Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED MAY 29, 1946, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT AS AMENDED

To investigate an unadjusted dispute concerning rates of pay between the Hudson and Manhattan Railroad Company and certain of its employees represented by the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen.

NEW YORK, N. Y.

JUNE 20, 1946

No. (37)

LETTER OF TRANSMITTAL

NEW YORK, N. Y.,

June 20, 1946.

THE PRESIDENT,

The White House.

MR. PRESIDENT:

The Emergency Board created by you May 29, 1946, pursuant to section 10 of the Railway Labor Act to investigate an unadjusted dispute concerning rates of pay between the Hudson & Manhattan Railroad Company and certain of its employees represented by the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted,

JOHN A. FITCH, *Chairman,*

ARTHUR E. WHITTEMORE, *Member,*

RUSSELL WOLFE, *Member.*

INTRODUCTION

The emergency which led the President to issue the following executive order arose from the announced intention of the employees of Hudson and Manhattan Railroad, represented by the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen to strike because the carrier had declined to put into effect the 18½ cents an hour wage increase arrived at through a conference at the White House between the President and representatives of the several Carriers Conference Committees and of the two brotherhoods. The employees of the Hudson and Manhattan Railroad engaged in carrier operations number about 1300. The employees represented by the two brotherhoods, all of whom are on strike, number 675.

EXECUTIVE ORDER 9731

Creating an Emergency Board to investigate a dispute between the Hudson & Manhattan Railroad Company and certain of its employees

WHEREAS, a dispute exists between the Hudson & Manhattan Railroad Company, a carrier, and certain of its employees represented by the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen, Labor organizations; and

WHEREAS, this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS, this dispute, in the judgment of the National Meditation Board, threatens substantially to interrupt interstate commerce within the states of New York and New Jersey, to a degree such as to deprive that portion of the country of essential transportation service;

NOW, THEREFORE, by virture of the authority vested in me by Section 10 of the Railway Labor Act, as amended (45 U. S. C. 160), I hereby create a board of three members, to be appointed by me, to investigate said dispute. No member of the said board shall be pecuniarily or otherwise interested in any organization of railway employees or any carrier.

The board shall report its findings to the President with respect to the said dispute within thirty days from the date of this order.

As provided by section 10 of Railway Labor Act, as amended, from this date and for thirty days after the board has made its report to the President, no change, except by agreement, shall be made by the Hudson & Manhattan Railroad Company or its employees in the conditions out of which the said dispute arose.

HARRY S. TRUMAN.

THE WHITE HOUSE,
May 29, 1946.

On June 4, 1946, the President appointed the following members of the Emergency Board: Arthur E. Whittemore, Russell Wolfe and John A. Fitch, defining their duties in the following letter addressed to each of them:

> You are hereby designated and appointed, under the authority conferred by the Railway Labor Act as a member of an Emergency Board created by Executive Order of the President dated May 29, 1946 to investigate and report to me respecting the dispute existing between the Hudson and Manhattan Railroad Company and certain of its employees, and you are hereby especially authorized to act in conformity with law and my Executive Order.
>
> The Board will organize and investigate promptly the facts as to such disputes, and on the basis of facts developed, make every effort to adjust the disputes and report thereon to me within thirty days from the date of the Executive Order.

In accordance with the foregoing, the board met in New York City on June 6 and organized by electing Mr. Fitch as chairman. Hearings were begun on that day and were held each day, excepting Sunday, June 9, through Tuesday, June 11, 1946.

At the opening of the hearing on June 6, the following appearances were entered in behalf of the Hudson & Manhattan Railroad Company: Robert A. W. Carleton, chairman of the board and president; John E. Buck, vice president and general counsel; J. C. Van Gieson, general superintendent; M. J. O'Connell, assistant general superintendent; E. M. Blake, superintendent of ways and structures; R. R. Potter, superintendent of car equipment; J. J. Fritsch, comptroller. No appearances were entered in behalf of the employees. After calling for appearances, the board recessed from 10:40 a. m. to 3:30 p. m. Immediately after declaring the recess, it caused letters to be delivered to W. E. Skutt, general chairman on the Hudson & Manhattan Railroad of the Brotherhood of Locomotive Engineers and M. A. O'Leary, general chairman on the Hudson & Manhattan of the Brotherhood of Railroad Trainmen. The letters asked these representatives to meet informally with the board in order to discuss the situation and to give the board an opportunity to invite them to attend the hearings. On the evening of June 6, the board sent a telegram addressed to Alvanley Johnston, grand chief, Brotherhood of Locomotive Engineers, and A. F. Whitney, president, Brotherhood of Railroad Trainmen, asking their cooperation in the direction of discovering a way by which the striking employees' representatives might attend hearings before the board. To this the brotherhood chiefs replied, stating their position as hereinafter set forth.

Reconvening at 3:30 on June 6, the board called for appearances from the Brotherhoods. There was no response to this call. The

chairman then stated in behalf of the board that the employee representatives would be welcomed at any time, if, during the course of the hearings they should wish to appear and testify or cross examine. At the close of the session on June 11, the board announced that if any additional parties in interest were present and wished to be heard the opportunity to do so would be afforded. To this there was no response.

Because of the mandate from the President to investigate the dispute and to make a report, as well as because of the public interests involved, the board felt that it had no choice but to proceed with the hearings even though the representatives of the employees were not present. Accordingly it received testimony from the representatives of the railroad and at the sessions of June 10 and 11 the board members themselves cross-examined the witnesses for the railroad.

On June 17, 1946, this board was advised by headquarters of the two Brotherhoods in Cleveland, Ohio, that Mr. Ray T. Miller, counsel for the two Brotherhoods, would appear before it for the purpose of making a statement. Thereupon a further hearing was set for June 18, 1946, at 10 a. m., at the George Washington Hotel. At that hearing Mr. Miller stated fully the contentions hereinafter summarized, to the effect that Hudson & Manhattan was entirely foreclosed by the Erickson Board report, and the subsequent Presidential settlement; also that the pending strike is legal because the employees of Hudson & Manhattan have already been subjected to the moratorium required under section 10 of the Railway Labor Act on account of the present dispute, which he asserted to be a continuation of the original dispute.

