Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 10953 DATED JULY 20, 1961, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To Investigate a Dispute Between the Southern Pacific Company (Pacific Lines) and Certain of Their Employees Represented by The Order of Railroad Telegraphers.

(NMB CASES A-5904, A-6083)

WASHINGTON, D.C.

SEPTEMBER 15, 1961

(Emergency Board No. 138)

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LETTER OF TRANSMITTAL

Washington, D.C., *September 15, 1961.*

THE PRESIDENT
The White House
Washington, D.C.

MR. PRESIDENT: The Emergency Board created by you on July 20, 1961 by Executive Order 10953, pursuant to Section 10 of the Railway Labor Act, as amended, to investigate a dispute between the Southern Pacific Company (Pacific Lines) and certain of their employees represented by the Order of Railroad Telegraphers, a labor organization, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted.

HARRY H. PLATT, *Chairman.*
HUBERT WYCKOFF, *Member.*
MORRISON HANDSAKER, *Member.*

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REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD

Appointed by Executive Order 10953 dated July 20, 1961, pursuant to Section 10 of the Railway Labor Act, as amended.

This is an Emergency Board report and recommendations in a dispute between Southern Pacific Co. (Pacific Lines), a carrier, and the Order of Railroad Telegraphers, a labor organization, which has been found to threaten substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service.

I. INTRODUCTION

On July 20, 1961, the President of the United States, by Executive Order No. 10953, and pursuant to Section 10 of the Railway Labor Act, as amended, created Emergency Board No. 138 and appointed as Chairman, Harry H. Platt of Detroit, Mich., and as Members, Hubert Wyckoff of Watsonville, Calif., and Morrison Handsaker of Easton, Pa., to investigate this dispute and report to him concerning it. The Board promptly convened at San Francisco, Calif. and held hearings from July 24 to August 7, 1961. The record consists of more than 2,000 pages of testimony and 35 exhibits. Due to the size of the record the Board requested, and the parties agreed to, an extension of time for submitting this report. The extension was granted by the President on August 16, the time for presenting the report being thus extended to September 20, 1961.

The disputants are the Southern Pacific Co. (Pacific Lines), a major interstate common carrier, and its employes in the telegrapher class who are represented by the Order of Railroad Telegraphers (ORT), a labor organization. The Organization, which as a national membership of more than 35,000, represents more than 1,000 Southern Pacific tower and telegraph service employes—about 2½ percent of the Carrier's employes.

Southern Pacific owns and operates a rail system of some 8,000 miles in the States of California, Oregon, Nevada, Arizona, Utah, New Mexico, and Texas. In general, it operates from Portland, Ore. to San Francisco, from San Francisco to Ogden, Utah, from San Francisco to Los Angeles by the coast and San Joaquin Valley routes, and from Los Angeles to Tucumcari, N. Mex., and El Paso, Tex. Its

mileage represents approximately 3½ percent of the mileage operated by all Class I railroads. Its traffic is mainly manufactured products, forest products, and agricultural products. It is one of the largest carriers of perishable commodities. The Southern Pacific Transportation System includes the Texas and New Orleans Railroad (operating in Louisiana) and other separately operated controlled affiliated companies in the United States and Mexico. It also embraces the trucking operations of Pacific Motor Trucking Co. (PMT), a wholly owned subsidiary, which provides a substitute highway movement service for Southern Pacific's less-than-carload traffic. In 1956 PMT expanded its operations through purchase of Pacific Freight Lines, one of the largest motor common carriers operating in the States of California and Arizona. This brought the total mileage of bus and truck routes operated by Southern Pacific Transportation System companies to in excess of 25,000 miles. Additionally, about 1,400 pipeline miles are operated by Southern Pacific Pipe Lines, Inc., another wholly owned subsidiary. In 1960 the average total employes of Southern Pacific Co. was 42,261.

The parties' contractual relations began in 1899 with the signing of their first collective bargaining Agreement in September of that year. As is customary in the railroad industry, the Agreement was of indefinite duration. But it has been amended from time to time in accordance with the procedures of Section 6 of the Railway Labor Act. The Agreement contains a Scope Rule, Rule 1, which states that it shall govern the employment and compensation of employes who generally comprise the telegrapher class, principally ticket agents and assistant ticket agents, station agents (supervisory—major stations—nontelegraphers), station agents (smaller stations—nontelegraphers), station agents (telegraphers and telephoners), chief telegraphers and telephoners or wire chiefs, clerk-telegraphers and clerk-telephoners, telegraphers, telephoners, and towermen, drawbridge tenders, and any other positions which may exist as described in the Scope Rule.

II. THE DISPUTE

The instant dispute arose April 24, 1958, when the Organization served upon the Carrier a "Section 6" notice indicating its desire to amend their bargaining Agreement.[1] The requested change was that the following rule be added:

[1] Section 6 of the Railway Labor Act, as amended, provides: "Carriers and representatives of the employees shall give at least 30 days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions. . . . [R]ates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act. . . ."

No position in existence on April 1, 1958, will be abolished or discontinued except by agreement between the carrier and the Organization.

In conferences subsequently held, the parties were unable to reach agreement on the proposed change and the Organization invoked mediation. On May 5, 1959, before mediation efforts were exhausted, the Organization served a second notice on the Carrier of its desire to revise and supplement the existing rules and working conditions agreement between them. That notice proposed incorporation of the following rules in the Agreement:

(a) Work and positions now or heretofore assigned to employes subject to this Agreement shall not be assigned to employes not subject to this Agreement.

