Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 10723 DATED AUGUST 6, 1957, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate a dispute between the General Managers' Association of New York representing the New York Central Railroad, New York, New Haven & Hartford Railroad Company, Brooklyn Eastern District Terminal, Jay Street Connecting Railroad, New York Dock Railway, Bush Terminal Railroad, Baltimore & Ohio Railroad Company, The Pennsylvania Railroad, Erie Railroad Company, Reading Company, Delaware, Lackawanna & Western Railroad, and The Central Railroad Company of New Jersey, and certain of their employees, represented by the International Organization of Masters, Mates and Pilots, Inc.

(NMB A-5435)

WASHINGTON, D. C.
SEPTEMBER 20, 1957

(No. 119)

LETTER OF TRANSMITTAL

WASHINGTON, D. C., *September 20, 1957.*

The President
The White House
Washington, D. C.

MR. PRESIDENT: This Emergency Board, No. 119, appointed by you August 6, 1957, has the honor to submit its report herewith.

The report concerns the merits of a current dispute involving the General Manager's Association of New York, representing eleven railroad carriers, and certain of their employees represented by the International Organization of Masters, Mates and Pilots, Inc.

The Board feels that its recommendations will serve as a reasonable basis for the settlement of the present dispute.

Respectfully submitted,

JAMES J. HEALY, Chairman.
WALTER R. JOHNSON, Member.
BENJAMIN C. ROBERTS, Member.

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I. Introduction

Emergency Board No. 119 was created by Executive order dated August 6, 1957, to investigate and report on a dispute between the General Managers' Association of New York, representing the New York Central Railroad and 10 other carriers, and certain of their employees represented by the International Organization of Masters, Mates and Pilots, Inc.

Members of the Board appointed by President Dwight D. Eisenhower were:

James J. Healy, *Chairman*,
Walter R. Johnson, *Member*,
Benjamin C. Roberts, *Member*.

Pursuant to the terms of the Executive order and Section 10 of the Railway Labor Act, as amended (45 U. S. C. 160), public hearings in the matter were started at 10:00 o'clock a. m., August 14, 1957, in the United States Court House, Foley Square, New York City, N. Y. At the start of the proceedings Ward and Paul, Washington, D. C., were appointed the official reporters.

Hearings of the testimony and arguments were held in nine daily sessions, and the record was closed on August 30, 1957. In addition, the members of the Emergency Board, at the request of the organization and with the concurrence of the General Managers' Association, inspected the equipment and facilities of certain carriers in the New York Harbor on two separate days. On these inspection trips, they were accompanied by representatives of both parties.

Because of the time required for formal hearings and deliberation by the Board, it became necessary to obtain an extension of time for the submission of the Board's report to the President. Upon stipulation of the parties and approval of the President, an extension to September 20, 1957 was secured.

II. Background

A. Parties to the dispute and the nature of the operation

The following carriers are represented by the General Managers' Association Labor Committee, an *ad hoc* committee established to handle this particular case and holding powers of attorney to speak for the carriers involved:

(NYC) New York Central Railroad,
(NH) New York, New Haven & Hartford Railroad Co.,

(BEDT)	Brooklyn Eastern District Terminal,
(NYD)	New York Dock Railway,
(B Tml)	Bush Terminal Railroad,
(B & O)	Baltimore & Ohio Railroad Co.,
(Penna)	Pennsylvania Railroad,
(Erie)	Erie Railroad Co.,
(Rdg)	Reading Co.,
(DLW)	Delaware, Lackawanna & Western Railroad,
(CNJ)	Central Railroad Company of New Jersey.

These carriers conduct ferry and towing operations in the New York Harbor. Ferry service, devoted to the carrying of passengers and automobiles between New Jersey and New York City, is provided by four of the carriers (NYC, Erie, DLW, CNJ). They operate approximately 18 to 19 ferry boats. The towing operation takes several forms: (a) The so-called lighterage operation which consists of physically unloading the freight from cars at the various lighterage terminals and loading the freight on barges, lighters, or scows. This equipment is then towed by railroad tugs to destinations in New York Harbor; they may be steamship piers, railroad piers, land stations, points of interchange with other carriers, etc. (b) The movement of freight cars themselves via car floats. The tugs tow one or more of these car floats to interchange points, railroad stations, piers, or terminals. In 1956 the tonnage handled by the subject carriers via lighter was 4,365,419; the tonnage handled via float totaled 16,903,818. The movement of freight described above is a continuous operation and it is part of the road-haul obligations of the common carriers under their tariffs. Thus, the marine tugs are in use 24 hours a day, 7 days per week. The approximate geographic limits of railroad marine operation are Weehawken, N. J., in a northerly direction on the Hudson River and the lower Bronx in a northerly direction on the East River. Although most of the operations in a southerly direction do not go beyond the northern tip of Richmond, the Reading Railroad and the Pennsylvania Railroad do tow coal barges from Port Reading and South Amboy respectively to New York City powerplants.

