Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 10511 DATED DECEMBER 28, 1953, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate disputes between The Akron, Canton and Youngstown Railroad Company and other carriers, represented by the Eastern, Western and Southeastern Carriers' Conference Committees and certain of their employees represented by the fifteen cooperating (non-operating) Railway Labor Organizations.

(N.M.B. Case No. A–4336)

WASHINGTON, D. C.
MAY 15, 1954

(No. 106)

LETTER OF TRANSMITTAL

WASHINGTON, D. C., *May 15, 1954.*

THE PRESIDENT,

The White House.

Mr. PRESIDENT: The Emergency Board created by your Executive Order 10511 of December 28, 1953, pursuant to the provisions of section 10 of the Railway Labor Act, as amended, and appointed by you on January 15, 1954, to investigate disputes between the Akron, Canton & Youngstown Railroad Co. and other carriers, represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and certain of their employees represented by the 15 cooperating (nonoperating) Railway Labor Organizations has the honor to submit herewith its report and recommendations.

Respectfully submitted.

CHARLES LORING, *Chairman.*
ADOLPH E. WENKE, *Member.*
MARTIN P. CATHERWOOD, *Member.*

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I. INTRODUCTION

Emergency Board 106, authorized by the Railway Labor Act, was established by Executive Order 10511 on December 28, 1953. (See Appendix A.) The members, consisting of Charles Loring, of Tucson, Ariz., as Chairman, Adolph E. Wenke, of Lincoln, Nebr., and Martin P. Catherwood, of Ithaca, N. Y., were appointed on January 15, 1954. The Board commenced hearings in Chicago on January 19, 1954. Hearings were held for a total of 8 weeks in the period between January 19 and April 3. More than 6,000 pages of testimony were received, more than 80 exhibits were offered, and counsel for the parties presented oral arguments and briefs.

Prior to completion of its hearings and pursuant to instructions in the letter of appointment from the President, the Board made efforts to adjust the dispute, but without success.

The original date for the submission of the Board's report and recommendations was extended from time to time and finally, by agreement between the parties with the approval of the National Mediation Board and the President, to May 15, 1954.

The parties in this case are substantially all the Class I Railroads and the Fifteen Cooperating Railway Labor Organizations representing nonoperating groups of railroad employees. A few Class I Railroads are not represented but some terminal and other companies are included. Most but not all the nonoperating employees of the railroads in question are represented by the Fifteen Organizations before the Board.

The Class I railroads operate approximately 95 percent of the railroad mileage of the country and employ approximately the same proportion of railroad employees. The nonoperating employees number upwards of a million and constitute almost three-fourths of all railroad employees. They perform the various classes of railroad work other than that directly involved in connection with the movement of trains.

(A) Procedural History

The employees' proposals which gave rise to the dispute which is before this Board were served by the Organizations on May 22, 1953, on the Carriers with which they had collective bargaining agreements. The Carriers rejected the Organizations' proposals and themselves

served 31 proposals for rules and working conditions changes, 16 of which were subsequently withdrawn. The Organizations rejected the Carriers' proposals.

Various discussions ensued on the individual railroads. Correspondence was exchanged at the national level. Carrier Conference Committees were eventually established and various dates were proposed for conferences at the national level. The Employees referred the dispute to the National Mediation Board on October 20, 1953. The National Mediation Board arranged a conference of the Employees' and Carriers' Committees for November 3 in Chicago. At the first meeting of such committees no substantial progress was made. The Carriers took the position that the Health and Welfare and Free Transportation proposals were not subject to negotiation under the Railway Labor Act and the Organizations took the position that negotiations should not proceed on the remaining proposals alone.

The National Mediation Board commenced mediation conferences a few days after the first meeting of the Committees. The dispute remaining unsettled after several weeks of mediation efforts, the National Mediation Board proposed arbitration as required by the Railway Labor Act. The Organizations indicated acceptance of such proposal but the Carriers did not. The National Mediation Board then reported the emergency to the President who established Emergency Board 106 on December 28 by Executive Order 10511. The members were appointed on January 15, 1954, and the Board convened in Chicago on January 19. The report and recommendations of the Board are submitted as of May 15, 1954.

In connection with the procedural history of the dispute it should be noted that the nonoperating Organizations were precluded in their agreements from proposing changes in wages prior to October 1, 1953, but the moratorium provision did not apply to rules and working conditions. The operating Organizations, however, were precluded from proposing changes in wages or in rules and working conditions prior to October 1, 1953.

In the period during which the proposals for changes in rules and working conditions for the nonoperating employees involved in this case were being processed pursuant to the Railway Labor Act the operating and some other organizations of railroad employees served demands relating to wages and in some instances to rules and working conditions.

The settlements with some of these organizations in the form of the so-called "pattern settlement" were the subject of much discussion in the case before the Board concerning rules and working conditions

for the nonoperating employees represented by the Fifteen Cooperating Labor Organizations.

The principal features of the so-called "pattern settlement" included (1) incorporation in the regular wage rates of some 13 cents per hour already being received in the form of the cost of living adjustment, (2) a wage increase of 5 cents per hour, and (3) a modification of the vacation agreement. The modification of the vacation agreement added a third week of vacation after 15 years of service to the 1 week and 2 weeks already provided after shorter periods of service and provided that under certain circumstances a payment for vacation qualified for but not taken would be made to the widow of a deceased employee.

(B) The Proposals of the Organizations

The proposals of the Organizations are reproduced fully and discussed in detail later in this report. In summary, however, such demands come in the five categories of (1) more extended vacations, (2) holidays with pay, (3) premium pay for Sunday work as such, (4) a comprehensive health and welfare program for employees and their dependents to be provided by the Carriers, and (5) increased free transportation for employees and their families.

(C) The Proposals of the Carriers

The proposals of the Carriers are reproduced fully and discussed later in this report. In summary, however, of the 15 demands for rules and working conditions changes remaining after sixteen of the original demands were withdrawn, two relate to the effect of putting any recommended proposals into practice and 13 are designed according to the Carriers to relieve them of burdensome rules and practices which have impaired the efficiency of operations and the quality of service and have increased costs to the Carriers. In varying degrees the proposals relate to the impact of craft or class lines and of seniority on employment and on work assignments.

(D) The General Positions of the Parties

The positions of the parties on matters related to this dispute are covered in some detail later in this report. For purposes of a general picture of the dispute, however, some of the more important general positions of the parties are indicated here.

The Organizations insist that the dispute before the Board concerns only rules and working conditions and not wages. They insist that prevailing practice in providing fringe benefits at the cost of the employer in other industries is far in advance of the railroad indus-

try. They take the position that the cost of their proposals is not an issue but that the Carriers have greatly exaggerated the costs of the proposals and that the Carriers are able to provide the benefits sought without jeopardy to their financial condition. They insist that their proposals are bargainable under the Railway Labor Act and that even if some were considered to be subject to question on this point such proposals are an integral part of the dispute and properly before the Board.

The Organizations take the position that the Carriers have magnified the significance of the "pattern" approach to wage and rules changes and that the socalled "pattern settlement" is inadequate, inappropriate and in no measure controlling in this case.

The Organizations insist that the Carriers' proposals have been advanced primarily for bargaining purposes and are without merit. They contend that such demands have repeatedly been denied in the past and that to grant them would completely nullify the twin pillars of seniority and of craft and class lines on which collective bargaining in the railroad industry rests. They insist that if there is any merit in any of the Carriers' proposals under any circumstances the only proper approach is through bargaining at the individual carrier level. They emphasize the existence of thousands of collective bargaining agreements with varying provisions to meet varying circumstances and the complications of attempting to formulate such rules changes at the national level.

The Carriers insist that the demands of the Organizations for a Health and Welfare program and for improved Free Transportation are not bargainable under the Railway Labor Act and that these demands are not properly to be considered as before the Board. With respect to the Organizations' demands generally the Carriers maintain that the cost would be excessive and that they are not in a position to assume such costs. They insist that the employees are already in superior positions on wages and other benefits in comparison with employees in most other industries.

The Carriers stress the importance of the "pattern settlement" approach and that any improvements provided for one group of employees will, in an integrated industry such as railroads, be demanded and obtained by other employees. They point to the "pattern settlement" along with the rules changes which they have requested as being the only proper settlement of this dispute.

Concerning their own proposals the Carriers point to obstructions to efficient use of manpower which have developed over a period of years. They attribute such difficulties in part to contract provisions which they have not succeeded in modernizing through collective bar-

gaining at the local level as new equipment and technology have been introduced and in part, to what they feel are erroneous and inconsistent determinations by the Railroad Adjustment Board. They point to delays that have been encountered in getting such problems considered at the national level and insist that such consideration is essential without further delay. They insist that the changes they propose are not an attack on seniority and craft and class lines as such but are essential for the efficient functioning of the Carriers.

II. PATTERN SETTLEMENTS

Much evidence and argument have been submitted on pattern relationships in wages and fringe benefits among various groups of railroad employees.

In general the Carriers have sought to establish that anything provided for one group of employees must sooner or later, and usually sooner, be provided for all. The Carriers have coupled this concept with the argument that the appropriate pattern for the settlement of the current controversy has been established by the particular package referred to as the "pattern settlement." The "pattern settlement" was offered to and has been accepted by substantial groups of operating employees and by some of the nonoperating employees not before this Board.

The Organizations have minimized the existence of any substantial pattern relationship in settlements among railroad employees and insist that the Carriers have tortured the statistics in an effort to demonstrate such relationships. The Organizations couple their observations of the absence of pattern relationships with the argument not only that the socalled "pattern settlement" is inadequate and inappropriate but that in no event is there any reason to consider it as having any substantial bearing on the present controversy.

The Board recognizes that particularly in the matter of wages there has been a substantial amount of pattern influence in settlements among railroad workers. The pattern influence does not seem to have been so predominant for rules and working conditions. Particularly as between operating and nonoperating employees certain basic differences in methods of determining pay and in other features of their employment seem to be accompanied by differences in rules and working conditions that cannot be fully reconciled with the pattern concept.

The Board recognizes that anything gained by one group of railroad employees comes to the attention of other employees and is likely to enter into collective bargaining negotiations either directly or indirectly. The Board feels it would be an exaggeration, however, to consider that every change in working conditions for one group will

be promptly reflected in a necessity for similar changes for all other groups. In some instances this will be true, in other cases the existence of difference is to be expected both on the basis of logic and on the basis of historical interpretation.

For purposes of the present case, the Board recognizes that any settlement with nonoperating employees is likely to be utilized as far as possible by other employee groups to improve their own positions. The Board does not carry its interpretation of the pattern concept, however, to the point of any conclusion that the socalled "pattern settlement" is controlling on the Board in making its recommendations here. The Board expresses no judgment concerning the "pattern settlement" in the circumstances under which it arose. The situation before the Board, however, is different and the Board considers that it has an obligation to analyze, appraise and recommend concerning the various demands on their merits as seen by the Board in the setting in which the demands come before the Board.

III. ECONOMIC CONSIDERATIONS

A mass of material has been presented to the Board on economic subjects such as competition facing the railroad industry, rates charged for services provided by the railroads, changes in productivity, wages and wage supplements for railroad employees and for employees in other industries, volume of business, total operating revenue, labor costs, net railway operating income, fixed charges, net income, dividends, retained earnings and other economic factors. Reference is made to some of this information in other sections of this report but some of the highlights are reviewed here as background material.

Data on some economic factors are not available for the early years of the period for which information on other subjects was presented. In some instances data for early years although available are of limited usefulness in the present case. It is also recognized that apparent economic relationships can be affected by the base year or base period selected. Furthermore it would be a mistake to assume that data covering a large number of different Carriers and a substantial period of time are uniformly and precisely accurate. Changes in accounting practices, retroactive mail transportation payments, accelerated depreciation included in operating expenses or credited against taxes which would otherwise be payable, the impact of strikes, delayed maintenance and variations in the basis of property valuation for different purposes are only a few of the factors that limit the comparability of data over a period of time and its precise accuracy for certain purposes at a given time. The Board has sought to keep in mind such limitations but in the following review it has not seemed

necessary to call attention to such limitations at each point to which they apply.

Considerable economic information was presented for selected individual railroads as well as for the industry as a whole. For the most part the present section is of necessity limited to the Class I railroads as a group. In considering the factual economic data here reviewed for the Class I Carriers it should be recognized that the Board is aware of the wide variations among individual Carriers as compared with the average of the group. Furthermore, in this review of the factual information the Board does not necessarily adopt the interpretations placed on such information by the Carriers or by the Organizations.

(A) Competition

(1) PASSENGER TRAFFIC

The competitive situation facing the railroads has changed markedly during recent decades.

Inroads on railroad passenger traffic by the automobile assumed large proportions during the 1920's. The railroads have handled less than 12 percent of the total intercity passenger traffic during the period 1930 to 1953 except for the war period 1942–46 and now handle approximately 6 percent. In 1944 the total volume of intercity passenger traffic handled by the railroads was approximately four and one-half times as great as in 1930 and three times as great as in 1953.

Among commercial transportation agencies, thus excluding the private automobile, the railroads in 1952 handled approximately 50 percent of the intercity traffic, a substantial decline from some 75 percent in 1926 and from some 65 percent in 1940. Buses handled some 30 percent of the total in 1952. The most startling change was in traffic handled by air carriers which increased from less than 3 percent of the total in 1940 to approximately 18 percent in 1952.

In actual number of passenger-miles of intercity traffic per year, the railroads during recent years have handled approximately one-third of their wartime peak but substantially above the level of the 1930's. Total revenue passenger-miles for the average of 1951–53 have been at approximately the same level as for the average of 1925–29. A decline of approximately 2 percent was experienced in 1952 compared with 1951, and 1953 was apparently some 7 percent below 1952.

As the population of the country has increased and as travel per capita has risen, the railroads, aside from their wartime bulge, have experienced some increase in their passenger traffic in comparison with the low levels of the 1930's, but have experienced a pronounced decline in their portion of the total. The current trend in amount and proportion is downward.

Some carriers have been permitted to abandon their passenger service because they have been abandoned by their former customers. Other carriers are making extensive efforts to retain their dwindling passenger traffic or to recapture lost business. With the competition, however, from other forms of transportation such as the automobile, the bus, and the air carriers it is doubtful if the railroads as a group can develop any substantial increase in the amount of their passenger traffic or in their proportion of the total.

(2) THE PASSENGER DEFICIT

Information is available concerning the financial results of railroad freight service and railroad passenger service. Results vary from year to year in accord with volume of business, rates, and costs. In general, however, net railway operating income from freight averaged something over 800 million dollars annually during 1936–40, increased for a brief period and then decreased but averaged over a billion dollars for 1941–45, averaged approximately 1,280 million dollars for 1946–50 and was 1,720 million in 1952.

In the case of passenger service, however, the result was a deficit averaging approximately 245 million dollars per year during 1936–41, an average net railway operating *income* of more than 200 million dollars due to wartime passenger traffic during 1942–45, and a deficit from 1946–52 amounting in 1952 alone to some 642 million dollars.

The passenger deficit points up a serious problem facing the railroads. Clearly for the railroads to propose to eliminate all passenger service would not provide a practical answer and would not save the entire deficit of 642 million dollars. Presumably part of the present service is required in the public interest and even if all passenger business were abandoned there are joint passenger and freight costs and overhead and fixed costs allocated in part to the passenger business. Under any reasonable interpretation, however, the huge passenger deficit which has mounted over a period of years, with the exception of the wartime period, is a problem of major proportions for the railroads.

The passenger deficit absorbs more than a third of the net railway operating income from freight and thus reduces such net railway operating income from 1,720 million dollars to a combined figure for freight and passenger business of some 1,080 million dollars for 1952. In addition the passenger deficit makes it difficult for the railroads to adjust costs during periods of decreased freight business and thus helps magnify the influence of a reduction in freight revenues on operating income. The freight rates must be such as to enable the Carriers to earn enough to pay their losses on passenger

business. The public, therefore, has an interest in having the carriers relieved, insofar as practicable, from unprofitable passenger operations. If passenger fares should be increased generally the probable result would be to drive more passenger business to the railroads' competitors.

(3) FREIGHT TRAFFIC

In freight traffic as measured by revenue ton-miles, the volume of railroad freight business for the average of 1951–53 was some 46 percent higher than for the average of 1925–29. The levels of recent years, with active business conditions generally have been below the peak war years but the decline of some 15 percent in freight ton-miles from the two peak war years of 1943–44 to 1951–53 is not at all comparable with the decline in passenger traffic. For the past 3 years freight ton-miles have averaged approximately twice the level of the depression thirties.

Railroads, however, have experienced keen competition in the freight field. Although experiencing an increase in freight ton-miles of nearly 50 percent from 1925–29 to 1951–53, a period during which population and freight traffic per unit of population increased with the result of a large increase in aggregate freight traffic, the railroads did not maintain their competitive position. From 1926 to 1952 for example the percent of the total intercity freight traffic handled by railroads declined from approximately 77 percent to about 55 percent. Oil pipelines and motor trucks were the principal competition taking an increased proportion of the total freight business.

In the case of motor truck competition the carriers complain not only of the increased proportion of the total freight traffic by these competitors who they feel are subsidized but also point out that the trucks can to a considerable extent "pick and choose" the most profitable type of traffic.

(4) UNIT CHARGES FOR FREIGHT AND PASSENGERS

Over recent decades prices and costs generally have increased substantially but the railroad revenues per passenger mile and per ton-mile have not increased as much as might be assumed.

For example, revenue per passenger mile averaged approximately 3 cents during the period 1921–25, declined to 2.8 cents for 1929 and to 1.8 cents in 1939 and for 1953 averaged approximately 2.66 cents. In the case of freight, the revenue per ton-mile averaged 1.15 cents for 1921–25, 1.07 cents in 1929, 0.97 cent in 1939 and 1.478 cents in 1953. Thus in comparison with 1921–25, revenue per passenger mile in 1953

was actually lower. In the case of revenue per ton-mile, freight rates were up approximately 28 percent in 1953 compared with 1921–25. During the same period prices of most other commodities and services increased considerably more.

In comparison with 1939, revenue per passenger mile has increased some 44 percent and revenue per ton-mile by some 52 percent. These increases compare with the approximate doubling of the Consumers' Price Index during the same period.

The decline in the proportion of the total passenger and freight business handled by railroads and the rise of the passenger deficit to its present magnitude have taken place in a situation where charges for passenger and freight service have not increased as rapidly as the prices of most other goods and services. During the same period certain competitors for passenger and freight business have been rapidly increasing their proportions of the total business.

(5) RESPONSIBILITIES OF OTHER PUBLIC AGENCIES

The Board considers that the competitive situation facing the railroads is one of a number of factors that should not be ignored in the present case. It recognizes, however, that the problems arising from competition in the railroad field and the collateral issues involved come primarily within the jurisdiction of other public agencies.

It is only natural that the railroads should be seriously concerned with the increasing competition with which they are faced, with certain obstacles they encounter in striving to meet such competition, and that they should protest at what they feel is public subsidy of some of the competing forms of transportation. In recognizing the growth and importance of competition and in discussing some of the problems involved for the railroads, the Board is concerned with a very practical problem but should not be interpreted as concluding that any sector of our economy has a vested right to a specified proportion of the total business. Progress is achieved in part through new developments including new forms of transportation.

The Board has not been faced with the necessity of an intensive study and analysis of all phases of competition for the railroad industry. During the course of its work, however, the Board has observed the changing competitive picture facing the railroads over a period of time and the importance of the issue at the present time. The Board therefore makes the following observations for whatever consideration various public agencies with responsibilities in this area feel is appropriate.

Historically, the railroads held a position of relative monopoly with respect to a large share of their freight and of their passenger

business. As other forms of transportation have developed, with or without public subsidy, the railroads have found themselves increasingly faced with more competition and have had less of a monopoly.

One result of this changed circumstance is reflected in the railroad rate situation. Any change in rates must now be undertaken with a much greater consideration of the probable influence on diversion of traffic than was true in earlier years. Under many circumstances an increase in rates for the purpose of providing an appropriate return can, through diversion of traffic, have the opposite of the desired effect. As has been seen, railroad rates for freight and for passengers have not increased in proportion to many other prices. Nevertheless the railroads have not succeeded in maintaining their earlier proportion of the total traffic, and many specific types of traffic have been largely taken over by competing forms of transportation.

Various increases and decreases in rates can be expected to be necessary to meet various combinations of problems in the future. Under the former monopoly situation delay in making such adjustments was not as damaging as at present. Under present circumstances where the railroads are getting along with a smaller margin of net operating income and of net income than formerly, delay in approval of necessary and appropriate increases in rates can cause financial damage of serious proportions. Delay in making necessary and appropriate decreases in rates can result in the loss of traffic which once gone may never return.

In the curtailment or abandonment of passenger service on specific railroads or of all service on some branch lines the public interest should not be ignored. In many instances, however, the public has abandoned the railroads but the railroads have not yet been permitted to abandon the uneconomical service. The seriousness of such situations has been increased by the competition now faced by the railroads and the fact that the passenger deficit hangs around the neck of the freight business.

Substantial progress has been made in the curtailment of uneconomical passenger service and in the abandonment of uneconomical branch lines. The process, however, is sometimes a slow one. The competition with which the railroads are faced makes it increasingly important that under appropriate conditions they be permitted to curtail or abandon service and that they be permitted to do so, promptly. To require the railroads to perform services that cannot be economically justified or to require undue delay in permitting curtailment or abandonment not only saddles the railroads with an unnecessary burden thus preventing them from competing successfully

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with other forms of transportation but also makes it necessary for the public to pay more for railroad transportation.

When railroad companies originally received their franchises to operate as common carriers their practical monopoly of the carriage of freight and passengers led to the Government taking the position that such carriage was clothed with such a public interest that the Government was invested with control of rates and service. Fares could not be raised nor freight rates increased without official approval nor could unprofitable passenger service or branch lines be abandoned without such approval.

The coming of effective competition vitally affected, if it has not destroyed, much of the public interest in the continuance of non-profitable trains and branches. Under most circumstances if the Carriers do not offer this transportation, their competitors will offer it and the public is not necessarily inconvenienced. The question then arises whether the public interest is not more adequately served by the discontinuance of unprofitable service and branches and by the relief of the railroads from the burden of unprofitable operations so that they may the more adequately and economically serve the public and be in a stronger position to meet the reasonable demands of their employees as well. Much of the 642 million dollars now lost in passenger operations could be made available for reductions in freight rates, strengthening the financial condition of the Carriers, improving services and other legitimate expenditures. In short, relief from this burden may in the long run spell the difference between financial survival and insolvency.

