all forms of benefits -- rose only modestly, resulting in decreasing labor costs per unit of output. In fact, since 1982 unit labor costs have dropped by more than 28 percent. Thus, the control of unit costs has fully offset price competition and freight rate compression that produced a stable operating revenue trend over the past ten years. As a result of this, the increase in net income lifted rail profitability to the highest levels in 30 years. Accordingly, there is no justification for the seven-year wage freeze proposed by the Carriers.

The Organizations note further that increasing profits and favorable tax law changes have enabled railroads to revitalize track, structures, and equipment, principally by use of cash generated internally. As a result, the railroads made huge capital improvements in their physical plants in the 1980's and reversed a chronic problem of deferred maintenance characteristic of prior decades. In so doing, the process of financing capital, in large part through internal funding, enabled the Carriers to retire debt faster than it was acquired. As debt shrank in the overall capital structure, all indicators of long-term solvency improved and the ability to finance future capital needs through borrowing was enhanced. All told, then, the financial and economic position of

Class I railroads at the close of the parties' last agreement in 1988 was stronger and more vital than at any point in 30 years.

The Organizations argue that the impact of its wage package on railroad profitability cannot be properly analyzed without considering mutually anticipated concurrent changes in productivity. Accepting the assumptions by the Association of American Railroads (AAR) regarding productivity growth, employment change, and traffic growth, wage increases of 8.0 percent per year beginning in 1988 and through 1994 would increase unit labor costs by only 2.7 percent per year -- less than half the annual rate of increases experienced by the total U.S. business sector over the past 15 years. With wage increases of 5.0 percent per year, from 1988 to 1994, unit labor costs will remain unchanged. For these reasons, labor costs cannot be made the "whipping boy" for the Carriers' problems.

In sum, the Organizations submit that railroad workers are entitled to annual wage increases (including a cost-of-living adjustment) of 8.0 percent per year in order to: (a) close the wage gap with outside industry developed in recent years and keep abreast of prospective wage progress achieved by the rest of American workers during the current round; (b) maintain real pay over the course of this agreement; and (c) provide rail labor with an equitable share of the industry's wealth in light of productivity trends.

## 2. Line Transfers

Ever since the Interstate Commerce Commission ("ICC" or "Commission") presented the railroads with a window of opportunity allowing them to transfer rail lines to others for continued operations without permitting employees to follow their work and without providing any monetary benefits for the affected employees, the Organizations have been attempting to protect the employees' equities. The Organizations first sought to enforce what they considered to be, and still considers to be, the proper

interpretation of the Interstate Commerce Act, 49 U.S.C. §10101, et seq. When that proved unsuccessful, the Organizations began to serve notices on the Carriers under Section 6 of the Railway Labor Act to negotiate an agreement to provide the protection for the employees' equities, which the employees previously enjoyed in the past and, the Organizations submit, Congress has required the ICC to provide.

The Organizations contend that the Carriers have refused to negotiate regarding those notices for a variety of reasons. First, the Carriers asserted that Congress has given the ICC the exclusive jurisdiction to resolve all labor disputes related to, or arising out of, rail transfers subject to the ICC's jurisdiction. That argument, the Organizations submit, has been rejected by the Supreme Court in Pittsburgh & Lake Erie R. v. RLEA, 491 U.S. ____, 105 L. Ed.2d 415, 435-35 (1989).

Second, the Carriers have asserted that the Organizations' proposal to resolve the line transfer dispute presents issues over which the Carriers have no obligation to bargain. But that position was rejected by the Supreme Court thirty years ago when the Court stated that: "It is too late now to argue that employees can have no collective voice to influence railroads to act in a way that will preserve the interests of the employees as well as the interests of the railroad and the public at large." Order of Railroad Telegraphers v. Chicago & North Western Ry., 362 U.S. 330, 338 (1960).

Nevertheless, since the Carriers presented a proposal during these Emergency Board proceedings, the Organizations argue that this proposal established that this dispute does indeed present bargainable issues. Unfortunately, the Carriers' proposal is essentially worthless because it offers illusory benefits in exchange for an agreement to waive benefits which some employees currently enjoy under other protective agreements.

This dispute is clearly one that can be resolved by collective bargaining. Rail employees should not suffer in the interim because of the Carriers' failure to abide by their obligation under

the Railway Labor Act to exert every reasonable effort to resolve this dispute. Accordingly, this Board should recommend that the parties adopt the Organizations' proposals and then bargain for a more permanent solution. Specifically, in order to restore the status quo until a more permanent solution can be achieved through meaningful bargaining, there should be a job freeze, and the job freeze should be complemented by a compensation guarantee.

A new successorship clause should compel Carriers to require any purchaser or new operator of a rail line, except for a real "short line", to assume the existing agreements, hire the affected employees who have the equity to perform that work, and continue to recognize the duly designated representatives of the crafts or classes of employees who follow their work to the new operator. The obligation to assume the contracts, would allow the employees to "follow their work" and would not impose any obligation that is contrary to our labor laws. Moreover, it would be entirely consistent with the past practice in this industry that has enabled it to consolidate over the past half-century without the labor strife that has occurred as a result of the recent line transfers. The obligation to assume the contracts and to recognize the chosen representatives of the employees it hires, would not freeze those contracts or representation for all times; instead, those contracts and representation rights would be preserved until changed by future collective bargaining or by applicable statute. If there is a dispute as to whether the successorship provision applies to a particular transfer or has been complied with, according to the Organizations' proposal, that transfer would not be consummated until the dispute is adjusted through the adjustment board process.

The Organizations also propose that: (1) the Washington Job Protection Agreement (WJPA) be modified so as to apply to line transfers and be updated to reflect the advances in protection guarantees which have occurred over the past fifty (50) years; (2) the employees be permitted to elect the arrangement under which they wish to be protected for the length of the applicable protective period if the employee has a choice between this

agreement and some other arrangement; and (3) the parties agree to establish a special board of adjustment to resolve disputes under this agreement, including any dispute over the application of the successorship provision to a particular transfer.

### 3. United Transportation Union

The three issues before this Board involving the UTU are (1) Health and Welfare, (2) Crew Consist and (3) Wages/Rules (including Yardmaster issues).

The UTU position on Health and Welfare is as follows:

1. The unions would agree on the three areas of managed care, indemnity and point of service.

2. The covered employees who did not have managed care available would be covered under the 85-15-100-300-1500 scale.

3. The carriers could use the reserve funds (approximately $300 million) to pay the proven increased cost for each year after the effective date of this agreement. It is understood that there would be a small amount of the reserve funds held in reserve to protect against the need in the simplified GA 23000.

4. After the reserve funds were exhausted, the unions would agree that the carriers could withhold 25% of cost-of-living applications to provide for the employees paying up to 50% of any increased costs in the overall plan. This provision would remain in effect for the duration of the moratorium contained in the agreement.

The Organization opposes any wage cut for its members. It argues that the NRLC has attempted to place it in a position where it has to either agree to a National Crew Consist Rule or take a huge 40% pay cut for not waiving existing contract rights. This posture, according to the UTU, is inconsistent with the NRLC's own actions. For example, one of the participating Carriers (CSX) has negotiated a local crew consist agreement (B&O), and by a Side

Letter has agreed that Part I and Part II of the NCCC's notice will not apply to the B&O.

In reference to Wage/Rules issues, including Yardmaster issues, the UTU argues that these have been adequately covered in the Organizations' general statements of position.

## 4. Brotherhood of Locomotive Engineers

### a. Restoring the Historic Pay Differential

Of utmost concern to the BLE is the need to restore, on a national basis, the historic pay differentials that have existed between engineers and other members of the operating crew, but which recently have been reduced -- and in many instances reversed -- as the direct result of so-called "productivity" bonuses provided to trainmen pursuant to reduced crew-consist agreements between the Carriers and the UTU. The BLE proposes that, on a trip-by-trip basis, any time that a trainman receives a payment or benefit because of a crew-consist agreement -- including, but not limited to, an up-front payment, a payment into an annual fund, an extra fringe benefit, extra personal leave days, a more favorable guaranteed extra board, or a stock option -- the engineer who is operating that train should receive an up-front payment or benefit that is equivalent to the payments and/or benefits provided to the other train service employees.

According to the BLE, the adoption of this proposal is compelled by the following circumstances: (1) over an extended period of time dating back many decades, engineers have been the highest paid members of the operating crew as a result of the Carriers' recognition of the nature and extent of an engineer's duties and responsibilities; (2) since 1979, the Carriers have entered into crew-consist agreements that not only have provided displaced employees (i.e., the "unnecessary" brakemen) with well-deserved severance payments, but also have provided the remaining UTU-represented train crew members, whose duties have not changed,

with major windfalls in the form of large payments and/or benefits as the price for UTU's agreement to eliminate brakemen from the crew consist; (3) as a direct result of these agreements, engineers no longer enjoy their historic pay differentials, and in fact on many carriers engineers no longer are the highest paid members of the crew; (4) there are so many crew-consist agreements and the monetary payments involved are so large, these payments have become an integral part of the industry's overall pay structure and have caused thousands of conductors and trainmen to refuse "promotion" to engineer positions; (5) this situation is destined to continue for many years, especially with the advent of "conductor-only" agreements, and in fact will worsen as the number of conductors and trainmen sharing in the "productivity" funds decrease by attrition; and (6) the morale among engineers (whose duties have increased in recent years) is understandably at an all-time low.

b. Paid Sick Leave and Long-Term Disability Insurance

The BLE proposes the adoption of two coordinated provisions relating to non-occupational illness and injury -- a traditional sick leave program for short-term illness or injury (generally providing one-day of sick leave per month, with unlimited accrual and cash-out at retirement), and a commercially insured long-term disability insurance plan (generally providing for benefits at 60% of earnings after a 60-day waiting period). The BLE asserts that the benefits currently provided to engineers under RUIA are inadequate. Such programs, according to BLE, also are provided for non-represented railroad personnel and for employees in other industries and are necessary in order to maintain the earnings lost by engineers who are unable to work due to non-occupational illness or injury.

c. Held-Away-From-Home Terminal Time and Meal Allowance

The Organization asserts that engineers have not been accorded equitable pay and/or meal allowances while they are being held away from their home terminal and are on call subject to immediate assignment for return trips. Accordingly, the BLE asserts that the Carriers should be required to pay engineers continuously for all hours that they are held away from home beyond the minimum rest period required by federal law, and to provide the engineers with an allowance of $10.00 per meal.

d. Holiday Pay for Road Crews

The BLE proposes that road engineers who work on a mileage-based assignment in excess of the basic day should receive their regular rate of pay for any holiday on which they do not work, and should receive holiday pay of double time and a half for holidays actually worked. Adoption of this proposal, according to the BLE, would place engineers on a par with most of their fellow workers by allowing them to celebrate holidays with their families without a loss in pay and by providing additional compensation when they are required to work on such holidays.

e. Longevity Pay

To correct what it alleges to be inequities caused by the lower entry rate of pay for new engineers during their first five years of service, the BLE proposes to provide engineers with longevity pay after they have served for either 13 or 18 years.

f. Interdivisional Service

The BLE proposes to eliminate basic inequities in the current pay structure for interdivisional service. The basic day rate should be paid for all miles run, including miles in excess of the

basic day; engineers who are "on duty" in excess of 12 hours should receive overtime pay (irrespective of the overtime conversion factor) until relieved from duty at the final terminal; and engineers on duty in excess of 6 hours should be allowed an adequate amount of time in which to eat or a minimum one hour's pay in lieu thereof.

g. Guaranteed Extra Boards

BLE proposes that carriers that implement guaranteed extra boards should be required to treat the affected engineers fairly and to compensate them adequately. To achieve this goal, the BLE proposes that engineers required to protect such boards at other than their home terminals be provided lodging and meals; that such boards be regulated according to negotiated guidelines; that all such boards be combination boards; and that the guarantee for such extra boards be 19 basic days per half month. In the alternative, local handling should govern, and each General Chairman should be allowed to cancel the existing guaranteed extra boards, thereby reverting back to the rules governing prior to Side Letter #20.

h. Engineer Used As An Instructor

Engineers required to provide on-the-job training for new engineers should receive an additional payment any day they perform those additional duties - i.e., 10% of the road miles for that trip or 1-1/2 hours pay, whichever is greater. Although some carriers already compensate engineers for performing these important duties, there is a need for a uniform rule on this issue.

i. Lay Off Rule

Engineers should be entitled to time off ("layoff") to attend to personal/family matters if there are other qualified engineers

rested and available. This proposed rule would impose no additional costs on the carriers.

j. National Hiring Pool

The Organization proposes the establishment of a national hiring pool to require carriers to hire engineers who have been furloughed or displaced from their previous jobs before hiring new employees to fill vacancies in engineer positions. This program would assist former engineers in obtaining replacement employment and would provide the carriers with a ready supply of experienced and qualified engineers.

k. Exclusive Representation

To ensure that it will be in a position to administer its agreements, BLE proposes that a rule be adopted to provide that bargaining unit employees must be represented exclusively by the BLE in processing grievances up to and including the company level.

l. Scope Rule

Only qualified engineers should be permitted to operate locomotives, and engineers should be given the authority to direct the conduct of all other employees who occupy the locomotive consist or perform services that directly affect the train's movement.

**5. Shop Craft Organizations**

The Shop Crafts (the IBEW, TCU-Carmen Division, IBF&O, IBB&B, and SMWIA) contend that since Shop Craft workers are paid wages significantly below "market" rates, substantial increases are justified now and retroactively. The Shop Crafts also seek the restoration of uniform rates by the elimination of the lower wage

rates paid to so-called "production workers" and employees at intermodal facilities and the entry rate progressions suffered by new hires.

The Area Wage Survey data reveal that the Shop Craft standard rate fell below the average hourly earnings of skilled craftsmen generally in private industry in 1985. That differential continues to grow. If the Shop Craft rate were to be placed retroactive at the "average" for 1989, it would require an increase ranging from 5.8 to 10.0 percent.

As shown by the data utilized by the carriers before Emergency Board 211, the Shop Craft standard rate would need to be increased by about 15 percent retroactive to 1989 to attain the average hourly wage paid skilled craftsmen in the general economy.

Comparisons with wages paid skilled craftsmen covered by collective bargaining agreements in a wide variety of industries show that the shopcraft rate lags behind those wages by at least the amount shown by the Area Wage Surveys and Federal Wage System survey data, and frequently by much more.

The Shop Crafts propose a COLA provision without the offsets which it contends has rendered the COLA impotent during the past contract period.

Because workers should be paid on the basis of the highest levels of skill required by the job, even if those skills are used infrequently, the shopcraft workers assigned primarily -- but not exclusively -- to production-like work should be paid at the same level as skilled shopcraft personnel. This latter group comprises the great majority of skilled shopcraft workers and, since only one wage rate is being proposed, the one that is applicable to the majority of workers would be the most appropriate.

There should be an improved skill premium. The outmoded differential rate of 6 cents an hour for welding and layout work, for example, was set in the 1940's.

The Shop Crafts also propose a liberalization of two existing benefit provisions: (1) The personal leave qualifying requirements presently are eight and seventeen years for one and two days of

annual leave respectively. Allowing employees one day of personal leave per year after one year of service and two days after two years of service is more consistent with the purpose of a leave (which is not a reward for longevity of service). (2) The deaths of grandparents, grandchildren, and immediate stepfamilies should be included in the bereavement leave provision.

The Shop Crafts seek the creation of a 401(k) plan, with matching employer contributions. (The Sheet Metal Workers and Boilermakers would have these moneys directed to their respective national pension plans.) Liberalization of vacation eligibility requirements and the addition of Veterans Day and Martin Luther King's Birthday to the holiday list are also warranted.

The Shop Crafts propose that a national rule be created in which the Carriers would be obligated to use furloughed workers to fill vacancies before "hiring from the street." In order to accomplish this, the Carriers would grant these persons first right of hire to industry vacancies for which they already qualify or can qualify through training.

The Shop Crafts propose to amend the September 25, 1964 National Agreement to require the maintenance of existing work force levels as a prerequisite for subcontracting, except in emergency situations or with the agreement of the affected organization. The reason: Article II of that Agreement simply has not had the intended work preservation effect.

The Shop Crafts propose that the new agreement require the carriers at a minimum to (1) identify the proposed subcontractor, (2) produce the bid or proposal describing the work to be done and the price being charged, with a breakdown of labor costs by hour and rate, and (3) state when the project will be undertaken and how long it will last. Further, the penalty for non-compliance, which presently is imposed only on a discretionary basis and limited to 10%, should be increased. Except in emergency situations, the failure of a carrier to comply with the requirements of Article II, Section 2 shall result in a finding that the subcontract was undertaken in violation of the Agreement. Without these changes,

the Shop Crafts claim that the subcontracting provisions of the 1964 agreement will continue to fail to achieve their original intended effect.

The Shop Crafts allege that, since the last bargaining round, a new scheme of obtaining locomotive power has emerged which arguably could avoid the use of carrier employees to repair and maintain the locomotives. By Electrical Power Purchase Agreements (EPPAs), Carriers purchase the power generated by locomotives, paying on a kilowatt hour basis, while disavowing any ownership, leasehold, or control interest in the locomotives themselves. The Shop Crafts propose the creation of a rule requiring such agreements as a precondition to any EPPA or other similar arrangement. The Shop Crafts propose a rule in which Carriers contemplating EPPAs should be required to enter into negotiations and consummate agreements with the shopcraft organizations regarding the performance of work on EPPA locomotives prior to closing EPPA transactions with outside suppliers.

**6. Transportation Communications International Union-Carmen Division**

Carmen's proposals cover subcontracting, Trailer Train Company (TTX), intermodal service and electronic data systems.

a. Subcontracting

The rule on subcontracting should be amended and modified to fulfill its original intent. The Carmen assert that the rule change is necessary because the Carriers are unilaterally removing the rail industry from the statutory and regulatory controls and safeguards designed to insure safe and uninterrupted transportation service to the public. The amendments proposed would achieve the following goals. Subcontracting would be defined as any arrangement whereby a third party or parties perform carmen's work. Subcontracting would be prohibited except where genuinely unavoidable. The minor transaction exception would be eliminated.

Notice of intent to subcontract would be required in each instance along with relevant information and supporting data and documentation. Also, the union would be allowed to request, and the carrier obligated to provide, additional pertinent information. The burden of proof and persuasion would be placed on the carrier, consistent with the notice requirements. Procedures for providing and requesting information which are explicitly set forth would facilitate frank and timely discussion of issues involved in any proposed subcontracting. Failure to provide the information and documentation with the notice or upon request would be considered a violation of the Agreement, thus motivating the Carriers to fully comply. Subcontracting would require approval of the general chairman or approval through arbitration under expedited arbitration procedures.

Section 14(b) of Article VI of the 1964 Agreement would be further revised to eliminate the 10 percent penalty for failure to provide notice of intent to subcontract with supporting data. Instead, any violation of the advance notice requirements or the requirement to provide information, supporting data and documentation would subject the Carriers to payment of an award at the claimants' rate of pay for the actual hours worked or billed by the contractor, thus providing a real incentive for the Carriers to comply. Further, an arbitration board would not allow a carrier to proceed with any proposed subcontracting or its functional equivalent should it find that the carrier failed to meet the burden of proof or persuasion as to the genuine unavoidability of subcontracting or its functional equivalent.

b. TTX Dispute

Carriers should be prevented from entering into transactions with TTX, a corporation wholly owned and controlled by the carriers, to divert Carmen's work to TTX personnel. This proposal would preserve Carmen's work and prevent expanded abuses by the Carriers. Carmen of the handling line would perform all light and

running AAR repairs to foreign railcars. Any warranty work, heavy repairs or other work performed on the carriers' property to any foreign cars would be performed by the carriers' carmen.

c. Intermodal Service

The intermodal rate (and coach cleaners' rate) should be eliminated. The Organization claims that the Carriers have merely reclassified carmen already working at existing intermodal facilities and no new intermodal work has been given to carmen at new facilities or at existing facilities.