As of June 1, 1957, the following marine equipment, exclusive of ferries, was in actual use by the New York Harbor carriers party to these proceedings:

Equipment	*Number*
Tugs	69
Carfloats	207
Hoist Lighters	71
Grain Barges	11
Covered Barges	427
Scows	236

The International Organization of Masters, Mates and Pilots, Inc., in 1956 represented approximately 872 or 27 percent of the 3,231 railroad marine service employees in the New York Harbor. The evidence shows that the collective bargaining representation is decidedly scattered among the marine employees, with no less than 10 different union organizations having established recognition rights. Moreover, on any given carrier the number of different collective bargaining agents for such employees is never less than 2 and in some instances is as high as 4. Thus, on the tug of one carrier only the captain might be represented by the organization, while the mate, second deckhand, float bridge operator, etc. are represented by other unions. On the tug of another carrier, most of these men might be represented by the organization. The representation by the instant organization, by occupational classes, is shown on the following table:

Occupational classes	Number in class	Employees before the board	
		Number	Percent of total
Deck personnel:			
Captain, pilot	273	246	90.1
Mate, first deckhand, bow deckhand	232	137	59.1
Wheelsman	33	10	30.3
Second deckhand, deckhand, floatman	574	355	61.8
Boat porter, cook, steward	32	6	18.8
Shore personnel:			
Bridgemaster, float bridge foreman	5	5	100.0
Float bridge operator, bridge motorman	71	54	76.1
Bridgeman, float bridge bridgeman	148	52	35.1
Miscellaneous occupations	85	1	2.3
Engineroom personnel:			
Engineer	276		
Fireman, oiler, etc.	503		
Non-self-propelled vessels: Captains—lighters, barges and hoist boats	999	6	.6
Total	3,231	872	27.0

No attempt will be made in this report to give a detailed description of the duties performed by the men in these various classifications. The Emergency Board members appreciate the importance of these duties in appraising the merits of the dispute, and it was for this purpose that two separate tours were made to observe firsthand the work of the captain, the mate, deckhand, floatman and others. The significance of job responsibility will be highlighted in the summary of the parties' contentions.

B. HISTORY OF COLLECTIVE BARGAINING

The record shows that from 1937, the year in which the nonoperating railroad organizations first served demands upon the carriers on a national basis, through 1953, the subject Organization joined with the so-called nonoperating unions in bargaining with the carriers.

Not only were the serving of notices pursuant to the Railway Labor Act identical in date and substantive content, but the Organization throughout this 16-year period also co-signed with other so-called nonoperating unions those national agreements which resolved the disputes and, in effect, agreed to the same basic wage increases and other benefits accepted by the other railroad unions. An exception occurred in this period on August 8, 1950, when the Organization served a notice requesting a special increase for captains on the ground that it was needed to encourage persons in lower classifications to take promotions to the captain's job and to accept the higher responsibilities thereof. Pursuant to this request, an increase of $2.00 per day for captains was agreed upon on June 16, 1952. In 1955 the Masters, Mates and Pilots chose not to join with the nonoperating railroad unions in bargaining with the carriers. The separately negotiated agreement, however, conformed substantially with the national settlement insofar as basic wage and benefit adjustments were concerned.

C. ORIGINS AND ISSUES OF THE PRESENT DISPUTE

In letters dated November 21, 1956, sent to each of the carriers, the Organization requested the following revisions for a 1-year period in the current working agreement for licensed and unlicensed marine employees:

Licensed (captains and pilots)

"1. A thirty-five percent (35%) wage increase, effective August 1, 1956.
"2. Hospitalization and welfare plan for member and family.
"3. Holiday pay at two and one-half times the straight-time rate for work performed.
"4. Transportation and pay for time spent at company physical examinations at times other than during regular working hours.
"5. Travel expense from home to work and from work to home, similar to that allowance made to lighter captains.
"6. That the carriers under agreement with the International Organization of Masters, Mates and Pilots authorize the New York Harbor Committee of the General Managers Association to act as their mutual and initial representative in any negotiations with this organization regarding changes in rates of pay, rules and working conditions in order to avoid initial meetings with each carrier.
"7. That those agreements be changed which include the rule concerning: 'Employees who attend court, investigations, hearings or other business by order of an official of the company or governmental agency shall—
1. * * *
2. * * *
3. * * * Be paid on a pro rata basis for time held in excess of 1 hour immediately before and after and continuous with the regular working day.'

The words 'in excess of 1 hour' be omitted from paragraph three (3) so that it will read as follows:

'3. * * * Be paid on a pro rata basis for time held immediately before or after and continuous with the regular working day.'

"8. A provision to include sick leave for captains."

Unlicensed (mate or first deckhand, second deckhand or floatman, etc.)

"1. A twenty-five cent (25¢) per hour increase in wages, effective August 1, 1956.

"2. Holiday pay at two and one-half times the straight-time rate for work performed.

"3. Differential pay of $1.50 per day to be paid bridge-motormen and ferry wheelsmen.

"4. Transportation and pay for time spent for company physical examinations at times other than during regular working hours.

"5. Health and welfare insurance for employees and family, similar to that negotiated for the Non-ops.

"6. Travel expense from home to work and from work to home, similar to that allowed lighter captains.

"7. That the carriers under agreement with the International Organization of Masters, Mates and Pilots authorize the New York Harbor Committee of the General Managers Association to act as their mutual and initial representatives in any negotiations with this organization regarding changes in rates of pay, rules and working conditions in order to avoid initial meetings with each carrier.

"8. That those agreements be changed which include the rule concerning, 'Employees who attend court, investigations, hearings or other business by order of an official of the company or governmental agency shall—

1. * * *

2. * * *

3. * * * Be paid on a pro rata basis for time held in excess of 1 hour immediately before and after and continuous with the regular working day.'