(b) Any function performed by work now or heretofore done by employes subject to this Agreement shall continue to be work subject to this Agreement and done by employes covered by this Agreement, irrespective of any change in the means or methods by which such function or work is performed.

(c) Positions occupied by employes and work performed by occupants of positions coming within the classifications now named or hereafter named in the Agreement between the parties, belong to the employes establishing seniority under the Agreement and neither position nor work will be removed from the jurisdiction of the Organization except by mutual agreement.

(d) Any employe who is separated from the service in accordance with provisions of the Agreement or who is deprived of employment through no fault of his own or due to a reduction in force will be granted severance pay in sufficient amount to guarantee him a minimum compensaton of the equivalent of 5 days each week or 40 hours each week at the straight time rate of the position last occupied for a period of time equal to the time he has had an employment relationship with the carrier with a minimum of one year. This compensation can be terminated within the limits named only by demise of the employe.

(e) Merger or the consolidation of positions may be effected only by mutual agreement between the parties. Any agreement to merge or consolidate positions shall contain, but not be limited to, the following provisions:

1. Locations or stations separate and distinct one from the other where one employe only and represented by the Organization is stationed shall be involved.

2. Hours of service at each location shall be posted at each location.

3. Rate of pay of not less than 20 percent in excess of the higher rate position.

4. Transportation to be furnished by the carrier, except employes will not be required to travel on freight trains. If the occupant of the position volunteers to use his own means of transportation mileage of 12 cents per mile will be paid, but one employe shall not bind his relief or successor in this respect. Travelling to be done within assigned working hours.

5. Any additional force at either location as needed shall be taken from the employes represented by the Organization.

6. Allocation of the merged position and rights of the employe not used.

7. The occupant of the merged position shall be compensated under the rules of the Agreement if work is performed by other employes at either location within or outside the assigned hours.

Failing after a number of conferences to reach agreement with the Carrier on its proposed rules, the Organization again invoked the services of the National Mediation Board. The Board's mediation efforts were unsuccessful, however. It requested the parties to submit the controversy to arbitration under the provisions of Section 8 of the Railway Labor Act but both declined. In consequence, on March 28, 1961, the National Mediation Board terminated its services and so advised the parties in writing. The Organization thereafter called a strike to begin on July 24, 1961. The creation of this Emergency Board followed.

III. SCOPE OF ISSUES AND POSITIONS OF THE PARTIES

The Organization states that the underlying issue is whether the employes it represents are to have a voice in actions and decisions of the Carrier which affect the tenure, stability and security of their jobs and opportunities for continued employment. It complains that since 1955 heavy displacements and loss of opportunity for continued employment due to diversion of work to other crafts, to station closings, abandonment of facilities, regionalization of agencies, centralized traffic control, dieselization, and other organizational and technological changes have resulted in a loss of more than 600 telegrapher positions and created personal hardships and unstable employment conditions in the telegrapher craft. The Organization therefore seeks a rule which would prohibit the Carrier from unilaterally abolishing positions which existed in fact on April 1, 1958. Additionally, it has proposed rules (1) barring unilateral transfer of any functions, work and positions "now or heretofore" performed or held by telegraphers; (2) requiring payment of severance pay to displaced employes; and (3) guaranteeing certain minimum benefits for agency employes where the Organization consents to merger or consolidation of positions.

In closing arguments before the Board, the Organization, recognizing some overlapping in purpose between its first and later proposals, requested the Board to recommend the former. If such a recommendation is made and adopted, it feels confident that whatever bargaining might be required to achieve the objectives of the later proposals would necessarily occur when the Carrier seeks to abolish positions and asks the Organization to agree.

The Carrier sees in the various proposals an effort by the Organization, through the collective bargaining processes of the Railway Labor Act, to arrogate to itself the authority of Management in decisions which vitally affect the operations of the railroad; to gain an indefinite retroactive veto power over discontinuance of jobs and facilities; to

achieve a "job freeze" as regards telegrapher positions in existence on April 1, 1958. It states the proposals are designed to halt technological progress, retard modernization and simplification of work methods, and thwart waste elimination and duplication of services. It also views the proposals as an attempt by the Organization to acquire jurisdiction over work which for many years has been within the exclusive jurisdiction of other crafts on the railroad; and by the stratagem of an excessive severence pay demand to make the cost of technological changes prohibitive. The Carrier denies that work belonging to the telegraphers has been diverted to other crafts and persons. It attributes the decline in telegrapher positions to elimination of train orders, improvements in operating practices and facilities, installation of centralized traffic control, dieselization, and reduction in passenger train service. The proposed rules, it believes, are not necessary to protect individual employes and if adopted would interfere with the Carrier's efforts to serve the public convenience and necessity.

