Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 11015
DATED APRIL 23, 1962, PURSUANT TO
SECTION 10 OF THE RAILWAY LABOR ACT,
AS AMENDED

To Investigate a Dispute Between the Chicago and
North Western Railway Company and Certain of
Its Employees Represented by
the Order of Railroad Telegraphers

WASHINGTON, D.C.
June 14, 1962

(National Mediation Board Case Nos. A-5696 & A-5739)
Emergency Board No. 147

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *June 14, 1962.*

THE PRESIDENT,
The White House, Washington, D.C.

Mr. PRESIDENT: The Emergency Board created by you on April 23, 1962, by Executive Order 11015, pursuant to section 10 of the Railway Labor Act, as amended, to investigate a dispute between the Chicago and North Western Railway Co. and certain of its 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.

ARTHUR M. ROSS, *Chairman.*
PAUL D. HANLON, *Member.*
CHARLES C. KILLINGSWORTH, *Member.*

Report and Recommendations of Emergency Board

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REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD

Appointed by Executive Order 11015 dated April 23, 1962, pursuant to section 10 of the Railway Labor Act, as amended.

This is an Emergency Board report and recommendations in a dispute between the Chicago and North Western Railway Co., 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. BACKGROUND OF THE DISPUTE

On April 23, 1962, the President of the United States by Executive Order 11015 and pursuant to section 10 of the Railway Labor Act, as amended, created Emergency Board No. 147. The President appointed as Chairman, Arthur M. Ross of Berkeley, Calif., and as members, Charles C. Killingsworth of East Lansing, Mich., and Paul D. Hanlon of Portland, Oreg., to investigate this dispute and report to him concerning it. The Board convened in Chicago, Ill., and held hearings from April 30 to May 2 and from May 9 to May 17, 1962. Final arguments were made at San Francisco, Calif., on May 26, 1962. The record of this case consists of 1,879 pages of transcript and 30 exhibits.

In view of the importance of the issue and the size of the record, the Board requested, and the parties agreed to, a 30-day extension of time for submitting this report. The request was granted by the President, the time for presenting the report being thus extended to June 23, 1962.

The Carrier is a class I line-haul railroad operating as a common carrier in nine States: Illinois, Wisconsin, Iowa, Minnesota, South Dakota, Nebraska, Wyoming, Michigan, and North Dakota. Its system consists of approximately 10,000 miles of railroad. The Organization is one of the national organizations representing nonoperating railroad employees for collective bargaining purposes and has been certified by the National Mediation Board as a representative on this Carrier of station agents, telegraphers, tower men, and certain other employees engaged in communication duties.

In December 1961 the number of telegraphers represented by the Organization in the employ of the Carrier was 1,139, constituting approximately 10.3 percent of the railway's nonoperating employees and approximately 7.3 percent of the railway's total employees.

On December 23, 1957, the Organization served notice on the Carrier under the provisions of section 6 of the Railway Labor Act[1] requesting that the current bargaining agreement be amended by adding the following rule:

"No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the Carrier and the Organization."[2]

On December 24, 1957, the Carrier responded by letter to the Organization stating that it did not consider the requested rule a proper subject for a section 6 notice and generally taking the position that such a request was not a proper subject of bargaining under the Railway Labor Act. A single conference on January 17, 1958, failed to achieve agreement. On February 5, 1958, the Organization filed an application invoking the services of the National Mediation Board. Mediation efforts between February and May of 1958 were unavailing. On May 27, 1958, the National Mediation Board proposed that the parties submit the controversy to arbitration as provided in section 8 of the Railway Labor Act. Both parties declined. On June 16, 1958, the Mediation Board notified the parties that it was terminating its services.

On August 18, 1958, the Organization authorized a strike effective August 21. Further mediation efforts were made by the Mediation Board on August 19, again without success, and on August 20 the Board once more terminated its services.

On August 20, 1958, the Carrier filed a complaint against the Organization and certain of its officers in the U.S. District Court for the Northern District of Illinois, seeking an injunction against the impending strike on the ground that the rule demanded by the Organization was not a bargainable issue under the Railway Labor Act. A temporary restraining order was entered on that date; but after full hearing, on September 8, 1958, the District Court held that the Organization's demand was a bargainable issue under the act. The court accordingly entered a decree restraining the strike only until midnight September 19, 1958, and denying further injunctive relief. The Carrier appealed and the U.S. Court of Appeals for the Seventh Circuit reversed the District Court, holding that the contract demand

[1] 48 Stat. 1197, 45 U.S.C., section 156.

[2] On December 19, 1957, an identical but separate notice had been served upon the Chicago, St. Paul, Minneapolis and Omaha Railway Co., now a subsidiary of the Chicago and North Western Railway Co. This report and its recommendations are equally applicable to the Carrier and said subsidiary.

was not a bargainable issue and remanding to the District Court with instructions that a permanent injunction be entered as requested in Carrier's complaint. Pursuant to a petition by the Organization, the Supreme Court granted certiorari. On April 18, 1960, the Supreme Court reversed the Circuit Court of Appeals and held that the Union's request was a bargainable issue; that the case was therefore one "involving or growing out of a labor dispute"; and that the injunction as ordered by the Court of Appeals was forbidden by the Norris-LaGuardia Act. Carrier's petition for a rehearing was subsequently denied.

The legal question being at last authoritatively answered, in July of 1960 conferences were resumed at the request of the Organization. Several conferences were held between August 1960 and December 1961. No agreement could be reached, and on April 18, 1962, the Organization advised the National Mediation Board that a strike was once again authorized, this time for April 24, 1962. The National Mediation Board certified to the President that an emergency existed. On April 23, 1962, the President issued Executive Order 11015 creating this Emergency Board.

It should be noted that the proposed rule is a major objective of the Organization among the Nation's principal railroads. The Organization has served notice on 33 carriers, accounting for 60.9 percent of the Nation's railroad employment, requesting adoption of the rule by collective bargaining. An amplified version of the rule has been requested of seven additional carriers.

Furthermore, other nonoperating railway labor organizations are seeking similar position stabilization agreements with the North Western. On February 1, 1960, 14 such organizations filed a section 6 notice with the Carrier reading as follows:

All positions within the scope of the rules and working conditions agreement between the Carrier and the Signatory Organization which were in existence on May 9, 1959, and which have been abolished or have become vacant or the incumbents of which have been furloughed, shall immediately be restored and shall be filled in accordance with the applicable rules of said agreement. Thereafter no position within the scope of said agreement shall be abolished, or allowed to remain vacant, or the incumbent thereof be furloughed except after conference and agreement between the representative of the Carrier and the General Chairman of the Signatory Organization.

The 14 organizations have conducted a strike vote on this demand.

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II. PRINCIPAL CONTENTIONS OF THE PARTIES

As we have stated, the Organization demands a rule reading as follows:

No position in existence on December 3, 1957, will be abolished or discontinued except by agreement between the Carrier and the Organization.

In our 12 days of hearings, both parties made detailed presentations of data and argument which have been most helpful to the Board in formulating recommendations. It would not be feasible to recapitulate in their entirety all of the factual presentations and arguments of the Carrier and the Organization. Instead, we will summarize briefly at this point the principal contentions of each party.

A. Contentions of the Organization

The Organization holds that the need for the rule grows out of two principal developments on this Carrier since the advent of a new management in 1956. The first is an excessive elimination of jobs in the telegrapher classes. The second is the absence of any collective bargaining, either as the need for particular job eliminations, or as to terms and conditions applicable to affected employees.

The Organization estimates that between 1955 and 1962, approximately 40 percent of telegrapher positions in the North Western were abolished. Telegrapher jobs on other railroads have declined during the same period, the organization concedes; but it points out that on the majority of other roads the decline has been between 15 and 25 percent. On the basis of this and similar comparisons, the Organization concludes that the rate of telegrapher job elimination on this Carrier has been highly excessive since 1955.

