Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

CREATED OCTOBER 3, 1950, BY EXECUTIVE ORDER 10165, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT

To investigate an unadjusted dispute between Railway Express Agency, Inc., a Carrier, and certain of its employees represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., Locals 808 and 459, a Labor Organization.

(NMB No. A-3256)

WASHINGTON, D. C.
NOVEMBER 2, 1950

(No. 93)

LETTER OF TRANSMITTAL

WASHINGTON, D. C., *November 2, 1950.*

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: The Emergency Board appointed by you on October 3, 1950, under section 10 of the Railway Labor Act, amended, to investigate unadjusted 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, has the honor to submit herewith its report.

Respectfully submitted.

GRADY LEWIS, *Chairman.*
Reverend WILLIAM J. KELLEY, *O. M. I., Member.*
JOSEPH L. MILLER, *Member.*

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD APPOINTED OCTOBER 3, 1950, BY EXECUTIVE ORDER 10165, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

IN RE: RAILWAY EXPRESS AGENCY, INC., AND CERTAIN OF ITS EMPLOYEES REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AMERICAN FEDERATION OF LABOR, LOCALS 808 AND 459, A LABOR ORGANIZATION

The Emergency Board composed of Reverend William J. Kelley, O. M. I., Joseph L. Miller, and Grady Lewis, appointed in this matter, on October 3, 1950, by Executive Order No. 10165 of the President, pursuant to section 10 of the Railway Labor Act, amended, met in Room 1028, 341 Ninth Avenue, New York, N. Y., on October 4, 1950, and at a preliminary organization meeting selected Grady Lewis as its chairman. It confirmed the appointment of Johnston and King as its official reporter.

Mr. John J. McNamara appeared on behalf of Organization Local 808, and Mr. Thomas J. Murphy appeared on behalf of Organization Local 459. Later in the proceedings Messrs. David Kaplan and Frank Murtha appeared on behalf of both organization locals.

Messrs. Albert M. Hartung, Earnest T. Williams, and Edward J. Beresford appeared on behalf of the Carrier.

Informal conferences with the parties were held by the Board on the 4th, 5th, 6th, and 7th of October, in an attempt to effect a cessation of the work stoppage then in force. A formal meeting was also held on the 7th to record the contentions of the parties.

The Board was successful in ending the work stoppage as of 12:01 a. m., October 13, and thereupon, on October 16, resumed public hearings, through October 26, Saturday and Sunday excepted.

A record, made a part of this report by reference, consisting of 1,236 pages, together with 69 exhibits, was considered by the Board upon which this report is based. The Board was unable to compose any of the dispute by mediation after hearings.

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History of the Controversy

(*a*) The International Organization represents, as bargaining agent, the vehicle employees of the Carrier in eight major cities in the United States, and in certain other localities in the vicinities of these cities in which a majority of such vehicle employees hold membership in the organizations. In New York City there is, in addition to this "national agreement," a "local agreement" with the Carrier by Organization Locals 808 and 459 covering the hours and working conditions of such employees of the Carrier in the New York metropolitan district. This local agreement is a complete contract and, in fact and practice, completely governs the wages, hours, and working conditions of the employees affected. The dispute here arose concerning proposed changes in the "local agreement."

The demands of the organization for changes in the agreement, under the provisions of section 6 of the act, were served by the organization upon the Carrier by a joint letter from the officers of the two organization locals on June 1, 1950. In reply to such letter, the Carrier, through its general manager, on June 9, 1950, stated that it would also seek changes in the local agreement and appointed July 11, 1950, as a date to give consideration at a conference of the parties to both sets of proposed changes. Agreeable thereto both parties met on that date through committees appointed for the purpose and the proposals for changes by both parties were discussed. Further conferences were held on July 13, 18, and 19, at which last date further meetings were, by agreement, postponed until August 15, 1950. The agreement for further conference on August 15 was, however, withdrawn by the locals immediately upon adjournment.