IV. GENERAL DISCUSSION, FINDINGS AND CONCLUSIONS OF THE BOARD

The Organization's proposals present issues which have long been a serious concern of railway management, railway labor, and the public. Essentially, the problem is the high rate of employe displacement caused by technological and organizational changes on the railroad and elimination of positions no longer considered by the Carrier to be useful or necessary. To protect its members from the impact of such changes, the Organization proposes that no job or position which existed on April 1, 1958, will be abolished or discontinued except by mutual agreement of the parties. The issue thus raised is not a new one; nor is the problem confined to the railroad industry. Labor Secretary Arthur J. Goldberg recently stated:

> The issue being joined in our economy today—one that is present in some form in every major industrial negotiation—is simply stated: How can the necessity for continued increases in productivity, based upon laborsaving techniques, be met without causing individual hardship and widespread unemployment?[2]

It is doubtful if the railroad industry can any longer be said to occupy a monopoly position in our economy. It faces severe competition from other forms of transportation and has been experiencing large traffic and revenue losses. These losses naturally have affected

[2] Challenge of "Industrial Revolution II," New York Times Magazine, April 2, 1961, p. 11.

railway employment and they account in part for the downward employment trend in the railroad industry generally. But the evidence does not indicate that they are the foremost causes of telegrapher employe displacement on this railroad. The causes here have largely been increased operating efficiency, improved technology, and laborsaving innovations. Laborsavings, including those from station closings, dieselization, centralized traffic control, and regionalization of service, nearly always lead directly to elimination of jobs, whether or not any employe actually loses his job at precisely the time the action is taken. National transportation policy, to be sure, encourages economy and maximum efficiency in the performance of the transportation function. The question asked by the Organization is whether, in implementing the national policy, it is not also in the public interest to afford job protection to railway employes adversely affected by operational changes and technological advances.

A. LOSS OF TELEGRAPHER POSITIONS

In 1955 average telegrapher employment was 1,689; by 1960 it had dropped to 1,068. This loss of 621 telegrapher positions in 5 years represents a decrease of 36.8 percent. During the same 5-year period total employment on Southern Pacific declined only 29.4 percent and total telegrapher employment of all Class I railroads declined only 21.3 percent. And, we note, in the 2 years following the Organization's first proposal in April 1958, telegrapher employment on Southern Pacific fell from 1,320 to 1,051.

The decline in telegrapher employment on Southern Pacific has therefore been substantial both since 1955 and 1958. We find that the major factors responsible for the longrun decline are: (1) technological improvements, innovations, and changes in work methods, and (2) the large number of station closings. Shortrun factors are seasonal and cyclincal fluctuations.

(1) *Technological Improvements, Innovations, and Changes in Work Methods*

Technological and methodological changes on the Carrier's property have, admittedly, most reduced the need for telegrapher services. The Board finds that the reduced need stems largely from elimination of much of the train order work telegraphers used to perform and from development of technological efficiency through:

(a) *Installation of Centralized Traffic Control Systems*

CTC electronically controls and directs the movement of trains from a single point over a wide area of railroad territory where the trains formerly moved under train orders handled by telegraphers. It raises the traffic capacity of a single main-track line to handle trains by

about 70 percent and dispenses with train orders entirely. The Carrier first installed CTC in 1930, and by 1960 the installations comprised 1323.6 miles, of which 715.2 miles had been installed during 1930 to 1956, and 607.4 miles during 1959 and 1960.

At the outset of 1930 and progressively during the course of these installations, the Carrier has consistently manned these CTC systems with train dispatchers and progressively abolished telegrapher positions in CTC territory where trains no longer move under train orders. Currently the CTC system is manned by 56 individual train dispatchers represented by the Train Dispatchers' Organization filling thirty-one 5-day assignments and 25 relief assignments. These CTC installations have been, and will continue to be as they are extended, a substantial and direct cause of the abolishment of telegrapher positions. At no time in the course of these installations has the Organization challenged the attendant abolishment of telegrapher positions. In 1940 however, it made a request that telegraphers man CTC machines. The request was denied and the dispute went to Mediation; but in 1942 the Organization withdrew the dispute from Mediation.

(b) *Complete dieselization*

This permits movement of heavier tonnage per train at a higher speed and substantially eliminates the need for helper engine movements and facilities. The further effect of dieselization has been to eliminate train stops for refueling, watering, inspection, and checking of retaining valves, thus reducing the number of train orders required and permitting the closing of intermediate telegraph offices which were maintained mainly for train order purposes.

(c) *Reduction of passenger train service due to lack of traffic*

There has been a reduction of some runs of 50 percent in the number of through passenger trains operated. In addition, establishment by the U.S. Post Office of a metropolitan distribution system, which brought about elimination of intermediate passenger train stops between the centralized mail distribution centers, also eliminated at intermediate stations a number of station duties of telegraphers.

(d) *Regionalization of Agency Accounting*

The Carrier has progressively established various Regional Offices where certain accounting and clerical functions are performed for a large number of adjacent local agencies or stations. In 1938 waybilling, expensing, and accounting for nine local agencies was transferred to a regional office; and a proportion of local billing was transferred to Regional Offices from 19 local agencies in 1942 and from 39 local agencies in 1948. In 1951 the Carrier completely mechanized its yard office clerical procedures through the installation of an extensive IBM system in yard offices. In 1951 and 1953 the Organization sub-

mitted claims challenging certain aspects of regionalization; but when the Carrier denied these claims, they were not progressed further.

With this start the Carrier made a comprehensive study of regionalization and progressively between September 2, 1958, and May 21, 1961, Regional Offices were established at 13 large stations which resulted in the elimination of a very substantial portion of the local agency accounting functions at 281 local agencies. The 13 Regional Offices selected contained concentrations of specialized clerical personnel, highly qualified supervision and modern office equipment and machines designed for high volume operations. This program has resulted in the reduction of 97 positions represented by the Clerks' Organization and 12 positions represented by the Telegraphers' Organization.

Although many agencies have been closed that were not involved in regionalization, the evidence supports the conclusion that regionalization has been, and will continue to be, a substantial contributing factor in agency closings. There are now pending but undetermined before the National Railroad Adjustment Board, claims which challenge various phases of regionalization.

