

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

**CREATED MARCH 20, 1950, BY EXECUTIVE  
ORDER 10117, PURSUANT TO SECTION 10 OF  
THE RAILWAY LABOR ACT, AS AMENDED**

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**To investigate an unadjusted dispute between  
the Carriers represented by the Western Carriers'  
Conference Committee and certain employees  
represented by the Switchmen's Union of North  
America**

***(NMB Case No. A-3332)***

**CHICAGO, ILLINOIS  
APRIL 18, 1950**

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**(No. 83)**

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(III)

## LETTER OF TRANSMITTAL

CHICAGO, ILL., *April 18, 1950.*

THE PRESIDENT,  
*The White House.*

MR. PRESIDENT: The Emergency Board appointed by you on March 20, 1950, under Executive Order 10117, pursuant to Section 10 of the Railway Labor Act, to investigate the facts in an unadjusted dispute between the Carriers represented by the Western Carriers' Conference Committee and certain of their employees represented by the Switchmen's Union of North America, has the honor to submit herewith its findings and recommendations based upon the investigation of the issues in dispute.

Respectfully submitted.

ROGER I. McDONOUGH, *Chairman.*  
MART J. O'MALLEY, *Member.*  
GORDON S. WATKINS, *Member.*

(IV)

## I. ORIGIN AND DEVELOPMENT OF THE DISPUTE

The dispute that divides the parties in the instant case was first manifested on or about September 20, 1949, when the Switchmen's Union of North America served upon the Western Carriers here involved individual notices of intended changes in existing agreements. The Carriers represented by the Western Carriers' Conference served on the Organization certain counter proposals on September 22, 1949.

The notices served upon the individual Carriers by the Organization specifically requested that the Carriers authorize the appointment of a national committee to represent them in negotiations with the Switchmen's Union, in case mutually acceptable settlements were not forthcoming from the initial collective bargaining conferences on the individual railroads involved.

Negotiations on the individual properties failed to produce any agreements during the initial joint conferences.

The Western Carriers' Conference Committee was appointed on or about January 9, 1950. On February 2, 1950, the Committee and the official representatives of the Organization met in joint session to discuss the proposals and the counter proposals previously referred to.

One Carrier in the East, the Delaware, Lackawanna and Western Railroad Co., did delegate representatives to meet with the President of the Organization in an attempt to adjust differences over the proposed 40-hour workweek. From this meeting there issued a so-called Stand-By Agreement, the terms of which were not placed in evidence during the brief hearings in the instant case.

Mediation was attempted on the individual railroads between representatives of these Carriers and representatives of the Organization, which appears to have been instrumental in the setting up of the Carriers' Conference Committee to consider the issues on a broader basis. The first joint meeting of said Committee and the representatives of the Organization was held, as previously indicated, on February 2, 1950. Relatively little progress was made toward the adjustment of differences, and both parties joined in invoking mediation by the National Mediation Board. Efforts to mediate the dispute were consequently started on March 8, 1950. The attempted mediation failed, and resort to arbitration seems to have been unacceptable.

The President recognized a state of emergency and on March 20,

1950, by Executive order, created the present Emergency Board (No. 83) to investigate the facts in the dispute and report to him its findings and recommendations.

Hearings in the dispute were commenced on March 27, 1950, in the Conference Room, Twenty-second Floor, 32 West Randolph Street, Chicago, Ill., at 3 p. m., and were continued on March 28, 1950, at the same place and time, when they were adjourned without date for reasons hereinafter set forth.

## II. APPEARANCES

The appearances in the instant case were as follows:

### IN BEHALF OF THE CARRIERS

Western Carriers' Conference Committee:

D. P. Loomis, chairman, The Association of Western Railways.  
 E. J. Connors, vice president, Union Pacific Railroad.  
 S. C. Kirkpatrick, assistant to the vice president, The Atchison, Topeka & Santa Fe Railway.  
 T. Short, chief personnel officer, Missouri Pacific Lines.  
 J. J. Sullivan, manager of personnel, Southern Pacific Co.  
 R. F. Welsh, executive secretary, The Association of Western Railways.