Alternatively, should the Carriers be willing to assign carmen to perform intermodal work in accordance with Article XI of the Carmen's Section 6 notices the intermodal rate could be continued with one change: an increase by the same dollar amount as each increase in the passenger carmen's rate. This would allow continued savings to the carriers while allowing carmen to perform intermodal work with greater safety and efficiency.

d. Electronic Data Systems

The Carmen seek to preserve work historically performed by carmen in relation to their duties of railcar inspection, building, rebuilding, maintenance, servicing and repair. The work of reporting car repairs has long been considered incidental to carmen's work.

The Carmen claim that its proposal would continue the efficiencies brought by the expanded use of computers and similar electronic and mechanical equipment. As carriers have computerized their operations, carmen have come to operate various types of electronic and mechanical equipment. The Organization believes that the carmen's use of such equipment should not be restricted by artificial distinctions as to type of equipment used or precise location.

### 7. American Train Dispatchers Association

ATDA has proposed a wage package which it claims will compensate the train dispatchers commensurate with their value to the carriers as well as with the greater responsibilities which have been assigned to them. Its wage demand is greater than that of the other organizations because the needs of the employees it represents are greater.

ATDA proposes a national personal leave rule and believes that the carriers do not oppose giving dispatchers paid personal leaves comparable to those enjoyed by the other employees.

The dispute resolution process contained in the May 30, 1979 national agreement, according to ATDA, has proven ineffective. The addition of a provision for final and binding arbitration, however, would cure this problem and establishment of a standing arbitration panel would ensure finality in the resolution of disputes and bring disputes to an end far more expeditiously than presently occurs.

ATDA proposes the enhancement of the existing job security agreement so as to induce other carrier employees to fill vacancies in the dispatchers' craft and give the existing workforce an added incentive to remain in the craft. The changes ATDA proposes address levels of protection as well as certain substantive and procedural aspects of the agreement.

ATDA's requests for a liberalization of vacation eligibility requirements and the establishment of a 401(k) savings plan are identical to those submitted by other organizations. It also suggests that a savings clause be included in any settlement.

### 8. Brotherhood of Maintenance of Way Employes

BMWE contends that maintenance of way employees are highly skilled by reason of the equipment they now operate. They are, according to BMWE, the equivalent of outside industry's operating

engineers and construction employees. And they have become one of the most productive groups of employees in the industry.

BMWE's proposed package includes the following:

a. Wages

Maintenance of Way employees should receive an annual wage increase in the vicinity of 5% per year during the life of the agreement. In view of the existing low wage scales for employees represented by BMWE, these payments should be made in percentages. Lump sum payments would not serve to alleviate the problem of a low pay scale. Moreover, cost-of-living adjustments should be reinstated.

b. Entry Rates

Entry-level rates should be increased to 85% of the journeyman rates in the craft. Due to the already relatively low scales for experienced employees, the entry rates presently in effect exacerbate a bad situation as to starting pay. The wages are too low to attract the best available workpersons for these skilled jobs and, in any event, are too low for a worker to adequately provide for a family. New hires should receive 100% of scale within two years of service. As the increases are presently phased in, BMWE claims that a worker can never anticipate receiving 100% of currently meager wages.

c. Away-from-Home Expenses

Lodging expenses should be increased from $13.75 to $18.00 per day on January 1, 1990, to $20.25 per day on January 1, 1991, and to $21.50 per day on January 1, 1992. Similarly, daily meal allowances should be raised from $3.25, $6.50 and $9.75 by increments of $1, $1.25 and $2.25 on January 1, 1990, of $.50, $.50, and $1.00 on January 1, 1991, and again on January 1, 1992.

BMWE also seeks increases in reimbursements for meals and lodging costs from $23.50 per day to $30.00 on January 1, 1990, to $33.25 on January 1, 1991 and to $35.50 on January 1, 1992.

d. Off-Track Vehicle Benefits

The off-track vehicle accident payments which were last adjusted in 1978 shall be increased. Payments for loss of life or two extremities should be upgraded from $150,000 to $250,000 and in the case of an eye, a foot or hand from $75,000 to $125,000.

In addition, the aggregate limitation of $1 million is unwarranted after 20 years, particularly in the case of BMWE represented employees who are carried daily to and from job sites in buses and trucks holding 40-50 employees.

Finally, employees should be entitled to 80% of their weekly compensation for time actually lost, less lawful deductions, for a period of 156 continuous weeks following the off-track vehicle accident.

e. Job Security

BMWE has proposed a guaranteed work arrangement which would provide for employees to work for at least the same number of months they worked in the preceding year. BMWE also proposes the elimination of the existing contractual provisions which permit limited contracting out after notice to the involved general chairman or chairmen and good faith discussions as to the procuring of rental equipment and operation thereof by the carrier's employees. According to BMWE, this rule, in conjunction with other activities of the railroads, has been abused.

BMWE opposes a Carriers' proposal allowing the Carriers to unilaterally impose system gangs and realign geographic seniority districts and proposes that these issues be remanded for local disposition.

## 9. Transportation Communications International Union (TCU)

TCU seeks the elimination of entry rates on the grounds that such rates for lower rated entry positions, particularly service and intermodal workers, do not provide a living wage and, when combined with a lengthy five year progression, the effect is to create a two-tiered wage structure that has proven to be inequitable and inefficient. Moreover, if entry rates are justified, longevity pay is also justified and should be granted at the rate of 5 cents per hour, per year of service.

Although the TCU, through its Executive Council and its General Chairmen's Association, has overwhelmingly rejected the recommendations of the 1988 Wage Study Commission, it is willing to negotiate on a local basis regarding the Commission's recommendations to reduce the number of clerical rates and to establish a joint labor management committee. TCU is also willing to continue bargaining locally regarding the recommendation to create a new, less complex compensation system. TCU notes that the Commission report was non-binding, and the Commission explicitly stated it was not authorized to consider, nor did it make recommendations, about wage levels. TCU believes that the Carriers have misrepresented the Commission's recommendations as the basis for denying wage increases and as a means of attaining wage cuts under the guise of restructuring rates.

TCU seeks a national scope rule giving it exclusive jurisdiction to input data into computers, revise data, retrieve data regarding rates, demurrage and billing, as well as prohibiting the subcontracting of clerical work. TCU believes that this rule is needed to clarify TCU's traditional work jurisdiction and to avoid endless attacks on its scope rule by the carriers through arbitrations on a property-by-property basis.

TCU seeks another national scope rule giving it exclusive jurisdiction over intermodal work -- including, but not limited to, tie down, ramping and deramping, gatemen, and related clerical

functions. Approximately 25% of the employees in this area are already under TCU contracts.

TCU seeks annual eye exams, to be paid for by the Carriers, for employees regularly using VDT and a break of 15 minutes for those employees performing VDT work for an hour or more, and an additional break of 15 minutes for those performing two to four continuous hours of VDT work. TCU believes that this proposal is consistent with the recommendations of the National Institute of Occupational Safety and Health (NIOSH) and the American Optometric Association.

TCU also seeks improvements in the vacation agreement, the addition of two holidays, increased personal leave, and a broadening of the category of relatives covered by bereavement leave.

### 10. Brotherhood of Railroad Signalmen

BRS seeks a modification of the current job stabilization agreement and a national advanced training program. It joins in the proposal of the Brotherhood of Maintenance of Way Employes for a modest amendment to the existing off-track vehicle accident insurance program.

As for job security, the Brotherhood seeks three changes in the status quo. First, the current agreement (February 7, 1965) on job security for the Signalmen Craft covers only 13% of the present signalmen's craft--that is, those signalmen who have been employed since October 1, 1964. Put another way, unless a signalman has 26 years of service in the craft, he does not enjoy the benefits of the agreement. BRS proposes to change that to provide job security benefits to those employees with at least five year's employment in the craft. Other organizations party to the same agreement have negotiated changes over the years; TCU employees, for example, are protected after six years of service. Second, the method for computing benefit amounts should be changed. Disputes have arisen over the years as to how test period averages

are to be computed for purposes of determining protective benefit levels. BRS proposes to simplify the process by using instead the wage rate at which the affected employee last worked.

Third, BRS proposes to adjust the amount of transfer allowance provided for in the agreement to reflect the effect inflation has had on the figure. In 1964, the parties set the transfer allowance at $400. This amount has never been changed over 26 years. It should be increased to $1000.

Their final proposal is to establish a uniform advanced training program for signalmen. While some carriers provide varying levels of advanced training for their signalmen, BRS believes it to be in the best interest of labor and management alike to pursue an industry-wide advanced training program. In this way, no carrier will be left behind, while the costs of developing an adequate program will be spread across the breadth of the industry.

## B. The Carriers' Position

### 1. Overview

The Carriers believe that unless the industry can hold the line on wages and compensation and eliminate restrictive work rules, the prospects for the 1990s are abysmal. And, the Carriers contend that if they were to agree to the wage increases and rules changes sought by the Organizations, the entire industry would be awash in red ink by 1994.

The Carriers' point out that they are engaged in intense competition with other modes of transportation, particularly trucks. Competition has caused a steady decline in rail prices, measured by revenue per ton mile (or "yield") over the last decade. At the same time, the cost of most of the goods and services that railroads buy has gone up. The result is a yield-cost squeeze.

The Carriers state that the return on investment managed to increase from 4.3% in 1983 to 6.7% in 1988. However much of this

apparent improvement was illusory. In 1983 the railroad industry changed its method of accounting for depreciation. When the effect of the accounting change is fully considered, the industry's operating ratio actually deteriorated by 2 points from 1981 through 1989, increasing from 87.96% to 89.6%. Moreover, the change in depreciation method required the railroads to capitalize certain maintenance of way work. This meant that some labor costs were spread out over the life of the track, which in turn reduced reported labor expense. For this reason, the apparent improvement in the labor ratio from 45.5% in 1981 to 42.3% in 1989 is virtually all accounted for by the change in accounting method.

In the 1980s, several fortunate but non-recurring circumstances enabled the railroads to improve profitability, notwithstanding the yield-cost squeeze. These included a 48% cut in employment, tax relief amounting to $2.5 billion over 5 years, a drastic fall in fuel prices, and 7 straight years of economic prosperity. Yet even with the help of those circumstances, the industry failed to achieve a sound financial condition. Return on investment fell far short of what is needed to secure the capital to ensure long-term viability and the employment that comes with it. Moreover, whatever one's appraisal of the railroads' achievements in the 1980s, no responsible observer believes that the factors that made those achievements possible will be repeated in the 1990s.

On optimistic economic assumptions, including the assumption that there will be no recession in the next 5 years, the railroads believe that they could avoid major deterioration in their financial position by 1995 -- but only if wages do not rise and the industry enjoys productivity gains going well beyond what is possible under current labor agreements. Without such productivity gains, the Carriers believe that the industry's operating ratio -- the ratio of operating expenses to net revenues from rail operations -- would worsen by 2.7 percentage points, from 89.6% to 92.3%, even with a wage freeze. Furthermore, if labor received the wage increases it has proposed -- 5% per year, retroactive to 1988,

with a COLA -- the industry-wide operating ratio would rise to 108.8, and the industry as a whole would suffer a loss of more than $2.6 billion.

According to the Carriers, wages and other compensation are the industry's largest controllable costs, and no progress toward financial health can be made unless they are in fact controlled. Moreover, the railroads operate under what they consider to be antiquated and rigid work rules that add enormously to costs and cripple efforts to provide quality service to customers.

In these circumstances, the Carriers seek a wage freeze for most crafts. But the wage proposals go beyond a freeze in three respects. First, the Carriers propose to reduce the pay of ground service employees (conductors and brakemen) by 20%. Second, the Carriers would reduce the pay of brakemen to 75% of the pay of conductors in the same class of service. The Carriers argue that this would rectify what the Carriers consider to be a serious pay inequity, because brakemen today earn nearly as much as conductors although the conductor's job is by far the more highly rated of the two and it would bring these employees' pay somewhat closer to market levels. Third, the Carriers propose to implement, at long last, the recommendation of the Van Wart Commission that the "basic day" in through-freight service be increased to 160 miles.

## 2. Wages and Benefits

### a. The General Wage Issue

The Carriers propose a wage freeze in this round of bargaining. They believe that such a freeze, together with substantial work rules relief, would enable them to head off deterioration in their financial condition and would give them an opportunity to improve their competitive position. Moreover, they believe that a wage freeze would not impose any unfair burden on railroad employees who, by and large, are already paid well above market rates. A general wage increase of 5% per year, retroactive

to 1988, according to the Carriers, would put the railroads $2.6 billion in the red by 1994.

The Carriers believe that the industry pays exceptional wages on the whole, and the evidence presented by the Hay Management Consultants shows that members of individual crafts receive wages that far exceed market rates. Hay found that, with the exception of conductors in yard service, all of the employees studied (engineers, conductors and trainmen) were paid substantially more than the market rate, as measured by the average wage of similar positions in the BLS's area wage studies.

The Carriers contend that clerical employees similarly receive compensation well in excess of market rates. The Carriers note that the joint TCU-NRLC Study Commission concluded that "most railroad clerical wages are substantially above comparable, competitive wage rates in other industries." Using the same method employed by the Commission, the Carriers calculate that rail clerical rates in 1990 were 20.7% higher than the market, as measured by the Survey of Professional, Administrative, Technical and Clerical Pay (PATC): Private Service Industries rates for similarly valued jobs.

The Carriers allege that, while the gap between the wages of most other rail employees and those of employees in similar positions in other industries is not so great, there is a gap nevertheless. According to the regional rail survey conducted by the Carriers, in 1989 the Class I railroads paid positions in the shop, signal, and maintenance of way occupations at rates nearly 12% higher than those paid by the regional railroads for similar positions.

According to the Carriers, the increases sought by the organizations would be ruinous for the industry. Taken together, those proposals would result in an increased wage bill of $21.182 billion through 1994. The application of the COLA and retroactivity accounts for the lion's share of this amount. A straight 5% annual wage increase, beginning in 1990, would result in a cumulative cost of $3.473 billion to the industry by 1994;

and a COLA (assuming, as the organizations do, 5% inflation) would add an additional $3.508 billion. Because of compounding, however, making such wage increases retroactive to 1988 would almost triple the increase in the wage bill. The Carriers state that they simply can not absorb such enormous costs.

The Carriers assert that no natural law entitles anyone -- rail employees, carriers, or anyone else -- to keep up with the rising cost of living. The railroads themselves have certainly been unable to do so. During the 1980s, for example, the carriers' yield, measured in revenue per ton mile, fell nearly 20%, while inflation, as measured by the consumer price index, increased by 34%. The wages of rail employees must be paid from the earnings of the industry. The employees cannot fairly claim to be entitled to a shield against inflation when their employers have none.

Similarly, retroactive wage increases would be unwarranted. First, rail employees have more than kept up with inflation during the 1980's. Second, given the levels of compensation rail employees already receive, the market should be catching up with them, not the other way around. And, finally, a major portion of the responsibility for the protracted nature of these negotiations must be borne by rail labor. Retroactivity would merely reward the bargaining tactics that have contributed to this delay.

b. Operating Craft Proposals

(1) Job-sharing Pay Adjustment-Ground Service Employees

The Carriers assert that the single most important labor cost problem is the huge expense of unneeded and unproductive ground service employees who are required under current crew consist agreements. Their number approximates 22,350 surplus employees today, at an annual cost of about $1.4 billion --- 19% of the carriers' total current wage package for all union employees ($7.5 billion) and 58% of the current ground service payroll ($2.4 billion). Although the UTU has been invited to negotiate a new

national crew consist agreement that would address the overmanning issue directly, the UTU has refused, claiming that crew consist must be handled locally and that some carriers are barred by local moratoriums from proposing crew consist changes.

In the face of these objections, the Carriers have not insisted upon their crew consist proposal, although they continue to hold their invitation open. They do insist, however, that the parties address the cost of current overmanning which threatens the survival of the industry and thus the livelihood of all of its employees. Accordingly, in the absence of any proposal from the UTU, the Carriers propose a 20% reduction in wages for all ground service employees.

This 20% reduction is less than the cost of ground service employees who even the UTU agrees are not needed. For example, the Carriers are obliged to employ about 9,000 second brakemen at an annual cost of nearly $540 million, 23% of current UTU wages. The UTU, however, has signed agreements with most carriers since 1973 allowing for the gradual elimination of these jobs. Moreover, Congress mandated the immediate elimination of all second brakemen jobs on the Consolidated Rail Corporation (Conrail) in 1981; and Emergency Board 213 determined in 1988 that the UTU cannot "seriously contest the practicality of utilizing a crew consist of a conductor and one brakeman" on any train.

In addition to the second brakemen (Category A), the Carriers claim that there are redundant ground service employees in all other classes of freight service; Category B -- all first brakemen on through-freights -- approximately 10,600 employees at an annual cost of $675 million; Category C -- first brakemen on low-volume way-freights -- approximately 2,000 employees at an annual cost of $121 million; Category D -- first helpers on all yard transfer jobs -- 300 employees at an annual cost of $16 million; Category E -- first helpers on low-volume yard switching jobs -- 450 employees at an annual cost of $23 million.

With respect to the first brakemen on through-freights, the Carriers point out that the traditional head-end crew prior to the

elimination of cabooses during the 1980s consisted of but one ground service employee plus the engineer. Cabooses were eliminated because technological advances did away with rear-end work. The employees who came up to ride at the head-end brought no work with them. The Carriers allege that the UTU has recognized this fact by agreeing to allow conductor-only through-freight operations on many Class I and regional railroads.

A one-man head-end crew was also traditional on yard transfer jobs and on low-volume way-freights that did little switching. Although all switching moves could be performed with a conductor only, carriers would continue to employ a brakeman on about half of their way-freights for efficiency reasons. Similarly, while all yard switching could be done with a foreman alone, in busier yards the carriers would use a helper to expedite the work. Several recent local UTU agreements, as well as awards of Special Boards of Adjustment under Public Law 88-108 during the early 1960s, have authorized way-freight, yard transfer, and yard switching jobs to be operated with a conductor/foreman alone.

The Carriers point out that the UTU has not disputed the Carriers' estimates as to the number and cost of redundant brakemen/helpers. Nor has the UTU suggested any means of addressing this enormous problem. Nobody other than ground service employees benefits from the maintenance of more than 22,000 unproductive ground service jobs, and they -- not the carriers and not their other employees -- should bear the costs.

(2) Brakeman/Conductor Pay Relationship

The Carriers propose that brakemen's wages be reduced so that their rate of pay equals 75% of the conductor's rate in the applicable service. They argue that this adjustment would be warranted even if there were no surplus brakemen and rely upon Hay's analysis which shows that the conductor's job is rated far higher than that of the brakeman, yet brakemen earn approximately 92-93% of a conductor's earnings in the same class of service.

The Carriers argue that the narrow margin between conductor's and brakemen's pay cannot be justified by the content of the two jobs and no one, least of all the UTU, has suggested any legitimate rationale for that difference.