GENERAL BACKGROUND OF THE CASE

On July 24, 1945, the general committees of the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen served notices on virtually all railroads for a general wage increase of 25 percent with a minimum increase of $2.50 per basic day. Other proposals involved additional wage adjustments and certain changes in rules. The employees represented in this national movement numbered slightly over 200,000. Conferences were held between the Brotherhoods and the class I carriers for several weeks in November and December. On December 13, 1945, the carriers invoked the services of the National Mediation Board. Mediation efforts failed, and, the Brotherhoods having rejected a proposal of arbitration, a strike vote was taken as of February 1, 1946, resulting in a vote overwhelmingly in favor of a strike. Because of this threat of an interruption in interstate commerce, the President appointed an Emergency Board which met in Chicago on March 12, 1946, and rendered a report on April 18, recommending a general wage increase of 16¢ an hour on all railroads

in the dispute. Later, as a result of a conference held at the White House, an additional 2½¢ per hour was recommended and an agreement for an increase of 18½¢ was entered into between the class I carriers and the Railroad Brotherhoods. The present case involving the Hudson & Manhattan Railroad grows out of the situation thus developed.

The Hudson & Manhattan Railroad Company was included in the list of carriers certified to the Emergency Board which met in Chicago in March and April 1946 (hereinafter referred to as the Erickson Board), counsel for the Hudson & Manhattan appeared before it, challenged its jurisdiction, and, saving its rights, presented its case on the merits in the short time available.

DEVELOPMENT OF THE ISSUES ON THE HUDSON & MANHATTAN RAILROAD

Representatives of the Hudson & Manhattan employees presented to the management their proposals for changes in wages and rules on July 24, 1945. They were identical with the standard proposals served at that time on all railroads throughout the country by the two Brotherhoods involved in this case. They called for a wage increase of 25 percent with a minimum of $2.50 on the basic day, together with certain rules changes. Conferences took place between management and representatives of the two unions which lasted approximately a week in the latter part of August 1945. During these conferences the company asked the unions to clarify the demands for changes in the rules claiming that they were inapplicable in certain cases to the Hudson & Manhattan. Management representatives testified before this board that the union representatives consented to make such clarifications. Conferences were recessed on August 28 to enable each side to consider its position.

On September 6 and again on November 1 the railroad management wrote to the unions repeating their previous request for clarification of the rules proposals and stating that they could not proceed with negotiations until this had been done. To these letters, the management testified, they received no replies. The company then presented counter proposals; on November 1, 1945, the representatives of the Brotherhood of Locomotive Engineers and on November 2, to the representatives of the Brotherhood of Railroad Trainmen, and conferences where held with the union representatives, respectively, on these dates.

On November 3, 1945, the management received a telegram signed by representatives of the two unions reading as follows:

> Management rejection of organizations' forty-five point submission as evident by counter proposals make further direct negotiations impossible.

On November 9, 1945, J. C. Van Gieson, general superintendent of Hudson & Manhattan replied to this telegram by a letter in which he reviewed the situation and asked for renewal of negotiations.

A conference was held on November 16, 1945, attended by the management and representatives of both unions. At this conference the management proposed a recess in the negotiations until the outcome of the national movement could be known. Their testimony indicates that the unions rejected this proposal and offered instead two alternate proposals either of which the company might accept, viz.:

1. To execute a standby agreement (that is agree to be bound by the national results) or
2. To participate in the national handling of the case.

The railroad management refused to accept either of the proposals, and the conference ended with the unions stating that negotiations were concluded, there being nothing further to confer about; and with management contending that since the issues had not been clarified direct negotiations must be regarded as still pending.

Apparently no further conferences were held until February 15, 1946, when as a result of a telephone conversation between J. R. Lavin, vice president of the Brotherhood of Railroad Trainmen and one of the management representatives, a conference was held with representatives of that organization. After preliminary discussions, the conference adjourned until February 16. At that date the position of the two parties apparently remained exactly as before; the carrier calling for a recess of negotiations pending outcome of the national movement and the union demanding either a standby agreement or representation of the company by the national carriers committee.

It thus became evident that no progress was being made. At the point, according to notes of the conference kept by management representatives and read into the record at the hearing before this board,

> "Mr. Lavin stated the organization would follow through with instructions given him by Mr. Whitney (A. F. Whitney, president of the Brotherhood of Railroad Trainmen); namely, present the matter to the men for their decision."

Following this testimony the witness, M. J. O'Connell, assistant general superintendent, of the railroad, was asked to explain what Mr. Lavin meant by this statement. Replying, Mr. O'Connell said:

> "He meant he would put it up to the employees as to whether or not they want to strike to make them do it * * * When they say that 'we will put it up to the men,' they know we know what they mean." (P. 472 of transcript)

There is nothing in the evidence before the board to indicate that after this conference of February 18, 1946, there were any further communi-

cations, oral or written, between management and union representatives until the following May.

In February, as stated above, a strike vote was taken and the Erickson Board was appointed. In his appearance before that board in April, Mr. Buck, vice president and general counsel of the Hudson & Manhattan, stated that he had had no official knowledge of a strike vote among Hudson & Manhattan employees or of any decision on their part to strike. This apparently led to the first contact between union and management in a period of more than 2 months. Carrier's exhibit No. 8 is a copy of a letter to Mr. Buck, dated May 1, 1946, and signed by Mr. Skutt for the Engineers and by Mr. O'Leary for the Trainmen, in which they stated that they were officially advising that the members of their respective organizations on the Hudson & Manhattan had voted by a margin of approximately 98 percent to strike in March. They stated that the strike had been postponed on account of the appointment by the President of an emergency board (obviously referring to the Erickson Board), but that it was now scheduled to go into effect on May 18, 1946,

> "unless a satisfactory settlement can be reached between the representatives of the carriers and the organizations involved." "However," the letter continued, "we wish to make it clearly understood that any such settlement if agreed upon would not affect the strike on the Hudson and Manhattan Railroad scheduled for May 18, 1946, since your company has refused to be represented by the carriers' conference committee and has also refused to enter into a stand-by agreement."

Shortly after sending this letter the representatives of the two unions involved, according to management testimony, caused notices, dated May 4, 1945, to be posted on bulletin boards notifying their members that a strike would take place on May 18.

On May 7, 1946, Mr. Van Gieson, general superintendent of the Hudson & Manhattan, addressed a letter to Messrs. Skutt and O'Leary, replying to their letter of May 1, 1946, addressed to Mr. Buck. In this letter, Mr. Van Gieson reviewed the previous negotiations and correspondence, calling attention to the alleged failure of the organizations to provide clarifying explanations of their proposals and their breaking off of direct negotiations.

"In the light of the foregoing facts," Mr. Van Gieson continued, "it is the position of the Hudson & Manhattan Railroad Company that direct negotiations * * * are still pending and undetermined; that, contrary to the statements made in your notice of May 4, 1946, you have not made 'every reasonable and available effort' to negotiate the issues involved; and that you have not complied with the procedures

prescribed in the Railway Labor Act * * * for the disposition of disputes * * * "

For these reasons, Mr. Van Gieson stated, the company felt that it was not properly before the Erickson Board, and his letter concluded with the statement that the company is "ready and willing" to resume direct negotiations in conformity with the Railway Labor Act, "and shall be glad to arrange a mutually convenient date and time for the resumption of such direct negotiations."