Counsel for the Western Carriers' Conference Committee:

Bruce Dwinnell, general attorney, Chicago, Rock Island & Pacific Railroad.  
 Burton Mason, general attorney, Southern Pacific Co.  
 Howard Neitzert, counsel for the Western Carriers' Conference Committee.

### IN BEHALF OF THE SWITCHMEN'S UNION OF NORTH AMERICA

Arthur J. Glover, international president.  
 C. E. McDaniels, chairman, wage-rules committee.  
 E. F. Hampton, member, wage-rules committee.  
 V. J. Sheffer, member, wage-rules committee.  
 Jacob J. Kaufman, consulting economist.  
 Charles W. Phillips, counsel for the Switchmen's Union of North America.

### III. SPECIFIC CARRIERS INVOLVED IN THE INSTANT CASE

The Western Carriers' Conference Committee previously referred to holds power of attorney in the instant case for the following Carriers:

Chicago, Great Western Railway Co.  
 Chicago, Rock Island & Pacific Railroad Co.  
 Davenport, Rock Island & Northwestern Railway Co.  
 The Denver & Rio Grande Western Railroad Co.  
 Great Northern Railway Co.  
 The Minneapolis & St. Louis Railway Co.  
 The Railway Transfer Co. of the city of Minneapolis.  
 The Northern Pacific Terminal Co. of Oregon.  
 The St. Paul Union Depot Co.  
 The Sioux City Terminal Railway Co.  
 The Western Pacific Railroad Co.

### IV. THE PROCEEDINGS

In the initial stages of the proceedings in the instant case the Emergency Board set forth the peculiar circumstances attendant upon the hearings in this dispute. The Board explained to the parties that it was confronted with a different situation in that concurrently it was engaged, under appointment by the President of the United States, in hearing a dispute between the Order of Railway Conductors and the Brotherhood of Railroad Trainmen and the Carriers represented by the Western, Southeastern and Eastern Conference Committees. Because of the complexity of the divers issues involved in that dispute, the hearing of the dispute promised to continue for a considerable length of time. Indeed, the Carriers and the Organizations in that dispute agreed, on March 23, 1950, for an extension of time to June 1, 1950, for the Board to complete its investigation and make its report to the President. The President, upon the recommendation of the National Mediation Board, approved such an extension of time on March 28, 1950.

The Board indicated to the parties that it had explored the possibility of holding concurrent hearings in both disputes, that is, the dispute between the Order of Railway Conductors and the Brotherhood of Railroad Trainmen and the Carriers represented by the Western, Southeastern and Eastern Conference Committees, and the dispute between the Carriers represented by the Western Conference Committee and the employees represented by the Switchmen's Union

of North America. Such simultaneous hearings, the Board explained, seemed neither feasible, because of the physical and mental strain on the members of the Board, nor fair, because under such circumstances it would be extremely difficult to give thoughtful consideration to the evidence and to render an intelligent, adequate judgment on the issues and contentions.

At this juncture the Board invited the parties to submit alternative suggestions which would provide an escape from the dilemma.

The Organization, through counsel, responded that it was prepared to go forward with the presentation of its case, which it estimated would consume 6 days, exclusive of cross-examination. The Organization also acknowledged that many of the issues involved in the two cases assigned to the Board are similar, although there are a sufficient number of dissimilar issues to make an intermingling of the cases completely unsatisfactory to the Switchmen's Union (Tr. 12).

With regard to comparability of issues, counsel for the Carriers stated that he believed the issues in the two cases are in substance substantially the same, consequently the evidence to be submitted by the Carriers in both cases would be the same (Tr. 14). Counsel also suggested, citing certain Emergency Board precedents of 1941 and 1943, that the Board might hear the direct evidence in the so-called Switchmen's case following the conclusion of direct presentation by the Order of Railway Conductors and the Brotherhood of Railroad Trainmen in the other case, then hear the direct evidence of the Carriers in both cases, following which the Organizations in both cases would conduct cross examination of Carriers' counsel on the particular issues that concerned them. This, the counsel explained, would save considerable time for the Board and for the parties (Tr. 14, 15).