These circumstances are known to the Federal and State agencies, both legislative and administrative, with responsibilities in determining and administering public policy in the regulation of the railroads. The public, however, is not fully aware of or has not fully appreciated the trend from monopoly and toward competition in the railroad industry and the implications of such a change.

The railroads have no alternative. They are faced and will continue to be faced with an increasing degree of competition. With such competition an accomplished fact they must successfully appeal to their customers in a competitive market if the public is to continue to have the advantages of railroad service without subsidy from the taxpayer. A full and prompt recognition by the public and by public agencies of the implications of competition as it now exists for the railroads as contrasted with relative monopoly as it once existed will go far toward making it possible for the railroads to survive as a useful form of transportation and as an integral part of a dynamic competitive economy. In this respect, the Nation requires a strong rail-

road system both in times of peace and of war in order to maintain its economy and self-preservation.

(B) Productivity

The Board has carefully considered the extensive material in the record relating to productivity. A number of different measures are useful in gaining a general picture of the trend in productivity, but the subject is a complex one and no one measure is ideal for all purposes.

One of the outstanding features of the railroad industry has been the increase in productivity in recent years. All of the various factors of production have played their part in making this possible. In the railroad industry in which labor costs amount to approximately half of all railway operating revenue, it is not surprising to find many of the indicators of productivity expressed in accomplishments of the industry per hour paid for. To do so, however, is not to minimize the contribution of factors other than labor to the increase in productivity.

If 1921–25 is taken as 100 the traffic units per hour paid for were 243 in 1953. If the single year 1921 is taken as 100 the increase was to approximately 261. Within this period the increase in productivity as shown by this particular measure was slow and gradual until about 1935 by which year it had reached 134 when 1921–25 is taken as 100. By 1941 it had reached 180, rose rapidly with the large volume of wartime traffic to 239 in 1943, declined to approximately 200 for the period 1946–49 and for the three year period 1951–53 has been approximately 243.

Dieselization has been an important but by no means exclusive factor in the increase in productivity. Other types of new equipment and of technological improvement have been important. Modernization of facilities has played a part. Labor and management may or may not be working under more nervous strain than formerly but both have increased responsibilities and both have played an important part in achieving increased productivity. Curtailment of branch lines with small volume of business has been of significance and the increase in the total physical volume of business handled by the railroads is also a factor. Thus the participation and cooperation of many different elements have been involved but no group or element can properly claim or be assigned all the credit for the impressive record of increased productivity on the railroads.

As in other industries, however, one of the essential and irreplaceable elements in achieving increased productivity has been new equipment, improved technology and modernized facilities. To recognize

this is not to suggest that the benefits of increased productivity should go exclusively to the creditors or stockholders who are responsible for the financing of such improvements. To recognize the vital nature of the contribution does not solve the problem of the sharing of the product. It does suggest, however, that if productivity is to be maintained and increased, an essential element in retaining position for both labor and management in a dynamic competitive economy, the railroads must be in a position to continue substantial outlays for new equipment, improved technological developments, and improved facilities.

During the period covered by the productivity data the price per unit received by the railroads for their freight and passenger services has not increased in proportion to indices in prices generally and has been less than the increases in the prices of goods and services purchased by the railroads. In this situation with a relatively rapid increase in productivity and a relatively less than average increase in price of the product what has happened to wages per hour paid for and to labor costs?

As measured in dollars of decreased purchasing power, wages per hour paid for by the railroad industry as a whole increased from a 1921–25 average of 100 to 305 in 1953. When the single year 1921 is taken as 100 the increase was to 288. The total wage bill for the railroads was apparently just a little less than twice as high in 1953 as compared with 1921, with the average of 1921–25 and the average of 1925–29. Thus as a result of a combination of factors including reduced number of hours of work per employee per week and per year, and reduced number of employees the total wage bill did not increase as rapidly as did hourly wages. Increased productivity was a substantial factor in this situation.

During the same period the total operating revenues received by the railroads per hour paid for increased from 100 for the average 1921–25 to 293 for 1953 or from 100 in 1921 to 289 for 1953. This factor reflects changes in the rates for railroad services and gives some index of value productivity in comparison with physical productivity. It is the connecting link which more or less demonstrates statistically how it is possible for wage rates in a period of inflation to increase more than physical productivity.

As will be noted elsewhere wage rates in the railroad industry have advanced roughly in proportion to wage rates in manufacturing generally. In round figures wage rates have increased 200 percent in the railroad industry. Due, however, to the inflation of the dollar as measured by the Consumer Price Index the increase in real wages per hour was approximately 100 percent. This doubling of the purchasing power of wages per hour during a period in which unit prices of

the services sold by the railroad did not increase proportionately was made possible primarily by the increase in productivity. As will be noted elsewhere, however, these results were achieved during a period in which interest payments declined and the margin of net railway operating income per dollar of business was curtailed.

If payroll taxes, on a per hour paid for basis, are added to wages in the foregoing analysis, the upward trend is more pronounced and the 1953 level is higher in absolute figures and in comparison with other factors because such taxes came into the picture beginning in 1936.

The Board has no basis on which to predict specifically the productivity trends of the future. Many different elements influence productivity and the Board sees no basis for conclusion that productivity should not be expected to continue to increase. Certainly the public as well as the parties directly concerned in this case have a vital stake in the continuation of improvement of productivity.

For purposes of direct relationship to the present case, over a period of time productivity is one of the factors related to ability to pay and ability to pay is one of several factors the Board feels should be considered in reaching its recommendations. There is therefore no basis for resolution of the demands of the employees on the basis of productivity alone.

To the extent that productivity can be appropriately considered in the current case it is noted that physical productivity has advanced very substantially over recent years, that as would be expected in an inflationary period, dollar wage rates have increased more rapidly than physical productivity but that physical productivity in the railroad industry has increased more rapidly than have real wages. Combining in effect the substantial increase in physical productivity with the modest increase in the price of the service sold by the railroads, value productivity as measured by total operating revenues per hour paid for has increased approximately in proportion to the increase in wage rates per hour paid for in the railroad industry. If payroll taxes are added, however, wages and payroll taxes per hour paid for have increased somewhat more than total operating revenue per hour paid for.

The Board is aware of the impracticability of assuming that changes in wage rates or working conditions, industry by industry, should be determined by changes in productivity in each industry. Productivity data in the current dispute are useful, however, in an appraisal of the economic position of the industry and in giving some idea of the capacity of the railroads to provide wages and working conditions comparable with those in other leading industries.

(C) Wages and Wage Supplements

In many collective bargaining negotiations a combination of wage issues and of issues concerning other benefits are involved. The normal expectation is that the outcome of the bargaining will dispose of the issues in both areas.

In the current case the Organizations insists that there is no wage demand before the Board and that their demands are completely separable from any potential wage issues. The Carriers have insisted that the Organizations' demands are of the nature of wage demands and also that the wage issue, at least to the extent of and with the collateral limitations proposed in connection with the so-called "pattern settlement," should be considered in this case. The Carriers also contend that the wage and wage supplement position of the industry is a major factor to be taken into consideration.

The Board considers that the present case as it comes to the Board under the provisions of the Railway Labor Act is not a wage case as such. It recognizes, however, that fringe benefits and wages are both important elements of cost even though it may be difficult or impossible to determine in advance what the long term trend in actual costs will be as a result of any particular settlement of wage or fringe benefit issues. The relative position of the railroad industry on wage rates, annual earnings, and wage supplements seems to the Board to have a bearing on the issues under consideration.

As has been noted earlier in connection with the section on "Productivity," wages in the railroad industry "per hour paid for" in 1953 were approximately three times the level of 1921 or of the 1921–25 average. This average is understood to include operating as well as nonoperating employees, and during the period of time involved the workweek and the number of employees were substantially reduced.

For the fourth quarter of 1953 the average straight time hourly earnings of nonoperating railroad employees was $1.79 or some 6 cents above the approximately $1.73 for production workers in all manufacturing industry. On the basis of total hourly earnings including straight time and overtime the rates averaged $1.82 and $1.79 respectively for railroads and all manufacturing industry.

The accuracy of wage data going back as far as 1921 may be open to question. On the basis of the available data, however, the total hourly earnings for the nonoperating employees were a few cents higher than for production workers for all manufacturing in 1921–22, lower from 1924–29, higher from 1930–36 except for the year 1934 when they were the same, slightly lower or the same during 1937–40, substantially lower from 1941 to 1949 and higher from 1950–53. The change in the relative position of the two groups between 1949 and 1950 reflected the

introduction of the 40-hour week as of September 1, 1949, whereas most manufacturing industry had gone on a 40-hour week basis at an earlier date. Wages per hour for the nonoperating employees and for manufacturing employees are now something more than three times the level of the early twenties.

The average weekly earnings of the nonoperating employees ran from 1 to 5 dollars above the average for production workers in all manufacturing with the exception of a small portion of the period. The reported figures for late 1953 show average weekly earnings for November and December of $73.03 for nonoperating employees compared with $71.78 for December for production workers in all manufacturing.

In terms of hourly earnings, those of the nonoperating employees have tended to remain fairly close to those for the average of production workers in all manufacturing. At times they have been ahead and other times behind. The relationship over a period of time has been so close that in comparing hourly earnings for the two groups in late 1953 with those in the early twenties results are readily affected by the dropping of fractions, the selection of the base period, and selection between total hourly earnings and straight time hourly earnings.

In the financial operation of railroads and other types of business, the costs of certain fringe benefits such as paid vacations are included in wages as such. Certain other fringe benefits to the extent they are paid for by the employer normally involve costs in addition to wages as such.

Complications are encountered in obtaining complete, comparable and meaningful information on such costs for various industry groups. The problems are multiplied when an effort is made to ascertain the costs of certain programs to the employee when they are paid direct by the employee and not from payroll deductions or where such information must be accumulated from various sources. Questions also arise concerning what should be included in such costs—for example, should free transportation be included for the railroad industry and if so on what cost basis? Cash expenditures for the purposes in question by an industry in any one year may be greater or less than the true cost properly chargeable to the period.

The Carriers point to average annual earnings and supplementary payments per full time employee in the railroad industry of $4,651 in comparison with $4,074 for all manufacturing and $3,610 for the all-industry total based on U. S. Department of Commerce data for 1952. Of the other 80 industry groups shown, only 12 were indicated as having a higher total of annual earnings and supplemental payments

than the railroads. The figure for the railroads includes operating and nonoperating employees and is presumably intended to show the relative position of the industry as a whole rather than the relative position of the employees before this Board.

Of the aggregate of $4,651, annual earnings were reported as $4,335 and supplements as $316. The Carriers emphasize that the supplements are 7.3 percent of total wages and salaries and that comparatively few other groups have a higher percentage. The percentage and the relative position of the railroads is changed somewhat if, as seems appropriate, payments for personal injuries are excluded from such supplements. The $316 referred to above becomes approximately $258 if compensation for injuries is excluded. This compares with $241 for manufacturing industries and $182 for all private industries without adjustment for payment for personal injuries in these nonrailroad groups. For the reasons indicated these are rough comparisons and not necessarily precise reflections of the true costs of wage supplements.

Of the $258 per full time employee referred to above, the major wage supplements paid for by the railroads are the payroll taxes for retirement and unemployment insurance which amount to approximately $240 per employee. The tax for the retirement system under the Railroad Retirement Act began at a lower level and has progressed to the present 6¼ percent of covered payroll. The Unemployment Insurance Tax, the source of unemployment and certain sickness benefits has been at a substantially higher rate than at present but is now ½ percent of covered payroll. The level is dependent on the status of the reserve fund which in turn is dependent on the taxes paid and the withdrawals for benefits. The two taxes in question are reported at present as amounting to approximately 11.6 cents per hour paid for.

In addition to the above taxes the Carriers also make significant but relatively minor payments for supplemental pensions, group insurance, and for hospital, relief or beneficial association programs. Insofar as the employer contributions for these benefits are included in the exhibit concerning wage supplements, it appears that the railroads' annual contributions to private pension plans averaged approximately $15 per employee and to health and welfare programs approximately $3.50 per employee. It is not clear that all of the actual contributions of the Carriers to private pension plans and to health and welfare programs are included in the above figures but on the basis of this and other information in the record it is clear that the total Carrier contributions to health and welfare programs are relatively small. Whether or not the costs of free and reduced rate transportation

should also be included in wage supplements and if so on what cost basis, may be open to argument. The value of such transportation is substantial and is estimated by the Carrier in excess of 5 cents per hour.

The employees contribute from their wages 6¼ percent of covered payroll toward the costs of the program under the Railroad Retirement Act. This is reported as amounting to approximately 10.75 cents per hour. The employees do not contribute directly toward the costs of unemployment insurance. The employees, with wide variations from Carrier to Carrier and from individual to individual, also contribute toward supplemental pensions and usually pay for all or a major part of the cost of any group insurance and hospital, relief or beneficial association programs from which they benefit. Some individual instances of the costs of certain such programs for specific groups of railroad employees were presented but comprehensive information is apparently not available.

In brief, therefore, aside from fringe benefits included in wages as such and aside from such free transportation as is available, the Carriers' major contributions toward fringe benefits are in the form of the payroll tax of 6¼ percent on covered payroll for benefits under the Railroad Retirement Act. This is supplemented by the Unemployment Insurance taxes currently at the rate of ½ percent of covered payroll and by varying but relatively minor contributions toward private pension plans and health and welfare programs.

The employees contribute from their wages a tax of 6¼ percent for retirement purposes, contribute toward supplemental pension plans, the cost and benefits of which are not of major significance for most of the employees in this case, and in the aggregate bear the major part of the cost of any group insurance, hospital, medical and surgical plans in which they participate.

The Board considers that the benefits available to the employees under the Railroad Retirement Act provide in some respects benefits which are the equivalent of certain types of group insurance or of some other forms of insurance. The Board does not consider, however, that disability benefits under this Act are the equivalent of what the employees are requesting in the form of hospital, medical and surgical benefits. With respect to sickness benefits available under the Unemployment Insurance Act, such benefits constitute only a partial replacement of wages lost as a result of sickness and cannot be properly considered as providing the equivalent of hospital, medical or surgical insurance.

The Board has noted the contention by the Organizations that under the Railroad Retirement System the Carriers are relieved of

the pension rolls they were supporting prior to the passage of the Railroad Retirement Act and that the Carriers are relieved of the costs associated with past service of employees covered by the system.

It is noted that the sharing by the employees of the cost of maintaining the Railroad Retirement System and the meeting by the employees of a major part of the costs of such other health and welfare programs as they enjoy, results in a very substantial contribution toward such fringe benefits. From the standpoint of the railroad employees, comparatively little has been achieved on the pension, health and welfare front during the past 20 years except for the establishment of the Railroad Retirement and Unemployment Insurance Systems and the subsequent improvement of benefits thereunder. From the standpoint of the Carriers, the payroll tax for retirement system purposes constitutes a very substantial levy and free transportation, although difficult to estimate on a satisfactory cost basis, is a benefit of no small proportions supplied at the cost of the Carriers.

If viewed from the standpoint of the Carriers alone, it would seem that they are making comparatively substantial contributions toward the cost of wage supplements as compared with most other industries. Such a conclusion concerning comparison with other industries is subject to some modification if one concludes that a substantial part of such payments is due to the hazards of the industry reflected in high disability costs under the Railroad Retirement Act or if one concludes, as the Organizations claim, that present costs of the Railroad Retirement System reflect to a large degree obligations incurred by the Carriers prior to the establishment of the present system. In any event the payments by the Carriers are very substantial primarily because of the Carriers' half of the costs of benefits under the Railroad Retirement Act.

If viewed from the standpoint of the Organization alone, retirement and disability benefits in excess of those available under the Social Security Act are received by the employees but their own contributions toward the costs is much higher than the contributions of other employees toward the Federal Social Security System. How such contributions by railroad workers compare with total contributions toward public and private plans for retirement by workers in other industries is not clear from the record but on the basis of indirect information in the record contributions by railroad workers are probably substantially greater. To the extent that hospital, medical, and surgical benefits are available to railroad workers they are paid for entirely or largely by the employees.

(D) Results of Railroad Operations Over a Period of Years

A number of different phases of the results of the operations of the railroads over a period of years were presented to the Board. In considering some of the highlights of such operations it is necessary to constantly keep in mind the changes in the value of the dollar and the periods of depression and boom experienced during the last 30 years. Time does not permit a comparison of results as between computations based on all of the different base periods utilized but the Board has recognized that results are substantially influenced by the selection of the base period.

The number of railroad employees averaged 1,659,000 in 1921. The number increased moderately during the early and middle twenties, declined to 971,000 for 1933, fluctuated from year to year until 1940 when the average was 1,027,000, rose during the war period to 1,419,000 in 1945, and during the past 5 years has averaged a bit more than 1,200,000. Current employment is at an annual average rate somewhat below 1,200,000. Approximately 70 percent of the railroad employees are in the nonoperating groups.

Revenue ton-miles has varied with business conditions and other factors but rose from 306,840 millions in 1921 to a wartime peak of 737,246 millions in 1944 and was 605,792 millions in 1953. Revenue passenger miles were 37,313 millions in 1921, gradually declined after 1923 to 31,074 millions in 1929, declined abruptly in the early thirties to 16,341 millions in 1933, recovered somewhat, experienced a wartime boom reaching 95,549 millions in 1944 and subsequently declined to 31,662 millions in 1953. This experience is related to the passenger deficit which has already been discussed. When combined in traffic units by adding double the revenue passenger miles to the revenue ton-miles the number of such units has with many ups and downs increased from 381,465 millions in 1921 to 669,116 millions in 1953.

Total operating revenues averaged some 6,200 million dollars during 1925–29, dropped severely during the thirties, boomed during the war, receded moderately after the war, and for each year in the period 1951–53 were relatively close to 10,500 million dollars.

Net railway operating income averaged 1,165 million dollars during 1925–29, suffered severely during the thirties, reached 1,485 millions in 1942, receded toward the end of and following the war and averaged 1,043 millions for 1951–53. If income tax deferrals resulting from accelerated amortization of defense projects are omitted, the net railway operating income is reduced approximately $100 million per year for the average of the period 1951–53. This circumstance has been noted by the Board but to simplify subsequent discussion references

in most instances are to the reported data without constantly making the adjustment.

Net railway operating income per dollar of gross thus declined from some 18.8 cents in 1925–29 to approximately 10 cents during 1951–53 or to 9 cents if the income tax deferrals are omitted. Thus while there has been a substantial increase in volume of business and in total operating revenues as measured in inflated dollars, the net railway operating income during recent years has been slightly less in dollars than during 1925–29 and the dollars in question now have less purchasing power. Stated in another way, net railway operating income per dollar of gross is now approximately half of what it was for 1925–29. This is the "squeeze" to which the Carriers point and which places them in a position with much less financial elbow room than during 1925–29.

Total wages charged to operating expenses for the Class I Railroads in 1953 were something more than 5 billion dollars compared with 2,671 million for 1925–29. Such wages required 43 cents out of each dollar of operating revenue in 1925–29 as compared with 47.4 cents in 1953. If payroll taxes which were nonexistent in 1925–29, but amounted to 2.7 cents of each dollar of revenue in 1953, are added to the wage costs the result is 50.1 cents of each revenue dollar. This figure has not changed substantially during the past 7 years. As indicated elsewhere hourly earnings and weekly earnings of employees during the period 1925–53 increased more rapidly than did the total wage bill.

With the trend toward wage costs requiring more of each dollar of revenue and with the nature of the industry such that a large proportion of revenue is required to meet wage costs, it is easy to understand why wage costs are an issue of great importance in the railroad industry and why the Carriers and the employees both have an extraordinarily large stake in the efficient use of manpower on the railroads.

To proceed very far with the use of rate of return on net investment or similar measures in the current case would necessitate more information than exists in the record and would require judgments by the Board on a variety of factors such as the valuation policy for reorganized properties, depreciation policies, handling of leased lines and consideration of the degree if any to which for purposes of the current case market values should be utilized. Such judgments might be required in a rate case but for the purpose of the present case do not seem to be essential in most instances. It does seem clear, however, that the net investment in the railroads during recent years has been increasing, in large part as a result of retained earnings.

Net income after charges averaged some 773 million dollars during 1925–29. The average for 1951–53 was approximately 800 millions or if income tax deferrals earlier referred to are excluded the average was about 700 millions. The railroads recently have been receiving approximately the same number of dollars of net income as during 1925–29. Thus for handling a substantially larger volume of business both in physical output and in dollars the railroads are now receiving roughly the same number of net income dollars as in 1925–29. The purchasing power of the dollars thus received, however, is substantially reduced.

The cash dividends on common and preferred stock averaged some 414 million dollars during 1925–29. In subsequent years they varied but were substantially lower until 1953 when they were at the same level as in 1925–29. Such dividends of course are in dollars of decreased purchasing power. This decline in purchasing power of dividends took place in a situation where the volume of business increased. Such dividends constituted a substantially lower proportion of operating revenues in 1953 as compared with 1925–29. Common stock dividends followed a somewhat similar trend at a lower level.

The railroads have not paid out all their net income in dividends but during recent years have ploughed back something like 60 percent of the net income into the properties. One of the reasons for such a policy has been the inability of the railroads to borrow substantial amounts other than in connection with equipment obligations, coupled with the necessity for large capital expenditures for equipment and modernization.

During the 13-year period 1941–53 gross capital expenditures averaged approximately 900 million dollars per year and substantially exceeded a billion dollars during each of the last 6 years. Of some 9 billion dollars spent for capital improvements during the postwar period 1946–53, about 1 billion came from reserves built up during the war period, about 3.5 billion came from annual depreciation charges, about 1.9 billion was met through additional issues of equipment obligations and 2.6 billion came from retained earnings.

The large capital expenditure requirements on the railroads and the need for retained earnings for financing an important part of such expenditures arise from a combination of circumstances. As a result of inflation and increased costs, replacement of many capital items is at far above original costs and far in excess of any financial provision for replacement based on original costs. In addition and aside from changes in levels of prices, modern railroad practice and technological developments require many capital items of plant and

equipment which are complicated and expensive and require capital investment in excess of that formerly needed. Furthermore expensive modernization of existing plant has been necessary.

