

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

APPOINTED MARCH 12, 1948
PURSUANT TO SECTION 10 OF THE
RAILWAY LABOR ACT, AS AMENDED

To investigate and report upon certain disputes
between the Railway Express Agency, Inc., and
certain of its employees represented by the In-
ternational Brotherhood of Teamsters, Chauff-
eurs, Warehousemen and Helpers of America,
A. F. of L.

(NMB Case A-2685)

CHICAGO, ILLINOIS

APRIL 30, 1948

(No. 59)

CHICAGO, ILL., *April 30, 1948.*

THE PRESIDENT,
The White House.

MR. PRESIDENT: The Emergency Board designated by you under Executive Order No. 9940, dated March 25, 1948, to investigate and report upon certain disputes between the Railway Express Agency, Inc., and certain of its employees represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, A. F. of L., has the honor to submit herewith its report.

The parties, after some preliminary hearings, withdrew all but two of the issues in controversy. The remaining issues are dealt with in the attached report.

Respectfully submitted.

JOHN A. LAPP, *Chairman.*
JOHN T. McCANN, *Member.*
JOHN D. GALEY, *Member.*

**REPORT TO THE PRESIDENT BY EMERGENCY BOARD
CREATED BY EXECUTIVE ORDER NO. 9940, DATED
MARCH 25, 1948, UNDER THE RAILWAY LABOR ACT, AS
AMENDED, TO INVESTIGATE AND REPORT UPON CER-
TAIN DISPUTES BETWEEN RAILWAY EXPRESS
AGENCY, INC., AND CERTAIN OF ITS EMPLOYEES REP-
RESENTED BY THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND
HELPERS OF AMERICA, A. F. OF L.**

Executive order dated March 25, 1948 follows:

EXECUTIVE ORDER

**CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE RAILWAY
EXPRESS AGENCY, INC., AND CERTAIN OF ITS EMPLOYEES**

Whereas a dispute exists between the Railway Express Agency, Inc., a carrier, and certain of its employees represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL, a labor organization; and

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

Whereas this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a large section of the country of an 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 said dispute. No member of the said board shall be pecuniarily or otherwise interested in any organization of employees or any carrier.

The board shall report its findings to the President with respect to the said dispute within 30 days from the date of this order.

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 the Railway Express Agency, Inc., or its employees in the conditions out of which the said dispute arose.

HARRY S. TRUMAN.

THE WHITE HOUSE,
March 25, 1948.

RECORD OF PROCEEDINGS

Pursuant to the above order, the President designated John A. Lapp, of Illinois; John T. McCann, of New York; and John D. Galey, of Oregon, as members of the emergency board. The board convened in

Chicago on March 30, 1948, and selected John A. Lapp as chairman and Ward & Paul as reporters.

The following appearances were entered: For the International Brotherhood of Teamsters, hereinafter called the Organization, Thomas P. O'Brien and David Kaplan; for the Railway Express Agency, hereinafter called the Agency, Albert M. Hartung and Peter M. Wilson.

Hearings were begun on March 30, 1948, and were continued until April 21, 1948. On April 22 the President, at the request of the board and with approval of the parties, extended the time for the board to make its report to May 4.

On April 5, 1948, the representatives of the parties conferred with the board and announced the withdrawal of all issues except two—the vacation and the 40-hour-week issues. Following the close of the hearings, the board made an effort through mediation to effect a settlement of the remaining issues but was unsuccessful.

The record of the hearing consists of 1,386 pages and 27 exhibits by the Agency and 29 exhibits by the Organization. On the basis of the record thus made, the board arrives at the findings and recommendations included in this report.

THE PARTIES TO THE DISPUTES

The parties to this proceeding are the Railway Express Agency, Inc., and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America. A description of the parties and their previous relationships will serve as the starting point for the understanding of the fundamental issues at stake.

The Railway Express Agency was incorporated in 1929 and thereafter took over the entire express business of the railroads which had been previously in the hands of the American Railway Express Co.

The Agency is a separate corporation whose capital stock is owned by the class I railroads and whose directors excepting one, are selected by the railroads. The Agency is classed with the railroads as a common carrier and is subject to the jurisdiction of the Interstate Commerce Commission. It is subject also to the Railway Labor Act, the Railroad Retirement Act, and the Railway Unemployment Compensation Act.

The Agency operates in fact as an arm of the railroads. It has no net income of its own but all of its net earnings go to the railroads to pay for the services rendered by the railroads. These are payments for what are known as express privileges.

The Agency furnishes transportation services for shippers from their premises to the transportation agency and finally to the consignee. It

is a connecting link of the transportation system from shippers to consignees.

The Agency employs about 70,000 employees engaged in collective bargaining with the Agency through four unions as follows: The Brotherhood of Railway Clerks; the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; the International Association of Machinists; and the International Brotherhood of Blacksmiths, drop Forgers and Helpers. About 62,000 of the employees are represented by the Brotherhood of Railway Clerks, about 7,000 by the International Brotherhood of Teamsters, and the remainder by the Machinist and Blacksmith Union.

The union in this case is the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which represents the vehicle drivers for the purpose of collective bargaining in the cities of Chicago, San Francisco, St. Louis, Cleveland, Cincinnati, Philadelphia, Newark, and New York.

The Organization had a collective agreement with the Agency since 1920 (originally with the predecessor company, the American Railway Express Co.), for all of these cities. In 1928 a special local agreement was entered into for the New York metropolitan area which is in force in that area to the extent that it is not inconsistent with the national agreement.¹

In the numerous proceedings resulting in emergency boards, the New York local union and the International Union jointly presented their claims for all cities before the Calkins board but had separate proceedings for the New York local in the Sharfman arbitration board (1941), the Stacy and Swaim boards (1945) and the Meyer board (1948).

The International Union conducted proceedings for all cities other than New York before the Edwards board (1947) and the present board.

The International Brotherhood of Teamsters represents vehicle and garagemen in the eight cities enumerated and in a part of surrounding suburban areas and in any city where a majority of vehicle and garagemen designate the Teamsters as the bargaining agent.

HISTORY OF THE DISPUTE AND SETTLED ISSUES

The demands of the Organization from which this case arose were made upon the Agency on June 27, 1947, and included the wage demands which were the basis of the Edwards emergency board report

¹ The Meyer board had the question of the relationship between this local agreement and the national agreement before it in 1948 and in its report explained in some detail the relationship.

of October 13, 1947. The Agency's demands upon the Organization were made on June 27, 1947. Both sets of demands applied only to the Teamsters national contract, outside of New York City.

Meetings were held in June, September, and October 1947, and the parties met with the National Mediation Board on October 16, 1947. Arbitration was suggested and declined on October 20.