In a further joint letter to the Carrier from the two organization locals, under date of July 24, 1950, it was proposed to submit the matters in controversy to arbitration. On July 24, the Carrier, by letter, in effect, declined arbitration. The letter suggested invoking the offices of the National Mediation Board for mediation of the dispute.

At the instance of the organization representatives, a further conference between the parties was held on September 13, 1950, and a final conference on September 15. None of the conferences proved successful in resolving any of the differences of the parties.

The Carrier invoked mediation of the dispute by the National Mediation Board on September 21, 1950. The organizations declined such mediatory services and, on September 23, 1950, instituted a work stoppage on the Carrier's property by the employees represented by it. Thereupon, the National Mediation Board certified the existence of

an emergency contemplated by the act, and the Executive order under which this Board was appointed was issued.

(*b*) To fully appraise the history of the present controversy, it is probably desirable to briefly outline the general background out of which it grew. This we do.

The Carrier has some 90 percent of its employees represented by the Brotherhood of Railway and Steamship Clerks as their bargaining agent. This organization represents all clerks and like employees of the Carrier throughout the United States. It also represents the vehicle employees in all but the eight cities and such localities where the majority of the employees are not members of the teamsters' organization. Such situation has resulted in almost continuous labor dissatisfaction, owing to recurring jurisdictional disputes between the labor organizations. By reason of the national scope of its business, and by reason of its being an agency of the rail carriers, the Carrier has, during the years, shown a preference for dealing with its labor contracts upon a national scale, agreeable to the general pattern set by the rail carriers in their working agreements. And this is true notwithstanding the fact that the Carrier negotiated an agreement with the locals here involved that is designed to, and does in fact, deal with but the local conditions affecting the metropolitan area of New York City.

To this confusion has been added the further insistence of the Carrier to deal with its vehicle employees in this area as railroad employees and the equal insistence of such employees to be dealt with as members of the New York trucking trade.

Moreover, the existence of the "local agreement," negotiated with the two locals as "autonomous" segments of the International Brotherhood, notwithstanding the fact that the international organization is certified as the bargaining agent, has in no wise lessened the difficulty. Indeed, it has but made bad matters worse, since it results in a total ignoring of the certified bargaining agent in the negotiation of any part of, or changes in, the local agreement.

The fruits of this welter of confusion are evidenced by the excessive number of times the agencies of government have been called upon to assist in composing the differences between this Carrier and its employees. It is significant that during the past decade, resort to governmental agencies, such as this Board, has been had no less than 13 times, while during such period only one agreement has been arrived at by direct negotiation. We point out these several situations, not necessarily as criticisms, but as simple recitations of fact.

In the instant proceedings, this continuing confusion has again arisen to plague this Board. The Carrier, again, wishes the difficulty

postponed to be dealt with upon a national, railroad industry-wide basis, while the organizations insist that it be dealt with upon a local basis, affecting but their craft in their own district—and as truckers in that district, rather than as a small segment of employees in the service of a railway agency.

This report, and the recommendations contained herein, is, by law, so confined as to subject matter and time as to preclude this Board from dealing with the full question in the manner we believe it requires for full settlement. We express the hope, however, that the entire subject may be dealt with at an early date to the end that such an undesirable and chaotic situation will be resolved to the good of the parties and the general public.

Being confined in authority and direction, we limit our inquiry and our report to a consideration of the local problem presented by the employees represented in this proceeding, and to the dispute covered by the Executive order under which we serve.

WAGES

The wage rates paid New York express drivers in the past 20 years, except in a few years when they temporarily caught up, have lagged slightly behind those in the general trucking industry in the New York area. Although this may have been in part due to recognition of more steady employment by the Carrier, it appears to have resulted more from the Carrier's insistence on *following* national wage movements in the railroad industry.

As instances, we note the depression wage cut in the general trucking industry was restored in the New York area September 1, 1934, while the express drivers did not get theirs back until April 1, 1935, the date that all railroad employees got theirs. In 1941 the Sharfman Emergency Board recommended increases which brought express and general trucking drivers to parity for the first time in many years, at $1.045 an hour.[1] Then the express rate lagged again until 1948 when the Meyer Emergency Board recommended increases which again equalized the rates at $1.52.