The ORT argues that the industry's average rate of job abolition in a particular craft or class such as telegraphers represents a kind of collective judgment concerning the proper rate of change. No individual railroad should expect to exceed that average rate, the Organization says, unless it can show that its basic circumstances (such as the types of service rendered, territory traversed, etc.) have substantially altered. The Organization holds that such is not the case with the North Western. Therefore, it argues, there is a need for regulating the rate of job abolition in the telegrapher classes on this railroad. The ORT states that it does not oppose, and has never opposed, techno-

logical change and other methods of improving efficiency. But it argues that an excessive rate of change can produce excessive unemployment as well as excessive hardship and insecurity for those who remain in the employ of the carrier. The prevention of such excess through regulating the rate of job abolition is essential for job security, the Organization contends, not only for present employees of the railroad but for their future replacements, to whom the Organization also owes an obligation.

When the demand for the proposed rule was first served on the North Western, the ORT points out, the railroad took the position that the demand was improper under the Railway Labor Act and refused to bargain concerning its adoption. That remained the formal position of the Carrier until after the U.S. Supreme Court decision holding that the Carrier was obligated to bargain concerning the requested rule. During that period, the Organization concedes, Carrier representatives offered on several occasions to discuss the general problem of employee displacement and possible measures to alleviate this problem. As the Organization views these approaches, however, some were couched in terms that seemed to constitute a demand for the surrender of the Organization's position; and those approaches that resulted in substantive discussions came to nothing because the Carrier refused even to consider the proposal for control over the rate of job abolition. The Organization emphasizes that it was given no opportunity to participate in the policy determinations that led to extremely high rates of job abolition beginning in 1956, and that there has been no meaningful discussion of protective measures.

The Organization emphatically denies that its proposed rule contemplates a "job freeze" since jobs can be eliminated by agreement between the parties. Neither does the rule bar technological advances or improvements in efficiency through organizational changes, ORT states. In its 76-year history, the Organization declares, it has encountered many technological changes and has not sought to prevent any of them. Nor is the rule a means of perpetuating useless jobs, according to the Organization. Its position is that the Carrier should not be the sole judge of the usefulness of a position; the fact that management believes that it can dispense with a particular job does not prove that the job is useless. The Organization contends that any determination concerning the usefulness of a job should be the mutual determination of the parties, and that when agreement is reached to eliminate a job, the parties should also agree on adequate protective measures for the employees affected.

Thus the purposes of the proposed rule, the Organization states, are to ensure the following: (1) reasonable and proper control over job

elimination, rather than excessive and arbitrary elimination undertaken unilaterally by the Carrier; (2) an opportunity for the negotiation of proper rates and working conditions for employees whose duties are changed as a result of the elimination of other jobs; and (3) an opportunity to negotiate, in advance, proper protective provisions for employees displaced by job elimination.

The Organization believes that its proposed rule would provide the basis for a flexible, case-by-case approach to job elimination and the problems resulting from it. The Organization says that, if the Board believes some specification of detail is desirable, it should consider a recommendation that the parties to this dispute adopt provisions like those incorporated in the recent agreement between the Southern Pacific Co. and the Order of Railroad Telegraphers.

The subject matter of the Southern Pacific agreement is discussed below. The Organization particularly commends the Southern Pacific agreement controls over job abolition. Merely limiting the rate of job abolition to the rate of attrition would provide insufficient protection, the Organization contends; insecurity of employment can induce an abnormally high rate of attrition—about 9 percent per year since 1956 on the North Western, as compared with 4 to 5 percent per year for the railroad industry. Hence, the future limitation that job abolition in any year may not exceed a stated percentage of a base figure is essential, says the Organization.

The Organization challenges the validity and relevancy of the Carrier's plea of financial stringency. The Organization contends that many of the Carrier's statistics are misleading, and that any genuine financial difficulties are at least partly the result of mistaken and improvident policies pursued by the management since 1956. For example, the Organization argues that the institution of the Central Agency Plan, under which two or more stations are placed under the control of a single agent, has resulted in substantial loss of revenue. A good station agent can almost always develop far more business for the railroad than the cost of his salary, the Organization says. In any event, the Organization concludes, the employees should not be expected to subsidize the Carrier's policies through hardship and financial loss.

B. *Contentions of the Carrier*

To the Carrier, the fundamental issue in this dispute is whether progress should be impeded by preserving obsolete jobs or postponing their abolition. The Carrier is opposed to any kind of "job freeze," including any arrangement which gives the Organization a veto power over the abolition of jobs, or limits the rate of job abolition to the

rate of employee attrition, or places a percentage limitation on the number of jobs that may be eliminated in any year. The Carrier emphasizes that from the outset of the dispute it has been quite willing to discuss protective measures for employees who suffer hardships as a result of job abolition; indeed, it has tendered written proposals on this subject to the Organization. In the Carrier's view, however, the only question properly before this Emergency Board is whether the parties should adopt the "job freeze" embodied in the Organization's proposed rule. The Carrier believes that if this question were eliminated from consideration, the parties could readily work out mutually acceptable protective measures.

The Carrier explains the substantial decline in the number of employees in the telegrapher classes since 1955 in the following way: When the new management assumed control of the North Western early in 1956, the railroad was in a perilous financial condition; revenues had been declining rapidly, roadbed and rolling stock were in particularly bad condition, and evidences of inefficiency were abundant. The Company's competitive position was very weak. The ratio of wage costs to operating revenue was the worst or second worst in the industry. Under these conditions a thoroughgoing economy program was essential. The general purpose of the economy program, according to the Carrier, was to eliminate all unproductive uses of funds and to concentrate resources into productive channels. To accomplish this, the management organization was strengthened; al remaining steam engines were scrapped; the need to purchase additional diesel engines was eliminated through better utilization of existing engines; a modern repair facility was constructed at Clinton, Iowa; many intercity passenger trains were taken out of service; a modern commuter service was inaugurated in the Chicago area; amalgamations were consummated with the Chicago, Minneapolis, St. Paul and Omaha, and with the Minneapolis and St. Louis. Much real estate was sold off to provide additional funds; numerous freight rates were reduced; and unnecessary personnel were eliminated wherever possible.

In analyzing the curtailment of telegraph employment, the Carrier distinguished between agency and nonagency positions. A relatively small number of agency positions had been abolished by virtue of line abandonments, station consolidation with other railroads, the closing of station agencies, and the purchase of the Minneapolis and St. Louis railroad. In those cases where the Interstate Commerce Commission had jurisdiction, protective conditions similar to those embodied in the Washington Job Protection Agreement were required.

The bulk of the decline in agency positions, however, has been occasioned by implementation of the Carrier's Central Agency Program, under which two or more neighboring stations were "dualized," i.e. handled by a single agent. Up to October 1, 1961, 270 agency positions had been abolished as a result of installing the Central Agency Program in 4 States: 52 positions in South Dakota, 69 in Iowa, 101 in Wisconsin, and 58 in Minnesota. The Carrier emphasizes that this program required the approval of the State regulatory commissions, and that extensive hearings were held in all the States affected.

The Carrier asserts that the Central Agency Program was adopted for a number of reasons. The placement of stations approximately 8 to 10 miles apart was established in the mid-nineteenth century, on the principle that a farmer should be able to drive a wagonload of grain to the railroad station and return home all in 1 day. The development of hard-surface roads, telephones, automobiles and trucks made this layout obsolete and wasteful. By the 1950's less-than-carload freight had largely been lost to other forms of transportation. Prepaid carload freight did not require the services of an agent. Branch line passenger trains had disappeared for the most part. The railroad station was no longer the economic and social center of small agricultural communities. Analysis of workload showed that many station agents had very little work to do. Consolidation of agencies made it possible to continue giving service to these communities rather than closing down the stations altogether. While some local shippers and receivers of freight were apprehensive at the outset, experience has shown that adequate service can be rendered under the Central Agency Plan, the Carrier states.

