
***Report* TO THE PRESIDENT**
BY THE
EMERGENCY BOARD

**APPOINTED UNDER THE PROVISIONS OF THE
RAILWAY LABOR ACT**

*To Investigate and Report
In Respect to the Dispute Between*

**THE DULUTH, MISSABE & IRON RANGE RAILWAY CO.;
CHICAGO & NORTH WESTERN RAILWAY; GREAT NORTH-
ERN RAILWAY; MINNEAPOLIS, ST. PAUL & SAULT STE.
MARIE RAILWAY AND CERTAIN OF THEIR EMPLOYEES
AS REPRESENTED BY THE BROTHERHOOD OF RAILWAY
AND STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS, AND STATION EMPLOYEES**

**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1941**

WASHINGTON, *June 6, 1941.*

THE PRESIDENT,
The White House,
Washington, D. C.

DEAR MR. PRESIDENT: Herewith is submitted the report of the Emergency Board appointed by you on May 9, 1941, to investigate and report to you respecting a dispute between Duluth, Missabe and Iron Range Railway, Chicago and North Western Railway, Great Northern Railway, Minneapolis, St. Paul and Sault Ste. Marie Railway and certain of their employees.

The railways and the employees, at the conclusion of the hearings, negotiated an agreement which disposed of the controversy.

Respectfully,

G. STANLEIGH ARNOLD, *Chairman,*
WILLIAM H. TSCHAPPAT,
ARTHUR E. WHITTEMORE,
Members, Emergency Board.

REPORT OF EMERGENCY BOARD APPOINTED MAY 9, 1941, UNDER SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED JUNE 21, 1934

In re: Duluth, Missabe & Iron Range Railway, Chicago & North Western Railway, Great Northern Railway, Minneapolis, St. Paul & Sault Ste. Marie Railway, and certain of their employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

The Emergency Board appointed by the President pursuant to the provisions of the Railway Labor Act and in accordance with Executive Proclamation of May 9, 1941, to investigate and report its findings respecting a dispute between Duluth, Missabe & Iron Range Railway, Chicago & North Western Railway, Great Northern Railway, Minneapolis, St. Paul & Sault Ste. Marie Railway, and certain of their employees, convened at Duluth, Minn., Thursday, May 15, 1941.

The Board consisted of G. Stanleigh Arnold, Esq., who was elected Chairman, Maj. Gen. William H. Tschappat, and Arthur E. Whittemore, Esq. Frank M. Williams was appointed secretary of the Board.

The Board held public hearings, commencing on May 15 and concluding May 24, 1941. Appearances were made on behalf of the employees by H. R. Lyons, vice grand president; W. M. Davis, assistant to the grand president; G. R. Atkinson, assistant research director; C. G. Orendorff, general chairman of the Brotherhood for the Minneapolis, St. Paul & Sault Ste. Marie Railway; C. L. Dennis, general chairman for the Chicago & North Western Railway; W. W. Rickard, general chairman for the Great Northern Railway; W. J. Greene, general chairman for the Duluth, Missabe & Iron Range Railway. On behalf of the carriers the appearances were Clarence J. Hartley, attorney, and Paul H. Van Hoven, vice president, for Duluth, Missabe & Iron Range Railway (hereinafter called the Missabe); Lowell Hastings, general attorney, and Guy F. Stephens, personnel director, for Chicago & North Western Railway; J. C. Rankine, assistant to vice president, C. S. McDonough, general manager, and J. P. Plunkett, general attorney, for Great Northern Railway; and William J. Quinn, attorney, and E. H. Buhlman, personnel officer, for Minneapolis, St. Paul & Sault Ste. Marie Railway (hereinafter called the Soo line).

On May 24 the representatives of the employees and the carriers settled the dispute by agreement.

REPORT OF EMERGENCY BOARD

In this case employees on the ore docks at Duluth, Minn.; Two Harbors, Minn.; Allouez, Wis.; Ashland, Wis.; and Escanaba, Mich., asked for an increase in base rate pay from 62½ cents per hour to 75 cents per hour. The maximum number of employees on these docks in May 1941 was about 1,180.

The 62½ cents per hour rate was established in 1937. In May 1939 representatives of employees discussed the need for a special adjustment of the pay of ore dock workers, it having been asserted that their rate of pay was too low on a comparative basis. It was then decided to postpone any action until the following year because the ore output in 1938 had been low. On August 16, 1940, formal notices were served on the employers involved, requesting the 12½ cents increase. There followed conferences in September and October 1940. The services of the National Mediation Board were requested in late October 1940. Mediation began in November 1940 and was recessed to March 1941. In March the employers offered a 5-cent increase and the Brotherhood on March 11, 1941, offered to accept a 7½-cent increase if made before the season should open in April. No agreement was reached. The National Mediation Board then offered arbitration, but at the request of the Brotherhood mediation was resumed on April 14, 1941. On April 22 the employers authorized the mediator to indicate to the Brotherhood that a 7½-cent increase would probably be acceptable to the employers. The mediator reported this to the Brotherhood. At a joint conference attended by representatives of the Brotherhood and the four railways and the mediator on April 23, 1941, the offer of a 7½-cent increase was made firm by the Great Northern Railway and all present understood that a 7½-cent increase would be acceptable to the employers.

