Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

CREATED APRIL 10, 1948

BY EXECUTIVE ORDER 9948

PURSUANT TO SECTION 10

OF THE RAILWAY LABOR ACT

AS AMENDED

To investigate an unadjusted dispute between the Aliquippa & Southern Railroad Co. and certain of its employees represented by the Brotherhood of Railroad Trainmen, a labor organization

(NMB Case A-2779)

Pittsburgh, Pennsylvania

MAY 17, 1948

(No. 60)

PITTSBURGH, PA., *May 17, 1948.*

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: The Emergency Board appointed by you on April 10, 1948, by Executive Order 9948, under section 10 of the Railway Labor Act, as amended, to investigate an unadjusted dispute between the Aliquippa & Southern Railroad Co. and certain of its employees represented by the Brotherhood of Railroad Trainmen, has the honor to submit herewith its report.

Respectfully submitted.

SIDNEY ST. F. THAXTER, *Chairman.*
LEVERETT EDWARDS, *Member.*
AARON HORWITZ, *Member.*

Executive Order 9948, April 10, 1948, follows:

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE ALIQUIPPA & SOUTHERN RAILROAD COMPANY AND CERTAIN OF ITS EMPLOYEES

Whereas a dispute exists between the Aliquippa & Southern Railroad Company, a carrier, and certain of its employees represented by the Brotherhood of Railroad Trainmen, 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 within the State of Pennsylvania to a degree such as to deprive that portion of 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 dispute. No member of said board shall be pecuniarily or otherwise interested in any organization of railway employees or any carrier.

The board shall report its findings to the President with respect to the said dispute within 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 Aliquippa and Southern Railroad Company or its employees in the conditions out of which said dispute arose.

HARRY S. TRUMAN.

THE WHITE HOUSE,
April 10, 1948.

INTRODUCTION

Under date of April 10, 1948, Harry S. Truman, President of the United States, having been notified by the National Mediation Board, in accordance with the provisions of section 10 of the Railway Labor Act, as amended, that certain employees of the Aliquippa & Southern Railroad Co. had given notice of an intention to withdraw from its service because of an unadjusted dispute between these employees and the carrier, by proclamation created an emergency board to investigate said dispute and report to him its findings and recommendations within 30 days. An extension of time of an additional 30 days within which to make report was subsequently granted.

The President appointed Judge Sidney St. F. Thaxter, Portland, Maine; Leverett Edwards, Oklahoma City, Okla.; and Aaron Horvitz, New York City, N. Y., members of said Board.

Pursuant to the said proclamation, the Board met in courtroom No. 4 of the new Federal Building, Pittsburgh, Pa., on Monday, April 19, 1948. All members were present. The Board selected Judge Sidney St. F. Thaxter as chairman and confirmed the appointment of Ward & Paul as reporter.

Public hearings were held commencing on April 19, 1948, and concluding on April 30, 1948.

The following appearances were entered:

For the Aliquippa & Southern Railroad Co.:
Chauncey E. Pruger, Esq.
John G. Wayman (of Reed, Smith, Shaw & McClay), 747 Union Trust Building, Pittsburgh, Pa.
For the Brotherhood of Railroad Trainmen:
Joseph P. Cahill, deputy president.
Wm. A. Moroney, general chairman.
J. B. Thompson, member.
E. G. Grosskopf, member.

Upon the conclusion of evidence offered at the public hearing and of arguments on behalf of both sides, the Board held informal conferences with the parties in an earnest but unsuccessful effort to assist them to adjust their differences.

History and Background of Dispute

Under date of September 3, 1947, Mr. A. F. Whitney, president of the Brotherhood of Railroad Trainmen, requested the National Mediation Board to conduct a representation election among the yardmen on the Aliquippa & Southern Railroad. Pursuant to this request, which was accompanied by certain authorizations, the National Mediation Board did proceed to conduct such representation election, the same being held at Aliquippa, Pa., on November 6 and 7, 1947, resulting in a majority of the yardmen employed on that property voting in favor of the Brotherhood of Railroad Trainmen as their representative in collective bargaining with the company.