Mr. Buck testified before the board that no reply was received to this letter.

On May 10, 1946, Mr. Buck addressed a letter to Harry H. Schwartz, chairman, National Mediation Board, in which he reviewed the situation as the company saw it, including the events here briefly sketched and concluded by requesting the service of the Mediation Board in the dispute "pursuant to the provisions of section 5 of the Railway Labor Act."

To this letter Chairman Schwartz replied on May 15. In this letter he stated that the Brotherhoods had refused to accept the 16¢ award of the Erickson Board and that they had announced a strike to take place on May 18. He stated further that representatives of the Brotherhoods and of the carriers were then in Washington at the President's request "attempting to reach an agreement before May 18."

Shortly after this, the White House conference took place, resulting in an agreement by the class I railroads to increase wages across the board in the amount of 18½¢ per hour. Mr. Van Gieson, general superintendent of Hudson & Manhattan, testified that General Chairman O'Leary of the Brotherhood of Railroad Trainmen telephoned him on May 27 asking what the position of the company would be with respect to this wage increase. He was told that the company had invoked the services of the National Mediation Board and that the board had assumed jurisdiction. To this Mr. O'Leary replied, according to Mr. Van Gieson, that if the company did not accept the 18½¢ formula, and withdraw its request for mediation, there would be "trouble in the making" for the company.

On May 28 a mediator was assigned to this dispute, but on May 29 the Mediation Board received notice that a strike had been ordered on Hudson & Manhattan to take effect on the morning of May 30. Because of this, mediation efforts were abandoned and the President on May 29 issued an Executive order creating this emergency board. On May 30 the strike occurred, as planned, and on June 4 the members of this emergency board were appointed.

THE ISSUES BEFORE THE BOARD

The foregoing indicates that the strike of May 30 occurred because of the failure of the company to raise wages across the board by 18½¢

in accordance with the agreement following the White House conference. While the original demand of July 24, 1945, included requests for changes in rules, it is apparent to this board that no demand concerning rules is now made.

There are two principal issues before us:

(1) Is the company bound by the Erickson Board report as modified by the Presidential adjustment so that it cannot reasonably ask this board to go into the question of the wage increase

(2) If not, what wage increase should be made effective on the Hudson & Manhattan property in the light of the Erickson report and the 18½¢ increase on the steam roads.

THE EFFECT OF THE ERICKSON REPORT AND THE WHITE HOUSE ADJUSTMENT

The company contends that the series of steps contemplated by the Railway Labor Act as essential to the processing of a labor dispute had not been completed in their case. It contends that when the Erickson Board was appointed, negotiations had not been concluded, mediation had not been invoked, arbitration had not been offered or considered, the company had not been served with official notice that a strike vote had been taken and that therefore, so far as Hudson & Manhattan was concerned, no threat of an interruption to interstate commerce had then existed such as would justify bringing that company before an emergency board.

The company asserts as to the White House conference that it did not join in the agreement then made and that that agreement is therefore not binding on it, and further that in the letter of May 1st the Brotherhoods had made it clear that they too did not intend that any national settlement should be binding on the Hudson & Manhattan.

The company also says that the 2½¢ was given in lieu of changes in the rules, and since no changes had been awarded by the Erickson Board as applicable to it, there is no basis for applying the 2½¢ to its wages.

The Brotherhoods contend that the company was in law and in fact before the Erickson Board, that the report of that board is in terms applicable so far as the wage recommendation is concerned, and that the company is therefore not entitled to have another emergency board pass on the same issues, that the report was one step in a procedure which had become applicable to the company of which the last step was the President's modification of the report and that the company is therefore not free to question the 18½¢ settlement.

On these points we find as next set forth. We think the company is right in its contentions that it is not bound by the White House adjustment. The 2½¢ increase therein provided for became effective only when an agreement embodying it was signed by the parties. The Hud-

son & Manhattan Railroad was not represented in the White House conference. No one signed the resulting agreement on its behalf.

Neither do we think that the Hudson & Manhattan was bound by this later White House agreement, made by other carriers, on the ground asserted by unions, namely, that this agreement was an addition to the Erickson Board report.

On the other hand, on the basis of reasons next stated we find that the Brotherhoods are right in their contention that the Erickson Board had jurisdiction of the wage issue on the Hudson & Manhattan property and that its report dealt with that issue.

The President had the power and right to refer the Hudson & Manhattan dispute to the Erickson Board. We do not concur in the contention of the company that the case was not ripe for that reference because mediation and other preliminary steps under the Act has not occurred.

Section 10 of the act provides:

> If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should in the judgment of the Mediation Board threaten * * * (etc.) the Mediation Board shall notify the President who may, thereupon, in his discretion create a board to investigate and report respecting such dispute * * *

It appears to us that there is nothing in this language or elsewhere in the Act which says that attempts must have been made to settle the dispute under the "foregoing provisions." The right to invoke mediation and to ask that the parties submit to arbitration is permissive. The premises for the exercise of the Presidential power are only that a dispute exists, that it shall not in fact have been adjusted and that the Mediation Board shall have found in its judgment that the dispute threatens interstate commerce to the degree stated in the Act.

The question of whether the Hudson & Manhattan was in fact dealt with by the Erickson Board can best be answered by looking at its report. The name of the company was included in the appendix of the Erickson Board report as one of those involved in the case under consideration. That board disclaimed any intention of including it in its recommendation concerning the rules issue. At page 20, at the end of the section of the report dealing with the rules submission, the Erickson Board stated that with respect to such roads as the Hudson & Manhattan, it did not have sufficient evidence to justify a finding. This disclaimer had reference to the rules issue only. It was clearly intended, therefore, that the wage award should apply to the Hudson & Manhattan.

It is obvious that successive emergency boards should not pass on the same issue in connection with the same disputes, barring material change in circumstances or other compelling reasons for so doing.

The dispute here, however, we believe to be a genuinely new dispute. The strike of May 30 we find to have been for a new demand.

The 16¢ award had been rejected. After the Nation-wide strike had occurred, the Brotherhoods made the agreement with many of the carriers, but not with Hudson & Manhattan, for 2½¢ from May 22. Preceding the 2½¢ agreement, the unions had served notice on the Hudson & Manhattan that they would strike regardless of the outcome of the national negotiations. Thus they then stood by their original demands. When they learned what the national settlement was, however, they abandoned that position and the local representatives asked the company what they intended to do about the 18½¢ agreement and said there would be trouble if the company did not adopt it. When they got a reply that they understood to be a refusal to pay the 18½¢ increase, they instituted the strike of May 30. This strike was a strike to force the adoption of the national pattern which the Brotherhoods felt was thereby established.

