

Report  
TO  
THE PRESIDENT  
BY THE  
EMERGENCY BOARD

APPOINTED OCTOBER 29, 1946  
PURSUANT TO SECTION 10  
OF THE RAILWAY LABOR ACT

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To investigate unadjusted disputes between the  
Atlanta & St. Andrews Bay Railway Co., and  
other carriers and certain of their employees  
represented by the fifteen cooperating railway  
labor organizations

CHICAGO, ILLINOIS  
DECEMBER 4, 1946

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(No. 43)

## LETTER OF TRANSMITTAL

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CHICAGO, ILL., *December 4, 1946.*

THE PRESIDENT,  
*The White House.*

MR. PRESIDENT: The Emergency Board appointed by you October 29, 1946, pursuant to section 10 of the Railway Labor Act to investigate disputes between the Atlanta & St. Andrews Bay Ry. Co. and certain other carriers and certain of their employees represented by the 15 cooperating railway labor organizations has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute. A digest of the recommendations is appended herewith for your ready reference.

Respectfully submitted.

JAMES H. WOLFE,  
*Chairman.*

ROBERT E. STONE,  
*Member.*

FLOYD MCGOWN,  
*Member.*

**REPORT**  
**to**  
**THE PRESIDENT**  
**by the**  
**EMERGENCY BOARD**

**Appointed October 29, 1946, Pursuant to an Executive Order  
Dated October 25, 1946, Issued Under the Railway Labor Act as  
Amended**

To investigate and report the facts as to disputes between The Atlanta & St. Andrews Bay Railway Co. and other carriers by rail and certain of their nonoperating employees represented by 15 Cooperating Railway Labor Organizations.

CHICAGO, ILL., *December 4, 1946.*

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**REPORT OF EMERGENCY BOARD APPOINTED OCTOBER 29,  
1946, PURSUANT TO AN EXECUTIVE ORDER DATED  
OCTOBER 25, 1946, UNDER SECTION 10 OF THE RAILWAY  
LABOR ACT AS AMENDED**

to investigate the facts of disputes between the Atlanta and St. Andrews Bay Railway Co. and other carriers and certain of their nonoperating employees represented by the 15 cooperating railway organizations, both carriers and organizations being named in said Executive order and to report on them to the President within 30 days from the date of the Executive order.

**INTRODUCTORY**

On October 25, 1946, the President of the United States issued an Executive order creating an Emergency Board to investigate the facts concerning 23 carriers and 15 railway labor organizations representing the nonoperating employees of said carriers, the said Executive order reading as follows:

**EXECUTIVE ORDER**

Creating an Emergency Board to Investigate Disputes Between the Atlanta & St. Andrews Bay Railway Co. and other Carriers, and Certain of Their Employees.

Whereas, disputes exist between the Atlanta & St. Andrews Bay Railway Co. and certain other carriers designated in list A attached hereto and made a part hereof, and certain of their employees represented by the 15 cooperating railway labor organizations designated in list B attached hereto and made a part hereof; and

Whereas, these disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

Whereas, these disputes, in the judgment of the National Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive the country of essential transportation service:

Now, therefore, by virtue 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 the said disputes.

Each of the carriers involved shall be given independent consideration in such investigation, and the said labor organizations shall be permitted to function as a unit in proceedings before the Board.

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 disputes within 30 days from the date of this order. The report of the Board shall contain separate and independent findings with respect to each of the carriers involved.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for 30 days after the Board has made its report to the President, no change, except by agreement, shall be made by any of the carriers involved or their employees in the conditions out of which the said disputes arose.

HARRY S. TRUMAN.

THE WHITE HOUSE, *October 25, 1946.*

List A attached to and constituting a part of said Executive order shows the carriers involved as follows:

Atlanta & St. Andrews Bay Railway Co.  
Atlantic & East Carolina Railway Co.  
Barre & Chelsea Railroad Co.  
Belfast & Moosehead Lake Railroad Co.  
Berlin Mills Railway Co.  
Columbus & Greenville Railway Co.  
East Tennessee & Western North Carolina Railroad.  
Fort Dodge, Des Moines & Southern Railway.  
Georgia & Florida Railroad Co.  
Lackawanna & Wyoming Valley Railroad Co.  
Lake Champlain & Moriah Railroad Co.  
Macon, Dublin & Savannah Railroad Co.  
Midland Terminal Railway Co.  
Missouri & Arkansas Railway Co.  
New York, Ontario & Western Railway Co.  
Port Utilities Commission.  
Quanah, Acme & Pacific Railway Co.  
Rapid City, Black Hills & Western Railroad Co.  
Rio Grande Southern Railroad.  
Rutland Railroad Co.  
St. Johnsbury & Lake Champlain Railroad.  
Toledo, Peoria & Western Railroad.  
Wichita Falls & Southern Railroad Co.

List B attached to and made a part of said Executive order reveals the labor organizations involved:

International Association of Machinists.  
International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.  
International Brotherhood of Blacksmiths, Drop Forgers and Helpers.  
Sheet Metal Workers' International Association.  
International Brotherhood of Electrical Workers.  
Brotherhood of Railway Carmen of America.

International Brotherhood of Firemen, Oilers, Roundhouse and Railway Shop Laborers.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Brotherhood of Maintenance of Way Employees.

The Order of Railroad Telegraphers.

Brotherhood of Railroad Signalmen of America.

National Organization of Master, Mates and Pilots of America.

National Marine Engineers' Beneficial Association.

International Longshoremen's Association.

Hotel and Restaurant Employees' International Alliance and Bartenders'

International League of America.

The President appointed Floyd McGown of Texas, Robert E. Stone of New York, and James H. Wolfe of Utah members of said Emergency Board.

The time fixed for the convening of the Board was 10 a. m. on Thursday morning, October 31, 1946, in room B-2, tenth floor of 32 West Randolph Street, Chicago, Ill.

The Board convened at said place on the day and hour named and organized by electing James H. Wolfe as chairman, and appointed the Acme Reporting Co. of Washington, D. C., as the official reporter.

Appearances before the Board were as follows:

For the employees: Lester P. Schoene, general counsel and Fred N. Aten, chairman of the 15 cooperating railway labor organizations and W. M. Homer, economist for the railway labor organizations represented on the properties of the carriers involved.

International Association of Machinists, H. W. Brown, international president and H. J. Carr, general vice president.

International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, C. J. MacGowan, international president, A. C. Bowen, international representative.

International Brotherhood of Blacksmiths, Drop Forgers and Helpers, Roy Horn, general president; John Pelkofer, general vice president.

Sheet Metal Workers' International Association, L. M. Wicklein, general vice president.

International Brotherhood of Electrical Workers, J. J. Duffy, vice president; R. E. Cline, international representative.

Brotherhood of Railway Carmen of America, Felix H. Knight, general president.

International Brotherhood of Firemen and Oilers, Round House and Railway Shop Laborers, George Wright, vice president.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, George M. Harrison, grand president; G. B. Goble, vice grand president.

Brotherhood of Maintenance of Way Employees, E. E. Milliman, president; Thomas L. Jones, vice president.

The Order of Railroad Telegraphers, G. E. Leighty, president; J. F. Young, vice president.

Brotherhood of Railroad Signalmen of America, Jesse Clark, grand president and C. L. Bromley, grand secretary-treasurer.

For the carriers:

C. A. Miller, vice president and general counsel, and J. P. Nye, secretary-treasurer of the American Short Line Railroad Association for the following carriers all being members of that Association;

Atlantic & East Carolina Railway Co.;

Barre & Chelsea Railroad Co.;

East Tennessee and Western North Carolina Railroad Co.;

Georgia and Florida Railroad;

Lackawanna & Wyoming Valley Railroad Co.;

Macon, Dublin & Savannah Railroad Co.;

Missouri and Arkansas Railroad Co.;

Port Utilities Commission of Charleston, S C;

Quanah, Acme & Pacific Railway Co.;

Rapid City, Black Hills and Western Railway Co.;

St. Johnsbury and Lake Champlain Railroad Co.;

Wichita Falls and Southern Railroad Co.

James N. Frazer, general counsel and K. Shealy, comptroller and T. L. Nichols, general superintendent for the Atlanta & St. Andrews Bay Railway Co.

D. P. Strickler and W. H. McKay for the Midland Terminal Railway Co.

The Berlin Mills Railway Co. appeared later during the course of the hearings by L. F. Van Kleeck, traffic manager, and the Columbus & Greenville Railway Co. by R. C. Stovall, president, and the Rutland Railroad Co. by W. E. Navin and A. A. Cree, trustees, Roy D. Plumley, comptroller and treasurer of trustees, and Edwin N Lawrence, attorney for the trustees.

