Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED JULY 3, 1950, BY EXECUTIVE ORDERS 10138 AND 10139, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate unadjusted disputes between The Toledo, Lorain and Fairport Dock Co. and The Toledo, Lakefront Dock Co. and certain of its employees represented by the International Longshoremen's Association, A. F. of L., a labor organization.

(*NMB No. A–3380–3430*)

TOLEDO, OHIO
AUGUST 11, 1950

LETTER OF TRANSMITTAL

TOLEDO, OHIO, *August 11, 1950.*

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: The Emergency Board appointed by you on July 3, 1950, under Section 10 of the Railway Labor Act, as amended, to investigate an unadjusted dispute between The Toledo, Lorain and Fairport Dock Co. and The Toledo, Lakefront Dock Co. and certain of its employees represented by the International Longshoremen's Association, A. F. of L., a labor organization, has the honor to submit herewith its report.

Respectfully submitted.

ROBERT G. SIMMONS, *Chairman.*
JOSEPH L. MILLER, *Member.*
DUDLEY E. WHITING, *Member.*

REPORT

By Executive order dated July 3, 1950, you created an emergency board, pursuant to the Railway Labor Act, as amended, to investigate a dispute between the Toledo Lakefront Dock Co., a carrier, and certain of its employees represented by the International Longshoremen's Association, Local 158, A. F. of L., a labor organization.

By Executive order of that same date, you created an emergency board, pursuant to the Railway Labor Act, as amended, to investigate a dispute between the Toledo, Lorain & Fairport Dock Co., a carrier, and certain of its employees, represented by the International Longshoremen's Association, A. F. of L., a labor organization.

You appointed as members of these boards Robert G. Simmons, chief justice of the Supreme Court of Nebraska, Lincoln, Nebr.; Mr. Joseph L. Miller, labor relations consultant, of Washington, D. C.; and Mr. Dudley E. Whiting, lawyer and labor arbitrator, of Detroit, Mich.

The board met at Toledo, Ohio, in the Post Office Building on July 6, at 10 a. m., in the dispute numbered 87 above, and at 2 p. m. in the dispute numbered 88 above.

On that date and those times, the Board was called to order in each dispute. Appearances were made on behalf of the company. Representatives of the unions were also present. When asked to make an appearance of record, the unions in each case, through their attorney, objected to the jurisdiction of these boards over the unions and over the disputes.

The unions contended that, at all times in the past, their relationship with the company was subject to the Wagner Act or the Taft-Hartley Act, and it was not until after the inception of negotiations this year that the company advised them that they were subject to the Railway Labor Act. They insisted that they and these disputes are not subject thereto. Accordingly, they contended that they were not subject to the jurisdiction of these boards and were not required to return to work pending their hearings (it having been disclosed that prior to the creation of these boards the unions involved had gone on strike).

They proposed to reserve their objections, remain out of service, and at the same time let us hear what they had to say. All parties recognized, however, that before these boards could proceed with the hearings it would be necessary for the men involved to return to

work. It is quite apparent that for the boards to proceed while the men were on strike would violate the intent and purpose of the Railway Labor Act.

We then determined to proceed informally pursuant to your letter of appointment that we "make every effort to adjust the dispute." We did that.

Throughout all of July 7 and 8, members of this Board were in substantially constant conferences with the parties to this dispute.

On Saturday evening, July 8, the companies submitted two propositions to the unions. The one was an offer to increase immediately all pay scales 7½ cents an hour, retroactive to the expiration date of the last contract and leave all issues to be submitted to these Boards either for arbitration or recommendation as Emergency Boards.

The other proposal covered, and would, if accepted, have settled all matters in dispute save as to pay, leaving that issue to the members of these Boards to determine either by arbitration or as Emergency Boards. This offer included the increase in pay as stated in the first offer.

Both offers were conditioned upon the men immediately returning to the service of the companies.

The committees representing the unions took the matter under advisement. Sunday afternoon, July 9, they returned and gave us an unqualified rejection of both proposals. In addition, they requested that the matter be "returned to the President."

We then prepared a report to you advising you of the situation which we faced. The Boards stood in recess.