The words 'in excess of 1 hour' be omitted from paragraph three (3) so that it will read as follows:

'3. * * * Be paid on a pro rata basis for time held immediately before or after and continuous with the regular working day.' "

Following conferences in December 1956 and as a result of a request from the Masters, Mates and Pilots Organization, the Labor Committee of the General Managers' Association of New York was formed to facilitate the negotiations. Meetings of the parties were held in February 1957 at which time the carriers' committee offered the Organization the so-called 1956–57 nonoperating "pattern." This offer was rejected by the Organization in March 1957 and shortly thereafter it invoked the services of the National Mediation Board. Negotiations were conducted with the services of a Board representative in May and June. On June 27, 1957, the Board offered arbitration as a method of resolving the dispute. The carriers accepted this offer, but the Organization rejected it. On July 8, 1957, the Mediation

Board advised the parties that arbitration was unacceptable and referred to section 5 of the Act. The Organization announced its intention to strike on August 7, a revised date, since originally it had indicated July 21 as a probable strike date but postponed it at the suggestion of a Mediation Board representative.

Considerable testimony and comment before this Emergency Board concerned legal questions as to the Organization's right to strike on August 7, given the language of the Mediation Board letter of July 8 and the terms of the Railway Labor Act. The Board expressed the view in the hearing and reiterates it in this report that it is not concerned with these legal matters. It is sufficient to note that on the first day of the Emergency Board hearings, the parties acknowledged that the Board was created legally under the terms of the Railway Labor Act and was legally constituted to hear the facts and argument of the dispute and to make recommendations in accordance with the Act.

The scope of the controversy will be better understood if the carriers' offer is described. As stated above, the 1956–57 "pattern settlement" for railroad employees constitutes the only proposal made by the carriers in response to the November 21, 1956 demand notices.

It consists of the following 3-year "package" agreement:

(a)	Effective November 1, 1956, an across-the-board wage increase of.	10¢ per hour, 80¢ per day;
(b)	Health and welfare benefits or equivalent wage increase also retroactive to November 1, 1956, equal to.	2.5¢ per hour, 20¢ per day;
(c)	A second wage increase effective November 1, 1957, of.	7¢ per hour, 56¢ per day;
(d)	A third wage increase effective November 1, 1958, of.	7¢ per hour, 56¢ per day;
(e)	Semiannual cost-of-living adjustments of 1 cent per hour for each one-half point change in the Consumers' Price Index, resulting on May 1, 1957, in a further increase amounting to.	3¢ per hour, 24¢ per day;
(f)	A moratorium on demands for further wage increases, rules changes or other benefits resulting in increased compensation.	

Three final findings of fact complete the history of the present dispute and the issues before this Board:

(a) During the negotiations, the Organization asked that mates be included in the request for a $1.50 per day differential mentioned in item 3 of the revisions for unlicensed personnel.

(b) With respect to the $1.50 per day differential for bridgemotormen, ferry wheelsmen and, as later extended, for mates, the Organization asked that $1.00 be granted effective

November 1, 1956, and 50 cents be made effective May 1, 1957.

(c) During most of the negotiations the only discussion related to the requests for the unlicensed personnel. There was little or no discussion concerning the captains or pilots.

III. Basic Wage Issue

The following table sets forth the present daily and hourly rates for the railroad marine classifications in the New York Harbor in which there are employees represented by the Masters, Mates and Pilots:

	Current rates effective 12/1/55	
	Daily	Hourly
Ferry service:		
Pilot	$22.50	$2.8125
Wheelsman	16.86	2.1075
Deckhand	16.40	2.05
Bridgeman	16.40	2.05
Tug service:		
Captain	22.50	2.8125
1st deckhand	16.80	2.10
Deckhand	16.40	2.05
Bridge operator/motorman	16.96	2.12
Bridgemaster	17.02	2.1275
Bridgeman	16.40	2.05
Tug dispatcher	19.48	2.435
Tankerman	17.60	2.20
Cook	16.40	2.05

The Organization's wage request for a 1-year period, as originally stated in November 1956, would increase the captains' and pilots' daily rate by $7.88; the rate of bridge-motormen and wheelsmen would be adjusted by $3.50 per day; and all others would be increased by $2.00 per day. The *carriers' wage offer* for a 3-year period (November 1, 1956–November 1, 1959) could increase the daily rates uniformly by $2.12 plus any applicable cost-of-living adjustments. At the time of the hearings, it was known that a three-cent-per-hour (24¢ per day) cost-of-living increase as of May 1, 1957 was dictated by the Consumers' Price Index; and, unless there is a change in the Index movement, as of November 1, 1957, at least an additional 4 cents per hour (32¢ per day) will be required.

A. Position of Organization

(1) The increases sought by the Union are necessary to reflect the high degree of skill and responsibility for men and equipment, particularly in the classifications of captain (or pilot), mate (or wheelsman), and deckhand. The Union stressed the many years required to achieve a captain's rating, the fact that the carriers would employ

only licensed men to be in charge of their tugs, and the high examination standards adopted by the United States Coast Guard, the licensing agency. The reluctance of the men in the lower classifications to accept advancement to the captain's assignment and to undergo the rigorous tests needed for such assignment is indicative of the demands imposed upon a captain. In turn, the mate or first deckhand is expected to relieve the captain and, along with the deckhand or floatman, he frequently serves as the "eyes" of the captain when the latter's vision on the bridge is obstructed by the equipment being moved or by inclement weather. A substantial adjustment for captains and a narrowing of the differential between captains and other key classifications is the only way to acknowledge the true values of these jobs.

(2) The insistence by the carriers that this organization accept the so-called 1956–57 railroad wage pattern is untenable. *First,* although the Organization may have joined with the nonoperating railroad unions in negotiations and in the adoption of final settlements for many years, this does not mean the Organization is wedded thereafter to the settlements of the railroad unions. In 1955 the Organization deliberately broke away from the nonoperating unions in its conduct of collective bargaining. It did so because there was real doubt whether employees in the marine service were "nonoperating" employees; a witness for the carriers agreed that a tug or towboat that propels itself through the water is an operating vehicle. Moreover, just because the employees represented by the Organization work for railroad carriers does not make them typical railroad employees. On the contrary, they are marine employees, confronted with greater hazards, different working conditions, and higher skill requirements.