(3) Basis of Pay in Through Freight Service

The Carriers propose an increase in the basic day for through freight service employees from 100 to 160 miles, a corresponding adjustment in the overtime divisor to 20, an adjustment in the overmile rate to 1/160th of the basic day rate, and appropriate adjustments in mileage regulations. Overtime would still not commence until after 8 hours. These changes would be phased-in over a four-year period. Inequities existing in the pay relationships between through freight employees and their counterparts in local freight and yard service would thus be corrected, and the earnings of through freight employees would better reflect the work they actually perform.

The present pay system is an anachronism according to the Carriers. Boards and commissions have repeatedly recommended that it be overhauled to conform to today's operating realities and to eliminate the many inequities it produces. Thus in 1983, after a year of thorough and careful study, both the UTU and BLE Study Commissions (Van Wart Study Commission) concluded that the basis of pay had created serious inequities and should be at least updated to reflect modern train speeds. The Carriers seek full implementation of those recommendations, stating that the small change obtained in the 1985 agreements (from 100 to 108 miles) has already been absorbed by a 2.7 m.p.h. increase in train speeds since the time of the Commissions.

c. Carrier Clerical Craft Proposal: Implementation of Study Commission Recommendations

The Carriers urge implementation, at the earliest feasible time, of the recommendations set forth at pages 2-3 of the TCU-NRLC Study Commission Report. The Commission recommended:

> reducing the number of separate pay grades to 15 and assigning positions to each grade based upon a method of job evaluation developed by the Commission specifically for rail clerical positions;
>
> increasing the "slope" of clerical wage rates to reduce excessive wage compression, thus moderating turnover and providing clear opportunities for advancement; and
>
> allowing the pay of rail clerical employees to come closer to market rates (taking into consideration any special factors that may bear on the appropriateness of rail clerical rates).

The Commission also recommended limitations on voluntary bidding and bumping to address severe turnover problems, as well as changes in rules regarding blanking and combining of positions.

The Commission, the Carriers point out, found that undue wage compression exacerbates turnover problems because the difference between one pay rate and another is often minuscule. In addition, the compressed wage structure fails to provide employees with the incentive to acquire new skills or earn promotion. In the Commission's words:

> Even though many clerks spend their working lives with the railroad, the present wage system provides employees with little opportunity for upward mobility or a clear career path. Such mobility is impossible in a compressed wage structure.

3. Response to Organizations' Wage and Benefit Proposals

a. Engineer Pay Differential

The proposed pay differential should be rejected for the following reasons: (1) Contrary to the BLE's contention, the productivity fund payments received by protected UTU members are not an integral part of the pay system for operating craft employees; (2) There is no historic pay differential between engineers and conductors. When the different classes of service are taken into account, there is no true pay relationship of any kind between those two positions; (3) Even if such a differential had existed in the past, it has been substantially reduced in the course of bargaining over the last two decades, and history is not a valid reason for perpetuating a differential that does not accurately reflect fair market values of work performed; (4) Contrary to the BLE's argument, there is no shortage of engineers and the carriers are not having difficulty recruiting trainmen to become engineers; (5) Engineers are not "worth" more than conductors; (6) Engineers are already overpaid, and boosting their wages yet further above market -- particularly by keying them to the wages of conductors, who are also overpaid -- is completely inappropriate; (7) The question of a wage differential between engineers and other crew members has been considered by a number of neutral bodies, none of which endorsed such a differential; (8) The Carriers should not be asked to spend at least $214 million annually for the purpose of salving the engineers' wounded self esteem, which is the only rationale that the BLE has offered in support of this proposal.

b. Held-Away-From-Home Terminal Time and Away-From-Home Expenses

The BLE and the UTU have both proposed increasing payments for held-away-from-home terminal (HAFHT) time and away-from-home

expenses. The Carriers contend that these proposals are unwarranted and excessively costly (the BLE's real allowance proposal costing $32 million annually and the UTU's proposal costing $113.9 million annually).

On numerous occasions over the last seventy years neutral bodies have found the current system of HAFHT payments -- 8 hours pay for every 24 hours held away after relief from previous duty -- to be fair and reasonable. That system gives operating employees a day's pay for every day they are held away from their home terminal. Contrary to the Organizations' arguments, HAFHT payments do not represent compensation for being on call (rail employees are regularly subject to call at home without any additional compensation), and therefore labor's proposal for continuous HAFHT pay is unjustified.

The Organizations' proposals would cost the Carriers $90-$100 million a year and the employees who stand to benefit most from those proposals -- operating employees in through freight service -- are already the most overpaid of all railroad employees. At the very least, the formula for HAFHT pay should not be changed as long as there is any discrepancy between the mileage basis of pay and modern train speeds -- and even then the issue would require careful study, because the system of operating employee compensation is already unduly complicated.

c. Shop Crafts Skill Differential

In the initial submission of the Shop Crafts the IBEW sought a "skill differential" for electricians -- presumably because the IBEW thought electricians were more skilled than other Shop Craft employees. At the hearings, the organizations presented general testimony on the nature of the work done by employees in various crafts. At the close of the Shop Crafts' presentation, however, their counsel made clear that the Shop Crafts sought such a differential for journeymen in all crafts.

A skill differential proposal for organizations other than the IBEW is not properly before the Board, according to the Carriers, because those organizations did not make such a proposal in their section 6 notices. In any event, the testimony demonstrates that the work of shop craft employees consists, to a considerable extent, of routine production work that does not require any special skill. In light of the relatively unskilled work done by shop craft employees, wages somewhat below the average paid outside the railroad industry would be justified. Certainly there is no basis for a skill differential that would increase the pay of shop craft journeymen.

d. Shop Crafts "Skill" Premium

Following World War I, arbitraries of 6 cents were established for such tasks as swearing to federal inspection forms, welding, laying out work, and so forth. The Organizations have proposed increasing these arbitraries to 7% of the basic rate, at a cost of $10.7 million.

This proposal should be rejected because these arbitraries are not "skill" premiums at all. For example, no special skill is required to fill out Federal inspection forms. The other historic arbitraries are similarly anachronistic. Welding is not particularly skilled work; the welding arbitrary was originally paid to enable welders to replace burned clothing. Similarly, any mechanic should be capable of laying out work.

These arbitraries should not exist at all and they are tolerable today only because the amounts involved are small. Increasing them would impose a major, unjustifiable expense on the carriers.

e. ATDA Proposals

(1) Work Load Adjustment

The ATDA claims that modernization has increased the workload and stress of dispatchers and that a substantial wage increase of $500 per month is necessary to compensate them for the attendant deterioration in working conditions. The Organization also asserts that a serious shortage of dispatchers exists primarily because of inadequate compensation.

For the most part, the Carriers point out, ATDA's claims for increased compensation due to stress and overwork are based on the same arguments it presented to Emergency Board 190 in 1979, except insofar as the Federal Railroad Administration (FRA) study of train dispatchers' work environment may shed additional light on the matter. That study does little to advance the dispatchers' case, however. The FRA explicitly stated that it was not in a position to evaluate either the workload of train dispatchers or the level of stress to which they are exposed. Moreover, while the FRA said that "[s]ome railroads" have shifted clerical and administrative duties to the dispatcher, it also stated that it "did not observe any trends or patterns in [that] direction." Indeed, in one case, the FRA noted that the ATDA had refused to allow a carrier to shift such duties away from dispatchers.

Working conditions for train dispatchers have, if anything, improved in recent years, according to the Carriers. While many dispatchers have been assigned more territory than previously, this increased responsibility has been made possible by improvements in technology that have simplified many of the dispatchers' duties. The FRA, it is true, did find that some dispatchers are subject to considerable pressure. But they alone among rail employees have a special mechanism for dealing with such complaints, as well as other issues relating to working conditions. Thus, the "1937/79 Agreement" allows dispatchers to bring concerns about working conditions to the attention of specially constituted

committees. Those committees often prescribe measures to alleviate stress or lighten work loads by reallocating work within a facility, dividing the work differently among different employees, and even hiring additional dispatchers to carry some of the load.

The FRA did not find any general shortage of train dispatchers and, in fact, there is none, the Carriers assert. Shortages did exist at specific locations on specific railroads but many were due to recent consolidations and the carriers were already in the process of rectifying the situation. Such local shortages, in any event, are not the result of an overall inadequacy in dispatcher compensation.

In sum, as shown by the ATDA, technological improvements in train dispatching like those used in CSX's Jacksonville Center make the work of the individual dispatcher easier. The FRA found that the Jacksonville Center "represents significant progress toward utilizing current technology to improve railroad safety, and to assist train dispatchers with the organization and management of the railroad's operational affairs." Modernization is making dispatchers' working conditions better, not worse. It certainly is not a reason for a dramatic increase in pay.

(2) "Equity" Adjustment

The ATDA has proposed a so-called "equity adjustment" of 4% because in the last round, as a result of an arbitration proceeding, the yardmasters received the 10.9% increase received by the operating crafts while ATDA employees settled for a 6.6% increase, which was the pattern for other non-operating employees.

The Carriers assert that the claimed adjustment is inappropriate for three reasons. First, there is no reason why the train dispatchers should be kept in any particular relationship with the yardmasters, as opposed to clerical or other non-operating employees who agreed to the same increases that the ATDA did. Second, in the last round the operating crafts received a larger wage increase than other employees because they agreed to changes

in the basic day and a freeze on arbitraries. The dispatchers did not give up any elements of pay comparable to those given up by the operating crafts, and it was therefore appropriate for the ATDA to agree to the pattern common to the non-operating employees. Third, even if the pay relationship between yardmasters and dispatchers were relevant, the latter are still paid approximately $2,000 per year more than the yardmasters. The results of the last round therefore did not eliminate the dispatchers' previous advantage.

f. Advanced Training for Signalmen

The BRS has proposed a national rule requiring carriers to provide advanced signal training. The objective of this rule would be to qualify all signalmen to be specialists or technicians -- the most skilled positions in the signal department.

While recognizing that training is important both for safety and efficiency, the Carriers oppose a national rule. Advanced training is already provided, the Carriers assert, and the BRS has not shown that those programs are inadequate. The proposal, moreover, goes far beyond what is necessary to assure safety and efficiency. Specialists and technicians require advanced knowledge of electronics and (in the case of specialists) computerized signal equipment. But the vast majority of signalmen do not require such advanced skills. It would be wasteful to qualify all signalmen for the most highly skilled positions in the craft.

g. Pay for Time Not Worked

Most of the Organizations have sought increases in the pay their members receive for time not worked. They have not, on the whole, treated pay-for-time-not-worked as a priority item but to the extent they have dealt with the issue, they have concentrated primarily on vacation and holiday benefits.

Current railroad vacation benefits meet or exceed the general standards of American industry, according to the Carriers.

Railroad employees qualify for one week (5 days) of vacation after one year of service and two weeks (10 days) after two years. Thereafter, vacation time increases, in stages, to five weeks (25 days) after 25 years of service. BLS data show that the average number of paid vacation days for workers in large and medium firms ranges from 9.1 for employees with one year of service to 21.9 for employees with thirty years of service. The BLS data do not show any category of workers receiving, on average, as many as 25 vacation days annually, no matter how many years of service they have.

The six-week vacations sought by the Organizations are thus clearly beyond the American industry norm. Indeed, the Organizations virtually concede as much; they characterize the six-week vacation only as "emerging as a significant development in outside industry." Their own evidence shows that only 24% of collective bargaining agreements provided for a maximum of six weeks of vacation or more in 1988. The railroad industry clearly meets current standards for vacation benefits and that should be enough. Reducing the number of years to qualify for certain vacations of less than six weeks' length, as the Organizations propose, would also take railroad benefits beyond what the average American worker enjoys. The Organizations want 15 days of vacation after five years, when the average worker gets 13.4. They want 20 days after 15 years, as compared to the average worker, who gets 18.6 days at that stage. They want 25 days after 20 years, when the average worker gets 20.4. Clearly, the market place is not providing vacations of the length the Organizations seek. The railroads should not be providing such benefits, either.

The railroad industry also provides an above-average number of paid holidays, the Carriers assert. In general, the Class I railroads provide 11 paid holidays for all non-operating employees and for those operating employees who are not paid on a mileage basis. By contrast, American workers generally average 9.2 paid holidays a year. No expansion of holiday benefits is warranted.

h. Entry Rates

Several organizations have proposed to eliminate or modify entry rates. Those proposals should be rejected, however, because the railroad industry cannot continue to pay the above-market wages that have been available in the past. Lower entry rates for new employees allow the Carriers to exercise some control over labor expenses without lowering final wage rates or affecting current employees. Thus, maintaining existing entry rates fosters the goal of improving the financial viability of the industry without an adverse effect on current employees.

Moreover, the Carriers point out, contracts providing lower entry rates for new employees have been reached in a variety of industries and with a variety of unions, including some that represent railroad employees. Such rates, indeed, have been an accepted feature of the wage structure in the railroad industry for more than a decade: the industry contracts of 1978 and 1981-82 provided for both lower entering rates and a longer Health and Welfare phase-in period for new hires. More recently, in the last round of agreements, both the operating crafts and TCU agreed to lower entry rates for new employees. And Emergency Board 211 endorsed entry rates, recommending the use of a 75% entry rate with a five-year progression for certain maintenance of way, signal, and shop craft employees.

The NRLC has calculated that the railroads saved $54.3 million in 1989 as a result of entry rates, which amounts to seven-tenths of one percent of payroll. This figure is comparatively low because the number of new hires has been small. As the number of affected employees increases over the years, however, the projected savings will amount to between 1.0% and 1.4% of payroll in 1995, depending on attrition. Eliminating entry rates now would deprive the railroad industry of this important source of savings before it has fully received the benefit of the bargain it made in the last round.

i. Longevity Pay

The organizations that advocate longevity pay all based their proposals, at least in part, upon the theory that if there are entry rates, there should be longevity pay.

There are, however, two important distinctions between the five-year rate progression for new hires and the Organizations' proposals for longevity pay, the Carriers contend. First, the entry rate progression already in place recognizes that employees go through a process of learning in their early years on the railroad. After a time, those employees will mature in their jobs. But an employee of 20 years' standing in the railroad industry does not have significantly more knowledge and judgment than an employee of 15 years' experience.

Second, the Carriers have not yet gotten the full benefit of entry rates because the industry has been characterized by declining employment and few new hires; but if those rates are left in place, more significant savings will follow. Adopting the organizations' longevity pay proposals, on the other hand, would have an immediate and substantial financial impact on the industry because the number of employees who would qualify for longevity pay far exceeds the number of new hires who have been subject to wage progression. Finally, even if some form of wage increase were justified, it would not be desirable to distribute the limited amount of money available for such increase by making payments based on the longevity of the Carriers' employees.

j. Other Wage and Benefit Proposals

The BLE and the UTU have made somewhat similar proposals for sick leave and/or supplemental sickness benefits, personal leave, vacations for road service employees and longevity pay. In addition, the BLE has proposed a differential for engineers who act as instructors and a long-term disability plan, and the UTU

has made a large number of pay-related or benefit proposals. These proposals are unwarranted and extremely costly.

The UTU-Yardmasters have proposed that yardmasters receive additional payments when assigned extra duties or additional territory, or when required to program work to be performed after their shift. The Yardmasters also propose that they receive a penalty payment whenever they are required to make a transfer with anyone other than another yardmaster. Finally, they propose a pay increase for transfer time. These proposals are unwarranted and should not be considered, although the Carriers are also willing to agree, in the context of an overall settlement, to provide credit for purposes of determining vacation eligibility to trainmen who work as extra yardmasters.

Several organizations have proposed that the Carriers establish 401(k) plans with employer contributions or that the Carriers' contribute to existing national pension trust programs. In addition, the TCU has proposed that the Carriers provide 15 minute breaks every two hours and annual eye examinations for VDT users; the Shop Crafts have proposed differentials for employees who perform hostling work or who handle heavy equipment; the Carmen have proposed adjustment of freight carmen rates and an increase in intermodal rates; and the BMWE and the BRS have proposed an increase in off-track vehicle benefits. All these proposals are unwarranted and unduly expensive.

The BMWE has proposed an increase in away-from-home expenses. As is the case with the operating crafts, the Carriers are confident that an appropriate adjustment can be agreed upon as part of an overall settlement.

Finally, the parties have reached a tentative agreement with respect to the non-operating craft and Yardmaster proposals to adjust supplemental sickness benefits.

## 4. Rules Issues - Carrier Operating Craft Rules Proposals

### a. Road/Yard Restrictions

The Carriers assert that their proposal to eliminate road/yard restrictions is vital to their efforts to attract and preserve business. These restrictions, while complex, have a common theme: they limit the carriers' authority to assign work to road and yard crews on the basis of efficiency. Under the current rules, crews must be assigned according to the location of the work -- whether it is within or outside arbitrary switching limits or seniority districts or on the property of another carrier. Road crews are also allowed to perform only a set number of moves -- including a limit of just two moves in the initial and final terminals. These restrictions often delay pick up or delivery of cars and leave crews standing idle, waiting for other employees to perform work that they could just as easily do themselves. Taken together, road/yard restrictions severely undermine the carriers' ability to operate efficiently and to provide the service that their customers expect and demand.

The importance of reforming road/yard restrictions has been recognized by numerous neutral bodies over the last 30 years, the Carriers point out. To give only the most recent example, in 1983, after a year of study, the UTU and BLE Study Commissions found that "[r]oad/yard restrictions more than any other subject matter placed before the Study Commissions epitomize a prime cause in the delay to, and the loss of, rail traffic with the resulting debilitating impact on rail employment." The Commissions concluded that relaxation of road/yard restrictions "can be translated directly into improved service reliability and more competitive rates."

The present road/yard rules are an historical accident, according to the Carriers. The segregation of road and yard service originated in the nineteenth century as a result of jurisdictional disputes between labor organizations primarily

interested in providing the maximum number of jobs for their own members. The merger of those unions to form the UTU, and the subsequent merger of road and yard seniority rosters in 1972, eliminated any possible basis for distinguishing between the two services. Employees in road and yard service perform identical tasks. The only difference between them is that road crews spend more time riding trains.

In large part, the Carriers assert, they are merely seeking to implement the recommendations made seven years ago by the Study Commissions. For example, the Commissions recommended -- and the Carriers now propose -- that road crews be allowed to make multiple set-outs and pickups within the same switching limits and, more fundamentally, that carriers should have the freedom to respond to shippers' needs and provide service that cannot be accommodated under the current rules. Similarly, the Commissions' recommendations would eliminate restrictions on interchanging cars with another carrier. The other changes proposed by the Carriers -- for example, permitting road crews to make transfers of cars within switching limits -- are cast from the same mold. All would improve service and provide the most efficient use of manpower and equipment.

b. Interdivisional Service

Interdivisional service is defined as the operation of a train by a single crew without regard to seniority districts or operating divisions. By eliminating unnecessary stops to change crews and avoiding the expense of maintaining unnecessary terminal facilities, interdivisional service permits carriers to provide faster, more reliable service and to reduce operating costs. It has long been recognized that such service is exceedingly important to shippers. The Carriers propose to expedite and simplify the procedures for establishing interdivisional runs.

Although they have the right to establish interdivisional service, the Carriers assert, the existing procedural requirements

make that a long and painful process. Currently, when the new service will operate through a home terminal the parties must agree or go through arbitration before the run can be implemented. When the new service will not operate through a home terminal, the run may be established on an interim basis after 20 days' notice. In both cases, arbitrators have no clear standards to guide them. As a result, delays or onerous conditions often make the proposed service unfeasible. Consequently, the Carriers seek the right to establish or reestablish, on an interim basis after 90 days' notice, interdivisional runs which operate through home terminals, to standardize the application of work rules and apportionment of jobs, and to limit the scope of arbitration. In addition, the Carriers seek to have the protection provisions applicable to the UTU conformed to those of the BLE.