At no time in the April mediation conferences, however, was a 7½-cent compromise acceptable to the Brotherhood. A principal reason why the Brotherhood did not find acceptable in April the increase it had offered to take in March was the announcement of the United States Steel Corporation of a general increase of 10 cents per hour for workers in the steel plants operated by its subsidiaries. The Missabe Railway is a subsidiary of the United States Steel Corporation. The 10-cent increase was also made effective in the mines of the Oliver Iron Mining Co., from which ore is sent to the docks of the Missabe Railway. The Oliver Iron Mining Co. is also a subsidiary of United States Steel Corporation. Employees on the Missabe docks felt that they should be treated in the same way that employees of mining and steel making subsidiaries of United States Steel Corporation had been treated, and they and other employees on the other docks felt that 10 cents had become to a substantial degree a measure

of the increase which should be made to men handling iron ore (whether at the mines, the docks or the mills) in view of the increase in business, the anticipated increase in profits, and the prospective increases in cost of living incident to the preparedness and defense activity of the nation. They felt that they were entitled to the 10 cents an hour increase on the grounds stated and to establish their wages in the place they deemed proper on a comparative wage scale. The Brotherhood in April 1941 asked for 10 cents an hour retroactive to September 16, 1940. On April 24, 1941, the Brotherhood distributed a strike ballot accompanied by a strike ballot circular which stated offers by the employers of $2\frac{1}{2}$ cents and 5 cents, and set forth the Brotherhood's offer in March of $7\frac{1}{2}$ cents (which had been for acceptance before the season opened). This circular did not mention the $7\frac{1}{2}$ cents proposed in April by the employers. There was testimony that this figure was reported at meetings held to discuss the strike. The notice of May 9 (hereinafter referred to) which called the strike, reported the $7\frac{1}{2}$ -cent proposal. The circular fully stated the Brotherhood's position in the April conferences that it would not settle for less than 10 cents an hour. The balloting which was completed within a few days was in favor of a strike. At this time many of the ore dock workers felt that they would be unjustly discriminated against if they did not receive the increase made effective at the mills and the mines. Meanwhile, the National Mediation Board offered arbitration which was accepted by the carriers and declined by the Brotherhood. A joint conference in the Board's offices in Washington on May 6 failed to resolve the impasse and on May 9, 1941, the Brotherhood called a strike to begin May 10. On May 9 also the President by proclamation created this Board with the duty under the act of investigating the dispute and reporting its findings to the President within 30 days.

The Board held hearings at Duluth, Minn., and inspected the operations at the ore docks at Duluth and Allouez. At the close of the hearings the Board conferred with the parties. The conferences resulted in agreements between the Brotherhood and each carrier, establishing $7\frac{1}{2}$ cents as the base rate for the entire 1941 season, and fixing no increase for any earlier period.

Notwithstanding this voluntary adjustment the Board believes that it should make this report.

I

The commerce and the emergency.

The interstate commerce involved is the movement of iron ore from the Minnesota and Wisconsin iron mines through the Great Lakes to ports on Lake Erie whence by short rail hauls the ore is transported to the mills. It was stated without dispute at the hearings that

the greater part of the iron ore used each year in the United States (perhaps 85 percent) passes by water from the ports on Lake Superior and Lake Michigan, and that most of this passes through the ore docks involved in this dispute. Also, that about 40 percent of the Nation's steel comes from this ore. (The apparent discrepancy in the figures results from the use of scrap metal.) It appeared also that the requirements of the steel mills in 1941 will substantially exceed the capacity of the ore boats working the full season without interruption, even with the use of a number of boats of Canadian registry, the use of which would require congressional action. The great bulk of the ore could not be moved by rail. Movement by rail to supplement water carriage offers serious technical difficulties particularly in cold weather, when it would be undertaken for the purpose of making good whatever deficiencies in delivery there then might appear to exist. It is apparent that any interruption whatever of this commerce would cause a loss in steel production which could not be made up and any substantial interruption would seriously delay much of the defense and preparedness activity of the entire country.

Description of equipment for ore handling.