The remaining job eliminations have been in the nonagency category, among the tower, telegraph, and relay employees. The Carrier states that upon assuming control in 1956, the new management found considerable inefficiency and overmanning in the utilization of nonagency forces. Among the reasons for abolishing positions have been the following; instalation of automatic gates and signals; discontinuance of trains; telegraph service no longer needed; insufficient work for two telegraphers, permitting the elimination of one telegrapher clerk; elimination of towers and installation of automatic inter-locking plants.

In the Carrier's view, the measures which it took to improve its efficiency were essential to avert imminent bankruptcy. It estimates that it has reduced nonoperating payrolls by about $20 million per year, which greatly exceeds its net income in any recent year. If

all of the telegrapher class positions abolished since December 3, 1957, had been in existence in 1961, the annual cost to the railway would have been approximately $3,850,000, which is more than the net income for 1961. The Carrier emphasizes that if ORT's proposal were granted, the other labor organizations would expect equal treatment; so that the costs of unneeded positions would be greatly increased. Such costs would be impossibly high, the Carrier states. Furthermore, it stresses that under the rules of the regulatory agencies freight rates must be "compensatory;" increases in wage costs reduce or eliminate the possibility of rate reductions to make railroads more competitive with other forms of transportation.

The Carrier believes that the Organization has no real incentive to agree to an adequate rate of job abolition. The ORT has condemned the rate of the past several years, the Carrier points out, although a slower rate might have meant bankruptcy. The Carrier emphasizes that it is not in a position to maintain a single unnecessary or obsolete position, and is sure that a large number of such positions would have to be maintained if the Organization's proposal were adopted.

The Carrier finds the terms of the Southern Pacific-ORT agreement equally objectionable. It is quite possible, the Carrier says, that this agreement will not impose unnecessary positions on the Southern Pacific; but this would not be true on the North Western, where the modernization program is still in progress.

III. CONCLUSIONS CONCERNING THE PROPOSED RULE

A. Problems of Employment Loss and Economic Stringency

The dispute between ORT and the North Western over the proposed rule is not an isolated occurrence. On the contrary, it is one reflection of the massive problem of job security in an industry experiencing radical employment declines and profound economic difficulties.

Between 1945 and 1961, average employment on class I railroads was cut almost exactly in half, falling from 1,420,266 in the former year to 717,453 in the latter. For a time, younger men with short seniority were primarily those affected; but in more recent years middle-aged and older men with many years of seniority have felt the impact of employment cutbacks. The human problems arising out of this trend have been a major concern of the railway labor organizations for many years now.

Although the railroads have been able to increase their labor productivity more rapidly than the majority of industries (between 1955 and 1960, for example, there was a 24.7 percent advance in revenue ton-miles per man-hour on class I roads), nevertheless the industry's competitive position and general economic situation have continued to deteriorate. The railroads' share of intercity freight traffic has been declining since the end of World War II in favor of private and common-carrier trucks, oil pipe lines, river and canal boats, and air carriers. In fact, even the absolute volume of railroad freight traffic may have fallen off slightly. Net incomes held up well during the first postwar decade, but have fallen off precipitously in the later period. According to the Interstate Commerce Commission, net incomes of class I railroads dropped from $927 million, or 5.7 percent of net investment, in 1955 to $382 million, or 2.2 percent, in 1961.

It is not the task of this Board to analyze or explain the railroads' economic difficulties. Suffice it to note that the Nation's transportation system as a whole, in the words of the Doyle Report to the U.S. Senate in 1961, suffers from "an excess of transport that is unequalled in this country except during the major economic depression of the thirties." And as the President stated in his Transportation Message of April 5, 1962, "Pressing problems are burdening our national transportation system, jeopardizing the progress and security on which we depend."

Under all these circumstances, it is not surprising that railroad

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employees and their organizations have become deeply concerned over the problem of job security. Neither is it surprising that the carriers have been equally preoccupied with the need to effect economies, and that conflicting demands for job security and operating efficiency have given rise to bitter labor-management disputes.

B. Position Stabilization in the Railroad Industry

To persons not familiar with collective bargaining practices in the railroad industry, the Organization's proposed rule and the alternate request for the Southern Pacific type of agreement may appear startling indeed. The decision as to how many employees are needed is ordinarily a function of management. As the Carrier points out, a majority of the Federal judges who passed on the question thought that the North Western was not obligated to bargain with ORT concerning the rule which is before us. But a majority of the U.S. Supreme Court has held that the railroad must bargain concerning the rule, and of course that question is not before us. We are called upon to recommend how this dispute should be settled in the best interests of the parties and of the general public. The formulation of a finding on this point requires a sensitivity to the special characteristics of employment and of labor-management relations in the railroad industry.

To a far greater extent than in most other industries, a change in assignment for a railroad employee frequently means a change of residence. This is particularly true of station agents in one-man agencies. The evidence in this case reveals many instances in which such agents remained in the employ of the railroad, but only by leaving a community in which they had sunk their roots; some agents voluntarily terminated their employment in order to avoid such a move. Often part of the value of a station agent to the railroad derives from his intimate knowledge of his community and especially of the needs of its principal shippers. This knowledge, which may take years to acquire, is generally not transferable to other types of employment. Changes of residence are also required rather frequently of nonagency employees. Some relatively long-service employees in the telegrapher classes on the Chicago and North Western have been "bumped down" to the extra board, which often involves work at irregular hours and in a variety of locations. As we have noted, the entire railroad industry has experienced a considerable decline in employment in recent years, and the accelerated decline which began on the North Western in 1956, when unemployment in the Nation as a whole began to creep upward, has understandably induced a feeling of insecurity among the employees. It is particularly pertinent to note that telegrapher employment was remarkably stable for a great

many years. Unlike some crafts, the telegraphers did not generally experience a substantial shrinkage of jobs in recession periods nor a sizeable expansion in prosperous periods. Hence, recent downward trends in telegrapher employment can be said to have created unprecedented problems of adjustment for employees in this category.

Another significant aspect of employment conditions on the railroads has been special public concern over the welfare of railroad employees. This special concern appears to have been in part a product of special conditions of railroad employment, in part a product of a belief that employee welfare is a necessary part of an enlightened transportation policy, and perhaps in part a means of reducing the likelihood of strikes on the railroads by providing favorable conditions for the employees. The case for some degree of special consideration of the welfare of railroad employees is at least as meritorious today as it ever was.

We also recognize the long history of close cooperation and in some respects joint decision-making on policy issues by railroad labor organizations and railroad managements. Indeed, the original version of the Railway Labor Act under which this Emergency Board is functioning was worked out in conference between the labor organizations and the leading carriers in this industry. The railway labor organizations have long been active in promoting legislation beneficial to the industry, and their participation in proceedings before regulatory agencies has been prominent.

Position stabilization agreements are not unknown in the railroad industry. Seniority has greater status as a "property right" on the railroads than in many other industries; at times the right has attached to particular jobs in particular locations. Hence, generally speaking, the concept of a "job" denotes a greater quality of permanence on the railroads than in industry generally. This fact probably helps to explain the sizeable number of position stabilization agreements in this industry, some of which the Organization introduced in evidence in this case.