Second, the Organization denies that the "pattern" cited by the carriers can be considered the true pattern. The various railroad unions entered into the 3-year package settlement during the late months of 1956 and the early months of 1957. Significantly, however, the most recent agreement negotiated between this organization and certain railroad carriers is the Philadelphia agreement, signed in July 1957. With full awareness of the 1956–57 railroad pattern, three carriers—the Pennsylvania Railroad Co., the Reading Co., and the Baltimore & Ohio Railroad Co., all parties to the instant proceedings—signed agreements with the Organization in behalf of licensed deck personnel which established a new pattern. The wage adjustments provided by these 3-year contracts in Philadelphia are the following:

(a) Effective June 5, 1956, the existing daily rate for tugboat captains will be increased to the New York level of $22.50 per day. In the case of the Pennsylvania Railroad Co. this meant an initial daily pay increase of $1.86. It was less in the case of the other two carriers.

(b) The "railroad pattern" adjustments were adopted, i. e., $1.00 per day effective November 1, 1956 (of which $0.20 per day is in lieu of a carrier financed health and welfare plan), $0.56 per day effective November 1, 1957, and $0.56 per day effective November 1, 1958. In addition, the standard cost-of-living adjustment clause was incorporated in these agreements.

(c) Finally, the following adjustments were granted over and above those already described:

-1- Effective June 5, 1956, $2.00 per day to be added to the daily rate of tugboat captains, presumably in recognition of certain special duties which the captains may be required to perform.

-2- Effective June 5, 1957, $2.00 per day.

-3- Effective June 5, 1958, $2.00 per day.

In the words of the agreements, the latter two additional increases "are afforded to correct alleged inequities in rate of pay of tugboat captains in view of the skill and ability of their craft."

Given the timing of this settlement, the similarity of the parties involved, and the proximity of the Philadelphia Harbor to the New York Harbor, this must be considered the only relevant or applicable pattern. Over the 3-year period it grants a $6.00 per day increase in the rate of captains in additions to the adjustments dictated by the older 1956–57 railroad pattern. In the words of Captain Atkins, President of the Organization:

> "The pattern was set, the pattern is in effect. The pattern is the Philadelphia agreement. And, gentlemen, we respectfully request that the Board consider the Philadelphia agreement as a pattern and as a basis of a settlement with the marine employees of the railroads in Philadelphia, the same railroads in Philadelphia that have marine employees in the Port of New York." (Tr. 1054).

B. POSITION OF CARRIERS

(1) The 3-year package settlement offered by the carriers is the only logical settlement consistent with the facts. This conclusion is based upon the following considerations:

(a) As of the time of these proceedings, 99.3 percent of all railroad employees in the United States were covered by the 1956–57 pattern agreement.

(b) The Masters, Mates and Pilots for almost 20 years have joined in collective bargaining with and/or have subscribed to the settlements negotiated by the nonoperating railroad unions on a national basis. There have been no changes in skill requirements or in the nature of the operations which would justify treating the marine service employees differently at the present time.

(c) The Organization itself has signed agreements which conform to the 1956–57 railroad pattern on the following properties:

-1- The Atchison, Topeka & Santa Fe Railway Co.—Coast Lines (January 3, 1957). 10 licensed and 40 unlicensed men involved.

-2- The Western Pacific Railroad Co. (January 9, 1957).

-3- Southern Pacific Co. (January 10, 1957). 21 licensed men involved.

-4- Missouri-Illinois Railroad Co. (March 22, 1957).

-5- Natchez & Southern Railway Co. (March 22, 1957).

(d) As indicated under part II of this report, the subject carriers also engage in collective bargaining with other labor organizations representing marine service employees in the New York Harbor. In every agreement negotiated, the 1956–57 railroad pattern has been adopted or, at least, has not been exceeded. Almost 2,300 of the railroad marine service employees in New York are now under such agreements. The carriers stress the practical difficulties created by the multi-representation structure. Different settlements would be destructive of morale and stability.

(e) The carriers have negotiated successfully the 1956–57 pattern settlement with numerous miscellaneous labor organizations, i. e., those not considered part of the recognized operating or nonoperating groups. Illustrative are 17 agreements negotiated by the New York Central in 1956 and 1957 with such organizations as the American Railway Supervisors Association, Railway Patrolmen's International Union, etc.

(f) Analysis of wage movements in selected companies and industries throughout the United States reveals a pronounced tendency for uniformity of wage change for the same or different crafts within an industry, irrespective of differences in bargaining agents.

(g) Numerous emergency boards appointed under the Railway Labor Act have confirmed the principle of uniformity as a criterion for wage adjustment in the industry. One of the most recent and pertinent reports is that of Emergency Board No. 116, which reviewed the Brotherhood of Railroad Trainmen's claim that it was entitled to more than the 1956–57 pattern. The Board said, in part:

"Of greater significance than a comparison with outside industry is a comparison of wage rate progress intra-industry. The history of wage movements in the railroad

industry during the post-depression years reveals a tendency toward 'across-the-board,' cents-per-hour increases with all classes of employees generally receiving identical increases. We do not say that there has been particular uniformity in the amounts of increases granted; but there has been a 'catching up' at some later date when one group of employees has received increases in basic wages in excess of those granted another."