In March 1948, the Organization advised the National Mediation Board that a strike had been authorized, and requested the appointment of an emergency board. Mediation was resumed on March 15, 1948, and on March 18 the National Mediation Board advised the parties that its services were at an end. The appointment of this emergency board was provided for on March 25, 1948.

When this hearing commenced there were in issue, for the consideration and recommendations of this board, demands by the Organization for one or more changes in each of 34 of the 84 rules in the rules agreement, of which the principal changes, in addition to the questions concerning the workweek and vacations, may be briefly stated as follows:

Changes in the manner of proof of a majority membership in the teamsters in the cities where the Organization does not now represent the vehiclemen.

Limitation of the number of extra list employees to 10 percent of the number of regular employees, and other changes affecting the seniority and work assignments of extra list employees.

Redefinition of the vehicle division and the employees belonging thereto.

Restriction of tractor-trailer operation to transfer service.

Restriction of employment of Agency vehicle employees by other employers.

Elimination of the fitness and ability clause in the seniority rule and related rules.

More exact description of jobs bulletined for bidding.

Requiring a driver and helper on all baggage service vehicles.

Shortening of period of temporary vacancies in jobs.

Extension of period of notice of change in starting time, and other changes in the starting time rule.

Extension of the period of notice of reduction in force.

Provision of severance pay for employees laid off or discharged.

Prohibition of use of outside vehicle equipment when Agency equipment is available.

Reduction of time for approval of records of new employees.

Shortening of time limits at all stages of grievance procedure.

Requiring that advice of cause of discipline be furnished the Organization in all cases.

Guarantee of 8-hour pay for regular employees reporting for work and not used.

Change of meal period.

Elimination of present requirements for authorization of overtime work.

Limitation to 7 days of time for notice of disallowance of claims.

Addition of Washington's birthday as a paid holiday.

Elimination of Sunday straight time jobs.

Revision of the basis of pay formula.

Increased allowances and hours changes for witnesses in court.

Guarantee of free transportation on same basis as railway employees.

Requiring that the Agency furnish uniform caps and jumpers.

Provision for sick leave of 12 days per year.

Provision by the Agency for 1 year of accident, health, hospital, and surgical benefit insurance for all vehiclemen.

At the commencement of the hearing there were in issue demands by the Agency for one or more changes in each of 15 of the 84 rules in the agreement, which may be briefly stated as follows:

Addition of a preamble referring to the express operations contract between the Agency and the railroad, and the air express agreement with the air lines.

Elimination of restrictions on preloading of vehicles.

Lengthening of time limit on temporary job vacancies and permission to assign men to such jobs without bulletining them for bidding.

Requiring a written request of an employee that the Organization represent him in grievance discussions.

Provision for 20-day delay in payment of reparations.

Prohibition of slow-downs pending grievance settlements.

Provision for union cooperation to prevent absenteeism.

Addition of a rule defining the employee's status after leave of absence.

Redefinition of intermittent service.

Elimination of pay for holidays except for men working on the day before or after a holiday, and other changes in the holiday-pay rule.

Revision of the basis of pay formula.

Addition of an article, of seven rules, relating to over-the-road truck service.

Division between the Agency and the Organization of the cost of printing the rules agreement.

Changes in the vacation rule.

Addition of a rule prescribing the time of payment of wages.

During the course of the hearing the parties to the dispute made a settlement agreement whereby the Agency withdrew all of its demands for rules, changes and the union withdrew all its demands except those for a 40-hour 5-day week, and vacation adjustments which are the issues upon which our recommendations are made.

THE RAILWAY EXPRESS AGENCY AND THE RAILROADS

The Railway Express Agency is not only subject to the labor laws affecting railroads enumerated above, but has been held by several emergency boards to be a part of the railroad industry to the extent that wage patterns applied to the railroads have been made to apply to the Agency.

As early as 1941 an emergency board headed by Justice John P. Devaney of the Minnesota Supreme Court recommended that the 44-hour week which had been extended to the vehicle men represented by the International Brotherhood of Teamsters should be applied to all employees represented by the Brotherhood of Railway Clerks, the International Association of Machinists, and the International Brotherhood of Blacksmiths, Drop Forgers and Helpers of America. This was in recognition of the unity of employment whereby all employees must be treated alike.

The Sharfman board in 1943 said :

The board concludes that the business of the Railway Express Agency is an integral part of the railroad business * * *. The employees engaged in express work are accordingly railroad employees whether they drive the trucks, pick up and deliver the shipments, or whether they work on the trains side by side with the railroad baggagemen.

The board has given consideration to the individual situation of the Railway Express Agency. After such consideration and on the basis of all evidence and arguments, we have concluded that the employees of this carrier should be treated in this case in the same manner as the employees of the carriers in general.

The board consequently applied its wage findings to the Agency.

The Shaw board, headed by Elwyn R. Shaw, in October 1943 reinforced the decision of the Sharfman board by declaring :

We see no reason to differ from the conclusions of the Sharfman board * * * and the recommendations hereinafter set forth are intended by us to apply equally to the employees of the American Express Co. (Agency).

The Woolley board in 1946 said :

The significant consideration is to be found in the fact that the Railway Express Agency has been recognized as part and parcel of the railroad industry, and that Express employees have been treated for the most part like other railway employees.

The Edwards board in October 1947, having before it a demand of the International Brotherhood of Teamsters for a wage increase greater than that granted by an arbitration board to the nonoperating railroad employees (15½ cents) refused to depart from the national pattern set for the railroads and recommended the same increase as that granted to the nonoperating railroad employees.

The board said:

In determining the amount of wage increase, if any, which should be granted to these men, we must consider their relation to the railroad industry in general, and their relation to the other employees of the Express Agency * * *. Many previous emergency boards, after careful consideration of all factors involved, have found that the Express Agency is an integral part of the railroad industry, and that its employees are railroad employees and should be so treated in respect to wages.

* * * Since 1929 the wages of Express employees have closely followed the pattern of wages fixed for other railroad employees.

In this case we are confronted by demands by the teamsters which, if granted, would give the vehicle employees in the seven larger cities here involved an increase in wages of more than 15½ cents per hour, and would thereby destroy the long existing differentials between the wages of the vehicle employees working in these cities and the wages of vehicle employees represented by the clerks and working in other cities.

This board refused the request of the teamsters and recommended the same increase in wages (15½ cents) as that granted to nonoperating railroad employees.

The issue of the national pattern was again raised before the Meyer board, 1947-48, which had before it the claims of the New York locals of the teamsters for an increase in wages greater than that granted to the nonoperating employees of the railroads and to the other employees of the Agency, and for a 40-hour, 5-day week, Monday through Friday.