The largest group of agreements of this type has been negotiated by the Brotherhood of Maintenance of Way Employees. Most of these provide that the number of section gangs will not be reduced below specified minima except by agreement; or that employment will be reduced only through the process of attrition. It should be pointed out, however, that the employment guarantees in these Maintenance of Way agreements have generally been well below the actual employment levels. More recently, the Maintenance of Way Employees negotiated an agreement with all three Carriers' Conference Committees. The agreement requires advance notice and consultation in the

event of "a material change in work methods affecting employees," with at least 96 hours' notice to the affected employees themselves. There was no quantitative limitation on job abolitions, however.

We do not suggest that position stabilization agreements of the kind just discussed are so prevalent as to constitute an industry pattern. On the contrary, they are relatively infrequent among nonoperating employees. Nevertheless, the fact remains that position stabilization is not unknown in the railroad industry, nor is it alien to the traditions of the industry. But this fact alone is not sufficient to persuade us that the Organization's proposal for a veto power over job abolition merits our support. After considering the likely effects and the implications of the proposal, we have concluded it would not be in the best interests of the employees, the Carrier or the general public. We now turn to our reasons for that conclusion.

C. Analysis of the Proposed Rule

The Organization's proposed rule, requiring mutual consent before any position can be eliminated, is simply worded; but its implications are complex and disturbing.

We agree with the Organization that its proposal cannot accurately be called a "job freeze," since jobs could be abolished by joint agreement. Likewise we accept the Organization's assurances that it does not advocate a moratorium on technological and organizational changes. Nevertheless we are satisfied that the rule would have the result of retarding efficiency improvement and preserving unnecessary positions.

How would the requirement of joint consent operate in practice? The Organization candidly states its belief that the railroad industry needs controlled efficiency through control over the rate of job abolition.[3] Even a rate of job abolition which is no higher than the attrition rate—resignations, discharges, retirements and deaths—is likely to be too high, the Organization says, because employees need a "cushion" of job opportunities and the lack of this cushion would drive the attrition rate up. It seems clear that this kind of approach to job security would inevitably mean the retention of some jobs which, by any reasonable standard, serve no real purpose other than that of providing an income for the incumbent. Hence, although the Organization's immediate objective is control over the rate of job abolition, this objective would necessarily involve some control over the rate of efficiency improvement.

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[3] The Organization also seeks an opportunity to negotiate protective measures for displaced employees, and to bargain over conditions of employment in remaining positions. These latter objectives are entirely proper; but we believe they can and should be pursued directly rather than through the device of the proposed rule.

The need to abolish jobs is a matter for regret, particularly in a period when there is excessive unemployment in the economy as a whole. Certainly all of us would prefer it if railroad traffic could expand sufficiently as to require more, not fewer employees. But we must declare unequivocally that the retention of unnecessary positions is not an acceptable form of job security.

Such a policy is clearly unsound in the railroad industry, which must struggle to maintain and improve its share of the market against competing forms of transportation. But this situation is not peculiar to the railroad industry. One of the central concepts of our economic system is that competition imposes constant pressure on business enterprises to adopt the most efficient methods, and that such pressure is in the public interest because it promotes the best possible use of resources. In this connection we are reminded that our Nation's leaders, beginning with the President, have been emphasizing the necessity for more rapid increases in industrial efficiency in order to permit the achievement of our national economic goals.

Employees who remain on jobs which have become technologically obsolete, or which provide only a fraction of a full day's work, are not contributing their potential to the national economy.

To retard efficiency is to invite stagnation, which would benefit no one. And we are surely not forced to regard economic efficiency and employee security as mutually exclusive choices. It is not necessary to sacrifice one in order to achieve the other. We can find reasonable ways and means of accommodating both these important goals.

In concluding that the effect of the proposed rule would be to retard efficiency improvement, we need not rely on pure logic. The Organization's analysis of employment reductions among telegraphers on the North Western confirms this belief.

The Organization points out that between 1955 and 1960, the number of telegrapher positions on the North Western declined 36.9 percent, as compared with approximately 20 percent for class I railroads as a whole. Among the important carriers in the North Western's territory, corresponding reductions were 18.2 percent on the Burlington, 18.5 percent on the Illinois Central, 23.9 percent on the Milwaukee, and 18.5 percent on the Great Northern. On the basis of these comparisons the Organization denominates the North Western as one of the "bad actors" in the industry deserving a special priority in the imposition of the proposed rule.

We do not think these statistics can be used to prove that any employment reductions in the North Western exceeding 15 to 25 percent were unwarranted, excessive, and unfair. There is ample evidence in the record before us that the North Western was a remarkably ineffi-

cient road in 1956; that it had lagged behind the rest of the industry in adopting modern technology and organization; and that economic necessity demanded extraordinary efforts to attain greater efficiency. This Board is certainly not in a position to state that each and every job abolition was necessary or wise; and as we shall indicate presently, we deplore the lack of sufficient provision for problems of worker adjustment. We are satisfied, however, that if the rate of job abolition had been held down to the industry average, numerous unnecessary positions would have been maintained.

The Organization contends that the Carrier's Central Agency Program, under which two or more stations are assigned to a single agent, is bad business and bad management; that the retention of full-time agents in the majority of such stations would have been profitable; and that numerous communities are being deprived of necessary service. But questions relating to the adequacy of railroad facilities and service lie within the jurisdiction of Federal and State regulatory agencies, not Emergency Boards. The fact is that the Central Agency Program was approved and ordered by State commissions in South Dakota, Iowa, Wisconsin, Minnesota, and Illinois. The Order of Railroad Telegraphers vigorously contested the plan, along with other opponents, but the plan was approved nonetheless. Where the Organization carried the matter to the courts, the regulatory commissions were upheld. Therefore the question of whether the Central Agency Program is consistent with the public interest in adequate transportation facilities in those States must be considered *res judicata* so far as this Board is concerned.

With respect to elimination of nonagency positions, the Organization offered no evidence whatever to refute the Carrier's reasons for these decisions.

The inadequacy of the Organization's statistical comparisons is also evident when other relevant statistics are reviewed. It is true that the North Western discontinued an unusually large percentage of telegrapher positions. But telegrapher employment on that property was unusually large to begin with, in relation to total employment and to the volume of business. It remains unusually large in both respects despite the curtailment of telegrapher positions. Thus, telegraphers constituted 5.6 percent of all North Western employees in 1951, 6.5 percent in 1955, and 7.3 percent in December 1961. The corresponding percentages for class I railroads as a whole are 3.8 percent, 4.2 percent, and 4.5 percent.

In 1960 the North Western had 18,500 revenue ton-miles of freight per station agent and 10,700,000 per telegrapher. In contrast, class I roads as a whole had 35,900,000 revenue ton-miles per station agent

and 16,200,000 per telegrapher. The results are similar when comparisons are made in terms of operating revenue, freight revenue, or the number of originating carloads. Thus, despite the sharper decline in recent years, telegrapher employment remains relatively high on the North Western.

Neither can it be said that telegraphers have been singled out for particularly harsh treatment in the course of the North Western's economy program. The record shows that between April 1956 and December 1961, the number of telegraphers employed by the North Western dropped 39 percent. This reduction compares with 43 percent in the category of Maintenance of Way and Structures, 58 percent for Maintenance of Equipment and Stores, 36 percent for Professional, Clerical and General Employees, and 49 percent for all Nonoperating Employees.

Our analysis has thus convinced us that the proposed rule would seriously impair efficiency and would represent an undesirable approach to job security.

We are not the first Emergency Board to express its opposition to this type of restriction. Presidential Emergency Board No. 138 considered ORT's demand of the Southern Pacific Co. for the same rule that it seeks here. That Board's comment was as follows:

> 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 approval.