The docks involved in this dispute and the railroads controlling them are shown in the following table:

Name of railroad	Location of docks	Number and types of docks
Duluth, Missabe & Iron Range Ry., Missabe Division	Duluth, Minn.	2 concrete and steel.
Duluth, Missabe & Iron Range Ry., Iron Range Division.	Two Harbors, Minn.	Do.
Great Northern Ry. Co.	Allouez, Wis.	3 concrete and steel, 1 wood.
Chicago & North Western Railway.	{ Escanaba, Mich. and	4 wood.
St. Paul & Sault Ste. Marie Railway.	{ Ashland, Wis.	1 concrete and steel.
	{ Ashland, Wis.	

These docks are steel, concrete, or wood structures, depending upon the date of construction. They vary somewhat in size, the largest having a length of 2,300 to 2,400 feet along each side, where vessels can be moored. The top decks of all of them are approximately 80 feet above the water. A row of steel-lined pockets about 40 feet deep is built in on each side of the docks. They are used to store ore pending arrival of boats, and as each holds five or six carloads, they serve also to blend ore of different grades to form a cargo of definite average analysis. There is a platform less than 2 feet wide between the pockets of a row. Tracks on the deck run directly over the pockets and permit dumping ore from properly spotted cars into any of the pockets. The bottom of the pocket is sloped toward the water

side where a vertically sliding door operated by hand or power leads to a steel chute hinged to the bottom of the pocket and leading to the hatch of the boat. Through the hinge the inclination of the chute can be changed by means of a woven steel band or ribbon attached to it near its outer end and connected with proper hand or power gearing on the deck of the dock. By the use of this mechanism the ore passing over the chute may be placed in the hatch at any place from the dock side to the water side of the boat. A platform is provided near the pocket door and above the chute for the use of men operating pocket doors by hand and "punching" the ore to keep it running.

On the Missabe Railway docks at Duluth and Two Harbors all chutes are electrically hoisted and pocket doors electrically operated from deck. On these docks there is a grill on the dock side as well as a railing on the water side of the pocket door platform.

On the Great Northern Railway docks at Allouez chutes are electrically operated. Pocket doors are operated through cables from the deck on two of the docks and hand operated from pocket platform on the other two.

The Chicago & North Western Railway has one dock at Escanaba with hand-operated chutes and one with electrically operated chutes. The two docks at Ashland are electrically operated except 78 pockets for which a portable electric hoist is provided. This machine weighs 115 pounds, and is carried by hand to the chute windlass as required. It does the actual work of lifting the chutes.

One dock at Escanaba has pocket doors operated by hand from platform at door, and the other has doors operated by cable from decks. Docks at Ashland have pocket doors operated by cable from top deck except for 78 pockets which have doors hand-operated from door platform.

On the new or outer end of dock of the Soo line at Ashland the chutes and pocket doors are electrically operated. On the old or inner end they are hand operated.

Hand-operated pocket doors are counterweighted for greater ease of operation.

Ore boats.

Boats in the ore business are capable of carrying cargoes of ore weighing from five to fifteen thousand tons. Hatches run nearly the width of the boat and are spaced the same as the dock pockets thus permitting one pocket to be loaded in each hatch without moving the boat.

Ore cars.

The ore cars used by these railroads vary considerably in details but in general are similar to bottom discharge cars used for coal.

The bottoms of the cars slope down to one or two pairs of doors which swing downward discharging the contents into one of the dock pockets. Mechanical means are provided for "untrapping" or opening these doors and for "trapping" or closing them. In one class of cars these operations are performed by applying a heavy ratchet wrench to a squared shaft, the turning of which operates the opening and closing mechanism. In another type a large iron wheel is attached to the squared shaft. In still another type the shaft is fitted with a device which can be operated by a simple iron bar. The mechanism for transmitting the rotation of the shaft to the doors also varies greatly between different makes and types of cars.

A new development is the use of a "trapping machine" which is a gasoline powered self-propelled vehicle designed to generate electric current. A motor-driven socket wrench flexibly mounted on the machine is easily applied to the end of the operating shaft of the opening and closing mechanism.

Ore cars of various capacities up to 150,000 pounds of ore are in use.

Operation of unloading cars.

Cars are placed over pockets at the dock as directed by the dock agent. The foreman at the dock is then in charge of unloading, and cars are untrapped by hand or machine in the order directed by him, by "trappers" assigned to this duty. When doors are opened the ore usually begins to run out and in the case of free-running ore the car may completely empty itself. Frequently, however, the ore jams on the slopes leading to the doors and stops running. One or more of the workers on the dock then pound the side of the car, or the slopes leading to the doors, with iron bars or sledges to start the ore running again. If this is not successful men with poles about 10 feet long mount the sides or ends of the car and punch the ore from the top. In poor-running ore they may have to step on the ore to get at the trouble. When the bulk of the ore has run out the car is inspected by a man assigned to that duty who removes ore caught in corners or in hinges of doors. The trappers then come along and close the doors by hand or machine. The car is then ready for its return trip to the mines.