The Belfast & Moosehead Lake Railroad Co., the Toledo, Peoria & Western Railroad Co., and the Rio Grande Southern Railroad Co. did not appear. A witness, James E. Hogle, appeared for the shippers of the Rio Grande Southern. Considerable correspondence between the chairman and the receiver of this latter road in the form of copies of letters and telegrams appears in the transcript (p. 1670) and a financial statement and Memorandum of Agreement approved October 24, 1946, by Hon. H. H. Schwartz, member National Mediation Board, between Cass M. Herrington, receiver, and operating and nonoperating crafts employed thereon, was admitted with conditions as Board's exhibits 46 and 47. Likewise endeavor was made to obtain appearances from the Belfast & Moosehead Lake Railroad (pp. 1670-71) and the Toledo, Peoria & Western Railroad Companies. The correspondence is shown in the transcript pages 1670 and 1684 to 1713.



The disputes on the Lake Champlain and Moriah Railroad, the Fort Dodge, Des Moines & Southern Railway and the New York, Ontario & Western Railway Companies listed in the Executive order but not listed in exhibit A, pending before the Board were settled since the order was issued.

The Board continued to hold hearings from October 31 to and including November 19, 1946, or a total of 17 actual hearing days excluding Sundays. The testimony consists of 2,052 pages of transcript and 15 exhibits of the organizations designated from A to O inclusive and 45 exhibits of the carriers numbered from 1 to 45 inclusive and 2 exhibits introduced by the Board numbered Board's Exhibits 46 and 47.

Upon conclusion of the testimony the Board canvassed the situation to determine whether there was any likelihood that the differences between the organizations and any of the carriers could be settled. The organizations acting as a unit maintained a steady contention that *every* carrier should pay 16 cents per hour retroactive to January 1, 1946, and 2½ cents per hour retroactive to May 22. The carriers, maintaining that they did not possess a present nor any immediate foreseeable financial ability to pay such amounts without assurance of a commensurate increase in traffic rates which was then entirely problematical, expressed the opinion that in view of the position of the organizations, attempts at mediation would be useless.

The Board thereupon went into executive session and carefully considered the evidence in consequence of which the instant report containing its recommendations and the reasons therefor was compiled.

### BACKGROUND OF THE CASE

The immediate dispute in the present case arises from the fact that the 20 carriers involved herein have not yet subscribed to the agreements made on April 3 and May 25, 1946, between the 15 nonoperating labor organizations, hereinafter, unless otherwise noted, called "organizations" and the 3 regional conference committees representing certain carriers which agreements provided for the payment of 16 cents per hour retroactive to January 1, and 2½ cents per hour retroactive to May 22, 1946. But the disputes stem, on the separate properties, from earlier antecedents..

In the summer and fall of 1945 all the organizations served upon the organized railroads of the country notices in a variety of terms requesting increases in wages and revision of rules and working conditions. In November 1945, in conference with representatives from the three regional carriers' conference committees, those proposals were by agreement dated November 29, unified and converted into a single uniform proposal for an increase in wages of 30 cents per hour. All rules issues were at that time laid aside with the privilege to either party of reviving them by the appropriate notices under the Railway Labor Act as amended.

With respect to the carriers represented by the three regional carriers' conference committees, an arbitration agreement was entered into, and pursuant to

such arbitration, an award was made on April 3, 1946, granting an increase in wages of 16 cents per hour, effective January 1, 1946. Although the employees were dissatisfied with the award, they accepted it as agreed and on April 4, 1946, signed an agreement putting it into effect. Under the terms of the arbitration agreement they were free to institute further proceedings. In consequence notices were then served, demanding a further increase of an additional 14 cents per hour.

Concurrently with the march of the above events demands for increases in hourly wages and changes in rules and working conditions of the 5 operating labor organizations had progressed independently in various stages through mediation before the National Mediation Board. Mediation having failed, 3 of the operating organizations, to wit, the Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors of America and Switchmen's Union of North America accepted arbitration. The other 2 operating organizations refused arbitration and in their case an emergency board was appointed. The Arbitration Board sitting on the case of the 3 operating labor organizations handed down, on April 3, 1946, an award of 16 cents effective January 1, 1946. The Emergency Board sitting on the disputes involving the remaining operating organizations, to wit, the Brotherhood of Locomotive Engineers and the Brotherhood of Railway Trainmen, recommended an increase of 16 cents an hour effective January 1, 1946. The operating organizations receiving the arbitration award started a movement for an additional raise similar to that of the non-operating labor organizations. The 2 operating brotherhoods before the Emergency Board refused to accept the recommendation of that board and a strike was called by them on all the roads in the United States in which disputes were pending. This strike-call resulted in the Federal Government taking over the railroads of the Nation on May 17, 1946. After the roads passed into Federal control the President of the United States proposed to joint meetings of the 15 non-operating labor organizations through their joint representatives, the 3 operating organizations subject to the arbitration award, the 2 operating organizations whose members were out on strike, and representatives of all the conference committees of the carriers, an additional increase over the 16 cents awarded and recommended, of 2½ cents per hour effective May 22, 1946.

Thus the 3 groups of labor organizations which had separately progressed their claims through mediation, and thereafter, had gone before separate boards, were brought together in a single effort by the President to settle the disputes. On May 25, 1946, various agreements were signed by the representatives of the carriers' conference committees, and the employees of such carriers including employees embraced within the 15 cooperating nonoperating organizations, the effect of which was to grant 16 cents increase in hourly wages effective January 1, 1946, and an additional 2½ cents per hour effective May 22, 1946, for all operating and nonoperating employees parties to the agreements. The operating labor organizations also agreed to withdraw all claims for changes in the rules and not to press such claims for a period of at least 1 year.

Two hundred and seven railroads signed the agreement thus affecting the non-operating employees on all of said roads. Thereafter negotiations were con-

tinued with carriers not represented by the 3 regional carriers' conference committees. Many of the carriers not so represented adhered to the agreements of April 4 and May 25, 1946. As to those who did not adhere demands were made on them to place into effect the 16 cents per hour increase granted by the award plus the 2½ cents per hour additional increase proposed by the President. These demands were mediated by the National Mediation Board in August 1946, with only partially successful results. For convenience we shall hereafter throughout this report refer to this 18½-cent increase with its 2 retroactive dates as the "national pattern."

The carriers involved in this dispute are mostly so-called Short Line Railroads which have refused to join in the 2 agreements. There are also 5 class I railroads involved. A reference to the matter under the above heading "Introductory" will reveal the railroads originally named in the Executive order and those which since said order have settled their disputes, leaving 20 of the carriers before this Board, three of which, as previously stated, did not appear.

### ISSUES PRESENTED TO THE BOARD

The basic issue is:

Should the "national pattern" be put into effect as to such employees represented by the nonoperating labor organizations on the 20 roads which have not adhered to the said agreements and which are now before this Board regardless of the question of their ability to pay?

or

Should the conditions on each carrier before this Board be considered and the recommendations be made according to the said conditions?

The issue otherwise stated is whether the 389 carriers, consisting of the 207 represented by the carriers' conference committees and the additional 182 which subsequently adhered to the agreement, thus established a national pattern in this case from which the 20 roads before this Board should not be permitted to deviate regardless of their present financial conditions or potentialities for survival.

Minor issues arising within the framework of the major issue above set out and incidental issues respecting jurisdiction and representation will be considered in connection with the treatment of the cases of the individual carriers in regard to which they arise.

### Contentions of the Parties in Support of Their Positions

The organizations contend:

(1) That because the wage movement which brought increases into being was in aspect and extent and in fact national, the 16 cents effective January 1, 1946, and the additional 2½ cents effective May 22, 1946, form a rigid national pattern to which all roads subject to the Railway Labor Act must conform regardless of local conditions on any road;

(2) That not to so consider it would break down intra-industry differentials and widen what are claimed to be already too great differentials between the so-

called standard rates (those generally prevailing in a region on the class I roads) and the rates on the short lines; that these differentials exist in many cases between employees doing the same work on the short lines as are done by employees on the class I roads when both sets of employees work out of the same junction point where short lines connect with Class I roads;

(3) That not to follow the so-called national pattern and make it uniform throughout the industry as a whole without exception would cause a further disparity in spots between rates for the same work in the railroad industry and nonrailroad industry to the claimed further disadvantage of the employees of the former;

(4) That the 18½ cent increase was intended to permit the employees to meet the rising cost of living and that such rise in living cost affected the employees of the rich and poor roads alike;

(5) That labor should not be asked to subsidize uneconomic roads;

(6) That the 18½ cent increase received the approval of the Director of Economic Stabilization and of the Stabilization Authority for the railroad industry as a basis for an application for an increase in freight and passenger rates and that the carriers have applied for and already obtained, in part at least, such increases which were granted in the main to pay the increased labor bill; and

(7) That on May 25, 1946, when the roads were in government control the President of the United States committed the railroads to grant the increase of 2½ cents retroactive to May 22, 1946, and, therefore, all the railroads coming under the Railway Labor Act should apply said increase and that this Board in consequence is obliged to so recommend.