The fall of the same year, however, parity was again briefly wiped out when the general trucking drivers in New York received increases of varying amounts, their size largely dependent upon the amount of collateral welfare benefits obtained. The Carrier, acting with more than normal alacrity, restored approximate parity with a voluntary agreement to increase rates by 10 cents in October 1948, and another

[1] Rates quoted are for 3-ton truck drivers which Carrier and organizations agree is the proper rate for comparative purposes.

5 cents the following March 1. This was the only increase granted by the Carrier without the ministrations, direct or indirect, of an Emergency Board in the whole decade of the 40's.

Throughout the 20 years we have discussed, despite the fact that New York express drivers' wages have lagged, the differential through most of the period has been slight. In 1930 it was 5 cents an hour; in 1937 it was 9 cents; in 1943 it was 5 cents. As pointed out above, it reached parity several times. By and large, the express drivers' rate has never been seriously below parity for an extended period of time. Tying the rates to the tail of the railroad kite has delayed increases rather than resulting in any permanent substandard scale.

This year the organizations filed their demands at approximately the same time as did the other major New York teamsters locals, whose agreements expired August 31. The railroad brotherhoods generally delayed the start of their 1950 wage movement until this fall. Meantime, however, industry generally, other than railroads, had been negotiating new agreements, most of them calling for wage increases.

As we pointed out above, there was considerable variation in the wage increases given in the New York general trucking industry in 1948, owing to the difference in cost of the welfare plans negotiated by the various locals. The same holds for the 1950 agreements. Here are some weekly (40-hour) rates provided by some of the new major agreements, however:

Local 282	$70.70
Local 807	68.70
Local 816	71.90

The Carrier's comparable rate is $67. The organizations asked for an increase of $8 a week. The Carrier proposed that the present rate be left unchanged.

The organizations made their case largely on recent and prospective increases in the cost of living and comparable pay for comparable work among New York truck drivers.

The Carrier advanced its financial status, its competitive position, and its fear as to the effect of a New York drivers' increase on its relationship with its other employees as its principal reasons for resisting any raise for New York drivers at this time.

We pointed out above comparable rates effective as of September 1 in the general trucking industry in New York. They indicate that express drivers currently receive about $4 less per week, or 10 cents an hour. As to recent cost-of-living increases, the Board notes that the Bureau of Labor Statistics on October 24, 1950, found that the cost of living had increased in New York for the seventh consecutive month,

bringing a 2.5 percent increase over the figure a year ago. The New York index in September stood at 170.3, compared with 173.3 in September 1948, just before the last agreement. As to the future, this Board is not prepared to make any economic prophesies. It believes there are too many unknowns involved.

The Carrier entered some hundreds of pages of testimony and exhibits to show how it was operating at a tremendous loss to its stockholders (all are railroads) largely because of loss of business to the Government-subsidized parcel post service. Much as this Board might sympathize with the Carrier in this regard, we feel it would serve no good purpose here to review this extensive testimony. And, although we give it due weight in reaching our conclusions as to wages, we cannot allow it to be all-persuasive any more than we could if profits were rolling in. We believe it is a generally accepted principle that employer profit or loss should temper but not control wage movements.

We discussed above the problem the Carrier has faced for some years in attempting to balance its relationship with the organizations here involved, with its relationships to the organizations representing the remaining 95 percent of its employees.

We need not dwell further on this problem in connection with the wage issue other than to reemphasize that we are here dealing strictly with a New York City problem. Like the Meyer Board before us, we feel that "the need for an adjustment to a pervasive local custom becomes compulsive when the change would not adversely affect the immediate interests of the parties." [2]

In view of this discussion, the Board feels that the Carrier should increase the New York drivers' hourly rate by 10 cents and adjust all other rates directly involved in this case accordingly, and so recommends.