Operation of running ore from dock pockets to boat.

Boats having been moored at the dock and water ballast, if any, pumped out, are ready to receive ore. The boat loader or "list man" has obtained from the dock foreman a list of the pockets to be emptied. He places two or three men on the platforms of the pockets to be emptied and lowers the chute, with the mechanism provided, to place the ore in the hatch below as desired by the mate of the boat. He then opens the pocket door or signals the men on the plat-

form to do so, depending upon whether these doors are for electric or hand operation. If free running, the ore then runs rapidly into the hatch. If "sticky" it may jam in the doors, or on the slopes leading to them. In the latter case the doormen pound on the door with sledges or bars and, in some cases, with electric vibrating machines, in an effort to start the ore. If this is not successful, they reach through the door with bars or poles and punch the ore. With some types of ore ramming from below may not be effective. In such cases men on the top of the dock standing on the edges of the pockets ram the ore from above, using long spruce wood poles provided with steel points. Generally, a pocket is completely emptied into the hatch before the door is closed, but in some cases a pocket is split in which case the door may have to be closed when the ore is still running. Reversing the operation described above closes the door and raises the chute making the pocket again available to receive ore.

The claim for an increase based on readjustment of the comparative wage scale.

The Brotherhood claimed that the work involved is semiskilled, hazardous, and seasonal. Also, that the amount of work available varies greatly from season to season and that there is a low annual wage in the seasons when the tonnage of ore shipped is low. For these reasons it was asserted that there existed an insufficient spread between the hourly wage of ore dock workers and the wages of other laborers.

Skill required in ore handling.

From information gained at the hearings and by observation on the Duluth and Allouez docks the Board has acquired a knowledge of the nature of the various jobs involved in the handling of ore from cars to boats. It is true that there are "tricks in every trade" and there are undoubtedly some things in the unloading of cars and the running of ore from pockets to boats that require some experience or practice to enable the workman to do them well and expeditiously. There is doubtless a knack in trapping and untrapping cars whether by hand or machine, in doing the work of a boat loader or list man, and in poling or ramming ore from cars or pockets. But there are similar things to be learned by a track gang man, or an extra gang man, or by a man working in almost any occupation generally rated as common labor. Familiarity with all the different kinds of jobs in ore handling would no doubt make a man more valuable on any particular job, and especially in that of boat loader, which involves the work of other men. There are, however, similar responsible jobs in many other types of laboring work. It is true that boat loaders and list men operate electric hoisting machines and trappers operate

gasoline electric machines, but the controls of these machines are not more complicated than those of an automobile and should be mastered as easily.

For the reasons outlined the Board is of the opinion that the work of ore handling on docks does not require more skill than is required in many other kinds of common labor.

Hazards of ore handling from cars to boats.

The special hazards in this work may be summarized as follows:

1. That due to working on narrow platforms near the edges of deep pockets without the protection of a railing while poling ore. This involves danger of stumbling over pieces of ore or other obstacles on the platform, colliding with other men, trapping machines, et cetera, with possibility of falling into the pocket.

2. That due to standing on top of a car or even on the ore load while poling ore in the car, subjecting the worker to danger of slipping down with the load or of being shaken off the car by vibration if ore load flows suddenly from one side of car, but sticks on the other side.

3. That due to untrapping cars by hand, subjecting the operator to a blow from the handle of the wrench or bar if weight of ore suddenly flips the car doors down.

4. That due to vibrating and punching ore at pocket door, especially in those cases where no railing has been provided on the dock side of the platform. Punching, when done from chute, also involves danger of being hit by ore when suddenly released.

5. Minor hazards are due to lumps of ore from tops of cars falling on men vibrating them; the danger involved in handling steam hose to thaw out cars and pockets; the increase in hazard when ice forms on dock, and the hazard due to high winds.

The railroads have contributed materially to safety by improvements in equipment and machinery among which the following may be mentioned:

1. Use of trapping machines.
2. Use of safety belts.
3. Use of jack hammers or air vibrators to minimize poling.
4. Placing of grills in front of pocket door platforms and the use of helmets.
5. Promulgation of safety rules and periodic instruction of employes in safety measures.

Trapping machines, introduced by the Missabe Railway in 1940, are now used also by the Great Northern Railway at Allouez. Four machines are in use by each of these roads. No machines are yet in use by the Chicago & North Western Railway or by the Soo line. Many cars in use cannot now be trapped by machine, but modifica-

tions can be made to permit its use. The Missabe Railway hopes to be able to trap all cars by machine very soon. There is difficulty under present conditions in getting prompt production and delivery of trapping machines. The trapping machine is probably the most effective of any of the devices introduced to reduce accidents.