The carriers contend:

(1) That the short lines have been recognized over the years as a separate segment of the railroad industry where the working and living conditions are somewhat different than those of class I railroads and that for this and other reasons a differential in wage rates has been considered as justified; that as the rates have been increased the differential in cents per hour has remained the same whereas percentage-wise it has greatly decreased;

(2) That ability to pay must be taken into consideration or otherwise roads necessary or convenient to the public even with increased freight rates which have been or may be granted and which will be necessarily limited by general regional and national considerations and by competing transportation facilities will be compelled to abandon operations;

(3) That regardless of what this Board may think as to the relevancy "ability to pay" has in these cases, it is enjoined by the Executive order dated October 25, 1946, proclaiming its establishment to give "independent consideration" to "each of the carriers involved" which must necessarily take into account the present financial conditions of the road, its future prospects and special local conditions;

(4) That there never occurred on these roads preceding national handling, bargaining on the local level as required by the spirit and implications of the Railway Labor Act as amended and that the machinery set up by the 15 cooperating nonoperating labor organizations for national handling allowed no place until

strike vote time arrived for any effective expression of views as to whether such local employees desired to conform to the national pattern.

## DISCUSSION

In the belief that it will be helpful in resolving matters hereinafter considered, we preface such discussions with a brief discourse of two kinds of labor movements initiated for the purpose of effecting a change in the rates of pay or rules.

When the movement is designed to narrow or widen the gap between craft rates on a single road or obtain a raise in a wage rate or rates or a change in the basic rate or rates on a single road for the purpose of bringing rates in line on that road or with the rates on neighboring roads or to change old or to obtain new rules or working conditions on a single road, it may be denominated a local labor or wage movement. It is clear that in such cases the negotiations will be confined to the local situation and be carried on by purely local representatives except as the general chairman may call upon the national headquarters for assistance.

If the purpose of the movement is to obtain a change in rules or a general increase in wages or change of basic wage rates throughout a region or nationally, based usually either on (a) an asserted rise in living costs or (b) relative wage situations in the railroad industry compared with rates for like work in the non-railroad industry, the movement is necessarily regional or national. That regional or national movements are contemplated by the Railway Labor Act as amended is inferable from the language used in amended section 2 (1) sixth, reading "In case of a dispute between a carrier *or carriers* and its *or their* employees arising out of grievances \* \* \*." [Italics added.] It would lead to endless and unmanageable administrative problems and near chaos if disputes which were regional and national in nature or scope were to be handled locally on each road and then take their course each separately through mediation, etc. In fact, where wage or rule changes are regional or national in nature and scope it is to the advantage not only administratively but substantively that they be handled so; otherwise it would be possible to come out with many different wage rates on many different roads resulting in a serious derangement of the whole railroad wage structure. Necessity here is the mother of invention, so that both the carriers and the labor organizations have designed means to bargain on a national level. And for this very reason in national wage movements the so-called collective bargaining on the property often has taken on a conventional form possibly amounting only to such steps as would satisfy the minimum requirements of the Railway Labor Act. The most perhaps that the employees on each road could expect at that stage would be a "standby agreement."

And as a corollary that a regional or national wage movement must be handled regionally or nationally and develop administrative machinery for such handling, we might well expect that the members of any craft in regard to which such wage movement was to be initiated would, through their representatives, preliminarily agree as to the amount to be asked and agree not to deviate on the various roads

as to such demands at least as to the initial stage. It as, in fact, testified that this was the procedure with at least some of the labor organizations. This should not mean, however, that throughout the entire procedure from predemand conferences to the stage where strike votes are taken there should not be some point at which the employees on roads in precarious financial condition should have an untrammelled opportunity to determine whether in their own interests they desire to recede from the national pattern. This brings us to a consideration of the contentions of the parties as above set out.

Before considering the contention that the national pattern should be put in effect uniformly without regard to ability to pay, we must take note of the fact that we are acting under the provisions of an Executive order of the President of the United States. This order contained a mandate not previously found in any order setting up such a Board reading as follows:

Each of the carriers involved shall be given independent consideration in such investigation, and the said labor organizations shall be permitted to function as a unit in proceedings before the Board.

It is asserted that this provision relates simply to procedure. The latter part of it stating that "the labor organizations shall be permitted to function as a unit in proceedings before the Board" would seem to lend countenance to the argument. But looking deeper it would be futile and meaningless to state to the Board that it should give independent hearing and consideration to each carrier when we would be obliged in the end to recommend unconditionally and retroactively in strict accordance with the national pattern. No such useless steps were intended. If the organizations are correct in their interpretation we would have had to go then through the motions of hearing and considering, knowing that we could only come to one conclusion.

The language in the Executive order does not mean that after an independent consideration of the conditions of each carrier we may not conclude that no exception from the national pattern should be permitted. But that would be because after freedom to come to a different conclusion our judgment was that no case had been made out which justified an exception. That is far different from holding that we are so bound by the principle of uniformity that we have no discretion. It is plain that the first part of the provision is substantive; the second is procedural.

It transpires, therefore, that we must undertake a consideration of the state of affairs on each of the carriers involved in this proceeding for the purpose of determining which, if any, should be exempt from the national pattern. And at this point it should be noted that the increases arrived at by the Arbitration and Emergency Boards and proposed by the President were arrived at after mature deliberation by disinterested parties charged with a public duty, as necessary to meet the increased cost of living, and that the proper authorities had approved such an increase in wages.

It must therefore be assumed as a basic premise that the  $18\frac{1}{2}$  cents with its retroactive dates is the minimum to which these employees are entitled. It follows that it should be paid to all employees unless the circumstances in which a road finds itself are so precarious as to in all likelihood result in a cessation of operations because financially it is unable to meet such obligation to its employees and further that if the employees do make the sacrifice there is a fair chance of its survival so its employees may continue to be given employment. We think such roads should furnish complete information fully to apprise the employees of the facts as they exist. Based upon these facts a road and its employees should be afforded an opportunity to bargain. If, after bargaining, they are able to arrive at a determination of the increases to be paid, that should settle the dispute even though the amount agreed upon be an exception to the national pattern.

Carriers, which, under any reasonably feasible plan can meet any reasonably expectable award or recommendation, should not withhold joining carrier's conference committees in national negotiations. We have come to our task having in mind in our investigation and findings regarding the carriers before us that carriers should not be encouraged to hold out. Exceptions might be made in cases where it appears that the road is really in dire or, at least, precarious financial condition, and that there will be a fair chance of its survival if its employees, whose welfare is wrapped up in the continuance of its operation, should agree to receive a lesser amount than the national pattern, after disclosure to them of the real conditions of the road with opportunity to check on the correctness of such disclosures.

It remains to consider the contention of the employees that the President of the United States, while the roads were under Federal control, made a commitment that the increases proposed by him should be put into effect on all the railroads of the United States without exception and that the labor organizations here represented acted on the assumption that the commitment would be fulfilled.

On May 25 the representatives of the three carriers' conference committees and of the operating and nonoperating labor organizations, at the instance of the President, agreed that all the carriers represented by the conference committees would put into effect as of May 22, 1946, an increase of  $2\frac{1}{2}$  cents per hour for all their employees and 16 cents from January 1, 1946. In return for this extra  $2\frac{1}{2}$  cents the operating labor organizations agreed to make no demands for rule changes for a period of 1 year.

Undoubtedly many of the representatives of the labor organizations understood that all carriers whether or not represented by conference committees would put these wage increases into effect. The record indicates, however, that only those were bound to do so who were represented at these meetings.

The 207 carriers so represented in each instance kept faith with their commitments and put the increases into effect, and 182 other organized carriers voluntarily did the same. A score of organized roads named in the Executive order have not seen fit to give the men the increases.

Because of the mandate contained in the Executive order we consider it our duty to consider separately each road before us which we now proceed to do. We shall divide these into two groups—one, group A in which we shall place all carriers whom we think should adhere to the national pattern, and group B, containing all the carriers in regard to which we think an exception should be made. In each group the cases will be arranged alphabetically.

In the course of our treatment thus arranged certain special issues raised by contentions made because of special circumstances will be touched on.

## **TREATMENT OF THE INDIVIDUAL RAILROADS**

### **GROUP A**

#### **ATLANTA & ST. ANDREWS BAY RAILWAY CO.**

##### **Position of the Parties**

Only the maintenance of way men and telegraphers are involved in this case.