(e) *Pacific Motor Transport Station, Clerical and Related Accounting Work*

The clerical forces of PMT are represented by the Clerks' Organization and its other employees by the Teamsters' Organization. Until 1958 by contract with PMT, Southern Pacific handled all PMT station, clerical and related accounting work as well as the physical handling of freight with Southern Pacific forces. On a progressive basis between December 1958 and April 1959, PMT elected to terminate this contract and to perform this work with its own forces.

(2) *Station Closings*

An accelerated program of station closings accounts for a number of the lost positions in the telegrapher class; and this is a major source of complaint by the Organization.

From 1955 to July 31, 1961, 160 stations were closed by this Carrier—about 140 of them since January 1958. It now has 290 open agencies, including 4 seasonal agencies, and 1451 nonagencies where its business is handled but at which no Carrier agent is employed. Of the closed stations, 144 were "one-man" agencies located in small communities and having in some cases a small volume of business and insufficient work to keep an agent busy more than a few hours a day. Economies resulting from closing a station amount to a minimum of about $6,000 per year per station—representing mainly the agent's salary. Additional savings accrue from unrequired property

and tariffs maintenance, equipment and supplies, inspection, and supervisory services. Authorization from State regulatory bodies is required before a station may be closed.

A major irritant to the Organization has been the apparent failure of State regulatory bodies, when weighing the public necessity and convenience, to consider the welfare of the employes and the effects upon them of discontinuing station service. Generally, the question before such bodies is whether to approve a station closing in light of the interest of both the railroad and the public. Usually considered are such factors as volume and nature of the station's business, revenue derived from the station, cost of maintaining agency service there, proximity and accessibility of other stations, adequacy of the service proposed to substitute for existing service and whether such substituted service would meet the needs of the community. Of the ultimately approved requests of the Carrier for authority to abandon stations in the above period, State regulatory bodies and courts authorized, after hearings, station closings in 61 percent of the applications and, without hearings, but after posting of notices and on petitions based on the concurrence of shippers and other interested parties, in 39 percent of the applications. Seven applications for station closing were denied.

It is not the function of this Board to review the actions of State regulatory bodies in authorizing station closings and we have no reason to question the legality of any orders that have been made. Nevertheless, the Organization's desire for an opportunity to influence the Carrier in steps it might take to abandon station service and thus abolish jobs, is understandable. Considering that Congress has directed particular attention to the requirement of stable and fair terms and conditions of railroad employment, it seems hardly right that the welfare of the employes should receive little or no consideration in weighing the public necessity and convenience. Surely, the public interest in station abandonments, as in other railway changes affecting it, comprehends the interest of all groups or elements of the public, including railway employes. Efficiency and economy are not the sole determinants of the public interest; fully to serve the public interest a national transportation system must also assure fair and stable employment conditions.

(3) *Diversion of Telegrapher Work*

In discussing the May 5, 1959, proposals, the Organization suggested that the problems of disemployment in the telegrapher class have stemmed not wholly from the disappearance of work "but from its diversion to other means of performance and by employes not

covered by the agreement." More specifically, it claimed there has been a diversion of telegrapher work in that: increased less-than-carload traffic is handled by trucks of the Pacific Motor Trucking Co., a wholly owned subsidiary of the carrier; many agent functions in connection with traffic handled by Pacific Motor Trucking Co. and other agent duties have been removed from the agencies and variously distributed; there has been contracting out to strangers of certain "caretaker" duties which remained after an agency has been closed; certain communications duties have been transferred to train crews and other tasks have been transferred to industrial clerks; station accounting duties have been transferred to regional agencies where they are performed in major part by employes not subject to the ORT agreement. The organization further contended that at many of the closed stations, the business is still there and the presence of an agent is necessary.

The Carrier maintains that in each instance telegraphers' work has either disappeared or has been properly diverted consistently with the Scope Rule of the Telegraphers' Agreement and applicable decisions of the National Railroad Adjustment Board. More specifically, it is the Carrier's position that the manning of CTC panels on this property is dispatchers' work; and although on some other properties both dispatchers and telegraphers participate in the operation of CTC systems, the Scope Rule of the Southern Pacific Telegraphers' Agreement does not mention CTC operations and the Organization appears to have acquiesced over many years in the manning of CTC panels by dispatchers and in the resultant displacement of telegraphers. Further, it is the Carriers' position that, as between the Telegraphers' Organization and the Clerks' Organization, clerical work is not the exclusive work of either craft; and that the lines of demarcation between the two crafts have been long and definitely established by awards of the National Railroad Adjustment Board (see Award 615, April 1938).

There is no doubt that telegraphs have lost a substantial amount of work, particularly since 1958, which they historically performed; but there is room for argument whether the telegraphers' work has "disappeared" or been improperly "diverted." However, it is not this Board's task to decide whether the Scope Rule of the parties' Agreement has been breached. If breaches of contract have occurred, they are subject to redress in the machinery provided by the Railway Labor Act. But in any event, we are persuaded that a rule to bar absolutely the transfer of work and functions "now or heretofore" performed by telegraphers would not necessarily contribute to an effective employ-

ment stabilization program; more likely, it would thwart legitimate cost-saving efforts and hamper efficiency of operations, and in the long run this might decrease the volume of employment by causing a loss of revenue and diminishing the competitive position of the Carrier.