To prevent the danger of men poling cars being carried through the doors into the pockets below, a leather or canvas safety belt or harness has been provided on some of the docks. The belt is provided with a steel cable 6 or 8 feet long, which is securely attached to a ring or handle near the top of the car. If a man wearing one of these belts having the cable attached to the car should slip down with the ore, or fall off the outside of the car, he would be caught by the cable and serious injury prevented. Safety belts are used by men working on top of cars at Missabe Railway and Great Northern Railway docks but not at other docks. Safety belts are some times, but not usually, used by men working at the pocket door platform.

Jack hammers or air vibrators are in partial use on the Missabe Railway and Great Northern Railway docks and are in process of further development. They may be rated as safety devices, as they reduce the amount of poling required in emptying cars and pockets.

Grills on dock sides as well as railings on water side of pocket platforms are in use on Missabe Railway docks. Helmets to protect pocket runners from falling ore are in use to some extent at Great Northern Railway docks.

All the railroads concerned have made it the duty of some supervisor or other employee to follow up all matters pertaining to safety, introduce or improve safety features, investigate accidents and promulgate and revise safety rules. Periodic meetings are held for the instruction of personnel in safety rules. This action and the introduction of safety machines and devices have gradually reduced the number of accidents. However, hazards still exist and most of them are increased in wet or freezing weather and during high winds, especially when ice forms on top of the dock or the ore is partly frozen in cars or pockets.

Exhibits submitted to the Board showed the casualties in ore handlers reported to the Interstate Commerce Commission by the Missabe Railway, the Chicago and North Western Railway, and the Great Northern Railway for the period 1931 to 1940 for the first two, and the period 1920 to 1940 for the Great Northern. One exhibit showed accidents reported by the Missabe Railway excluding those due to wrenching. The exhibits also showed comparative data for all employees on each road and for track gangs and bridge and building workers. In all cases, the rate of accident per million

man-hours worked is highest for ore handlers. The reports to the Interstate Commerce Commission show only accidents which involve the loss of at least three days of work in the first 10 days after the accident. Other exhibits submitted to the Board showed the same data for all accidents and still others showed only those accidents which involve the loss of more than the "balance of turn," i. e., accidents are not included if the man reports at the beginning of his next shift. However, the Board believes that the reports to the Interstate Commerce Commission which include only accidents involving a substantial loss of time, give the fairest data for evaluating the hazards of ore handling as compared with those of the other work reported.

In view of all considerations, it is the opinion of the Board that these hazards, combining as they do the hazards inherent in working at considerable heights, those due to the uncertainty in the flow of ore while being punched, and those due to hand-trapping cars, are somewhat greater than those encountered in ground jobs such as track gangs and probably greater than those encountered by bridge and building workers on the railroad.

The Board further believes that a worker near the edge of a high platform not protected by a railing must exercise continual care to avoid accident and that the ability to exercise such care and at the same time do his work well would constitute a basis for additional compensation even if the hazards of his job were not reflected in a statistical record of accidents over a period of years.

Seasonality.

The ore shipping season extends from about the middle of April to late November. In 1941 the season opened on April 6, about 2 weeks earlier than usual. In the last 5 years the length of season has varied from 118 days in 1938 to 210 days in 1940. The date when the ice goes out of the Lakes fixes the beginning of the season; the freezing of ore in the cars and in the pockets in the docks, and the hazards to transportation on the Lakes and general bad weather conditions bring the season to a close.

In years past the amount of ore shipped has varied greatly from season to season. In a year of low tonnage there are fewer men employed, and in many instances the wages received by the men who do work are less. Men are called to work each season according to their rank on seniority rosters. The working rules provide that in order to maintain their position on the rosters the men must come to work when called. Men who have been on a roster for several years do not feel free to take employment from other employers while there is a substantial chance of their being needed at the ore docks. A substantial number of the men have a full season of work even in the poor years. Many

of them, however, earn a very low annual wage when the ore shipments are low. Additionally, there are many men employed for the first time in the good years who do not have a full season's work and may not come back to the ore docks in subsequent years. The meager annual ore dock earnings of this group probably should be excluded in determining the annual wage of regular ore dock employees. In addition to their earnings on the ore docks, the employees receive unemployment compensation if they do not have other winter employment and a number of them are given some winter work by their railway employers in the bridge and building departments, or in other departments. Some men obtain employment elsewhere.