The board readily accepted the national pattern of 15½ cents an hour increase fixed by the arbitration board for the railroads in September 1947 and applied thereafter to the Express Agency by agreement to all other employees of the Agency. The board, however, in reviewing the request for a 40-hour week gave consideration to certain local conditions in New York, not found elsewhere, and in its recommendations modified the national pattern as to hours of work to the extent of providing for a 40-hour, 5-day staggered workweek with an extra increase of 5 cents an hour as a partial compensation for the loss in weekly pay, and which the board alleged could be saved by the Agency under the new plan.

The board was fully aware of the possible effect of its proposed modifications upon the national pattern and set forth clearly its reasoning on this point.

The recommendations of the board cannot reasonably be construed as setting a precedent for other areas in which the Agency operates * * *. It is far from selfevident that other Agency employees, working in other localities and subject to varying customs, will desire a changed workweek that involves a large cut in their take-home pay, or that a board would award or recommend a 5-day workweek on the mere theory that what is appropriate for one area is appropriate for all areas. Those conditions in the discrete areas which directly affect the Agency's operations are sharply distinguishable * * *. Our conclusions are based on the conditions that prevail in New York metropolitan area today. Though we deny that our recommendations create a precedent for other areas or other classes of employees, we are not passing in one way or another on the general application of the staggered workweek nor, for that matter, on the general admissibility of the penalty Saturday. We have reviewed the proposed changes in the local agreement and reached the conclusion on narrow grounds which relate to present distinguishable customs and operations.

The Calkins board, February 1, 1944, had the question of the national pattern before it in a different form; namely, the adjustment of wage increases in New York to conform to the national increases. The New York drivers of the Agency, represented by the teamsters, had obtained in August 1941, through an arbitration board, an increase of 8.16 cents per hour independently of the national movement.

Thereafter the Morse board, as of December 1, 1941, through mediation, increased wages of all of the Agency employees (excluding the New York drivers who were not in the proceedings) 10 percent per hour. Thus a discrepancy of 1.84 cents per hour was created against the New York drivers.

The Calkins board restored the national pattern as nearly as possible by special adjustment of the wages in the New York metropolitan area of the Agency's drivers. The Board recommended the payment of the difference per hour between the general wage increase and the maximum of 9 cents per hour increase permissible under the wage stabilization program. The drivers under this adjustment received an additional 2 cents per hour and the helpers and garagemen 1 cent per hour.

The Calkins board thus recognized the national pattern not only as used in the Agency but in the railroad industry and corrected the infraction in the pattern which had been made in 1941 by the arbitration board in the New York metropolitan area case.

The evidence is conclusive that the Railway Express Agency is a part of the railroad industry, and that historically the major labor relations issues have followed the national pattern set by the railroads. In turn the labor relations issues in the Agency have followed a pattern set by the Agency in its collective agreements with the Brotherhood of Railway Clerks and the International Brotherhood of Teamsters.

Uniformity has been the rule with an occasional aberration. Whatever in wages has been granted to the railroad men has been granted to Agency employees; and whatever has been granted to Agency employees represented by one union has eventually been granted to all employees of the Agency.

In all of the proceedings prior to those in this case, the Agency has contended that it was not a part of the railroad industry and not subject to wage patterns set on the railroads.

In the instant case, the Agency acknowledged that it had changed its view in the light of the findings of emergency boards since 1941 and was now accepting the views set forth by those boards.

Mr. Hartung, representing the agency, said:

We are an integral part of that industry (railroads). Our employees are railroad employees. Several emergency boards have so held, and we have submitted their reports as exhibits * * *. We have quoted their findings in our evidence, and again I ask you to bear those quotations in mind because I think they are particularly apt in the consideration of this question.

FIVE-DAY, FORTY-HOUR WEEK

The Organization seeks to establish for the vehiclemen whom it represents in the 7 teamster cities and 25 smaller communities, a 5-day, 40-hour week, Monday through Friday, with Saturday as an overtime day, without reduction in the present weekly rate of pay.

Rule 45 now reads as follows:

Day's work: Except as otherwise provided in these rules, 7 hours, 40 minutes, Monday through Friday, inclusive, and 5 hours, 40 minutes on Saturday, exclusive of the meal period, shall constitute a day's work; provided, however, that by mutual agreement locally, 8 hours, Monday through Friday, inclusive, and 4 hours on Saturday, exclusive of the meal period, may be substituted.

The new form of rule 45 as proposed by the Organization would read thus:

Day's work: Except as otherwise provided in these rules, 8 hours, Monday through Friday, inclusive, shall constitute a day's work.

Other rules which the Organization says would require changes if this change were made in rule 45 are the following:

RULE 17. Changing starting time.

RULE 6. Weekly work.

RULE 45. Overtime.

RULE 60. Computing overtime.

RULE 63. Basis of pay.

RULE 64. Day of rest.

RULE 85. Date effective.

Although the Organization at no time formally offered to accept the staggered 40-hour, 5-day week recommended for the New York teamsters by the report of the Meyer emergency board, nevertheless there is implicit in much of their argument and a great deal of the evidence the contention that a change to that extent is desirable if the demand as written should not be recommended. We have therefore, also considered whether the staggered 40-hour week should be recommended in this case.

HISTORY OF THE WORKWEEK

The present workweek of the vehiclemen represented by the teamsters consists of 5 days of 7 hours and 40 minutes, Monday through Friday, and 5 hours and 40 minutes on Saturday, making a 44-hour straight-time week. By agreement between the Organization and the Agency the weekly pay is allocated equally to each of the 6 working days. The existing 44-hour week permits staggering of work schedules and does not require premium pay on Saturday as such, both under this contract and the rules agreement between the Agency and the Brotherhood of Railway Clerks, which represents two-thirds of the company's vehicle drivers. Sunday is a premium day under both contracts, except for a limited number of "continuous operations" jobs which are worked at straight time on Sunday and have a weekday as a day of rest.

For many years, prior to 1939, the workweek for all of the employees of the Agency was 48 hours. In September 1938, the truck drivers employed by other companies in New York City secured a 44-hour week, following a strike in the trucking industry. In May 1939, the New York teamsters employees of the Agency, who then numbered about 3,500, were granted the 44-hour week, with the expectation on the part of the Agency that this change would be limited to New York City vehiclemen. However, in March 1940, the vehiclemen represented by this organization in the other teamster cities succeeded in securing the 44-hour week. These changes resulted in a demand by the Brotherhood of Railway Clerks for a 44-hour week for the 90 percent of the Agency employees represented by its including two-thirds of the Agency's vehiclemen. The Devaney emergency board recommended that this demand be granted with only minor exceptions, which was done on October 1, 1940. Thus, by that date almost all of the employees of the Agency were on a 44-hour week while all other railroad employees were still on a 48-hour week as they are now.