(4) *Increased Productivity*

Railroad employment is affected by productivity as well as traffic volume. Increased productivity in terms of output per employe contributes to cost reduction and leads directly to reduced employment, given a fixed or declining traffic volume. Productivity data in the current dispute indicates that in the last decade employe productivity in the telegrapher class, measured in terms of traffic volume, revenue traffic units per telegrapher employe, revenue traffic units per hour paid for per telegrapher employe, gross ton-miles per telegrapher employe, and gross ton-miles per hour paid for per telegrapher employe has increased. The Carrier asserts that this increased productivity is more attributable to large capital expenditures for new equipment, dieselization, and modernization of service and facilities than to employe effort. The relevance of this point is unclear inasmuch as wages are not really the subject of this dispute. The fact remains that the downward longrun trend in telegrapher employment is largely due to increased overall operating efficiency.

B. EMPLOYMENT STABILIZATION PROGRAM

(1) *The Organization's Proposal of April 24, 1958*

Currently in the railroad industry, as in other industry, proposals to regularize employment and measures to alleviate the consequences of technological change are occupying the center of attention. As we have noted, the Organization's principal proposal contemplates dealing broadly with those problems through a rule which would bar the Carrier from abolishing any telegrapher position in existence on April 1, 1958, except by agreement with the Organization. The Organization believes that such a rule, giving it a voice in decisions over job abolishment, would lead to stabilized employment and income security for its members.

The Board does not question the Organization's right to advance the proposal; it is a bargainable matter. Nor are we unmindful that the collective bargaining process may in fact provide the best hope for employes to obtain relief from job and income instability. Nonetheless, any proposal made in collective bargaining for job stabilization needs to be judged on its merits and in light of the conditions

and practices which exist in the employment relationship to which it is applicable. More than that, its primary objective should not be to freeze existing jobs but to stabilize employment without seriously retarding technological progress. The American public has long recognized the inevitability of technological change and, we think, generally believes that the national transportation policy will be effectuated by encouraging and facilitating technological advance. A "job freeze" provision would thus not meet with public aproval. Indeed, a provision in the Emergency Railroad Transportation Act of 1933 which amounted to a jobfreeze is believed to have been one of the principal reasons for allowing that law to expire; and a similar provision was rejected by the Congress when it enacted the Transportation Act of 1940.

In the judgment of the Board, the Organization's 1958 proposal is neither a practical nor realistic solution to the employe displacement problem. An employment stabilization program based upon rules which freeze existing jobs, bar improvement in work methods and blocks technological progress reaps more damage than benefit. For, to so hamper operational improvement and efficiency must inevitably diminish the competitive position of the industry or its segment and force its retreat from the "market place." The ultimate cost to all the employes in such circumstances would be serious and inescapable. We believe that the Organization's 1958 proposal if adopted would effectively prevent the Carrier from achieving the greater operational efficiency which the economic pressures of our times make necessary. It would inhibit unification of facilities, modernization of services, simplification and redistribution of work and functions. While the proposal seems only to seek for the Organization a voice in actions and decisions affecting its members' tenure and security, it would, in our opinion, vest in it a veto power over vital managerial judgments. The Board believes that the problem of instability in the telegrapher craft, substantial as it is, cannot be solved in this manner and does not warrant vesting of such powers of veto in the Organization. Accordingly, we recommend that its proposal of April 24, 1958, be withdrawn.

(2) The Organization's Proposals of May 5, 1959

Certain of the Organization's 1959 proposals, although aimed principally at halting work diversion, would have the effect of freezing jobs. For the reasons already given the Board recommends that proposals designated (a), (b), and (c) be withdrawn. This is not intended, however, to foreclose exploration by the parties of more feasible approaches of job stabilization.

Various employment stabilization measures have been suggested, both within and without the railroad industry, which do not have the effect of freezing existing jobs or vesting veto powers over vital managerial decisions in the Union. In general, they have been proposals for retraining employes for new or different jobs; giving preference to displaced employes for new positions; reducing hiring until regular employment is assured displaced employes; broadening seniority units to increase job opportunities for displaced employes; limiting job abolishment to an agreed number per year; specifying minimum employment by agreement; reducing working hours; providing income security; giving advance notice and consulting over material changes in work, methods and functions; and others.[3]

We think it would be unwise to make positive recommendations as to the suggested measures, except one. We believe that only through actual negotiation and practical experience can a workable employment stabilization program be devised; and we are convinced that the persons who are most informed as to the factors which create instability in their employment relationship and are best able to judge the effects of any proposed stabilization measure are the proper ones to work out a program for job stabilization. Moreover, the parties have apparently not, either in collective bargaining or in mediation, seriously considered any of the above discussed measures. The Railway Labor Act obligates them to exert every reasonable effort "to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise." We therefore urge the parties to consider the above measures, and any others which may suggest themselves, in an endeavor to agree upon a workable employment stabilization program.

We recommend that, as a minimum, the parties agree upon a rule which would require reasonable advance written notice by the Carrier to the Organization of any contemplated abandonment of station service, job abolishment, or material change in work methods involving employes covered by the telegrapher agreement. The rule should further require joint discussion of the manner in which and the extent to which employes represented by the Organization may be affected by such abandonments or changes, with a view to avoiding grievances

[3] Some of the suggested measures are discussed in a recently published report to the Brotherhood of Maintenance of Way Employees. The report, by Prof. William Haber, John J. Carroll, Mark L. Kahn, and Merton J. Peck, analyzes the sources of instability in maintenance of way employment on U.S. railroads and discusses remedial measures.

arising out of the terms of the existing agreement and minimizing adverse effects upon the employes involved.