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

The carrier objected to complying with the demands for the following reasons:

- (1) That none of the organizations here represented had authority to speak for the employees on this road.
- (2) The legality of the strike vote is challenged.
- (3) Considering the pay scales for like classes of labor in the neighborhood together with the fact that the carrier furnishes many of its men free living quarters, the offer of the carrier to raise the section men 11 cents per hour is adequate. The offer made to the telegraphers, the amount of which is not material here, was adequate considering their responsibilities and duties.
- (4) The financial situation of the company does not permit further increases.

##### **Discussion**

(1) The evidence produced was to the effect that the members of the two local lodges of the maintenance of way men had forfeited membership and the lodges had surrendered their charters. The Brotherhood of Maintenance of Way Employees and the Order of Railroad Telegraphers hold the contracts on this road respectively for the maintenance of way men and the telegraphers and until another organization is certified as representing these crafts the presumption is that they continue to represent them.

(2) The question of whether a proper strike vote was taken is not relevant in this case. The Executive order of the President creating this Board declared that a dispute exists and further declared that in the judgment of the National Mediation Board, it threatens to interrupt interstate commerce. These declarations are binding upon this Board.



(3) The carrier introduced considerable evidence showing that labor of the class employed as maintenance of way employees was available in the communities served by the carrier at rates of pay less than that demanded by the employees.

In a national wage movement when increases only are in question such matters are not relevant. The carrier introduced photographs of dwellings furnished the employees and other evidence to the effect that they compared favorably with those occupied by such classes of laborers in such communities, and that no charge was made for these. On the other hand the employees introduced uncontroverted evidence that maintenance of way as well as clerical and telegrapher employees on other railroads connecting with the Bay Line were receiving wages at least as high as those which would be paid by the Bay Line after adding the 18½ cents here demanded.

The matter of whether housing is furnished to employees is immaterial to the issue before this Board. We are not concerned in this case with the ingredients which go to make up the wage base. We are here concerned with the question of whether the carrier should meet the increase reflected in the national pattern.

(4) An examination of the financial statements and of the testimony presented by the carrier brings us to the conclusion that the road is able to meet the demands of the employees. During the war wooden bridges were replaced with concrete culverts, new steel was laid on the road, three-quarters of the ties were replaced and the road was reballasted in every place where needed.

The carrier acquired and paid for adequate Diesel power engines to replace other locomotives, and its facilities generally are in excellent physical condition. The income statements, particularly in the light of the small amount involved in meeting the employees' demands, indicate that the payment of these demands would in no way affect the financial stability of this road.

#### **Recommendation**

The Board recommends that this carrier, the Atlanta & St. Andrews Bay Railway Co., conform to the national pattern, viz: meet the demands of the employees involved in this dispute by the payment of 18½ cents per hour increase, 16 cents of which shall be paid from January 1, 1946, and 2½ cents of which shall be paid from May 22, 1946.

#### **ATLANTIC & EAST CAROLINA RAILWAY CO.**

##### **Position of the Parties**

Only the clerks and maintenance of way men are involved in this case.

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

The carrier objected to complying with the demands on the ground of financial inability to pay.

### Discussion

This carrier has no fixed obligations for invested capital but has a lease from the State with a minimum annual rental of \$60,500 which is graduated upwards in accordance with increased gross revenue.

The U. S. Army and the State of North Carolina during the war contributed about \$800,000 (including the proceeds from the sale of old rails) to improve the road of this carrier. Although the road belongs to the State the improvements will inure to the benefit of the leaseholder and will tend to reduce its expenditures for maintenance of way.

An examination of the exhibits, of which there were five in number submitted by this carrier, and a careful reading of the testimony of the witnesses show that this carrier's properties and its financial position have greatly improved during the war years.

The carrier's fixed charges are controlled to a large extent by its volume of business. Its past history is one of ability to adjust expenditures in all phases of operation to the amount of operating revenues. There is evidence of ability to pay the increased wages demanded by the workmen and of sufficient cash on hand to meet the demands retroactively.

### Recommendation

The Board recommends that this carrier, the Atlantic & East Carolina Railway Co., conform to the national pattern, viz: meet the demands of the employees involved in this dispute by the payment of 18½ cents per hour increase, 16 cents of which shall be paid from January 1, 1946, and 2½ cents of which shall be paid from May 22, 1946.

### BARRE & CHELSEA RAILROAD CO. AND ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD

#### Position of the Parties

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

The carriers plead inability to pay.

### Discussion

Both the above roads are under the same management with one central operating and accounting office and common officials and for that reason they are treated together. The evidence shows that outstanding notes and mortgages of these two roads are in the hands of the Boston & Maine Railroad.

These roads connect with the Boston & Maine and the Maine Central (these latter two being under the same operating management). The bulk of their freight either originates with or is forwarded to the Boston & Maine or to the Maine Central.

The Boston & Maine owns all of the common stock, all the income bonds, and all of the other indebtedness of the St. Johnsbury & Lake Champlain Railroad, and has granted to its own employees the full 18½ cents per hour increase in wages together with requested back pay.

When a major road controls a connecting short line, owns its principal obligations, and receives the benefits therefrom, and has put into effect on its own line wage increases in response to a national wage movement, it has an equal obligation to extend the same benefits to the employees on the controlled line.

A review of the evidence leads to the conclusion that the Boston & Maine also dominates and controls the Barre & Chelsea. The evidence shows:

The St. Johnsbury & Lake Champlain Railroad admittedly is owned and controlled by the Boston & Maine. It along with the Barre & Chelsea has the same officials.

The Barre & Chelsea is operated in conjunction with the St. Johnsbury & Lake Champlain Railroad. The St. Johnsbury & Lake Champlain pays all salaries, keeps all the records, and attends to all accounting matters. It was impossible to ascertain what proportion of the revenue dollar of the Barre & Chelsea goes for the salaries of its officers or for wages to employees for the reason that the accounts were kept by the St. Johnsbury and it would "be a very long and tedious process to get those figures" regarding the proportion of the totals which should be allocated to the St. Johnsbury & Lake Champlain and what portion to the Barre & Chelsea (Tr. pp. 1581, 83, 87, 88). This information was not forthcoming even after a telephone call to headquarters. These two roads are under single management.

All the long term debt of the Barre & Chelsea is held by the Boston & Maine. Upon default the road would for all practical purposes go to the Boston & Maine.

On or about December 31, 1944, the Barre & Chelsea purchased the physical property and franchises of the Montpelier & Wells River Railroad (which constitutes the major portion of mileage of the resulting unification). The Barre & Chelsea did not purchase all the assets of the Montpelier & Wells. That which was purchased were the cars and locomotives and so forth but not the cash and other assets. The Montpelier road then turned over to the Boston & Maine whatever it received from the Barre & Chelsea. It was at that time that there was a consolidation of the accounts of the two companies (Tr. pp. 1556, 1657, 1658).

This information was obtained for the Board from Mr. Willis, the receiver of the St. Johnsbury & Lake Champlain (Tr. p. 1658).

The Barre & Chelsea connects with the Central of Vermont (owned by the Canadian National Railway) and with the Boston & Maine. The testimony is that the debtor road, i. e. Barre & Chelsea, routes a larger or disproportionate part of the traffic over the creditor road, Boston & Maine, than over the other connecting road, the Central of Vermont.

Over the last 13 years the company has had a balance of income transferred to surplus for nine of those years amounting to \$139,935. It has a deficit for 4 years totalling \$51,740. The net amount transferred to surplus between 1933 and

1946 amounts to \$88,195 (Exhibit 24, pp. 5 and 6) (Tr. p. 1592). The evidence is that this surplus has gone to the Boston & Maine either as payments on the principal of an indebtedness due the Boston & Maine or on the indebtedness of the Montpelier & Wells River Railroad which the Barre & Chelsea took over at the time of consolidation or as interest on monies due the Boston & Maine (Tr. p. 1653).

The Boston & Maine holds all the capital stock of the St. Johnsbury & Lake Champlain Railroad, all of its outstanding income bonds and all of its other funded debt. The Boston & Maine has taken over all the capitalization of this road with the expectation of either holding it for its traffic value to itself or disposing of it to other connections for the traffic value to them (Tr. p. 1625).