Emergency Board No. 145 considered a proposal by all the Organizations representing nonoperating employees for 6 months' advance notice of job abolitions. The Board concluded that such a requirement would constitute a form of job freeze and stated:

> When one views the organization's proposal against the background of a constant decline in railroad employment—especially among nonoperating employees—and of the continuing necessity for the carriers to employ all feasible advances in technology and scientific management, the conclusion is inescapable that the solution they seek falls far short of its apparent goal.

The recent report of the Presidential Railroad Commission also deals with the problem in the following terms:

> To obstruct technological advance is to give the public a poorer transportation system, to hobble the railroads in their competition with other modes of transport, and to reduce employment opportunities for all railroad employees.

Finally, President Kennedy stated in his recent Transportation Message to the Congress:

> An efficient and dynamic transportation system is vital to our domestic economic growth, productivity, and progress. Affecting the cost of every commodity we consume or export, it is equally vital to our ability to compete abroad. It

influences both the cost and the flexibility of our defense preparedness, and both the business and recreational opportunities of our citizens. * * * For the long-range benefit of labor, management, and the public, collective bargaining in the transportation industry must promote efficiency as well as solve problems of labor-management relations. Problems of job assignments, work rules, and other employment policies must be dealt with in a manner that will both encourage increased productivity and recognize the job equities which are affected by technological change.

We recommend that the Organization's request for this rule be withdrawn.

IV. IS THE SOUTHERN PACIFIC SETTLEMENT AN APPLICABLE PRECEDENT?

The Organization urges that in the event we are unable to endorse the proposed rule, we should at the very least recommend that the dispute be settled on the basis of an agreement reached between the Organization and Southern Pacific Co. (Pacific Lines) on October 29, 1961.

That agreement was the end result of a notice served on the Southern Pacific April 24, 1958. Almost a year later—on May 5, 1959—the Organization served its amplified notice embodying alternative proposals. By Executive Order 10953 of July 20, 1961, the President created Emergency Board 138 to investigate the dispute involving these two notices. That Board reported that the April 24, 1958, notice was "neither a practical nor realistic solution of the employee displacement problem," on the ground that "an employment stabilization program based on rules which freeze existing jobs, bar improvement in work methods and blocked technological progress reaps more damage than benefit." The Board also recommended, for similar reasons, that most of the May 5, 1959, notice be withdrawn. This was not intended, the Board said, "to foreclose exploration by the parties of more feasible approaches to job stabilization." Finally, the Board recommended that a program of income maintenance and other forms of worker protection be developed.

On October 29, 1961, a Memorandum of Agreement between Southern Pacific Co. (Pacific Lines) and its employees represented by the Order of Railroad Telegraphers was executed. This agreement, disposing of the Organization's 1958 and 1959 notices, was an amalgam of position stabilization and worker protection measures.

A. Terms of the Southern Pacific Agreement

Under the terms of the Southern Pacific Agreement, the affected employee is given at least 96 hours' notice when a regular assigned position is abolished. The Organization receives 90 days' notice of discontinuance of positions by reason of technological or organizational changes. Joint conferences may be initiated at the option of the General Chairman, with a view to avoiding grievances and minimizing adverse effects on employees involved.

A formula for limiting abolition of positions is incorporated.

Future reductions are computed from a base of 1,000 positions, and are limited in the following ways: (a) The number of positions cannot be reduced except in line with technological or organizational changes or a change in the volume or composition of traffic. (b) No more than five agencies may be eliminated in any calendar year except through conference and agreement between the parties. (c) Abolition of positions will not exceed the rate of normal attrition; neither will it exceed 2 percent per year on a system basis. This limitation, however, does not apply to reductions resulting from the installation of Centralized Traffic Control. (d) The number of positions will not be reduced (with certain exceptions) "until such time as the number of positions which may be abolished under this agreement has equalled the difference between the base of 1,000 positions and the number of positions currently in effect." Inasmuch as there were approximately 950 telegrapher positions when the agreement was executed, the quoted language means that the number of positions cannot be reduced below that level until some time in 1964.

Telegraphers holding seniority as of September 15, 1961, were guaranteed 40 hours of work per week, or pay in lieu thereof, when assigned to the extra board.

Employees adversely affected "by force reductions resulting from abolishment of positions by reason of technological or organizational changes" were allowed benefits equal to those provided by sections 6, 7, 8, 9, 10, and 11 of the Washington Agreement. For employees adversely affected between the dates of April 24, 1958, and September 15, 1961, these benefits were made retroactive. Sections 6 to 11 of the Washington Agreement cover displacement allowances, coordination allowances, maintenance of fringe benefits, separation allowances, moving expenses, and real estate losses. (See the discussion in section V of the present report.)

Telegraphers previously employed on the Southern Pacific were given preference of employment in vacant positions unless they have retired or were discharged for cause. Furthermore, the parties agreed to develop training programs to improve the qualifications of telegraphers presently or formerly employed by the Carrier.

Finally, a special adjustment board was established to handle cases of alleged improper transfers of work to employees outside the jurisdiction of the Organization. (This was a major issue in the Southern Pacific case, but does not appear to be seriously involved in the North Western case.)

The Southern Pacific agreement was praised by high Government officials; and when it was executed the Organization stated that it would serve as a precedent for the entire railroad industry. We must

therefore consider whether it does in fact constitute a valid and applicable precedent for the North Western.

B. Differences between the Southern Pacific Case and the North Western Case

The Board is prepared to recommend protective terms and conditions similar to those embodied in the Southern Pacific settlement, including a requirement of notice and conference; a 40-hour guarantee for employees assigned to the extra board; provisions similar to those in the Washington Job Protection Agreement which will protect earnings, maintain fringe benefits, and indemnify telegraphers against certain economic losses; and a preferential hiring and training program. In fact our recommendations will be even broader in one essential respect, in that we do not believe that income protection should be limited to job abolishments arising from technological and organizational changes.

We have determined, however, that the Southern Pacific formula for controlled attrition cannot be considered an applicable precedent in the present dispute.

In our view, a controlled attrition formula of this type cannot be diffused on a wholesale basis throughout an industry in the same fashion as a wage pattern, a vacation plan, etc. Such a formula may be helpful in some instances but must be carefully geared to the circumstances of the particular case. It should be demonstrably feasible and basically acceptable to both parties immediately involved. In this connection, the record indicates that some of the key elements in the Southern Pacific formula were proposed by the carrier itself.

If this formula had already been accepted by a large number of important railroads, the case might be different, since we would be faced with a widely prevailing practice. Southern Pacific, however, is only one out of scores of important railroads in the United States. Controlled attrition certainly cannot be considered prevailing practice. Moreover, while there are other agreements in the industry limiting abolishment of nonoperating positions, these agreements are relatively uncommon and each seems to have been negotiated in the light of specific factual circumstances.

The major reasons why we do not consider the Southern Pacific controlled attrition formula applicable in the specific factual circumstances of this case are as follows:

(1) One of the principal complaints of the Organization against the Southern Pacific was that telegrapher work had been diverted to other crafts. This contention was stressed throughout the proceeding before Emergency Board 138. The Organization not only sought to prohibit the unilateral abolishment of positions, but also to bar the

unilateral transfer of any functions, work and positions now and heretofore performed or held by telegraphers. In the present case, however, alleged diversion of work to other crafts is not a significant issue.

(2) Positions to be abolished as a result of installing Centralized Traffic Control were exempted from the controlled attrition formula in the Southern Pacific agreement. At the time the agreement was signed, it was stated that CTC installations already authorized would eliminate perhaps fourteen positions. Installations planned but not yet officially authorized might eliminate 40 to 50 additional positions over a period of several years. Thus a total of 60 or more positions could be abolished outside the terms of the formula. This type of relief would not be of significance to the North Western, which has installed CTC on only 1 percent of its trackage and does not plan to extend its use of this technique.