A 40-hour week demand by the New York teamsters was in issue before the Sharfman arbitration board in 1941, but was withdrawn.

These developments were followed by a demand by the New York teamsters for a 40-hour week which both the Stacy and Swaim emergency boards refused to recommend in 1945.

However, in January 1948, the Meyer emergency board recommended that the demand of the New York teamsters for a 40-hour, 5-day workweek be granted in modified form, and found that the New York City vehiclemen represented by the Organization should have a staggered 40-hour week, without premium pay for Saturday as such. This change resulted in a reduction in the hourly and weekly rate of pay, which was partially compensated by a recommended 5-cent per hour increase in the pay rate. The Meyer board also recommended a general pay increase of 15½ cents per hour for the New York teamsters, conforming to the October 1947 recommendations of the Edwards emergency board affecting teamsters outside of New York. Thus, the actual take-home pay of the New York teamster employees was slightly increased after the Meyer board recommendations were all made effective.

THE ORGANIZATION'S CONTENTIONS

The International Brotherhood of Teamsters bases its claim for the 40-hour, 5-day week on the following principal contentions. The public policy of the country favors a 40-hour week, as evidenced particularly by the provisions of the Fair Labor Standards Act, the Walsh-Healy Public Contracts Act, and the working conditions of Federal employees. The 40-hour week has made rapid progress in the trucking industry since the end of World War II and has been the standard in that industry in New York City since September 1946. Other cities have followed that trend. The general trend of industry has been toward the 40-hour week since 1929, and this schedule is common in continuous as well as in discontinuous industries. The Organization asserts that the 40-hour week is the general practice of the competitors of the Agency, including the post office, less than carload freight forwarders, over-the-road truckers and local trucking companies.

The Organization further contends that the ratio of the work load on Saturdays to that on other days of the week is so low that the Saturday operation as now conducted is wasteful of manpower and vehicle costs, and that the Agency can adopt the 5-day, 40-hour week without deduction in weekly wages with little increase in pay-roll costs, which will be partially, if not wholly offset by savings of other costs.

The Organization points out that the Edwards emergency board found that the difference in the progression between the hourly and

weekly wage rates of Agency vehiclemen was due to the continuance of the 44-hour week by the Agency, which resulted in comparably high weekly earnings with lower comparative hourly rate increases. The Organization contends that Agency drivers are at a disadvantage when compared with other truck drivers as respects the hourly rate of pay in the seven teamster cities other than New York, i. e., those cities where the teamsters' organization represents the vehiclemen.

THE AGENCY'S CONTENTIONS

The Agency's principal counter-arguments are the following: A change to the 40-hour week for these employees will require a similar change for all Agency employees. The cost of such a change will be so great as to require changes in the Agency's rates charged to the public for its service, and such rate increases will necessarily result in the reduction of the volume of business of the Agency, and therefore in its employment. While not denying the prevalence of the 40-hour week in industry generally, the Agency distinguishes continuous operation industries, of which it contends it is one, from industries which do not maintain continuous operations. The Agency also relies strongly on the contention that it is a part of the railroad industry in which the standard workweek is 48 hours.

Although it acknowledges that the Saturday work load is lower than that for other weekdays, the Agency argues that a reduction in the workweek for either these employees or all employees cannot be made to result in corresponding reductions in other costs. It is also submitted that the present ratio of Saturday hours to other weekday hours under the teamsters national contract (5 hours, 40 minutes: 7 hours 40 minutes) is realistically related to the ratio of the Saturday work load and the normal work load.

The Agency contends also, that as to 87 percent of the men here represented, and in all teamster cities excepting St. Louis and San Francisco, the hourly rate of pay compares favorably with that of other trucking employees.

The Agency is opposed to the 40-hour staggered workweek recommended by the Meyer board as well as to the Organization's demand as written, and argues that the conditions in New York are clearly distinguishable from those in other cities, including all teamster cities.

DISCUSSION OF THE EVIDENCE

Prevalence of the 40-hour week

The Organization calls particular attention to the direct and indirect effects of the Fair Labor Standards Act and the Walsh-Healy

Public Contracts Act and to the general working conditions of employees of the Federal Government, as evidence in support of its demands. It is noted that although the Fair Labor Standards Act requires overtime pay after 40 hours per week and the Walsh-Healy Act requires overtime pay after 40 hours per week or 8 hours per day, neither requires overtime pay on Saturday as such, as here demanded by the Organization. Also, although the evidence on public employment is meager, the record shows that some post-office employees, for example, work a staggered 5-day week. So, while the evidence helps to support the claim that industry generally is moving in the direction of the 40-hour week, it is not persuasive in favor of the Monday through Friday work schedule with overtime on Saturday as such. The record contains no definitive evidence on the extent to which operations subject to these acts are continuous or discontinuous, but we take it that it may be fairly assumed that the percentage of continuous operations is relatively low.

In a study by the Bureau of Labor Statistics of the United States Department of Labor of overtime clauses in 437 collective bargaining agreements which were in effect during the last half of 1946, and covered 31 manufacturing and nonmanufacturing industries employing something over 2 million workers, it was found that the 40-hour week, 8-hour day prevailed in 85 percent of the contracts studied. Slightly less than one-half of the agreements required a premium rate for Saturday as such. The record does not reveal how many of the industries covered by this study were continuous operations industries, but since part of this report was read into the record by the Organization, we assume that if it had contained any significant showing in favor of a 40-hour week in continuous operations industries that fact would have been brought to our attention.

A report of the Bureau of Labor Statistics on "Union Scales for local city truck driving" dated July 1, 1947, based on studies covering more than 200,000 truck drivers in 75 cities of populations of from 40,000 to 1,000,000, shows that as of July 1, 1947, almost two-thirds of the drivers worked under union agreements providing for the payment of overtime rate after 40 hours. Included in the one-third of the men working more than 40 hours are the vehicle employees of the Railway Express Agency. This report shows a steady decline in hours of truck drivers since 1939, when more than 50 percent were on a 48-hour straight-time week and only 10 percent on a 40-hour schedule. Forty hours became the typical workweek in the trucking industry in 1947, with only 20 percent of the employees working 48 hours at straight time. The average workweek in the trucking industry on July 1, 1947, was 43 hours.

To this report are attached schedules applying to each of the teamster cities except New York, from which it appears that on July 1, 1947, the principal exceptions to the 40-hour week, in addition to the Railway Express Agency vehiclemen, were drivers handling general freight, ice, milk, food products, furniture, newspapers, and laundry.