Following the certification of Brotherhood of Railroad Trainmen as a representative of the yardmen, the local committee on the property submitted to the carrier a request for an increase in wages, a revision of certain existing rules, and for some additional rules. Following the receipt of this request the carrier met with the committee upon one or more occasions, the net result of these conferences being that the carrier declined to negotiate with the committee, basing its refusal to do so upon a certain provision contained in its contract negotiated by the previous bargaining representative of the employees,

herein generally referred to as the moratorium clause and reading as follows:

These revised regulations shall become effective September 16, 1947. They shall supersede the revised regulations effective June 1, 1944, as amended, and they shall continue in force thereafter until the expiration of 30 days after notice terminating the same or requesting a change has been given in writing by either party to the other under the provisions of the Railway Labor Act, as amended, except that no further proposals respecting changes in existing rules or working conditions will be served by either of the parties hereto upon the other party for a period of at least 2 years from August 11, 1947, as set forth in former amendment No. 14 dated August 11, 1947, which has been incorporated in these regulations. The last two paragraphs of said former amendment No. 14 read as follows:

"Under date of June 17, 1947, the employees represented by the Order of Railway Conductors served official notice in accordance with the provisions of the Railway Labor Act, as amended, upon the Aliquippa & Southern Railroad Co. of their desire to increase existing wage rates and to adopt or change specified rules affecting their working conditions. It is agreed that the request for an increase in wage rates (item 1) is disposed of by the amended article 1 above. It is agreed that the wage differential for yard conductors (item 3b) and also the overtime rate for holidays (item 4) are disposed of by the revised article 1 as amended above, and by the above addition of article 26, respectively. It is further agreed that all of the other requests for changes in rules or working conditions are hereby withdrawn.

"It is also agreed that no further proposals respecting changes in existing rules or working conditions will be served by either of the parties hereto upon the other party for a period of at least 2 years from the date of this agreement, except that the foregoing provision shall not apply to any request for change in existing rate of pay resulting from any national wage movement and except that changes to the regulations may be negotiated by mutual consent."

Previous to the certification of the Brotherhood of Railroad Trainmen as bargaining agent for the yardmen, the yardmen on this property had been represented by the Order of Railroad Conductors, which organization had engaged in an agreement with carrier under date of December 3, 1937; said agreement having been supplemented and brought forward in the revised regulations covering rates of pay and working conditions effective June 1, 1944; and thereafter revised, supplemented and amended on various rates until finally brought together and codified in an agreement referred to as Revised Regulations Covering Rates of Pay and Working Conditions for Conductors, Brakemen, Tower and Ground Switchtenders Negotiated Between the Aliquippa & Southern Railroad Co. and the Order of Railway Conductors Superseding Revised Regulations Effective June 1, 1944, and Amendments Thereto, effective September 16, 1947. It is this final revised, supplemented and codified agreement which contains the paragraph from the rules, article 27, above quoted, and

upon which paragraph the carrier has based its refusal to negotiate with the newly accredited bargaining agent, Brotherhood of Railroad Trainmen.

It is not claimed by the Brotherhood of Railroad Trainmen that its certification as representing the yardmen on the Aliquippa & Southern Railroad Co. altered or canceled the contract which had been negotiated prior to such certification by the Order of Railway Conductors for such yardmen. Such certification is notice that the employees chose the Brotherhood of Railroad Trainmen as a new agent to represent them in dealing with the management under the agreement then in force and authorizes the brotherhood to act in that capacity.

The Aliquippa & Southern Railroad Co. is a short industrial switching railroad, a subsidiary of the Jones & Laughlin steel enterprises, the principal business of which railroad is to serve the Jones & Laughlin plants and furnaces. It transports the raw materials into the plant and the finished products out; and, in general performs switching and transportation functions for the vast installations of the steel company and a few other industries along the trackage. The president of this railroad is J. N. Wilson.

It so happens that the steel company of which Aliquippa & Southern is a subsidiary, has in this immediate area and territory another subsidiary railroad serving another section or group of its plants and industries. This is the Monongahela Connecting Railroad Co. which likewise has J. N. Wilson as president. That is, both of these small industrial railroads are under the same top management, and both are subsidiaries of Jones & Laughlin. The two railroads are about the same size, type of work performed, and in general are as closely comparable as two railroads might well be. The Brotherhood of Railroad Trainmen represents the conductors, brakemen, towermen, and gatemen employed by the Monongahela Connecting Railroad Co., which will hereafter be referred to as the Mon Con or Monongahela.

It is quite apparent to the Emergency Board after listening to the evidence, examining the witnesses, and hearing the argument of both parties, that the main source of dissatisfaction of the employees of Aliquippa & Southern, as hereinabove stated, stems from what is alleged to be a material difference between the rates of pay and working rules provided for in the agreement covering employees on the Mon Con and those provided for in the agreement covering the same classes of employees doing much the same work on the Aliquippa & Southern. That is to say the Aliquippa & Southern employees assert that the Mon Con agreement covering rates of pay and working conditions is much more favorable toward its employees than is the

Aliquippa & Southern agreement dealing with the same classes of employees who perform substantially the same work.