One cannot review the evidence showing how inextricably linked together are the management, accounting control, and financing of the two roads without coming to the conclusion that for all practical purposes the Barre & Chelsea and the St. Johnsbury & Lake Champlain are a unit under the aegis of the Boston & Maine and one is supported in coming to this conclusion by keeping in mind that their major connections and traffic relations are with the Boston & Maine and the Maine Central (The Maine Central is jointly operated with the Boston & Maine) (Tr. p. 1615). The Boston & Maine holds all the outstanding indebtedness of both roads, their main value is as auxiliaries to the Boston & Maine. When the Barre & Chelsea has any surplus cash it finds its way to the Boston & Maine and not to the stockholders. The stock has never paid any dividends (Tr. p. 1584). If the Boston & Maine admittedly holds and operates and controls the St. Johnsbury fully for its own purpose, one cannot avoid the conclusion that through the St. Johnsbury & Lake Champlain and others it similarly dominates and controls the Barre & Chelsea for its own purpose: when therefore the Boston & Maine has put into effect on its own line wage increases in response to a national wage movement it has an equal obligation to see to it that the same benefits are extended to the employees on the controlled lines.

#### **Recommendation**

The Board recommends that these carriers, the Barre & Chelsea Railroad Co. and the St. Johnsbury & Lake Champlain Railroad, conform to the national pattern, viz: meet the demands of the employees involved in this dispute by the payment of 18½ cents per hour increase, 16 cents of which shall be paid from January 1, 1946, and 2½ cents of which shall be paid from May 22, 1946.

#### **BELFAST & MOOSEHEAD LAKE RAILROAD CO.**

##### **Position of the Parties**

Only the maintenance of way employees are involved in this dispute.

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

This carrier, in addition to such notifications as it received from the National Mediation Board, was notified by this Board by wire on October 31, 1946, of the time and place of hearing and that it would be to its interest to make an appearance.

Its general manager on November 1 wired that the carrier was unable to be present at that time. In reply to a subsequent wire the general manager, on November 4, 1946, wired this Board: "Local conditions requiring presence of our officials on property preclude our appearance before Emergency Board" (Tr. p. 1672).

#### **Discussion**

There was no appearance before this Board of this carrier and no evidence or explanatory statement submitted on its behalf showing financial inability or any other peculiar situation that would justify its failure to pay in accordance with the national pattern.

We will presume in the absence of evidence to the contrary that a railroad is in position to meet the national pattern. In order to be excepted from such pattern it must affirmatively show grounds for the exception.

#### **Recommendation**

The Board recommends that this carrier, the Belfast & Moosehead Lake Railroad Co., conform to the national pattern, viz: meet the demands of the employees involved in this dispute by the payment of 18½ cents per hour increase, 16 cents of which shall be paid from January 1, 1946, and 2½ cents of which shall be paid from May 22, 1946.

### **BERLIN MILLS RAILWAY CO.**

#### **Position of the Parties**

Only the maintenance of way employees are involved in this case.

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

The Berlin Mills Railway is a captive road owned entirely by the Berlin Mills.

In the past this carrier adjusted the wages of its employees in accordance with the changing wage rates of the mills; at other times in accordance with the changing wage rates generally received by the employees of the railroad. In 1945 it adopted the policy of following the railroad wage changes (Tr. pp. 571-2).

#### **Discussion**

The carrier had agreed verbally to put into effect the 18½ cent raise with the retroactive features but before the agreement was signed the carrier was notified by the United Mine Workers that they represented a majority of the maintenance of way employees. The carrier notified the National Mediation Board and stopped negotiations. The carrier is willing to sign an agreement putting the

employee wage demand into effect as soon as it knows with whom to bargain (Tr. pp. 544-547).

The carrier points out that if the 18½ cents is added to present existing rates on its road it would in some cases bring the wage rates for certain classifications of maintenance of way men above the highest rates now paid for the same classification by the class I roads operating in the same territory as the instant road. An examination of exhibit H confirms this observation as to sectionmen, but the contract that the organization and the company were prepared to sign took care of this feature.

The Brotherhood of Maintenance of Way Employees holds the contract on this road. Until the National Mediation Board certifies that some other bargaining agency represents this craft the company should bargain and sign a contract with the Brotherhood of Maintenance of Way Employees.

#### **Recommendation**

The Board recommends that the Berlin Mills Railway Co. sign the contract which has been agreed to between it and the maintenance of way employees putting into effect the 18½ cent increase currently or as much thereof as is necessary to bring the wage rate for any classification up to the highest rate paid by class I roads operating in the same territory for any corresponding classification.

#### **COLUMBUS & GREENVILLE RAILWAY CO.**

##### **Position of the Parties**

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

(1) This carrier raised the point that the shop craft employees represented by 7 of the organizations included in the 15 cooperating organizations had not served notice of a change in the agreement affecting their rates of pay until May 1, 1946, as far as the 16 cents was concerned and not until July 29, 1946, as far as the 2½ cents; hence that no retroactive pay could be given to those employees before the dates of the served notices.

The organizations countered with the contention that there was nothing in the Railway Labor Act as amended which prohibited a request for a change of rates of pay to be retroactive.

(2) The carrier further contended that the granting of the wage demands at issue in this case would result in paying classes of its employees a rate higher than the going wage for similar labor in other industries and municipalities along the railroad's right of way (Tr. pp. 1342-1345).

(3) That the technique of handling wage demands on the part of the employees is such as to make impossible engaging in bona fide and collective bargaining between the employees and carrier on the property (Tr. pp. 1366, 1367).

(4) The carrier asserts inability financially to pay the demands (Tr. pp. 1367-1379).

### Discussion

(1) Section 6 of the Railway Labor Act as amended reads as follows:

Carriers and representatives of the employees shall give at least 30 days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within 10 days after the receipt of said notice, and said time shall be within the 30 days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this act, by the Mediation Board, unless a period of 10 days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

The purpose of the notice was to give both the carriers and the employees written notice of the request for a change of agreement. Until that was given the agreement as it existed could be considered by either party as satisfactory to the other. The written notice sets in motion the machinery for altering an agreement. It is not part of the machinery for interpreting or applying the provisions of an agreement. That is provided for in section 3, first (i) of the Railway Labor Act as amended. The period for fixing the time and place of holding the first conference runs from the receipt of said notice. The service therefore of a written notice would seem to be basic to the movement for a change in the agreement, which movement may continue through mediation or arbitration or emergency board procedure and even strike action.

It may be that the carrier, if it met in conference and treated the notice as having been given, might be estopped later from asserting that it had not been given. In certain cases a party may be estopped from asserting that the jurisdiction of a tribunal has not been properly invoked where the tribunal has jurisdiction of the subject matter and the party has voluntarily submitted himself to it. Reasoning by analogy a carrier or labor organization may be estopped to assert that the notice for a change in the agreement had not been given when it treats with the other party on the assumption that notice has been served and makes no objection to such failure. But in this case the carrier expressly by letter notified the shop craft organizations that it would not recognize them in a conference for the reason that they had not served notice. Hence estoppel cannot be urged against the carrier in this case.

There is nothing in the Railway Labor Act as amended which specifically proscribes a request for a change in agreements retroactive but the spirit and implication of the provisions regarding notice of intention to seek a change in the rules presume that each party may rely on the provision of the agreement as then existing as binding *up to the time a change is effected in pursuance of the*

sequent to that of the creation of this Board, the carrier did put into effect all of the employees' wage demands.

The organization claims that the contract for the 18½ cents with retroactive pay was made with the local chairman who had no authority to enter into an agreement; that the contract so signed contained a provision for a moratorium on changes in rates and rules for a 2-year period and that this was not acceptable to the organization.

#### **Discussion**

The carrier is paying currently the 18½ cents and claims a willingness to pay the retroactive increase. In all probability it would contend that this was in consideration of the 2-year moratorium and that if such is not in effect the whole subject is still open and it should, therefore, not be bound for the back payments or the current 18½ cents. We do not think we should decide such issue. Even if, as stated by the organization, J. A. Powell, who is designated on the contract as local chairman, had no authority to sign the contract but only Mr. Sorah, the general chairman had such authority, it amounts to an assertion that there is no contract. We see no reason why this question cannot be determined when and if the employees make a request for a change of rules within a 2-year period from the signing of the "contract." The company may then defend against such action on the ground that the organization had agreed not to ask for a change. At such time the question of authority may be determined.

The company raises no question as to ability to pay as it well could not because it has agreed to pay the full increase of 18½ cents to the retroactive dates. For the purpose of this report we must then recommend that it adhere to the national pattern.

#### **Recommendation**

The Board recommends that this carrier, the East Tennessee & Western North Carolina Railroad, conform to the national pattern, viz: meet the demands of the employees involved in this dispute by the payment of 18½ cents per hour increase, 16 cents of which shall be paid from January 1, 1946, and 2½ cents of which shall be paid from May 22, 1946.

#### **LACKAWANNA & WYOMING VALLEY RAILROAD CO.**

##### **Position of the Parties**

Only the electrical workers and the clerks are involved in this dispute.

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

Mr. C. A. Miller, attorney for the carrier, and Mr. Lester Schoene, attorney for the organization, stipulated that the Board could include a recommendation that the carrier make payment in accordance with the employees' request (Tr. p. 1506). It was stated that this carrier has already put into effect currently the 18½ cents increase and was in the process of making the back payments.