The report shows that in Chicago many of the more significant changes to the 40-hour week from longer schedules for truck drivers occurred in the year between July 1, 1946, and July 1, 1947. During that year 40 hours became the contract straight-time workweek for the following classes of drivers who had formerly worked at straight-time rates for the number of hours indicated.

Formerly 54 hours per week, wholesale food.

Formerly 51 hours per week, building materials (in part), general cartage, parcel delivery, and machinery moving.

Formerly 48 hours per week, baggage, bakery (in part), butter and eggs, film carriers, furniture, general hauling, meat, soft drinks, and tobacco.

Formerly 45 hours per week, bakery (in part) and building material (in part).

However, in the other teamster cities the changes in the same year do not show the same trend in the same degree. In San Francisco reduction of hours occurred only in the contracts covering parcel and furniture delivery and soft-drink drivers, in each case from 48 to 40 hours; in Cincinnati, only ice men improved their position, from 54 to 40 hours; in Philadelphia, there were no decreases in hours, while ice men went from 40 hours to 48, ice-cream drivers from 40 to 45 and milk drivers from 40 to 44. In Cleveland, wholesale grocer drivers' hours went up from 40 to 48 and biscuit drivers from 40 to 45 with only rag-supply drivers decreasing hours, from 48 to 44. St. Louis reported reductions to 40 hours in a number of industries, which had formerly worked 44, 45, or 48 hours at straight time.

Comparison of the hourly rates of pay for truck drivers generally, as shown by this study, with that for Railway Express Agency vehiclemen, adjusted to include the 15½ cents per hour increase granted since July 1, 1947, shows that the rate paid to Agency drivers exceeds the local average in four of the seven cities here represented, and is in all cases in excess of the national average. Thus, the effect of the 44-hour week on the hourly rate of pay does not appear to be such as to justify the conclusion that Railway Express Agency-Teamster vehicle drivers as a group are at a serious disadvantage as compared with other trucking employees.

The Organization introduced in evidence examples of and testimony concerning truck drivers' contracts in Chicago, San Francisco, and

Newark, which tends to confirm the summary statement of the B. L. S. report regarding the general trend to the 40-hour week in the trucking industry, and which tends also to show that changes in the direction of the 40-hour week are continuing to occur. However, as was developed in the cross-examination of the union witnesses, very few of the employees subject to those contracts do any Saturday work, and, in general, the continuous operations industries are or probably will be, the last to go to a 40-hour week.

CONTINUOUS OPERATIONS

As was recognized by the Stacy, Swaim, and Meyer emergency board the business of the Agency cannot be discontinued on Saturday. This is due, in part to the fact that the equipment and personnel of the Agency is not sufficient to handle shipments arriving on Saturday on the following Monday which is almost invariably a very heavy day, due to the nondelivery of most of the shipments arriving on Sunday, and some of the shipments arriving on Saturday. Agency witnesses testified that present terminal and vehicle facilities would be insufficient in several of the cities here involved to care for such an increased Monday work load.

More importantly, however, Saturday pick-up and delivery cannot be discontinued because of the nature of the service offered by the Agency. It is of the essence of an express service that shipments reach the consignees as promptly as possible. Many shipments consigned through the Agency are of a perishable or emergency nature. The Agency's rates are high in comparison to those of some of its competitors. No doubt many shippers would refuse to pay this premium unless prompt transportation and delivery service are maintained. Although the Interstate Commerce Act does not prescribe the days on which the Agency shall operate its business, compliance with the act requires that the Agency maintain adequate service.

Since the Saturday work cannot be discontinued, the Organization points out that this does not mean that each individual employee must work six days at straight time rates. The Agency counters with the argument that if the 40-hour week were thus applied it would amount only to a general wage increase of approximately 10 percent, within a few months after the general increase of 15½ cents per hour recommended by the Edwards emergency board.

THE SATURDAY WORK LOAD

To support their contention that the Saturday operations of the Agency are wasteful of pay roll and other costs, the Organization

introduced evidence that in some of the seven teamster cities outside of New York many of the business places using express service are closed on Saturdays and cannot send or receive express shipments, have asked the Agency to deliver no express or only air express on Saturday. There was also some testimony intended to show that there is less efficient full use of manpower and vehicles on Saturdays than on other days of the week in some cities. The Organization calls attention to the experience of the Agency in New York City, using the 40-hour staggered week recommended by the Meyer emergency board, and emphasized that while the Agency witnesses before the Meyer board testified that Saturday operations would require 60 percent of the regular pay roll, and the Meyer board found that 55 percent would be needed, experience has shown that only 25 percent is required. From all of this evidence the Organization argues that the Agency can install the 40-hour week in all the teamster cities without substantial increase in pay-roll costs and with certain offsetting savings in vehicle operations costs.

In discussing the work load which involves the vehicle men the parties distinguish between the pick-up and delivery service and the transfer service. The pick-up and delivery, of course, involve local transportation of shipments from local consignors and to local consignees. The transfer service involve the transferring of shipments from one carrier to another while en route to other than local destinations. When this transfer occurs between different terminals or other shipping points vehiclemen are used. The size of the transfer operation differs in different cities. It appears to be an important part of the work in Chicago and Cleveland, is substantially less important in San Francisco, St. Louis, and Newark, and apparently does not involve the vehiclemen in Cincinnati.

That part of the operation which is the more comparable as between different cities, and the greater part of the vehicle operations in each of the cities, is the pick-up and delivery service. The ratio of the number of shipments handled on Saturday to the average number of shipments handled each day from Monday through Friday inclusive for the months of November and December, 1947, and January 1948 was as follows in teamster cities other than Chicago and New York.

San Francisco.....	61.71	Cincinnati.....	52.18
St. Louis.....	48.10	Cleveland.....	49.27
Philadelphia.....	41.80	Average (6 cities).....	50.43
Newark.....	49.54		

The same ratio for the principal offices in the whole Express system excepting the New York City department for the same period was 73.58. The ratio for the whole year of 1947 in Chicago was 49.28.

These figures exclude all transfer operations, and include incoming shipments only if they are delivered.

The period of time which these figures represent appears fairly to reflect normal operations. December is considered to be a month of heavy express operations while January may be said to be a light month, and November, in general, a normal month. Although a comparison of Saturday work load with the Tuesday through Friday work load gives a higher Saturday ratio, as suggested by one Agency witness, it is also true that comparison of Saturday with Monday alone gives a much smaller ratio. In our view either of these comparisons distorts the inferences to be drawn from the evidence, and in any case deprives this evidence of any direct comparability with the evidence relied on by the Meyer board in New York City.