Judge Simmons and Mr. Miller then went to Washington to make the report to you and to discuss the matter with members of the National Mediation Board. When we arrived in Washington, we found that representatives of the Toledo Local 158 were there. Additional conferences were held there and by telephone with company and union representatives. The result was that on July 13, 1950, agreements were signed between the companies and the representatives of the unions involved in the disputes denominated Emergency Boards 87 and 88 above.

These agreements provided that the unions would call off the existing strike and that their members would return to work; the companies agreed to put in effect an across-the-board wage increase of 7½ cents per hour retroactive to the expiration date of the last contract; the parties agreed upon a provision for paid holidays and the rates of pay where employees worked on the paid holidays; they agreed upon contract provisions for paid vacations; and further agreed that "all other issues, including wages, in dispute at the time of the com-

mencement of the strike" would be submitted to these Emergency Boards.

It appeared during the progress of the negotiations that there was another dispute in this area that was interwoven with the disputes which had been referred to these Emergency Boards. It arose as a result of this situation: The Cleveland Stevedore Co. operates coal and ore docks at Huron, Ohio. The employees there were represented by International Longshoremen's Association Locals Nos. 1377 and 1396.

These two locals, together with the locals involved in Emergency Boards Nos. 87 and 88, had formed the Lake Erie Council for the purpose of concerted action in matters affecting all the docks. The two locals at Huron and the company had been negotiating a new contract without success. The company had offered an across-the-board wage increase of 10 cents per hour, all other demands to be withdrawn by the union. The proposal had not been accepted. The employees at Huron were also on strike. The locals belonging to this council had agreed to remain on strike until all member locals had agreed to return to work.

It was agreed that the men at Huron would go back to work at a 7½ cents per hour across-the-board increase, the same as the other men on the other docks, and that all other matters in dispute at the time of the commencement of the strike, including wages, would be submitted to this Board the same as was to be done by the other parties in the other disputes.

We agreed to hear the Huron dispute and make recommendations as to it also.

Pursuant to these agreements, the Board reconvened at Toledo, Ohio, on July 24, 1950. We designated the dispute between the Cleveland Stevedore Co. and Locals 1377 and 1396 as Emergency Board 88–A. We conducted separate hearings as to each dispute.

Preliminary to a discussion of the issues presented it may assist to point out that for reasons earlier stated, that these unions and companies were, heretofore, strangers to the provisions and procedures of the Railway Labor Act, as amended. The negotiations on many of the contract proposals and counterproposals had not been discussed to the point where they were specific in detail as to the precise questions involved. The parties were not ready to submit the issues to this Board in the usual manner before Emergency Boards. Our proceedings became, in part, hearings in the normal sense of the word, and in part conferences and negotiations between the parties. As a result, throughout the hearing many issues were settled and fully determined by the parties, and others were withdrawn by the unions.

Throughout the hearings, several of the unions made requests for the adjustment of rates on specific jobs. The information made available to this Board is not sufficient to enable us to make favorable recommendations on those requests. The pay of a particular job obviously must be related to the entire pay scale on any dock.

A study of the pay scales on all docks (Huron excepted) indicates an interdock relationship which would be thrown out of balance by granting any of these requests.

As to these disputes we recommend that the requests be withdrawn.

As to these matters above discussed, we will not make further reference in this report.

It was further agreed by all of the parties that the time for our report to you, which by your appointment expired August 2, 1950, should be extended for a period not to exceed 2 weeks from the time we closed the hearings on the last of the matters to be presented to us. The National Mediation Board was advised of this agreement, and you, pursuant thereto, extended the date of our report to not later than September 1, 1950.

The parties requested and were granted the right to make separate presentation of the issues as to the docks in each of the towns involved. Accordingly, the dispute involved in Emergency Board 87 was heard at Toledo, beginning July 26, 1950, to and including July 28, 1950.

Thereafter, the Board adjourned to Cleveland, Ohio, where we reconvened in Room 528, Post Office Building, on July 31, 1950, and heard the disputes involved in Boards Nos. 88 and 88–A, concluding the hearings on August 4, 1950.

Having heard the disputes involved with reference to the contract proposals and counterproposals, as to each town and the docks there involved, and the problems presented being separate and distinct in many particulars, we accordingly report as to our findings of fact and recommendations on that basis.