The suggestion of counsel for the Carriers did not receive a favorable response from the Organization representing the switchmen, counsel for which indicated that any intermingling of the two cases would be unsatisfactory. He pointed out, moreover, that the statutory limitation of 30 days in which the Board must submit its report to the President would have expired long before such a simultaneous hearing of the cases could be completed (Tr. 20). It was obvious that the Organization desired "a separate investigation and report on the facts within thirty days" and was unwilling to stipulate for an extension of time (Tr. 23); also, that in the absence of such investigation and report within the statutory limitation of 30 days the Organization would take such action as it might deem necessary to implement its demands (Tr. 25).

The Board then made it quite clear that it seemed impossible to conduct two separate hearings in the cases under consideration, and

that it would not make an ex parte report to the President of the United States (Tr. 25). In the hope of finding an escape from its dilemma and of serving the best interests of all concerned, the Board thereupon adjourned the hearing to the following day (March 28) at 3 p. m., being assured again by counsel for the Organization that the Organization would exercise its coercive rights under the Railway Labor Act if necessary to attain its ends (Tr. 26).

The hearing was reopened on March 28 at 3 p. m., at which time the Board again endeavored to find a way out of the difficult situation which confronted it. The Board explained to the parties that without an extension of time beyond the statutory limit of 30 days it could not conduct a thorough investigation as directed by the President, nor submit to him a report adequate for his guidance in the national emergency created by the threatened strikes of the Organizations involved in the two disputes. The original plan of procedure was restated with the hope of its acceptance by the Switchmen's Union.

The president of the Switchmen's Union then reviewed the history of the dispute between the parties, indicating what he termed the slow response of the Carriers to the notice of the Organization for certain intended changes in the conditions of employment and wages. He also expressed the opinion that the dispute between the parties in the instant case could easily be resolved once the Emergency Board had stated certain fundamental principles in regard to the 40-hour work-week. The details of application, he thought, must necessarily be handled on the individual railroad properties. A possible workable agreement, he believes, has been made between the Organization and the Delaware, Lackawanna & Western Railroad Co., and that a similar agreement is practicable on all the individual properties (Tr. 30-37). Both the president of the Organization and its counsel reiterated the position that an intermingling of the two disputes is neither feasible nor desirable from the standpoint of the switchmen represented here.

Counsel for the Carriers reexpressed the opinion that his original plan for hearing both cases is practicable, and stated that since, according to his estimates, 95 percent of the ground yard forces are represented by the Brotherhood of Railroad Trainmen and only 5 percent by the Switchmen's Union of North America, there should be no disadvantage to the Switchmen's Organization in a simultaneous hearing, the basic issues in the two cases being the same. He volunteered, in behalf of the Carriers, to separate the issues so that the switchmen's representatives in the instant case would not have to listen to rules controversies which do not concern their men (Tr. 42-46). The Carriers expressed a willingness to cooperate in any plan deemed by the Board to be desirable, and to agree to any necessary extension



of time for the Board to complete its inquiry and make its report. Counsel for the Organization, on the contrary, stated emphatically that: "It is our position that we cannot condone any extension of time" (Tr. 46).

Having reached an obvious impasse, the Board decided to recess the hearing without date unless prior to the time of its contemplated report to the President, as required by the Railway Labor Act, the Organization suggests a way of cooperating with the Board to assure a thorough and fair hearing of the issues. No suggestion was received by the Board prior to the submission of this report.

## V. FINDINGS AND RECOMMENDATIONS

### 1. Comparability of issues

The Board is firmly of the opinion that it is both unnecessary and undesirable to make an ex parte investigation and report of the instant dispute. Such procedure would be undesirable since it would not permit a thorough and objective examination of the facts nor allow an adequate presentation of the evidence. The validity of evidence and testimony is tested in and through the processes of cross-examination, which is precluded in an ex parte hearing. Moreover, an ex parte hearing of this case is unnecessary since the principal issues are similar in the dispute between the Carriers represented by the Western Carriers' Conference Committee and the employees represented by the Switchmen's Union of North America, on the one hand; and the dispute between the Carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and the Order of Railway Conductors and the Brotherhood of Railroad Trainmen, on the other.