Similar statistics for cities in which two-thirds of the Agency's vehiclemen and all other Agency employees are represented by the clerks rather than by the teamsters show the following ratios of the number of shipments handled on Saturday to the average number handled each day from Monday to Friday inclusive:

Dayton, Ohio.....	74.9	Atlanta, Ga.....	61.1
Des Moines, Iowa.....	62.7	New Orleans, La.....	81.08
Detroit, Mich.....	70.67	Washington, D. C.....	80.0
Indianapolis, Ind.....	68.79	Los Angeles, Calif.....	67.7
Milwaukee, Wis.....	65.85	Seattle, Wash.....	70.7
Minneapolis, Minn.....	51.72	Kansas City, Mo.....	60.4
Toledo, Ohio.....	71.35	Denver, Colo.....	82.0
Baltimore, Md.....	56.0	Houston, Tex.....	68.7
Buffalo, N. Y.....	56.2	Dallas, Tex.....	70.0
Pittsburgh, Pa.....	54.0		

If the vehiclemen represented by the teamsters were to receive a 40-hour week in teamster cities on the basis of an average Saturday work-load ratio of 50.43, no valid distinction would justify its denial to the vehiclemen represented by the clerks in Minneapolis, Baltimore, Buffalo, and Pittsburgh, in which nearly the same ratio exists. If the vehiclemen represented by the teamsters are entitled to a 40-hour week in San Francisco, where the ratio is 61.71, then so would be the vehiclemen represented by the clerks in Des Moines, Milwaukee, Atlanta, Los Angeles, and Kansas City. It is inconceivable that the 40-hour week could then be denied to the remaining vehicle employees of the Agency, or in fact, to the remaining employees of the Agency.

Although these ratios cover a different period of time than those put in evidence before the Meyer emergency board they were derived in the same manner as those there considered. The Meyer board found that the ratio of Saturday work to Monday to Friday work in New York City was only 28.12. In distinguishing the New York City

department from the rest of the system on the basis of this ratio the Meyer board was comparing the New York City ratio of 28.12 with a ratio for the entire system of 61.24. This system-wide ratio of 61.24 was lower than that of 73.58 shown in the evidence in this case because it included the figures from New York City.

In the teamster cities other than New York the ratio of hours worked on Saturday (5 hours 40 minutes) to those worked on Monday through Friday (7 hours 40 minutes), by vehiclemen is 74 percent, which closely approximates the system-wide Saturday work-load ratio.

THE COST OF THE 40-HOUR WEEK

Although the alleged cost of the establishment of the 40-hour week is not one of the reasons for our recommendation on that issue, it should be noted that in the case of the Agency an increase in pay-roll costs may have a more immediate effect on volume of business, and therefore on the Agency's capacity to retain employees, than is true in most industries. The net income of the Agency, after payment of operating expenses and taxes, is paid to the railroads which own it as "Express privileges" payments, to compensate the railroads for transporting express. The rate of such payments has declined steadily and substantially with minor fluctuations, since 1929. This decline has been found by the Interstate Commerce Commission to be due principally to increased pay-roll costs, including pay-roll taxes for retirement and unemployment insurance and general wage increases.

As a result of these decreases in revenue available to be paid to the railroads as "Express privileges" payments, and in order to permit the Agency to increase such payments, the Interstate Commerce Commission approved successive substantial rate increases on December 13, 1946, October 25, 1947, and January 22, 1948. These increases in rates have resulted in substantial losses of business to competitors of the Agency, who are the Parcel Post Service, Rail Fast Freight, Air Freight, Freight Forwarders, and Over-the-Road trucking companies. At the time of the hearing in this case the volume of the Agency's business was down 22 percent below the same period in 1947. In 1947 the Agency handled 17.71 percent less traffic than in 1946. Agency witnesses asserted that continued increases in costs and rates would result in further decreases in the volume of business.

The Agency estimates the cost of the establishment of the 40-hour, 5-day week, Monday through Friday, with premium pay on Saturday, in all teamster cities including New York, at a little less than 4 million dollars per year. This estimate is said to allow for all probable savings of costs available in adopting the new schedule, and does not include

railway retirement and unemployment costs which are estimated at \$400,000 annually.

It is the Agency's position that if the 40-hour week were to be established for this group of employees it would soon necessarily be granted to all of its employees. If the same arrangements were extended to all Agency employees the Agency's estimate of additional annual cost is \$47,206,207.00.

The record does not afford a basis for estimating the cost of the 40-hour staggered workweek as applied either in these seven teamster cities other than New York or in the whole system. Company evidence tended to show a substantial increase in costs, however, due to the overtime payments required on the sixth day of work.

EFFECT OF MEYER BOARD RECOMMENDATIONS

The only exception to the 44-hour week for operating employees of the Agency is the staggered 40-hour week for the vehiclemen in the New York City department established pursuant to the recommendations of the Meyer emergency board dated January 15, 1948. This schedule has not been extended to any other group of employees.

In recommending the staggered 40 hours workweek for the New York vehiclemen represented by the teamsters, the Meyer board was very careful to say that their recommendation was limited to New York and that their conclusions were based wholly on conditions shown by the evidence to exist in New York City.

Thus, the following statements appear in the Meyer emergency board report:

In the second place, though teamsters outside of New York work 74 percent of their normal work hours on Saturday, just as New York teamsters do, the outside teamsters, probably with the help of some overtime, carry double the relative Saturday work load of the New York teamsters.

* * * * *

The relationship of all overtime hours (Sundays and holidays included) to total hours is 4.8 percent for New York teamsters and 6.3 percent for all other teamsters. Agency exhibits do not separate outside teamster cities from other outside cities in respect to relative Saturday work loads. We assume that teamster cities follow the general outside average.

* * * * *

We have * * * distinguished the local situation by important differences in the Agency's operation which, in turn, are the result of vital differences in local customs.

It is far from self-evident that other Agency employees, working in other localities and subject to varying customs, will desire a changed workweek that involves a large cut in their take-home pay, or that a board would award or recommend a 5-day workweek on the mere theory that what is appropriate in

one area is appropriate in all areas through conditions in the discrete areas which directly affect the Agency's operation, are sharply distinguishable.

The recommendations of the board cannot reasonably be construed as setting a precedent for other areas in which the Agency operates.

* * * * *

In 1945, for example, the Swaim and Stacy emergency boards passed on the demands of the local unions for a 5-day, 40-hour week with Saturday and Sunday as days of rest. Both of these boards found that it would not be feasible to eliminate Saturday work and recommended that the local union's demand should be denied. We have made the same finding and the same recommendation. In the instant case, however, the local unions intimated that they might be willing to accept a staggered 5-day, 40-hour week. Because such a week would not eliminate Saturday work at straight-time pay, because it would increase the efficiency of the Agency's local operation and because it accords with a pervasive local custom, we have recommended its adoption. This practical local recommendation is in no way repugnant to the recommendations of the Swaim and Stacy boards.