The ore dock work is more seasonal than that of any of the classifications of employment (other than extra gang work) which either side claimed to be comparable to the ore dock work. Extra gang workers on the railroads are by definition seasonal casuals and their annual wage is not significant for comparison purposes. Section labor and maintenance-of-way work is to some extent seasonal as is bridge and building work, but not as seasonal as the ore dock work. None of these comparable employments are subjected to the full extent to the uncertainties which are established for ore dock labor by the fluctuation in amount of ore shipped each season. It may be expected that for a number of seasons to come ore shipments will be at a maximum, and for the near future it appears likely that the within-season fluctuations in the amount of work will be less than in some past periods.

Many carefully compiled and helpful exhibits bearing on this question and the other aspects of the comparative wage claim were submitted to the Board. Most of these came from the employers, to whom the figures are more easily available, but the Board wishes to commend both sides for their full presentation of the available data.

Ore dock pay compared with pay for other labor.

The Brotherhood presented evidence of wages paid in municipal and waterfront employments in Duluth. The employers presented evidence of comparative wages in various other industries in Duluth and of wages paid to municipal and private industry employees in Ashland and Escanaba. Some of these wage scales would tend to indicate that the rate of 62½ cents per hour is somewhat in excess of the rate for comparable employments and others of these scales suggest that the 62½-cent rate is somewhat too low measured on a comparable scale after making allowance for special aspects of the ore dock work. This evidence is inconclusive.

There was a substantial amount of evidence of the rate of pay of other classes of railroad employees. This showed that wage increases to the ore dock workers in 1937 to some extent improved their po-

sition in relation to all other railway laborers. Also, that increases to these and the other railway laborers beginning in 1934 improved to some extent the position of all railway labor in relation to the cost of living. The carriers urged that this evidence established conclusively that 62½-cent per hour rate is more than sufficient to compensate the ore dock workers for the disadvantages of seasonality and lack of work in some years and for the elements of skill and hazard to the extent that these elements are involved.

Conclusion as to claim for comparative readjustment of wage scale.

It is clear in the view of the Board that the ore dock workers are entitled to differentiation from otherwise comparable workers because of the factors of seasonality, within-season fluctuation and hazard; also that the pay of the ore dockmen at 62½ cents per hour made some allowance for this differentiation as far as other railway labor is concerned. It is impossible to determine with complete accuracy what the amount of the differential should be. The space in this field between clear minimums and clear maximums must be spanned either by agreement or arbitration or other enforceable adjudication. The facts available to this Board warrant the conclusion that there existed in 1940 and 1941 a reasonably negotiable and arbitrable question as to whether there should be an upward readjustment of the ore dock workers' pay, considering rates in comparable activities and the special aspects of the ore dock labor. In view of the disposition of the case by agreement it would be inappropriate for the Board to make a more definitive finding relative to this aspect of the case, and indeed it appears to the Board questionable how far a Board, whose decision is not enforceable, should go in attempting to recommend a specific change in wages where there is no exact way of ascertaining on a scientific basis just what the wage should be, and where the evidence does not establish a clear injustice because of a greatly too low or too high a wage. (See sec. II of this report.)

Claim for an increase based on presently changing conditions.

There has been a slight increase in the cost of living measured on the generally accepted scales. It appears likely that the trend of living costs will continue upward.

Wage increases are being granted in many industries which have been stimulated by the defense program. The ore industry is clearly such. The exact amount which labor in a given field should be paid cannot at all times be determined solely by comparison with past periods or comparable fields. In some periods of good business the fact of increased capital returns may justify an increase in the wage scale. In the ore-handling industry, as in most others, there have been substantial reductions in wages when other factors have permitted or other trends have been downward.

Labor may properly seek a relative improvement in its return from industry in relation to the returns on invested capital. Without at this point considering how far in the presence (or absence) of national emergency, and in view of the available machinery for adjustment, direct action would be justified by any or all of the factors discussed, the Board finds that at the time of the hearings before it there was a question which was open to negotiation and arbitration, of what increase, if any, should be granted the ore dock workers because of these factors, viz, (1) increase in other industries stimulated by the defense program; (2) realized and prospective increases in living costs; (3) the desire of the workers to increase their net earnings along with a possible increase in the net return on capital, and (4) their desire to improve their position in the division of gross earnings vis a vis capital. The evidence before this Board establishes that the employees were entitled to some increase in wages because of factors (1) and (2). The exact amount of such an increase is not subject to ascertainment as a matter of certain fact; and the adjustment by negotiation has made it inappropriate for this Board to attempt to say what compromise would be expedient, even if in any case an Emergency Board should undertake to make such a finding. (See *supra* and sec. II post.) The Board has not investigated or considered factors (3) and (4).