There was then a strong conflict of view as to whether the company was bound to do this. That issue, of course, had not been passed on before; and had not arisen before. It was an important issue. Even if the unions were sound in their contention that the company is bound by the Erickson Board report as to the issues dealt with by it, which would rearise in considering an 18½¢ increase, there still remains the question of whether the company was bound to the 2½¢ or ought to pay it. This was, we believe, clearly a new dispute to which the act applied. Therefore, in going into the existing wage question, this board is presented with a new and somewhat different issue than that presented to the Erickson Board.

The issues which are before us, which we think were passed on by the Erickson Board, are those resolved in its express or implicit findings that there should be a Nation-wide increase, that it should be not less than 16¢ and that a Nation-wide increase should apply to the Hudson & Manhattan notwithstanding its special circumstances.

The company has urged several reasons for our reviewing these issues, even if its jurisdictional point fails as we have found that it does. The company says that it had only a short time to present its case before the Erickson Board; that there are special considerations, which apply to it, which could not be adequately developed or considered by a board which had to deal with major issues for all the country's railways, and that its financial situation is so serious that it is forced to ask another board, considering only its problems, to look into the matter. It says also that since the unions refused to accept the Erickson Board report because they found it so unacceptable to them and succeeded in getting it reviewed and changed, the company, under the other circumstances stated, should be allowed to have the matter reviewed, it being recog-

nized by all that no Emergency Board report is binding as a matter of law.

It is not necessary for us to determine whether these constitute sufficient reasons for reviewing the case and arriving at a different result, since our recommendation is consistent with that of the Erickson Board. We do believe it was our duty, having been duly constituted as a board, to proceed to hear all the evidence and the contentions of the parties, and we have done so.

We have carefully considered the points made by the company on the merits, and in view of its genuinely held position as to its need and right to a reexamination, we have stated at length the reasons why we have found consistently with the Erickson Board report, and why we recommend the 18½¢ hour increase. The fact that we do this is not to be taken as indicating that we think we might have been free to arrive at a different result inconsistent with that report.

THE CONTENTION OF THE PARTIES AS TO THE INCREASES TO BE PAID BY THE HUDSON & MANHATTAN RAILROAD

The company contends that under the existing wage stabilization regulations, the amount of the total increase in wages for any job since January 1, 1941, cannot exceed 33 percent and that this will permit only slight increases on its properties. Also that even if the 33 percent is not binding in law, it should nevertheless control our discretion.

The company also contends that the work on its properties is less responsible or less onerous than on the class I and other standard style railroads to which the 18½¢ increase may apply (hereinafter for convenience called the steam roads or the standard lines) and that the existing differentials are not as great as are warranted and therefore that lesser increases on the Hudson & Manhattan, which will widen the differentials, are entirely justified.

It points to the rates of pay on the New York City subways as indicating that the present Hudson & Manhattan wages are reasonably in line with wages paid on comparable jobs.

It stresses most emphatically its financial position, saying that the very large prospective deficits in store for it require that it be not subjected to any cost which is not absolutely necessary and also justify the company in asking that any general policy indicating an increase to its employees be strictly applied, and also that even if a particular increase, such as the current 18½¢, is found otherwise to be applicable to its properties it should not be applied because of the serious financial effect of so doing.

It says also that only 16¢ could be awarded anyway since the final 2½¢ was in lieu of rules changes, most of which were not applicable to it.

The position of the employees, on the substantive issue is primarily that it is made res adjudicata by the Erickson Board decision and the Presidential settlement. On the merits, we gather that they also would assert that even if the 18½¢ adjustment has not been already determined to be applicable on this property, it should now be applied there for the reason that it establishes the pattern of an across-the-board country-wide increase for railroad employees and that the existing differentials against Hudson & Manhattan employees are unjustified and therefore ought not to be increased, and that the financial position of the carrier is immaterial.

THE EFFECT OF THE EXISTING WAGE AND SALARY REGULATIONS

The Supplementary Wage and Salary Regulations of March 8, 1946, issued by the Director of Economic Stabilization, are applicable to this case. Section 303 of those regulations authorizes the approval of any increase "consistent with the general pattern of wage or salary adjustments which has been established in the particular industry, or in the particular industry or related industries within the particular local labor market area, during the period between August 18, 1945, and February 14, 1946."

Section 305 provides that "in any case in which it finds that no applicable pattern * * * was established during the period between August 18, 1945 and February 14, 1946, * * *" an increase shall be approved which is found "necessary to correct a maladjustment which would interfere with the effective transition to a peacetime economy and which is further necessary to make the average increase since January 1, 1941, in wage or salary rates of employees in the appropriate unit equal the percentage increase in the cost of living between January 1941 and September 1945. For purposes of this section, this percentage increase in the cost of living shall be deemed to be 33 percent."

Section 308 (a) provides that "the appropriate wage or salary stabilization agency shall have the authority by regulation or general order to designate particular industries or related industries within a particular local labor market area, with respect to which it finds that a general pattern of wage or salary adjustments has been established * * * and to provide that any wage or salary increase conforming to such regulation or general order shall be deemed to be approved."

Section 308 (c) provides that "The appropriate wage or salary stabilization agency may, with the approval of the Economic Stabilization Director, give advance approval by regulations or general order to other classes of wage or salary increase."

Executive Order 9299, as supplemented, constituted the chairman of

the National Railway Labor Panel as the appropriate wage and salary stabilization agency for such railway employees as are here involved.

Under date of April 24, 1946, Hon. H. H. Schwartz, chairman of the National Railway Labor Panel, with the approval of the Economic Stabilization Director, gave advance approval of increases to employees subject to the chairman's jurisdiction "in such amounts as will not exceed 16¢ per hour * * * above straight time rates currently in effect for such employees on April 2, 1946, less the amount of any general, across-the-board increases * * * granted between August 18, 1945, and April 2, 1946, inclusive."

Under date of June 12, 1946, a like advance approval was issued by Chairman Schwartz and the Economic Stabilization Director for general increases up to 2½¢ per hour made on and after May 22.

We believe that the effect of this last order, under section 308 (c), is to permit the 18½¢ increase to be made effective on the Hudson & Manhattan lines without violation of the existing wage stabilization regulation.