In its recommendation the Board urged that the 3-year 26½ cents per hour package settlement be adopted, although its form might differ because of a paid holiday issue.

(h) In a 4-year agreement dated February 1, 1957, the Marine Towing and Transportation Employers' Association and the United Marine Division, Local 333, agreed upon a basic wage adjustment which was less than the total package settlement offered by the carriers in this case. This agreement covers the banner companies in New York and their employees. These companies operate approximately 225 tugs in the harbor, 200 of which are on general towing work similar to that of the railroad tugs and 25 of which are used in transport work, i. e., the berthing of large vessels. Except for crew complement and scheduling arrangements, the classifications can be compared with those involved in this case. Under the 1957–61 agreement, which can be reopened on the subject of basic wages only on February 1, 1959, the rate for a captain was set at $22.48 per day on 24-hour self-propelled vessels engaged in general harbor towing. This agreement contains no cost-of-living clause.

(2) The Philadelphia agreement, in the judgment of the carriers, cannot be construed as a new "pattern" which has the effect of replacing the 1956–57 railroad pattern. *First*, it affected only 12 or 13 captains in the Philadelphia Harbor. It would be absurd to allow this to prevail over settlements which affected over 1 million railroad employees. *Second*, one must recognize the circumstances which led to the July 1957 agreement. The services of the Mediation Board in Philadelphia were terminated on June 4, 1957, and there was uncertainty as to whether the appointment of an emergency board would be recommended. Confronted with the prospect of a strike early in July, the Reading Railroad Co., followed by the other two carriers, decided to grant the adjustments described by the Union in this case. The agreement was made reluctantly and against the better judgment of the carriers. In the words of the carriers' spokesman, it "was a direct result of the exercise of economic duress."

(3) Using employment figures for 1956, it is estimated that the total annual cost of the Organization's basic wage demands will exceed $1 million; if these same adjustments were extended to all marine service employees in the harbor, the annual cost would be almost $3.9 million. This additional cost for 1 year is unreasonably high, given the financial position of the railroads. The rate of return on net investment of the 10 basic Eastern Class I carriers averaged 2.99 percent as of December 31, 1956, as contrasted with an average return of 4.28 percent for all other United States Class I railroads.

(4) With respect to the Organization's claim for a 35-percent increase for captains, a narrowing of differentials for the wheelsmen and bridge-motormen, and a 25-cent adjustment for other employees, these final observations are made by the carriers:

(a) Between 1936 and 1956 the percentage differential between the captain or pilot rate and the rates of the lower classifications has decreased by slightly more than 30 percent. This decrease is less than that which has occurred in other related classifications in the railroad industry. For example, the differential between the passenger engineer and passenger firemen rates in the 20 years has decreased 51.9 percent, between road conductor and road brakeman, 57.3 percent, etc. Undoubtedly, the special $2 per day adjustment for captains in 1952 served to keep the senior-junior class differential somewhat wider.

(b) The extra increase for captains cannot be justified on the ground that an incentive is needed to induce people to accept promotions. The 1952 adjustment made for this reason did not have the desired effect. Instead, nonmonetary inducements, such as training programs, are the answer to this indifference to a captain's assignment.

(c) The Union in its presentation offered no evidence to show why the wheelsmen (limited to ferryboat operation) or the bridge-motormen should be given an additional $1.50 per day.

C. COMMENTS OF THE EMERGENCY BOARD

A review of the testimony and evidence makes it quite clear that both parties recognize the pattern concept to be the dominant criterion in appraising the merits of the basic wage issue. The principal question is which pattern is to prevail: The 1956–57 railroad pattern, which constitutes the carriers' offer or the July 1957 Philadelphia Harbor Agreements, for which terms the Organization is willing to settle? After a careful study of the record, the Emergency Board members conclude that neither of these patterns is necessarily the correct one. The equities are more likely to be satisfied if the parties

will consider a settlement formula which reflects the properly weighted influence of both of these patterns.

It cannot be denied that over the past 20 years the various railroad unions have entered into agreements with the carriers which have had the net effect of equalizing the total wage-per-hour changes among the employees represented by the different organizations. It is also very relevant that the Masters, Mates and Pilots until recent date has joined in the national settlements, and in agreements with five railroad carriers in 1957 it subscribed to the 1956–57 pattern set by the nonoperating unions in late 1956. Finally, the evidence is overwhelming that agreements between the carriers and other marine service employee organizations in the New York Harbor, covering more than twice as many employees as the subject Organization, conform to the 1956–57 railroad pattern of 26½ cents per hour in three-step increases plus cost-of-living over a 3-year period. If statistics alone were to govern, it would appear that the carriers' offer has acquired a sanctity and an inexorable influence which disallows consideration of any other settlement.

Nevertheless, there are compelling reasons why the 1956–57 railroad pattern cannot be recommended automatically, even though the Board considers it to be the more dominant criterion.

First, while collective bargaining history between the subject parties has revealed an adherence to the national railroad settlements, there has been at least one significant departure. In 1950, when the Organization was still identified formally with the nonoperating unions for bargaining purposes, it sought a $2.00 per day special adjustment for captains and pilots. This increase was granted and approved on the theory that a greater differential favoring the captains was needed to stimulate acceptance of promotional offers. Presumably the carriers found this reason persuasive enough to depart from the principle of uniformity. The members of the present Emergency Board are inclined to the view that the same reason has some validity today. It is true that the differential between the captain and the lower evaluated classifications has narrowed less than between senior and junior related classes elsewhere in the railroad industry. But this fact alone does not prove that the monetary incentive to take on a captain's responsibility is adequate. The record shows that the reluctance among the mates and deckhands is still present. Although one carrier witness discounted the salutary effects of a monetary incentive, another testified as follows:

> "The bid list for captains has been out since 1952. The men just don't take it because they are getting such good pay. They don't want to be a pilot. They don't want to go on the night shift." (Tr. 458)

This suggests that the present differential is inadequate. It also tends to confirm the Organization's emphasis on the skill and responsibilities which are inherent in the captain's assignment. The need for a widened differential was also recognized and expressed in the Philadelphia agreements.