II

The appointment of an Emergency Board in this case never should have been made necessary. The fact that it was necessary indicates a situation which this Board feels should be seriously considered by management and organization alike before it is manifested in other cases in which the outcome may be less fortunate. In order to make clear this possible tendency and to explain its implications, it is necessary again to recur to the history of the Railway Labor Act and the obligations assumed by both management and the organizations at the time that law was enacted.

The Railway Labor Act of 1926 was the result of a joint effort by the railroads and the several organizations representing the employees, to secure from Congress permission to settle their differences among themselves in their own way through agencies and methods devised by them and authorized by the act. The act differed radically from any preceding law governing their relations, and was devoid of coercive features. Its provisions, throughout, were permissive only, except for the following single obligation:

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions and to settle all disputes—in order to avoid any interruption to interstate commerce growing out of any dispute between the carrier and the employees thereof.

Both the carriers and the organizations represented to Congress that they would, if allowed the freedom of action permitted by the act, conscientiously observe, in letter and spirit, this mandate, and that through this medium would secure the benefit which the paramount interest of the public demanded, i. e., the continuous flow of interstate commerce, uninterrupted by labor disputes. How well justified they were in undertaking this obligation is strikingly shown by the history of the relations between the labor organizations and the railroads for a period of over 15 years. During that period, though the lives of millions of employees and their dependents have been intimately influenced by agreements and by the settlement of disputes under the sanction of the act, and while many billions of dollars in railroad investments have been substantially affected thereby, the act has almost uninterruptedly achieved the results which were promised for it.

The successive methods for securing this industrial peace are: (1) The making and observance of agreements, (2) the settlement of disputes by conference, (3) the reference of proper cases to the National Adjustment Board (not here pertinent), (4) the invocation of the Mediation Board, (5) voluntary submission of a dispute to arbitration, and (6) the appointment of an Emergency Board whose function is to investigate promptly the dispute, and report its findings to the President. It was anticipated that these Boards might generally find and develop the opportunity to mediate the controversy under investigation, and this has, in fact, occurred in many instances.

The methods of settling disputes provided by the act should have been, and ordinarily would have been, effective in settling the dispute presented to us long before it reached an emergency board or even an arbitration status. As hitherto shown there was a difference of 2½ cents per hour between the parties. It is inconceivable to this Board that the representatives of the two conflicting interests, who appeared before us and showed convincingly their fair-mindedness and genuine desire to make a settlement, could not speedily have settled this difference had they all been free to act. The representative of the Brotherhood, however, felt that his hands were tied by the instructions of the employees, and that he could do nothing less than insist upon the establishment of a minimum 10-cent increase.¹ He further felt unable to accede to the Mediation Board's suggestion

¹ P. 142, Transcript: "They are not like some other workers that will place their case in your hands and let you exercise what you feel would be the best judgment. These men have from the beginning in their organized effort retained the mandatory control of certain ratification on certain final conclusions on their decisions and throughout this we have tried to give to the employers the correct view of the men, realizing all the way through that the views of these men were materially different from the views of other railroad employees."

to arbitrate.² Consequently, the only way to prevent an immediate strike was the appointment of an emergency board. An emergency board, however, obviously cannot make a finding of the exact amount by which wages should be adjusted. It was not anticipated by Congress that any question of this kind would reach an emergency board, for it had been pointed out to Congress that the Board could, in any such contingency, give little help.

As stated by the representative of the very Brotherhood here involved (and also of many others) to the congressional committee.

But if it were a question as to whether an increase of 2 cents an hour or 3 cents an hour or 4 cents an hour was desirable or not, a board of that kind could hardly hand down a decision that would be of any particular effect. It would be too much a matter of opinion. They might say that some increase was desirable. They might say this increase was not unreasonable and this was. They might express a general opinion, but as far as going into the details of it, like a patent litigation, it is quite impossible to conceive that such a board, so organized, could have any effect in writing a decision as though they were to settle a broad economic question in one decision. That is the trouble with the Labor Board.³

Where, then, in the carefully devised sequence of remedies, mutually agreed upon by the railroads and the organizations as sufficient to protect the public interests, should this case properly have been settled? Mediation had failed, and since the exact amount at which wages should be fixed cannot be scientifically determined, a specific recommendation of an emergency board, being unenforceable, would have offered no certain solution. Only one other expedient had been provided and that expedient was the one which in the opinion of this Board had been devised to meet exactly the requirements of this controversy—arbitration.