As stated above, the carrier contended before us that section 305 was the controlling section, apparently on the basis that no industry pattern had been established under section 303 prior to February 14, 1946. We doubt if the orders of Chairman Schwartz under section 308 (c) had come to the attention of the carrier at the time of the hearing. We think they conclusively dispose of the contention that the industry pattern cannot be followed in this case. It may be noted in passing that the Erickson Board held that, notwithstanding the wording of the regulation, industry pattern actually established after February 14, 1946, were to be followed by and indeed were "binding" upon it.

The matter was of less moment in that case since the 33 percent cost-of living adjustment under section 305 was found by the Erickson Board to allow for a 16¢ increase to the employees of the steam roads even if the pattern of 16¢ established by the railway arbitrations was not to be followed. The Hudson & Manhattan employees, however, had received increases subsequent to January 1, 1941, in excess of these received by the steam road employees in the same period. As a result, if the rule under section 305 were operative the increase now available to the Hudson & Manhattan employees would be very much less than 18½¢ or 18 percent. According to an exhibit submitted by the company, the available increases within the 33 percent limitation range from 0 to 6 percent.

We believe that the industry pattern is not binding on us in the sense of requiring that we recommend the full amount of the pattern increase. Neither, however, is the 33 percent limitation binding on us in view of the orders of Chairman Schwartz approved by the Stabilization Director. Therefore we think that nothing in the regulation bars us from recommending whatever increase, up to 18½¢ per hour, appears to be warranted.

THE EFFECT OF THE EXCESS OF INCREASES ON THE HUDSON & MANHATTAN SINCE JANUARY 1, 1941. THE ARGUMENT FOR CHANGE IN THE WAGE DIFFERENTIAL

Between January 1, 1941, and December 27, 1943, the date of the general 9¢ increase on all railroads, Hudson & Manhattan employees had had three increases in pay. The percentage increase for them greatly exceeded that for the steam road employees who had only one increase in the same period. As of December 27, 1943, the 9¢ increase became effective on all the carriers, including eventually the Hudson & Manhattan. The differential which existed between the steam roads and the Hudson & Manhattan wages after that general increase, continued up to the date of the 18½¢ increase and the question is whether any changes in relative wages prior to that date and since January 1, 1941, justify our taking action which would in fact change the existing differential.

Ordinarily, arbitrators or fact finders assume that prevailing differentials should be continued in the absence of reasons shown to them for making a change.

In determining to what extent the steam road increase of 18½¢ should be applied to the Hudson & Manhattan, we would, therefore, in the absence of an affirmative showing of reasons for not doing so, assume that the differential existing just prior to the 18½¢ increase should be continued.

Three reasons for not making this assumption are urged by the company, or occur to us as contendable. The first is that the national wage stabilization policy does not permit it. That has been disposed of. The second is that the differential is too narrow and should be widened. We do not have sufficient evidence to permit us to go into that contention. Were we to do so, we should have to determine what differential ought to exist in the light of differences in responsibility and skill and onerousness of duties. Only a scientific job study could answer that question. The evidence before us is totally inadequate to permit us to begin to deal with it. The differentials which have existed indicate that the view has prevailed for a long time that there should be differences in pay. We note manifest differences in job content but what they would add up to in total job evaluation, we cannot say.

The third reason, as we understand it, advanced by the company for not regarding as fixed the differential of May 1, 1946, is that it is arbitrary and unfair to do this, since it means that merely because the Hudson & Manhattan employees happened to get their cost of living increases prior to August 18, 1945, they get a greater total of increase since January 1, 1941, than do the steam road employees.

On careful consideration, we think that this argument begs the question. It is true that if the wage stabilization regulation had been written

or applied differently all railroad employees might have been limited to increases not in excess of 33 percent since January 1, 1941. Actually the regulation, and action taken under it, have removed this limitation for railway employees. The present limitation applicable to them is that increases may be had by all of them up to 18½¢ per hour, dating from August 18, 1945. That takes it out of our province to determine the reason for increases prior to August 18, 1945, or whether relative changes in wages which have occurred in any particular period were in fact justified.

The period back to January 1, 1941, has significance as distinguished from any other period in the past in which the differential may have changed, only if some regulation makes that a significant period. For railway workers that period is not now relevant.

Therefore, in the absence of any showing of reasons against it, we take the May 1, 1946, differential between the steam road wages and the Hudson & Manhattan wages, as a differential which should be continued.

THE EFFECT OF THE COMPARISON WITH NEW YORK SUBWAY WAGES

Undoubtedly much of the work on the Hudson & Manhattan property is comparable to that done on the subways just as much of it is comparable to that done on certain standard lines in their suburban operations. A scientific study to realign relative wages would probably take into account both comparisons. Doubtless also the changes in wages on the Hudson & Manhattan over the years have had some relationship to changes in wages on the subways as well as changes on the steam lines.

We think that only if we were able to go into the question of whether the existing differentials properly reflect the differences in job content would we be justified in considering the existing subway wages in determining the wage now to be prescribed for the Hudson & Manhattan.

The Hudson & Manhattan employees moreover are represented by the same Brotherhoods which represent the steam road employees. It is inevitable therefore that wage adjustments which will be asked on the Hudson & Manhattan will be keyed to adjustments asked on the steam roads. This is particularly true of adjustments like the present which are demanded because of general increases in living costs.

It is important to note in this connection that one operation of the Hudson & Manhattan extends to Newark in part over tracks of the Pennsylvania Railroad and, after the trains on this run leave Journal Square Station, the employees are in law and in fact Pennsylvania Railroad employees performing the same tasks as other employees in suburban service on the Pennsylvania. A relatively small part of Hudson & Manhattan employees are in this service at any particular time, but most of

them work on this operation at one time or another. It is obvious that this circumstance is a very compelling reason for adjusting wages on the Hudson & Manhattan in the light of changes which are occurring or have occurred on the Pennsylvania Railroad.

THE EFFECT OF THE CHANGE IN THE STEAM ROAD WAGES ON THE HUDSON AND MANHATTAN CASE

We believe that in the absence of compelling reasons for not applying the rule of fair going price, the Hudson & Manhattan should be expected to pay, for the services rendered by its employees, the fair going price in the community for the work done. An important measure, perhaps the most important measure available for determining that fair going price is the steam road wage less the prevailing differential. Under all the circumstances we think that that measure should be applied now to Hudson & Manhattan wages. The question of how far its application is to be controlled by the financial position of the employer is discussed in a subsequent paragraph.

It is important to determine in applying this measure of changes in steam road wages, whether the changes are to be reflected percentagewise or on a cents-per-hour basis.

The difference on the Hudson & Manhattan of the methods of applying to it the changes in wages on the steam roads is apparent if a particular wage scale is examined. We take the conductor's scale for convenience.