Second, in spite of the suggested inviolability of the uniform settlement principle, the railroads, in effect, did grant a special skill differential to the railroad engineers, over and above the pattern.

Third, and by far the most important consideration, are the Philadelphia agreements negotiated between three carriers, who are party to this dispute, and the Organization. The import of these agreements is not to be dismissed on the ground that only a dozen or so captains were affected, while more than 200 are involved in the present dispute. This fact may affect the weight to be assigned to the Philadelphia settlement. In the opinion of the Board, the Philadelphia agreements demand attention for a number of reasons:

(a) These agreements were entered into *after* the 1956–57 railroad settlement had been adopted by nearly every national railroad organization and *after* the same carriers had entered into railroad pattern agreements with marine service organizations in the New York Harbor.

(b) These agreements were entered into by three principal railroads of the 11 carriers who are parties to the instant controversy.

(c) The substantially more-than-railroad pattern settlement was made at a time when the carriers involved knew that the New York Harbor dispute was pending.

(d) Although the Organization had accepted the railroad pattern on west coast and more limited midwest carrier marine operations, its success in gaining departure from such pattern in Philadelphia is just as meaningful. The Philadelphia Harbor is the closest one to New York which involves employees of the same organization. Interestingly, the terms of the Philadelphia agreements even acknowledge the desirability and logic of equating the Philadelphia Harbor tugboat captains' daily rate with the New York Harbor rate. Now, having equated the rates by an initial adjustment and having added $6.00 per day to such rates over and above the pattern, the same carriers appear in these proceedings and join in the argument that the railroad pattern is the only logical criterion. Regardless of the numerical difference in employees, which requires the "tail wagging the dog" defense, the carriers must admit that the Philadelphia settlement is highly prejudicial to their present position.

(e) The reasons advanced by the carriers for the Philadelphia settlement are disturbing to the Board. Instead of minimizing the influence of such settlement, they force the Board to give careful consideration to the settlement. It was explained that the threat of strike and the uncertainty of an emergency board creation had a great deal to do with the carriers' reluctant acquiescence. Admittedly the number of employees was also a key factor. It does not seem proper to disregard the settlement just because in one case, "economic duress" was imminent and in this case all of the steps of the Railway Labor Act were invoked. Such a theory in the long run would destroy the effectiveness of and the parties' faith in the Act; it would establish double standards for deciding the merits of a dispute.

In summary, just as the Organization cannot deny its parental responsibility for the railroad pattern in the Atchison, Topeka & Santa Fe *et al* agreements, neither can 3 of the 11 carriers involved herein deny their parental responsibility for the Philadelphia Harbor pattern. The three considerations cited above suggest that a settlement consistent with the merits flows from a reasonably weighted blend of the two patterns. Although more verbal attention has been given in this report to the Philadelphia settlement, it is the consensus of the Board that the railroad pattern is to be more heavily weighted. This conclusion is founded not only on the great body of evidence concerning past bargaining history and widespread acceptance of the 1956–57 railroad pattern, but also on such facts as the following: (1) Within the New York Harbor, the other local labor organizations, representing more employees in the railroad marine service than the Masters, Mates and Pilots, have already agreed to the 26½ cents per hour plus cost-of-living, 3-year settlement; (2) the noncarrier marine service employees in the New York Harbor have accepted a settlement which, if fringe benefits are included, would probably exceed 26½ cents per hour, but which would fall far short of the Philadelphia settlement; (3) the granting of the Philadelphia settlement to New York Harbor captains would create an unreasonable differential over the other classifications.

It is the judgment of this Board that the equities of the basic wage issue will be satisfied if the parties were to agree to the so-called railroad pattern of 1956–57, as offered by the carriers, and in addition thereto, to agree to the following adjustments in daily rates for captains and pilots: $1.00 to be added to the then-existing daily rates effective December 21, 1956 (which is 30 days after the date of the Organization's notice), $0.50 per day to be added effective November 1, 1957, and $0.50 per day to be added effective November 1, 1958.

With respect to the Organization's request for a $1.50 per day differential for bridge-motormen and wheelsmen, the Board concludes that inadequate evidence has been provided to justify such a request. In fact, to do so would destroy partially one of the bases for recommending a greater adjustment for captains and pilots, i. e., the need for an increased differential to interest persons in the next lower classifications to bid for the top position. The Board notes that the Organization, subsequent to the notice of November 21, 1956, also sought to include mates in the request for the $1.50 differential. It is questionable whether this inclusion is timely under the provisions of section 6 of the Act; in any event, the differential requested for mates lacks merit for the same reasons stated above for the other two classifications.

Because of the Board's disposition of one of the nonbasic wage issues, additional premium payment for holidays worked, it may well be that further increases for all employees represented by the Organization will be adopted. This matter, discussed under part IV of the report, involves a possible 2-cent per hour increase for all employees in lieu of payment of double time for work required on designated holidays.