The credit position of the railroads has not been such as to facilitate borrowing except on equipment obligations. Consequently retained earnings have occupied a key spot in making possible capital expenditures in excess of those provided for through annual depreciation charges.

Net working capital has declined markedly from the high level at the end of World War II. Presumably the requirements for capital expenditures have been a large factor in the erosion of net working capital. The relatively low level of net working capital leaves the Carriers without as much cushion as formerly against a decline in business or against increases in cost. Presumably, however, the level of net working capital taken alone is not of major importance in the resolution of the issues in the current controversy.

A modest decline has been experienced by railroad indebtedness between 1925–29 and 1953. Because of this decline, coupled with a decline in interest rates generally and with an increased proportion of the total indebtedness in low interest equipment obligations, the total interest charges per year have been substantially reduced. The increased flexibility as a result of reduction in fixed charges for interest has been countered at least in some degree by the fact that equipment obligations are relatively short term and for this type of obligation charges for retirement of debt are proportionately larger in a given year than for longer term obligations.

In considering the foregoing comparison relating to changes from the base period of 1925–29 it must be recognized that by most measures and with the possible exception of war periods, the period 1925–29 was the most favorable 5-year period in the history of railroads. Even so there is something to be said for comparing that relatively prosperous active business period with the active business period of recent years. Care must be taken, however, to not assume that 1925–29 is typical nor that it necessarily constitutes an appropriate standard for all purposes.

For example, for 1921–25 net railway operated income averaged approximately 883 mililons compared with something over a billion dollars for 1951–53 and 1,165 millions for 1925 to 1929. Net railway operating income was 15 percent of total operating revenue for the period 1921 to 1925 compared to 18 percent for 1925 to 1929 and with either 9 or 10 percent for 1951 to 1953 depending on the treatment of income tax deferrals. Net income was much less favorable for the period 1921–25 than for 1925–29.

In summary it may be said that in comparison with 1925–29 the railroads are now doing a larger physical volume of business and a still larger volume as measured in dollars. Due in no small degree to the competitive nature of the business, rate increases have been limited and wage costs have gone up roughly in proportion to those of manufacturing industry. Thus in spite of substantial increases in productivity, aggregate expenditures for labor have gone up more rapidly than have gross revenues. Interest payments have declined. The margin above operating costs has been substantially reduced when expressed on a per dollar of business basis and in the aggregate is somewhat below the average for 1925–29. Net income in the aggregate is approximately the same as in 1925–29 but is considerably lower when expressed on a per dollar of business basis. It has been difficult for the railroads to borrow except on equipment obligations. Consequently they have been dependent in a substantial degree on retained earnings for financing that part of new equipment and modernization needs not met by annual depreciation charges. The curtailed margin and the need for retaining a substantial proportion of earnings to finance capital expenditures places the industry in a position with less financial elbow room than formerly. From the standpoint of the owners roughly the same level of dividends now as during 1925–29 provides substantially reduced purchasing power.

The long range picture, however, is not wholly depressing. By many measures results during 1951–53 have been relatively good in comparison with most other periods of the last 30 years. Plant and equipment have been substantially modernized, the burden of indebtedness has been reduced and many unprofitable branch lines have been dropped. Retained earnings are not without their significance for holders of railroad equity securities.

Aside from uncertainty concerning the length and seriousness of the current business recession with its adverse effect on railroad business and earnings, the principal cloud on the railroad horizon as the industry enters 1954, is the reduced and limited margin above operating expenses. The passenger deficit is a major factor in this situation. This margin has been reduced in part because the competitive situation limits increases in rates and in part because wage costs as well as some other costs, largely determined by competitive conditions in outside industries, have increased more rapidly than the gross income resulting from a substantially increased volume of business and only moderately increased rates. It is therefore clear why efficiency in the use of labor is essential for the long range welfare of the employees and of the Carriers and why any increases in costs must be scrutinized closely.

(E) Results of Railroad Operations During the Current Period

In the record before the Board emphasis has been placed on the experience of recent months in the railroad industry. It has been demonstrated that revenue car loadings declined for each of the last 4 months of 1953 when compared with the same month of the preceding year, that total operating revenues declined in somewhat similar proportions, and that net operating income and net income suffered more severely.

For the first 3 months of 1954 for which information was available, revenue car loadings were lower for each week than for the similar week of the preceding year. For the first 13 weeks of 1954, revenue car loadings were at a substantially lower level than for the same period of each year since 1940.

For the first 13 weeks of 1954 revenue car loadings averaged 11.7 percent less than for the comparable period of 1953. In January of 1954 net railway operating income was 59.3 percent below January 1953 and net income was 69.4 percent less. In February 1954, net railway operating income was down 42.9 percent from a year earlier and net income was down 60.9 percent. For the 6 months ending with February 1954, net railway operating income was down 29 percent from the same period a year earlier and net income was down 34.4 percent.

It is recognized that the nature of railroad operations is such that a modest decline in traffic and consequently in gross income produces a substantially larger proportionate decline in net railway operating income and a still larger relative decline in net income. Furthermore week to week or month to month comparisons are influenced by a number of different factors. The Board, however, recognizes the serious nature of the decline in car loadings, revenues and net income during the last part of 1953 and the first part of 1954.

The most recent information submitted to the Board demonstrates that for the late months of 1953 and the early months of 1954, volume of business and financial returns continued seriously behind those of a year earlier. Although business was continuing at a substantially lower level compared with a year earlier the relative position in comparison with a year earlier was getting no worse. There were some indications that the railroad business was starting to climb out of the valley in which it was still operating in comparison with conditions a year earlier.

The Board considers that there are substantial indications that the present reduced level of activity and income in the railroad industry is due to an "inventory recession" in business activity generally. It notes the absence of any large amount of responsible opinion that the

country is going into a "depression." It has noted the announced policy of the Government to use powerful weapons to combat any serious or long continued recession in our economy. The Board is not in a position to predict the length or seriousness of the present recession in the railroad business. It considers, however, that conditions are likely to improve substantially before the end of the year but that the results of the year's operations as a whole are likely to be less favorable than during 1953.

The Board considers that without minimizing the serious effect of the current recession on the Carriers, and without ignoring it as an element in the economic situation facing the railroads and as an appropriate element along with many others to be considered in making recommendations concerning working conditions, it must nevertheless base its recommendations primarily on other and longer range considerations.

(F) The Position of the Board

Certain features of the Board's position are covered in other sections of the report. There is briefly outlined here, however, the general position of the Board with particular reference to economic considerations as they may have a bearing on this case.

The Board considers that no demand for a wage increase as such is officially before it.

The Board feels that wages and fringe benefits both influence costs and that fringe benefits cannot be considered without some reference to wage levels and costs.

The Board is aware of the difficulty or impossibility of determining what the long range changes in total wage costs will be as a result of various proposed fringe benefits but recognizes that the best available information concerning current costs of such benefits is a factor to be considered.

The Board considers that the employees of the railroads are entitled to a reasonable combination of wages and working conditions benefits consistent with the social and economic concepts of American life, and that the problem in this case is not that of agreement on such a principle but rather of determining what fringe benefits are reasonable and appropriate under the conditions of this dispute.

The Board considers that the two principal factors which should be used in determining what is reasonable and appropriate in the present dispute are (1) practice in other industries generally, and (2) the ability of the Carriers to pay.

The Board feels that under the conditions prevailing in the railroad industry the acceptance of the concept of ability to pay as an im-

portant factor is consistent with the concept that submarginal wages and working conditions cannot be justified.

The Board recognizes that the division between submarginal levels for wages and working conditions and above marginal levels is a band, the width and location of which is influenced by judgment, rather than a precise line subject fully to objective determination.

The Board considers that the ability of the Carriers to pay is limited, that it is not practicable for the railroad industry to be a leader in every phase of wage and working conditions benefits, but that the ability to pay is such as to make possible a moderate increase in aggregate fringe benefits in the direction of what is being provided by other leading industries.

The Board considers it appropriate to examine the costs of each of the proposals and to compare the existing situation in the railroad industry with conditions in other industries for each such proposal but feels that in making its recommendations consideration must be given to the overall picture of aggregate benefits and costs.

The Board is convinced that in the light of the characteristics of and trends in the railroad industry efficiency in the use of labor is of vital importance to the economic survival of the Carriers and to the maintenance of appropriate wages and working conditions for the employees.

The Board considers that the railroad industry is now basically a competitive industry and that it is doubtful if under present conditions there is any substantial relief for the Carriers as a group in a relative increase in rates as compared with other forms of transportation.

The Board feels improvement in fringe benefits is called for but that in the light of the trends and conditions in the railroad industry care must be taken to not recommend a burden which would jeopardize the solvency of an important part of the industry.

In its analysis of the economic feasibility of the various proposals of the employees, the Board considers that the Carriers cannot be expected to incur additional costs of the magnitude which the Carriers estimated to be involved in the complete program proposed by the Organizations.

On the other hand without attributing to the so-called "pattern settlement" anything more than is actually involved, and without ignoring the limitations which the Carriers attached to their discussion of this subject, it is clear that the limited but substantial benefits of that settlement constitute recognition by the Carriers that the trends and current situation in railroad finances do not preclude all improvements for the employees.

The Board considers that its recommendations constitute a reasonable and appropriate basis on which to settle the current dispute irrespective of such additional adjustment in one direction or another as may be required by the changing economic and other conditions of the future.

The Board concludes that some increases in benefits for nonoperating railroad employees are called for in relation to existing practices in other industries. With the adoption of its recommendations the Board feels the nonoperating employees will, in respect to fringe benefits, be in reasonable position compared with those in other industries. Although the cost of the recommended increases in benefits cannot be estimated with precision in advance of further collective bargaining and experience, the Board is of the opinion the total cost thereof to the Carriers should not exceed approximately 7 to 8 cents per hour and that such a cost increase is within the ability of the Carriers to pay.

IV. FINDINGS AND RECOMMENDATIONS CONCERNING THE ISSUES

(A) Are Certain of the Proposals Properly Before the Board?

The Carriers urge on the Board that there is serious doubt as to whether or not the Organizations' demands for a Health and Welfare Plan and for Free Transportation are within the language of the Railway Labor Act, to which they contend collective bargaining is limited. They urge that this Emergency Board created pursuant to and by authority of the Act should not act in reference to these demands but should recommend a withdrawal thereof.

The language of the Act to which the Carriers refer is as follows: "to provide for the prompt and orderly settlement of all disputes" and "to exert every reasonable effort to make and maintain agreements" concerning rates of pay rules and/or working conditions. Whether or not these demands come within the quoted language, and, if not, whether or not this Board has a right to act in regard thereto because of other language in the Act (see sec. 5, First. (b)), are legal questions which the Board does not feel it should attempt to answer. They are questions involving statutory construction and for the courts to determine.

These two demands are part of the dispute that caused this Board to be created "to investigate and report respecting such dispute." In this respect the Act provides: "Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President * * *" We think we would be remiss in our duties if we failed to do so.

(B) The Organizations' Proposals

The proposals of the Organization are set forth in their Exhibit No. 1 and are quoted in full in Appendix C of this report. We shall discuss these proposals in the order in which the Organizations have proposed them.

(1) DISCUSSION OF ORGANIZATIONS' PROPOSALS

The Organizations' proposals are discussed under the five general headings of Vacations, Holidays, Health and Welfare Plan, Premium Compensation for Sunday Service, and Rights to Free Transportation. In discussing these proposals we shall separate them into the issues involved and make our recommendations accordingly.

Vacations

The first of the numbered sections of the Organizations' proposals concerning vacations follows:

1. Effective with the calendar year 1954, an annual vacation with pay will be granted to each employee who renders compensated service, covered by an agreement between the carrier and any one or more of the employee organizations, parties hereto, on not less than 133 days during the preceding calendar year. Time off because of sickness, injury, jury duty, and court attendance, whether compensated or not, and all paid holidays, shall be counted as compensated service in computing the number of days of compensated service necessary to qualify for a vacation.

The following issues are involved in the above section:

Issue 1 proposes to combine service under different agreements with the same Carrier for vacation qualifying purposes. (Issue 7 in Carriers' analysis.)

Issue 2 proposes to change in certain instances the character of qualifying days. (Issue 3 in Carriers' analysis.)

Insofar as Issue 1, to combine service under different agreements with the same Carrier for vacation qualifying purposes, is concerned, the Board considers that such issue disregards craft and class lines and is difficult to reconcile with the emphasis that the Organizations have placed elsewhere on the separate status of crafts and classes.

At present, however, all service under any agreement with the Federated Shop Crafts is counted. This arrangement seems to the Board to be a realistic and practical one. The proposed extension to other crafts and classes would presumably not affect any large number of employees but would seem to be fair in the instances to which it would apply. Consequently the Board feels that service rendered under agreements between a Carrier and one or more of the Organizations in this proceedings should be counted in computing days of compen-

sated service and years of continuous service for vacation qualifying purposes.

In Issue 2, to change in certain instances the character of qualifying days, the Organizations urge that all days not worked because of sickness, injury, jury duty, court attendance, or holidays be counted to make up the 133 days of compensated service.

The Carriers state that "inclusion of days not actually worked because of sickness and injury is not necessarily unreasonable to the extent that such days are confined to those within the employee's sick leave allowance or to injuries incurred while on duty." The Carriers insist, however, that under the proposal all days on leave of absence for sickness would be included and that an employee might be on such leave for years and still draw vacation pay. The Carriers insist further that in previous bargaining the Organizations traded off the right to include appropriate days lost due to sickness and injury for a lower number of qualifying days than would otherwise have been agreed upon.

The Board does not find convincing support in the record for counting toward the 133 days of necessary service, days not worked because of jury duty, court attendance or holidays paid for although not worked.

The record convinces the Board that the employees gave up the opportunity to count days due to sickness and injury in preference for a reduction in the number of days in the vacation eligibility yardstick. It is considered, however, that the bargaining in question occurred some years ago and that the issue may properly be reconsidered on the basis of current concepts and practices.

Insofar as the record is concerned the Board considers that there is nothing substantial to support the view that the present number and definition of qualifying days is unreasonable. Consequently the Board recommends no general change in this provision.

On the basis of its study of the record, however, the Board feels that even with the present limited number of days required for qualification, an employee should not be deprived of a vacation because of failure to accumulate the minimum number of qualifying days due to illness, within the limits of sick leave, or to injury on the job, within reasonable limits.

The second of the numbered sections of the Organizations' proposals concerning vacations follows:

2. Subject to the provisions of Section 1 as to qualifications, employees will be given annual vacations with pay, to be assigned and selected in accordance with the procedures in the existing vacation rules, and according to their years of continuous service as follows:

Those with 1 year but less than 2 years of service, 5 consecutive working days of vacation.

Those with 2 but less than 5 years of service, 10 consecutive working days of vacation.

Those with 5 but less than 15 years of service, 15 consecutive working days of vacation.

Those with 15 or more years of service, 20 consecutive working days of vacation.

For the purposes of this section, the term "years of continuous service," except for the first such year, shall mean consecutive calendar years during which an employee maintains a continuous employment status of (or) employment relation in the service of a carrier, covered by the agreement or agreements between such carrier and any 1 or more of the employee organizations parties hereto: for the first such year it shall mean that period in the calendar year during which an employee renders compensated service on not less than 133 days as defined in section 1.

The above section makes indirect reference to other issues but includes the following primary issues, which will be discussed here:

Issue 3 proposes to increase the vacation period by increasing the number of work days in the base vacation period. (Issue 1 (a) in Carriers' analysis.)

Issue 4 proposes to amend the basis for computing qualifying years by changing the definition of the phrase "years of continuous service." (Issue 4 in Carriers' analysis.)

Issue 3 relates to paid vacations, commencing with 5 consecutive working days or 1 week of vacation after a year's employment and running up to 20 working days or 4 weeks after 15 years' employment.

Under the present National Vacation Agreement, employees other than Clerks and Telegraphers receive 5 working days or 1 week of vacation after 1 year of service and 10 working days of vacation or 2 weeks after 5 years of service. Clerks and Telegraphers receive 5 working days or 1 week of vacation after 1 year of service, 7½ working days or 1½ weeks of vacation after 2 years of service, and 10 working days or 2 weeks of vacation after 3 years of service.

The Organizations emphasize the marked trend in recent years toward the establishment of paid vacations in industry, toward increasing the length of vacations, and toward reducing the service requirements for a vacation of specified length. The Carriers minimize such trends in industry generally, insist that provisions of other industries cannot be applied as such to the railroad industry, and emphasize the cost of the proposal.

The Board recognizes that due to continuity of service of railroad employees a larger proportion of such employees qualify for a vacation on the basis of a specified number of years of service than in most other industries. It is also clear that because of the continuous nature

of railroad operations, the dispersal of personnel at many points, and certain contract rules, vacations of any given magnitude involve relatively greater costs for the railroads than in most other industries. Such factors, while important, do not seem to the Board to be a proper basis on which to completely withhold increased vacation benefits from railroad employees if merited in relation to industry practice generally and if within the capacity of the Carriers to provide.

Generally, there has been during recent years a pronounced trend in industry toward vacations and improvement in plans relating thereto. Under such circumstances the time lag in the availability of data for industry generally creates the problem of uncertainty as to how far the trend has gone. Furthermore, a program may be in line with industry practice at one time and be outdated within a relatively short span of years.

The Board recognizes that in a number of instances in other industries more than 3 weeks of vacation are available, that in a growing number of instances the second week of vacation is available after less than 5 years of service, and that in a number of instances the service requirements for the third week of vacation have been reduced below 15 years. The Board is not convinced, however, that such developments have carried to the point of being a sound basis for recommending them for the railroad industry.

In reaching its recommendations the Board will consider the general practice in industry, to the extent that data is available, and the ability of the Carriers to pay. The Board recognizes the trend in provisions relating to improvement of vacation benefits. It has not seemed appropriate to the Board, however, to propose that the railroad industry adopt the most liberal provisions for each phase of a vacation plan that can be found in outside industry. The Board considers that when and if the trend and practice in outside industry carries to the point of making the current recommendations obsolete, ways and means are available for modernizing such provisions.

The Board concludes, based on the record, that a maximum vacation of 3 weeks is becoming generally available in industry and that a minimum requirement of 15 years of service for the third week of vacation is reasonable in view of industrial practice. Under such a service requirement a larger proportion of railroad workers would qualify for the third week of vacation than would be true in industry generally.

The record supports a finding that a third week of vacation after 15 years of continuous service has been adopted by a substantial portion of industry generally. The Board believes that such an arrangement would be reasonable from the standpoint of railroad employees and

within the capacity of the Carriers to pay. The cost of such an improvement in the vacation agreement is estimated in the neighborhood of 1½ cents per hour.

On the basis of the record the Board is not inclined to recommend any modification in the present qualification requirements for the first or second week of vacation.

The Board notes at this point that under Issue 7 of the vacation proposal, the Organization urge that vacations be extended 1 day for each holiday occurring within the vacation period. As indicated in connection with Issue 7 the Board is recommending against such a plan. The above conclusions favoring the provision of a third week of vacation after 15 years of qualifying service and no change in the qualification requirements for the first and second week of vacation, are made with the reservation that they are not meant to be inconsistent with the Board's recommendations under Item 7 or elsewhere.

Issue 4, to change the definition of the phrase "years of continuous service," would apparently include in years of continuous service, for purposes of vacation qualification, periods during which individuals are on extended sick leave, furlough, etc. The effect of such a liberalization would be to increase the number of individuals qualifying for a vacation of specified length. In the opinion of the Board the present provision requiring only 133 days of compensated service, qualified as recommended under Issue 2, will be a liberal one. Consequently the Board does not otherwise favor the change requested in Issue 4 above.

The third of the numbered sections of the Organizations' proposals concerning vacations follows:

> 3. The vacation above provided shall be considered to have been earned when the employee has qualified under Section 1 hereof. If an employee so qualified is furloughed or his employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, or failure to return after furlough, he shall at the time of such furlough or termination be granted full vacation pay earned up to the time he is furloughed or leaves the service. This shall include pay for vacation earned in the preceding year and not yet granted, and the vacation for the succeeding year if the employee has qualified therefor under Section 1.
>
> If an employee thus entitled to vacation or vacation pay shall die, the vacation pay earned and not received during the preceding and current years shall be paid to such beneficiary as may have been designated, or the surviving spouse or children or estate, in that order of preference.

The above section includes the following issues:

Issue 5 proposes to award vacation pay to "separated employees" where employee has not continued in the active service of Carrier (Issue 5 (a) in Carriers' analysis.)

Issue 6 proposes to award vacation pay if an employee should die, to such beneficiary as may have been designated, or to the surviving spouse or children or estate, in that order of preference. (Issue 5 (b) in Carriers' analysis.)

In considering circumstances, if any, where payment for vacations should be made after termination or interruption of employment, as requested in Issues 5 and 6, six different kinds of terminations or interruptions are identified: (1) military leave, (2) layoff, (3) retirement, (4) discharge, (5) resignation, and (6) death.

According to the Carriers, pursuant to the Nonoperating Employees' National Vacation Agreement, payment is generally made after termination or interruption when caused by any 1 of the first 3 types. On the basis of a consideration of the record in this regard the Board considers that the existing practices relating to these three types of termination or interruption are adequate if required by contract provisions. If they are not required by contract provisions we feel the contracts should be modified to so provide.

On the basis of the record and of a consideration of responsibilities and relationships concerned, the Board does not feel that the Carriers should be required to pay for vacations in cases of discharge or resignation and therefore does not recommend this part of the issue.

The Board feels, however, that in connection with Issue 6 there are some circumstances following the death of an employee where payment for vacation is appropriate. The Board considers that following the death of an employee who has qualified for a vacation, which has not been taken or paid for, payment should be made to the widow, if any, or, in instances where no widow but a dependent minor child or children survive, such payment should be made on their behalf, but if no widow or dependent minor child or children survive, then payment should lapse.

The fourth of the numbered sections of the Organizations' proposals concerning vacations follows:

4. If a paid holiday shall fall during the employee's vacation period he shall be granted 1 additional day of vacation for each such holiday.

The above section included the following issue:

Issue 7 proposes to increase the vacation period by allowing additional vacation days where holidays fall in the base vacation period. (Issue 1 (b) in Carriers' analysis.)