Under normal circumstances the Board would have recommended the increase be made retroactive to September 1, 1950, when other New York truck drivers got theirs. In view of the work stoppage, however, which the Board believes was outside the spirit, if not the letter, of the Railway Labor Act, we recommend that the increase be made retroactive to October 13, 1950, the day the strike ended.

The Board recommends withdrawal of the organizations' demand for a night shift differential, and adoption of the Carrier's proposal for revision of rule 35, the termination clause, bringing it in line with the provisions of the Railway Labor Act.

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[2] Report of Emergency Board No. 52 dealing with a dispute between the same parties, January 15, 1948.

WELFARE

The organizations also proposed amendment of rule 33 to provide sick leave, a welfare "fund" (or plan), and a private pension for retired employees and their widows, all to be financed by the Carrier.

Under Federal statutes, the employees as a group now are entitled to sick leave and pension benefits as great or greater than those accruing to other New York truck drivers under social security and State unemployment laws. None of the principal teamsters' contracts before us provide benefits of this nature.

Thereupon, we recommend that the organizations withdraw their demands for sick-leave pay and private pensions.

We find much merit, however, in the organizations' contention that their members should have a life insurance policy and hospital insurance. In fact, the Carrier apparently agrees to this in principle. For many years, the Carrier has offered its employees a group insurance program on a contributory basis, the Carrier paying administrative expenses and a part of the premiums, and the subscribing employees paying $2.98 a month to make up the balance. More than 75 percent of the Carrier's employees, the country over, are subscribers; latest available figures show that about 40 percent of the employees here involved participate. The Carrier also makes payroll deductions for a group of Blue Cross subscribers who initiated the program a decade or more ago. Since the Carrier has offered hospital benefits as a part of its group insurance program, however, it has refused to enlarge its Blue Cross deduction list.

The difference comes on the questions of who should pay—and how much.

The organizations say the Carrier should provide welfare benefits on a noncontributory basis, without cost to the employees. They point to the provisions of all the major, current agreements between the teamsters and New York trucking firms as precedent. For instance, the Local 807 agreement, one of the larger ones, provides the following schedule of employer-financed employee benefits:

1. $2,000 life insurance.
2. $2,000 accidental death and dismemberment insurance.
3. $35 *weekly* nonoccupational accident and sickness benefits.
4. Blue Cross hospitalization or its equivalent (for families as well as employees).
5. $150 surgical reimbursement (for families as well as employees).

The present Express Agency plan provides:

1. $1,000 life insurance.
2. $1,000 accidental death, dismemberment, and loss-of-sight insurance.

3. $80 *monthly* nonoccupational accident and sickness benefits.
4. $80 *monthly* hospital benefits (employees only).
5. $150 surgical reimbursement (employees only).

Although dissatisfied with the amount and coverage of these benefits, the organizations offered as an alternative to their demands the extension of the present Carrier plan to all employees herein involved, with the Carrier footing the entire bill. Part of the reason for this alternative, the Board understands, was the organizations' belief that the Carrier and the subscribing employees were paying too much for what they were getting. When the Board questioned the Carrier representatives about the cost of the various items and about the proportion of employee and Carrier payments, they respectfully declined to divulge the requested data, stating that the Carrier had pledged itself to secrecy in making its arrangements with the insurance companies involved.

Before making specific recommendations in this matter the Board will make five general observations:

1. Even with the recent amendments of the Social Security Act, railroad employees, including those here involved, are still ahead of general industrial employees, including New York truck drivers, in old age, unemployment, and other benefits provided by various laws, State and Federal.

2. For these benefits both the Carrier and its employees are presently contributing considerably more than New York trucking firms and their employees.

3. The contributory principle is well established, not only in the railroad industry but also—witness that more than 75 percent of the Carrier's employees are now voluntarily contributing to a group insurance plan—in the express branch.

4. Joint contribution to such a plan calls for a full accounting to all who contribute, even though the Carrier, in this instance, appears to be the proper administrative agent.