EMERGENCY BOARD NO. 87

Toledo Docks and Local 158

UNION PROPOSALS

1. The proposal here is that employees be paid on a weekly instead of a bimonthly basis as at present. The union contended that it is to the advantage of the men to be so paid. The company contended that it would involve reorganization of their accounting and payroll department and require the employment of a considerable additional clerical force without material compensatory advantages to the com-

pany or to the employees. We recognize the merit of the company's position. We recommend that the union withdraw this request.

2. The union requested that the provision in article 2, section 2, of the last contract which denied a paid lunch time during winter season to men on winter repair work be stricken out so as to provide that men so employed be paid for the lunch period. It appears obvious that the needs of the service which calls for the payment of a lunch period during the operating season in the expeditious loading and unloading of vessels does not exist as to winter repair work. We recommend that the union withdraw this request.

3. The union requested an across-the-board wage increase of 20 cents per hour. As previously pointed out, the company granted a 7½-cent an hour incerase in the agreement of July 13, 1950, leaving the matter open for the recommendation of this Board as to any additional increase. The union also requested an increase in the night shift differential from 5 cents to 10 cents per hour. The company points out that the increase granted on July 13, 1950, together with the paid holiday and vacation provisions, contained therein constitute a total increase of about 15 cents per hour for time actually worked and contend that no further increase is justified. This 15-cent figure is not disputed by the union.

It further contends that to grant the night differential would constitute, in effect, a 2½-cent an hour increase to all employees. Both parties have submitted figures to us as to payments in other industries. There is no formula by which the correctness of the position of either party can be demonstrated.

We think there is an element of merit in the contention regarding an increase in the night-shift differential, considering the nature of the work and the conditions under which it is performed, and that likewise there is some merit in the request for an across-the-board increase. In this connection we recognize that on this property, contrary to the practice followed on the other docks, involved in this dispute, the day and night shift is not rotated.

We accordingly recommend that these two requests be considered as one and that an across-the-board additional increase of 2½ cents per hour be granted to all employees retroactive to the expiration date of the last contract.

4. The union requests that the provisions of section 2 of article 3 be changed so as to require a 7 days' notice of layoffs and an extension of the call back pay to a 4-day period. It is recognized that a large part of the time involved in the contract now being negotiated has already expired. In our judgment, a situation such as the employees anticipate will not, in all probability, arise during the remaining con-

tract period. We accordingly recommend that this request be withdrawn.

5. The union requested a change in the vacation rule that was adopted in the agreement of July 13, 1950. We consider the whole vacation issue settled by that agreement. We recommend that the request be withdrawn.

6. The union requested a change in article 6 of the last agreement so as to be allowed wages and expenses when taken from their regular assigned duties to attend court as jurors or as witnesses in cases not involving the company and not at its request. Attending court as witnesses and serving as jurors is a duty that the citizen owes to the State and Nation. It involves the fact developing and fact determining processes whereby we administer justice according to law in this country.

It is one of the most important duties that the citizen is called upon to render. The company should not be required to pay its employees for the performance of a public duty. We recommend that that part of the request be withdrawn.

Under the present agreement committeemen of the union attending meetings with the management are paid their wages when such meetings are held at the dock and during their regular hours of work. The union requests that this provision be changed so as to provide for the payment when such meetings are held for the convenience of the parties at places other than the dock. We recommend that the restriction as to meetings held at the dock be eliminated and that the provision be amended in that respect only.

COMPANY PROPOSALS

1. The company proposed a change in section 7 (a) of the last agreement so as to provide generally that overtime be figured on a 15-minute basis instead of the provision now controlling. The merits of the contention are not at all certain or vital. We recommend that the request be withdrawn.

2. The company proposed a change in the contract relating to notice to the employees to return to work after being laid off. This is a counterproposal to that referred to in paragraph 4 of this report dealing with union proposals. In the light of our recommendation there, we recommend that this proposal be withdrawn.

3. The company requests a grievance rule for the settlement of disputes arising over the interpretations of the contract. There is much merit in this proposal. Such provisions are common in most collective-bargaining agreements. The showing made indicates that as a matter of practice there has been a grievance procedure followed on this

property involving discussions between committees of the union and the immediate supervising officials. In some instances those grievances have been carried to the general manager. There has been no agreement which provides for an orderly and final determination of such disputes.