Their inability to establish interdivisional service in a timely and consistent manner, the Carriers contend, drives existing customers away and discourages new business. Shippers are rarely willing or able to wait months to get the type of service they require and truckers are readily available. The Carriers' proposal would correct these problems by making the establishment of interdivisional runs quicker and more predictable.

According to the Carriers, the Organizations' fear that this proposal would result in a massive relocation of employees is unfounded. The proposed changes would merely allow these interdivisional runs to be established more quickly and without unreasonable conditions. The BLE and UTU proposals, by contrast, would roll back previous agreements and cripple interdivisional runs.

c. Starting Time For Yard Service Employees

The Carriers propose eliminating all starting time restrictions for yard service employees. These rules currently result in unnecessary costs and are serious obstacles to efficient customer service. Since there is no relation between these rigid

contractual starting times and the times when there is actually work for yard crews to perform, the rules make it difficult to match work demands with crewing. Thus, the starting time restrictions reduce efficiency, inflate overtime, and adversely affect customer service. Eliminating these restrictions would help the carriers compete with trucks, which are not bound by any such restrictions.

d. Meal Period Rules

The Carriers propose to eliminate all existing rules which permit road crews to stop their trains in order to eat at a restaurant. The reason: to prevent significant delays and operating inefficiencies. These meal stops may delay trains over two hours which, in turn, leads to expiration of the crew's time under the Hours of Service Law. It is common for crews to carry their lunches and eat on board and the lack of an adverse impact on employees is demonstrated by the fact that the Organizations have already given up the right to stop for meals in interdivisional service.

**5. Rules Issues - Carrier Non-Operating Craft Rules Proposals**

a. System Gangs, Seniority Districts, and Work Day and Work Week Adjustments

Preliminarily, the Carriers assert that customer service is currently a hostage to archaic work rules which result in a lack of flexibility in scheduling maintenance of way (MOW) and signal work and in getting that work done. The Carriers ask this Board to recommend three basic sets of changes that would remedy what is considered an intolerable situation: (1) Authorize the railroads to establish regional or system gangs that would work over any given carrier's entire system, without regard to seniority districts or other territorial work restrictions. (2) Authorize the

carriers to realign or combine seniority districts, sections, and other labor-related territorial jurisdictions. (3) Authorize the carriers to make various adjustments in the work day and work week of MOW and signal employees in response to operational considerations.

Current agreements barring MOW and signal employees from working outside their own seniority districts slow work, increase costs and are no longer justifiable, the Carriers affirm. These rules reduce employee productivity because replacement production gangs often need to learn the skills necessary to work on the project. They cause manpower shortages and duplications and idling of equipment because timing in the coordination of replacement gangs is extremely difficult. They disrupt employment and project continuity in a variety of ways and they adversely affect employee safety because of the learning curve that occurs as new gang members learn or relearn how to operate the equipment.

According to the Carriers, their proposals for system-wide and regional gangs and to realign or combine seniority districts would foster better employment continuity, provide improved work opportunities and employment stability, enhance safety, increase productivity, reduce costs, and permit better customer service.

Inflexible work days and work rules similarly impair operating efficiencies. The Carriers must be able to take advantage of potential productivity improvements that flexible scheduling would permit, for example, by scheduling maintenance work when it will be least interrupted by train traffic. Thus, the Carriers propose that they be authorized to (1) adjust starting times for all MOW and signal employees, (2) designate any consecutive days as rest days, (3) schedule work on the basis of four ten-hour days per week or other compressed schedules, (4) extend the number of days that can be worked (and then rested) consecutively, and (5) determine the timing and location of MOW and signal employees' meal periods, all in response to operational considerations.

These proposals would not lead to carrier abuse; nor do they require local, rather than national, handling. Some of the rules

the Carriers seek are already in effect on some properties, and there is no evidence of abuse. Significantly, these local arrangements in large part reflect long-standing practices of the Carriers involved, rather than the Organizations' willingness to negotiate such flexibilities based on local conditions. Recent local agreements on these issues are rare and represent isolated, narrowly defined improvements in a largely rigid system of work rules to which the local Organizations still cling. The faith expressed by Emergency Board 211 in the local Organizations' willingness to reach negotiated agreements on these issues has been shown to have been unwarranted. This Board should not repeat that mistake.

b. Job Site Reporting

The Carriers propose that pay time for MOW and signal employees who have no assigned headquarters, or who are working at any job site away from their assigned headquarters, should begin and end at the work site. The rule that pay begins when an employee picks up his tools and starts work and ends when he finishes his work and puts his tools away is nearly universal, the Carriers contend. The BMWE and BRS have shown no convincing reason why they alone should be paid for commuting.

c. Yardmaster and Dispatcher Staffing Proposals

The Carriers contend that they need greater freedom in staffing dispatcher and yardmaster positions. They therefore propose to eliminate restrictions (both actual and claimed) on their ability to reduce the use of such employees, and consequently to reduce costs, where local conditions permit. Specifically, the Carriers seek authorization to combine dispatchers' work or blank dispatchers' positions when the work required on a day or shift can be handled by the remaining dispatchers on duty. Second, the Carriers propose that they be permitted to establish footboard

yardmaster positions in lieu of yardmaster positions when conditions permit. This substitution would simultaneously eliminate a layer of administration and reduce labor costs.

### 6. Scope and Allocation of Work

In general, the Carriers assert, existing work rules requiring that certain work may be performed only by members of a designated craft, even though other employees who could do it equally well are standing idle, are burdensome throwbacks to a much earlier time. They undermine railroad efforts to compete with trucks.

The Carriers have therefore proposed four intercraft and intracraft work rules to minimize this unwarranted handicap. First is the "all-union" work rule. It would permit an employee (regardless of craft) to perform any work of which he is capable, even though that work traditionally may have been performed by another craft, when such performance would improve customer service, utilization of employees' skills, and utilization of equipment. Although this proposal is "new" in seeking to allow employees of any craft this flexibility, the idea of using employees to do whatever work they are capable of is not novel, nor will its application to railroad operations cause any radical change in the general organization of employee functions. The proposal would not obliterate craft lines, but would permit sensible assignment of tasks when it would serve clearly defined purposes.

The Carriers have also made proposals to allow more efficient assignment of work within a craft or a related group of crafts: the operating crafts, the shop crafts, and maintenance of way. The operating craft proposal, designed to increase productivity, avoid delays and improve service, would increase the number of incidental tasks that could be performed by both road and yard service employees without regard to whether some other employee is available or whether that task is in connection with their regular

assignment, and would eliminate additional payments for performing such tasks.

This would greatly improve efficiency, according to the Carriers, by eliminating delays which occur when employees must stop their work in order to have an employee of a different craft or classification perform some part of a task. For example, operating employees routinely handle end of train devices when no other employees are present or available, but under the current rules they cannot handle the devices if an employee from another craft is deemed to be "available." The devices have essentially replaced cabooses and their handling is an integral part of operating the train. There is no logical or sensible basis for the existing restrictions.

Similarly, the Carriers seek authority to assign shop craft work to any Shop Craft employee capable of performing it, regardless of existing classification or work rules and practices. By giving Shop Crafts "ownership" of particular work, these rules and practices often require the use of several employees to do the work of one. For example, under current rules it takes mechanics from three separate crafts to replace a fuel pump in a heavy repair shop, when one can easily do the job. Although a machinist "owns" the task of replacing the fuel pump and is fully capable of performing that task all by himself, the rules require that he be "assisted" by a pipefitter -- who disconnects pipe fittings using an ordinary crescent wrench -- and an electrician -- who removes a cover and disconnects two wires. Such overmanning increases costs, delays the return of equipment to service, leads to disputes among the crafts over turf, and distracts attention from getting the job done. The Carriers' proposal would still require specific crafts to be assigned to jobs that call for specialized skills, but would allow supervisors greater flexibility in assigning tasks that any mechanic can perform.

Currently, certain kinds of MOW work are assigned to particular groups of BMWE employees (such as trackmen, or bridges-and-buildings workers). Members of one group cannot perform the

work assigned to other groups. As with the Shop Crafts, the Carriers affirm, these rules unnecessarily restrict the carriers' ability to use capable, available employees to perform work which in many circumstances they could do more conveniently than employees from the "proper" group. This inefficiency is all the more objectionable because the groups of employees contending for the work are all members of the same Organization. Accordingly, the Carriers ask this Board to recommend that MOW employees may be assigned any MOW work within their capability, without regard to pay or seniority classification. Employees performing work outside of their pay rate or seniority classification would be paid according to the provisions for combination service.

The Carriers emphasize that these proposals would not destroy the craft system. Where the special skills of skilled craftsmen are needed, such persons would continue to be assigned to the task. The Carriers only seek greater flexibility in assigning the many tasks that require common skills possessed by members of more than one craft.

By contrast, assignment-of-work proposals by the Organizations reflects a starkly different vision the Carriers contend. In fact, labor's proposals would add even more restrictions on work assignments and aggravate the "time-claim" mentality that already plagues the industry.

Labor's disregard for operational concerns -- and its emphasis on the expansion of turf -- is vividly reflected, the Carriers emphasize, by the Clerks' and the Carmen's proposals for mutually exclusive rights to input and retrieve computer data. It is not hard to foresee the stifling inefficiency that would result from prohibiting managers, other employees and contractors from performing such essential daily tasks. Both the Clerks and the Carmen are represented by TCU.

Other Organizations' proposals would similarly parcel out work to various crafts, all at the expense of the Carrier's ability to use its employees efficiently. For example, the TCU and the Carmen both seek the exclusive right to perform intermodal work. A UTU

proposal would prevent trainmen from performing certain work. The Yardmasters seek the exclusive right to supervise employees directly engaged in the switching, blocking, classifying and handling of cars and trains, and duties incidental thereto, in the yardmasters' designated territory. All these proposals would increase costs or harm service by restricting the employees who could be assigned to perform work.

### 7. Contracting

According to the Carriers, their and the Organizations' proposals on contracting also march in opposite directions. The Carriers seek the right to contract when it is cheaper than doing work in-house, and their proposals are grounded in the economic facts of the transportation market, namely, in order to keep and attract business, Carriers must reduce their costs wherever possible. The Organizations' proposals, by contrast, would require work to be brought back and performed in-house even where doing so would increase costs.

Because experience has consistently shown that intermodal work and service work (janitorial, custodial, driving, messenger and laborer work) cannot be provided at competitive rates using railroad employees, the Carriers propose the elimination of all restrictions on contracting out of this work.

The Carriers' mechanical work proposal, they say, would simplify the existing "cost" criterion to assure that Carriers will be able to contract out work that costs more to perform in-house. More specifically, three changes are sought in existing restrictions: (1) removal of all restrictions on contracting out work involved in construction, repair or maintenance of structures, facilities and stationary equipment; (2) permitting the contracting out of any mechanical work whenever it cannot be performed by the Carrier except at greater cost; and (3) defining "minor transaction" to mean forty hours or less of labor per unit. The Carriers' MOW proposal would add such a cost criterion, enabling

Carriers to contract out work whenever performing of the work with the Carriers' own employees would increase costs. The Carriers also propose to clarify that the restrictions on contracting out apply only to work that is within the scope of an applicable BMWE agreement or that is recognized as belonging exclusively to BMWE-represented employees.

The Organizations' claims of "abuses", according to the Carriers, principally reveal that the Organizations consider virtually any contracting out to be "abusive." The Organizations' own proposals carry this view even farther by subordinating the Carriers' need to reduce costs and to obtain certain products and services available only from outside contractors, to the Organizations' desire to have all railroad work performed by their own members -- even where their own excessive wages or uneconomic work rules make it impossible for railroad employees to do the work at a competitive cost. Through various proposals, the different Organizations seek the same result -- to force the Carrier to keep any and all work in-house.

At least the BMWE is forthright; it seeks an outright ban on the contracting of all maintenance of way work. Others, such as the Carmen, seek the same result by a series of complicated new restrictions, including the requirement that Carriers obtain advance approval (either by agreement or by "expedited arbitration") before contracting out work. The Shop Crafts collectively would condition the Carriers' right to contract on maintaining guaranteed minimum employment levels, and would impose other cumbersome new requirements. All these proposals are designed to force work in-house by raising the "cost" of contracting.

Two other Organization proposals -- the "TTX" and "EPPA" proposals -- go even farther in seeking to maximize the work available to Carrier employees. These proposals do not even involve the contracting of Carriers' mechanical work, but strike at their ability to enter into flexible arrangements for obtaining equipment or power -- arrangements that are important for non-

labor reasons. Labor's proposals would interfere with the Carriers right to enter into arrangements with third-party owners of rail equipment, such as rail cars and locomotives, if they allow those owners to have persons other than Carrier employees perform repairs on their equipment. Such arrangements are currently within the business judgment of the Carriers, and they should remain that way.

## 8. Protection Issues

It is the Carriers' general position that employee protection in the railroad industry is excessive. The Carriers assert that because of the base of protection historically provided by statute and regulation, the Organizations have been successful in obtaining protective arrangements far more generous and comprehensive than those available to most American industrial workers. The Carriers' proposals to reform those agreements are intended to apply only to protections subject to change under the Railway Labor Act, not to ICC protective conditions. Moreover, those proposals would not apply to any situation in which they would conflict with moratorium requirements. Specifically, the Carriers advance four proposals that would reduce costs and eliminate barriers to more effective use of protected employees.

First, the Carriers would eliminate restrictions on the transfer of surplus employees to positions and locations where they are needed. This would enable the Carriers to avoid providing protection benefits to an employee who has nothing to do at one location when work is available elsewhere on the system.

Second, the Carriers would allow mandatory buy-outs of surplus protected employees at the Carriers' discretion, thus permitting them to remove surplus employees from their payrolls by means of a one time payment. A similar buy-out plan was approved by Emergency Board 213 to allow for the removal of surplus brakemen from the payroll of C&NW.

Third, the Carriers propose mandatory promotion of train and engine service employees to conductor and engineer, regardless of

seniority date. The requirement that employees accept promotion to conductor or engineer asks no more than that employees make available to the carrier the full extent of their abilities, rather than drawing large payments for doing nothing. UTU-represented employees whose seniority began on or after November 1, 1985 are already subject to this requirement.

Fourth, the Carriers propose a minimum 10 years' continuous service requirement before TCU employees achieve protected status, unless those employees already enjoy such status. This proposal would move TCU employees somewhat closer to the seniority requirements applicable to other crafts entitled to similar benefits under the February 7, 1965 Agreement.

The Organizations' long list of proposals for new protections are fundamentally misguided, the Carriers assert. Five crafts have proposed a major expansion of their protection benefits -- the UTU, BMWE, BRS, Yardmasters and ATDA. The UTU seeks a guaranteed minimum employment level, as well as lifetime attrition protection and compensation guarantees for all of its members; the Yardmasters similarly seek a guarantee that all existing positions will be filled into perpetuity; BMWE proposes that its members' best annual income level be guaranteed in future years; BRS wants the lifetime guarantees of its protection agreements improved and extended to all of its members with at least 5 years of seniority; ATDA wants to expand the protections under its June 16, 1966 Agreement and to have them apply to any situation in which positions are eliminated.

Improved productivity, however, is essential if the railroads are to become serious competitors in the transportation marketplace. Indeed, the Carriers affirm, without major productivity improvements they will need substantial wage cuts to avoid a financial collapse in the early 1990s. But the additional costs required by the Organizations' proposals are enormous. Guaranteed employment levels and lifetime income protection, as sought by UTU, Yardmasters and BRS, simply are not feasible in light of the economic conditions under which the railroads must operate. Moreover, despite the BMWE's misleading characterization,

its proposal does not seek a work guarantee, or even a minimum income guarantee, but, rather, a guarantee to maintain the highest yearly income achieved by each BMWE-represented employee. Those employees' interests in obtaining greater work opportunities, however, are better served by the Carriers' proposals regarding regional and system gangs, and the consolidation of seniority districts. Finally, the ATDA's proposal seeks protection from every circumstance that results in the elimination of a dispatcher's position. Such a shield against the future is totally unrealistic.

**9. Other Organizations' Rules Proposals**

The Organizations also have made numerous other proposals, all of which the Carriers believe are without merit. The BLE would place conditions on guaranteed extra boards, create a lay off rule and a scope rule, provide the BLE the exclusive right to represent engineers, and create a national hiring pool. The UTU has also made a large number of additional rules proposals. Each of these proposals should be rejected.

The ATDA proposes that a standing arbitration panel be established to resolve certain deadlocked disputes. Such a panel, however, is completely unnecessary.

The Yardmasters propose that in the case of a merger, coordination, or major technological change, Yardmasters should be able to serve new proposals for rates of pay on an individual basis based upon increased duties or responsibilities due to the change. This extraordinary proposal for a private variable moratorium provision is unworkable on its face, and the Yardmasters have not even attempted to justify it.

Finally, the Shop Crafts propose a rule requiring retraining and a national right of hire. The Carriers submit that before they consider embarking on an expensive program of training or retraining, the Organizations should at least be required to demonstrate that lack of training is a significant obstacle

preventing railroad shop workers from finding appropriate employment in other industries. Moreover, a national right of hire is objectionable for several reasons: It would abrogate existing management prerogatives; if a carrier's own employees are given preference in rehiring, the national hiring pool would be ineffective; and if no such preference is given, it would be unfair. In either case, the proposed rule is almost certain to spawn innumerable conflicts, and perhaps lawsuits, over who is entitled to specific jobs.

### 10. Moratorium

The Carriers propose a moratorium covering national and local section 6 notices until December 31, 1994. As a practical matter, this moratorium period will be less than four years from the date the parties enter an agreement. The issues before this Board are of an unprecedented range and complexity, the Carriers affirm, and it would be in the interest of everyone, the parties and the public as well, if those issues were resolved with relative finality, for a reasonably extended period.

## VI. FINDINGS AND RECOMMENDATIONS

### A. Health and Welfare Issues

A central issue in the parties' negotiations has been the question of changes in the health insurance system which they originally created in the 1950's. That system of non-contributory health care based upon an indemnity plan has remained unchanged throughout the intervening years despite the great changes which have occurred in the payment and delivery of health care services.

Significantly, the expert consultants and counsel retained by the parties have agreed, in many areas of preexisting dispute, that there is need for significant administrative and substantive changes in order to modernize the GA-23000 plan presently held with

Travelers Insurance Company. That plan covers approximately 188,000 railroad employees as well as their dependents.

As a result of full and open discussions during and subsequent to the hearings and the submission of rebuttal statements, as well as mediation sessions conducted by the Board's Chairman, the parties agreed on a statement of the issues in dispute. Thereafter the Board issued guidelines which it hoped would form the basis for the final resolution of the various matters. The parties then met and exchanged various additional proposals.

The issues ultimately submitted to the Board and the Board's recommendations for resolution are set forth below.

## 1. Cost-Sharing

Rapidly escalating Health and Welfare costs are not a problem of just the rail industry and its employees. Recent history clearly shows that the concern about this issue has insinuated itself both in the collective bargaining arena and also, most significantly, before the Congress of the United States.

During the late 1970's health care policy debates reflected the deregulation sentiment which pervaded most domestic policy discussions. Legislative initiatives were rejected in favor of private-sector efforts designed to encourage individual employers and unions to use their purchasing clout to keep health costs down. Throughout the 1980's, labor and management tried a number of strategies, including hospital pre-certification, second surgical opinion programs, and broad utilization review to stabilize and, ultimately, reduce the proportion of total fringe benefit costs going to health care. Despite a joint commitment to making these strategies work, results were short-lived and costs continued to climb.