The proposal to allow an additional vacation day where a holiday falls in the base vacation period cannot be considered without reference to the Board's recommendation concerning paid holidays. As indicated under "Holidays," the Board recommends payment for certain holidays when they fall on a work day of an assigned work

week. The Board bases such recommendation primarily on the maintenance of take-home pay.

Assuming the adoption of its recommendations on paid holidays, the Board feels that it is not appropriate to recommend extension of the vacation period when a holiday falls in the base vacation period. The Board reaches this conclusion with respect to both holidays falling on a work day and holidays falling on a rest day during the vacation period in question.

The Board proposes that when, during the vacation of an employee, a holiday falls on what would have been a work day of his regularly assigned work week, he shall not be entitled to an additional vacation day because thereof, but such holiday shall be considered as a work day of the period for which he is entitled to vacation. When, during the vacation of an employee, a holiday falls on what would have been a rest day he shall not be entitled to an additional vacation day because thereof.

The fifth of the numbered sections of the Organizations' proposals concerning vacations follows:

5. If the employee performs service on any day in his vacation period, he shall be paid for each such day not less than 8 hours' pay, at double the regular rate of his position, in addition to his vacation pay; service beyond 8 hours shall be paid at double the regular rate of his position.

The above section includes the following issue:

Issue 8 proposes to increase allowances paid in lieu of vacations. (Issue 2 in Carriers' analysis.)

Under the present agreements as administered, the vast majority of employees take their vacations. In some instances, however, the employee works during his vacation and receives straight time pay in addition to his vacation pay. It is recognized that in some instances the employee works during his vacation because he prefers to do so in order to obtain the extra compensation, but that in other cases the employee works during vacation because of the preference of the Carrier that he should do so.

The employees claim that the present agreements provide no incentive for the Carriers to make vacations available. The Carriers insist that only a very small proportion of employees continue work during their vacation period and that this arrangement is due primarily to the desire of the employees or to a very difficult situation facing the Carrier in obtaining a replacement. The proposal in question would require payment of double time in addition to regular vacation pay for any work during the vacation period.

On the basis of the record the Board sees no evidence of substantial abuse under present circumstances nor basis for a penalty rate of

double time for work during the vacation period in addition to regular vacation pay. The Board does consider, however, that in addition to regular vacation pay, time and a half for work during vacation would be appropriate unless the employee has requested that he have an opportunity to continue work during his vacation, in which case, if his request is granted, he should receive only straight time in addition to his normal vacation pay.

The sixth of the numbered sections of the Organizations' proposals concerning vacations follows:

6. If any employee shall leave the service of a carrier to enter the armed forces of the United States (or the armed forces of Canada in the case of U. S. carriers operating in Canada), retaining his seniority rights with such carrier, he shall be entitled to whatever part of his full vacation pay earned in the preceding calendar year shall not have been given him at the time of leaving. At the end of the calendar year next succeeding that during which he entered such armed forces, he shall be entitled to vacation pay equal to what he would have been given if the time spent in such armed forces had been in the continuous compensated service of the carrier. If an employee shall return to the service of a carrier after having served in such armed forces, with seniority rights maintained or restored, he shall be entitled to a vacation in the year during which he thus returns and in the next succeeding year, equal to what he would have been given had he been in the compensated service of the carrier during the preceding year and in the year he returns the same length of time he was in such armed forces, plus whatever time he may have been in the compensated service of the carrier in such years. Time spent in such armed forces during which seniority is accumulating shall be considered continuous service under section 2.

The above section includes the following issues:

Issue 9 proposes to grant vacation pay to employees entering military service. (Issue 6 (a) in Carriers' analysis.)

Issue 10 proposes to grant vacations to employees returning from military service. (Issue 6 (b) in Carriers' analysis.)

For present purposes Issues 9 and 10 above will be discussed together. It is the understanding of the Board that although the present vacation agreement makes no specific provision for vacations for employees entering military service or returning from military service, such employees are, pursuant to the Selective Service Act, treated in the same manner as furloughed employees.

As this Board views the record, the provisions of the Selective Service Act which require employees who enter military service to be treated in the same manner as furloughed employees sufficiently protects such employees. It is recognized that some carriers have adopted more favorable practices for their employees. On the basis of the record, however, the Board is not convinced that such more favorable practices should be uniformly required.

The seventh of the numbered sections of the Organizations' proposals concerning vacations follows:

7. Nothing herein shall be construed to deprive any employee of such additional vacation days or more favorable practice as he may be entitled to receive under any existing rule, understanding or custom, which additional vacation days or more favorable practice shall be accorded under and in accordance with the terms of such existing rule, understanding or custom.

The above section includes the following issue:

Issue 11 as it relates to whether more favorable practice under existing rule, understanding or custom, as determined unilaterally by one party, should be exempted from the recommendations of the Board, is discussed under the Carriers' Proposals 30 and 31. (Not treated as a separate issue in Carriers' analysis of Organizations' proposals.)

Where no favorable recommendations are made as to certain of the Organizations' proposals, our discussion is not to be considered as intended to affect any existing rules, regulations, interpretations or practices, however established, unless such change is specifically included in our recommendations. Where to the Board the proposals have merit and are recommended for adoption on a national basis, such proposals as agreed to by the parties should be uniform except, as presumably goes without saying, that more favorable or differing rules, regulations, interpretations or practices may be retained if the parties so agree.

Holidays

The first of four paragraphs in the proposal by the Organizations concerning holidays follows:

All employees shall be given seven holidays off with pay in each year. Those holidays, unless alternative designations are made on the individual carrier by agreement between such carrier and the representatives of the employees, shall include January 1, February 22, May 30, July 4, Labor Day, Thanksgiving Day, and December 25.

The following issue is involved in the above proposal:

Issue 12 proposes to grant employees time off duty with pay on seven holidays. (Issue 10 in Carriers' analysis.)

At present, for most of the employees concerned, the holidays in question are recognized but no compensation is received. Those employees called on to work on holidays are paid time and a half.

Some other holidays are recognized in similar fashion on individual carriers. Apparently in some instances other holidays are substituted for one or more of the seven referred to in the proposal and in other instances more than seven holidays are recognized.

The Organizations point to substantial progress in other industries in the establishment of paid holidays. The Carriers insist that even

if the concept of paid holidays is accepted, the employees before the Board received an extra wage adjustment in 1947 in lieu of such holidays. The Organizations deny this contention.

The general trend in recent years toward paid holidays is unmistakable. The number of such paid holidays varies but a proposal for seven is not out of line with practice in industry generally.

The Board is not convinced that the employees received a wage adjustment in lieu of paid holidays in 1947. Even if the absence of paid holidays had been taken into account in the wage adjustment of 1947, it seems to the Board that it would not now be inappropriate to examine the proposal for benefits in this area in the light of present circumstances.

The Board feels that in relation to practice in other industries it would be appropriate for hourly rated nonoperating railroad employees to receive straight time compensation for any of the seven holidays falling on any of the workdays of their established workweek, subject to certain limitations outlined. In reaching this conclusion the Board is strongly influenced by the desirability of making it possible for the employees to maintain their normal take-home pay in weeks during which a holiday occurs. As will be indicated later, the Board proposes continuation of the present arrangements for time and a half for holidays worked. Such time and a half for holidays worked would be in addition to straight time pay for holidays. This will have the effect of take-home pay in excess of normal for those employees who work on holidays, but under the conditions involved is believed by the Board to be justified.

Assuming acceptance of the Board's proposal for paid holidays for hourly rated employees, the question arises as to comparable treatment for employees paid on a monthly salary. The Board understands that in the case of some such employees computations have been made, for purposes of overtime payment, of hourly rates based on excluding from a year of 365 days the 104 rest days and 7 holidays. Deducting 111 days from 365 days gives 254 days. This number multiplied by 8 hours per day and divided by 12 months gives 169⅓ hours per month.

Based on this computation and on the discussion in the record, it is the understanding of the Board that the monthly rated employees whose hourly rate is based on 169⅓ hours per month are not now being paid for 7 holidays even though their monthly pay is averaged throughout the year.

The Board therefore concludes that treatment of these monthly rated employees comparable to that proposed for hourly rated employees calls for the computation of their monthly pay on a basis

which will include, on an annual average, pay for the number of holidays that will ordinarily fall in the workdays of a workweek.

The Board considers that such an arrangement will provide an approximation of equality of treatment. Depending on the number of holidays occurring in the workweek of an individual in a given year, the adjustment proposed for these monthly rated employees might yield more or less by way of increased compensation than would be received by a comparable hourly rated employee with the same workweek schedule during the same year. Over a period of years, however, such discrepancies should average out.

It is recognized that certain of the holidays when they fall on Sunday will be celebrated on Monday. In this situation it is our understanding that Monday is the holiday.

The Board also recognizes that inasmuch as Labor Day falls on Monday and Thanksgiving on Thursday, the average number of holidays over a period of years on which hourly rated employees would receive straight time holiday pay will vary somewhat due to differences in the days of the week constituting the assigned workdays. Some may receive more than the expected average of five; others may receive less. The principle concerning take-home pay will, however, be maintained and it is not believed that the variations referred to need to be disturbing. Furthermore, the same influences will affect the actual number of holidays during the assigned workweek for monthly rated employees. On the average, however, under the recommendations of the Board it would be expected that the hourly rated employees and the monthly rated employees would receive pay for approximately five of the seven holidays per year.

The Board considers that the adoption of the above recommendation would cost in the neighborhood of 3½ cents per hour and that when considered with the other recommendations of the Board would come within the capacity of the Carriers to pay.

Summarizing the Board's conclusions concerning Issue 12 under Holidays, whenever one of the seven enumerated holidays falls on a workday of the workweek of a regular assigned hourly rated employee, he shall receive the pro rata of his position in order that his usual take-home pay will be maintained. As to monthly rated employees whose hourly rate is based on 169⅓ hours per month, which is arrived at by deducting the 7 days, the monthly pay shall be recomputed so it will be increased to include on an annual average the number of holidays that will ordinarily fall in the workdays of a workweek.

In order to qualify to receive pay on a holiday which falls on a workday of such employee, he must have worked the workday of his workweek immediately preceding and following such holiday. If the holiday falls on the last workday of his workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding week shall be considered the workday immediately preceding the holiday.

As indicated later, it is not the intention of the Board in making the above recommendation, to propose the modification of the present agreement providing time and one-half for work on holidays.

The remaining three paragraphs in the proposal by the Organizations concerning holidays follow:

> If any employee performs any service on any such holiday, he shall be paid at double his regular rate of pay, with a minimum of 8 hours, in addition to the regular pay for that holiday.
>
> If any of the holidays above specified, or the day alternatively chosen for such holiday on any carrier, shall fall on an assigned rest day of an employee, the next following assigned work day shall be considered as that employee's holiday.
>
> Nothing herein shall operate to reduce the number of holidays now recognized on any carrier, by agreement or past practice, and on each additional holiday now so observed the employee shall be granted the day off with pay, or compensated as above provided if worked.

The following issues are involved in the above proposal:

Issue 13 proposes to increase the penalty for work on holidays from the present time and a half to double time in addition to the proposed regular pay for holidays. (Issue 11 in Carriers' analysis.)

Issue 14 proposes to recognize holidays falling on a rest day and to consider the next following assigned workday as the employee's holiday. (Issue 12 in Carriers' analysis.)

Issue 15 proposes to require a minimum of 8 hours' pay for any work on a holiday. (Issue 13 in Carriers' analysis.)

Issue 16 proposes that there shall be no reduction in the number of holidays now recognized on any Carrier and that where additional holidays are now observed the benefits proposed under 12, 13, 14, and 15 above shall prevail. (Not treated as a separate issue in Carriers' analysis.)

With respect to Issue 13, the request would increase the penalty for work on holidays from the present time and a half to double time. As indicated above, the Board is recommending regular pay for the holidays in question when they fall on an assigned work day but are not worked. On the basis of the Board's appraisal of experience in outside industry and of the merits of the proposal, it is not believed

that an increase in the present penalty rate of time and a half for work on holidays is necessary or appropriate.

Issue 14 proposing that a holiday falling on a rest day shall be recognized on the next following assigned workday, is inconsistent with the basic conclusions and basis for the recommendation which the Board is making with respect to paid holidays falling in the workdays of a workweek. The Board does not find adequate support for Issue 14 either in the practice in outside industry or on its merits as considered for the nonoperating employees of the railroad industry.

With respect to Issue 15 to require a minimum of 8 hours' pay for any work on a holiday, the Board does not find in the record adequate justification for concluding that the present "call rules" should be modified as proposed by the Organizations.

With respect to Issue 16 above, it is the concept of the Board that its recommendation for paid holidays under Issue 12 is limited to 7, and subject to other limitations as indicated. It seems no reason, if the parties agree, why some 1 or more other holidays might not be substituted for 1 or more of the enumerated holidays. The Board, however, does not recommend that the number of holidays with pay under Issue 12 shall be increased beyond 7. It should also be clear that the Board does not recommend the benefits sought under Issues 12, 13, 14, and 15 above be granted in connection with any additional holidays now observed.

Health and Welfare Plan

The Health and Welfare Plan proposed by the Organizations follows:

> There shall be established and maintained, effective January 1, 1954, a health and welfare plan which shall:
>
> 1. Provide life insurance for each employee, to pay upon his death an amount equal to the full time annual earnings at the rate of pay of the position last held before death, with a minimum of $3,500, to his designated beneficiary.
>
> 2. Provide all hospital, medical, and surgical care incident to any sickness, injury, or other disability of any employee, spouse, and/or other dependents, including children under 18 years of age, and occurring while the employment relationship exists.
>
> 3. Provide that all costs incident to such life insurance and hospital, medical, and surgical service shall be borne in full by the carrier.
>
> The provisions of this health and welfare plan shall not be reduced by or operate to reduce any compensation for sickness, injury, or disability of any employee now provided by law, agreement, or practice on any carrier.

The following issues are involved in the above proposal:

Issue 17 proposes that the Carriers contract to provide at their expense life insurance on the lives of all employees. (Part of Issue 14 in Carriers' analysis.)

Issue 18 proposes that Carriers contract to provide at their expense for all hospital, medical, and surgical care incident to any illness, injury, or other disability of employees and their dependents. (Part of Issue 14 in Carriers' analysis.)

Issue 19 proposes that the Health and Welfare Plan shall not be reduced by nor operate to reduce any compensation for sickness, injury, or disability of any employee now provided by law, agreement, or practice on any carrier. (Not treated as a separate issue in Carriers' analysis.)

The Organizations propose that the Carriers shall provide insurance on the lives of all employees, and for hospital, medical, and surgical care not only for all their employees but also for their dependents, the cost to be borne entirely by the Carriers.

In discussion of the types of benefits sought here, there will be found in the literature on the subject wide variations in the titles or labels used. Various groupings such as Health and Welfare Plans; Employees' Insurance; Social Insurance; Health, Medical, and Surgical Benefits; Fringe Benefits; etc., are frequently used with various degrees of overlap and without precise or consistent definition. For purposes of the present case, the term "Health and Welfare Program" is used to refer to the employees' proposal on this subject.

On this general issue both parties produced substantial information, and a substantial picture of the current practice on railroads and in other industries was presented to the Board. It is clear that there has been a substantial trend toward group life insurance benefits and group insurance coverage for hospital, medical, and surgical care at the expense of employers. Because of the trend and the time lag prior to publication of studies on this subject, it is difficult to determine with precision how far such benefits have developed at the present time. As in the case of many other fringe benefits, current information on costs and on sharing of costs is not as adequate as might be desired. It is clear, however, that there has been a substantial movement toward such benefits and toward provision of them at the expense of the employer.

In much of the record of the present dispute, as it relates to the Health and Welfare proposal, the Organizations have supported their demands for extensive benefits and the Carriers have emphasized the high level of costs and their insistence that this demand is not properly before the Board. Therefore the real issue concerning reasonable benefits at a reasonable cost has not been sharpened up by the parties as much as would have been desirable. Consequently the Board in its recommendation must deal primarily in general conclusions and

leave many details to the further processes of collective bargaining.

The Board considers that the Health and Welfare Plan of the employees would come normally within the concept of issues expected to be handled through collective bargaining, but whether within the term "rates of pay, rules, and working conditions" as used in the Railway Labor Act we do not decide. Consequently the Board is making its recommendations on what it considers to be the merits with appropriate consideration of practice in other industries and capacity of the Carriers to provide fringe benefits. It might also be observed that the Health and Welfare proposal has a social significance beyond that of most of the other proposals before the Board.

The Board is of the opinion that under Issue 17 of the Health and Welfare Plan the benefits sought by the employees in connection with group life insurance are to a large degree provided by benefits under the Railroad Retirement Act. The Board feels that because of this circumstance a case cannot be made for the necessity of blanket coverage of employees with group life insurance benefits. Accordingly the Board does not recommend the adoption of that part of the proposal relating to group life insurance.

Insofar as Issue 18 relating to hospital, medical, and surgical care is concerned, it is clear that in the unlimited form of the Organizations' original proposal the cost would be prohibitive. It is recognized, however, that the Organizations have made clear in the record that they are not looking for, and do not urge, unlimited benefits or coverage without reasonable qualifications.

The Board considers that hospital, medical, and surgical benefits of the type proposed by the Organizations are quite different from benefits provided under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, but that the sharing of costs as provided under the Railroad Retirement Act has certain merits as applied to hospital, medical, and surgical programs.

With respect to Issue 18, the Board recommends that the parties agree upon a program providing hospital, medical, and surgical benefits in accordance with the following three specifications:

Reasonable limits for benefits and for qualification requirements.

Benefits under collective bargaining agreement to be for employees only.

Benefits for employees to be made available at the joint cost of Carriers and Employees on a fifty-fifty basis.

The above recommendations are not meant to suggest that arrangements would be inappropriate whereby in conjunction with the benefits proposed employees might purchase at their own expense similar

types of benefits for their dependents and the Board feels that such arrangements would be desirable and appropriate.

The above recommendation is not meant to suggest that it is necessary to provide the coverage in question through a single contract with an insurance carrier. Many administrative and organizational details must be worked out and consideration should be given to relationships with hospital associations and other existing plans on the various systems.

In connection with Issue 19 under the Health and Welfare Plan, it is not the purpose of the Board to recommend reduction or modification in plans providing compensation for sickness as such, for injury as such, or for disability as such. Such arrangements seem to the Board to concern benefits other than those being recommended in connection with hospital, medical, and surgical benefits. If complications are encountered because benefits under existing hospital, medical, and surgical plans supplied at the expense of the Carriers are greater than those recommended by the Board, the principle enunciated at the end of the section relating to Vacations should prevail.

The Board makes no specific estimate or forecast of costs to be expected from the adoption of this recommendation under circumstances where the level of benefits and the nature of qualifications remain to be defined. The Board visualizes, however, that following collective bargaining on details of the plan the agreement reached, depending on its specific nature, might include specifications covering costs.

The Board makes its recommendations with the understanding based on the record that some of the hospital associations on the various railroads are providing most of the benefits sought by the employees. The charges in connection with such associations are reported for the most part to fall in the range of 4 to 7 dollars per month. With a sharing of the costs the Board believes that a reasonable level of the benefits sought by the employees can be obtained at a cost for each party in the neighborhood of 2 to 3 cents per hour but with the precise level dependent on the level of benefits, the type of administrative arrangements agreed upon and other factors such as average age of employees.

Although leaving undefined a specific estimate of the cost of the adoption of this recommendation, the Board feels that the information in the record concerning the approximate level of benefits which the employees are interested in together with the qualifications and limitations suggested by the Board provides reasonable assurance against a program of excessive costs. This conclusion is strengthened by the Board's recommendation that the costs be shared equally by the

Employees and the Carriers. This should assure that the Organizations and the Carriers will each have a stake in negotiation of a program to meet the real needs of the employees and the Carriers and without excessive costs to either.

Premium Compensation for Sunday Service

The Organizations' proposal for premium compensation for Sunday service follows:

> Any employee who performs service on a Sunday which is not his rest day shall be paid for a minimum of 8 hours at 1½ times the applicable straight time hourly rate of pay. Any employee who performs service on a Sunday which is his rest day shall be paid for a minimum of 8 hours at double the applicable straight time hourly rate of pay. Service beyond 8 hours on any Sunday shall be compensated at double the applicable straight time hourly rate of pay.

The following issues are involved in the above proposal:

Issue 20 proposes premium pay for work performed on Sunday at the rate of time and one-half when Sunday is scheduled as a work day. (Issue 8 (a) in Carriers' analysis.)

Issue 21 proposes premium pay for work performed on Sunday at the rate of double time when Sunday is a designated rest day. (Issue 8 (b) in Carriers' analysis.)

Issue 22 proposes to require a minimum of 8 hours' pay for any work on Sunday when Sunday is a designated rest day. (Issue 9 in Carriers' analysis.)

Prior to the adoption of the 40-hour week certain of the nonoperating crafts had overtime pay for work on Sunday. Under the 40-hour week agreement these crafts gave up their overtime pay for Sunday work as such, as part of the bargain for the reduced work week without reduction in pay. Under the agreement the Carriers were authorized to stagger the work week assignments for regular employees and there was no overtime pay for Sunday work as such is those instances in which the work assignment included Sunday as one of the 5 working days for the 40-hour week.

The Organizations in their argument have stressed the disruptions for those employees who are called on to work on Sunday as a part of their regular assignments, and insist that a 5-day week including a Sunday assignment merits extra compensation for the work on Sunday. The Organizations insist that unnecessary Sunday work is carried on by the Carriers to the disadvantage of the employees under present circumstances where no penalty rate is attached to Sunday work as such.

The Carriers stress the continuous nature of railroad operations and the necessity of a substantial amount of Sunday work, but insist that

Sunday work has been reduced to and retained at a minimum. They argue that the primary justification for a penalty rate for work under a given set of circumstances is to discourage such work. They further insist that in the railroad industry Sunday work cannot be substantially reduced from its present level, and the effect of penalty payments for Sunday work as such would be to not reduce the amount of work on Sunday but to greatly increase the costs to the Carriers.

The Board recognizes the continuous nature of railroad operation and that such operations do cause inconvenience for those employees who must work on Sunday. On the basis of the record the Board is convinced that in general Sunday work has been reduced to a reasonable minimum and that there is an existing remedy for abuses that may arise by appeal of grievances to the Railroad Adjustment Board.