Even a cursory examination of the issues in these disputes reveals their comparability. The exceptions are found only in certain rules changes proposed by the Carriers and in certain wage adjustments and night differentials proposed by the Switchmen's Union of North America, the rules changes proposed by the Carriers in the dispute involving the O. R. C. and B. R. T. being more extended than those presumably to be proposed in the dispute involving the Switchmen's Union of North America.

That the same Board might logically and appropriately investigate the facts and examine the details of both of these disputes may be seen by the following comparison of the principal issues involved in them.

## REQUESTS OF THE ORGANIZATIONS

*O. R. C. & B. R. T. Revised Proposals*

*Switchmen's Union of North America*

### 1. BASIC RATE AND DAILY MINIMA

(A) The basic rate of all said classes of employees or crafts of yard service employees shall be increased 2½ cents per hour in lieu of the daily earning minima now applicable to said classes or crafts.

Adjustment of daily earning minima:

(b) That five (5) cents be added to the basic daily rate of each employee embraced within scope; and if not already included to include car retarder operators.

### 2. FORTY (40) HOUR WORK WEEK

(B) All services in excess of 8 hours each day (24 hour period) or in excess of five 8-hour days (40 hours) in a week shall be paid for at overtime rates, but at not less than time and one-half.

Section 2—

Forty (40) hour work week:

(c) All services under the scope of this agreement shall be limited to five (5) day assignments and any man—regular or extra—required to perform service on the sixth (6th) or seventh (7th) day will be compensated therefor at not less than double time for the basic day thus worked.

### 3. OVERTIME RATES FOR SUNDAYS AND HOLIDAYS

(C) Employees required to perform service on Sundays and the following holidays—New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas—shall be paid at overtime rates, but not less than time and one-half with a minimum of eight (8) hours.

Section 3—

Double-time, The basic daily rate for Sundays and holidays shall be double the basic daily pro rata rate:

(a) All employees (within the scope of the agreement) required to perform service (basic day rules govern) on Sundays and the following holidays: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day of each year will be compensated at double the basic daily pro rata rate. When any of the herein named holidays are on Sunday, the day recognized or proclaimed by the State or Nation as the holiday will be so recognized by the railroad company and the employees herein referred to performing service on the so recognized holiday will be compensated at double the basic daily pro rata rate.

(D) When any of the holidays enumerated in item (C) hereof falls on Sunday, the following Monday shall be recognized and paid for as a holiday.

#### 4. FORTY-EIGHT HOURS PAY FOR FORTY HOURS OF WORK

(E) Forty hours, consisting of 5 calendar days of 8 hours each, shall comprise the workweek. Yardmen shall be paid the equivalent of 48 hours' pay at straight time rates for 40 hours of straight time work and basic rates shall be adjusted accordingly. Hours in excess of 8 on any day shall not be utilized in computing the 40-hour workweek. The first 8 hours paid for on any calendar day, including Sundays and holidays, shall be utilized in computing the 40-hour week.

##### Section 1—

##### General wage schedule:

(a) Effective October 20, 1949, all existing basic daily wage rates shall be increased twenty (20) percent—with a minimum money increase of \$2.50 on the basic day. The same percentage of increase applied to the basic day will be applied to all arbitraries, miscellaneous rates, special allowances, and to daily and monthly guarantees.

##### Section 2—

(b) All service, regular and extra (within the scope of the agreement) performed under the provisions of paragraph (a) will be compensated at the equivalent of Forty-eight (48) hours' straight time rates, to be computed as a basic daily rate.

##### Section 3—

(b) When an assignment is held in (not worked) during any of the five (5) days of its assigned weekly work-day period, the crew or member of such assignment shall each be compensated at not less than the basic daily rate for the day or days held in, the same as if they worked.

#### 5. FIVE-DAY ASSIGNMENT RULE

(F) All regular assignments in yard service shall be for not less than five (5) consecutive calendar days per week of not less than 8 consecutive hours per day.

Yardmen, regular or extra, shall not be permitted to work more than five (5) days in a 7-day period unless the extra board has been exhausted and the exigencies of the service require the use of additional men; then senior yardmen who have expressed their desire to perform service in excess of five (5) days per week, shall be used in accordance with their standing on the seniority roster.