In the absence of any national solution, labor-management purchasers of health care services have had no other recourse but to buy a new generation of products that promise to bring costs under control. In practice, the current system requires employers

of all sizes and with varying work force demographics to compete against one another for discounts from health care providers. Those with a higher proportion of older workers, those in hazardous industries and those with a high proportion of young families are finding the costs of protection prohibitive. In labor-management discussions on this problem, a truism is emerging: no individual employer and its union has the economic clout to keep the rate of increase in health care costs down.

In the United States one million dollars for health services are spent each minute. This amounts to 11.1% of Gross National Product (GNP), far more than in any other industrialized country. We contribute 31% more to health care than Canada, 65% more than Japan, and 73% more than Great Britain. If current trends continue, within less than 10 years health care spending will reach $2 trillion, and amount to 15% of GNP.

At the same time, studies indicate, 25 percent of U.S. health care expenditures are going toward wasteful and inappropriate procedures. For example, 50% of all post-operative complications and 35% of all surgical deaths are preventable. A recent report from the Rand Corporation suggested that a number of specific medical procedures may be inappropriate, including 14% of coronary bypasses, 32% of arterial balloon operations, 17% of upper GIs, and 30% of X-rays.

These data provide compelling evidence that purchasers are not receiving appropriate value for their considerable investment in health care services. In comparison with other industrialized countries, the rate of growth in provider charges appears to be out of line and the usage of expensive technology should be questioned. While purchasers have been committed to meeting the crisis in health care through their own negotiations with providers, this cannot be considered to be a long-term solution. Even the railroad industry, with one of the nation's largest single health insurance plans, cannot affect the cost of health care services by its own action. For there to be a true measure of cost containment there will have to be national solutions to the health

care problem. This Board, consequently, can only make recommendations which will help to solve the problem involving the railroad industry and its employees in the relatively short run. All of our recommendations can be copied over time by other groups thereby counteracting any savings which the recommendations may achieve.

The most critical matter, in terms of the Carriers' desire to control costs associated with the provision of a broad range of benefits, has not been resolved through bargaining; that is, the question as to the extent to which employees should be required to share in the costs of Health and Welfare benefits. Following receipt of the Board's guidelines, the Organizations made a proposal which, for the first time, involved some measure of cost sharing. While that proposal does not go as far as the Carriers might wish, it nevertheless establishes the principle of cost-sharing and recognizes that any individual who must pay part of the costs of a health care system will be a more careful user of such services. The Board recognizes, moreover, that changes of this magnitude can only occur incrementally.

The Board recommends, accordingly, that up to one-half of the amount of the lump sum payments which are being recommended to be paid employees in the years 1992, 1993, 1994 and 1995 and one-half of any COLA payments which may be payable after the moratorium has ended, be available to pay up to one-quarter of any increase in the year-to-year costs of the health insurance plans as they may be amended by these recommendations.

**2. Managed Care**

The parties have agreed that managed care networks should be established in geographical areas where it is feasible to do so, and hospital associations should be incorporated into the networks wherever appropriate.

The parties have agreed further that the managed care network should include a point-of-service option that allows employees to

choose an out-of-network provider whenever they need health care services, but with less generous benefits than for in-network services.

With respect to the unresolved issues, the Board recommends that:

A 20% differential in out-of-pocket costs for employees between benefits for in-network care and benefits for out-of-network care should be written into the Plan to encourage use of the networks.

Employees should be allowed initially to continue in GA-23000, as modified, with benefits undiminished even when a network is available. However, after 2 years of experience under the new plan, the question of the amount of the differential may be brought before the Joint Policyholder Committee by either the Organizations or the Carriers.

All newly hired employees should initially be enrolled in a managed care network if one is available. All current employees should be enrolled in the network unless they affirmatively elect to remain in GA-23000.

**3. Utilization Review and Large-Case Management**

With respect to the unresolved issues, the Board recommends the following:

Prior approval by the Utilization Review/Large-Case Management contractor (except in emergencies) should be required for all confinements and lengths of stay, all home health care, and in-patient and out-patient procedures and treatment.

If an employee or dependent incurs expenses for services not approved by the Utilization Review/Large-Case Management contractor, the Plan should reimburse only 80% of what it otherwise would pay (except that in cases of mental health/substance abuse the Plan should reimburse only 50% of what it otherwise would pay).

When there is disagreement between an attending physician and the utilization review physician, the patient and/or attending physician, after all opportunities for appeal have been exhausted within the Utilization Review Organization, should be afforded an

opportunity to obtain a review (including if necessary, an examination) by an independent specialist physician. This independent physician, who should be conveniently located and board certified in the appropriate specialty, should be designated by a physician appointed for this purpose by the Joint Policyholder Committee. Neither physician should be an employee of or under contract to the Utilization Review Organization. In the event of an appeal to a specialist described above, the Utilization Review Organization should bear the burden of convincing the specialist that the Utilization Review Organization's determination was correct.

**4. Conversion to Wholly Self-Insured Plan and Use of Cash Reserves to Pay Current Benefits**

With respect to the unresolved issues, the Board recommends that:

The Plan should be converted to a wholly self-insured or Administrative Services Only arrangement. In conjunction with that conversion, one-third of the Plan's cash reserves available at the time the plan goes into effect may be used to pay current benefits in each of the first three years of the new Administrative Services Only arrangement. A small cash reserve ($1-$5 million) should be maintained at all times.

In the event that a participating Carrier defaults on its payment obligations for any reason, including but not limited to bankruptcy, and its participation in the Plan terminates, the Carriers remaining in the Plan should be liable for any Plan contribution required of the terminating carrier prior to the effective date of its termination, not paid by the defaulting Carrier. The other Carriers should be obligated to contribute in pro-rated amounts based upon their shares of Plan contributions for the month immediately prior to such default.

**5. Eligibility Rule for Part-Time Employees**

The Board recommends that existing eligibility requirements remain unchanged.

## 6. Appointment of Neutral to Joint Policyholder Committee

The parties have agreed that a neutral should be retained to break deadlocks on the Joint Policyholder Committee.

With respect to the unresolved issues, the Board recommends that:

> If the members of the Joint Policyholder Committee cannot agree upon a neutral within 30 days of the date the agreement becomes effective, either side may request the National Mediation Board to provide a list of 7 persons from which the neutral member should be selected by the procedure of alternate striking.
>
> The neutral member should serve for the duration of the agreement.
>
> The neutral member should be empowered to resolve any matter arising out of the interpretation, application or administration (including investment policy) of the Plan.
>
> Joint Policyholder Committee members and the neutral member should receive fiduciary bonding, as required by ERISA, at the expense of the Plan.
>
> The Carriers and the Organizations should have one vote for each group regardless of the number of members.
>
> The Joint Policyholder Committee should have the power to create such subcommittees as it deems appropriate and to choose a neutral chairman for each such subcommittee, if desired.

## 7. Coordination-of-Benefits Rule

With respect to the unresolved issues, the Board recommends the following:

> The Plan's Coordination of Benefits rules should be modified to provide that a Plan participant who is also covered under a non-railroad plan will be reimbursed at the maximum level available under the more generous of the two plans.

The current Coordination of Benefits rules should be maintained with respect to husbands and wives who are both covered railroad employees.

**8. Elimination of On-Duty Injury Coverage**

The Board recommends that on-duty injuries should continue to be covered in the same manner as they are presently covered.

**9. Mail Order Prescription Drug Benefit**

The parties agree that a mail-order prescription drug benefit for maintenance drugs should be added to the Plan.

With respect to the unresolved issues, the Board recommends that:

This benefit should provide 100% reimbursement after a $5 employee co-payment for a 90 day supply of maintenance drugs.

**10. Discontinuation of Medicare Part B Premiums**

The parties have agreed to discontinue Plan payment of Medicare Part B premiums, except in those few instances where Medicare is the primary payor of benefits to a Plan participant.

**11. Experience-Rating**

The Board recommends that the GA-23000 Plan, as modified, should not be separately experience-rated by individual carrier.

**12. Rebidding the Plan**

The parties have agreed that managed care and Utilization Review/Large-Case Management shall be submitted for bidding.

With respect to the unresolved issues, the Board recommends that:

The GA-23000 Plan, as modified, should not be rebid during the first three years after the effective date of this contract; however, the Joint Policyholder Committee should agree that at the end of that period the Plan will be rebid unless both the Carriers' and Organizations' Joint Policyholder Committee members decide to the contrary.

**13. Miscellaneous Additional Benefits**

The Board recommends that the Plan should not be expanded to cover vision care, well-baby care, or physical examinations, but the following benefits should be added:

Services rendered by psychologists where such services would be covered if rendered by medical doctors.

Preventive care such as mammograms, childhood disease immunizations, pap smears, and colorectal cancer screening.

**14. Benefits Under Redesigned Indemnity Plan**

The Board recommends that the GA-23000 Plan be redesigned to provide for:

An 85% reimbursement after $100/$300 deductible.

A reduction of benefits by 20%, or by 50% for mental health/substance abuse treatment, if Utilization Review/Large-Case Management approval is required and not obtained.

A $1,500/$3,000 annual out-of-pocket maximum per individual/family.

A general $1 million lifetime benefit maximum ($100,000 for mental health/substance abuse) with $5,000 annual restoration.

Specialized utilization review for mental health and substance abuse to assure expert determination of medical necessity and appropriateness of treatment and provider.

## 15. Benefits Under a Managed Care Program

The parties are in agreement, as reflected in a jointly prepared document entitled, "Comparison of Carrier and Labor Plan Design of In-Network and Out-of-Network Benefits Under a Managed Care Program", concerning the plan design for in-network benefits under a managed care program, with several exceptions.

With respect to the unresolved issues, the Board recommends that the new managed care program should be designed to incorporate the following features:

Emergency Room - 100% coverage after $15 employee co-payment

Substance Abuse - Same as in the indemnity plan

Outpatient Mental Health & Substance Abuse - 100% coverage after $15 employee co-payment per visit

Hospice Care - 100% coverage

Home Health Care - 100% coverage

Prescription Drugs - 100% coverage after $5 employee co-payment for brand name ($3 for generic)

Office Visits - 100% coverage after $15 employee co-payment

Routine Physical - 100% coverage after $15 employee co-payment

Well-Baby Care - 100% coverage after $15 employee co-payment

It is the Emergency Board's opinion that if these recommendations are accepted the Health and Welfare plan applicable to the rail industry will be significantly and beneficially modernized, substantial savings will be generated, the Carriers will be able to better control escalating health care costs, and

the employees will continue to receive the substantial and varied health benefits they have enjoyed for many years.

## B. Wages

The Carriers and the Organizations submitted widely differing proposals regarding the question of general wage increases. The Organizations asked for substantial pay increases and a cost-of-living adjustment. The Carriers suggested a complete pay freeze for the almost eight years that they suggested that the contract period cover, with an actual pay cut for train crew members other than locomotive engineers. During private meetings with the Board the parties did modify their positions slightly; however, neither side made the kind of offer which enticed the other side to alter its position enough to create a clear indication of where agreement might be possible.

The Board is left to make its own estimate of what might be mutually acceptable. It does so with the knowledge that its decisions, even though based on the voluminous record which was created, may not satisfy either side. However, the Board expects that the potential dissatisfaction of one side will be tempered by the realization that the other side did not achieve all it sought.

At the outset, the Board notes that the Carriers constitute a single bargaining entity and that the issue of wages, like the rules issues involving the various crafts, was to be treated as though all Carriers had the same ability to pay for any wage increase which the Board might recommend. In multi-employer bargaining where a single wage rate must be set, it is not possible to take into account the financial problems of a single carrier without thereby unjustly benefitting profitable carriers and unjustly reducing what might otherwise be a reasonable wage increase. The National Carriers' Conference Committee did not emphasize ability to pay, but, rather presented its case in terms of the rate of return on capital needed for the various railroads to maintain their viability. The Board does not believe that its

recommendations will cause the railroads to suffer in the competition in the capital markets. However, the evidence before the Board did indicate a wide disparity among Carriers in the percentage of operating revenues which was attributed to labor costs.

It is clear that the retroactive payment which will be recommended, as well as the general wage increases proposed, may be larger than one or two carriers can reasonably afford. If that is the case it will be up to the Carrier involved to show the Brotherhoods the particular economic facts on which it relies and which make the Board's recommendations impracticable. The Board anticipates that the Brotherhoods would sympathetically examine the situation and take into account that a delay or even denial of a retroactive wage payment and/or immediate wage increase may be more desirable than the uncertainty and possible loss of jobs that the inability of a railroad to meet its financial obligations would entail. It is up to the parties, in other words, to adapt the Board's recommendations to the particular circumstances present on each railroad.

Nevertheless, while the Board will remand certain issues back to the various properties for local handling, it does not believe that it can do so in the case of wages. It must, instead, look at the economic picture of the entire industry in attempting to resolve the basic problems of wages, work rules, and Health and Welfare costs. The Board's recommendations reflect an attempt to balance the overall interests involved and to help the parties resolve issues which they were unable to solve by themselves.

It should be noted that there were several requests by various of the Organizations for the Board to establish a skill differential for specific work. Although there was not sufficient evidence presented to the Board for it to make definitive recommendations, it believes that the parties should engage in a joint study of these proposals and reach a determination of the need to adjust wages based upon skill and pay for similar work in other occupations.

It should also be noted that the recommendations regarding wages which follow must be read in conjunction with the rules and Health and Welfare changes which are discussed elsewhere in this report, which changes will have a profound impact upon both the wages and the working conditions of the employees.

The Board makes the following general wage recommendations:

1. A lump sum payment of $2000 to each employee upon the signing of the agreement.[1]

2. A 3 per cent general wage increase effective July 1, 1991.

3. A 3 per cent lump sum payment effective July 1, 1992 which is to be considered as a cost-of-living adjustment and not become part of the wage base.

4. A 3 per cent lump-sum payment effective January 1, 1993 which is to be considered as a cost-of-living adjustment and not become part of the wage base.

5. A 3 per cent general wage increase effective July 1, 1993.

6. A 3 per cent lump-sum payment effective January 1, 1994 which is to be considered as a cost-of-living adjustment and not become part of the wage base.

7. A 4 per cent general wage increase effective July 1, 1994.

8. A 2 per cent lump-sum payment effective January 1, 1995 which is to be considered as a cost-of-living adjustment and not become part of the wage base.

9. A cost-of-living adjustment for each six-month period beginning July 1, 1995 based upon the COLA formula which has previously been utilized by the parties.[2]

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[1] This payment to be made to each employee of a railroad who worked during the year preceding the date of the signing of the agreement and an aliquot share to those who worked less than full-time.

[2] 1 cent per hour increase for each .3 increase in the CPI-W which shall become effective if the cost of living rises by no less than 1.5 per cent semi-annually (3 per cent on a adjusted annual basis) and be capped at 2.5

## C. Basis of Pay in Road Service

In 1985, the Carriers and the UTU and the BLE agreed to increase to 108 miles the historic 100 mile figure as the equivalent of a day's pay. That change, in effect, constituted an increase of 2 miles for each year of the contract. In the proceedings before this Board the Carriers argued that there should be an immediate increase in daily mileage to 160 miles, while the Organizations indicated a desire to return to the 100 mile limitation.

In the Board's view, the Carriers have not justified an immediate increase to 160 miles. However, subsequent to issuance of the Van Wart Study Commission recommendation that the mileage for a day's pay be increased gradually to 160 miles, the technology which made possible continuous welded rail has improved. Additionally, the speed of through freight trains has increased because of upgraded tracks and changes made in the way that freight cars are assembled in marshalling yards. In light of all this, the Board believes that the 160 mile level should be reached in less than 30 years time. Accordingly, although it recommends that the 2 mile a year increase, which was effectively agreed upon in 1985, be used for the years 1988 through 1991, the increase should be four miles a year beginning January 1, 1992 and continuing through January 1, 1995. The mileage which constitutes a day's pay, therefore, would be as follows:

Upon adoption of a new contract - 116 miles;

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per cent semi-annually (5 per cent annual basis). Where lump sum COLAs are recommended, the details involved in calculating the annual payments should track the parties' practices with respect to determining lump sum payments provided under the 1982 and 1985 agreements. Similarly, where COLA allowances are recommended rather than lump sums, the parties should be guided by their corresponding practices in the last round of agreements.

January 1, 1992 - 118 miles
January 1, 1993 - 122 miles
January 1, 1994 - 126 miles
January 1, 1995 - 130 miles.

Overmiles should be computed in the same manner as presently, that is, by using the then daily mileage which constitutes a day's pay as the divisor and the daily rate of pay as the dividend to find the overmile rate of pay.

## D. Road/Yard Restrictions

The Carriers requested that the Board adopt the recommendations of the Van Wart Study Commission regarding the relaxation of road/yard restrictions and also eliminate all restrictions on interchange, the transfer of cars by road crews, the elimination and establishment of yard and road switcher assignments and the ability of road and yard crews to service customers and to relieve expired road crews.

The Operating Brotherhoods did not directly address these matters, but the UTU did request the Board to increase pay for initial and final terminal delay, to pay an arbitrary for cabooseless service, to pay an arbitrary for working trains containing hazardous cargo and to pay UTU-represented engineers lonesome pay. All of these proposals, however, would return to UTU-represented employees arbitraries which had been given up in previous negotiations. The Board sees no reason now to turn back the clock and therefore none of the UTU suggestions will be recommended.

The record is replete with evidence showing that the present limitations on road crews have the effect of limiting service to customers which hurts the railroads' ability to compete with trucks. However, the Carriers' proposal is untried and its effects unknown. Accordingly, the Board recommends that the parties begin to change the road-yard restrictions by allowing each road crew to make up to three additional moves as follows at each of the

(1) initial terminal, (2) intermediate terminal, and (3) final terminal. Each move may include pick-ups, set-outs, getting or leaving the train on multiple tracks, interchanging to foreign railroads, transferring cars within a switching limit, and spotting and pulling cars at industries. In order to protect affected employees, New York Dock type protection should be included and employees of Terminal companies should have their rosters topped and bottomed on each owning line road roster maintaining prior rights.

In addition, the Board recommends that, where a railroad can show a bona fide need to obtain or retain a customer by servicing that shipper outside of these rules, the carrier should be allowed to institute such service on an experimental basis for a six month period. The determination of whether a bona fide need exists should be made by a Joint Committee of Carrier and Organization representatives. In the event of a deadlock, the service should be allowed; however, after the six months have expired, if the Organization representatives on the Joint Committee continue to object, the matter should be referred to arbitration. The parties should share the cost of the arbitration and if they cannot agree upon an arbitrator within seven working days of the date of the request for arbitration, either party may request the National Mediation Board to appoint an arbitrator. The arbitrator should determine whether the carrier needs to provide the service requested or can provide the service without a special exception to the general rules being made at a comparable cost to the carrier.

## E. Interdivisional Service

The Board declines to make any substantive recommendations concerning ID runs. We believe the existing provisions can be made to work if the parties commit themselves to the expedited processing of negotiations concerning ID runs, including those involving running through home terminals, and mutually commit

themselves to request the prompt appointment by the NMB of an arbitrator when agreement cannot be reached.