In relation to Issue 20 above the Board considers that the settlement of this issue in connection with the 40-hour week was not an unreasonable one and does not feel that the record supports the proposal for penalty or premium pay for Sunday work as such for nonoperating employees in the railroad industry with the substantial costs that would be involved.

With respect to Issue 21 above, those employees for whom Sunday is a designated rest day now receive pay at the rate of time and a half when work is performed on Sunday. The Board believes that this is a reasonable arrangement from the standpoint of the employee and a sufficient penalty to the Carrier to discourage unnecessary use on Sunday of employees for whom Sunday is a rest day.

In relation to Issue 22 above, the Organizations request a minimum of 8 hours' pay at the proposed overtime rates for any work performed on Sunday when Sunday is a designated rest day for the employee.

The issue of modification of the penalty rate for work performed on Sunday when it is a designated rest day has been discussed under Issue 21 above. In connection with Issue 22 relating to a minimum of 8 hours' pay whenever any service is performed on Sunday by an employee for whom Sunday is a designated rest day, the Board notes that the present "call rules" vary but in general permit short assignments on Sunday to be paid for, usually for a minimum of 2 hours and 40 minutes, at the rate of time and a half.

The Board is of the opinion that such present arrangements are not unreasonable and in general take into account the interests of the employees and of the Carriers.

Rights to Free Transportation

The proposal by the Organizations for increased free transportation follows:

Free transportation on home roads and foreign roads, shall be granted to employees of:

1. Railroad Systems.
2. Railroad Terminals and other joint facilities.
3. Pullman and Express Agency.

on the following basis:

HOME ROADS:

1. An employee with 90 days' service but less than 1 year's service shall be granted trip passes requested on home division or divisions.
2. An employee with 1 year of service but less than 5 years' service shall be granted an annual pass over the home division or divisions, and trip passes requested over the entire line.
3. An employee with 5 or more years' service shall be granted an annual pass.

FOREIGN ROADS:

1. An employee with 90 days' service but less than 1 year's service shall be granted free transportation for 1 trip per year.
2. An employee with 1 year of service but less than 5 years' service shall be granted free transportation for 3 trips per year.
3. An employee with 5 or more years' service shall be granted free transportation as requested.

Rules Applicable to Both Home Road and Foreign Road Transportation

1. Periods of service in determining eligibility for passes and free transportation shall be computed from the date an employee enters service and throughout the period that a continuous employment relationship is maintained.
2. The same pass and free transportation privileges shall be extended to an employee's wife and/or dependents.
3. All necessary school passes for each dependent student child of an eligible employee shall be granted.
4. Passes and free transportation shall be honored on all passenger trains. On extra fare trains an employee may be required to pay the extra fare. Where a charge is made to the public for seat space in coaches, employees and/or dependents may be required to pay the same charges.
5. Work passes or free transportation shall be issued to all employees in order that they may return "deadhead" to their homes at least once each week. Such passes or free transportation shall be honored in all day coaches; and in Parlor and Pullman cars upon the payment of the Parlor or Pullman car fare for such accommodations.
6. Employees in terminals and other joint facilities shall select a home road among the roads operating within the terminal or facility, and pass and free transportation privileges shall be granted to them on the same basis as to employees of the road so selected. Foreign transportation to such employees shall be granted on the same basis as to employees of the home road they have selected.
7. Pullman and Express Agency employees shall select a home road within the territorial district employed and pass and free transportation privileges shall be granted to them on the same basis as to employees of the road so se-

lected. Foreign transportation to such employees shall be granted on the same basis as to employees of the home road they have selected.

8. An employee covered by paragraph 6 or paragraph 7 hereof may change his selection of a home road at the beginning of any calendar year provided he notifies all parties in interest of this change in selection 90 days prior to the beginning of the new calendar year.

Effect of Current Agreements

Provisions in current agreements not in conflict with these proposals shall remain unchanged.

Issue 23.—The above proposal involves the combined issues of contracting for free transportation and of substantial liberalization of free transportation arrangements which in general have not heretofore been the subject of collective bargaining in the railroad industry. (Issue 15 in Carriers' analysis.)

The Board sees nothing improper in contract provisions to which references have been made in the record relating to assurances against discrimination among employees or between groups of employees in the granting of free transportation by the Carriers. The Board interprets this type of contract provision, however, as substantially different from the major objective of the Organizations in making the Free Transportation proposal.

Contract provisions concerning transportation or transportation costs under circumstances directly and closely related to employment or changes in location, such as have been referred to in the record, seem to the Board to be substantially different from the major benefits being sought by the Organizations in connection with their Free Transportation proposal.

The Board recognizes the relation of the costs of free transportation to the passenger deficit. The Board notes the complications involved in free transportation arrangements insofar as "foreign lines" are concerned. It is clear that the burden of the Free Transportation proposal would fall unevenly on the Carriers due to wide variations in the relative amount and nature of the passenger business on different Carriers. The Board considers that while the availability of half-rate transportation by no means fully meets all of the demands of the employees, it is a factor of some consequence. It has also been noted that the Carriers contend that public regulatory bodies are critical of the amount of free transportation already being granted.

The Board has the impression, based on the record, that under most circumstances with most of the Carriers the employees have not encountered serious problems concerning reasonable and acceptable arrangements for free transportation. The Board has the impression that complaints have arisen which have led to continuing serious dis-

satisfaction on only a minority of the Carriers. Although the Board does not believe that the answer lies in collective bargaining concerning free transportation privileges, it does believe that it would be to the advantage of both parties to explore through appropriate conferences, without prejudice to positions on the question of bargainability, the causes of the dissatisfaction in such instances as it has arisen, and to seek appropriate remedies.

The Board doubts if free transportation comes within the language of the Railway Labor Act relating to "rates of pay, rules, and working conditions." It is also of the belief that, on the merits, this subject should not be required to be the subject of collective bargaining. It is a gratuity except when directly related to the employees' services and as such should be left under the control of the Carriers.

(2) FINDINGS AND RECOMMENDATIONS CONCERNING ORGANIZATIONS' PROPOSALS

Vacations

Issue 1.—Because of the reasons set forth in our discussion we recommend that the parties agree that service rendered under agreements between a Carrier and one or more of the Organizations in these proceedings be counted in computing days of compensated service and years of continuous service for vacation qualifying purposes.

Issue 2.—Because of the reasons set forth in our discussion we consider that the present number and definition of qualifying days for vacation purposes is reasonable and recommend that the Organizations withdraw this proposal except that an employee should not be deprived of a vacation because of failure to accumulate the minimum number of qualifying days due to illness, within the limits of sick leave, or to injury on the job, within reasonable limits.

We recommend that the original proposal be withdrawn and that the parties agree to a modified proposal to achieve the result indicated.

Issue 3.—Because of the reasons set forth in our discussion we favor this issue in part. We recommend that it be modified as suggested in our discussion and agreed to by the parties. We recommend a third week of vacation after 15 years of service be provided and made applicable for the year 1954. The Board assumes that the result recommended can be accomplished by detailed provisions relating to vacations expressed in terms of workdays or weeks. It is noted here that in reference to Proposal 7 the Board does not propose that the vacation period be extended because of any holidays occurring therein.

Issue 4.—Because of the reasons set forth in our discussion we consider that the present basis for computing qualifying years for vaca-

tion purposes is reasonable, except as otherwise recommended under Issue 2, and recommend that the Organizations withdraw this proposal.

Issue 5.—Because of the reasons set forth in our discussion we recommend that the Organizations withdraw that part of this proposal relating to discharge and resignation but recommend that safeguarding of vacation rights for persons going on military leave, retiring, or being laid off should be provided by collective bargaining agreement if not already so provided.

Issue 6.—Because of the reasons set forth in our discussion we recommend that following the death of an employee who has qualified for a vacation which has not been taken or paid for, payment for such vacation be made to the surviving widow, if any, or in the absence of a surviving widow, on behalf of a dependent minor child or children, if any. The Board recommends that the parties agree to the proposal in such modified form.

Issue 7.—Because of the reasons set forth in our discussion, including the interrelation of this issue to other issues, the Board recommends that the vacation period not be increased by allowing additional vacation days where holidays fall in the base vacation period and that when a holiday falls on what would have been a workday of the employee's regularly assigned workweek, such holiday shall be considered as a workday of the period for which he is entitled to vacation.

Issue 8.—Because of the reasons set forth in our discussion the Board recommends that this proposal be modified and that the parties agree that in addition to regular vacation pay, employees are to receive time and a half for work performed during vacation unless the employee has requested the opportunity to work during his vacation, in which case if his request is granted he would receive only straight time in addition to his normal vacation pay.

Issues 9 and 10.—Because of the reasons set forth in our discussion we consider that the Selective Service Act provides reasonable protection for employees entering into or returning from military service and we recommend that these proposals be withdrawn.

Issue 11.—Because of the reasons set forth in our discussion we consider in making our recommendations on the Vacation proposals, and on the other proposals, that where no favorable recommendations are made as to certain of the Organizations' proposals it is not our intent to affect existing rules, regulations, interpretations or practices, however established, unless such change is specifically included in our recommendations.

Where to the Board the proposals have merit and are recommended, they are recommended for uniform adoption, except that differing

rules, regulations, interpretations or practices may be retained if the parties so agree.

Holidays

Issue 12.—Because of the reasons set forth in our discussion the Board recommends that the parties agree that:

(*a*) Whenever one of the seven enumerated holidays falls on a workday of the workweek of a regularly assigned hourly rated employee, he shall reecive the pro rata rate of his position for that day.

(*b*) As to monthly rated employees whose hourly rate is based on 169⅓ hours per month, which is arrived at by deducting the seven holidays, the monthly pay shall be recomputed so it will be increased to include on an annual average the approximate number of the holidays that would be expected to fall in the workdays of a workweek.

(*c*) In order to qualify to receive pay on a holiday which falls on a workday the employee must have worked the workday of his workweek immediately preceding and following such holiday. If the holiday falls on the last workday of his workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

The Board recommends that the above recommendations concerning holidays be made effective as of May 1, 1954.

Issue 13.—Because of the reasons set forth in our discussion we recommend against the proposed increase in the penalty for work on holidays from the present time and a half to double time and recommend that it be withdrawn.

Issue 14.—Because of the reasons set forth in our discussion we recommend withdrawal of this proposal to recognize holidays falling on a rest day by considering the next assigned workday as the employee's holiday.

Issue 15.—Because of the reasons set forth in our discussion we recommend withdrawal of this proposal to require a minimum of 8 hours' pay for any work on a holiday.

Issue 16.—Because of the reasons set forth in our discussion we recommend that the Organizations withdraw this proposal. As indicated in the discussion, the Board is limiting its recommendations concerning holidays with pay to seven but sees no reason, if the parties agree, why some one or more other holidays might not be substituted for one or more of the enumerated holidays under appropriate circumstances.

Health and Welfare Plan

Issue 17.—Because of the reasons set forth in our discussion the Board recommends that the Organizations withdraw this proposal relative to life insurance.

Issue 18.—Because of the reasons set forth in our discussion the Board recommends that the parties agree to a program, to be effective as soon as possible, providing hospital, medical, and surgical benefits in accordance with the following three principles:

(*a*) Reasonable limits for benefits and reasonable qualifications.

(*b*) Benefits under collective bargaining agreement to be for employees only.

(*c*) Benefits for employees to be available at the joint cost of Carriers and Employees on a 50-50 basis.

To the extent administratively feasible the Board favors arrangements under the Health and Welfare Plan whereby employees may purchase at their own expense similar benefits for their dependents.

Issue 19.—Because of the reasons set forth in our discussion the Board recommends that the Health and Welfare Plan recommended shall not operate to reduce compensation for sickness, injury, or disability of any employee now provided by law, agreement, or practice on any Carrier.

Premium Compensation for Sunday Service

Issue 20.—Because of the reasons set forth in our discussion the Board recommends the withdrawal of this proposal that work performed on Sunday as a scheduled workday be paid for at time and one-half.

Issue 21.—Because of the reasons set forth in our discussion the Board recommends the withdrawal of this proposal that work performed on Sunday as a designated rest day be paid for at double time.

Issue 22.—Because of the reasons set forth in our discussion the Board recommends the withdrawal of this proposal to require a minimum of eight hours' pay for any work on Sunday when Sunday is a rest day.

Rights to Free Transportation

Issue 23.—Because of the reasons set forth in our discussion the Board recommends that this proposal for a collective bargaining agreement concerning Free Transportation be withdrawn but suggests that it would be desirable for appropriate representatives of both parties to participate in joint conferences to explore the causes for the dissatisfaction which exists in some cases and to seek appropriate remedies.

Comments on Proposals

In listing the issues for analysis some abbreviation of the original proposals was required. In a number of instances the Board has recommended a part of a specific proposal or has recommended modification of the proposal. In reaching its recommendations concerning the Organizations' proposals, however, the Board has sought to consider all of the elements or issues involved.

The Board considers that it has made clear all of the recommendations which it feels are warranted and that it should also be clear that in combination with its recommendations covering the Carriers' proposals it is making its report as a recommended basis for a complete settlement of all phases of the dispute.

C. The Carriers' Proposals

Within 30 days following May 22, 1953, the date the Organizations served their proposals on these Carriers in behalf of the employees they represent, the Carriers served 31 proposals on these Organizations requesting changes in rules and/or working conditions in the provisions of the agreements covering the employees they represent. A list of these proposals is appended hereto, identified as Appendix D.

(1) DISCUSSION OF CARRIERS' PROPOSALS

For various reasons discussion of these proposals was never had between the parties prior to the hearing before this Board. While it is most desirable that proposed changes in rules and working conditions should be settled by the parties themselves by direct negotiations in the course of normal collective bargaining procedures, because of the generally complex nature of the rules of the numerous agreements that relate thereto, nevertheless, we are of the opinion that these proposals are properly before us for our consideration.

At the hearing, Carriers withdrew 16 of these proposals without prejudice either as to the merits of the proposals withdrawn or to the right to present and prosecute them subsequently in other proceedings. This left the following proposals for our consideration: Nos. 2, 4, 5, 6, 7, 11, 14, 15, 16, 23, 24, 25, 29, 30, and 31.

The Carriers state that the general intent and purpose of their proposals is to start to modernize the contract provisions of their agreements with these employees in order to be able to meet the requirements of the railroad industry under present-day conditions, that is, to clarify and simplify existing rules in order to eliminate costly and waste-

ful practices and thereby increase the efficiency of the industry. Also included in the proposals are rules changes to fix procedures in regard to time limits on claims and to arbitration of socalled craft or class line jurisdictional disputes. It is, without question, the duty of those in charge of the railroads to operate them in the most efficient and economical manner possible, giving proper consideration to the public welfare. However, it cannot be overlooked that the natural effect of collective bargaining will, in varying degrees, circumscribe and limit the powers of management in this regard.

While some of these proposals deal with other matters, we observe that generally they seek to restore to Carriers what they considered to be their rights and prerogatives in regard to the subject matter thereof as they existed prior to 1934. They seek to accomplish this by either eliminating rules negotiated since or by overcoming the effect of awards of the several divisions of the National Railroad Adjustment Board which in any way limit or restrict such rights or cause uncertainty or confusion in regard thereto.

The Railway Labor Act has at all times provided for collective bargaining by the representatives of employees on a class or craft basis. Consequently the employees of such a class or craft are entitled to perform the work covered by the scope of the agreement covering them, with a right to seniority resulting therefrom. We do not think emergency boards created pursuant to authority of the Act should make any recommendations contrary thereto, that is, recommendations that would arbitrarily have the effect of eliminating craft or class lines and resulting seniority.

The proposals of the Carriers are very general in their terms. No negotiations in regard thereto having been had by the parties prior to our hearing, it was not possible for Carriers to explain fully what they intended each proposal to accomplish. This they did at the hearing. We shall discuss each proposal on the basis of what Carriers explained they intended should be accomplished thereby. In doing so we recognize that generally problems of this nature do not readily lend themselves to being handled on a uniform national basis because of the complexities involved and also due to local conditions usually relating thereto, which vary on different railroads. But that fact should not completely eliminate our consideration of the proposals. If we come to the conclusion that we do not have sufficient information in regard thereto, or that it is a matter that should be separately handled on each Carrier, we can and will recommend accordingly.

Carriers' Proposal No. 2

Eliminate existing rules, regulations, interpretations or practices, however established, which restrict or prohibit a carrier from consolidating positions or extending the jurisdiction of a position.

The Carriers describe the purpose and intent of this proposal to be to secure relief from any rules in the nonoperating agreements or interpretations thereof by the National Railroad Adjustment Board or otherwise which have resulted in practices that restrict the Carriers from consolidating positions or extending the jurisdiction of positions even though no craft or seniority district lines are involved, whenever they deem it advisable to do so; and to authorize Carriers to make consolidations within a craft or class of employees and to extend the jurisdiction of positions only where the work involved is all in a single seniority district.

The Carriers go on to say this proposal is not to be construed as seeking a rule to authorize the consolidation of positions involving more than one craft or class of employees, or to extend the jurisdiction of a position to absorb work from two or more seniority districts even though in the same craft. They say, as a basis for desiring the change, that while there are few specific rules in the agreements limiting the rights of Carriers to consolidate assignments or extend the jurisdiction of positions, that the divisions of the Adjustment Board having jurisdiction thereof have sustained Organizations' contentions that after an assignment or position is once established, and work assigned thereto, the position can not be consolidated with another position nor its jurisdiction extended to include work of another assignment.

We think the present rules, and the interpretation thereof by the National Railroad Adjustment Board, provide a reasonable basis for consolidation of positions along class or craft lines, having due regard for the seniority rights of the employees involved, and that the staggering of the work week of these employees, as permitted by the 40-hour week agreement, gives Carrier ample opportunity to have the work of any class or craft performed on any day of the week by regularly assigned employees.

The proposal would give Carriers the right to unilaterally cross group seniority rosters and disregard point seniority when consolidating positions and when extending the jurisdiction thereof. This would, to a certain extent, have the effect of permitting Carriers to destroy the seniority of employees affected thereby. We think the seniority rights of such employees should be protected. That can best be done by requiring, as is now necessary, a negotiation thereof by the parties involved when an individual Carrier desires to make

such change. Certainly such employees' interests would not always be protected if Carriers were granted the absolute authority they here request.

Carriers' Proposal No. 4

Establish a rule or amend existing rules to provide that extra or unassigned employees will be paid on a minute basis for actual time worked with a minimum of four (4) hours, exclusive of a meal period.

The Carriers explain the purpose of this proposal to be, "to permit the Carriers to compensate an extra or unassigned employee on the basis of the actual time worked (with a minimum of 4 hours' pay) when there is no need for his service for a full day of 8 hours."

In explanation of their desire for the proposed rule Carriers say call rules permitting payment of less than 1 day's pay generally apply only to regularly assigned employees and therefore most Carriers are required to pay extra employees a full day's pay whenever used, even though needed for only a few hours. Thus, if the proposed rule were negotiated, it would permit Carriers to work extra or unassigned employees for any length of time necessary, with a minimum as to pay of 4 hours, at pro rata, and thus avoid calling and using regular forces to do the work at the overtime rate.

We are not here dealing with regular employees subject to call rules when used outside their regular hours, nor with employees required to report for work at regular starting time and for some reason not used. The latter are generally covered by special rules.

This proposal deals with extra or unassigned employees and would have the effect of abolishing the 8-hour day for them. The 8-hour day has, in such cases, been considered standard for many years. We think that when an extra or unassigned employee is called to work for a day, or any part thereof, that generally speaking he should be entitled to at least a day's pay. Ordinarily he cannot work on more than 1 job on any day and it seems only right that when his services are needed he is entitled to 1 day as a minimum. It is true Carriers have work which, during abnormal or peak work loads, it would be more economical to have performed on less than a full-day basis. When special situations exist, such as at freight houses, mail handling stations, etc., special rules can be, and usually are, negotiated to meet the situation. That, we think, is a better way to handle such situations which, because of their magnitude, need special attention.

Carriers' Proposal No. 5

Establish a rule or amend existing rules to permit the Carrier to establish and regulate extra lists.

The Carriers state: "The purpose of this proposal is to authorize a carrier to provide a pool of extra or unassigned employees at convenient locations so as to have readily available sufficient employees to fill the needs of the service at straight-time rates of pay without having to resort to the payment of overtime penalty rates to regular employees to fill the needs of the service, and to have men available to fill temporary vacancies without having to disturb the regular working force assignments. Extra and unassigned employees could be used in the following cases:

1. To fill the positions of regular employees who are off for any reason.
2. To fill vacant positions while they are being bulletined and until the permanent employees are assigned.
3. To take care of so-called "tag-end" relief day work that has not been assigned to a regular relief assignment.
4. To take care of extra work generally."

The Carriers further state the proposed rule is necessary because at the present time there is no standard rule, such as here proposed, and the construction placed on present rules by the Adjustment Board requires Carriers to obtain consent of the Organizations before extra lists may be established and regulated. In this respect the Organizations say extra lists now in effect are usually agreed to and jointly regulated by the parties, and necessarily so because operations and conditions vary from carrier to carrier and from place to place on a carrier to such an extent that they cannot be met by one uniform provision relating thereto.

This proposal would permit Carriers to have outsiders perform the work covered thereby. That such a rule lends itself to the needs of some classes or crafts of employees, and not to others, is evidenced by the fact that rules providing for extra boards or lists are quite common in the agreements of Telegraphers and to some extent in those of Clerks, but are generally absent from the agreements covering other classes or crafts of nonoperating employees.

We do not think a rule should be recommended that would give Carriers the absolute authority to discourage regular assignments in having its work performed. If the work is not of such a nature that it can be made the subject of regular assignments, then it is better to have the regular men have the right thereto on an overtime basis than to bring in outsiders to perform it on a casual basis. To have work performed on a casual basis is to destroy regularity of employment and the seniority accruing to employees working on that basis. Con-

sequently any rule which gives authority to casualize Carriers' employment is not justified on the basis that it will avoid paying overtime in some of the situations here presented. If extra men are needed to perform abnormal or peak workloads that occur with regularity, special provisions can and should be negotiated in regard thereto. That such has been done is evidenced by rules that appear in various agreements of these employees.

Carriers' Proposal No. 6

Eliminate existing rules, regulations, interpretations or practices, however established, which restrict the right of a Carrier to require furloughed employees to perform extra and relief work.