(3) *The Organization's Proposal for Agreement on Station Dualization*

Paragraph (e) of the Organization's May 5, 1959 proposals requests a rule which would permit merger or consolidation of positions only by agreement of the parties and on condition that certain minimum benefits for agency employes be provided. This proposal relates precisely to station dualization. Dualization involves using an agent to divide his worktime between two stations when the work at both stations has diminished but has not entirely disappeared.

In 1932 Southern Pacific dualized two agencies upon the theory that such a consolidation of positions was authorized under the rules of the Telegraphers' Agreement. Authority had been secured from the State regulatory body, not to close either agency, but to reduce the hours during which each station would remain open, thus converting both from full-time to part-time agencies, both jointly manned by one agent.

At that time the policy of the Organization was against dualization and a claim against Southern Pacific was progressed to the National Railroad Adjustment Board which ruled (Award 388, February 25, 1937) that such a consolidation of positions violated the rules of the Telegraphers' Agreement and that, as long as both stations remained open, an agent at each station was entitled to be paid full-time. Southern Pacific then abandoned dualization and has ever since pursued a policy of either keeping stations fully open or closing them entirely.

About 1954 the Organization changed its policy; and, although it was under no obligation to do so, more than 100 dualization agreements have been negotiated by the Organization since 1957 with various eastern carriers. These dualization agreements authorize dualization and generally provide a new wage rate for the dualized position (the proposal is for a rate not less than 20 percent in excess of the higher-rated position), travel expense and posted hours of service at each location. However, the evidence is that Southern Pacific not only has not dualized stations but still retains a firm policy opposed to agency dualization. In these circumstances, the proposed rule is unnecessary. Besides, since the Carrier acknowledges it may not unilaterally dualize stations, it would have to negotiate for the Organization's consent in any case, and in the process, the precise terms of a dualization agreement could be bargained out. We therefore recommend that this proposal, paragraph (e), be withdrawn by the Organization.

C. INCOME STABILIZATION PROGRAM

Besides job stabilization, the Organization's proposals contemplate a program of income stabilization and protective measures for employes who are adversely affected by technological and organizational changes.

After due consideration, the Board concludes that protection from the adverse effects of technological changes, laborsaving innovations, and organizational changes such as have occurred on this railroad is a proper and legitimate employe demand. It may be, as some people believe, that the crisis in railway employment caused by the development of technological efficiency cannot be completely solved by private agreements between the carriers and labor organizations; but surely they can help mitigate resulting personal hardships and dislocation. In large part, technological efficiency and functional reorganization are aimed at reduction in labor expense. The consequence of changes and innovations such as abandoning stations, centralizing accounting activities, regionalizing agencies, and installing centralized traffic controls, is a reduction in need for telegrapher and tower service. Surely none would argue that the brunt of technological change and cost-saving should fall only upon the employes. Many would urge, rather, that part of the economies thus realized should be used to alleviate the social cost of technological advance. This philosophy is not new or alien to the railroad industry; on the contrary, it is an extension of the rationale which public policy has affirmed and which underlies many income security provisions in collective bargaining agreements.

The first recognition by Congress of the principle of job protection for railroad employes came with passage of the Emergency Railroad Transportation Act of 1933. It provided that no individual who was employed in May of 1933 should be dismissed or placed in a worse position with respect to his compensation because of any undertaking pursuant to the Act. The Act expired in 1936. But before it expired, on May 21, 1936, a collectively bargained agreement, virtually national in coverage, was signed which specified conditions for protecting employes in the event of merger or consolidation. Known as the "Washington Job Protection Agreement," is provides, among other things, that for a period of 5 years no employe shall be in a worse position with respect to pay and working conditions than he was at the time of the consolidation, so long as he is unable to exercise his seniority to obtain another position of equal or higher pay which does not require a change in his residence; employes compelled to move on account of a coordination must be reimbursed by the Carrier

for moving expenses and any loss suffered in selling their homes; employes displaced as a result of the consolidation must be paid monthly "coordination allowances" of 60 percent of previous average monthly earnings, the duration of payment depending on length of service; a displaced employe may elect to resign from the railroad and receive a lump sum "separation allowance" amounting to a year's pay if his length of service was 5 years or more.[4]

The Washington Agreement has been reinforced by public policy. The Transportation Act of 1940 covering essentially the same action as the Washington Agreement, i.e., merger or consolidation, provides protection for employes adversely affected by impaired employment conditions for 4 years or for a period equal to their prior service if less than 4 years. And the Interstate Commerce Commission, after extending the principle of the Washington Agreement to abandonment actions, has almost universally imposed the protective conditions of the Washington Agreement, with some modifications, to employes adversely affected either by coordination or line abandonment.[5] Neither the Washington Agreement nor any existing Federal law however affords job or income protection to employes who are displaced as a result of technological and organizational changes—a present objective of the Organization.

In the opinion of the Board, the parties should, through the process of collective bargaining, agree on protective measures for employes in the telegrapher class who are adversely affected by technological and organizational changes on this railroad. This would extend the principle of job protection which the parties subscribed to in the Washington Agreement so as to cover employes who may be adversely affected by other actions than consolidation and abandonment. Specifically, the protection thus extended would cushion the impact on

[4] The Agreement further provides: When a coordination is contemplated, the Carrier must give 90 days' notice by posting and by advising the Organization; there must be a conference on how the Washington Agreement is to be applied; an employee who is affected by a coordination is not to be deprived of benefits he enjoyed in his previous employment such as, free transportation, pensions, hospitalization, relief, and so forth, so long as such benefits are received by other employees on his home road; if an employee is furloughed within 3 years after changing his point of employment as a result of a coordination and he elects to move back to his original point, the Carrier will pay the expense of moving his household and other personal effects; if the Carrier shall rearrange or adjust its forces in anticipation of a coordination with the purpose or effect of depriving an employee of the benefits of this Agreement, he shall nonetheless be entitled to them.