## F. Specific UTU Issues

### 1. Crew Consist

A central issue to the railroads is the level of manning of trains, referred to as crew consist. Historically, a crew consisted of an engineer, fireman, conductor and two or three brakemen. Over the years the parties have entered into agreements to eliminate the job of fireman and many carriers have entered into agreements to eliminate the second brakeman's position by attrition. However, from the Carriers' point of view, attrition has been too slow a method of obtaining manning efficiencies.

Crew consist has always been bargained locally and has never been the subject of a national agreement. The UTU has taken the position here that it cannot become a national subject without UTU consent and the Carriers have implicitly recognized this by requesting either a wage reduction or, alternatively, a national crew consist agreement.

The Board is of the view that the UTU position is the correct one and that crew consist, as such, is not appropriately before this Board. However, since the Carriers have made a valid proposal for a reduction in pay, which is before this Board, the Board believes that the parties' best interests would be served if it made some recommendations regarding the pay of UTU-represented employees in order to help to resolve the parties' longstanding impasse rather than simply dropping the matter on legal grounds.

The Board does not believe that a wage reduction program as suggested by the Carriers should be undertaken. It also agrees with the UTU that crew consist cannot be handled nationally. On the other hand, it does believe that the matter must be bargained to resolution in 1991. Accordingly, the Board makes the following recommendations which should be part of the national agreement:

a. Notwithstanding any local moratorium, either party may serve a local notice requesting changes in crew consist. Such notice should be handled on a local basis.

b. The parties should bargain locally. If agreement has not been reached by October 31, 1991, either party may request binding arbitration. Within 10 working days of the request for arbitration being served on the other side, the parties shall choose three arbitrators to resolve the dispute. In the event that the parties cannot agree on three arbitrators within the ten days, either side may request the National Mediation Board to name the three arbitrators, who shall be paid jointly by the parties. The arbitration panel shall render its decision within sixty days of its appointment, or by December 31, 1991 whichever occurs first.

c. The arbitration panel should have the power to resolve any crew consist dispute brought before it. In making its decisions, the panel should be guided by the standard that the party making the request shall have the burden of proving that such a change does not diminish safety or efficiency, is consistent with industry practice, and will not increase the costs of operations substantially. The panel should also be guided by standards in those agreements which have been entered into by other carriers and the UTU on properties which are contiguous with those of the involved carrier.

d. If the parties reach an agreement on the crew consist issue by April 1, 1991, each member of the UTU who is covered by such agreement should receive a one thousand dollar ($1000.00) signing bonus. In the event that agreement is reached by May 1, 1991, that signing bonus should be nine hundred dollars ($900.00). For each month that passes without an agreement having been reached, the signing bonus should be reduced by one hundred dollars ($100.00) until October 31, 1991, when the signing bonus should be eliminated.

**2. Mandatory Promotion**

The Carriers have proposed that individuals who are filling blankable second brakeman positions and who are eligible for promotion to either conductor or engineer should be required to take such promotions. The UTU argues that the present rule should not be changed.

It is the Board's view, and it so recommends, that all brakemen who are offered promotion to conductor should be required to accept such promotion. Promotion to engineer from conductor should not be made mandatory.

## G. BLE-Specific Issues

The Carriers did not raise any BLE-specific issues before the Board. The BLE proposed longevity pay, holiday pay, sick leave, long-term disability pay, changes in held-away-from-home terminal rules, a scope clause, extra pay when an engineer is used as an instructor, a right to lay off when other qualified employees are available, and the creation of a national hiring pool. In each case the Carriers opposed such changes.

The Board believes that only the suggested changes to the collective bargaining agreement specifically dealt with in this Report should be made at this time.

### 1. Exclusive Representation

The BLE proposes a national rule to provide that the certified or recognized collective bargaining agent for locomotive engineers will be the exclusive representative of such engineers for grievance purposes as well as for the bargaining of collective bargaining agreements. By law the certified or recognized collective bargaining agent has exclusive jurisdiction over the making of collective bargaining agreements on behalf of the employees in the craft it represents; however, in the handling of individual grievances there has evolved a practice of "dual representation" of locomotive engineers. Since many of the locomotive engineers have been promoted from the ranks of operating employees represented by the United Transportation Union, individual employees, when filing grievances, have asked to be represented by the UTU. The extent of such requests is unknown, but the BLE has indicated before this Board that representation of

individual locomotive engineers by the UTU potentially can have an adverse effect on its ability to enforce its collective bargaining agreements. At the hearings the UTU bargaining committee did not offer any objection to the change proposed by the BLE or any information on the interest of the UTU in continuing such grievance representation.

Since the UTU representatives did not offer objection to the BLE proposal, this Board recommends, in accordance with the practice in virtually every other industry in the United States, that the BLE have exclusive representation for all purposes of all employees in the craft or class to which it has been certified or recognized.

## 2. Pay Differential

The BLE has asked that locomotive engineers be granted a special allowance which would allow them to regain the historic differential which existed between the wages paid to such employees and other members of the operating crews of the railroads. The Carriers contended that there has not been an historic differential as claimed by the BLE. A great deal of evidence was submitted on this issue, none of it dispositive. It is clear that the wages of both locomotive engineers and train service employees have been tied together for many years. However, since individual carriers, in recent years, have entered into crew consist agreements with the UTU, which agreements grant special payments to remaining train service crew members, the earnings of locomotive engineers have lagged behind those of the train service employees.

The Board recognizes that this disparity of payment has created a disincentive for individuals who could be promoted to locomotive engineer to accept such promotion since acceptance might result in not only working less desirable hours, but also a real loss in take-home earnings. Accordingly, the Board finds merit in the contention of the BLE regarding disparate wage treatment.

During the Board's mediation efforts, several proposals were exchanged on this subject. Eventually, the only difference remaining between the Carriers and the BLE was the amount to be paid to redress the existing imbalance. The Carriers wished to make a token payment and the BLE wished to immediately obtain, on an individual basis, the same amount as train service crew members receive, with the payment tied to any changes which the UTU might negotiate for its members.

The Board does not believe that a practice which has taken a number of years to evolve should be changed all at once. Furthermore, since the entire subject of crew consist agreements will be the subject of local bargaining, it does not believe that it can presently resolve the issue in all respects. Accordingly, while recognizing that an initial acknowledgment of the locomotive engineers' problem must be made, the Board will not attempt to write the last word on this subject. Rather, we recommend that the Carriers make a payment of $12.00 a trip, effective immediately, to each engineer who operates a train without a fireman, which train crew has any member receiving "productivity fund" payments. The payment should be increased to $15.00 per trip on January 1, 1995.

## H. Subcontracting Issues

The initial national rule concerning the contracting out of mechanical work appeared in Article II of the September 25, 1964 National Agreement which covered shopcraft organizations. Eleven years later the parties modified that rule by following the recommendations of Emergency Board 187. In this round both the Carriers and Organizations seek changes in the national rule. At issue, among other things, are the criteria for subcontracting, advance notice provisions, requests for information, and machinery for resolving disputes. The current provisions appear in: Article II, Section 1 - Applicable Criteria; Article II, Section 2 - Advance Notice; Article II, Section 3 - Request for Information;

Article II, Section 4 - Machinery for Resolving Disputes; and Article VI - Resolution of Disputes.

The Carriers made certain proposals regarding the Shop Crafts. Specifically, they proposed to: (a) remove all restrictions on a Carrier's right to contract out work involving construction, repair or maintenance of structures, facilities, or stationary equipment; (b) amend the cost criterion to provide only that a Carrier may contract out work whenever such work cannot be performed by the Carrier except at a greater cost; (c) clarify the term "minor transaction" in Section 2, Advance Notice, to mean 40 or less hours of labor per unit.

The Carriers also proposed to eliminate all restrictions on contracting out of service and intermodal work performed by TCU and Carmen-represented employees.

The Shop Crafts proposed several changes regarding subcontracting. They seek changes which would: (a) provide that existing workforce levels be maintained and the Article II criteria applied to permit subcontracting only when workforce levels meet or exceed current levels, except in emergency situations or with the agreement of the affected Organization; (b) strengthen Article II, Section 2 by requiring Carriers to provide more detailed information; (c) revise Section 14 of Article VI, Resolution of Disputes, to provide that, except in emergencies, the failure to comply with Article II, Section 2, Notification Requirements, shall constitute a violation of the Agreement; and (d) bar Carriers from entering into any EPPA or similar arrangements without a written agreement allowing persons other than Carrier employees to perform Shop Craft work on locomotives.

The Carmen concur generally in the proposals of the other participating Shop Crafts, but add several of their own. An amended rule suggested by this Organization contains these features: (1) Addition of a definition of subcontracting. (2) Addition of a definition of "Carmen's work" and "Carmen". (3) Revision of Article II, Section 1, Applicable Criteria, to (a) prohibit any subcontracting unless genuinely unavoidable and, even

then, only with the prior approval of the general chairman or of the Special Board of Adjustment (SBA); (b) place on the carrier the burden of proof or persuasion on all issues, including compliance with procedural requirements; (c) expand and refine the descriptions of the five "genuinely unavoidable" criteria; (d) limit the scope and duration of a subcontract to the circumstances that initially made the action "unavoidable". (4) Revision of Article II, Section 2, Advance Notice - Submission of Data - Conference, to (a) eliminate the "minor transaction" provisions; (b) elucidate the type of information to be furnished; (c) set specific time limits for the initial submission of the notice, requests for and submission of additional information and notices and holding of conferences; (d) require the Carrier to process an unresolved dispute to expedited arbitration; (e) provide that a carrier's failure to comply with the procedural requirements or to proceed to subcontract without approval of the SBA or the general chairman would constitute a violation of the Agreement.

The Carmen would also revise and expand Article II, Section 3 - Request for Information When No Advance Notice Given, to provide that (1) a carrier, when informed by a general chairman that carmens' work has been subcontracted without the required notification, shall immediately terminate the subcontracting and provide the requisite information; (2) failure to take either of these actions shall constitute a violation of the Agreement; (3) at the general chairman's request, the subcontracting issue will be discussed within a specified time frame; (4) upon failure to agree, either party may process the dispute to expedited arbitration.

The Carmen propose, further, to amend the provisions of Article VI, Resolution of Disputes, by revising Section 14 - Remedy, to eliminate the maximum of 10% of man-hours as penalty for violation of the advance notification procedures and substitute a penalty of an amount not in excess of that produced by multiplying the greater of the total man-hours actually billed or actually worked by the subcontractor by the weighted average of the

straight-time hourly rates of pay of the employees who would have done the work. Additionally, the SBA would be authorized to bar a carrier from engaging in subcontracting if it failed to show that such action was genuinely unavoidable under the specified criteria.

After considering the voluminous evidence we cannot conclude that subcontracting should either be eliminated completely or that all restrictions should be lifted. Although it has been a quarter of a century since the first subcontracting provisions were negotiated, the findings of Emergency Board 160 in 1964 are still applicable, namely, that the public interest would best be served by measures which would help to arrest the decline in railroad shop facilities and to maintain the capacity of the industry to keep equipment in good working order and expand its operations as needs require. Moreover, we discern no trend in American industry that would justify an all or nothing approach to this matter.

We do recognize, however, that some changes are called for, as might be expected after fifteen years (the last national agreement changes were negotiated in 1975). If the intent of the parties was to minimize conflicts and adjudications over subcontracting issues, that intent has not been fulfilled, as the evidence discloses. As the volume of subcontracts has expanded, so has the number of complaints. Adjudications are time-consuming and often duplicative. Advance notices are not effective in averting disputes. Words such as "minor" are given varying interpretations. It is apparent, moreover, that adjudications are not swift and that part of the delays may be attributable to the processes under which SBA 570 has operated.

In the Board's judgment, then, several measures should be taken to deal with the discerned problems. Accordingly, we recommend that:

a) The parties revise Article II and substitute regional arbitration panels for the processes of SBA 570. The new system should include these features:

(1) The maintenance and repair of equipment which has been historically (not necessarily exclusively)

maintained and repaired by a carrier's own employees, no matter how purchased or made available to the carrier, should not be contracted out except in the manner specified.

(2) The applicable criteria for subcontracting of work should be as currently set forth in Section 1 of Article II.

(3) Advance notice of intent to subcontract should be given by the carrier to the appropriate general chairman except where minor transactions are involved. A minor transaction should be defined for purposes of notice as an item of repair requiring eight man-hours or less to perform (unless the parties agree on a different definition) and which occurs at a location where mechanics of the affected craft, specialized equipment, spare units or parts are not available or cannot be made available within a reasonable time.

The timetables for the submission of information and the holding of conferences to discuss the proposed action should be as presently set forth in Section 2 of Article II unless changed by mutual agreement.

(4) If no agreement is reached at the conference following the notification, either party should be allowed to submit a demand for an expedited arbitration within five working days of the conference. Except in emergencies, the carrier should not be permitted to consummate a binding subcontract until the expedited procedures have been implemented, unless the parties agree otherwise. For this purpose an emergency should be considered to mean an unforeseen combination of circumstances, or the resulting state, which calls for prompt or immediate action involving safety of the public, employees, and carriers' property or avoidance of unnecessary delay to carriers' operations.

(5) The parties should establish expedited panels of neutral arbitrators at strategic locations throughout the United States, either by carrier or by region. The members of each of those panels should serve in rotation. They should be appointed and serve for terms of two years provided they adhere to the prescribed time requirements concerning their responsibilities. They should be compensated directly by the parties.

(6) Disputes submitted to an expedited panel arbitrator should be processed in the following manner: (a) Upon receipt of the demand, the arbitrator should schedule a hearing within three days and conduct a

hearing within five days thereafter; (b) The arbitrator should conclude the hearing not more than 48 hours after it has commenced; (c) The arbitrator should issue an oral or written decision within two working days of the conclusion of the hearing. An oral decision should be supplemented by a written one within two weeks of the conclusion of the hearing unless the parties waive that time requirement.

(7) Disputes concerning a carrier's alleged failure to provide notice of intent or to provide sufficient supporting data in a timely manner in order that the general chairman may reasonably determine whether the criteria for subcontracting have been met, should be submitted to a member of the arbitration panel, but not necessarily on an expedited basis.

(8) The penalty for violating the advance notice requirements (except for emergency situations) should be the payment to employees who would have done the work of a sum equal to 50% of the hours billed by the contractor multiplied by the weighted average of the straight-time hourly rates of pay of those employees. The amounts awarded may be divided equitably among the claimants by the arbitrator or otherwise distributed upon an equitable basis. Compensation to named claimants for wages lost should also be based on the 50% formula.

(9) Under the new procedure, the carrier should agree to apply the decision of an arbitrator in a case arising on the carrier's property which sustains a grievance to all substantially similar situations and the Organizations should agree not to bring any grievance which is substantially similar to a grievance denied on the carrier's property by the decision of an arbitrator.

## I. Assignment of Mechanical and Shop Work

The current rule, imposed by Congress in 1970 (P.L. 91-226) and known as the incidental work rule, permits certain simple tasks traditionally performed by members of one craft to be performed by employees of other crafts at running repair locations which are not designated as outlying points if such work "does not comprise a preponderant part of the total amount of work involved in the assignment". In 1972, the rule was amended by the parties to limit to one hour the incidental work that could be done by other crafts

in areas traditionally assigned to sheet metal workers. The rule has not been applied to the IBF&O.

In 1972 and 1974 proposals by the SMWIA to exempt it from the rules coverage were rejected by Emergency Board 181 and Emergency Board 185, respectively. Efforts by the Carriers to obtain greater latitude in assignments of work to shop employees also met with no success.

In 1986 the Carriers proposed a "composite mechanic" rule. Although Emergency Board 211 rejected that proposal, it remanded the entire issue (including the establishment of composite crews) to local negotiations with the suggestion that the parties consider extending the incidental work rule to the back shops. The record indicates that few local agreements have been reached.

The Carriers' current proposal - rejected out of hand by the Shop Crafts - is to adopt an intercraft work rule authorizing carriers to assign mechanical or shop work to members of the crafts who are capable of performing it, without regard to classification or assignment of work rules. The current rule, according to the Carriers, suffers from two significant limitations: it does not apply to the major repair shops and it is inapplicable to many simple tasks that, although not "incidental" under the rule, could easily by performed by mechanics of any craft. Included among such tasks, according to the Carriers, are various kinds of preparatory work for repair jobs such as loosening a bolt to remove a pipe or disconnecting a hose or electrical leads. Additionally, tasks such as inspections, bench reclamation work, changeouts of various pumps, radiators, power assemblies, locomotive generators, and the like, are simple and can be performed by members of any craft. Many of these tasks, according to the Carriers, require no more than the removal and replacement of old parts.

It is wasteful of time and personnel, the Carriers contend, to require two or three mechanics to make a simple repair, the need for which is discovered by another mechanic during a routine inspection. Most such repairs - like replacing a light bulb, changing a brake shoe, tightening a hose, fixing an air leak -

require no special training, tools or skill and could readily be performed by the person who does the initial inspection.

The Shop Crafts view the Carriers' proposal as another version of their "composite mechanic" proposals of prior years. This Board should reject the request, the Organizations affirm, because: (1) there is no hard evidence that attempts by carriers to pursue the matter locally, as recommended by Emergency Board 211, have been rebuked; and (2) the Carriers have failed, as they did in 1986, to demonstrate that a substantial savings would be achieved.

At least part of the Carriers' case is based on a 1988 study by Bongarten Associates of locomotive servicing on the Burlington Northern Railroad. The Organizations have responded to this study in their Rebuttal Submission. After considering these documents and related testimony, we are not convinced that the Bongarten study was broad enough to reliably reflect the cost savings which could be achieved by granting the Carriers' proposal in full. Nevertheless, we are persuaded that the time has come to eliminate some of the restrictions which unnecessarily add time, costs and delays to the accomplishment of shopcraft work. To that end the Board recommends that: (1) The coverage of the rule be expanded to include all Shop Craft employees and the back shops. (2) "Incidental Work" be redefined to include simple tasks that require neither special training nor special tools. (3) The Carriers be allowed to assign such simple tasks to any craft employee capable of performing them for a maximum of two hours per work day, such hours not to be considered when determining what constitutes a "preponderant part of the assignment."

## J. Maintenance of Way Employees

The Carriers made several specific proposals to change the work rules involving the BMWE. They wish to: (1) eliminate restrictions on the establishment of regional and system-wide production gangs which could work over the entire territory of the carrier; (2) realign or combine seniority districts; (3) change the

reporting of employees working away from home for pay purposes from their lodging site to their work site; (4) allow adjustments in starting times without restriction to be announced at the end of the previous day's work; (5) allow the carrier to designate any two consecutive days as the rest days and to use a compressed work week of four days; and (6) allow the individual carrier to determine the timing of meal periods.

The BMWE also proposed changes in the national agreement. They include: (1) longevity pay; (2) changes in the amount paid for injuries incurred while operating off-track vehicles; (3) increases in away-from-home expense payments; and (4) guarantees of employment during the work year.

A number of the rules proposals which the Carriers and the BMWE presented appear to the Board to have merit although the Board does not necessarily adopt any of the proposed changes in their entirety. Our recommendations are set forth below.

**1. Expenses Away From Home**

It is obvious that these expenses have increased over the years and that the employees should receive an amount greater than has been paid in the past. These payments were established pursuant to the decision of Arbitration Board No. 298 and were amended in subsequent agreements. Our recommendations are set forth below in the sequence they were referred to in that original award:

> The maximum reimbursement for actual reasonable lodging expense provided for in Article I, Section A(3) should be increased from $13.75 to $17.00 per day.
>
> The meal allowances provided for in Article I, Sections B(1), B(2) and B(3) should be increased from $3.25, $6.50 and $9.75 per day, to $4.00, $8.00 and $12.00 per day, respectively.