The Carriers qualify the foregoing by stating the intent and purpose of this proposal to be to permit the Carriers to call furloughed employees, who are available and willing to be used, to perform extra or relief work and to remove the restrictions in the existing rules that prevent their use in such work.

They go on to say the rule is necessary because many agreements prohibit the recall of furloughed employees except to fill a permanent position and, in cases where they have been recalled with their consent to fill temporary jobs, claims on behalf of regular employees have resulted.

The proposal would authorize Carriers to call furloughed employees to perform extra and relief work only when they have expressed a willingness to be so used, and to remove any restrictions in present existing rules in the agreements covering these employees, or awards of the Adjustment Board interpreting and applying them, that prevent their being used to perform such work. It is also intended that it shall eliminate any rules or awards of the Adjustment Board in interpreting and applying them which require notice to be given in such cases, the same as is required when regular or permanent jobs are abolished or forces reduced.

The proposal would make it possible to give extra and relief work to furloughed employees, if they expressed a willingness to perform it, and remove any necessity of using regularly employed men on an overtime basis for that purpose. To do so would in no way harm the regularly employed men insofar as the work of their regular assignments is concerned. We certainly think that such an arrangement would be desirable and help remove some unemployment for these furloughed employees. It should, of course, be understood to have no application when furloughed men are recalled to regular duty. In that event all the present rules of the various agreements

that are applicable in that situation should be retained, and such furloughed employees and Carriers should be required to comply therewith.

It should also be provided that a furloughed employee may withdraw his expressed willingness to perform such extra and relief work at any time before being called to do so, and that when he has done so he shall no longer be available therefor but will remain subject to being recalled to regular duty. It should also be understood that by expressing his willingness to perform extra and relief work a furloughed employee shall in no manner be considered to have waived his rights to a regular assignment, when opportunity therefor arises.

Carriers' Proposal No. 7

Establish a rule or amend existing rules so as to provide time limits for presenting and progressing claims or grievances.

The Carriers state the purpose of this proposal is to establish a new uniform rule in the agreements with the nonoperating crafts similar to that already agreed to by the operating employees represented by the Engineers', Firemen's, Conductors', Trainmen's and Switchmen's Organizations, governing the time within which claims and grievances may be filed and progressed toward final conclusion.

This proposal seeks to establish a rule governing the time limits for presenting and progressing claims and grievances to a final conclusion. Although the Railway Labor Act contemplates that claims and grievances shall receive expeditious handling on the property in conferences between representatives designated and authorized for that purpose by the respective parties, to the end that there shall be, insofar as possible, a prompt and orderly settlement of all disputes concerning rates of pay, rules and working conditions, no time limits are provided therein within which such handling must be brought to a conclusion. The same is true in regard to appeals to any system, group or regional board of adjustment, when such has been agreed to by the parties involved, or to an appeal to the appropriate division of the National Railroad Adjustment Board.

At the time the Railway Labor Act was amended in 1934, and the National Railroad Adjustment Board established, there was a large backlog of claims and grievances pending because the Act of 1926 had not provided a definite procedure for handling claims and grievances to a final conclusion. As a consequence there was a large backlog of unsettled disputes before various regional or system boards or being held up at some stage of the adjustment procedure on the property of many Carriers. It was apparently the intention of the Congress not to bar these claims that caused it to refrain from including

a time limit in the Act within which the handling had to be done, both on the property and on appeal.

The Board thinks a uniform time limit is desirable for handling claims and grievances to a conclusion, both on the property and on appeal to a system, group or regional board of adjustment that has been agreed to by the parties thereto, as provided for in Section 3 Second of the Railway Labor Act, or to the appropriate division of the National Railroad Adjustment Board. However, any time limits so provided by agreement should be reasonable, that is, they should provide sufficient time for proper conferences at each stage of handling on the property, with settlement as the object in view, since that is what the Railway Labor Act contemplates. On the other hand, the time limits fixed should not be of such length as to unduly protract the handling thereof by permitting dilatory tactics, as a prompt and expeditious handling is contemplated.

The Organizations suggest that to provide such limits will result in perfunctory handling and that no proper time will be taken for conferences. They also suggest that the Organizations' procedures for handling and screening claims does not lend itself to time limits, and to compel them to act within a certain length of time will cause many claims to be filed and handled that would otherwise have been eliminated by their screening procedures, thus materially increasing the number of disputes that will be handled both on the property and on appeal to the appropriate division of the Adjustment Board.

This contention is not without merit and has received our full consideration. However, we think if the proposed rule provides that the time limits therein contained may, both in handling on the property and on appeal, be extended by agreement of the parties it will adequately safeguard against this possibility.

The Organizations also suggest that such a rule may have the effect of causing a backlog of cases to develop on the several divisions of the National Railroad Adjustment Board having jurisdiction of employees they represent. They cite in support of their argument the condition existing on the First Division and the fact that most of the agreements covering employees of which that division has jurisdiction, have such provisions. The fact is that the First Division had such a backlog long before any provision of this character was placed in the agreements covering employees of which it has jurisdiction. We do not think a rule of the kind here proposed will have any serious effect on the amount of work that the several divisions will have to perform that have jurisdiction of the employees here involved.

With their proposal Carriers have submitted a time limit rule which they consider as desirable. There are several changes which we think

should be made therein. First, we think the provision for extending the time by agreement should be applicable both to handling on the property and on appeal; second, we think the only time limit that should be applied to the decision of the highest operating officer designated to handle claims is the 6-month period in which an appeal may be initiated to the appropriate division of the National Railroad Adjustment Board or to a system, group or regional board of adjustment that has been agreed to by the parties; and, third, only 1 claim should be initiated for a continuing violation, with a retroactive period for monetary adjustment limited to 60 days.

Any rule adopted should, of course, fully protect the present status of all claims and grievances now being handled, or which are currently in the process of being filed. It should also provide therein as to the effective date thereof. We will, for this purpose, set out a rule which we think will fully protect the rights of all parties in this regard.

Time Limit Rule

All claims or grievances arising on and after _____ shall be handled as follows:

(*a*) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify the employee or his representative of the reasons for such disallowance. If not so notified, the claim or grievance shall be considered valid and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

(*b*) If a disallowed claim or grievance is to be appealed, such appeal must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the chief officer of the Carrier designated for that purpose.

(*c*) The procedure outlined in paragraphs (*a*) and (*b*) shall govern in appeals taken to each succeeding officer except in cases of appeal from the decision of the highest operating officer designated

by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest officer shall be barred unless within 6 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 6 months' period herein referred to.

(*d*) A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

(*e*) This rule recognizes the right of representatives of the Organizations, parties hereto, to file and prosecute claims and grievances for and on behalf of the employees they represent.

(*f*) This rule shall not apply to requests for leniency.

NOTE.—With respect to all claims or grievances which arose or arise out of occurrences prior to the effective date of this rule, such claims or grievances must be filed within 60 days after the effective date of this rule in the manner provided for in paragraph (*a*) hereof, and if not progressed pursuant to the provisions of paragraphs (*b*) and (*c*) of this rule the claims or grievances shall be barred. With respect to claims or grievances filed prior to the effective date of this rule the claims or grievances must be ruled on or appealed as the case may be within 60 days after the effective date of this rule and if not thereafter progressed pursuant to paragraphs (*b*) and (*c*) of this rule the claims or grievances shall be barred, except that in the case of all claims or grievances on which the highest officer of the Carrier has ruled prior to the effective date of this rule, a period of 6 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (*c*) before the claim or grievance is barred. This provision does not apply to claims or grievances already barred under existing agreements.

Carriers' Proposal No. 11

Establish a rule or amend existing rules to provide that in the event of a strike or emergency affecting the operations or business of the Carrier, no advance notice shall be necessary to abolish positions or make force reductions.

The Carriers state the purpose of the proposed rule is to permit all Carriers to abolish positions and/or reduce forces, and thus reduce

expenses, at any time when revenues are cut off without the necessity of giving any advance notice when operations or business are affected by events beyond their control, such as strikes, floods, and other emergencies.

Although some agreements do so provide, the Carriers contend such a rule is necessary because most rules providing for advance notice when abolishing positions and/or reducing forces contain no exception with respect to conditions beyond the control of the Carrier.

There are two phases here involved that arise when emergency circumstances over which a Carrier has no control—such as a flood, snowstorm, hurricane, earthquake, fire, strike of its own employees and strikes of industries served by it—cause an actual suspension of all or part of its operations. First, it causes certain of the Carrier's work to actually cease to exist; and, second, it causes part or all of the Carrier's revenue to be cut off. It is primarily because of the latter that Carriers contend a proper curtailment of its expenditures should be possible.

We think when emergency conditions arise over which a Carrier has no control, which actually cause the work being performed by certain of its employees to cease to exist, that the Carrier should be permitted to either abolish the positions occupied by such employees or to place such employees on a furlough status by a reduction of forces, and that it should be permitted to do so without giving any advance notice to such employees, and that rules covering these employees that require notice to be given before a position can be abolished or reduction of force made should be made subject to an exception in such cases. However, if the work actually being performed by certain of its employees continues to exist, the mere fact that Carrier's revenue has been cut off in part or in whole by such emergency conditions should not authorize it to either abolish the positions or reduce the forces of these employees without giving whatever notice is now required by the provisions of any agreement covering such employees.

Carriers' Proposal No. 14

Establish a rule or amend existing rules to permit the Carrier, when it introduces new machines, changes methods of performing work, or introduces technological changes, which eliminate or combine work previously performed by employees of two (2) or more crafts or of two (2) or more seniority districts; to designate the craft or class of employees in each instance which is to perform the work and the seniority district or districts in which the work is to be performed.

The proposal has a double aspect—it seeks a solution of both intercraft and interseniority questions which arise from technological advances.

The Carriers state there are few, if any, rules in the present agreement which specifically limit the right of the Carriers to introduce new machinery and methods, but that, when in doing so, work is involved which was previously performed by 2 or more crafts or on 2 or more seniority districts jurisdictional disputes between the Organizations have resulted.

They go on to state that this rule would make it clear that management will have the right to designate the craft or class of employees to perform work on assignments created by the introduction of new machines, changed methods of performing work, or technological changes which eliminate or combine work previously performed by 2 or more crafts or on 2 or more seniority districts.

If a protest is made by one or more of the crafts as a result thereof and the dispute cannot be settled by negotiation, they state it will then be submitted for final decision to a board of arbitration as provided for by their Proposal No. 16.

This would permit a Carrier, without possible liability, to unilaterally designate employee or employees of a craft or seniority district who will be used to perform the work when new machines or methods are introduced that combine work or functions formerly performed by employees of more than 1 craft or on more than 1 seniority district.

Class or craft lines in the industry and seniority which has been built up over the years based thereon, should, when it is reasonably possible to do so, be protected and not be permitted to be arbitrarily destroyed.

In this respect it would appear such rights would be better protected by having problems of the type here contemplated, whenever they arise, handled and solved by conference, negotiation and agreement on the individual Carrier. There it will be possible for those having first-hand information and knowledge of the immediate problems involved to give personal consideration and attention to the particular situation and, probably because thereof, be better able to solve it on a basis that will more nearly protect the rights of all who are affected than would be possible if unrestricted authority in this regard rested entirely in the hands of one of the parties.

We fully realize, as evidenced by the record before us, that conference, negotiation and agreement in regard to such problems are not always easy of accomplishment because new machinery, changing methods of performing work or the introduction of technological changes bring about what is actually the destruction of seniority rights of employees and work opportunities that, within reasonable limits, should be avoided insofar as it is possible, although not to the point where it will seriously impair Carrier's right to im-

prove its operations. Giving careful consideration to all sides of the question, we think it is to the best interests of all parties concerned that the solution of this problem be continued on the present basis, that is, by handling such situations, when they arise, on the individual Carrier.

Carriers' Proposal No. 15

Establish a rule or amend existing rules to recognize the rights of supervisory employees to perform the work of employees of any craft or class, and of excepted employees to perform the work of positions covered by the agreements from which they are wholly or partially excepted.

The Carriers state the first part of the proposed rule would make it clear, beyond any doubt, that a supervisor may, in the course of his work, perform any character of work that is under his jurisdiction and for which he is responsible without infringing upon the rights of the supervised employees under the rules found in their agreements.

The second part of the rule has for its purpose a confirmation of the rights of so-called "excepted employees" to perform work of positions not excepted from the agreement covering the craft or class.

The Carriers state that generally speaking there are few rules in the agreement covering supervisory employees which would prohibit them from performing duties of the craft or class they supervise or duties incident to their positions, but that there are awards of the National Railroad Adjustment Board holding that when Carriers have given employees covered by an agreement the exclusive right to work coming within the scope thereof, that then they cannot rightfully assign such work to a supervisory employee not covered thereby.

It is the purpose of the proposed rule to eliminate restrictions resulting from such rules and interpretations.

It should here be mentioned that, generally speaking, awards of the National Railroad Adjustment Board recognize that supervisory employees have the right to perform work that is incident to and done in connection with their regularly assigned duties. Also that they may perform work of the class or craft they are supervising if they are under the agreement covering such class or craft.

The Carriers state that "Excepted Employees" is a term used in the railroad industry to describe employees who are within the crafts or classes of employees organized under the Railway Labor Act but whose positions are not covered by any, or a substantial part, of the provisions of the collective bargaining agreements. Those that are totally excepted are wholly exempted from the coverage of the agreements while those covered by a limited number of the rules or provisions are sometimes called partially excepted employees.

From the record before us it is apparent the agreements on the Carriers are not uniform with respect to either the classes of positions or the number classified as excepted or partially excepted. Various reasons are cited for the placing of employees in the excepted classes, the principal ones being the personal and confidential nature of the work, the high degree of responsibility attached to the position, semi-official character of duties, etc.

The Carriers state that awards of the National Railroad Adjustment Board have held it improper for excepted employees to perform certain types of work that have been previously or are ordinarily performed by employees fully covered by the agreement. Because of these awards Carriers state it has been necessary on many Carriers to adopt practices whereby they carefully keep excepted employees from doing work previously performed by employees of the class or craft covered by the agreements.

The purpose of the proposed rule is to enable such Carriers to assign work of the class or craft to employees excepted therefrom.

This proposal strikes at the very foundation of collective bargaining agreements, for if the class or craft covered by the agreements is not secure in having the right to perform the work of the Carrier which the agreement provides that they shall have, then they have little security in their employment or in the seniority which results from their performance of the work covered thereby.

This proposal, if agreed to by the parties, could very easily result in supervisory employees being used to perform all of Carriers' work at lesser points or stations on Carriers' property.

It could, and probably would, result in the employees of a class or craft covered by an agreement bearing all the burdens of force reduction at large centers of employment on a Carrier, where excepted employees are usually located. It may be true that some economy would result therefrom and that Carrier would benefit from a stable force of excepted employees fully employed at all times, but these results are not, in our opinion, justified if collective bargaining is to remain in full force and effect in this industry.

A simple, but perhaps not always possible, solution of Carriers' difficulties would be to put the supervisory employees under the agreement of the class or craft whose work the Carrier desires to have them perform. The same would be true of the employees now excepted. But, in any event, we do not think these exceptions should be attached to the scope rules of agreements covering classes or crafts of employees who now have the exclusive right to perform the work covered thereby.

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Carrier's Proposal No. 16

Establish a rule or amend existing rules to provide that all disputes as to the class or craft of employees which may properly be used to perform any particular work which are not resolved by existing rules or understandings, or rules provided under other proposals contained in this Attachment "A" shall be submitted to arbitration for determination as to which craft or class of employees shall perform the work. Such arbitration may be requested by any affected organization or by the Carrier. All such Organizations and the Carrier shall be parties to the arbitration proceedings and shall be bound thereby. Claims will not be filed or entertained pending the determination of such dispute.

The Carriers say: "There are frequent occasions when two or more unions contend that members of their respective classes are exclusively entitled to perform the same work. These monopolistic claims made by the Organizations have frequently resulted in disputes which have interfered with the efficiency of operations."

They go on to say since there is no effective remedy available to the parties through the procedures provided in the Railway Labor Act or in the courts, it is necessary for the parties to find a way to provide a solution of this jurisdictional dispute problem.

The proposal would have the effect of entirely relieving Carriers from any responsibility in cases where they violated the scope rule of an agreement by giving to employees not covered thereby work exclusively contracted to a class or craft of employees covered thereby.

In other words, Carriers could be quite indifferent to the content of scope rules, or the application thereof, because any dispute arising therefrom could easily be made subject to arbitration, as in the proposal provided, without any liability.

We do not think such unilateral practice on the part of the Carriers is desirable insofar as collective agreements are concerned. It would permit Carriers to destroy the exclusive effect of any existing scope rules.

The Railway Labor Act, as amended in 1934, established the National Railroad Adjustment Board. It has exclusive jurisdiction of disputes between an employee or group of employees and a Carrier or Carriers growing out of the interpretation or application of agreements concerning rates of pay, rules or working conditions that may be referred to the appropriate division thereof by petition of either party thereto, with authority to make findings upon such disputes and render awards accordingly. Thus it is possible for either party, which would include a Carrier or Carriers, to appeal a dispute to the appropriate division of the Adjustment Board to have a scope rule of an agreement interpreted and applied. If such procedures resulted in awards finding a Carrier had exclusively contracted certain work to two or more

crafts or classes, it could seek relief under section 6 of the Railway Labor Act.

It might be subject to monetary claims in the meantime, but that would be no different than is the legal obligation of any other person who, because of separate contracts he has entered into, finds himself under obligation to two or more persons for the same thing.

It may be true that the foregoing procedures do not operate as fast nor as effectively as the Carriers might desire, and can and do result in delay and monetary loss, but those factors are not sufficient reasons for our recommending what would, in effect, destroy jurisdiction of the National Railroad Adjustment Board in many disputes involving scope rule violations.

We think that much of the difficulty here sought to be remedied arises from the language of Section 3 First (j) of the Railway Labor Act, because of the construction given it by the courts.

Section 3 First (j) provides: "Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the Carrier or Carriers involved in any disputes submitted to them."

Courts have generally held that under the notice requirements of this section an employee or employees involved in any dispute submitted to a division of the National Railroad Adjustment Board must be formally served with notice of the proceeding; that such requirement is jurisdictional; and that if the division fails to comply with this requirement it is acting without authority and any award rendered is void.

The difficulty which the several divisions of the Adjustment Board have in dealing with the notice requirements of this section, as a result of this construction, arises primarily from two causes.

First, the Act limits the jurisdiction of each division to disputes involving employees in certain classes or crafts, which classes or crafts are definitely named. Consequently, if notice is given by a division to an employee or employees of a class or craft over which it does not have jurisdiction such service would serve no useful purpose because the division would have no authority to settle the dispute as far as the employee or employees served are concerned, it having been given no jurisdiction over them.

Second, if the employee or employees served are of a class or craft over which the division does have jurisdiction, but not covered by the agreement to which the immediate dispute relates, the division would not have authority to determine their rights because the disputes over which a division is given jurisdiction are those which have been

properly handled on the property and then appealed to the appropriate division.

There is still another difficulty with which the several divisions of the Adjustment Board are confronted as a result of this section. It appears there is no provision in the Railway Labor Act for the appointment of a referee in the case of a deadlock by a division on the question of giving notice, as a referee is only authorized in the event that the division is deadlocked because it is unable to agree on the making of an award. See *Illinois Central Railroad Company* vs. *J. W. Whitehouse, et al.*, No. 10959, decided in the United States Court of Appeals for the Seventh Circuit on March 19, 1954. Thus it could be possible to have a complete and permanent stalemate of a dispute if a division deadlocked thereon on the question of giving notice.

If Congress intended, by the language used in this section, to mean what the courts have generally construed it to mean, that is, that the several divisions of the Adjustment Board must give notice of all hearings to the employee or employees involved in any dispute submitted to them regardless of whether or not they have been given jurisdiction over their disputes, it should then broaden the jurisdiction of the division in such cases so that it has authority to, and can, dispose of all the rights of the parties before it that arise out of and by reason of the dispute submitted.

If, on the other hand, Congress intended the language to mean that a division shall give due notice of all hearings only to an employee or employees involved in any dispute submitted to it of the class or craft of which it has jurisdiction, then the language of this section should be clarified so as to definitely limit such notice requirements accordingly.

We think, from the record before us, that this issue is a matter of serious concern in relation to the proper functioning of the separate divisions of the National Railroad Adjustment Board and should be called to the attention of the Congress for their proper consideration and action.

Carriers' Proposal No. 23

Establish a rule or amend existing rules so as to permit the carriers to require mechanics who are on duty, at points or on shifts where mechanics of all crafts are not on duty, to perform the work contained in the classification of work rules of a craft or class that does not at the time have a mechanic on duty.

This proposal involves only shop craft employees.

The Carriers say that rules in existing agreements generally do not permit work of mechanics in one craft to be performed by mechanics of another craft except at a limited number of isolated and specifically named points where mechanics are employed alone or in small force.

The proposal would permit management, in cases where now restricted by rules, regulations, interpretations or practices, to require mechanics who are on duty at points or on shifts where mechanics of all crafts are not on duty, to perform the work of any craft that does not at the time have a mechanic on duty. The intention of this rule is to secure a relaxation of the strict work classification rules applicable to shop craft employees to accord realistically with present-day operational requirements.

It would appear that rules adopted on most Carriers at the same time as the "Classification of work rules" were adopted specifically provided that at selected points, which must be agreed to by the Organizations, any mechanic or mechanics might be utilized to perform, to the extent they were capable, work of other crafts not having mechanics employed at such points, while on some Carriers, under the above situation, it is permitted without agreement.

The Carriers state that former major points on many railroads, because of recent change in power to diesel, have become outlying or isolated points with skeleton crews that need to be put in a classification that permits mechanics to perform work of all the crafts.

We think that when, because of limited work requirements, there is no need for a mechanic of each craft to be on duty at a point that those that are on duty should be allowed to perform any mechanical work which they are capable of performing. Any rule adopted permitting this latitude should make it clear that it is based on the fact that the necessary work requirements at the point do not require a mechanic of each craft to be on duty.