##### Section 2—

(a) The provisions of any, and all agreement articles now providing for definite duration of workweek shall be changed to read:

"Eight hours or less shall constitute a day. Assignments within the scope of the agreement shall be for not less than five (5) consecutive days within seven (7) consecutive days."

#### 6. SAVINGS CLAUSE

(G) The adjustment referred to herein shall not modify any basic day or monthly rule or any other rules or practices now in effect which are more favorable to the employees.

#### Section 4—

##### Savings clause:

Existing rules, considered more favorable, than those proposed in sections 1, 2, and 3 of this proposition, by committee on individual roads, are preserved.

#### 7. CAB RETARDER OPERATORS

The basic daily rates for car retarder operators shall be determined by adding eighty cents (80¢) to the basic daily rate of yard conductors (foremen).

#### Section 1—

(d) The basic daily wage for car retarder operators will be determined by adding one (1) hour, pro rata rate, to the basic daily rate of switch foremen.

#### 8. FOOTBOARD YARDMASTERS

Where there is no existing agreement or practice more favorable to the employees, the daily rate for yard conductors (foremen) who also act as yardmasters will be not less than 1 hour's pay (one-eighth of the daily rate) in excess of the yard conductors' (foremen's) rates. The same rules for the basic day and overtime apply to such employees as apply to other yardmen.

#### Section 1—

(e) The basic daily wage rate for switch foremen who are required to act as footboard yardmaster will be determined by adding one (1) hour, pro rata rate, to the basic daily wage rate of switch foremen.

NOTE.—This paragraph (e) not to apply on properties not now having a footboard yardmaster rate in their agreements.

#### 9. RATES FOR SWITCHTENDERS

No request submitted by O. R. C.—  
B. R. T.

#### Section 1—

##### Rates for switchtenders:

(c) All yard switchtenders shall be paid the switchman helper's rate of pay.

#### 10. NIGHT DIFFERENTIALS

No request submitted by O. R. C.—  
B. R. T.

#### Section 1—

##### Night differentials:

(f) That ten (10) cents shall be added to the basic hourly rates of all employees embraced within scope; and if not already included to include car retarder operators, for services performed between 6:30 p. m. and 6:30 a. m.

## 11. DIFFERENTIAL FOR FOREMEN

No request submitted by the O. R. C.-  
B. R. T.

## Section 1—

Differential for foremen:

(h) The basic daily rate for foremen shall not be less than one dollar and sixty cents (\$1.60) more than the basic daily rate for yard helpers.

## 12. ESTABLISHMENT OF GRADUATED RATE OF PAY TABLES—ALL CLASSES OF SERVICE

The basic daily rates of pay for all classes and grades of road train service employees and conductors (foremen) and brakemen (helpers) in yard service shall be established on a graduated basis so as to maintain money differentials between train and yard service employees and engine service employees.

## Section 1—

(g) That the basic daily wage rates of switch foremen and switchmen helpers be established and maintained on a uniform basis governed by the weight on drivers of locomotive, or locomotives, used in switching service during any tour of duty.

(NOTE.—This proposal intends that a formula will be adopted to provide a relationship between rates of pay and weight on drivers of the locomotive used during any tour of duty.) Suggested schedules appended. Not reproduced here.

(NOTE.—The following table attached hereto and make a portion hereof contemplates the restoration of historic differentials between engine and ground service employees existing prior to November 1, 1947.) Suggested schedules follow. Not reproduced here.

## 13. SAVINGS CLAUSE

Existing rules, considered more favorable by committees on each individual road, are preserved.

## Section 4—

Existing rules, considered more favorable than those proposed in sections 1, 2, and 3 of this proposition by committee on individual roads, are preserved.

It will readily be seen that with the exception of Items 9, 10, and 11, dealing, respectively, with "Rates for Switchmen," "Night Differentials," and "Differential for Foremen," the demands of the Organizations in both cases under consideration are very similar. The details of the requests differ in certain aspects, but the essential principles involved are almost identical. Hence, it would seem just and proper that both cases be heard by the same Board.