Our conclusions are based on the conditions that prevail in the New York metropolitan area today. Though we deny that our recommendations create a precedent for other areas or other classes of employees, we are not passing, in one way or another, on the general application of the staggered workweek nor, for that matter, on the general admissibility of a penalty Saturday. We have reviewed the proposed changes in a local agreement and reached a conclusion on narrow grounds which relate to present distinguishable customs and operations. Arguments that we have dismissed as inappropriate in a local setting may perhaps be appropriate later before another tribunal.

The Meyer board recommendations affect approximately 4,300 vehicle drivers. This case involves approximately 3,200 vehicle drivers. All the other employees of the Agency, including all other vehicle drivers, are represented by the Brotherhood of Railway Clerks, which represent 90 percent of the company's employees except for about 1,000 employees, who are represented by the International Brotherhood of Blacksmiths and the International Association of Machinists. The vehiclemen constantly work with and beside these 44-hour employees of the Agency. In our view this is a closer association than is the casual contact between these vehiclemen and other teamsters or loading platforms and in some union meetings.

The history of the 44-hour week for employees of the Agency, as well as the general wage history of the Agency, shows that a change granted to one group of employees will promptly be demanded by all of the others. Since the seven teamster cities involved here cannot properly be distinguished from all other cities, as New York City was in the minds of the members of the Meyer board on the basis of local conditions different from conditions throughout the country, the parties and the board are faced with the question whether in this case, involving 4 percent of the Agency's employees and one-third of its vehicle drivers, the evidence justifies the recommendation of a 40-hour

week which would inevitably result in its extension throughout the Agency's entire system.

The Meyer board recommendation by its own terms is not a controlling precedent for the establishment of the 40-hour staggered week throughout the Agency's entire system. The evidence in this case, which includes only the seven teamster cities outside of New York, does not show the propriety at this time of giving further impetus to the establishment of the 40-hour staggered workweek throughout the system while at the same time approximately 1 million other nonoperating employees are uniformly working on a 48-hour week.

It is believed by many that at some future time the present 48-hour standard workweek of the nonoperating railroad employees may be modified. The board is advised, and the parties acknowledged that such demands are currently being made by the nonoperating railroad unions on a Nation-wide basis. What changes, if any, may result from these demands is not now apparent. However, consistently with the Agency's past experience, so often referred to in this record, of extending similar changes in working conditions to all groups of its employees who are similarly situated, it follows that changes which may accrue to other employees of the Agency will be extended to the vehiclemen represented by the teamsters. Presumably, this will be done without delay and without the necessity of such a proceeding as this.

We believe that the 40-hour-week demand of the vehiclemen represented by the teamsters in this case cannot be regarded as an isolated problem, but that it must necessarily be considered in its relationship to the situation of the other employees of the Agency for whom the prevailing workweek is 44 hours. While the workweek for employees of the trucking industry as such is commonly found to be 40 hours we are persuaded, as were the Sharfman, Shaw, Woolley, and Edwards emergency boards, that Agency employees are a part of the railroad industry in which the 48-hour week presently prevails, affecting approximately 1 million nonoperating employees.

It was acknowledged in the argument of the Organization that the 40-hour-week demand does not contemplate cessation of Saturday work. Since Saturday work cannot be eliminated, the granting of the 40-hour week would operate as a general pay increase. The group of employees received a 15½ cents per hour general wage increase in late 1947, as the result of a report of the Edwards emergency board, which conformed to the pattern of general wage increases for nonoperating railroad employees generally. The 40-hour week cannot be justified this time for the purpose of obtaining a further general increase.

The Organization here involved has not demonstrated to this board the propriety of recommending a 40-hour, 5-day workweek for the vehiclemen employed by the Agency in the locations involved in this dispute. What has been shown is that such a recommendation would be contrary to the general pattern of working hours for Agency employees and for those in the railroad industry.

RECOMMENDATION

On the basis of the evidence in the record, the board is unable to recommend that the proposed reduction of the workweek be approved.

PROPOSED CHANGES IN VACATIONS (RULE 80)

The present rule governing vacations in the agreement between the Agency and the Organization provides as follows: (A) Employees having more than 1 year's service but less than 10 years' service—six working days with pay. (B) Employees having 10 years or more service but less than 15 years' service—nine working days with pay. (C) Employees having 15 years' service or more—12 working days with pay.

The change proposed by the Organization seeks to increase the vacation benefits by extending the vacation periods and by reducing the term of service necessary to qualify for the increased periods. Such proposal provides as follows: (A) Employees having more than 1 year's service but less than 5—10 working days with pay. (B) Employees having 5 years' or more service but less than 10—15 working days with pay. (C) Employees having 10 years' service, but less than 15 years' service—20 working days with pay. (D) Employees having 15 years' service or more shall have 25 working days with pay. All vacation allowances to be retroactive to January 1, 1947. Positions vacant due to employees being on vacation shall be filled by the senior unassigned extra vehiclemen.

The company originally proposed a change in the existing vacation rule but withdrew it during the hearing.

The Organization alleges generally in support of its proposal that employees with many years of service should be granted additional vacations and submits that more liberal vacation rules prevail for teamsters in trucking companies. The Organization also asserts that a schedule awarding special vacation benefits to long service employees represents the established policy of the Agency and such policy should not be disturbed.

With respect to the proposal that extra employees be assigned to jobs normally filled by employees on vacation, the Organization asserts

that the Agency's failure to so assign makes it necessary for the employees with adjoining routes to assume the duties of the vacationing employees, thus requiring them to work harder and longer and rendering the service less efficient.

The Organization also requests that any changes recommended in the vacation rule be made retroactive to January 1, 1947.

The Agency first contends that the Brotherhood's proposal is entirely unreasonable. It asserts that the standard vacation rule applicable to Agency employees and to all nonoperating employees in the railroad industry is on the basis of 1 week's vacation for employees of 1 to 5 years service and 2 weeks' vacation to employees with 5 or more years service. The Agency submits that further extending the vacation rule for this comparatively small group of its employees would result in demands by the vast majority of its employees for similar benefits. The Agency also contends that any further liberalization of present vacations should originate with a larger segment of the Agency's employees or of the railroad industry.

Regarding the claim for retroactivity, the Agency claims that the Organization's proposal is impracticable and perhaps unlawful since the demand was not made until June of 1947.