The maximum reimbursement for actual meals and lodging costs provided for in Article II, Section B should be increased from $23.50 to $29.00 per day.

We further recommend that on December 1, 1994 the following changes be made:

The maximum reimbursement for actual reasonable lodging expense provided for in Article I, Section A(3) should be increased from $17.00 to $20.25 per day.

The meal allowances provided for in Article I, Sections B(1), B(2) and B(3) should be increased from $4.00, $8.00 and $12.00 to $4.75, $9.50 and $14.50 per day, respectively.

The maximum reimbursement for actual meals and lodging costs provided for in Article II, Section B should be increased from $29.00 to $34.75 per day.

On carriers where expenses away from home are not determined by the allowances made pursuant to the award of Arbitration Board 298, such allowances should be not less than those suggested herein.

**2. Rates Progression**

Unlike the case with the other organizations, we believe that the BMWE has advanced persuasive arguments for some modifications in the rate progression rules. Therefore, the Rate Progression Agreement of October 17, 1986 should be amended to exclude foremen, mechanics and production gang members operating heavy self-propelled equipment that requires skill and experience. It is up to the parties to define more precisely who should be excluded from the rate progression provisions. Those excluded, however should be individuals who occupy the highest rated positions, while those included would occupy lower rated positions. Thus, a production gang member who operates equipment that requires lesser skill and experience such as non self-propelled, hand-held or portable machines should not be excluded.

### 3. Starting Times

The starting times for production crews should be between 4:00 a.m. and 11 a.m. and should not be changed without thirty-six hours notice, except that forty-eight hours notice should be given for a change which is greater than four hours. Starting times should remain in effect for five consecutive days. The BMWE may contest the creation of new starting times through the arbitration procedure described below.

Other starting times may be agreed upon by the parties for production crews or for regular assignments involving service which is affected by environmental conditions or governmental requirements or for work that must be coordinated with other operations in order to avoid substantial loss of right of way access time; however, no production crew or regular assignment will have a starting time between midnight and 4:00 a.m. If the parties fail to agree on such other starting times, the matter may be referred to arbitration in the manner described below. Similar notice requirements regarding starting times, as described above, should apply.

### 4. Meal Periods

Regular meal periods should be observed at the work site or other convenient location between the beginning of the fourth hour and the beginning of the seventh hour computed from the assignment starting time, unless otherwise agreed upon by the carrier and the affected employees. The meal period should not be less than thirty (30) minutes nor more than one (1) hour.

Whenever the meal period cannot be observed within the prescribed time period and is worked, affected employees should be paid on a minute basis at the straight time rate and twenty (20) minutes in which to eat should be granted at the first opportunity without deduction in pay.

Employees required to render more than three (3) hours overtime service continuous with their regular assignment should be accorded an additional meal period, the meal to be provided by the carrier. Subsequent meal periods, with meals provided by the carrier, should be allowed at intervals of not more than six (6) hours computed from the end of the last meal period.

If an employee is currently entitled to a higher payment for working through a prescribed meal period, whether during a regular shift or on overtime, the current rate should be preserved.

**5. Alternative Work Weeks and Rest Days**

Production crews should work either five eight-hour days followed by two consecutive rest days, one of which must be either Saturday or Sunday, or four ten-hour days followed by three consecutive rest days with one, but not both, of the work days being either a Saturday or a Sunday. If four ten-hour days are worked and a holiday falls during the work week, the holiday should be observed as either the first or last work day of the week and the employees compensated for eight hours, the other two hours to be made up during the rest of the work week.

**6. Subcontracting**

The parties should continue substantially unchanged the special arrangements governing subcontracting that are contained in the current national agreement. However, if either the Organization or Carrier believes that the other party is not cooperating in an attempt to resolve the matter, that party may refer the matter to the Contract Interpretation Committee, described below, for prompt consideration and any action deemed appropriate that is consistent with the spirit and intent of the Agreement. This may include a requirement that an Advisory Fact-Finding panel be established immediately, regardless whether the conditions described for establishing such a panel have been

met. The parties should share equally the fees and expenses of any neutral arbitrator who may be utilized.

**7. Work Site Reporting**

Paid time for production crews that work away from home should start and end at the reporting site designated by the appropriate supervisor at the end of the previous day, provided the work site is accessible by automobile and has adequate off-highway parking. If a new highway site is more than 15 minutes travel time via the most direct highway route from the previous reporting site, paid time should begin after fifteen minutes of travel time both to and from the work site on the first day only of such change in the work site.

**8. Intra-craft Work Jurisdiction**

Employees should be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing, provided the tasks are within the jurisdiction of the BMWE. Compensation should be at the applicable rate for the employee performing the service and should not constitute a basis for any time claims by other employees. This recommendation is not intended to alter the establishment and manning of work forces accomplished in accordance with existing assignment, seniority, scope and classification rules.

**9. Combining or Realigning of Seniority Districts**

A carrier desiring to combine or realign seniority districts should give thirty days written notice to the affected employees and their bargaining representative. If the parties are unable to reach agreement within ninety days of serving that notice, the matter may be submitted to arbitration in accordance with the procedure described below.

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**9. Combining or Realigning of Seniority Districts**

A carrier desiring to combine or realign seniority districts should give thirty days written notice to the affected employees and their bargaining representative. If the parties are unable to reach agreement within ninety days of serving that notice, the matter may be submitted to arbitration in accordance with the procedure described below.

## 10. Arbitration

Arbitration of disputes between the various carriers and the BMWE should be made available where the parties fail to agree, as specified above, in matters concerning starting times and the combining or realigning of seniority districts. If the parties fail to agree upon an arbitrator within five days of delivery of a request for arbitration, either party may request a list from the NMB of five (5) potential arbitrators. The arbitrator should be selected by alternatively striking names from the list. The fees and expenses of the arbitrator should be borne equally by the parties.

## 11. Regional and System-wide Gangs

The Carriers have indicated that greater operational efficiencies can be attained if production gangs can continue working together for longer periods of time. The BMWE has been concerned with maintaining job opportunities for its members. The Board recommends the following changes in present practices:

> (a) A carrier should give at least ninety (90) days' written notice to the appropriate employee representative of its intention to establish regional or system-wide gangs for the purpose of working over specified territory of the carrier or throughout its territory (including all carriers under common control). These gangs will perform work that is programmed during any work season for more than one seniority district. The notice should specify the terms and conditions the carrier proposes to apply.
>
> (b) If the parties are unable to reach agreement concerning the changes proposed by the carrier within thirty (30) calendar days from the serving of the original notice, either party may submit the matters set

forth above to final and binding arbitration, in accordance with the following procedures:

(1) Should the parties fail to agree on selection of a neutral arbitrator within five (5) calendar days from the submission to arbitration, either party may request the National Mediation Board to supply a list of at least five (5) potential arbitrators, from which the parties shall choose the arbitrator by alternately striking names from the list. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel.

(2) The fees and expenses of the neutral arbitrator should be borne equally by the parties, and all other expenses should be paid for by the party incurring them.

(3) The arbitrator should conduct a hearing within thirty (30) calendar days from the date on which the dispute is assigned to him or her. Each party should deliver all statements of fact, supporting evidence and other relevant information in writing to the arbitrator and to the other party, no later than five (5) working days prior to the date of the hearing. The arbitrator may not accept oral testimony at the hearing, and no transcript of the hearing shall be made. Each party, however, may present oral arguments at the hearing through its counsel or other designated representative.

(4) The arbitrator must render a written decision, which shall be final and binding, within thirty (30) calendar days from the date of the hearing.

(5) The jurisdiction of the arbitrator is to be confined to a determination of how the seniority rights of affected employees will be established on the combined or realigned seniority rosters.

## 12. Contract Interpretation Committee

In view of the many new rule provisions recommended, the Board also suggests the establishment of a Contract Interpretation Committee. Similar committees have worked successfully in other circumstances where a number of contract changes have been implemented. The committee's jurisdiction should not overlap those

areas where other recommendations have provided for a specific dispute resolution mechanism.

Specifically, disputes arising over the application or interpretation of the agreement between the various carriers and the BMWE should be referred to an interpretation committee consisting of an equal number of representatives of both parties. Within ninety days of the effective date of their agreement, the parties should select a neutral person to serve with the committee, as needed. If the parties fail to agree upon such a neutral person, either party may request a list from the NMB of five potential arbitrators from which the parties should choose the arbitrator by alternately striking names from the list.

If a dispute is not resolved within sixty days of its submission to the committee, it may be referred to the neutral for final and binding disposition. The fees and expenses of the arbitrator should be borne equally by the parties.

## 13. Work Force Stabilization

Perhaps the most difficult issue presented is that of work force stabilization, and particularly how that relates to the Carriers' desire to establish efficient system-wide production gangs. The series of recommendations described below, the Board believes, offers the parties a singular opportunity to achieve their mutual goals

A program should be established by each carrier effective at the beginning of the 1992 production season. The purpose of that program is to respond in some measure to the Organization's concern over seasonality of employment, which mainly affects production gangs, and the Carriers' desire to utilize such gang members to the fullest extent practicable. The Organization has stressed to the Board that its intention is not to have employees receive pay for not working but, rather, to provide bona fide work opportunities for its members.

Under this new scheme, each carrier will determine at the beginning of the production season the number and staffing of the gangs or crews that are to be covered. These gangs or crews are to be provided at least six (6) months' work in the calendar year or, if laid off by action of the carrier, paid a supplemental unemployment benefit for the remainder of the six-month period. The benefit level will be the same as that provided by the BMWE Supplemental Sickness Benefit program.

There are a number of obvious issues and concerns in developing and implementing this "guarantee" program and probably many more that are not obvious to this Board and that might not even be identified by the parties until they address the subject in a thoroughgoing way. For these reasons the Board recommends that there be established a Select Committee of the parties at the national level, with a neutral Chairman, to identify and resolve issues directly or by final and binding decisions by the neutral Chairman, if necessary. This will permit thoughtful deliberations on such matters as what gangs or crews are to be covered, whether a carrier should have added flexibility to enable it to provide more work opportunities to covered employees, whether there should be some commitment by the employee to remain on a covered crew for the duration of the production season, whether there should be provisions for forfeiture of the "guarantee" under certain conditions and other equally relevant questions that the parties may encounter.

Notwithstanding the current economic downturn and the competitive realities of the transportation marketplace, we are confident that the parties, with the assistance of the Select Committee, will be able to devise appropriate measures to be taken when economic adversity of any kind strikes a railroad. The Board, therefore, recommends further that the Committee, with the neutral chairman, continue in existence to help ensure that the program is applied and utilized effectively and evolve to achieve its full potential. This program, in the Board's view, holds the promise of moderating seasonality of employment with little or no added cost

to the Carriers. Of course, if it turns out to represent just an added cost burden to the carriers because of inability to utilize employees fully, the program cannot succeed. The parties, therefore, through their committee and assisted by the neutral, have the responsibility of fleshing out the program by incorporating features to assure that it serves its intended purpose. To this end we recommend that the Committee have maximum flexibility to establish conditions, adopt new rules, change old rules, and the like, with the neutral available to make binding decisions on any issue that the parties themselves cannot resolve.

**14. The Select Committee**

Within sixty (60) days from the date of the Agreement, the parties should establish a Select Committee to be comprised of an equal number of Carrier and Organization representatives. Within 15 days of its establishment, that Committee should select a neutral to serve as Chairman. Absent agreement, the Committee should promptly request appointment of such neutral by the National Mediation Board. The fees and expenses of the neutral should be shared equally by the parties.

The neutral Chairman should convene the Committee promptly and assist the parties in attempting to resolve all issues before it, with due regard for the overall purposes of the program and the parties' needs and concerns. If the Committee fails to resolve all issues submitted to it within 120 days from the date of the Agreement, the neutral Chairman should, no later than thirty (30) days thereafter, make final and binding determinations on all unresolved issues.

The Committee should have the authority to modify any applicable rules to the extent necessary to foster the overall objectives of reducing seasonality and minimizing under-utilization of employees.

The Committee should monitor implementation and application of this program on individual carriers in order to evaluate its

effectiveness in meeting the parties' objectives and to make changes as necessary or desirable in light of the overall purposes of the program.

The Committee should retain jurisdiction to facilitate implementation and to resolve any issues that may arise, including those on individual carriers, striving to achieve uniformity to the extent practicable but accommodating relevant local considerations.

The neutral Chairman should be empowered to render final and binding decisions on any issue not resolved by the parties and, if he or she finds that the program is not effective in that it does not meet the goals described above, may cancel the program at any time after December 31, 1993.

### K. Specific ATDA Issues

As the record before the Board establishes, in recent years the rail industry, through innovative management and technology, has been able to substantially upgrade the function of train dispatching as the result of major geographic consolidations of dispatching offices and improved communications systems.

Illustrative of these developments are the train dispatching facilities established by the Union Pacific and the CSX, respectively, at Omaha, Nebraska and Jacksonville, Florida. Other major carriers have also begun the process of consolidating their train dispatcher personnel and functions and acquiring "star wars" type equipment which would bring their dispatching operations into the 21st century.

The presentation by the ATDA established several facts to this Board's satisfaction: the train dispatcher is a critical component in a carrier's safety scheme; the train dispatcher has assumed an increased role as the result of the reduction of yardmasters at smaller terminals in communicating information between train crews and the operating department; in many circumstances the train dispatcher, as the result of the elimination of the majority of cabooses on the Nation's rails, has inherited increased

responsibilities in terms of notifying operating crews when they are "in the clear"; and with the reduction of on-line personnel, train dispatchers have assumed greater responsibility in terms of instructing train and engine crews regarding set outs, pick ups and bad orders.

While the Board has determined to address the matters of retroactive pay and future wages uniformly, the ATDA has presented sufficient evidence for this Board to conclude that its membership is entitled to what has been referred to as an "equity wage adjustment". Accordingly, it is the Board's recommendation that train dispatchers should be granted a one-time 4% equity wage increase added to their present basic rate in view of the substantial consolidation of train dispatching functions nationwide, the deteriorating differential that train dispatchers once enjoyed vis-a-vis employees in comparable craft positions, and, most importantly, the increased responsibilities, work loads and job-related stress associated with the new train dispatching technology.

The Board also recommends that the parties establish a more realistic level of protective benefits for train dispatchers who are required to relocate their residences as the result of major intra-carrier consolidations.

The ATDA presented substantial and convincing evidence which persuades this Board that the 1966 National Agreement, which provides certain protective benefits to train dispatching personnel, is outdated. Obviously, when carriers consolidate, merge or otherwise combine their dispatching facilities, as the result of an ICC-approved transaction, protective benefits will be established by the Interstate Commerce Commission consistent with current policies, practices and law. However, when a carrier undertakes a massive internal consolidation or combination of dispatching functions which result in a substantial reallocation of duties and a major geographic reorganization, it is this Board's opinion that protective conditions should be updated.

The Board is not in a position to recommend the manner in which all of the details of a protective arrangement should be established. Many of the specifics must be left to the parties' acceptance of our broad recommendations and their anticipated good faith bargaining regarding those details. However, the Board specifically recommends that (1) employees "dismissed" as the result of internal consolidations should be entitled to allowances that represent one hundred percent (100%) of their guaranteed wages, and that those allowances be upgraded by subsequent general wage increases, (2) a "change in residence" definition should be incorporated in the parties' agreements which establishes the regularly-used "30 miles" standard found in numerous protective agreements/arrangements, (3) a reasonable "lace curtain" allowance should be established for train dispatching personnel required to relocate as the result of an internal consolidation or combination of dispatching functions, and (4) the parties should address the other details of a comprehensive protective arrangement, in the circumstances discussed above, which would, among other things: (a) permit carriers to force-transfer dismissed dispatching personnel to other dispatcher positions, with an appropriate lump sum payment option for those employees who do not desire to retain employment, (b) allow the parties to consider extending the protective period from five (5) to six (6) years, and (c) incorporate the other standard protective provisions that these parties have become accustomed to as the result of current practices and procedures.

### J. Specific TCU Issues

The TCU has focused its proposals upon requests that certain adjustments be made in wages and benefits, including the implementation of a cost-of-living adjustment which, it suggests, would allow its members to keep pace with changing economic conditions and to avoid losses in real wages resulting from inflation.

As noted in other sections of this report, the Board has concluded that the wage proposals of all Organizations, both those representing the operating crafts and those representing the non-operating crafts, should be treated uniformly. The Carriers, while proposing a wage freeze in this round of bargaining for all crafts, have argued with greater force that the wages of the members of the TCU clerical craft should be frozen in light of the TCU-NRLC Study Commission Report (hereinafter the "Study Commission"), which concluded, inter alia, that clerical wages, in general, were higher than those paid to incumbents of comparable positions in "outside industry".

The Study Commission was created as the result of stalemated negotiations between the Brotherhood of Railway, Airline and Steamship Clerks (the predecessor of the TCU) and the Nation's Rail Carriers regarding the Carriers' proposals to restructure the wage and classification system applicable to clerical and related employees represented by the Organization.

The Study Commission was given jurisdiction under Side Letter 4 of the April 15, 1986, National Agreement to consider

". . . wage rates and related matters, especially the question of whether certain rates are appropriate or too high or too low, what would be the proper comparison for making these determinations and how to best proceed when the determinations have been made; the number of clerical rates, i.e., are there too many; the incidence of turnover of incumbents in various positions; manning requirements; and how these matters should be addressed".

The Study Commission was composed of two senior representatives of the TCU, two senior representatives from rail management and Neutral Chairman John B. LaRocco. The parties had agreed that the Study Commission's findings would not be binding. The Commission met thirty (30) times at multiple day sessions between December 1986 and June 1989, and issued an extraordinarily detailed, technical, comprehensive and thoughtful Report on August 9, 1989.

It is not this Board's purpose or desire to detail, with any specificity, the work of the Study Commission. The parties are intimately familiar with its Report and the hundreds of pages of attached appendices. Simply stated, however, the Study Commission made the following findings of fact: (1) The number of different clerical pay rates (more than 1,400 on a single railroad) is excessive. (2) The present clerical wage rates do not reflect the difficulty of the work performed or the value of a job to the railroads, and the current rate structure is internally inequitable. (3) Many railway clerical pay rates are too high when compared to the prevailing clerical wages in other industries, especially for the unskilled and semi-skilled railroad clerical jobs, while other railroad clerical pay rates are appropriate and some clerical positions are moderately underrated. (4) There is not, on any railroad, a coherent and equitable clerical compensation system. (5) A study of employee turnover on Conrail reveals that there is an excessive amount of voluntary employee movement from one position to another, amounting to about 18% of all voluntary job changes.

Based upon these findings of fact, the Study Commission made the following non-binding recommendations: (1) The parties should scrap the entire present clerical rate structure and construct a new, rational and equitable clerical compensation system. (2) The number of clerical pay rates should be reduced to fifteen (15) wage grades. (3) The wage grade of each clerical position should be determined by application of a job evaluation system developed exclusively for the railway clerical craft. (4) Based upon future forecasts, comparable prevailing clerical wages in other industries should be allowed to move closer to railroad clerical pay rates without disregarding other factors which have a bearing on the propriety of these rates. (5) Current employees should be provided with reasonable protection from the adverse effects of the transformation to the new clerical compensation plan. (6) The railroads' cost of implementing the new salary plan should be applied against whatever future wage increases are agreed upon at

the bargaining table. (7) To provide railroads with a pool of skilled employees and to give clerical employees opportunities for upward mobility (promotion) within the new salary plan, the parties should create joint labor-management training committees to develop, administer and coordinate employee training and training programs. (8) To reduce abusive and excessive voluntary employee turnover, employees should be restricted to two (2) successful bids per calendar year, with some exceptions for employees receiving protective pay and employees moving to a higher wage grade.