Comparison of conductor's wages (per day rates)

	Trunk Line	Hudson & Manhattan	
		Transit service	Other service
Jan. 1, 1941	$7.64	$6.11	$5.68
Feb. 2, 1941	7.64	6.63	6.20
Dec. 1, 1941	8.40	6.63	6.20
Jul. 5, 1942	8.40	7.19	6.76
Jul. 6, 1943	8.40	7.51	7.08
Dec. 27, 1943	9.12	7.91	7.48
May, 1946	10.60	?	?

It will be observed that the Hudson & Manhattan rate for conductors in the joint service to Newark is $7.91. That amount is 86 percent of the $9.12 which was payable to trunk line conductors prior to the 18½¢ increase. The new daily rate on the trunk lines (adding 18½¢ per hour or $1.48 per day) is $10.60. The new Hudson & Manhattan rate, if it were still to be 86 percent of the trunk line rate would be $9.12. But if 18½¢ were to be added to the present Hudson & Manhattan rate of $7.91,

the new rate would become $9.39—a difference per day of 27½ or 3.3¢ per hour.

According to the figures given us, some of the employees on the Hudson & Manhattan receive a base rate in excess of the per hour base rate paid on the trunk line carriers. As to them, maintenance of the percentage differential would mean an increase in wages in excess of 18½¢ per hour.[1]

We do not believe, however, that such a precise calculation would be just or reasonable under the circumstances. The present policy of the country is to allow across-the-board increases on an industry or local-area basis, computed in cents per hour. This means that the percentage differential between lower and higher paid jobs is reduced throughout every industry in which such increases are paid. There is a question whether this lessening of the premium paid for higher skills and greater responsibility or more onerous work is desirable as a long-range policy. The Erickson Board expressed its view against it and there is force in what that board has said. The argument for it is, in part at least, that increases in the cost of living bear more severely on the lower paid employees since purchase of the necessities of life use a greater part of their earnings. However that may be, an attempt here to compute an increase for the Hudson & Manhattan, working in terms of the exact percentage which expresses the former relation of the Hudson & Manhattan wage to the steam road wage, would we think, in view of the general national policy now already applied on the country's railways, create an unjustified inequality of treatment between persons in the railway industry and would be so out of line with the country-wide policy as to seem unjust to Hudson & Manhattan employees. A further comparison will show the inequality we refer to. Let us assume that there is a job on a steam road which, prior to the 18½¢ increase, was paid the same rate as the Hudson & Manhattan conductor's wage, viz, $7.91. The new wage for that job has become $9.39. We see no reason why persons formerly earning $7.91 on Hudson & Manhattan should only get $9.12 under the new policy while persons formerly earning $7.91 on trunk lines will get $9.39 under the new policy.

We believe therefore that the proper way to apply to the Hudson & Manhattan the measure of the changes on the steam roads, is to add cents per hour to the existing Hudson & Manhattan wage.

THE EFFECT OF THE FINANCIAL POSITION OF HUDSON & MANHATTAN ON THE WAGE ADJUSTMENT

The Hudson & Manhattan is a privately owned carrier not controlled by any other carrier. According to the statement of its officials, no

[1] NOTE—It is to be noted that some of these employees at least are so paid and their working schedule is such that it is to be doubted if their over-all pay picture is more favorable than that of comparable trunk line employees. But the base rate is nevertheless higher.

appreciable amount of its stock is owned by any other carrier or any holding company affiliated or connected with a carrrier or carrier interests. It has no freight business as do all trunk-line carriers, and as do the Long Island Railroad and the Staten Island Rapid Transit Railway, with which the Hudson & Manhattan is sometimes compared. It does not, therefore, have the advantages of a profitable freight business to support the operations of a passenger business which could not stand on its own feet. The trunk line carriers have this freight cushion and most of them need it to sustain their passenger business. The Hudson & Manhattan also does not have access to a public subsidy such as supports the operations of the New York City subways at a very substantial operating loss. In common with many other railroads operating a commuter service, it has lost business because of the use of buses and private automobiles.

The Hudson & Manhattan does at present have income from its real estate which should be considered in determining its financial position. In 1945, after charging to such income the interest on that portion of the bonded debt which is applicable to real estate, the net of this income was $204,000 in round figures. In some other years there has been a net deficit on real estate income on the same basis. The Hudson & Manhattan annual income is nevertheless largely dependent on its fares. At present fares it is operating at a deficit and its comptroller has estimated that the 18½¢ increase, applied on the same basis as on steam roads, and granted to all its railway employees, would add to its deficit about $609,000 for the year 1946. This will be increased somewhat in subsequent years because 2½¢ of the increase did not become applicable on the steam roads until late May 1946. The Hudson & Manhattan is uncertain whether it can get fare increases from the Interstate Commerce Commission and State regulatory bodies. It points out that such fare increases as it may get will come in the future after hearings and delays. Local public agencies oppose all fare increases and the prevailing 5¢ subway fare maintains a general public opinion that local tunnel rides ought to cost no more than 5¢. Alternative methods of transportation which exist to a substantial extent indicate that fare increase almost certainly will not mean a net gain. This carrier operates only a few miles of lines, largely in tunnels. This is an expensive operation. The route to Newark is, as noted, in part on Pennsylvania Railroad tracks and the Hudson & Manhattan feels that it does not get as great a portion of the joint fare as should be the case.

The situation of the carrier is not, however, as serious as this recital suggests. It is alleviated by the fact that a substantial part of the bonded indebtedness of the Hudson & Manhattan is represented by income bonds on which the interest is payable currently only to the extent earned.

The Hudson & Manhattan has a so-called property amortization fund which it apparently may, and does in fact, use in large part to buy its own bonds. It is buying very large amounts of its bonds of both classes—the fixed interest as well as the adjustment income bonds. Each purchase of adjustment income bonds cancels all the overdue interest on the bonds purchased; hence at a price of 40 the company has been retiring its adjustment debt at about 30¢ on the dollar.

As of the December 31, 1945, the company had outstanding $27,700,000 of the adjustment income bonds. Of these, however, $4,649,000 were held in the property amortization fund leaving $23,051,000 in the hands of the public.

In 1945, at a cost of $300,000 the company acquired adjustment bonds to the amount of $885,000 par value and other bonds in the amount of $257,000 at a cost of about $184,000. If it should continue to spend about $500,000 per year to buy adjustment income bonds only and should pay for them at 35¢ on the dollar, it would retire all but say 8 million face value of its bonds before 1957. But there is no reason to suppose that a price of 35 will prevail. If the price of the bonds should further decline the same expenditure or even less would suffice to retire the entire issue. On the other hand, as 1957 approaches, the accumulation of over-due interest may make the bonds more attractive to purchasers, in which case the price would rise.