[5] The Interstate Commerce Commission frequently imposes the so-called New Orleans conditions which prescribe: Employes retained on the job but in a lower paying position receive the difference between the two salaries for 4 years following the merger or abandonment; dismissed employes receive their old salaries for 4 years, less whatever they make in other jobs, or they may elect a lump sum payment; transferred employes receive certain moving expenses, and certain fringe benefits are insured; and any additional benefits that a given employe would have received under the Washington Job Protection Agreement are guaranteed.

employes of technological and organizational changes. In the context of the times we think the extension is justified. There is little difference between displacement caused by technological and organizational change and that caused by consolidation and line abandonment. For they produce the same conditions of personal hardship, dislocation and income insecurity. The essential objective of our national transportation policy, as we have noted, is to achieve an adequate, economical, and efficient railroad transportation system. We believe this national policy comprehends as well the stability of railroad employment and fair and reasonable treatment of railway employes. It cannot seriously be urged that there is no relationship between just and reasonable treatment of railroad employes and maintenance of an adequate, efficient transportation system. Certainly, the Congress was cognizant of this; it recognized "that just and reasonable treatment of railroad employes is not only an essential aid to the maintenance of a service uninterrupted by labor disputes, but that it promotes efficiency, which suffers through loss of employe morale when the demands of justice are ignored." [6]

We find no reason either in equity or in logic for making a distinction between mitigating hardship and dislocation imposed on these railroad employes through consolidation or line abandonment and hardship and dislocation imposed on them by technological and organizational change made by the Carrier in the interest of efficiency. We therefore recommend that the parties negotiate and embody in their agreement protective conditions for employes adversely affected by technological and organizational changes. Such conditions should afford them protection for a period of time by providing dismissal pay and coordination, moving expense, and property loss allowances. In general, they should encompass the protections afforded by the Washington Agreement, reduced as to dismissed employes to the extent of compensation received in other employment or under unemployment insurance laws.[7] In so recommending, we have in mind that protective conditions proposed apply only to employes who have been or will be displaced by technological or organizational changes, not to those temporarily laid off due to seasonal or cyclical fluctuations.

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[6] *United States* v. *Lowden,* 308 U.S. 225.

[7] The Organization requested a severance pay rule which, in our judgment, is too sweeping and extensive. It would call for monthly payments to severed employes equal in number of payments to the total number of months of employment of the individual with the carrier. The monthly payments would terminate with the death of the employe. Thus, for example, an individual who is severed because of technological or organizational changes at the age of 62, after 30 years of service, would be eligible for monthly severance pay until age 92, if he lived that long. He would, under the Organization's proposal, receive this monthly separation allowance even though he would also, during much of this time, be receiving other benefits under existing laws.

RECOMMENDATIONS OF THE BOARD

In summary, the Board finds and recommends that the dispute committed to its investigation and report be resolved in this manner:

1. The Organization's proposal of April 24, 1958 should be withdrawn.

2. Paragraphs (a), (b), (c) and (e) of the Organization's proposal dated May 5, 1959 should be withdrawn.

3. The parties should explore more feasible approaches to regularization of employment and endeavor to reach agreement on a job stabilization program for employes in the telegrapher class.

4. The parties shall, as a minimum, incorporate a rule into the Agreement which would require reasonable advance written notice by the Carrier to the Organization of any contemplated station closing, job abolishment, or material change in work methods involving employes covered by the Agreement. The rule should further require joint discussion of the manner in which and the extent to which employes represented by the Organization may be affected by such abandonments or changes, with a view to avoiding grievances arising out of the terms of the existing agreement and minimizing adverse effects upon the employes involved.

5. The parties should negotiate an agreement on protective measures for employes who are adversely affected by technological and organizational changes. Such protective measures should not apply to employes temporarily laid off due to reasonal and cyclical fluctuations. The measures should afford protection for a period of time to employes who suffer reduced pay or unemployment as a result of technological and organizational changes and reimbursement for moving expense and property loss to employes forced to move as a result of the changes, and in general should comprehend the protection afforded by the Washington Job Protection Agreement, reduced as to dismissed employes to the extent that they receive compensation in other employment or under unemployment insurance laws.

Respectfully submitted.

HARRY H. PLATT, *Chairman.*
HUBERT WYCKOFF, *Member.*
MORRISON HANDSAKER, *Member.*

WASHINGTON, D.C., *September 15, 1961.*

APPENDIX A-1

APPEARANCES

On Behalf of Southern Pacific Company:

W. A. Gregory, General Attorney.
W. R. Denton, Attorney.
H. S. Lentz, Attorney.
K. K. Schomp, Manager of Personnel.
C. A. Ball, First Assistant Manager of Personnel.

On Behalf of the Order of Railroad Telegraphers:

Schoene and Kramer, by Lester P. Schoene, Attorneys for the Organization.
E. L. Oliver, Economic Counsel, Labor Bureau.
G. E. Leighty, President, ORT.
A. O. Olsen, Vice President, ORT.
H. D. Smith, General Chairman, Southern Pacific Company (Pacific Lines).
W. E. Fisher, Secretary-Treasurer, Southern Pacific Company (Pacific Lines).