Such a procedure is provided under the provisions of section first (i) of the Railway Labor Act, as amended, and is available to the parties.

The union objects to the time and delay involved in the operation of a grievance rule and to the expense involved to the union.

We think these objections are met in the provisions as to misunderstandings or disagreements arising with regard to the interpretation, understanding, or application of the contract contained in the last contracts between the Cleveland Stevedore Co. and Locals 1396 and 1377 I. L. A. which are before us in an exhibit in Emergency Board 88–A.

We point out that except as to time limits and final disposition the Huron contract procedure, in effect, has been followed on this property. We also point out that the parties to this dispute in article 18 of their last agreement have a complete grievance procedure limited as to applicability. It would furnish a basis for a general rule, the operation of which is already within the knowledge of the parties. We recommend the adoption of a similar provision on this property, but if the parties do not see fit to do so, we again point out that the grievance procedures of the Railway Labor Act, as amended, are available and applicable.

EMERGENCY BOARD NO. 88

Lorain Docks and Local 106

UNION PROPOSALS

1. The union requested a change in the vacation pay agreement made on July 13, 1950, to conform to what they contend it should have provided. As we see it, the agreement is plain, and was or should have been understood as written by the parties when made. Under it the union received substantial advantages in a retroactive pay increase, vacation, and holiday pay.

The company should not be subject to a demand for a change therein during the time covered by it. This dispute is not one reserved by the agreement to be submitted to this Board. We recommend that the request be withdrawn.

2. The union made a request for an increase in wages and for a night differential. These requests are substantially the same as those considered and upon which a recommendation was made in paragraph 3 of the union proposals at Toledo in Emergency Board 87 above.

There is one difference in the situations: The employees at Lorain change from day to night shifts weekly. For the reason given in said paragraph 3, we recommend an additional across-the-board increase of 2½ cents an hour be granted to all employees involved, retroactive to the expiration date of the last contract, and that such recommendation be understood to cover both the wage increase and the night differential request.

3. The union requested a paid lunch period during the winter season. This request is similar to the one considered in paragraph 2 of the union proposals in this report on Toledo docks in Emergency Board No. 87. For the reasons there given, we recommend that the union withdraw this request.

4. The union requested a provision for a 3 weeks' vacation with pay for all employees having 15 or more years of service and that vacation pay be based on earnings. We consider this matter to have been settled by the vacation pay agreement made on July 13, 1950. We recommend that the request be withdrawn.

COMPANY PROPOSALS

1. The company proposed a contract provision to meet fluctuations in business caused by strikes, walkouts, or other labor disputes in other industries. It is recognized that a large part of the time involved in the contract now being negotiated has expired. In our judgment a situation such as the company anticipates will not arise, in all probability, during the remaining contract period. The matter does not appear to have been a subject of negotiation prior to these proceedings. We accordingly recommend that this request be withdrawn.

2. The company requests a grievance rule to provide for the handling of grievances involving the interpretation of the contract between the company and the union. It appears from testimony before us that this is an issue lately presented and was not in dispute at the time of the commencement of the strike, and hence under the agreement of July 13, 1950, is not properly submitted to us. We recommend that the request be withdrawn for that reason.

EMERGENCY BOARD NO. 88

Fairport Docks and Local No. 1634

UNION PROPOSALS

1. The union presented the same contentions as made by the Lorain union, relating to vacations, which are covered by our recommendation in paragraph 1 of the Lorain union proposals. We recommend that this request be withdrawn.

2. The union requests an across-the-board increase in wages and a night differential substantially the same and under like conditions as those discussed under paragraph 2 of the union proposals on the Lorain docks. For the reasons there given, we recommend an additional across-the-board increase of 2½ cents an hour be granted to all employees involved, retroactive to the expiration date of the last contract, and that such recommendation be understood to cover both the wage increase and the night-differential request.

3. The union requested a guaranteed 6-day workweek. Admittedly this is a new issue not in dispute at the time of the commencement of the strike, and under the agreement of July 13, 1950, it is not properly submissible to us. For that reason, we recommend that this request be withdrawn.