The Carriers contend that rules which require the parties to agree as to what points shall be so classified have, from experience, proved unsatisfactory. On the other hand, the Organizations say present rules furnish a satisfactory method to those who approach collective bargaining with a sincere purpose. We think, from a careful study of the record before us, that it should be a sufficient safeguard to all concerned if a rule were adopted which provided that Carriers' right to so use an employee be dependent on the factual situation involved. In other words, if Carrier, because of the limited amount of work required at a point, thinks the factual situation justifies it to do so it can apply the rule and, if the Organization is dissatisfied with the action taken, it can protest and then, if still dissatisfied with Carrier's decision, appeal to the appropriate division of the Adjustment Board to have the factual issue finally decided.

As a basis for putting the foregoing into effect we suggest the following rule:

At points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed.

Such permission "on shifts" presents quite another problem because such rule contemplates that mechanics of each craft are employed at the point or station, only working on other shifts. In such cases we think the forty-hour week rule permitting the staggering of the work week of regular employees, plus "call" rules, are a sufficient basis for Carrier to operate on.

Carriers' Proposal No. 24

Establish a rule or amend existing rules to recognize the Carrier's rights to assign clerical duties to telegraph service employees and to assign communication duties to clerical employees.

The Carriers state: "The proposal is broadly stated. Its purpose, however, is merely to recognize the traditional right of telegraphers to perform clerical duties; and to recognize the right of the Carriers to require clerks to perform communication duties to the extent of freely using the telephone or other communication devices to handle messages or communications that are incidental to their clerical work."

The Carriers say the proposal has been made necessary because existing scope and seniority rules have been construed as restricting the character of and the extent to which clerical duties may be assigned to telegraphers while, on the other hand, giving telegraphers a monopoly to perform various communication duties.

We shall, under this proposal, discuss the issue only to the extent that it would permit management to have clerical duties performed by telegraph employees and to have clerks perform communication duties that are incident to and must be performed in connection with the performance of their clerical work.

As the Carriers state, it is to be confined to those communcations which necessarily must be performed in conjunction with clerical duties of employees involved.

We shall not here discuss the handling of train orders, motor car line-ups or other communications relating thereto, even though incident to a clerk's duties, but shall discuss those issues under Carriers' Proposal Number 25.

The necessity for the proposal is because some awards of the Adjustment Board have restricted Carriers' rights in this regard, although generally they have affirmed them.

The record discloses that the telegraphers have always been permitted to utilize part of their working day to perform clerical duties. We think that right must necessarily continue because it is hard to

believe that all telegraphers can be continuously kept busy performing only telegraphic duties. Likewise, it appears clerks have always made use of various means of communications to transmit or receive information or messages in conjunction with the incident to their clerical work. Certainly that privilege or right should continue even though the methods of communication used for that purpose have changed, because otherwise clerks will be seriously handicapped in the performance of their duties.

Carriers' Proposal No. 25

Establish a rule or amend existing rules to recognize the right of a Carrier to require other than telegraph service employees to handle train orders, motor car line-ups or other communications.

The Carriers state: "This proposal is aimed at present rules, practices or interpretations that require the Carriers to pay for services not performed. It is designed to eliminate penalty payments made to telegraphers in many circumstances when other employees obtain and copy train orders, line-ups or some similar communication.

"The proposal is not designed to authorize these other employees to perform this work. It is not directed at any rule or practice in the agreements governing the Operating employees or others that may restrict or tend to restrict the rights of other employees to perform this work. It goes only to restrictions that have grown up under the Telegraphers' Agreements and the penalties that may flow to the telegraphers when these other employees obtain and copy train orders, line-ups or other communications."

The Carriers say this proposed rule is necessary because rules either provide, or awards of the Adjustment Board have so construed them, that only telegraphers may handle train orders. The same is true of some rules and awards as to the handling of motor car line-ups and other communications.

The Carriers divide the purpose of the proposal into two parts.

First, Carriers seek to establish a rule that will remove any restriction in or interpretation of the Telegraphers' Agreements that prohibit operating employees from obtaining and copying train orders at a point where no telegrapher is employed.

Second, Carriers seek to establish a rule which would eliminate any penalty payments to telegraphers required by any rule, interpretation or practice when motor car line-ups and other similar messages are obtained by others, either at points where no telegraphers are employed or even at points where telegraphers are employed but at times when they are not on duty.

A train order may be generally defined as a written directive affecting or controlling the movements of a train. It advances or restricts its movements. Methods of train operation vary from railroad to railroad and even over different parts of the same railroad. Consequently the forms of train orders vary and there is considerable difference in the rules in the agreements on different railroads which deal with the subject. These rules have resulted from negotiations, mediation and arbitration.

With the advent of the motor car and other mobile track equipment there has been an increase need for obtaining line-ups or other communications providing information in regard thereto. Line-ups are generally used to convey information as to train movements, that is, the time that trains may leave certain terminals or may be expected at a particular place or be passing through certain territory. It does not control or direct the movement of trains or motor cars. It is usually secured by maintenance of way employees or operators of motor cars or other mobile track equipment so they can do track work or operate motor cars or other mobile equipment with safety and efficiency.

Some awards of the Adjustment Board are in irreconcilable conflict and in hopeless confusion on this subject, and there is merit in what Carriers here propose. However, from the record before us, it is apparent the problem is not one that lends itself to uniform handling on a national basis but, because of local complexities, it can best be dealt with on each individual Carrier. There the parties are fully informed of the operating problems immediately involved, based on how those operations are now handled, and can and should negotiate a rule or rules that will eliminate any confusion if such now exists.

In this regard, however, it should be remembered that merely because awards come to different conclusions based on comparable facts it does not necessarily mean that they are in conflict, for they may be based on different rules that make the results arrived at correct even though opposite in result. That this is true is evidenced from some of the awards cited.

Carriers' Proposal No. 29

Eliminate existing rules, regulations, interpretations or practices, however established, which require the use of regularly assigned employees in seniority order or otherwise on vacancies or work not subject to bulletin, during the life of a bulletin, or pending assignment.

The Carriers state this proposal is intended to relieve the Carriers of the inconveniences resulting from disruptions to working forces when an assignment of short-duration—that is, a temporary assign-

ment not subject to the bulletin rules, or a temporary vacancy, occurs in regular assignment or during the period of bulletin and pending assignment of a regular employee to the position.

They further state: "Vacancies or work not subject to bulletin are brought about in the following circumstances:

1. An employee is sick or absent for a short period for other reasons.
2. The work load becomes abnormal and it is necessary to increase the force temporarily, but short of the time warranting the creation of an additional regular assignment. Such work is generally referred to as extra work.

The Carriers go on to say this proposal is necessary because most agreements contain a rule providing that when positions are temporarily filled pending asignment the senior qualified employee making request therefor shall be assigned. By this rule Carrier seeks the elimination of such existing rules, regulations, interpretations or practices, however established, which result in a requirement that where positions are temporarily filled pending permanent assignment the senior qualified employee making the request therefor shall be assigned.

Insofar as the proposal refers to "vacancies or work not subject to bulletin" that subject matter was covered by our discussion of Carriers' Proposals Nos. 5 and 6. Under our discussion of Proposal No. 6 we came to the conclusion that Carriers, when furloughed employees expressed a desire to do such work, should be permitted to use them in having extra and relief work performed.

As to existing rules, regulations, interpretations or practices, however established, requiring the use of regularly assigned employees in the order of their seniority, or otherwise, during the life of a bulletin or pending assignment thereunder, the proposal presents a new issue. As to this work the proposal would permit Carriers to use available qualified extra or furloughed employees before requiring them to use regularly assigned employees.

It would seem that such use of qualified furloughed employees would have all the benefits set out in our discussion of Carriers' Proposal No. 6 and have the additional benefit of avoiding any disruption of the regular working forces, and would prevent, to a certain degree, any confusion and inconvenience that might result from the shifting of employees from one job to another for short periods of time. However, all regular assignments should remain subject to bulletin bid, with seniority applying thereto. It would only be during the life of the bulletin, and assignment thereunder, that the proposal would have application.

It is undoubtedly true that regular employees get experience on a job while temporarily filling it pending bulletin and assignment, but

we do not think this sufficient reason to deny the work to qualified furloughed employees if they express a willingness to do it while on furlough, and thus give such employees an opportunity to temporarily relieve themselves from the status of unemployment.

What we have said under Carriers' Proposal No. 5 as to the establishment of extra lists has application here. We think this right should only be extended to Carriers' use of furloughed employees when they have expressed their willingness to be so used. Consequently, for the purpose of our recommendations, we shall broaden Carriers' Proposal No. 6 to include it thereunder. If no qualified furloughed employees are available, then qualified regular employees would have to be used and, in that event, seniority should apply if the rules or practices now in effect so require.

Carriers' Proposals Nos. 30 and 31

No. 30

Where an existing rule, regulation, interpretation or practice, however established, is considered by the Carrier to be more favorable than a rule resulting from any of the foregoing proposals, such rule, regulation, interpretation or practice may be retained by the Carrier.

No. 31

All rules, regulations, interpretations or practices, however established, which conflict with these proposals shall be eliminated.

Proposal No. 30 seeks to give Carriers a benefit over and above its own proposals, that is, if it feels that existing rules, regulations, interpretations or practices, however established, are more favorable than what would result from its own proposals, if recommended and agreed to, that it may then unilaterally retain those presently existing. If the proposals have merit and we recommend that they should be adopted on a uniform national basis because thereof, then such proposals, if agreed to by the parties, shall be subject to the principle set forth in Proposal 31, except that more favorable existing rules, regulations, interpretations or practices, however established, may be retained if the parties on an individual Carrier so agree.

Where no favorable recommendations are herein made as to certain of Carriers' proposals, our discussion of the principle therein contained is to, in no way, be considered as intending to affect any existing rules, regulations, interpretations or practices, however established.

(2) FINDINGS AND RECOMMENDATIONS CONCERNING CARRIERS' PROPOSALS

Proposal No. 2.—Because of the reasons set forth in our discussion of this proposal, which are based on the record before us, we find we cannot approve the principle thereof. We therefore recommend that

the Carriers withdraw it and that they may do so without prejudice either as to the merits of the proposal or to the right to again present and prosecute it in some other proceeding.

Proposal No. 4.—Because of the seasons set forth in our discussion of this proposal, which are based on the record before us, we find we cannot approve the principle thereof. We therefore recommend that the Carriers withdraw it and that they may do so without prejudice either as to the merits of the proposal or to the right to again present and prosecute it in some other proceeding.

Proposal No. 5.—Because of the reasons set forth in our discussion of this proposal, which are based on the record before us, we find we cannot approve the principle thereof. We therefore recommend that the Carriers withdraw it and that they may do so without prejudice either as to the merits of the proposal or to the right to again present and prosecute it in some other proceeding.

Proposal No. 6.—Because of the reasons set forth in our discussion of this proposal, which are based on the record before us, we find ourselves in favor of approving the principle thereof. We therefore recommend that the parties accept the proposal, as we have modified it in view of our discussion of Proposal No. 29, and negotiate and agree to rules that will make the principle thereof effective as a part of their collective bargaining agreements.

Proposal No. 6, as Modified

Eliminate existing rules, regulations, interpretations or practices, however established which restrict the right of a Carrier to use furloughed employees, when they have expressed a willingness to be so used, to perform extra and relief work, on vacancies or work not subject to bulletin, or during the life of any bulletin or pending assignment thereunder. Furloughed employees available hereunder must, of course, be used in the order of their seniority rights.

Proposal No. 7.—Because of the reasons set forth in our discussion of this proposal, which are based on the record before us, we find ourselves in favor of approving the principle thereof. We therefore recommend that the parties accept the principle thereof by agreeing to and making effective the rule we have proposed in our discussion of this subject by including it and making it a part of their collective bargaining agreements.

Proposal No. 11.—Because of the reasons set forth in our discussion of this proposal, which are based on the record before us, we find ourselves in favor of approving, in part, the principle thereof. We therefore recommend that the parties accept the proposal, as we have modified it, and negotiate and agree to rules that will make the prin-

ciple thereof effective as a part of their collective bargaining agreements.

Proposal No. 11, as Modified

Establish a rule or amend existing rules to provide that in the event of an emergency over which a Carrier has no control, which affects the actual operations of the Carrier, no advance notice shall be required to abolish positions or make force reduction of employees whose work has actually ceased to exist because thereof.

Proposal No. 14.—Because of the reasons set forth in our discussion of this proposal, which are based on the record before us, we find we cannot approve it. We therefore recommend that the Carriers withdraw it and that they may do so without prejudice either as to the merits of the proposal or to the right to again present and prosecute it in some other proceeding.

Proposal No. 15.—Because of the reasons set forth in our discussion of this proposal, which are based on the record before us, we find we cannot approve it. We therefore recommend that the Carriers withdraw it and that they may do so without prejudice either as to the merits of the proposal or to the right to again present and prosecute it in some other proceeding.

Proposal No. 16.—Because of the reasons set forth in our discussion of this proposal, we find ourselves opposed to the principle thereof and recommend that the Carriers withdraw it.

However, we do recommend to the President that he call the attention of Congress to the subject matter of our discussion and suggest to the proper committees thereof that they give consideration thereto to the end that action will be taken to relieve the several divisions of the National Railroad Adjustment Board of the difficulties with which they are now confronted.

Proposal No. 23.—Because of the reasons set forth in our discussion of this proposal, which are based on the record before us, we find ourselves in favor of approving, in part, the principle thereof. We therefore recommend that the parties accept this proposal, as we have modified it, and negotiate and agree to a rule that will make the principle thereof an effective part of their collective bargaining agreements. For this purpose we have drafted, and made a part of our discussion of this proposal, a rule which we think the parties can accept for the purpose of putting into effect our recommendation.

Proposal No. 23, as Modified

Establish a rule or amend existing rules so as to permit the Carriers to require mechanics who are on duty, at points where, because of limited work requirements, mechanics of all crafts are not on duty,

to perform the work contained in the "Classification of work rules" of a craft or class that does not at the time have a mechanic on duty at that point.

Proposal No. 24.—Because of the reasons set forth in our discussion of this proposal, which are based on the record before us, we find ourselves in favor of approving the principle thereof but qualified to the extent indicated in our discussion. We therefore recommend that the parties accept our modified form of this proposal and negotiate and agree to whatever rules that may be necessary to make the principle thereof an effective part of their collective bargaining agreements.

Proposal No. 24, as Modified

Establish a rule or amend existing rules to recognize Carriers' right to have clerical duties performed by telegraph employees and to have clerks perform communication duties that are incident to and that must be performed in conjunction with their clerical work.

Proposal No. 25.—Because of the reasons set forth in our discussion of this proposal we find merit in what the proposal seeks to accomplish and recommend that it should be done on a Carrier or local level, and not a national level. We therefore recommend that Carriers withdraw this proposal.

Proposal No. 29.—Because of the reasons set forth in our discussion of this proposal, which are based on the record before us, we find ourselves in favor of approving the principle thereof only to the extent that we have included it in our modified version of Proposal No. 6. We therefore recommend that Carriers withdraw this proposal.

Proposal No. 30.—For the reasons stated in our discussion of this proposal we find it undesirable and therefore recommend that Carriers withdraw it.

Proposal No. 31.—For the reasons stated in our discussion of this proposal we find it desirable, as we have modified it, and recommend that the parties, when they agree to and accept the proposal we have recommended, consider it as applicable thereto.

Proposal No. 31, as Modified

All rules, regulations, interpretations or practices, however established, which conflict with any proposal recommended, if such recommended proposal is agreed to and accepted by the parties, shall be eliminated, except that more favorable existing rules, regulations, interpretations or practices, however established, may be retained in effect on any Carrier if the parties thereto so agree.

APPENDIX A

EXECUTIVE ORDER 10511

CREATING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN THE AKRON, CANTON AND YOUNGSTOWN RAILROAD COMPANY AND OTHER CARRIERS AND CERTAIN OF THEIR EMPLOYEES

WHEREAS disputes exist between the Akron, Canton and Youngstown Railroad Company and other carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees, designated in list A attached hereto and made a part hereof, and certain of their employees represented by the fifteen cooperating (non-operating) railway labor organizations designated in list B attached hereto and made a part hereof; and

WHEREAS these disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS these disputes, in the judgment of the National Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive the country of essential transportation service:

NOW, THEREFORE, by virtue of the authority vested in me by section 10 of the Railway Labor Act, as amended (45 U. S. C. 160), I hereby create a board of three members, to be appointed by me, to investigate the said disputes. No member of the said board shall be pecuniarily or otherwise interested in any organization of employees or any carrier.

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

As provided by section 10 of the Railway Labor Act, as amended, from this date and for thirty days after the board has made its report to the President, no change, except by agreement, shall be made by the Akron, Canton and Youngstown Railroad Company and other carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees or their employees in the conditions out of which the said disputes arose.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
December 28, 1953

LIST A

Eastern Region

Akron, Canton & Youngstown Railroad.
Ann Arbor Railroad Co.
Baltimore & Ohio Railroad Co.:
    Baltimore & Ohio Chicago Terminal Railroad Co.
    Curtis Bay Railroad.
    Dayton & Union Railroad.
    Staten Island Rapid Transit Railway Co.
Bessemer & Lake Erie Railroad Co.
Boston & Maine Railroad Co.
Boston Terminal Co.
Brooklyn Eastern District Terminal.
Buffalo Creek Railroad Co.
Bush Terminal Railroad Co.
Canadian National Railways:
    Canadian National Railways—Lines in NE.
    United States & Canada Railroad.
    Champlain & St. Lawrence Railroad.
    Canadian National Railways—State of New York.
    St. Clair Tunnel Co.
Central Railroad Co. of New Jersey.
Central Vermont Railway, Inc.
Chicago, Indianapolis, & Louisville Railway.
Chicago Union Station Co.
Cincinnati Union Terminal Co.
Dayton Union Railway Co.
Delaware & Hudson Railroad Corp.
Delaware, Lackawanna & Western Railroad Co.
Detroit & Toledo Shore Line Railroad.
Detroit Terminal Railroad Co.
Detroit, Toledo & Ironton Railroad.
Erie Railroad Co.
Grand Trunk Western Railroad Co.
Hudson & Manhattan Railroad Co.
Indianapolis Union Railway Co.
Lake Terminal Railroad Co.
Lehigh & New England Railroad Co.
Lehigh Valley Railroad Co.
Long Island Railroad Co.
Maine Central Railroad Co.:
    Portland Terminal Co.
Monongahela Connecting Railroad Co.
Monongahela Railway Co.
Montour Railroad Co.
Newburgh & South Shore Railway Co.
New York Central System:
    New York Central Railroad.
        Federal Valley Railroad.

New York Central Railroad—Buffalo and East:
Buffalo Stock Yards.
Grand Central Terminal.
New York Central Railroad—West of Buffalo.
Michigan Central Railroad.
Cleveland, Cincinnati, Chicago & St. Louis Railway:
Peoria & Eastern Railway.
Louisville & Jeffersonville Bridge & Railroad Co.
Boston & Albany Railroad.
Indiana Harbor Belt Railroad.
Chicago River & Indiana Railroad:
Chicago Junction Railway.
Pittsburgh & Lake Erie Railroad:
Lake Erie & Eastern Railroad.
Cleveland Union Terminals Co.
Troy Union Railroad Co.:
New York, Chicago & St. Louis Railroad Co.
New York Dock Railway.
New York, New Haven & Hartford Railroad Co.
New York, Susquehanna & Western Railroad Co.
Northampton & Bath Railroad Co.
Pennsylvania Railroad Co.:
Baltimore & Eastern Railroad Co.
Pennsylvania-Reading Seashore Lines.
Pittsburgh & West Virginia Railway Co.
Pittsburgh, Chartiers & Youghiogheny Railway Co.
Railroad Perishable Inspection Agency.
Reading Co.:
Philadelphia Reading & Pottsville Telegraph Co.
Beaver Creek Water Co.
River Terminal Railway Co.
Toledo Terminal Railroad Co.
Union Depot Co. (Columbus, Ohio).
Union Freight Railroad Co. (Boston).
Union Inland Freight Station.
Union Railroad Co. (Pittsburgh, Pa.).
Washington Terminal Co.
Youngstown & Northern Railway Co.

WESTERN REGION

Alton & Southern Railroad.
Atchison, Topeka & Santa Fe Railway:
Gulf, Colorado & Santa Fe Railway.
Panhandle & Santa Fe Railway.
Atchison Union Depot & Railroad Co.
Belt Railway Company of Chicago.
Chicago, Burlington & Quincy Railroad:
Colorado & Southern Railway Co.
Fort Worth and Denver Railway Co.
Camas Prairie Railroad Co.
Chicago & Eastern Illinois Railroad Co.:
Chicago Heights Terminal Transfer Railroad Co.

Chicago & Illinois Midland Railway Co.
Chicago & North Western Railway:
    Chicago, St. Paul, Minneapolis & Omaha Railway Co.
Chicago & Western Indiana Railroad Co.
Chicago Great Western Railway Co.
Chicago, Milwaukee, St. Paul & Pacific Railroad:
    Chicago, Terre Haute & Southeastern Railway Co.
Chicago, Rock Island & Pacific Railroad Co.:
    Peoria Terminal Co.
Colorado & Wyoming Railroad.
Davenport, Rock Island & North Western Railway.
Denver & Rio Grande Western Railroad.
Denver Union Terminal Railway.
Des Moines Union Railway.
Duluth, South Shore & Atlantic Railroad Co.
Duluth Union Depot & Transfer Co.
Duluth, Winnipeg & Pacific Railway.
East St. Louis Junction Railroad Co.
Elgin, Joliet & Eastern Railway.
El Paso Union Passenger Depot Co.
Galveston, Houston & Henderson Railroad Co.
Great Northern Railway Co.
Green Bay & Western Railroad:
    Kewaunee, Green Bay & Western Railroad Co.
Houston Belt & Terminal Railway.
Illinois Central Railroad Co.
Illinois Terminal Railroad Co.
Joplin Union Depot Co.
Kansas City Southern Railway:
    Arkansas Western Railway.
    Fort Smith & Van Buren Railway.
    Louisiana & Arkansas Railway.
Kansas City Terminal Railway.
Lake Superior & Ishpeming Railroad Co.
Lake Superior Terminal & Transfer Railway.
Litchfield & Madison Railway Co.
Los Angeles Junction Railway Co.
Manufacturers Railway Co.
Midland Valley Railroad:
    Kansas, Oklahoma & Gulf Railway.
    Oklahoma City-Ada-Atoka Railway.
Minneapolis & St. Louis Railway Co.
Minneapolis, St. Paul & Sault Ste. Marie Railroad Co.
Minnesota Transfer Railway.
Missouri-Kansas-Texas Railroad Co.:
    Missouri-Kansas-Texas Railroad Co. of Texas.
Missouri-Illinois Railroad Co.
Missouri Pacific Railroad Co.:
    Missouri Pacific Lines in Texas & Louisiana.
Northern Pacific Terminal Co. of Oregon.
Northern Pacific Railway Co.:
    Walla Walla Valley Railway Co.