2. *The National Character of Present Wage and Rules Movements*

An impartial examination of the issues involved in both of the cases under consideration clearly indicates, we think, that the demands of the Order of Railway Conductors, the Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America are integral

parts of a national rules and wage movement to bring about fundamental changes in existing agreements with the Carriers. Proposals like the reduction of the workweek to forty (40) hours with the retention of forty-eight (48) hours of pay, the application of the graduated basis of pay identified with the weight on drivers of the locomotive used in a tour of duty by both yard service employees and road employees, and overtime rates of pay for Sundays and holidays are of concern not only to the relatively few Carriers having agreements with the Switchmen's Union of North America but to all Carriers in the Class I category. In this connection, it is appropriate to point out that demands not unlike those before this Board have been advanced by other Organizations, such as the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Yardmasters' Association of America, and the Pullman Conductors.

In view of the facts stated above, it would appear to this Board that a distinct advantage would obtain in the hearing by the same Board of the disputes involving the O. R. C., the B. R. T., and the S. U. N. A. The hearing of these disputes by more than one Board might easily result in differences in recommendations which, if approved and accepted, would occasion serious distortions in established rules and in wage relationships.

### 3. *A National Emergency*

Closely related to the foregoing discussion of the national character of present wage and rules movements is the fact that the accumulated effect of these movements is to create a national, not local or regional, emergency. This national emergency was originally confined to a strike threat on the part of road conductors and brakemen on all railroads and a large number of yard conductors and brakemen on the great majority of railroads represented by the Order of Railway Conductors and the Brotherhood of Railroad Trainmen. The serious threat to transportation and, consequently, to the flow of interstate commerce was greatly enhanced by the strike threat of the Switchmen's Union of North America on the railroads on which that Organization holds representation. Since, as previously indicated, the issues affecting yard conductors and brakemen are, with minor variations, almost identical, and since the time set for strikes on the part of these Organizations was approximately the same, there existed in fact one national emergency. That is, there was thus created a single national emergency involving substantially the same issues so far as yard conductors and brakemen are concerned on all railroads—an emergency necessitating investigation and determination.

It may reasonably be deduced that these considerations dictated the President's appointment of the same three men to sit on the Board to investigate both disputes, namely these involving the O. R. C.-B. R. T., and the S. U. N. A.

Because of the facts cited in the preceding pages no complete investigation, such as contemplated by the Railway Labor Act, was feasible under the circumstances confronting this Board. Certainly it is implicit in the act that the parties to a dispute on American railroads must cooperate with the Emergency Board and with each other in assuring, in their own interest and in the public interest, a detailed, thorough and impartial investigation. The refusal of the Switchmen's Union of North America to cooperate with the Board in the instant case rendered such an investigation impossible.

Under the circumstances there is no extensive record to support findings and recommendations on the facts. It is evident, therefore, that whatever conclusions and recommendations the Board may make must be accepted as suggestions in the public interest and not as a finding on the merits of the position of either party to the instant dispute.

In view of the foregoing considerations, the Board earnestly recommends the following:

a. If no further hearings be held, the same treatment shall be accorded the employees represented by the Switchmen's Union of North America as may be accorded the yard employees represented by the Order of Railway Conductors and the Brotherhood of Railroad Trainmen in so far as the proposals for the 40-hour workweek and any other identical issues are concerned.

With regard to the issues which are not identical, but similar, adjustments of the same general character shall be made in so far as is possible within the framework of the requests. Different treatment cannot be accorded these groups of yard service employees without seriously disrupting established wage and rules relationships and generally disturbing labor relations on the railroads.

b. A further opportunity might well be given the Switchmen's Union of North America to present any new evidence on any phases of the matters in dispute on which it desires to be heard, and in order that this may be accomplished the President may wish either that this Board not consider itself discharged with the making of this report and that there be an extension of time within which to make a terminal report to June 1, 1950, or such further time as may be required by the Board to make findings and recommendations on the issues now in the process of examination.

The Board awaits the President's pleasure in this matter, holding itself available for whatever additional service may be deemed necessary to assure an objective and complete inquiry into the issues and facts and to safeguard the public interest and welfare.

Respectfully submitted.

ROGER I. McDONOUGH, *Chairman.*

MART J. O'MALLEY, *Member.*

GORDON S. WATKINS, *Member.*