IV. Issues Other Than Basic Wages

The testimony and evidence concerning the various nonwage items were not extensive. They will be treated briefly in this report. The threshold comment must be made that the Board was agreed very early in its deliberations on two points: (a) A 3-year agreement, such as those negotiated for most of the railroad industry in 1956 and 1957, was desirable. Not only would such duration have the virtue of conforming with all immediate reference patterns, but it would provide stability in the relationship of the parties; (b) the 3-year agreement should contain provision for a moratorium on demands for further wage increases, rule changes or other benefits resulting in increased compensation. Although the Organization protested the moratorium feature in the so-called railroad pattern, it is observed that such a provision appears in the Philadelphia agreements as well as in other railroad agreements with the Organization. With these two points in mind, the Board was concerned with the most equitable total package settlement as well as the merits of each specific issue. The Board's recommendations are premised upon a 3-year agreement, including a moratorium clause.

A. *Health and welfare insurance.* This item, which appears in the notices for both licensed and unlicensed personnel, has already been covered under basic wage increases. The Organization seeks the arrangement developed in the 1956 settlement by the nonoperating

railroad groups. This consists of 2½ cents per hour to be paid by the carriers for an extended health and welfare plan. This is in addition to portions of prior increases earmarked for this purpose in recent years. In each case the union involved was given the option of putting this cents-per-hour increase in basic wages in lieu of health and welfare insurance. The basic railroad pattern referred to under the wage issue includes this adjustment.

B. (1) Transportation and pay for time spent at company physical examinations at times other than during regular working hours; (2) travel expense from home to work and from work to home, similar to that allowed lighter captains; (3) revision in the rule relating to payment for time involved in investigations, hearings or other business by order of an official of the company or governmental agency.

With respect to these proposed changes, it is the opinion of the Board that the present arrangements should continue. The adjustments recommended elsewhere in this report create a total cost package which does not permit approval of additional cost items. Furthermore, the Organization did not present convincing evidence to show that these rules revisions were meritorious by the tests of established practice or serious hardship to the men.

C. *Provision for sick leave for captains.* Little or no evidence was offered by the Organization in support of this claim, nor was there an explanation why the captains are any more entitled to sick leave benefits than the unlicensed personnel. The Board cannot recommend the adoption of such a provision.

D. *Provision that carriers authorize the New York Harbor Committee of the General Managers' Association to act as their mutual and initial representatives in all negotiations with the Organization.* In the course of the hearings, Captain Atkins of the Organization made it clear that this was a "request" and not a "demand." Accordingly, the Board does not consider it a substantive issue on which a recommendation is required. In any event, there is doubt whether this issue is admissible in the light of the Railway Labor Act provision (section 2) which states that representatives, for the purpose of this Act, "shall be designated by the respective parties without interference, influence, or coercion, by either party over the designation or representatives by the other * * * ."

E. *Holiday pay at two and one-half times the straight-time rate for work performed.* The Board has given careful study to this issue, including the historical treatment of the holiday premium claims advanced by the operating and nonoperating railroad organizations. At the present time the agreements between the carriers and the Masters, Mates and Pilots in the New York Harbor provide as follows:

"Employees required to work on any of these holidays shall be

paid at the rate of one and one-half of the straight-time hourly rate * * * ."

The carriers point out that the railroad industry is a continuous process industry, and historically parties to the agreements as well as various governmental boards have recognized that it is improper to penalize the carriers for what they cannot avoid, i. e., operating on Saturdays, Sundays, and holidays. For this reason operating employees do not receive premium pay for work performed on such days, while nonoperating employees do receive the premium pay on the theory that the carriers are in a better position to avoid working the customary "rest days" in the case of the latter group of employees. The premium payment in effect in the nonoperating agreements is the time and one-half rate.

Although the Board recognizes that the present rates are designed to reflect recognition of holiday payment in this continuous operation marine service and although the pattern of premium payment among nonoperating groups is well established at the time and one-half rate, there is some merit in the Organization claim. In reviewing the record it finds the following:

(1) The New York Dock Railway, a party to these proceedings, negotiated an agreement with the United Marine Division, Local 337, AFL, on January 25, 1957 in which a clause was adopted providing for an aggregate of double time if an employee is required to work on a designated holiday. (Railroad Exhibit 30.)

(2) The Pennsylvania Railroad Co. agreement with the Masters, Mates and Pilots, dated July 3, 1957, and applicable to captains in the Philadelphia Harbor provides for double-time payment if work is required on the holiday. (Organization Exhibit No. 1.) This same clause appears in the Reading Co. and Baltimore & Ohio Railroad agreements in Philadelphia.

(3) The Agreement between the Marine Towing and Transportation Employers' Association and United Marine Division, Local 333, AFL, dated February 1, 1957, and covering the banner tug boats in the New York Harbor, provides payment at an aggregate of two and one-half times the regular rate for required holiday work.

These settlements, considered in conjunction with the inherent merit of paying a man who works on the holiday more than one-half day's pay above the regular payment, lead the Board to conclude that the Organization's request should be granted to the extent of a double-time premium payment. The cost of such added payment is estimated to be almost 2 cents per hour. In the Board's view the Organization should be allowed to exercise the option of revising

present holiday clauses to provide for double time instead of time and one-half payment *or* to accept 16 cents per day to be added to the basic rates of all employees in lieu of the additional holiday premium.