5. Collective bargaining on welfare plans is a generally accepted part of American labor relations.

In the light of these general observations, this Board specifically recommends:

1. That the Carrier within 30 days offer to the employees here involved the following welfare plan:

A. Its present group insurance plan, with the present hospital indemnity policy deleted and, as a substitute, the same type of Blue Cross benefits for employees and their families now provided by the principal New York teamsters' agreements.

B. The Carrier and the subscribing employees should share the cost of this plan, the employees to pay $1 each per month, and the Carrier the balance.

C. The Carrier annually should furnish each subscribing employee a detailed accounting of the plan's operation.

2. The Carrier and the organizations should set up a joint welfare committee to study the operation of the revised plan and any suggested changes. The Carrier and the organizations should share any expenses such as fees for consultants. Although this joint committee, if unanimous, could make suggestions for changes in the plan at any time, this Board is of the opinion that the welfare issue, as an issue, should be allowed to rest on the basis of its recommendations for at least 1 year, and so recommends.

Since the total cost of the plan to the Carrier depends upon the unpredictable number of employee participants, not even a rough estimate of this total cost can be advanced. The Board calculates, however, that, on an hourly basis, the cost should be somewhat less than 3 cents for each participating employee. This figure was reached on the basis of the Carrier's estimate of what it would cost to assume the entire cost of the present insurance program, adding Blue Cross at $2.41 per month per subscriber (a figure furnished by the organizations), deducting the $1 employee contribution per month, and using 173 hours as a monthly divisor.

RULES

The proposed rules changes advanced by the organizations herein are designed:

1. To eliminate hourly rated employees.
2. To secure certain preloading work now done by the Brotherhood of Railway Clerks.
3. To subject or to condition appointments to new jobs and the filling of vacancies to the approval of the duly accredited representative.
4. To change the workweek.
5. To liberalize vacation periods.
6. To increase premium pay.
7. To create 1,200 new jobs.

The proposed rules changes advanced by the Carrier are designed:

1. To make the Carrier's operation more flexible.
2. To conform the local agreement to the terms of the national agreement entered into between the Railway Express Agency and the International Brotherhood of Teamsters covering the employees

represented by the International Brotherhood of Teamsters in certain cities of the United States.

After a careful analysis the Board believes that the rules in the current local agreement with the Carrier should remain unchanged.

RULE 1—SCOPE

The organizations seek to eliminate hourly rated employees, holding that no such employees have been hired since 1946.

The Carrier asserts that in meeting the conditions occasioned by the irregularity of train schedules over which it has no control that it requires the privilege of part-time employees.

The organizations further contend re the note in rule 1 that "exceptions" should be limited to the chief clerk.

The Carrier contends that selection of supervisory personnel is a prerogative properly reserved to management and it should be left free to exercise the same.

The Board suggests that the organizations withdraw both requests.

RULE 2—CLASSIFYING POSITIONS

The organizations contend again that hourly rated employees should be eliminated, and that a minimum number of scheduled positions to be maintained at all times shall be 3,500.

The Carrier contends when fluctuations cannot be handled by regular employees, extra employees shall be used with no guarantee beyond a day's work.

The Board does not believe it prudent to bind an employer by way of a stipulated provision in the contract as to how many employees should be employed at all times, and hence suggests that the organizations withdraw this request.

RULE 3—DUTIES OF VEHICLE EMPLOYEES

The organizations request the work of preloading of vehicles be done only by the employees of the vehicle department. The organizations admit certain preloading activity is now being done by platform men. Preloading is the moving of freight by platform men into trucks while drivers are off duty.

The Board suggests to the organizations herein making claim to certain preloading activities that this claim should be resolved by the interested parties within the sphere of their fraternal family before seeking a change in the current agreement with the Carrier. The Board suggests this request be withdrawn.

RULE 5—VACANCIES AND NEW POSITIONS

The organizations herein, and in rule 6, paragraphs 2 and 3, and rule 7, paragraph 13, seek to add language that would condition the filling of vacancies and new positions upon the approval of the duly accredited representative.