APPENDIX A-2

EXECUTIVE ORDER No. 10953

Creating an Emergency Board to Investigate a Dispute between the Southern Pacific Company (Pacific Lines) and certain of its employees

WHEREAS a dispute exists between the Southern Pacific Company (Pacific Lines), a carrier, and certain of its employees represented by the Order of Railroad Telegraphers, 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 this dispute. No member of the board shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier.

The board shall report its findings to the President with respect to the 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 Southern Pacific Company (Pacific Lines), or by its employees, in the conditions out of which the dispute arose.

[Signed] JOHN F. KENNEDY

THE WHITE HOUSE,
July 20, 1961.

APPENDIX A-3

Sys—450-Miscl

THE ORDER OF RAILROAD TELEGRAPHERS,
SYSTEM DIVISION NO. 53
808 Pacific Building, San Francisco, 3, Calif., April 24, 1958,

BY CERTIFIED MAIL
MR. K. K. SCHOMP,
Manager of Personnel,
Southern Pacific Co., 65 Market St., San Francisco 5, Calif.

DEAR SIR: Please accept this as a formal notice served under the provisions of the Railway Labor Act, specifically Section 6, of a desire of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) to amend the current agreement by having a rule reading:

> No position in existence on April 1, 1958 will be abolished or discontinued except by agreement between the Carrier and the Organization.

Please advise place, time, and date for initial conference. Your attention is directed to status quo provisions of Railway Labor Act, Section 6.

Yours truly,

BC-G. E. Leighty (2)
General Committee
IBM/s

General Chairman.

APPENDIX A-4

THE ORDER OF RAILROAD TELEGRAPHERS,
SYSTEM DIVISION NO. 53
808 Pacific Building, San Francisco 3, Calif., May 5, 1959.

BY CERTIFIED MAIL
MR. K. K. SCHOMP,
Manager of Personnel,
Southern Pacific Co., 65 Market St., San Francisco 5, Calif.

DEAR SIR: Please accept this as the usual and customary notice, pursuant to Section 6 of the Railway Labor Act, of our desire to revise and supplement the existing rules and working conditions agreement between the carrier and the employees represented by this organization to incorporate therein the rules set forth in the attached Exhibit A.

We wish to confer with you on this proposal at your earliest convenience and, in any event, not later than June 4, 1959.

This proposal is in addition to any other proposals for revision of agreements heretofore made and not yet disposed of. Will you please advise of time, date and place for conference on this proposal.

Very truly yours,

(Signed) I. S. WILSON,
General Chairman.

BC-G. E. Leighty (2)
General Committee
Enclosure
ISW/s

APPENDIX A-5

NATIONAL MEDIATION BOARD
Washington, August 14, 1961.
Emergency Board No. 138

THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: Reference is made to your executive order dated July 20, 1961, creating an emergency board under the provisions of Section 10 of the Railway Labor Act, to investigate a dispute between the Southern Pacific Company (Pacific Lines) and certain of its employees represented by the Order of Railroad Telegraphers. Under the terms of this executive order the emergency board is required to report its findings to you on or before August 19, 1961.

We have been advised by the Emergency Board that it does not appear possible for them to conclude their investigation and report on this dispute by August 19, 1961. The parties have entered into a stipulation providing for an extension of time within which this Emergency Board shall report its findings to the President.

The National Mediation Board accordingly recommends that the requested extension of time be approved, permitting this Emergency Board to file its report and recommendations not later than September 20, 1961, inclusive.

Respectfully,

LEVERETT EDWARDS,
Chairman, National Mediation Board.

APPROVED:
(Signed) JOHN F. KENNEDY,
August 16, 1961.

EXHIBIT A

(a) Work and positions now or heretofore assigned to employes subject to this Agreement shall not be assigned to employes not subject to this Agreement.

(b) Any function performed by work now or heretofore done by employes subject to this Agreement shall continue to be work subject to this Agreement and done by employes covered by this Agreement, irrespective of any change in the means or methods by which such function or work is performed.

(c) Positions occupied by employes and work performed by occupants of positions coming within the classifications now named or hereafter named in the Agreement between the parties, belong to the employes establishing seniority under the Agreement and neither position or work will be removed from the jurisdiction of the Organization except by mutual Agreement.

(d) Any employe who is separated from the service in accordance with provisions of the Agreement or who is deprived of employment through no fault

of his own or due to a reduction in force will be granted severance pay in sufficient amount to guarantee him a minimum compensation of the equivalent of 5 days each week or 40 hours each week at straight time rate of the position last occupied for a period of time equal to the time he has had an employment relationship with the carrier with a minimum of 1 year. This compensation can be terminated within the limits named only by demise of the employe.

(e) Merger or the consolidation of positions may be effected only by mutual agreement between the parties. Any agreement to merge or consolidate positions shall contain, but not be limited to, the following provisions:

1. Locations or stations separate and distinct one from the other where one employe only and represented by the Organization is stationed shall be involved.

2. Hours of service at each location shall be posted at each location.

3. Rate of pay of not less than 20 percent in excess of the higher rated position.

4. Transportation to be furnished by the Carrier, except employes will not be required to travel on freight trains. If the occupant of the position volunteers to use his own means of transportation mileage of 12 cents per mile will be paid, but one employe shall not bind his relief or successor in this respect.

5. Any additional force at either location as needed shall be taken from the employes represented by the Organization.

6. Allocation of the merged position and rights of the employe not used.

7. The occupant of the merged position shall be compensated under the rules of the Agreement if work is performed by other employes at either location within or outside the assigned hours.

U.S. GOVERNMENT PRINTING OFFICE: 1961