DISCUSSION OF THE EVIDENCE

The Organization produced witnesses who testified concerning the vacation provisions incorporated in agreements governing the working conditions of truck drivers in Cleveland, Ohio, Newark, New Jersey, and San Francisco, Calif. These witnesses produced, or testified concerning, some 38 such provisions in these 3 cities. No evidence on vacation practices or of contractual agreements pertaining to vacations was produced for any of the other localities involved in this proceeding. It was conceded that the evidence produced covered only a portion of the Organization's members in the cities mentioned above.

An examination of the evidence produced disclosed a variety of vacation provisions covering employees in trucking and warehouse operations and also some production employees. These contracts provide for vacations from 2 weeks after 1 year's service to 1 week after 1 year and 2 weeks after 5 years. Others provide 3 weeks vacation after varying periods of service.

This evidence, in our opinion, is not competent to present a prevailing practice on vacations, even in the three cities concerning which testimony was had. The liberalization of an existing vacation rule, Nation-wide in scope, on this limited showing would be founded on conjecture or speculation and not on competent evidence.

Rather than creating a pattern of vacation practice, the evidence produced points to a lack thereof. Certainly these various vacation rules presented to us in no way support the claim made by the Organization that employees of long service should be given additional consideration in the granting of vacations.

From the evidence before this board it appears that what the Organization is seeking by its proposed change of the vacation rule is a departure from the established pattern of granting vacations to employees of the Agency and to the nonoperating employees of the railroad industry.

In 1937, for the first time, vacation benefits were included in the agreements covering working conditions between the Agency and the representatives of its employees. These vacation rules made with the Brotherhood of Railway Clerks, as well as with the International Teamsters Organization, covered all of the Agency's employees, some 70,000 in number. Such provisions were identical in scope with that now included under rule 80 in the Organization's agreement in dispute here.

Thereafter, pursuant to recommendations of the Stacy and Swaim emergency boards in 1945, the vehicle employees in the New York City metropolitan area secured a liberalization of the vacation rule, namely: Six working days for employees of 1 to 5 years, and 12 working days vacation for employees of 5 or more years of service. In effect, such vacations amount to one and two weeks for the specified periods of service. Subsequently, through collective bargaining, this vacation rule was extended to all the Agency's employees, except the vehiclemen represented by the Brotherhood of Teamsters in this dispute. At the present time, therefore, all of the Agency's employees enjoy this liberalized vacation rule, with the exception of the teamsters here involved. Ninety-six percent of the Agency's employees are operating under this rule. It should also be noted here that approximately 1 million nonoperating railroad employees enjoy the same vacations as those recommended in the Stacy and Swaim reports.

There is here outlined a pattern of vacation privileges for employees of the Agency and as well for the nonoperating employees of the railroads. It would be unwise for many reasons to depart from that pattern by recommending a different and more extensive vacation rule to the employee group here involved. The bargaining history of the Agency amply demonstrates that the liberalization of any substantial rule for one group of employees results in discontent among other employees and inevitably in demands by other groups for the same change. We do not pass on the desirability of extending vacation privileges, but we are impressed by the Agency's claim that if such extension is to

be brought about the movement should originate with a larger segment of the Agency's employees or of those in the railroad industry.

The Organization also asserts that the vacation rule recommended by the Stacy and Swaim boards is unacceptable, because it departs from an earlier policy of the Agency in rewarding longevity of service by longer vacations. The testimony in support of this claim is vague and does not establish the claimed earlier policy. In any event, the present over-all pattern of vacations shown to exist among the Agency's employees dissipates any weight that the claimed earlier policy might have.

Regarding this claim that longevity of service should be given consideration, it is at least implied that the Stacy and Swaim recommendations (the rule now enjoyed by a preponderate majority of the Agency's employees) in some way prejudice the longevity in service. We cannot agree with this contention. Whereas, under the original rule employees became entitled to 2 weeks vacation after 15 years of service, under the rule recommended by the Stacy and Swaim boards employees now are entitled to 2 weeks vacation after 5 years of service. The vacation privilege for senior employees remains the same, but has been extended to include a larger group of employees with less seniority. On the basis of this record and in the face of the circumstances presented to us, it would not be equitable or practical to recommend the change requested by the Organization. Such a recommendation would not only be against the weight of the evidence, but would suggest a departure from the pattern now prevalent among the Agency's employees.

We think that the vehiclemen involved here should enjoy the same vacation privileges and on the same basis as other Agency employees. We therefore recommend the following vacation rule: Six working days vacation for employees of one to 5 years' service, and 12 working days vacation for employees with 5 years of service or more.

In our opinion, and we so recommend, such extended vacations should be retroactive to January 1, 1947. This recommendation is designed to follow the pattern shown by the Agency to be established for its employees. The Brotherhood of Railway Clerks who represent a majority of the vehiclemen employed by the Agency, secured this liberalized vacation rule as of that date. The New York teamsters likewise secured it in 1947. Although this rule was offered to the vehiclemen involved here in 1947, we believe the conditions imposed by the Agency for its acceptance, namely that the Organization would waive any other demand for rule changes in the year 1947, was a hardship sufficient to justify the Organization's rejection of it at that time. The delay in securing this liberalized vacation allowance was caused,

at least to a substantial extent, by the action of the Agency. The teamsters' group involved here will, by our recommendation, be restored to parity with the other employees of the Agency.

In the discretion of the Agency, the retroactive vacations recommended may be given by extending longer vacations this year, or by making payments in cash in lieu of vacations, or both. An agreement between the Agency and the Organization, implementing this recommendation, would in no way violate the Railway Labor Act.

With respect to the Organization's claim that extra employees be assigned to fill positions of vacationing employees, the only testimony presented was that other employees took over the work of the vacationing employees. It was testified that the former individuals thus had to work harder and sometimes longer. Some point was also made that if the positions were filled, the efficiency of the service would be improved.

The Agency showed that under the present system management decided in a given circumstance whether the position should be filled, and that generally a substitute was assigned to the job. It was conceded that when an employee is required to work overtime, he is compensated at the premium rate.

From the evidence presented, there appears no substantial reason to depart from the present practice. The assignment of a substitute would require double payment for the time the employee is on vacation, and it seems wiser, in the face of the circumstances presented, that management should continue to decide whether the additional expense is warranted by the work load.

SUMMARY OF RECOMMENDATIONS

The board recommends:

1. That the demand of the Organization for a 40-hour, 5-day week not be granted.
2. That the demand of the Organization for changes in the vacation rule be granted in part, namely: 6 working days after 1 year's service and 12 working days after 5 years' service, retroactive to January 1, 1947.

Respectfully submitted.

JOHN A. LAPP, *Chairman.*

JOHN T. McCANN, *Member.*

JOHN D. GALEY, *Member.*