At present this whole set-up operates as a kind of automatic receivership. How long it will continue to serve in this way, and whether it will in fact serve to avoid default in the adjustment income bonds at maturity or only to postpone the day of reckoning we cannot determine. It seems to us, however, that because of this arrangement the existence of an annual deficit in an amount which does not produce a default in the fixed interest bonds should not cause receivership now or other immediate drastic action. For these reasons we discount very substantially the claim that the prospective annual deficits are a reason for withholding a justified wage increase.

The company has estimated its results for 1946, based on applying the 18½¢ normal wage adjustment[2] for all its railway employees. This shows a deficit for the year of $1,256,279.23. This figure includes an item of net loss due to the strike (estimated for only a part of the strike period) of about $174,000. Eliminating this figure for strike loss, but extending the 18½¢ increase for a full year, other factors remaining the same, the annual deficit would be about $1,116,000. This is with the inclusion, as a cost item, of the full interest on the adjustment income bonds. The amount of this item is $1,155,017.50. That is to say, the earnings which would remain after increasing the wage rate by 18½¢

[2] Sixteen cents from Jan. 1, 1946 and 2½¢ more from May 25, 1946.

and after paying the interest on the fixed interest bonds in full would be $41,000 more or less.

It is clear, therefore, that the 18½¢ wage adjustment will put this company in a very tight position. For 1946 at least, it will fail to earn even its fixed interest. But counsel for the company believes that in that situation it can properly pay its fixed interest to the extent not earned, from its property amortization account. Nothing before us indicates that it cannot do so.

We do not suggest that the company ought for a long period to draw on its property amortization account to pay interest. We do not undertake to say what it ought to do with this account. But taking the situation as we find it, we observe a very substantial fund by means of which the company may apparently, and does, relieve itself from bond burdens which would otherwise be severely embarrassing. In determining the effect of the wage increase we must assume the continuance of the existing policies in this respect, an assumption which is supported by the company's statements about the fund in its 1945 annual report.

Whether it does or not, we come to the question of whether those employees ought to take less than the full increase because of the financial position of the employer.

We recognize that in some cases it is in the employees' interest to make a contribution as a means of preserving a business which would otherwise disappear and where other jobs are not surely open to the employees. Whether such a contribution is to be made by them should, we suppose, in most cases at least, be left to their determination. In this case the business which is losing money is performing a public service. If we assume, as we doubtless should, that there is a private interest in the employees on the Hudson & Manhattan in having the service continue, we must also assume here, and in fact we find, a strong public interest to the same end. Certain of the operations of the Hudson & Manhattan, if not all of them, are necessary to meet the public demand for rapid transit between New York and New Jersey and along both banks of the river. Under these circumstances we doubt if the situation will ever so develop that the employees should be asked to determine whether they will accept a wage sacrifice to keep their jobs. The public interest is the dominant one. The employees should not be expected to sacrifice a part of their pay to serve the general public interest, any more than are venders of steel rails or tickets or railway cars.

We believe, therefore, that in its present aspect, this is not a case wherein less than otherwise proper wages should be paid because of the financial situation of the carrier.

THE 2½ CENTS IN LIEU OF RULES CHANGES

It is true that it had not been determined by the Erickson Board what if any changes should be made in rules applicable to Hudson & Manhattan. That report left it to the parties to negotiate on the subject of rules. We believe that the 2½¢ is a reasonable exchange for the waiver of the likelihood of rules changes on the Hudson & Manhattan. The changes which would in fact have been negotiated on the Hudson & Manhattan if the Erickson report had not been superseded by the White House conference, might have been somewhat less or more burdensome to it than were the changes recommended by the Erickson Board report to the steam roads. It is sufficient to find that on the Hudson & Manhattan a real prospective burden has been removed by the postponement of rules demands for a year. It follows, therefore, that the different position of the Hudson & Manhattan rulewise is not a valid reason for withholding the 18½¢ increase from its employees.

WAGE RECOMMENDATION

The foregoing discussion leads inevitably to our recommendation that the 18½¢ increase be made effective on the Hudson & Manhattan property on the national basis, viz, 16¢ per hour for hours worked since January 1, 1946, and 2½¢ per hour for hours worked since May 22, 1946.

SOME COMMENTS ON SPECIAL ASPECTS OF THIS CASE

Our investigation has been carried on under unusual circumstances. Several aspects of the case call for something more from this board than a mere report of the facts.

THE REFUSAL OF THE UNIONS TO NEGOTIATE PENDING THE NATIONAL SETTLEMENT

The proposals submitted by the Brotherhoods to this local electric railroad were drawn by them for application on the main trunk line railroads. The Brotherhoods, according to the testimony of the company, first agreed to discuss with the management the application to the Hudson & Manhattan of the numerous demands for changes in the rules and then refused to do so. The inapplicability of many of the proposed new rules and reasonable doubt as to the applicability of others of them made discussion clearly necessary if collective bargaining between this carrier and its employees was to go forward.

When the company presented to the unions counterproposals their representatives refused to consider them and declared that these coun-

terproposals in themselves constituted a rejection of the union's demands and that as a result further negotiations were "impossible."

We understand that this attitude on the part of the unions was not due to stubbornness or animus directed at this employer. It was doubtless deemed to be a necessary corollary of the decision of the Brotherhoods to present a united front throughout the country in pressing for new wage and rule demands. We take no position on this question, but it does not seem inconsistent for such policy to prevail for matters of general concern and for collective bargaining to progress independently on individual specialized properties, such as this, to dispose of purely local questions.

Furthermore, we think the serious financial problems of the Hudson & Manhattan may furnish adequate support for the contention of the company that the labor contracts for its employees should have independent consideration regardless of a general policy for national negotiations.

THE STRIKE OF MAY 30TH SHOULD NOT HAVE OCCURRED

We say this having fully in mind the feeling of the unions that if they withheld this strike they would be twice subjected to the moratorium of section 10 for the same dispute. We do not think that this was in fact so, as has been stated. But even if it were so we think the strike should not have occurred. We recognize also that the employees felt that they were being imposed upon, but even if that view had been justified, we think action should have been taken to avoid the strike.

The merit of the Railway Labor Act has been stated many times. The absence of compulsion upon either employer or employee is noteworthy. In exchange for the preservation of the right to strike in the aggravated case, the employees were made subject to the obligation to delay the strike action until the nature of the alleged aggravation could be discovered. The basic premise is that the American people are fair and reasonable and intend that all citizens, and working men and women in particular, shall have a fair and square deal. The Act is sound in its assumption that if the facts are disclosed there is great likelihood that the fair and square thing will be done. But in order for public opinion and the general intendment of fair dealing to become effective, time must be taken to ascertain and make known the facts.