4. The union requested before us a rule guaranteeing 8 months' work for two crews. It appears that this request originated as one for a guaranteed starting time for a second crew. It further appears that the whole matter has been discussed at various times and that the unions have not in negotiation made this specific demand. The whole matter is indefinite in the submission. It involves a consideration of the economic burden it would place upon the company, and likewise a determination of the need of the company for the services of a second crew at a particular starting time. In our judgment this situation has not been explored by the parties sufficiently to justify a recommendation on the specific issue. Under these circumstances, we recommend that it be withdrawn.

5. The union requested a contract provision requiring 7 working days' notice be given to all employees to be laid off or recalled to work. The company contends that such a rule would result in severe financial penalties arising out of circumstances beyond its control. This request is similar to that discussed under paragraph 4 of our report on the union proposal at Toledo. For the reasons there given, we recommend that the request be withdrawn.

6. The union requested a new rule requiring a minimum of five car riders on each shift. It appears that this is a new request; was not

an issue at the time of the commencement of the strike. For the reason heretofore given, we recommend that the request be withdrawn.

7. The union proposed a 3-week vacation with pay for employees with 15 years of service or more. This matter was settled in the agreement of July 13, 1950. Further, it appears that this is a new request and was not an issue at the time of the commencement of the strike. For reasons heretofore given, we recommend that the request be withdrawn.

8. The union requested a weekly payday. We discussed a similar request in paragraph 1 of the union proposals on the Toledo docks. It appears that this is a new request and was not an issue at the time of the commencement of the strike. For reasons heretofore given, we recommend that the request be withdrawn.

EMERGENCY BOARD NO. 88A

Huron Docks—Locals 1377–1396

UNION PROPOSALS

Throughout the hearings on the matters covered by this report we have been confronted by the fact that presentation of issues to an Emergency Board was a new experience for all the parties. The result was that on many issues matters have been submitted to us that had not reached the point of being specific proposals, but rather were general discussions of matters that the unions wanted changed. In many instances they had not progressed beyond the earlier stages of negotiation and conciliation proceedings. That situation is particularly true as to the Huron matters. The disputes had not jelled. The parties were hurriedly called upon to make this presentation.

Several issues presented here were based on requests made by other unions in the other cases. Many matters were presented to us and then withdrawn because not in issue at the time of the commencement of the strike. Accordingly, we find it difficult and in some instances inadvisable to make recommendations. We feel sure that the parties recognize this situation and will hereafter proceed amicably to a solution of the problems not determined. We recommend that they do so.

1. The major issue here, as in the other cases, is that of an across-the-board increase in wages. The union here made the same request for an increase as was made in the other cases considered. Here the company had offered a 10-cent an hour across-the-board increase, conditioned on all other parts of the contract being unchanged. The proposal was not accepted.

While the strike was on, the union here agreed to accept a 7½-cent across-the-board increase and go back to work, as did the other unions, leaving all other issues in dispute, including wages, to be submitted to this Board.

The company accepted this proposal. Here the union at our hearings requested a 5-cent an hour increase in the night differential. That request was later withdrawn because it was not an issue at the time of the commencement of the strike.

In our recommendations in the other cases we have included the matter of the wage increase and night differential in one category. To be consistent we must do so here, or otherwise the over-all wage structure would be thrown out of balance and would cause inequalities where equality of treatment should be had.

Accordingly, we recommend an additional across-the-board increase of 2½ cents per hour to be granted to all employees involved, retroactive to the date of the expiration of the last contract, and that such recommendation be understood to cover the wage increase and the night differential request.

2. The unions presented to us the matter of increasing the pay of specific jobs so as to bring them more nearly in line with the pay on other properties involved in this report.

These matters were presented to us on the basis of the name of the jobs, rather than on a basis of work involved, responsibilities, and conditions under which performed. Obviously the job name is not the test. Also, it appears that, even on a name basis, the disparity is not at all uniform. It would be a disservice under these circumstances for us to attempt to make specific recommendations. The parties have the intimate knowledge as to these matters which this Board does not have and obviously cannot get in a poceeding of this character.

We point out, however, that with the installation of electric ore unloaders, the equipment and work requirements here are now similar to, and in most respects comparable to, those at the other docks involved in these disputes. These matters, as the situation now stands, are peculiarly ones that must be dealt with and determined by the parties in negotiation. We recommend that they be so handled with this further statement: That the end result should be pay equal to that made at the other docks involved in this report for comparable work.