V. Recommendations

The Board recommends that the parties enter into an agreement beginning from November 1, 1956 and remaining in effect through October 31, 1959, that embraces the following principles:

A. *Wage increases*

(1) Adoption of the wage proposal by the carriers, which includes (a) a $0.80 per day adjustment in all daily rates, effective November 1, 1956, plus $0.20 per day to be applied to health and welfare benefits or to the daily rates at the option of the Organization; (b) a $0.56 per day increase in all daily rates, effective November 1, 1957; (c) a $0.56 per day increase in all daily rates, effective November 1, 1958; (d) a cost-of-living adjustment formula of the type adopted in the 1956–57 railroad pattern settlement.

(2) In addition to the increases provided for under (1) above, further increases in the daily rates for captains and pilots in the following amounts: (a) $1.00 per day effective December 21, 1956; (b) $0.50 per day effective November 1, 1957, and (c) $0.50 per day effective November 1, 1958.

B. *Premium payment for holidays worked*

Provision for the payment of double time for work required on the contractually-designated holidays *or* in lieu thereof an additional increase in basic daily rates for all employees of 16 cents per day, effective December 21, 1956, the option to be exercised by the Organization.

C. The adoption of a 3-year moratorium clause of the type proposed by the carriers.

It is the sincere belief of the members of the undersigned Emergency Board that the above recommendations are consistent with the equities. It is their hope that careful consideration by the parties of these recommendations will lead to a peaceful and fair settlement of the current dispute.

James J. Healy *Chairman,*
Walter R. Johnson *Member,*
Benjamin C. Roberts *Member.*

APPENDIX A [1]

EXECUTIVE ORDER

Creating an Emergency Board to investigate a dispute between the General Managers' Association of New York representing the New York Central Railroad, New York, New Haven & Hartford Railroad Company, Brooklyn Eastern District Terminal, Jay Street Connecting Railroad, New York Dock Railway, Bush Terminal Railroad, Baltimore & Ohio Railroad Company, the Pennsylvania Railroad, Erie Railroad Company, Reading Company, Delaware, Lackawanna & Western Railroad, and the Central Railroad Company of New Jersey, and certain of their employees

WHEREAS a dispute exists between the General Managers' Association of New York representing the New York Central Railroad, New York, New Haven & Hartford Railroad Company, Brooklyn Eastern District Terminal, Jay Street Connecting Railroad, New York Dock Railway, Bush Terminal Railroad, Baltimore & Ohio Railroad Company, the Pennsylvania Railroad, Erie Railroad Company, Reading Company, Delaware, Lackawanna & Western Railroad, and the Central Railroad Company of New Jersey, carriers, and certain of their employees represented by the International Organization of Masters, Mates and Pilots, Inc., a labor organization; and

WHEREAS this dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended; and

WHEREAS this dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service;

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

The board shall report its findings to the President with respect to the said dispute within 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

[1] In a telegram dated August 12, 1957, from the National Mediation Board, the members of the Emergency Board were advised that the Jay Street Connecting Railroad, shown as a party in the Executive Order, was not a party to the proceeding.

to the President, no change, except by agreement, shall be made by the General Managers' Association of New York representing the New York Central Railroad, New York, New Haven & Hartford Railroad Company, Brooklyn Eastern District Terminal, Jay Street Connecting Railroad, New York Dock Railway, Bush Terminal Railroad, Baltimore & Ohio Railroad Company, the Pennsylvania Railroad, Erie Railroad Company, Reading Company, Delaware, Lackawanna & Western Railroad, and the Central Railroad Company of New Jersey, carriers, or by their employees, in the conditions out of which the said dispute arose.

[Signed] DWIGHT D. EISENHOWER

THE WHITE HOUSE
August 6, 1957.

APPENDIX B

LIST OF APPEARANCES

I. *On Behalf of the Organization of Masters, Mates and Pilots:*
Capt. C. T. Atkins, *International President*
Associated Maritime Workers, Local No. 1:
Capt. D. A. Zeller, *Vice President*
Capt. George Eisenhauer, *Secretary-Treasurer*
Local No. 3:
Capt. A. G. Hines, *Treasurer*
The committee:
Capt. E. J. McDermott
Capt. E. G. Jacobsen
Capt. H. P. Jones

II. *On Behalf of the Carriers:*
Appearance of counsel representing the Labor Committee of the General Managers' Association:
W. Scott MacGill, Washington, D. C.
J. E. Frick, Philadelphia, Pa.
E. T. Pettengill, Jersey City, N. J.
T. M. Healy, New York, N. Y.
Basil Cole, Philadelphia, Pa.
Members of the Labor Committee of the General Managers' Association of New York:
R. W. Pickard (*Chairman*), Director, Labor Relations and Personnel, the New York, New Haven and Hartford Railroad Co., New Haven 6, Conn.
G. R. Fink, Marine Supervisor, the Baltimore and Ohio Railroad Co., Dock 5, Jersey City, N. J.

J. J. Duffy, Manager, Labor Relations, the Central Railroad Co. of New Jersey, Jersey City Terminal, Jersey City 2, N. J.

L. L. Larsen, Superintendent, Marine Department, the Delaware, Lackawanna and Western Railroad Co., Hoboken, N. J.

C. E. De Joia, Superintendent, Marine Department, Erie Railroad Co., Jersey City, N. J.

C. L. Wagner, Chief of Personnel, the Lehigh Valley Railroad Company, 143 Liberty Street, New York 6, N. Y.

J. J. Gaherin, Manager-Personnel, the Long Island Railroad Co., Jamaica Station, Jamaica 35, N. Y.

C. E. Alexander, Manager-Labor Relations, the Pennsylvania Railroad Company, 1234 Six Penn Center Plaza, Philadelphia 4, Pa.

H. F. Wyatt, Jr., Director of Personnel, Reading Co., Reading Terminal, Philadelphia 7, Pa.

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