Neither side is obliged to accept arbitration—the law provides that it cannot be imposed except by the voluntary consent of both parties and that a failure to agree to arbitration must not be construed as a violation of any legal obligation. This provision of the law, although it has been invoked by carriers, upon occasion, as well as by the organizations, was originally insisted upon by the latter. Through the years, labor has, with good reason, jealously guarded its most effective weapon—the right to strike. Furthermore, its experience with arbitration under the Railway Labor Board, preceding the adoption of the Railway Labor Act, had not been satisfactory. While the provisions of the present act carefully guard the rights of those who have submitted to arbitration, occasions arise

² Pp. 141-2, Transcript: "The Railway Labor Act provides an option for arbitration or not, and the employees and the representatives of the employees, upon considering the whole picture and, as we termed it at one time, the gamble that went with arbitration, wherein the employees had no recourse after signing an arbitration agreement but to accept the award of the arbitrator, made it in the wisdom of the employees and their representatives undesirable to arbitrate the question."

³ Hearings before House committee, 69th Cong., on H. R. 7180, p. 192.

wherein either party may have a thoroughly justified unwillingness to be placed, without further recourse, in the hands of the one (or two) neutral arbitrators provided for in the act. Such a situation may occur when one or more great principles are involved, as, for example, when it was proposed that labor make the first sacrifice to remedy financial ills from which the railroads were suffering. An examination of the Emergency Board reports shows that matters of principle have generally been involved where arbitration has been rejected, and that where this has not been the case the Boards have indicated the course which should have settled the matter in controversy before reaching an emergency board. The right of refusal to arbitrate, given by the act, must be considered with reference to the avowed objects of the act and the permissive character of all its provisions except the all-embracing duty to exert every reasonable effort to settle all disputes in order to prevent any interruption to interstate commerce. The reason given in the present case for refusing arbitration was that the employees were unwilling to be bound by a definite award which would foreclose the right to strike. They felt and were informed that they had an option, with no limitations, either to arbitrate or to await the findings of an emergency board, while retaining the right to strike if those findings were unsatisfactory. This view takes an advantage, not intended by Congress, of a provision placed in the law for the protection of the organizations in matters of basic principle. That Congress was led to expect that arbitration, and not emergency boards, would be the final method of settling cases like the present which could not be mediated, it made clear by the testimony before the congressional committee hitherto quoted. The same representative further stated: ⁴

I do not think you will have very many disputes that will ever go to emergency boards. I hope I will not see any, but I do not want to be too optimistic.

* * * * *

The break-down of arbitration has occurred in places where, for some reason or other, the parties got the notion they were not getting a fair deal in arbitration.

Now, it is to protect against such results that provisions have been written into this law to insure fairness of arbitration, to insure the fairness of the selection of the arbitrators, and to insure the fairness of the procedure, *and with this improved procedure and protection we believe that there will be a recourse to arbitration in practically every instance where the mediators cannot bring about an agreement.*

In this connection, without fully adopting them as our own, we call attention to the words of an Emergency Board of 1931:

The refusal to arbitrate was, of course, within the legal right of the carrier. Legally, this refusal could be made for any reason, good or bad, or without rea-

⁴ Hearings before House committee, 69th Cong., on H. R. 7180, pp. 102, 103.

son. But the moral right to exercise this legal right is dependent on the reason for it.⁵

While there is no legal obligation to submit to arbitration in any case, it is the view of this Board that repeated failure to do so in such cases as this must eventually result in defeating the purpose of the law. Especially at a time of national emergency it is of the highest importance that all available means be utilized for the peaceful settlement of labor disputes to the end that direct action and coercion or the appearance of coercion be avoided. The Railway Labor Act provides these means as its record shows. Its continued success depends upon the consistent exercise of cooperative effort in the spirit of the law and not a merely literal compliance with its terms.

It was wisely and prophetically said by the representative of the organizations when urging the enactment of this law:

The most valuable feature of this law is the fact that it represents the agreement of the parties, that they will be under the moral obligation to see that their agreement accomplishes its purpose, and that if enacted into law they will desire to prove the law a success.⁶

And further:

If the spirit which now exists changes, if the parties distrust each other's good faith and they do not work together, this bill contains very little in the way of compulsion to prevent them from producing disorder and discord instead of harmony.⁷

Our object is to recall and to emphasize again to both the carriers and the million and more men in railway employment (who, with their predecessors and officers, in genuine cooperation with the carriers, have made the Railway Labor Act for more than 15 years a signal success) the unique character of that act. It is not an ordinary statute, prescribing their legal rights as against each other. It is a grant of self-government, good for as long as it accomplishes its primary object, the uninterrupted flow of interstate commerce, and revokable when it fails to obtain that object.

Respectfully submitted.

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WILLIAM H. TSCHAPPAT,
ARTHUR E. WHITTEMORE.

⁵ Findings Emergency Board appointed April 6, 1931, in Louisiana & Arkansas Ry. Co., etc., p. 9.

⁶ Hearings before House committee, 69th Cong., on H. R. 7180, p. 21.

⁷ Hearings before House Committee, 69th Cong., on H. R. 7180, p. 51.