The worth of any law or constitutional principle is really tested only by the aggravated case. The Supreme Court has pointed this out in its opinions upholding freedom of speech and religion.

It is particularly important in a time like the present to demonstrate that a noncompulsive law, built on the concepts of balancing rights against responsibilities and preserving the maximum of freedom of

action, will work, not only in the easy periods, but in times of stress and crisis and misunderstanding and aggravation. Such are the times when the particular form of the law is of great importance.

We recognize the difficulties of the situation which existed but we think that those difficulties imposed on some one in authority in the Brotherhoods the obligation to explain not only the terms of the Act and its purpose, but also why the employees would not be prejudiced by the delay involved in the appointment of this Board. In fact no prejudice to the employees should result from delay in such a case as this. The wage increase can be paid retroactively. If the employees deem the results of public intervention inadequate from their point of view their right to strike can be exercised thereafter without impairment.

We speak as persons who distrust proposals for compulsion and prohibitions as means of overcoming difficulties which have arisen in the field of employer-employee relations. We believe it is greatly in the interests of the employees subject to the Railway Labor Act to help to make it work as intended.

As to the double moratorium point, it is true that the unions have become subject to two periods of delay because of matters growing out of their original demands.

But, as stated earlier herein, we believe that the strike of May 30 was for a new demand, and that there had then arisen a new dispute between the parties which had not theretofore been passed on. We think it would defeat the purpose of the Act to hold that its provisions cannot be invoked whenever in the course of a wage controversy a strike impends and new questions have arisen which require answers in order that the fair and just thing may be done.

It has been contended before us that the appointment of this board was unauthorized and that there was nothing before this board, or nothing on which it could properly act. We have found on this issue that there was a new dispute fully warranting the President in invoking the provisions of section 10 of the Act. If this conclusion is sound, it follows that the provision of that section prohibiting change in position by either party for a stated period after the creation of the board, was violated by the strike of May 30, 1946, and that the employees have not been subjected to a double moratorium in any sense which would be inconsistent with the provisions or the intent of the statute.

THE ATTITUDE OF THE COMPANY

As stated earlier, one of the company's principal contentions in support of its claim that it should not have been haled before the Erickson Board was the alleged failure of the employees to follow through on the series of steps provided for in the Railway Labor Act for the settlement of disputes. These steps involve negotiation, mediation, proposal of

arbitration, strike vote, and emergency board. The company asserts that the unions failed to act in conformity with provisions of the law because they broke off negotiations and did not request mediation. The unions consequently never arrived at the point where arbitration could be offered, but took a strike vote and eventually went on strike. The company, commendably sought negotiation of the existing differences. As late as May 7 the general superintendent of the company was still asking the employees to set a date for a resumption of negotiations. But it cannot be said nevertheless that the company seasonably availed itself of the opportunities for adjustment afforded by the Railway Labor Act. The procedures outlined in that Act are not for the employees alone to follow. Section 5 of the Act, under which the company finally on May 10 invoked mediation, provides "The parties, or either party to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board * * *" Representatives of the company indicated in their testimony before the board that they consider it unusual for a carrier to request mediation prior to notice of a strike vote. It is clear, however, that they could have taken that step at any time, and in view of what they knew of the over-all situation, we think, they should have done so. For a period, of course, after the unions said that further negotiations were impossible the railroad might reasonably have bided its time in the expectation and hope that the union later on might change its mind; but the unions did not indicate any change of mind in the months that elapsed after November 3, 1945, and in February 1946, this company knew that the unions were contemplating a strike. In spite of that knowledge the company took no action and even maintained the fiction that they had no knowledge that a strike was in the offing because no official notice had been served upon them.

We do not know whether an attempt on the part of the company to invoke mediation and other National Mediation Board assistance would have changed the result in view of the apparent firmness of the union's decision to maintain a united front and not negotiate separately. We believe however that the unions would have been hard put to justify, even on their own premises, the failure to clarify reasonably the rules demands made on the Hudson & Manhattan. We believe also that even if the prospect of adjustment seems dim it is incumbent on employers to act promptly under the Act so that all available means of resolving the impasse will be brought to bear.

We believe that the company was legally free to refrain from putting into effect the 18½¢ increase and that it acted in good faith in withholding the increase in the belief that its financial position required it to do so. But we think also that any carrier which had been before the Erickson Board and whose employees had been out as a part of the national strike must have realized that their employees would almost

surely believe that the Presidential settlement was intended to apply to them. In this situation we hesitate to suggest what might have been done by the company in late May in the direction of strike avoidance. Possibly a statement of the company's position and an undertaking to deposit the 18½¢ in escrow pending a clarification of the issues by mediation or by an emergency board would have been an available stop. We make this comment because, while we feel that the primary responsibility was on the Brotherhoods to keep the strike from developing we believe that the employer also has a responsibility to make sure that everything has been done to avoid a strike and we question whether that obligation was fully met by the company in this instance.

THE STATUS OF EMERGENCY BOARD REPORTS

Other emergency boards have stated their views that management and employees will be poorly served if emergency board reports come to be thought of and dealt with as merely intermediate steps in manoeuvres for securing new contract terms. We are in accord with their views. We recognize that there may be cases where the Board's recommendations should not be followed. The Act was drawn to allow for such cases. We do think however that failure to follow Board reports as a matter of policy, will make more likely the imposition of other procedures less satisfactory to both sides.

THE EFFECT OF THE STRIKE ON OUR RECOMMENDATIONS

We have considered whether we ought to suggest an increase in wages when the employees are, as we believe, improperly on strike and we do not think that that fact should alter our recommendations. We believe it is our task to do all that is possible in the direction of a constructive settlement of the existing dispute. We cannot believe that the carrier or the employee or the community will benefit by a prolongation of the existing impasse. This is the report which we would have made if no strike had occurred on May 30. We have felt no compulsion to the conclusion herein stated by the existence of the strike.

CERTIFICATION

In accordance with the provisions of the Stabilization Act of October 2, 1942, as amended by Section 202 of the Stabilization Extension Act of 1944, approved June 30, 1944, we hereby certify that the recommendations of this Board relating to changes in compensation are consistent with such standards now in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies and approvable for purposes of seeking rate increase relief.

JOHN A. FITCH, *Chairman,*
ARTHUR E. WHITTEMORE, *Member,*
RUSSELL WOLFE, *Member.*

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