### Recommendation

The Board recommends that this carrier, the Lackawanna & Wyoming Valley Railroad Co., conform to the national pattern, viz: meet the demands of the employees involved in this dispute by the payment of 18½ cents per hour increase, 16 cents of which shall be paid from January 1, 1946, and 2½ cents of which shall be paid from May 22, 1946.

### MACON, DUBLIN & SAVANNAH RAILROAD CO.

#### Position of the Parties

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

The carrier objected to compliance with these demands raising the following issues.

(1) The Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees was not in existence or certified as a bargaining agency on this property until subsequent to January 1, 1946, and therefore could not legally make demands for retroactive pay prior to the date of their certification (Tr. p. 1063).

(2) The carrier asserts inability financially to pay the demands.

#### Discussion

It is assumed that no demand for adherence to the national pattern was made before the clerks were organized.

(1) What has been said in the Columbus & Greenville case is largely applicable to this case. Certainly the clerks' organization cannot soundly contend in law that they are entitled to retroactive pay going back before they served their requests.

The executive vice president of the carrier stated that on all previous occasions he had treated the unorganized clerks on the same basis as the organized groups (Tr. p. 1063, 1074, 1116). Certainly any intelligent handling of labor relations would dictate such a policy, and we might expect that in this case the carrier would not abandon its established policy of treating all its employees alike. But we again say that if it decides to stand on its legal rights without regard to harmonious labor relationships it could refuse. We shall handle our recommendation in this case as we did in the Columbus & Greenville case.

(2) This carrier's entire common stock is owned by the Seaboard Air Line. Its main business consists of bridge traffic, most of it derived from or delivered to the Seaboard (Tr. p. 1110). The carrier is not in default on its bonded indebtedness and an examination of its financial position makes it apparent that the payment of the demands of the employees would not imperil its financial structure.

### **Recommendation**

In view of what was said in the discussion we split our recommendation into two parts.

The Board recommends that as to all except the clerks the Macon, Dublin & Savannah Railroad Co. adhere to the national pattern, viz: meet the demands of such employees involved in this dispute by payment of the 18½ cents per hour increase, 16 cents of which shall be paid from January 1, 1946, and 2½ cents of which shall be paid from May 22, 1946.

The Board further recommends that as to the clerks the Macon, Dublin & Savannah Railroad Co. pay the 18½ cents increase currently and that as to the 16 cents and the 2½ cents increase they be paid retroactively from the dates a request or demand for a change in the rates of pay was served on the carrier.

### **MIDLAND TERMINAL RAILWAY CO.**

#### **Position of the Parties**

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

The carrier asserts inability to pay and that it has operated at a deficit over the last few years and has been able to continue to so operate only by reason of loans obtained from the Golden Cycle Ore Reduction Mill at Colorado Springs, and that the milling company is now unwilling to make further loans in an amount sufficient to meet the demands in full. For this reason the carrier claims inability to pay the wage demands of the employees.

#### **Discussion**

The evidence showed that the Golden Cycle Ore Reduction Mill owns all the capital stock of and controls the carrier. The testimony showed that both the carrier transports and the mill processes the low-grade ore at less than cost to encourage individual miners to continue development, for only by continually moving out of the way low-grade ore is it possible to come upon richer veins. Mill and freight rates are graduated upwards as the value of the ore increases. It is out of the rich veins that both the railroad and the mill make their greatest profits. In viewing their total operations it would appear that the carrier is hardly more than a department of the mill operations.

Under the circumstances it does not seem proper for the mill (and the carrier) to subsidize the movement of low-grade ore at the expense of the workers on the railroad, particularly when the ultimate profit made by the milling company depends on the movement of low-grade ore by the carrier.

### **Recommendation**

The Board recommends that this carrier, the Midland Terminal Railway Co., conform to the national pattern, viz: meet the demands of the employees involved

in this dispute by the payment of 18½ cents per hour increase, 16 cents of which shall be paid from January 1, 1946, and 2½ cents of which shall be paid from May 22, 1946.

### **PORT UTILITIES COMMISSION**

#### **Position of the Parties**

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

The carrier pleads inability to pay and has filed an exhibit showing losses in net revenue from operations every year as far back as 1933.

#### **Discussion**

This carrier is entirely owned by the city of Charleston and controlled by the city of Charleston and the bonds issued on behalf of the Port Authority are the direct obligations of the city.

The city through its Port Authority is engaged in a form of business activity frequently carried on as a private undertaking. When the city carries on these activities so that it incurs an operating loss, which because the benefits accruing to the city justify continued deficits, or for any other reason, then the city should bear the burden, and the employees of the authority as employees should not be required to bear a share of the loss.

#### **Recommendation**

The Board recommends that this carrier, the Port Utilities Commission, conform to the national pattern, viz: meet the demands of the employees involved in this dispute by the payment of 18½ cents per hour increase, 16 cents of which shall be paid from January 1, 1946, and 2½ cents of which shall be paid from May 22, 1946.

### **QUANAH, ACME & PACIFIC RAILWAY CO.**

#### **Position of the Parties**

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

The carrier claims inability to pay.

#### **Discussion**

This carrier's entire common stock and indebtedness is owned by the St. Louis & San Francisco Railway Co. The carrier is not in default on its bonded debt and examination makes it apparent that the payment of the demands of the employees would not imperil its financial structure.

The St. Louis and San Francisco Railway Co. has put into effect on its road wage increases of the character demanded by this carrier. When a major road owns the stock and principal obligations of a connecting line, receives benefits from such ownership, and has put into effect on its own lines wage increases in response to a national wage movement, there is an equal obligation to extend the same treatment to the employees on the other line.

#### **Recommendation**

The Board recommends that this carrier, the Quanah, Acme & Pacific Railway Co., conform to the national pattern, viz: meet the demands of the employees involved in this dispute by the payment of 18½ cents per hour increase, 16 cents of which shall be paid from January 1, 1946, and 2½ cents of which shall be paid from May 22, 1946.

#### **TOLEDO, PEORIA & WESTERN RAILROAD**

##### **Position of the Parties**

The employees testified that recent discussions had been held with the president of this carrier and that agreements had been reached providing that the carrier pay the men the demanded wage increases, and that the only issue remaining unsettled was one that has not been brought before this Board.

The carrier was notified of the time and place of the hearings and given an opportunity by telegram and letter to appear (Tr. pp. 1684-1691 inclusive).

The record shows that the carrier knew that the Board was sitting and that it had been certified to the Board for consideration and by its communications to the Board said that he would not appear.

##### **Discussion**

There is no evidence of financial inability to pay or even unwillingness to pay the demands at issue before this Board nor were there any peculiar circumstances presented to the Board as far as this carrier is concerned requiring further consideration. When no showing is made of inability to pay or any other peculiar situation that would justify exempting it from the national pattern the Board will presume that the carrier has the ability to pay.

The evidence presented to this Board by a witness on behalf of the organizations was that this carrier had ceased operating since before January 1, 1946, and that all of the employees represented by the organizations before this Board were out on a strike since prior to that date. The only suggestion to the contrary is an implication contained in the telegram, dated November 1, 1946, to this Board from the president of this carrier, stating that there were men employed on this carrier not represented by the organization before this Board, the intimation being that such employees were of the crafts represented by these organizations, but that because they were employed since the strike began they were, therefore, not represented by the organization before us. If there are or have been any such employees of the crafts represented by these organizations working on the said road since January 1, 1946, our recommendation will apply to them.

### Recommendation

The Board recommends that this carrier, the Toledo, Peoria & Western Railroad, conform to the national pattern, viz: meet the demands of the employees involved in this dispute by the payment of 18½ cents per hour increase, 16 cents of which shall be paid from January 1, 1946, and 2½ cents of which shall be paid from May 22, 1946.

### GROUP B

#### GEORGIA & FLORIDA RAILROAD CO.

##### Position of the Parties

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

The carrier pleads financial inability to pay the demanded increases.

##### Discussion

This carrier is now in receivership and has been in default on its bonded indebtedness for every year except 5½ since the date of its construction in 1907-8 (Tr. pp. 954, 956-958). It failed materially to benefit from wartime traffic. The expenditures for maintenance of way and structure have more than doubled during recent years and the expenditures for maintenance of equipment have substantially increased during this period. Nevertheless the railroad has been financially unable to and has not materially improved its physical condition. Such equipment as it acquired is old and was second hand when acquired. The interest rate upon \$750,000 of receivership certificates has been reduced from 7 to 4 percent. Interest on the other notes remains unpaid.