(3) The most important reason for position abolition on the Northwestern has been the Central Agency Program. We have been given no reason to believe that the Organization would be willing to exempt the Central Agency Program from the operation of a controlled attrition formula. Here again the two carriers have diametrically opposite policies. As Emergency Board 138 observed, "Southern Pacific has not only not dualized stations but retains a firm policy opposed to agency dualization."

(4) When the October 29, 1961, agreement was executed, Southern Pacific had already closed 160 agencies; there were only 290 remaining open agencies on the road. The record indicates that Southern Pacific was not planning to abolish any large number of additional agencies. Therefore, it does not appear that the provision limiting agency closings to five in any calendar year, in the absence of special agreement, will prevent Southern Pacific from carrying out plans for modernization or reorganization. This would not be the case if the provision were applied to the North Western, however. The Board requested the Carrier to furnish information concerning prospective job abolishments in the foreseeable future. We were informed, first, that approval of the Central Agency Program will be sought in Nebraska. If the regulatory commission should concur, approximately 40 positions would be eliminated. Station operations are being studied in Wyoming and Michigan; it presently appears that if the Central Agency Program should be implemented in those States, 15 to 20 positions would be abolished. An application has been filed in Minnesota which would eliminate 22 positions. (All but one of these positions are covered by a separate contract between the Minneapolis and St. Louis Railroad, an operating subsidiary of the North Western, and

ORT, however.) Likewise the Carrier has applied to dualize some additional stations in Iowa. About 18 positions would be eliminated, of which approximately half are covered by the agreement here involved and the remainder by the Minneapolis and St. Louis agreement. Thus, contemplated extensions of the Central Agency Program would eliminate almost 100 agency positions, of which about 70 are covered by the present agreement. A formula limiting the abolition of agency positions to five per year, within an overall 2 percent limitation, would impede these plans as contrasted with the relative lack of impediment on the Southern Pacific.

(5) The situation of the two roads with respect to relative employment of telegraphers is vastly different. In 1961 Southern Pacific had 1,069 telegraphers among 41,302 employees, or 2.6 percent of the total. The North Western, on the other hand, had 1,189 telegraphers out of 16,505 total employees, or 7.2 percent. Thus the North Western's ratio of telegraphers in the labor force was almost three times as great as Southern Pacific's.

(6) Although Southern Pacific has fewer telegraphers, and fewer agency positions, than the North Western, it is a much bigger railroad. Its net investment is approximately twice as great; its revenue ton-miles of freight and operating revenue are more than three times as great. As one would therefore expect, the relationship between revenue ton-miles, operating revenues, and employment of telegraphers is vastly different on the two roads. In 1961 the North Western reported 11,200,000 revenue ton-miles per telegrapher, as compared with 35,100,000 on Southern Pacific. Similarly, the North Western had an operating revenue equivalent to $184,000 per telegrapher in 1961 while Southern Pacific's operating revenue was equal to $551,000 per telegrapher. On the other hand, the two carriers do *not* differ substantially in the number of revenue ton-miles per employee, or in operating revenue per employee. This situation reflects the fact that telegraphers make up a much higher proportion of the labor force on the North Western. Such being the case, it is understandable that Southern Pacific may have been relatively unconcerned over the controlled attrition formula whereas the North Western believes it would be extremely damaging.

(7) But even if the burden were approximately equal, which it is not, the two carriers differ greatly in their ability to absorb it. The Southern Pacific is one of the half dozen most profitable railroads in the Nation, while the North Western's financial condition is marginal. Net income on the Southern Pacific has been running in the neighborhood of $50 million per year, while the North Western showed a net income of $2,815,000 in 1958, a net loss of $2,897,000 in 1959, a net loss of $7,170,000 in 1960, and a net income of $3,030,000 in 1961.

C. The Question of Natural Attrition

We have also considered whether we should recommend a formula restricting the rate of job elimination to the rate of "natural" labor force attrition resulting from death, retirement, resignation, and discharge. We should note at the outset, however, the Organization's contention that inadequate job security would be provided by such a formula. The attrition rate has been abnormally high among telegraphers in the North Western in recent years. The Organization states that forced changes in residence, unattractive assignments, low earnings, and general insecurity are responsible for this fact. Since few if any telegraphers were actually laid off to the street, it is not clear that a "natural attrition" formula would have changed the situation. Nevertheless the Board believes this approach should be discussed in order to cover all the alternatives.

Reliance on attrition may be a desirable and humane way in which to reduce work force when the attrition rate is approximately the same as the rate of job abolition which the pertinent economic and technological factors dictate. Indeed, under some circumstances, a brief extension of life of a job beyond its normal expiration may be justified as a substitute for other aids to employee adjustment. Unhappily, however, the attrition rate in a particuplar enterprise is sometimes considerably below the job abolition rate which circumstances compel the enterprise to seek. In some such cases, supplements or stimulants to attrition may be helpful. All employees with less than a specified amount of seniority may be laid off, with further adjustment of the work force left to attrition. Or inducements may be offered for early retirement in order to speed up the attrition rate. Another crucial feature of some attrition agreements is the assurance of considerable flexibility in the assignment of the work force to encourage efficient utilization. The agreement between the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union exemplifies several of these devices. This agreement provides a guarantee of employment for the fully-registered longshoremen, less attrition. Accompanying this guarantee is a provision for payment of nearly $8,000 for early retirement at age 62, and a provision under which longshoremen may be required to move from one port city to another to remedy local labor surpluses or shortages.

In the present case, we find no basis for predicting what the attrition rate among telegraphers would be if the job security measures which are recommended later in this report were adopted. It seems likely that the rate of voluntary retirement over the past few years has been higher than it will be over the next few years. Some men

have chosen to retire rather than change residence. Some on the extra board have resigned because of low earnings and irregular assignments. An employment guarantee for extra-board employees might be expected to reduce the rate of voluntary resignation. Hence, the attrition rate is not as predictable as it might be in other situations. Furthermore, there is no indication that the parties are presently prepared to require mandatory retirement at a given age, to adopt inducements for early retirement, or to relax seniority rules in order to permit men to transfer between districts without loss of accumulated seniority and prevent a surplus of telegraphers in one district while new employees are being hired in another.

We must conclude that, under these circumstances, a commitment by the Carrier to limit force reductions to the rate of normal attrition is not feasible as a device for employment stabilization.

V. INCOME STABILIZATION AND OTHER PROTECTIVE MEASURES

A. The Need for Employee Protection

The costs of economic progress are not limited to the financial and material resources committed to it by business enterprises. There are also human costs: workers are displaced; occupational skills become obsolescent; families are uprooted from accustomed surroundings; feelings of anxiety and insecurity are created. These must be counted among the full social costs of economic change. It is important to recognize them so they may be faced explicitly and shared equitably among individuals, business enterprises, and government.

As we have indicated, we do not believe that economic progress can or should be curtailed in order to avoid these human costs. The sounder approach is to cushion the impact upon individuals and families, prevent excessive personal hardships and assist employees in making successful adjustment.

The merits of this approach are now widely recognized. Thus we have seen the development of unemployment compensation, supplemental unemployment benefits, advance notice of displacement, short workweek benefits, separation pay, retraining programs, moving allowances, and similar adjustment mechanisms. It is also recognized that acceptance of technological change by workers is closely connected with the availability of humane protective conditions. Resistance to change has diminished over the decades as the legitimate needs of affected employees have increasingly been recognized.

Protection of workers adversely affected by technological, organizational, and economic changes has been a prominent theme of employment relations in the railroad industry. Seniority provisions confer priority of job opportunity upon older employees who incur the greatest difficulties in adjusting to change. Railroad unemployment insurance benefits are now considerably more generous than those provided by the Federal-State system which is applicable to most other industries. The option of early retirement at a reduced pension is available under the railroad retirement system.