3. The unions requested pay at the navigation season classification rates for winter work. When such work involves dock work as distinguished from other work, such as boat repairs, no good reason ap-

pears for the existing differential. We recommend that the regular classification rates be paid for winter dock work.

4. The union requested a weekly guarantee of 52 hours' pay instead of the present 40 hours, and a guarantee of work or pay for the navigation season.

Both requests involve a consideration of the economic burdens they would place upon the company. There is no assurance that the services of employees are needed for 6 days per week or for the full navigation season. Such needs are dependent upon normal business fluctuations, the weather, strikes in other industries, and other factors not within the control of the company.

To require pay when employees' services are not needed involves so great a burden that it should not be granted upon mere conjecture or the desire of the employees. The practice thereon of the other docks involved in this dispute is not consistent. Under these circumstances, we recommend that these requests be withdrawn.

In this connection the company offered to consolidate the present weekly guarantee provision with the subsequent provision in each agreement relating to suspension of the contract in the event that strikes, et cetera, necessitated the closing of either or both docks, and to modify the same by providing for 5 calendar days' notice of the suspension of the weekly guarantee, and by providing that if one dock remains in operation, it will be double-crewed if business warrants. We recommend the adoption of such proposal.

5. The last agreement provides that—

> the season shall start April 1, and shall continue until November 30, inclusive. When employees are called for loading or unloading boats outside of the season of navigation, they shall be paid the regular season rate only for the days when machines are in actual operation.

The unions request a modification of this provision so that in the event there is an early navigation season and that boats begin to arrive prior to April 1, or in the event the season is extended so that boats arrive after the 30th of November, that the navigation season be extended to cover the earlier or later date, or both, as the case may be. We feel there is merit in this request and recommend that it be granted.

6. The unions requested changes in, or the elimination of, provisions of the last contract dealing with single crew operations for what may be unreasonably long periods. Here again we are dealing with a request which the parties themselves are much better able to solve. We recommend that the contract provide that unless the union committee at the time agree otherwise, in no event shall the employees be required to work more than 16 consecutive hours, after which they are to be given an 8-hour rest period and then be subject to call back.

7. The union requested a modification of the paid holiday rule. As pointed out heretofore there were written agreements of July 13, 1950, covering this matter and paid vacations in the cases of the other docks covered by this report. No such agreement was reduced to writing in the Huron dock disputes by which the men went back to work. Here the union presented and withdrew a request for a modification of the holiday rule. Hence, no recommendation is necessary.

8. The union requested also a modification of the paid vacation rule. We feel that in fairness to the employees here involved, that the same agreement should be adopted for a vacation pay at Huron as has been adopted on the other docks by the agreement of July 13, 1950, and recommend that the agreement involved be modified to so provide.

Here also the unions have requested further changes in paragraph 7 of article 5 of the agreement with Local 1396 and paragraph 9 of article 4 of the agreement with Local 1377. The provisions are identical.

The company has stated its agreement to the elimination of the word "successive" preceding the words "calendar years" in the third sentence of these paragraphs, and likewise to change the words "seven months" to "six months" where they appear in these paragraphs of the agreement, with a proviso that credit be given for absence from employment due to illness or injury proved to the satisfaction of the company. We recommend the adoption of these proposals.

It is recognized that other matters have been discussed with us. As to all other items not included in this report, we make no recommendation for the reason that the positions of the parties have not been sufficiently clarified or the facts developed to justify action by us.

Finally, we recommend:

(1) That the parties to these disputes, in line with the spirit and intent of the Railway Labor Act, meet at the earliest possible date and conclude the negotiation of their agreements for the current year.

(2) That hereafter, if at all possible, the parties conclude their new agreements before the opening of the navigation season, so that the full time and energy of all concerned can be devoted to dock operations so that the public will have assurance of uninterrupted flow of coal and ore from spring to winter.

Respectfully submitted.

ROBERT G. SIMMONS, *Chairman.*
JOSEPH L. MILLER, *Member.*
DUDLEY E. WHITING, *Member.*

U. S. GOVERNMENT PRINTING OFFICE: 1950