The Carrier contends that such a request is a violation of the Railway Labor Act, section 2, paragraph 4.

The Board believes that section 2, paragraph 4 of the Railway Labor Act governs, and suggests that the organizations withdraw such request.

The Board is not persuaded as to the request contained in the note of rule 7 re starting time changes of Saturday and Monday and accordingly suggests that this be withdrawn.

RULE 19—STARTING TIME

The organizations seek to insure regular assignments shall have a fixed starting time, such changes coming twice a year, then only with 72 hours written notice to employees affected. Again, this change of fixed starting time should be subject to the approval of the duly accredited representative.

The Carrier seeks a change in paragraph 2 of this rule to have it conform with their current national agreement with the International Brotherhood of Teamsters.

The Board finds no persuasive reasons advanced by the Organizations here.

The Board notes the "argument of conformity" used here and elsewhere by the Carrier. The Board believes the Carrier freely entered into this precise local agreement and must dismiss here and in other instances herein the argument of conformity with the national agreement advanced by the Carrier.

The Board suggests that both the organizations and the Carrier withdraw their requests. The Board believes that the only matter before it is the local agreement.

RULE 9—OVERTIME

This subject matter is also embraced by rules 22, 24, 27, and 28.

The organizations seek to increase overtime from time and a half to double time.

In rule 22 the organizations seek to get a 40-hour, 5 consecutive day week.

In rule 24 organizations seek double time for everything over a 40-hour workweek.

In rule 27 organizations seek to make Saturday and Sundays days of rest—any work done shall be at double time rate.

In rule 28 organizations seek to add five new holidays to annual contract.

In rule 9 the Carrier seeks to conform the rule to rule 56 of national agreement.

In rule 22 the Carrier agrees to 8 hours as a day's work and the workweek of 40 hours, but with 2 days off in 7 but the scheduling of off days must be governed by the Agency.

In rule 24 Carrier holds that overtime shall be on time and a half basis, and there shall be no overtime on overtime.

The Board is convinced that the nature of the Carrier's business does not lend itself to a workweek of 5 consecutive days—suggests withdrawal of this request by the organizations.

The Board has previously revealed its mind regarding hourly rated employees and herein again suggests that the organizations withdraw this request.

Carrier has recourse to the argument of conformity in rule 24. The Board suggests that Carrier withdraw its request for reasons above stated.

The Board believes premium pay should remain at time and a half and hereby suggests to organizations that their suggestion for changes in remuneration for overtime be withdrawn.

The Board is persuaded that the present list of holidays is ample.

RULE 32—VACATIONS

The organizations seek to increase vacation days for employees having from 5 up to 20 years service to 15 days, and from 20 years up, 20 working days. Further, the organizations wish to delimit vacation period from June to September for employees having over 5 years service.

The Carrier seeks to have the current local agreement provisions maintained.

The Board because of problems arising from the roster condition, suggests request be withdrawn.

RULE 32—UNIFORMS

Organizations seek to have all uniforms required by the Carrier be paid for by Carrier.

Carrier contends that the present provision of the current local agreement should be continued.

The Board, since the only requirement demanded by the Carrier is a badge for which the Carrier pays, the Board suggests that the organization withdraw this request.

In Conclusion

We believe we have made it clear throughout this report that this Board is dealing with a dispute affecting but the vehicle employees in the New York metropolitan area. In the abundance of clarity, however, we here reiterate the fact that such is the case. We do not consider that we have the authority to inquire into any broader field.

It follows, therefore, that nothing said in this report may be construed, now or later, to imply, by inference, or otherwise, that the recommendations here made are to serve as a pattern, or formula, for the readjustment of any other working agreement in the trucking or railroad industry.

Respectfully submitted.

Grady Lewis, *Chairman.*
Reverend William J. Kelley, *O. M. I., Member.*
Joseph L. Miller, *Member.*

U. S. GOVERNMENT PRINTING OFFICE: 1950