The Washington Job Protection Agreement, negotiated between the major carriers and the railway labor organizations in 1936, supplies comprehensive protection for employees affected by the merger and

coordination of railroad systems. Specific provisions include advance notice to the labor organizations and joint consultation between the parties; "displacement allowances" protecting rates of pay, for a maximum of 5 years, of employees transferred to less desirable jobs; maintenance of fringe benefits for affected employees; "coordination allowances," in the nature of unemployment compensation, for periods up to 60 months; "separation allowances," or termination pay, as an alternative to coordination allowances; reimbursement of moving expenses; and indemnity against real estate losses resulting from the coordination.

The Interstate Commerce Commission has frequently required protective conditions, similar to those in the Washington Agreement, in cases of line abandonments and other changes subject to Commission approval. The best known of these variants are the New Orleans, the Burlington, and the Oklahoma Conditions. Furthermore, certain individual carriers and railway labor organizations, contemplating the automation of facilities or similar changes, have negotiated special agreements for employe protection and readjustment. The provisions negotiated by ORT and the Southern Pacific Co. have already been noted.

It seems anomalous that under the State public utility laws, the regulatory commissions do not impose any protective conditions when ordering the closing or consolidation of stations. The Board finds it difficult to understand why displacements resulting from Federal orders should require consideration of employee welfare whereas displacements resulting from State orders should not. Public necessity and convenience, which the regulatory commissions are required to safeguard, certainly includes the interests of employees as well as those of other groups in the economy. Thus the absence of protective conditions in the "dualization" or station abandonment orders of the various States is an evident weakness in the structure of employee protection.

Numerous impartial groups have recently stressed the importance of protective measures as a principal means of adjusting to economic change.

For example, the Independent Study Group created by the Committee for Economic Development to study *The Public Interest in National Labor Policy* stated that it is essential to "recognize both sides of the coin: the need to encourage change and the importance of learning how to adjust to change." On the latter point the Study Group stated:

Accommodation to the pains of transition is more successful when there is timely notice of an impending development, when there is as careful planning in the personnel fields as in the areas of engineering and finance, when there is a careful effort to assess the requirements of new jobs and to re-train existing employees for those jobs where possible, when there is a flexible administration of seniority systems by unions, and when there is willingness to help displaced workers weather immediate financial storms and find new jobs.

In its report of February 28, 1962, the Presidential Railroad Commission favored "progress plus protection" as the central concept in a policy on technological change and adjustment. According to the Commission,

There is substantial agreement that in the short range, the problem of technological displacement has been visible, acute and grave for the individual worker affected by change, particularly the older worker who has relatively greater difficulty in finding a job or in being retrained. The avulsive disappearance of his craft presents a disaster of the first magnitude. It is clear beyond question that he ought not to be left to cope with that disaster alone and unaided.

Continuing its discussion of protective measures, the Commission observed:

Consideration of the form of protective conditions in this industry inevitably starts with a review of the provisions of the Washington Agreement of 1936. These provisions, or similar provisions in the Transportation Act of 1940, have been successfully applied to railroad mergers so that the cost of protection has in fact become a part of the calculation in the development of merger plans. These provisions have on occasion been extended to nonmerger situations . . . as in the case of mergers, so in the case of technological improvement, the cost of a reasonable plan for the protection of employees affected should be a charge against the savings obtainable from such improvement.

Likewise Emergency Board No. 138, which served in the dispute between the Southern Pacific and the ORT, held that

. . . protection from the adverse effects of technological changes, labor saving innovations, and organizational changes such as have occurred on this railroad is a proper and legitimate employee demand. . . . Surely none would argue that the brunt of technological change and cost-saving should fall only upon the employees. Many would urge, rather, that part of the economies thus realized should be used to alleviate the social cost of technological advance.

A similar note has been expressed by Emergency Board No. 145 whose recommendations led to a settlement of the recent wage dispute between the Nation's carriers and the nonoperating railway labor organizations. That Board noted the usefulness of the Washington Job Protection Agreement in coping with human problems arising out of merger consolidations and coordinations. It deplored the delay in exploring the possibility of extending the principles established by the Washington Agreement to job abolitions arising out of technological changes.

B. Hardships Encountered by North Western Telegraphers

In framing our own recommendations concerning protective measures, we have considered it important to review carefully the evidence supplied by the Organization and the Carrier concerning the impact of employment changes on individual telegraphers. In our view, a program of remedial measures should not be constructed in a vacuum, but should be tailored to the facts and circumstances of the case if it is to yield maximum benefit.

The record shows that the number of telegrapher positions abolished on the North Western rose from 15 in 1955 to 41 in 1956, the first year under the new management. Abolishments in subsequent years have been as follows: 77 in 1957, 199 in 1958, 188 in 1959, 61 in 1960, and 39 in 1961. As already indicated, the Carrier plans to eliminate approximately 70 additional positions covered by the present agreement through extension of the Central Agency Program. The Carrier states that predictions concerning nonagency positions are more difficult; but as we view the prospect, nonagency as well as agency employment will continue to decline although not at the rapid rate experienced in 1958 and 1959.

Reviewing the evidence concerning curtailment of telegrapher employment since 1956, we are satisfied that this process did create hardship for considerable numbers of affected employees.

Because of rapid-fire displacements and complicated bumping sequences, some employees found it necessary to change jobs and locations several times within a brief period. Other telegraphers lived away from their families for considerable periods. Those who commuted between a home in one community and a job in a different community incurred substantial travel expense. In a survey conducted by the Organization, some telegraphers reported that they suffered financial losses in selling their homes. Others complained of the expense of one or more changes in residence, as well as the disruption of established ways of life.

Some of the extra-board employees resigned because of dilution of job opportunity. In this connection the organization points out that as late as 1960, 23 percent of telegrapher class employees on the North Western earned less than $4,000 per year as compared with 19 percent for class I railways as a whole, 17 percent for the Burlington and 19 percent for the Milwaukee railroads. At the other end of the scale, 34 percent of the North Western telegraphers earned $4,800 or more in 1960, as compared with 46 percent on all class I railways, 50 percent on the Burlington and 56 percent on the Milwaukee.

Some North Western telegraphers were forced to accept lesser paid jobs, temporarily at least. A considerable number, already eligible

for retirement, chose to retire rather than move to other communities. Others elected to avail themselves of early retirement at a reduced pension. The record does not indicate that any telegraphers were actually laid off; but there was an unusually large number of resignations and "constructive resignations," doubtless occasioned in many instances by the prospect of irregular work or difficult assignments.

We were shocked by testimony that in one State numerous station agents, some with many years of service, were given less than 2 hours' notice of specific time for termination of their assignments. The fact that these men had known of the Carrier's application to dualize agencies does not alter our belief that they could have been shown more consideration without undue cost to the Carrier.

It is also clear that many telegraphers and their families suffered anxiety because of insecurity and uncertainty concerning their future. When an industry is going through difficult economic adjustments, anxiety on the part of employees cannot be prevented altogether; but doubtless it could have been mitigated if adequate protective conditions had been available. The depth of the telegraphers' concern can be appreciated when we note that many of them were middle aged and older men. Furthermore, most of those affected by the Central Agency Program were residing in small communities where there was little or no alternative employment at their accustomed level of earnings. The evidence does not support the Carrier's contention that a large number of agents had lucrative sidelines which mitigated hardship when the Central Agency Plan was introduced.