Ogden Union Railway & Depot Co.
Oregon, California & Eastern Railway Co.
Pacific Coast Railroad Co.
Peoria & Pekin Union Railway Co.
Pueblo Union Depot and Railroad Co.
Railway Transfer Co. of the City of Minneapolis.
St. Joseph Terminal Railroad Co.
St. Louis-San Francisco Railroad Co.:
    St. Louis, San Francisco & Texas Railway Co.
St. Louis Southwestern Railway Co.:
    St. Louis Southwestern Railway Co. of Texas.
St. Paul Union Depot Co.
Sioux City Terminal Railway.
Southern Pacific Co.:
    Northwestern Pacific Railroad Co.
    San Diego & Arizona Eastern Railway Co.
    Texas & New Orleans Railroad Co.
South Omaha Terminal Railway Co.
Spokane International Railroad Co.
Spokane, Portland & Seattle Railway:
    Oregon Electric Railway.
    Oregon Trunk Railway.
Terminal Railroad Association of St. Louis.
Texas & Pacific Railway:
    Abilene & Southern Railway.
    Denison & Pacific Suburban Railway.
    Fort Worth Belt Railway.
    Texas-New Mexico Railway.
    Texas Short Line Railway.
    Weatherford Mineral Wells & Northwestern Railway.
Texas Mexican Railway Co.
Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans.
Toledo, Peoria & Western Railroad.
Union Pacific Railroad Co.
Union Railway Co.
Union Terminal Co.:
    St. Joseph Belt Railway Co.
Wabash Railroad Co.
Western Pacific Railroad Co.:
    Sacramento Northern Railway.
    Tidewater Southern Railway.
Yakima Valley Transportation Co.

SOUTHEASTERN REGION

Atlantic Coast Line Railroad.
Atlanta & West Point:
    Western Railway of Alabama.
Atlanta Joint Terminals.
Central of Georgia Railway.
Charleston & Western Carolina Railway.
Chesapeake & Ohio Railway.
Clinchfield Railroad.

Florida East Coast Railway.
Georgia Railroad:
    Augusta Union Station.
Gulf, Mobile & Ohio Railroad.
Jacksonville Terminal Co.
Kentucky & Indiana Terminal Railroad.
Louisville & Nashville Railroad.
Nashville, Chattanooga & St. Louis Railway.
Norfolk & Portsmouth Belt Line.
Norfolk & Western Railway.
Richmond, Fredericksburg & Potomac Railroad:
    Richmond Terminal Railway Co.
    Potomac Yard.
Seaboard Air Line Railway Co.
Southern Railway:
    Alabama Great Southern Railway Co.
    Cincinnati, New Orleans & Texas Pacific Railway.
    Georgia Southern & Florida Railway.
    Harriman & Northeastern Railroad Co.
    New Orleans & Northeastern Railroad.
    New Orleans Terminal Co.
    St. Johns River Terminal Co.
Tennessee Central Railway Co.
Virginian Railway Co.

LIST B

1. International Association of Machinists.
2. International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.
3. International Brotherhood of Blacksmiths, Drop Forgers and Helpers.
4. Sheet Metal Workers' International Association.
5. International Brotherhood of Electrical Workers.
6. Brotherhood Railway Carmen of America.
7. International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers.
8. Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.
9. Brotherhood of Maintenance of Way Employees.
10. The Order of Railroad Telegraphers.
11. Brotherhood of Railroad Signalmen of America.
12. National Organization Masters, Mates and Pilots of America.
13. National Marine Engineers' Beneficial Association.
14. International Longshoremen's Association.
15. Hotel and Restaurant Employees and Bartenders International Union.

[F. R. Doc. 53-10906; Filed, Dec. 30, 1953; 12:16 p. m.]

APPENDIX B

APPEARANCES FOR THE EMPLOYEES

Lester P. Schoene, General Counsel.
Eli L. Oliver, Economic Advisor.
W. M. Homer, Assistant Economic Advisor.

Employees' National Conference Committee—Fifteen Cooperating Railway Labor Organizations: G. E. Leighty, chairman.

Railway Employees' Department, A. F. of L.: Michael Fox, president; George Cusich, research director.

International Association of Machinists: Earl Melton, general vice president.

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers: Charles J. MacGowan, international president; Charles E. Goodlin, international representative (Boilermakers); John Pelkofer, general vice president, in charge of Blacksmiths, Railroad Division; George F. Barna, international representative (Blacksmiths).

Sheet Metal Workers' International Association: C. D. Bruns, general vice president; J. W. O'Brien, international representative.

International Brotherhood of Electrical Workers: J. J. Duffy, international vice president; R. E. Cline, international representative.

Brotherhood Railway Carmen of America: Irvin Barney, general president; A. J. Bernhardt, assistant general president.

International Brotherhood of Firemen, Oilers, Helpers, Round House and Railway Shop Laborers: Anthony Matz, president; George Wright, vice president.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees: George M. Harrison, grand president; G. B. Goebel, grand vice president; J. H. Sylvester, grand vice president.

Brotherhood of Maintenance of Way Employees: T. C. Carroll, president; Frank L. Noakes, director of research.

The Order of Railroad Telegraphers: G. E. Leighty, president; Ray J. Westfall, director of research.

Brotherhood of Railroad Signalmen of America: Jesse Clark, president; E. J. Burman, grand lodge representative.

National Organization Masters, Mates and Pilots of America: John M. Bishop, national secretary-treasurer.

National Marine Engineers' Beneficial Association: H. L. Daggett, national president.

International Longshoremen's Association: Eugene Murphy, international representative.

Hotel and Restaurant Employees and Bartenders' International Union: Hugo Ernst, general president; R. W. Smith, general vice president.

APPEARANCES FOR THE CARRIERS

Counsel for the Carriers' Conference Committees:

Robert C. Bannister, of Dallstream, Schiff, Stern & Hardin, Chicago.

Hallan Huffman, assistant general counsel, Great Northern Railway.

W. S. Macgill, general attorney, Southern Railway System.

H. Merle Mulloy, general solicitor, Reading Co.

Martin M. Lucente and Howard Neitzert, of Sidley, Austin, Burgess & Smith, Chicago.

Eastern Carriers' Conference Committee:

J. W. Oram (chairman), assistant vice president, operation-personnel, Pennsylvania Railroad System.

F. J. Goebel, vice president, personnel, Baltimore & Ohio Railroad.

L. W. Horning, vice president, personnel, New York Central System.

H. E. Jones, chairman, executive committee, Bureau of Information of the Eastern Railways.

E. B. Perry, assistant vice president, New York, New Haven & Hartford Railroad.

G. C. White, assistant vice president, Erie Railroad Co.

Western Carriers' Conference Committee:

D. P. Loomis (chairman), chairman, The Association of Western Railways.

L. D. Comer, assistant to vice president, The Atchison Topeka and Santa Fe Railway.

E. J. Connors, vice president, Union Pacific Railroad.

T. Short, chief personnel officer, Missouri Pacific Lines.

J. J. Sullivan, manager of personnel, Southern Pacific Co.

J. E. Wolfe, assistant vice president, Chicago, Burlington & Quincy Railroad.

R. F. Welsh, executive secretary, The Association of Western Railways.

Southeastern Carriers' Conference Committee:

Fred A. Burroughs (chairman), assistant vice president, Southern Railway.

W. S. Baker, assistant vice president, Atlantic Coast Line Railroad.

B. B. Bryant, assistant vice president, Chesapeake & Ohio Railway.

F. K. Day, Jr., assistant general manager, Norfolk & Western Railway.

G. C. Howard, director of personnel, Louisville & Nashville Railroad.

C. A. McRee, director of personnel (vice chairman), Seaboard Air Line Railroad.

A. J. Bier, manager, Bureau of Information of the Southeastern Railways.

APPENDIX C

THE ORGANIZATIONS' PROPOSALS SERVED MAY 22, 1953

The agreements between the individual carriers and the employees parties hereto shall be so amended as to provide the following:

VACATIONS

1. Effective with the calendar year 1954, an annual vacation with pay will be granted to each employee who renders compensated service, covered by an agreement between the carrier and any one or more of the employee organizations parties hereto, on not less than 133 days during the preceding calendar year. Time off because of sickness, injury, jury duty, and court attendance, whether compensated or not, and all paid holidays shall be counted as compensated service in computing the number of days of compensated service necessary to qualify for a vacation.

2. Subject to the provisions of Section 1 as to qualifications, employees will be given annual vacations with pay, to be assigned and selected in accordance with the procedures in the existing vacation rules, and according to their years of continuous service, as follows:

Those with 1 year but less than 2 years of service, 5 consecutive working days of vacation.

Those with 2 but less than 5 years of service, 10 consecutive working days of vacation.

Those with 5 but less than 15 years of service, 15 consecutive working days of vacation.

Those with 15 or more years of service, 20 consecutive working days of vacation.

For the purposes of this section, the term "years of continuous service," except for the first such year, shall mean consecutive calendar years during which an employee maintains a continuous employment status or employment relation in the service of a carrier, covered by the agreement or agreements between such carrier and any one or more of the employee organizations parties hereto; for the first such year it shall mean that period in the calendar year during which an employee renders compensated service on not less than 133 days as defined in section 1.

3. The vacation above provided shall be considered to have been earned when the employee has qualified under section 1 hereof. If an employee so qualified is furloughed or his employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, or failure to return after furlough, he shall at the time of such furlough or termination be granted full vacation pay earned up to the time he is furloughed or leaves the service. This shall include pay for vacation earned in the preceding year and not yet granted, and the vacation for the succeeding year if the employee has qualified therefor under section 1.

If an employee thus entitled to vacation or vacation pay shall die, the vacation pay earned and not received during the preceding and current years shall be paid to such beneficiary as may have been designated, or the surviving spouse or children or estate, in that order of preference.

4. If a paid holiday shall fall during the employee's vacation period, he shall be granted one additional day of vacation for each such holiday.

5. If the employee performs service on any day in his vacation period, he shall be paid for each such day not less than 8 hours' pay, at double the regular rate of his position, in addition to his vacation pay; service beyond 8 hours shall be paid at double the regular rate of his position.

If the carrier does not assign any specific vacation period, or grant actual time off for all vacation due, the employee shall be paid in accordance with this section, for a period during the calendar year equivalent to the vacation to which he is entitled.

6. If any employee shall leave the service of a carrier to enter the Armed Forces of the United States (or the armed forces of Canada in the case of United States carriers operating in Canada), retaining his seniority rights with such carrier, he shall be entitled to whatever part of his full vacation pay earned in the preceding calendar year shall not have been given him at the time of leaving. At the end of the calendar year next succeeding that during which he entered such armed forces, he shall be entitled to vacation pay equal to what he would have been given if the time spent in such Armed Forces had been in the continuous compensated service of the carrier. If an employee shall return to the service of a carrier after having served in such armed forces, with seniority rights maintained or restored, he shall be entitled to a vacation in the year during which he thus returns, and in the next succeeding year, equal to what he would have been given had he been in the compensated service of the carrier during the preceding year and in the year he returns the same length

of time he was in such armed forces, plus whatever time he may have been in the compensated service of the carrier in such years. Time spent in such armed forces during which seniority is accumulating shall be considered continuous service under Section 2.

7. Nothing herein shall be construed to deprive any employee of such additional vacation days or more favorable practice as he may be entitled to receive under any existing rule, understanding or custom which additional vacation days or more favorable practice shall be accorded under and in accordance with the terms of such existing rule, understanding or custom.

HOLIDAYS

All employees shall be given 7 holidays off with pay in each year. These holidays, unless alternative designations are made on the individual carrier by agreement between such carrier and the representatives of the employees, shall include January 1, February 22, May 30, July 4, Labor Day, Thanksgiving Day, and December 25.

If an employee performs any service on any such holiday, he shall be paid at double his regular rate of pay, with a minimum of 8 hours, in addition to the regular pay for that holiday.

If any of the holidays above specified, or the day alternatively chosen for such holiday on any carrier, shall fall on an assigned rest day of an employee, the next following assigned workday shall be considered as that employee's holiday.

Nothing herein shall operate to reduce the number of holidays now recognized on any carrier, by agreement or past practice, and on each additional holiday now so observed the employee shall be granted the day off with pay, or compensated as above provided if worked.

HEALTH AND WELFARE PLAN

There shall be established and maintained, effective January 1, 1954, a health and welfare plan which shall:

1. Provide life insurance for each employee, to pay upon his death an amount equal to the full time annual earnings at the rate of pay of the position last held before death, with a minimum of $3,500, to his designated beneficiary.

2. Provide all hospital, medical and surgical care incident to any sickness, injury, or other disability of any employee, spouse, and/or other dependents, including children under 18 years of age, and occurring while the employment relationship exists.

3. Provide that all costs incident to such life insurance and hospital, medical, and surgical service shall be borne in full by the carrier.

The provisions of this health and welfare plan shall not be reduced by or operate to reduce any compensation for sickness, injury, or disability of any employee now provided by law, agreement, or practice on any carrier.

PREMIUM COMPENSATION FOR SUNDAY SERVICE

Any employee who performs service on a Sunday which is not his rest day shall be paid for a minimum of 8 hours at one and one-half times the applicable straight time hourly rate of pay. Any employee who performs service on a Sunday which is his rest day shall be paid for a minimum of 8 hours at double the applicable straight time hourly rate of pay. Service beyond 8 hours on any Sunday shall be compensated at double the applicable straight time hourly rate of pay.

RIGHTS TO FREE TRANSPORTATION

Free transportation on home roads and foreign roads shall be granted to employees of:

1. Railroad Systems.
2. Railroad Terminals and other joint facilities.
3. Pullman and Express Agency.

on the following bases:

HOME ROADS:

1. An employee with 90 days' service but less than 1 year's service shall be granted trip passes requested on home division or divisions.
2. An employee with 1 year of service but less than 5 years' service shall be granted an annual pass over the home division or divisions, and trip passes requested over the entire line.
3. An employee with 5 or more years' service shall be granted an annual pass over the entire line.

FOREIGN ROADS:

1. An employee with 90 days' service but less than 1 year's service shall be granted free transportation for 1 trip per year.
2. An employee with 1 year of service but less than 5 years' service shall be granted free transportation for 3 trips per year.
3. An employee with 5 or more years' service shall be granted free transportation as requested.

RULES APPLICABLE TO BOTH HOME ROAD AND FOREIGN ROAD TRANSPORTATION

1. Periods of service in determining eligibility for passes and free transportation shall be computed from the date an employee enters service and throughout the period that a continuous employment relationship is maintained.

2. The same pass and free transportation privileges shall be extended to an employee's wife and/or dependents.

3. All necessary school passes for each dependent student child of an eligible employee shall be granted.

4. Passes and free transportation shall be honored on all passenger trains. On extra fare trains an employee may be required to pay the extra fare. Where a charge is made to the public for seat space in coaches, employees and/or dependents may be required to pay the same charges.

5. Work passes or free transportation shall be issued to all employees in order that they may return "dead-head" to their homes at least once each week. Such passes or free transportation shall be honored in all day coaches; and in parlor and pullman cars upon the payment of the parlor or pullman car fare for such accommodations.

6. Employees in terminals and other joint facilities shall select a home road from among the roads operating within the terminal or facility, and pass and free transportation privileges shall be granted to them on the same basis as to employees of the road so selected. Foreign transportation to such employees shall be granted on the same basis as to employees of the home road they have selected.

7. Pullman and express agency employees shall select a home road within the territorial district employed and pass and free transportation privileges shall be granted to them on the same basis as to employees of the road so selected. Foreign transportation to such employees shall be granted on the same basis as to employees of the home road they have selected.

8. An employee covered by paragraph 6 or paragraph 7 hereof may change his selection of a home road at the beginning of any calendar year provided he notifies all parties in interest of this change in selection ninety days prior to the beginning of the new calendar year.

EFFECT ON CURRENT AGREEMENTS

Provisions in current agreements not in conflict with these proposals shall remain unchanged.

APPENDIX D

The Carriers' Proposals Served Within 30 Days Following May 22, 1953

*1. Eliminate existing rules, regulations, interpretations or practices, however established, which restrict the right of a carrier to abolish any position covered by an agreement and to distribute any remaining work in any one of the following three ways or in any combination thereof: (*a*) To other employees of the same craft or class; (*b*) to employees of other crafts or classes when the duties are not exclusively those of the craft or class in which the position was abolished; (*c*) to supervisory employees.

2. Eliminate existing rules, regulations, interpretations or practices, however established, which restrict or prohibit a carrier from consolidating positions or extending the jurisdiction of a position.

*3. Eliminate existing rules, regulations, interpretations or practices, however established, that restrict or prevent the carrier from fixing or changing the starting time of employees.

4. Establish a rule or amend existing rules to provide that extra or unassigned employees will be paid on a minute basis for actual time worked with a minimum of 4 hours, exclusive of a meal period.

5. Establish a rule or amend existing rules to permit the carrier to establish and regulate extra lists.

6. Eliminate existing rules, regulations, interpretations or practices, however established, which restrict the right of a carrier to require furloughed employees to perform extra and relief work.

7. Establish a rule or amend existing rules so as to provide time limits for presenting and progressing claims or grievances.

*8. Establish a rule or amend existing rules to provide that no claim based on the failure of the carrier to use an employee for certain work shall be valid unless the claimant was the employee entitled to perform the work in question and was available to do so at the time, and that any payment shall be at the straight time rate on a minute basis for the time actually required to perform the work in question.

*9. Establish a rule or amend existing rules to provide that where a claim results in payment for time out of service, such payment shall not exceed the amount which the employee would have earned in

*For explanation, see footnote at end of Appendix D.

service under the agreement less the amount which he actually earned, or could by due diligence have earned, in other employment for the carrier or in outside employment.

*10. Establish a rule or amend existing rules to provide that no claim shall be entertained unless made in his own behalf by an individual employee.

11. Establish a rule or amend existing rules to provide that in the event of a strike or emergency affecting the operations or business of the carrier no advance notice shall be necessary to abolish positions or make force reductions.

*12. Establish a rule or amend existing vacation rules to provide for not less than 200 days of compensated service each qualifying year.

*13. Establish a rule or amend existing rules so as to recognize the right of the carrier to blank positions during the absence of the regular incumbent thereof.

14. Establish a rule or amend existing rules to permit the carrier, when it introduces new machines, changes methods of performing work, or introduces technological changes, which eliminate or combine work previously performed by employees of 2 or more crafts, or of 2 or more seniority districts, to designate the craft or class of employees in each instance which is to perform the work and the seniority district or districts in which the work is to be performed.

15. Establish a rule or amend existing rules to recognize the right of supervisory employees to perform the work of employees of any craft or class, and of excepted employees to perform the work of positions covered by the agreements from which they are wholly or partially excepted.

16. Establish a rule or amend existing rules to provide that all disputes as to the class or craft of employees which may properly be used to perform any particular work which are not resolved by existing rules or understandings, or rules provided under other proposals contained in this Attachment "A", shall be submitted to arbitration for determination as to which craft or class of employees shall perform the work. Such arbitration may be requested by any affected organization or by the carrier. All such organizations and the carrier shall be parties to the arbitration proceedings and shall be bound thereby. Claims will not be filed or entertained pending the determination of such dispute.

*17. Eliminate existing rules, regulations, interpretations or practices, however established, which limit the work that may be performed on Sundays in seven-day service at straight time rates.

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*For explanation, see footnote at end of Appendix D.

*18. Establish a rule or amend existing rules to permit employees performing relief work on regularly scheduled assignments to commence 2 tricks within the same 24-hour period without the overtime penalty.

*19. Establish a rule or amend existing rules so as to provide that time worked either preceding or following and continuous with a day's work shall be considered daily overtime and paid for on the minute basis at the rate of time and one-half.

*20. Eliminate existing rules, regulations, interpretations, or practices, however established, that require penalty payment for changing shifts.

*21. Establish a rule or amend existing rules prohibiting suspension of work to absorb overtime so as to provide that such rules shall have application only to the absorption of overtime on the assignment of the employee who is required to suspend work during the hours of such assignment.

*22. Establish a rule or amend existing rules to permit carrier to select and upgrade employees, and to permit such upgraded employees to retain and accumulate seniority in lower grades.

23. Establish a rule or amend existing rules so as to permit the carrier to require mechanics who are on duty, at points or on shifts where mechanics of all crafts are not on duty, to perform the work contained in the classification or work rule of a craft or class that does not at the time have a mechanic on duty.

24. Establish a rule or amend existing rules so as to recognize the carrier's right to assign clerical duties to telegraph service employees and to assign communication duties to clerical employees.

25. Establish a rule or amend existing rules to recognize the right of a carrier to require other than telegraph service employees to handle train orders, motor car lineups or other communications.

*26. Establish a rule or amend existing rules requiring advance notice before positions can be abolished or forces reduced so as to require not more than 36 consecutive hours of such advance notice.

*27. Eliminate existing rules, regulations, interpretations or practices, however established, that require payment for time lost on account of sickness.

*28. Establish a rule or amend existing rules to provide that hours of work of assignments under any agreement may be nonconsecutive where such assignments are desirable in order to meet operating conditions of service requirements.

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*For explanation, see footnote at end of Appendix D.

29. Eliminate existing rules, regulations, interpretations or practices, however established, which require the use of regularly assigned employees in seniority order or otherwise on vacancies or work not subject to bulletin, during the life of a bulletin, or pending assignment.

30. Where an existing rule, regulation, interpretation or practice, however established, is considered by the carrier to be more favorable than a rule resulting from any of the foregoing proposals, such rule, regulation, interpretation or practice, may be retained by the carrier.

31. All rules, regulations, interpretations or practices, however established, which conflict with these proposals shall be eliminated.

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* Proposals identified by an asterisk have been withdrawn by the Carriers from this proceeding and do not, therefore, constitute issues before this Board. Such withdrawal, however, is without prejudice either to the merits of the proposals or to their subsequent prosecution in other proceedings.

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