The Study Commission then outlined and specified the methodology for implementation of its recommendations.

The Carriers have requested that this Board recommend full implementation of the Study Commission's Report. The TCU, through its Executive Council and its General Chairman's Association, overwhelmingly rejected the recommendations of the Study Commission, and now argues that this Board should not recommend implementation of the Study Commission Report. The TCU points out that the Report was non-binding, and that the Study Commission explicitly stated that it was not authorized to consider, nor did it make recommendations regarding, wage levels. The TCU maintains that the Carriers have misrepresented the Commission's recommendations as a basis for denying wage increases and it is the TCU's opinion that the Carriers are using the Report to obtain wage cuts under the guise of restructuring rates.

This Board has given full consideration to the respective positions of the TCU and the Carriers, and has carefully considered, within the constraints of time and energy, the voluminous documentation submitted by the parties in support of their respective positions regarding the implementation of the Study Commission Report. After such consideration, the Board concludes that (1) all TCU employees should be provided with the same level of wage increases or lump sum payments that are being recommended for the members of the other Organizations who are parties to this proceeding, and (2) the Study Commission's recommendations for the establishment of a National Salary Plan

should be adopted with certain procedural and substantive modifications.

Specifically, the Board recommends as follows regarding the implementation of the Study Commission's National Salary Plan and Report:

(1) TCU members should receive the same retroactive pay being recommended by this Board for the other employee groups.

(2) Effective July 1,1991, the Study Commission's Salary Plan should be adopted. The wage increases/lump sum payments as recommended by this Board for other employee groups should also be adopted, and the Employee Turnover (two voluntary bids) and Manning (Holiday and Station Agency) provisions of the Study Commission Report should be applied.

(3) The implementation period of the salary plan should run from July 1, 1991 through June 30, 1992, consistent with the procedure outlined in the Study Commission Report.

(4) Effective July 1, 1992, new rates should be established, with fifteen (15) grades at the 220% slope at the January 1, 1992 revenue neutral basis reduced by 17% (as opposed to the 28% recommended by the Study Commission), in order to bring the rates in line with the outside industry level of wages, which would eliminate the necessity of applying the three (3) year "Fan Plan" recommended by the Study Commission.

(5) Effective July 1, 1992, employees entitled to an Employee Maintenance Rate (EMR) (i.e., their present rate of pay), should be paid their EMR subject to the obligations to bid for and accept higher paying positions and to accept training for higher paying positions in accordance with the salary plan, or the new rate, whichever is higher, and other employees should be paid at the new rates.

(6) The EMR provisions should terminate on June 30, 1998.

(7) Effective July 1, 1992, and subsequent thereto, EMRs and the new position rates should be adjusted by the same amount of percentage wage increases that the Board has recommended be granted to other employees subject to this proceeding.

(8) No EMR adjustment should affect any protected rate under any other agreement between the parties.

(9) In recognition of the Study Commission's recommendation that the cost of implementing the National Salary Plan should be offset by subsequent wage increases, the Joint Training Committee established by the Study Commission Report should be implemented effective as of the date of the termination of the EMR provisions.

## M. Specific BRS Issues

The BRS has presented a group of requests which involve (1) a five percent (5%) annual wage increase with full retroactivity, accompanied by a workable COLA provision, (2) a modification of the current job stabilization agreement, and (3) a national advanced training program.

In addressing the retroactive pay and wage requests and Section 6 proposals of the other Organizations, this Board has treated all of the Organizations' proposals uniformly, save for an exception regarding the ATDA. Accordingly, the BRS wage proposal has been addressed in another section of these Findings and Recommendations.

The Board finds certain merit in the BRS's second proposal concerning the modification or modernization of the existing job stabilization agreement applicable to members of the Signalmen's craft. Therefore, the Board recommends that (1) the entitlement to certain elements of job security, currently available under the February 7, 1965 agreement, should be upgraded, so that employees who have at least ten (10) continuous years of service will be entitled to the protection previously available only to members of the Signalmen's craft who had employment relationships at least as far back as October 1, 1964, and (2) the present transfer allowance of $400, which has been in place since 1964, should be upgraded to $800.

The major thrust of the BRS's presentation focused upon its desire to establish an advanced training program for members of the Signalmen's craft. The testimony and documentation provided in support of their contention that the Carriers should establish a formal advanced training program for signal employees convinced this Board that the BRS does represent a unique and highly skilled craft and that proper implementation of a formal advanced training program would redound to the benefit of the Carriers, the BRS, appropriately selected members of the Signalmen's craft and the general public.

There is no dispute that the more highly-rated classifications in the Signalmen's craft require technicians of great skill and ability. In fact, the Carriers have established training programs for signal employees and generally recognized the special technical skills possessed by members of this craft. It is also significant that several carriers and the industry, during recent times, have experienced shortages of employees to fill the needs of their signal departments. Moreover it is clear that the signal employees represent a critical element in the carriers' overall safety system.

Based upon these observations and the evidence of record, it is this Board's recommendation that a formal advanced training program be established consistent with several of the suggestions made by the BRS. This Board is not in a position to determine the detailed technical aspects of such a program, since the Board lacks the expertise to offer specific suggestions regarding how the program should be structured, who should be entitled to participate in the program, the breadth and scope of the program, the extent to which the program suggested by the BRS would overlap or duplicate existing training programs, and the other aspects of the BRS proposal.

The Board therefore recommends that the Carriers and the BRS establish an ad hoc joint Signalmen's Training Committee. That committee should be created forthwith and complete its work within six (6) months of the issuance of these recommendations, unless the

parties mutually agree to extend the time. The committee should be composed of two (2) Carrier representatives and two (2) Organization representatives and should be instructed to determine which classifications and which members of the craft, based upon skills and aptitude, will be entitled to advanced training. If the committee is unable to reach agreement prior to the target date, a neutral person with industrial engineering expertise should be selected from a list of individuals provided by the American Arbitration Association to resolve the parties' differences. The neutral expert's jurisdiction should be limited to the issues remaining in dispute. The neutral member of the committee, who should be compensated equally by the parties, should have sixty (60) days from the close of the proceedings (submission of evidence and argument) to issue the decision. The program ultimately established should be made part of the parties' collective bargaining relationship, amendable only through direct negotiations and/or the provisions of the Railway Labor Act.

The Carriers advanced a number of rules proposals similar to those pursued with the BMWE. We find that the situations are not comparable and that, for the most part, the Carriers' concerns were neither as wide-spread nor as substantial with the BRS. However, we believe that on those carriers where there are legitimate needs for improving the use and efficiency of signal construction gangs and other signal forces, proposals may be served and pursued to mediation and fact-finding if necessary. In such situations, the Organization should be able to serve appropriate proposals for concurrent handling.

### N. Miscellaneous and General Issues

The proceedings before this Emergency Board, which involve most of the Nation's Class I line haul railroads and terminal and switching companies and ten (10) of the eleven (11) major rail labor organizations that represent in excess of ninety percent (90%) of the Nation's rail employees, resulted in a record of

greater magnitude than any record ever presented to a Board established under the provisions of Section 10 of the Railway Labor Act. It is conceivable that the record presented to the Presidential Railroad Commission in the early 1960s exceeded in breadth the record presented to this Board. However, that record was confined to rules changes affecting the operating crafts. On the other hand, this Board's jurisdiction was much broader in scope, as we were asked to consider nearly 200 issues applicable to ten crafts or classes covering both operating and non-operating employees.

As noted in Sections III, Activities of the Emergency Board, and IV, History of the Dispute, issues were presented to this Board through the testimony of dozens of witnesses representing the various Organizations and Carriers, and in documentary exhibits. The various rules changes proposed by both the Carriers and Organizations were suggested as early as January 1988, when the first Section 6 notices were served. This Board exercised its best efforts to address those issues in the context of the time and resources available. We gave consideration to a variety of factors, including (1) the extent to which certain issues had been the subject of direct bargaining, (2) the extent to which the parties gave priority, if at all, to the issues in dispute, (3) whether the Board is the appropriate forum for the presentation of several issues raised by both the Carriers and the Organizations, and (4) the fact that many of the issues listed by the parties in their respective Section 6 notices did not become the subject of written and/or oral presentation to the Board.

We note, for example, that the Carriers have listed approximately forty-five (45) issues as being before the Board, in which neither written nor oral presentation was made. These include, but are not limited to, Management Rights, Work Stoppages/Strikes and Picketing, and Work Stoppages and Suspension of Rules (in which only written presentation was made to the Board) and New Employees, Vacations, Holidays, Personal Leave, System-Wide Agreements, Seniority, Deadheading, Availability, Remote

Control Devices, certain Compensation Elements, Use of Firemen and Hostlers, Crew Unity, Independent Assignments, Self-Propelled Equipment, Cabooses, Night and Assistant Chief Dispatchers, Bidding and Bumping, Protection, Temporary Positions and Part Time Employees, Work Flexibility, Realignment of Pay Rates, Number of Rates of Pay, Supplemental Sickness for Furloughed Employees, Supervisor Sections, Vacancies, and Lower Pay and Benefits for Certain Employees.

Similarly, the Organizations listed approximately seventy-seven (77) issues as being before the Board, in which no written or oral presentation was made. These include, but are not limited to, restoration of the Basic Day, increasing Overtime and Shift Differential Rates, elimination of all Entry Rates and Two Tier Pay Systems, providing Maternity and Paternity Leave, establishing Profit Sharing Plans, creating Retirement Accounts similar to those established under Section 401(k) of the tax code, establishing a national rule to provide furloughed employees the option of a First Right of Hire, providing for additional and/or improved Personal Leave, Bereavement Leave and Sick Leave Benefits, establishing a Longevity Pay System, providing a Clothing and Equipment Allowance, enhancing existing Jury Duty Provisions, requiring carriers to reprint and furnish copies of existing collective bargaining agreements, and elimination of all moratorium provisions.

Several other issues, such as the Organizations' proposals regarding Line Sales, were also considered by the Board.

As the lettered subparagraphs in this section reflect, the Board has made numerous findings and recommendations concerning what we have determined to be the significant, priority issues in dispute that fall within our perceived jurisdiction. It is the Board's view and hope that the implementation of these recommendations will contribute substantially to achieving the prioritized needs articulated by the parties.

The Board has purposefully not addressed many of the issues. This does not reflect on the merits or lack of merit of the positions taken on those issues.

### O. Moratorium

The Board recommends a moratorium period for all matters on which notices might properly have been served when the last moratorium ended on July 1, 1988 to be in effect through January 1, 1995. Notices for changes under Section 6 of the Railway Labor Act, accordingly, may be served by any of the parties on another party no earlier than November 1, 1994.

## VII. CONCLUSION

The March 6, 1990 Agreement, suggested by the NMB, represents a unique, and in some ways a positive, departure from the way in which the nation's rail labor organizations and carriers have attempted to resolve their bargaining disputes in the past. The fact that all of the major labor organizations, save one, voluntarily submitted their varied issues to the jurisdiction of a single emergency board saved the public and the shipping community from the uncertainty of the cessation of rail service which might have occurred had each major organization or group of organizations prosecuted their proposals for change individually. Consolidating the disputes for submission to a single emergency board avoided such uncertainty as well as multiple proceedings.

To be sure, certain disadvantages were inherent in the March 6, 1990 Agreement and the Emergency Board proceedings that flowed from that compact. First, the proceedings, by necessity, became overly long and drawn out. Secondly, the voluminous record stretched the abilities of the Board and the parties to focus their attention on issues which may have merited deeper consideration.

Finally, and most importantly, the Board's recommendations, because they are so far-reaching and organization-specific, may create the possibility that the Carriers or one of the Organizations will be dissatisfied with one or more of the

recommendations and will fail to exert their best efforts to make those recommendations form the basis for the long-term collective bargaining agreements that are needed to create a substantial period of rail industrial peace.

However, the Board is optimistic that, despite their initially polarized positions, the Parties will recognize the "give and take" in our recommendations, and will accept them. We trust they will "fine tune" our suggestions where appropriate and will expeditiously agree to implement the recommendations.

In conclusion, the Board wishes to express its appreciation to the Parties, their counsel and administrative staffs for their professionalism, practicality and consistent and thorough cooperation with our efforts.

Respectfully,

Robert O. Harris, Chairman

Richard R. Kasher, Member

Arthur Stark, Member

# EXECUTIVE ORDER

## 12714

## ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN CERTAIN RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE OF THE NATIONAL RAILWAY LABOR CONFERENCE AND THEIR EMPLOYEES REPRESENTED BY CERTAIN LABOR ORGANIZATIONS

Disputes exist between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor conference and their employees represented by certain labor organizations. The railroads and labor organizations involved in these disputes are designated on the attached lists, which are made a part of this order.

These disputes have not been adjusted under the provisions of the Railway Labor Act, as amended; 45 U.S.C. 151-188 ("the Act").

In the judgment of the National Mediation Board, the disputes threaten substantially to interrupt interstate commerce to a degree that would deprive various sections of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me by the Constitution and laws of the United States, including section 10 of the Act, it is hereby ordered as follows:

Section 1. Creation of Emergency Board. There is created, effective May 5, 1990, a board of three members to be appointed by the President to investigate the disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any railroad carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. Report. The board shall report to the President with respect to these disputes.

Sec. 3. Maintaining Conditions. From the date of the creation of the board and for 30 days after the board has made its report with respect to these disputes to the President, no

change, except by agreement of the parties, shall be made by the railroads or the employees in the conditions out of which the disputes arose.

Sec. 4. Expiration. The board shall terminate upon the submission of the report referred to in sections 2 and 3 of this order.

THE WHITE HOUSE,

May 3, 1990.

# RAILROADS

Akron & Barberton Belt Railroad

Alameda Belt Line Railway

Alton & Southern Railway

Atchison, Topeka & Santa Fe Railway

Bessemer and Lake Erie Railroad

Burlington Northern Railroad

- Western Fruit Express Company

Canadian National Railways

- Great Lakes Region Lines in U.S.
- St. Lawrence Region Lines in U.S.

Canadian Pacific Limited

CSX Transportation

- Atlanta & West Point Rail Road
  - Western Railway of Alabama
- Baltimore and Ohio Railroad
- Baltimore and Ohio Chicago Terminal Railroad
- Chesapeake and Ohio Railway
  - Hocking Valley Railroad
  - Pere Marquette Railroad
- Clinchfield Railroad
- Seaboard System Railroad
  - Georgia Railroad (former)
  - Louisville and Nashville Railroad (former) incl. C&EI and Monon
  - Nashville, Chattanooga & St. Louis Railway
  - Nashville Terminal

Seaboard Coast Line Railroad (former)

Toledo Terminal Railroad

Western Maryland Railway

Chicago & Illinois Midland Railway

Chicago & North Western Transportation Co.

Chicago South Shore and South Bend Railroad

Colorado & Wyoming Railway

Columbia & Cowlitz Railway

Consolidated Rail Corporation

Davenport, Rock Island and Northwestern Railway

Denver and Rio Grande Western Railroad

Denver Union Terminal Railway

Duluth, Winnipeg & Pacific Railway

Elgin, Joliet & Eastern Railway

Grand Trunk Western Railroad

Houston Belt and Terminal Railway

Illinois Central Railroad

Kansas City Southern Railway

Louisiana & Arkansas Railway

Milwaukee (Soo Line) - KCS Joint Agency

Kansas City Terminal Railway

Lake Superior & Ishpeming Railroad

Los Angeles Junction Railway

Manufacturers Railway

Meridian & Bigbee Railroad

Minnesota, Dakota & Western Railway

Mississippi Export Railroad

Missouri Pacific Railroad

Chicago Heights Terminal Transfer Railroad

Galveston, Houston and Henderson Railroad

Missouri-Kansas-Texas Railroad

Oklahoma, Kansas & Texas Railroad

Monongahela Railway

New Orleans Public Belt Railroad

Norfolk and Portsmouth Belt Line Railroad

Norfolk and Western Railway

Norfolk Southern Corporation

Oakland Terminal Railway

Ogden Union Railway and Depot Co.

Peoria & Pekin Union Railway

Pittsburgh & Lake Erie Railroad

Pittsburgh, Chartiers & Youghiogheny Railway

Port Terminal Railroad Association

Portland Terminal Railroad Company

Richmond, Fredericksburg & Potomac Railroad

Sacramento Northern Railway

St. Louis Southwestern Railway

Southern Pacific Transportation Co.

- Eastern Lines
- Western Lines

Southern Railway Company

- Alabama Great Southern Railroad
  - New Orleans and Northeastern Railroad
- Atlantic and East Carolina Railway
- Carolina & Northwestern Railway
- Central of Georgia Railroad
- Cincinnati, New Orleans & Texas Pacific Rwy.
- Georgia Northern Railway
- Georgia Southern and Florida Railway
- Interstate Railroad
- Live Oak, Perry and South Georgia Railroad
- New Orleans Terminal Co.
- St. Johns River Terminal Company
- Tennessee, Alabama and Georgia Railway
- Tennessee Railway

Spokane International Railroad

Terminal Railroad Association of St. Louis

Texas Mexican Railway

Union Pacific Railroad

Western Pacific Railroad

Wichita Terminal Association

Yakima Valley Transportation Co.

Youngstown & Southern Railway

Montour Railroad

# LABOR ORGANIZATIONS

American Train Dispatchers Association

Brotherhood of Locomotive Engineers

Brotherhood of Maintenance of Way Employees

Brotherhood of Railroad Signalmen

International Brotherhood of Boilermakers and Blacksmiths

International Brotherhood of Electrical Workers

International Brotherhood of Firemen & Oilers

Sheet Metal Workers International Association

Transportation Communications Union

Transportation Communications Union - Carmen Division

United Transportation Union

THE WHITE HOUSE

WASHINGTON

Appendix "B"

June 7, 1990

Dear Mr. Harris:

This is to inform you that the President agreed today to approve the extension of the Presidential Emergency Board's reporting requirement to September 15, 1990.

Sincerely,

C. Boyden Gray
Counsel to the President

Mr. Robert O. Harris
Chairman
Presidential Emergency Board
1629 K Street, Northwest
Suite 600
Washington, D.C. 20006

cc: Joshua M. Javits
Chairman, National Mediation Board

THE WHITE HOUSE

WASHINGTON

Appendix "C"

September 11, 1990

Dear Mr. Harris:

The President has approved an extension of the Presidential Emergency Board's reporting requirement until December 23, 1990. We appreciate the work that you and the other members of the Board are doing on this important matter, and we look forward to a successful resolution.

Yours truly,

C. Boyden Gray
Counsel to the President

Mr. Robert O. Harris
Chairman
Presidential Emergency Board
1629 K Street, Northwest
Suite 600
Washington, D.C. 20006

cc: Joshua M. Javits
Chairman, National Mediation Board

THE WHITE HOUSE

WASHINGTON

Appendix "D"

December 21, 1990

Dear Mr. Harris:

The President today approved an extension of the Presidential Emergency Board's reporting requirement until January 15, 1991. The work that you and the other members of the Board are doing on this important matter is appreciated.

Yours truly,

Nelson Lund
Associate Counsel to the President

Mr. Robert O. Harris
Chairman
Presidential Emergency Board
1629 K Street, Northwest
Suite 600
Washington, D.C. 20006

cc: Joshua M. Javits
Chairman
National Mediation Board

Robert P. Davis
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