The Carrier points out, it is true, that during the period in question almost 200 new employees were hired into telegrapher positions, and that new telegraphers are presently being trained at company expense. Therefore, the Carrier argues, nothwithstanding the abolition of jobs no telegrapher has been denied employment in his own craft somewhere on the railroad. This may be correct, but it does not mean that no hardships were encountered. Man is an immobile resource and adjusts himself slowly and imperfectly to rapid shifts in labor requirements. The Carrier may also be correct in arguing that some of the seniority districts (such as one with only 35 telegraphers) are too small, and that mobility could be encouraged by consolidating seniority districts. It does not follow, however, that hardship and dislocation could thereby have been prevented.

Was the hardship transitional or permanent? It is impossible to give any simple, general answer to this question, but the following facts are pertinent: (a) We have information concerning the earnings of most of the telegraphers reported as "hardship cases" in the Organization's survey who are still employed on the North Western.

The great bulk of these employees have earned considerably more in the 1959–61 period than in the earlier period prior to the installation of the Central Agency Program. This indicates that they have had satisfactory work opportunity in recent years. (b) Between December 3, 1957, and September 1, 1961, 671 individuals were terminated for one reason or another. The largest group—276—retired. Doubtless some of these would have preferred to stay at work if no change in location had been necessary. On the other hand, pension benefits under the Railroad Retirement Act are considered relatively attractive. (c) Another 270 resigned formally or informally (such as failing to report when called). The Carrier has been able to trace most of these individuals. The majority seem to have landed on their feet from an economic standpoint. A few are presently unemployed, however, while others have low-status jobs such as apprentice barber, janitor, and part-time bartender. (d) Of the remaining 125, 52 died and the remainder were discharged or were transferred to positions outside the scope of the ORT Agreement.

From these facts we conclude that the installation of the Central Agency Program and the other job abolishments did occasion substantial hardship; that the hardship was temporary in the majority of cases; and that it could have been mitigated by more adequate provision for transitional adjustments. This experience, in our view, does not call for the rules which the Organization proposes, or any similar regulation conferring on it direct control over the number of positions. It does indicate, however, that a comprehensive program of protective conditions should be adopted.

C. A Program of Protective Conditions

In recommending a program of protective measures, the Board does not believe that application of such measures should be limited to employees displaced or adversely affected by "technological or organizational changes." This criterion was employed in the Southern Pacific Agreement, it is true, but we consider it dubious on grounds of practicality as well as logic. It can be anticipated that endless difficulties will arise in determining whether specific displacements were occasioned by technological or organizational changes. In any event, our primary concern is to alleviate individual hardships arising out of position abolishments. Such hardships are equally real to the employee displaced because of loss of traffic to the trucking industry and to the employee displaced by installation of new equipment on his own railroad. We conclude that the protective conditions recommended below should apply to employees adversely affected by

the permanent elimination of positions regardless of the reasons for such elimination.

1. *Notices and Conferences*

(a) The General Chairman of the Organization should be given a substantial period of advance notice of the Carrier's decision to permanently discontinue any position. The precise length of the notice should be negotiated by the parties. During this period the General Chairman or his representative should have an opportunity to meet with a representative of the Carrier in joint discussions. Such discussions might concern the manner in which and the extent to which employees represented by the Organization would be affected by the proposed changes, with a view to avoiding grievances and minimizing adverse effects upon employees involved. In addition, the Organization would have an opportunity to state its views with respect to the wisdom and necessity of the job eliminations which the Carrier intends to make.

(b) When a regularly assigned position is to be abolished, the employee affected should be given at least 5 days' notice thereof.

2. *Forty-hour Workweek Guarantee*

A guarantee of 40 hours a week should be established for employees assigned to the extra board. Such a guarantee will be feasible only if management is authorized to determine the appropriate size of the extra board.

3. *Displacement Allowance*

The terms and conditions of section 6 of the Washington Job Protection Agreement should be available to employees adversely affected by force reductions resulting from abolishment of positions.

4. *Coordination Allowance*

The terms and conditions of section 7 of the Washington Job Protection Agreement should be applied with the following qualification: Section 7(i) provides that when an employee receiving these unemployment benefits obtains railroad employment the benefits are reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his cordination allowance is based. The Board sees no reason why the benefits should thus be reduced only when the employee obtains railroad employment. On the contrary, we recommend that the reduction be applied whenever the employee receives compensation in any employment.

5. ***Maintenance of Fringe Benefits***

The terms and conditions of section 8 of the Washington Job Protection Agreement should be available to employees affected by job abolitions.

6. ***Separation Allowance***

In line with section 9 of the Washington Job Protection Agreement, separation allowances should be available to employees eligible for coordination allowances in lieu of all other benefits and protections provided in the Washington Agreement.

7. ***Moving Expenses and Protection Against Real Estate Losses***

A review of the experience of displaced telegraphers on the North Western has satisfied us that the provisions of sections 10 and 11 of the Washington Agreement are properly applicable.

8. ***Preference of Employment***

We recommend that employees previously employed by the Carrier on positions subject to the ORT Agreement, whose employment was terminated other than by retirement or discharge for cause, should be granted preference of employment in available positions.

9. ***Training and Retraining***

The parties should cooperate in the development of training programs to improve the qualifications of employees and to facilitate the return to work of employees holding seniority, but not presently working.

10. ***Retroactivity***

The possible retroactive application of any of these provisions should be a matter for negotiation between the parties.

SUMMARY OF RECOMMENDATIONS

The Board recommends that the dispute committed to its investigation be resolved in the following manner:

1. The Organization's notice of December 23, 1957, should be withdrawn.

2. The parties should negotiate a comprehensive program of employee protection, described more fully in section V of this report.

Respectfully submitted,

ARTHUR M. ROSS, *Chairman.*
PAUL D. HANLON, *Member.*
CHARLES C. KILLINGSWORTH, *Member.*

WASHINGTON, D.C.
June 14, 1962.

APPENDIX A

APPEARANCES

On behalf of the Chicago and North Western Railway Co.:

Carl McGowan, General Counsel
Robert Russell
Douglas Smith
Howard J. Treinens
Martin Lucente
James R. Wolfe

On behalf of the Order of Railroad Telegraphers:

Lester P. Schoene, General Counsel,
Order of Railroad Telegraphers
E. L. Oliver, Economic Advisor,
Labor Bureau of the Middle West
Jack Fry, Assistant Economic Advisor,
Labor Bureau of the Middle West
G. E. Leighty, President,
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A. O. Olson, Vice President,
Order of Railroad Telegraphers
R. C. Williamson, General Chairman, System Division
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Lloyd A. Craig, General Secretary and Treasurer,
System Division No. 76, Order of Railroad Telegraphers
J. W. Smith, General Chairman, System Division No. 4,
Order of Railroad Telegraphers
O. F. Bjorklund, General Secretary and Treasurer,
System Division No. 4, Order of Railroad Telegraphers

APPENDIX B

EXECUTIVE ORDER

CREATING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN THE CHICAGO AND NORTH WESTERN RAILWAY CO., THE FORMER CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY CO., NOW A PART OF THE CHICAGO AND NORTH WESTERN RAILWAY CO. BY MERGER, AND CERTAIN OF THEIR EMPLOYEES

WHEREAS disputes exist between the Chicago and North Western Railway Co., the former Chicago, St. Paul, Minneapolis and Omaha Railway Co., now a part of the Chicago and North Western Railway Co. by merger, and certain of their employees represented by the Order of Railroad Telegraphers; and

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

WHEREAS these disputes, in the judgment of the National Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive 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 these disputes. 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 these disputes within 30 days from the date of this order.

As provided by section 10 of the Railway Labor Act, as amended, from this date and for 30 days after the board has made its report to the President, no change, except by agreement, shall be made by the carriers, or by their employees, in the conditions out of which these disputes arose.

(Signed) JOHN F. KENNEDY.

THE WHITE HOUSE,
April 23, 1962.

11015

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