The railroad has washed out indebtedness of \$7,000,000 and the new issues of over \$6,000,000 have long been in default (Tr. p. 954-961). Accrued taxes amount to \$582,000, its cash position is \$129,000 and its total current assets amount to only \$580,000 (Exhibit 28, pp. 8, 9).

During recent years no major shippers have located along its right of way. Testimony was uncontradicted that if the railroad were abandoned and sold for junk the security holders would receive more than the bonds are selling for at current market prices. In the course of its 400 mile right of way other railroads connect with or cross this road on an average of once for every 15.1 miles (Tr. p. 965). The testimony was that the main excuse for the continued existence of this road was to furnish employment for its 663 employees.

The carrier's net railway operating income increased during war years. It was in the red 5 years out of the 8 during the years immediately preceding the war. The years 1941 to 1943 were good years, the 1943 net railway operating income amounting to \$205,915. It fell to \$113,059 in 1944, showed a deficit of \$34,167 for the first 8 months of 1946. Losses from receiver's operations for the

month of September 1946 were \$44,218 (Tr. p. 989). Unusual "other income" of \$66,765 in 1945 does not materially improve its financial situation. It is obviously unable to meet its interest payments.

Full additional cost of meeting of employees' demands would amount to \$236,692 (Tr. p. 990) annually. The receiver testified that he had put into effect wage increases to the extent of all revenues received as a result of increases of rates granted in June 1946 by the Interstate Commerce Commission, and is willing to immediately put into effect further wage increases to the extent of any further increases in revenues that result from increases of rates, if any, as a result of pending proceedings.

When a road is in the condition of the Georgia and Florida we have the choice of recommending adherence to the national pattern with probable consequence of abandonment if put into effect or to send the matter back for further overtures. We have explored other possibilities but we do not find ourselves in possession of sufficient information to make a definite recommendation of how much of the 18½ cents railroads in shaky condition could pay with a possibility of surviving. The Board was not equipped with auditors or analysts who could penetrate underneath the statements in the exhibits tendered by the roads. This might have meant also an audit of the company books.

We do not take the position that it is our province to recommend an increase with the purpose of putting the quietus on such a road on the theory that it has no longer any economic reason for being. That matter rests with another agency. We would not, on the other hand, refrain from recommending an increase to which the men were entitled just because it would result in a demise of the road.

But when a road is in dire or precarious financial straits with little likelihood of survival if full increases are recommended we believe other considerations—largely human—enter into the picture.

A certain number of roads now in difficulty have given long and creditable service to their communities. Some of their employees have spent many years of their life there and grown old in the service. They have accumulated commanding seniority. If they were young enough to procure a job on another carrier they would be placed at the bottom of the seniority roster. And if they could not get a job on another carrier the amount of their retirement benefits might be affected as compared to what it would be if they were enabled to serve until retirement age. They have homes and families in towns along these roads. Their very lives revolve about those neighborhoods. And on some roads such as the Rio Grande Southern shippers have a very substantial interest in the continuance of operations.

We are aware that strike votes were taken on most if not all of these roads and that the figures show more than a two-thirds majority of all the men of the crafts which were polled. But we are not convinced that the men so voting were apprised of the real condition of these roads which refrained from putting the national pattern into effect or appreciated the possibility of abandonment and the effect such action would have on their lives.

We think the employees on these roads should be given a free and untrammelled opportunity to express their decision after full disclosure of the road's financial and traffic conditions.

The employees to be affected should be furnished with financial statements of the condition of the road and such statements and the books and transactions of the company should be subject to inspection by an auditor of the men's own choosing—his services to be paid for by the company. After ascertaining information as to the true situation of the road, which information should be widely disseminated among the men, the employees and the carrier should confer and bargain in a fair spirit in view of the information developed in the hope that they may arrive at a fair agreement which will keep the road running if after they know the situation they desire the road to run.

We realize that if both parties accept our recommendation and if thereafter no agreement to deviate from the national pattern results it may follow that a few roads, if they do not resort to abandonment proceedings, may again go through mediation and finally perhaps to an emergency board. But it is only by this sort of handling that there will be fair assurance that all the facts will be developed and that the best thing may be done under all the circumstances.

The procedure above outlined is to be considered a part of our recommendation. Furthermore if the recommendation is accepted by the parties we think it would be well, when the issue is one which, according to how it is resolved, may mean the difference between continued operation or abandonment of the railroad, that the men be permitted to vote by secret ballot after a full opportunity to acquaint themselves with the facts.

We do not intend to criticize the methods of taking a strike vote nor the matter of framing the issue before the men nor the signed ballot. But when the issue really involves the probable life or death of the railroad and on the fate of the road depends the future life of its employees, it may be well to devise a plan for taking a secret vote before an impartial and reliable person. From our own experience we know that in the stress and excitement of meetings and, perhaps under pressure of fellow employees, especially in stressful periods, some men make decisions which might not be the same had the vote been taken under different auspices.

In conclusion we call attention to the fact that in the bargaining processes above referred to they should take into consideration the percentage of the revenue dollar that goes to employees in the form of wages. A proper proportion of all increased revenue resulting from permission to raise rates granted by State or Federal regulatory bodies based in its entirety or in part on this national wage movement should be set aside to take care of the wage increases of its employees.

### **Recommendation**

This Board recommends that the employees involved in this dispute and the Georgia and Florida Railroad Co., under the suggestions and conditions advanced in the discussion confer and bargain as to what wage increases this carrier can pay in order to continue operations and as to how far the same

should be retroactive and in the light of the facts so developed an agreement be made.

### **MISSOURI & ARKANSAS RAILWAY CO.**

#### **Position of the Parties**

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of  $18\frac{1}{2}$  cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of  $18\frac{1}{2}$  cents per hour from May 22 1946.

The carrier authorized a statement to be made to the Board that as a result of a strike that had taken place on its property September 18, 1946, the road was not now in operation, and that it had petitioned the Interstate Commerce Commission for permission to abandon operation. It further said that only a skeleton staff was now employed who are engaged in preparing papers for the abandonment proceedings, and was unable to prepare a case to present before this Board.

The employees contended that even if the road were abandoned they would be entitled to their retroactive pay as a preferred wage claim and hence it should be allowed.

#### **Discussion**

This road was evidently financially in extremis. The strike gave it the death blow. Naturally a road in that condition is par excellence in condition where it should be excepted from the national pattern.

If the road resumes operations then it should be subject to the same recommendation as other roads which have been excepted. If it does not resume, the recommendation will be moot. What we said in the Discussion in the case of the Georgia & Florida Railroad Co. and which we made by reference part of our recommendation in that case we incorporate here and intend our recommendation here to include the procedures there set out.

#### **Recommendation**

The Board recommends that if and when the Missouri & Arkansas Railway Co. resumes operation it and the employees involved in this dispute confer and bargain under the suggestions and conditions advanced in the discussion in the case of the Georgia & Florida Railroad Co. regarding what wage increases this carrier can pay in order to continue operations and as to how far the same should be retroactive, and in the light of the facts so developed an agreement be made.

### **RAPID CITY, BLACK HILLS & WESTERN RAILROAD CO.**

#### **Position of the Parties**

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of  $18\frac{1}{2}$  cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of  $18\frac{1}{2}$  cents per hour from May 22, 1946.

The carrier pleads financial inability to pay the increases.



### Discussion

In 1939 this carrier underwent a reorganization eliminating its old capital stock. New capital stock was issued. It is at present unable to take care of its current obligations on the resulting funded debt. In 1945 it had a loss in net revenues from operations. In its 32.2 miles of road it crosses the Rapid Creek 102 times in the canyon through which it operates. Severe rains cause frequent washouts, with the result that maintenance costs are high. The communities at each terminus are served by other carriers and there is no industry situated between them.

Neither the current cash position nor future prospects point to the possibility of its meeting the demands at issue here. The road is over mountainous country and is costly to maintain. In the past there have been severe wash-outs. Out-bound, the principal commodities hauled are cement and lumber. The mines which formerly shipped ore have long since closed down. In-bound traffic consists mostly of coal. No large cities are located on the road. The eastern terminal, Rapid City, has a population of about 20,000 people. The road is in competition on its eastern end with the Chicago and Northwestern and the Chicago, Milwaukee & St. Paul.

The road has between 25 and 30 employees. It would cost \$14,000 to put the increases into effect.

Plainly this road is now an uneconomical venture. It is even doubtful if it is longer necessary. We refer to the discussion under the Georgia & Florida Railroad Co. in regard to a situation in which a road is poised between life and death. What was there said in that respect is applicable here. The same technique set out there should be here applied and our recommendation is made in the light of such discussion.