As we have pointed out, both of these railroads have the same individual as president, and the employees of each have to all practical purposes the same primary employer, namely, Jones & Laughlin Steel Co. So far as we have been able to discover, no explanation has been given by the management of the Aliquippa & Southern to its employees as to why they should not be treated in the same manner as are the employees of the Monongahela. It is true that the opinion was expressed to this Board at the hearings that there has been a loss of efficiency on the Monongahela since the date of the revised agreement on that carrier; but, in spite of repeated inquiries by the members of this Board, no particular rule was pointed out as being in any way responsible for such loss of efficiency. This Board cannot assume that, solely because of the coincidence in time between the adoption of the rules and the alleged loss of efficiency, one was the result of the other.

Considering the disparity in the treatment of the employees on the two railroads, we believe that the unrest and dissatisfaction among the employees on the Aliquippa & Southern is understandable. It is in our opinion expedient and wise, if not the duty, of the carrier to sit down with the representatives of the employees here involved and endeavor to reach an agreement with them. If it is not possible to grant their demands in full by giving to them the same rules as are in existence on the Monongahela, at least an explanation can be given to them why this cannot be done. In the absence of such explanation and without a sincere effort to adjust any grievances, the present unrest with the consequent danger of a work stoppage is bound to continue.

The position taken by the carrier prior to this hearing and at the hearing has been that the carrier will not negotiate or discuss with its employees on the Aliquippa & Southern the merits of the rules desired by them. The carrier's refusal to negotiate is based on what it claims are its legal rights under the so-called moratorium clause. It contends that the purpose of this clause is to relieve the parties of the obligation, right or duty, as the case may be, to proceed in accordance with section 6 of the Railway Labor Act in seeking changes in the contract. But the fundamental purpose of this section of the act is only to provide a method by which the parties to a contract may be brought together to consider changes which may be mutually agreed upon. This Board calls attention to the last line and a half of the so-called moratorium clause reading, "* * * except that changes to regulations may be negotiated by mutual consent."

In spite of many hours of discussion of the matter by the parties and their counsel, this Board is in grave doubt as to what the parties

intended to accomplish by this provision; for it cannot be denied that within the limits set by public policy, or by law, any contract may be amended by mutual consent, and no contract can be amended in any other way.

The spirit of the Railway Labor Act is that the parties shall settle their disputes between themselves if possible. Any provision of any agreement which places a barrier in the path of negotiations is certainly contrary to that spirit, is in our opinion of doubtful legality, and unquestionably constitutes an invitation to just such controversy as here exists. The moratorium clause should not be so construed as to reach such an unfortunate result. We interpret the provision "that changes to regulations may be negotiated by mutual consent" to mean that the way is left open to either party to propose changes in the rules and that consideration will be given to such proposals by either side in whatever form they may be presented.

To the end that the present acute danger of a work stoppage may be minimized and in the hope that by the exercise of mutual consideration the present impasse may be broken, we make the following recommendations:

(1) That the carrier for the time being forego what it insists is its legal right not to negotiate with its employees, and that both sides in the spirit of the Railway Labor Act sit down together and attempt to iron out their differences between themselves.

(2) That if, after such attempt, there are fundamental differences still between them, they submit such part of their dispute as may be unresolved to arbitration in accordance with the provisions of section 7 of the Railway Labor Act.

Respectfully submitted.

SIDNEY ST. F. THAXTER, *Chairman.*
LEVERETT EDWARDS, *Member.*

STATEMENT BY AARON HORVITZ, MEMBER OF BOARD

The undersigned concurs with recommendation No. 1 of the Emergency Board which reads:

> That the carrier for the time being forego what it insists is its legal right not to negotiate with its employees, and that both sides in the spirit of the Railway Labor Act sit down together and attempt to iron out their differences between themselves.

However, he finds himself unable to join with his colleagues in recommendation No. 2 which reads as follows:

> That if, after such attempt, there are fundamental differences still between them, they submit such part of their dispute as may be unresolved to arbitration in accordance with the provisions of section 7 of the Railway Labor Act.

It is unnecessary to go into a detailed review of the facts in this case. Suffice to state that the Brotherhood of Railroad Trainmen when it became the representative of the employees herein, became bound by the then existing contract between the Aliquippa & Southern Railroad Co. and the former bargaining agent for the employees, the Order of Railroad Conductors. That contract contained the following moratorium clause:

> These revised regulations shall become effective September 16, 1947. They shall supersede the revised regulations effective June 1, 1944, as amended, and they shall continue in force thereafter until the expiration of 30 days after notice terminating the same or requesting a change has been given in writing by either party to the other under the provisions of the Railway Labor Act, as amended, except that no further proposals respecting changes in existing rules or working conditions will be served by either of the parties hereto upon the other party for a period of at least 2 years from August 11, 1947, as set forth in former amendment No. 14 dated August 11, 1947, which has been incorporated in these regulations. The last two paragraphs of said former amendment No. 14 read as follows:
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> "Under date of June 17, 1947, the employee represented by the Order of Railroad Conductors served official notice in accordance with the provisions of the Railway Labor Act, as amended, upon the Aliquippa & Southern Railroad Co. of their desire to increase existing wage rates and to adopt or change specified rules affecting their working conditions. It is agreed that the request for an increase in wage rates (item 1) is disposed of by the amended article 1 above. It is agreed that the wage differential for yard conductors (item 3b) and also the overtime rate for holidays (item 4) are disposed of by the revised article 1 as amended above, and by the above addition of article 26, respectively. It is further agreed that all of the other requests for changes in rules or working conditions are hereby withdrawn.
>
> "It is also agreed that no further proposals respecting changes in existing rules or working conditions will be served by either of the parties hereto upon the other party for a period of at least 2 years from the date of this agreement, except that the foregoing provision shall not apply to any request for change in existing rate of pay resulting from any national wage movement and except that changes to the regulations may be negotiated by mutual consent."

Under the above provisions, until August 11, 1949, the Order of Railroad Conductors had the right to request changes in the agreement, as long as it was the representative of the employees. These the employer was obligated to consider openmindedly and fairly. It could not, if the company declined to make the changes requested, legally compel the granting thereof. The parties were bound by the terms of the contract until the expiration of the moratorium period provided for.

The right of the brotherhood cannot rise higher herein than that possessed by the Order of Railroad Conductors. The former is bound by the terms of the agreement until August 11, 1949, subject to such changes as "may be negotiated by mutual consent." The latter clause

does not in my judgment vitiate the moratorium provision in the slightest degree. It is a mere superfluous statement of the right which parties to any contract have, i. e., to make changes in the agreement during its life by mutual consent.

Admitting the obligation of the parties to abide by the terms of the agreement herein until August 11, 1949, an emergency board, whose recommendations though not binding it is hoped will be accepted, should not recommend within the life of the contract a procedure for the settlement of the issues involved such as the majority has decided upon. It would encourage companies and/or unions to attempt under the provisions of the Railway Labor Act to secure changes in the very contracts to the terms of which they have agreed or are otherwise bound for a fixed period and which changes might not otherwise be obtainable.

To conclude otherwise would mean that as a practical matter contracts between companies and unions which are for a stated fixed period or which contain moratorium clauses could not be relied upon as certain to continue in operation during the very period agreed upon by the parties. Emergency boards should not make any recommendation which would tend to destroy the sanctity and certainty of performance of contracts openly and fairly agreed upon.

The Board cannot be warranted in recommending arbitration except on its reaching a definite conclusion that the moratorium clause involved herein is invalid. This it has not done. I do not share the doubts of the majority as to its validity.

It might be noted that a moratorium clause was part of agreements arrived at between unions and carriers in two nationally crucial railroad situations, one during the administration of former President Franklin D. Roosevelt and the other during that of the present Chief Executive. They were scrupulously observed by both carriers and unions. The legality of the moratorium clause in the agreement in this case was not questioned by the brotherhood.

Recommendation No. 2 is in my judgment undesirable from the standpoint of the very international union involved herein. Its contract with the Monongahela Connecting Railroad, the other carrier owned by the same company as the railroad involved in these proceedings, the terms of which it requests for the employees in this case, contains a moratorium provision almost identical with the one with which we are concerned in this instance.

I feel certain that when it entered into the agreement with the Monongahela Connecting Railroad in July 1947 with a moratorium on changes for a 2-year period, that it did not remotely envisage the possibility that a request by the employer, during the life of the agreement

for changes therein, might through the recommendation of an Emergency Board, which it would no doubt hesitate not to accept, destroy the rights it obtained through negotiation and which it felt were fixed and determined for a prescribed period of time. The second recommendation of the majority would make possible such a state of affairs.

The carrier has not in my judgment fully exhausted through negotiations the possibility of arriving at an agreement with the union re the requested changes, which may have considerable merit. With this in mind I readily concur with the other members of the Board in recommending "that the carrier for the time being forego what it insists is its legal right not to negotiate with its employees, and that both sides in the spirit of the Railway Labor Act sit down together and attempt to iron out their differences beween themselves." This it agreed to do when it joined in the original contract with the Order of Railroad Conductors, which provided "that changes to the regulations may be negotiated by mutual consent."

I cannot, however, for the reasons set forth above join in majority recommendation No. 2.

Respectfully submitted.

AARON HORWITZ, *Member.*

U. S. GOVERNMENT PRINTING OFFICE: 1948