### Recommendation

This Board recommends that the employees involved in this dispute and the Rapid City, Black Hills & Western Railroad Co., under the suggestions and conditions advanced in the discussion in the case of the Georgia & Florida Railroad Co. which suggestions and conditions are made by reference part of this recommendation, confer and bargain as to what wage increases this carrier can pay in order to continue operations and as to how far the same should be retroactive and in the light of the facts so developed an agreement be made.

## RIO GRANDE SOUTHERN RAILROAD

### Position of the Parties

Only the maintenance of way men are involved in this case.

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22 1946.

### Discussion

The carrier's main income is from the shipment of metal ores. A representative of certain of the shippers, which ship the major tonnage on this road, appeared voluntarily before this Board and advised that the shippers believed the wage demand of these employees to be fair, and that they ought to be met, and that the shippers he was speaking for would be glad to have the rates raised on the ore they ship in an amount to take care of these demands as of October 1, 1946.

The carrier's position is set forth in a letter to the Board written by the receiver on November 13, 1946, set forth in the transcript on pages 1679 to 1683, the last paragraph of which reads as follows:

Rio Grande Southern was kept going during the war on government directives. Government agencies financed. It is suggested the emergency is not over in the true sense especially from metal standpoints. Rio Grande Southern situation is a peculiar one. Doubtless another year's operation is possible and in my opinion should be effected if possible. It hinges on renewal of mail contract. Anything Emergency Board could report in this connection would be helpful.

### Recommendation

The Board recommends that the employees involved in this dispute and the Rio Grande Southern Railroad, under the suggestions and conditions mentioned in the Discussion of the case of the Georgia & Florida Railroad Co. which suggestions and conditions are made by reference a part of this recommendation, confer and bargain as to what wage increases this carrier can pay in order to continue operations and as to how far the same should be made retroactive, and that in the light of the facts so developed an agreement be made.

## RUTLAND RAILROAD CO.

### Position of the Parties

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

The carrier pleads financial inability to pay the increases in full as of the present time.

### Discussion

The Rutland Railroad is an historic road with a hundred years of operation to its credit. It suffered loss of traffic through having, around 1916, to dispose of its connecting shipping facilities across the Great Lakes as required by the Panama Canal Act (Tr. p. 765), and again through the reduction of rate differentials as required by the orders of the Interstate Commerce Commission, and in more recent years through increased competition with other lines and the extension of truck operations in the area served by it. The road has a capitaliza-

tion in excess of \$26,000,000 but for many years has paid neither dividends on its common or preferred stock nor since 1938 any interest on its bonded indebtedness (back interest now amounts to over \$3,000,000) (Tr. p. 776) except that the rent of \$19,000 from certain property in Chicago has been applied towards the payment of bond interest in part of the subsidiary which executed the mortgage thereon (Tr. p. 764).

The total income available for fixed charges (and before fixed charges) reached a recent high of \$597,000 in 1942. It dropped to \$81,000 in 1944; there was a loss of \$237,000 in 1945; a loss of \$231,000 for the first 6 months of 1946 (Exhibit No. 22). It is now and has been in the receivers' hands since 1938.

Every effort to cut down expenses has been made. The proportion of the revenue dollar paid out for salaries of the officials are the lowest that have come to the attention of the Board in this hearing and the total amounts to but 1.4 cents of the revenue dollar.

The state legislature has made it possible to reduce state taxes from \$140,000 to \$46,000 a year (Tr. p. 802) and in addition forgave back taxes amounting to \$118,000 (Tr. p. 802).

Every reasonable and many colorful efforts have been made to increase business, in which efforts the State and the Rutland Chamber of Commerce have cooperated.

The demands of the employees if met in full would increase the wage bill of the company by over \$700,000 per year (Tr. p. 815). If the demands of the employees for back pay from January 1, 1946, to December 1 were met in full it would amount to more than \$600,000 (Tr. p. 779). The total cash on hand is \$654,000 (Tr. p. 779). To meet the demand for back pay immediately would probably bring about a cessation of operations. The value of the railroad as junk exceeds the total market value of its securities, the value of the securities being approximately \$1,725,000 while the junk value is \$2,250,000.

#### **Recommendation**

The Board recommends that the employees involved in this dispute and the Rutland Railroad Co., under the suggestions and conditions contained in the Discussion of the case of the Georgia & Florida Railroad Co. which suggestions and conditions are made by reference a part of this recommendation, confer and bargain as to what wage increases this carrier can pay in order to continue operations and as to how far the same should be retroactive and in the light of the facts so developed an agreement be made.

#### **WICHITA FALLS & SOUTHERN RAILROAD CO.**

##### **Position of the Parties**

The employees demand that the carrier conform to the national pattern, that is, an increase in pay of 18½ cents per hour, the said increase to be effective at the rate of 16 cents per hour from January 1, 1946, to May 21, 1946, inclusive, and effective at the full rate of 18½ cents per hour from May 22, 1946.

### Discussion

This carrier's gross operating revenues from 1925 to 1929 inclusive was in excess of \$1,000,000 per year. On the latter date it began to fall off until by 1938 it was only slightly in excess of \$500,000. It has continued to fall off since that date and in 1945 amounted to \$334,000. While the decrease was in part due to the abandonment of four of its connecting roads (Tr. p. 1313), it was more largely due to the decrease in oil production in that area, and the fact that 85 percent of the cattle are now hauled in trucks (Tr. pp. 1336, 1337).

The total net railway operating income dropped from \$61,087 in 1941 to \$20,767 in 1942 and the road suffered a deficit for the next 3 years. In 1946 revenues increased and its net railway operating income likewise increased so that it amounted to \$10,428 for the first 9 months of 1946. "Other income" increased, beginning with the year 1943 from about \$2,500 to \$30,000 per year with the result that the total income for the first 9 months of 1946 came to \$28,590.

This carrier's income available for fixed charges fell during the war years but with the war over is picking up. The statistical data indicates sufficient present earning ability to meet a portion of the demands of the employees here in dispute.

A statement militating against such a conclusion was that economic changes in the area served by this carrier coupled with the development of trucking has made the road no longer necessary. There was evidence that its junk value exceeded its value as a going concern (Tr. p. 1329).

The road has an indebtedness in excess of \$2,300,000. Interest on this indebtedness has been in default for a considerable period of time. The holders of all of the common stock own a \$265,000 note secured by \$2,271,000 of the company's bonds. Subject to a \$729,000 mortgage debt on a portion of the carrier's property, these stockholders are the owners of the road.

### Recommendation

The Board recommends that the employees involved in this dispute and the Wichita Falls & Southern Railroad Co., under the suggestions and conditions contained in the discussion in the case of the Georgia & Florida Railroad Co. which suggestions and conditions are made by reference part of this recommendation, confer and bargain as to the wage increase this carrier can pay in order to continue operations and as to how far the same should be retroactive and in the light of the facts so developed an agreement be made.

### SUMMARY

As noted above, the Board, following the mandate of the Executive order of October 25, 1946, creating it, considered independently each of the 20 cases still unsettled when the Board convened. With several exceptions the main plea was inability to pay. The Board has carefully considered the evidence and within the available time, analyzed the statements of the financial condition of those carriers who submitted such statements. The Board concluded that 14 of the car-

riers before it, constituting group A above, namely Atlanta & St. Andrews Bay Railway Co.; Atlantic & East Carolina Railway Co.; Barre & Chelsea Railroad Co. and St. Johnsbury & Lake Champlain Railroad; Belfast & Moosehead Lake Railroad Co.; Berlin Mills Railway Co.; Columbus & Greenville Railway Co.; East Tennessee & Western North Carolina Railroad; Lackawanna & Wyoming Valley Railroad Co.; Macon, Dublin & Savannah Railroad Co.; Midland Terminal Railway Co.; Port Utilities Commission; Quanah, Acme & Pacific Railway Co.; and Toledo, Peoria & Western Railroad should conform to what we have, for brevity, denominated the national pattern. As to the remaining 6 roads, constituting group B, namely Georgia & Florida Railroad Co.; Missouri & Arkansas Railway Co.; Rapid City, Black Hills & Western Railroad Co.; Rio Grande Southern Railroad; Rutland Railroad Co., and Wichita Falls & Southern Railroad Co.; we considered that they should be returned to the properties for bargaining under certain conditions laid down, the chief of which was full disclosure to the employees of the financial condition of the carrier with the privilege of having its financial statements and books examined by an auditor of the employees' own choosing. All of the roads in group B are in such condition that an insistence on adherence to the national pattern might result in an abandonment of operations.

Before the hearing was concluded all parties appearing stipulated that the Board might have such reasonable time beyond the thirty days allowed under section 10 of the Railway Labor Act as might be required in order to prepare and present its report. The President on November 26 approved a 30-day extension.

JAMES H. WOLFE, *Chairman.*

ROBERT E. STONE, *Member.*

FLOYD MCGOWN, *Member.*

