Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 11050 DATED SEPTEMBER 14, 1962, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To Investigate an unadjusted dispute between REA Express, a carrier, and certain of its employees represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

(NMB CASES A-6671, A-6696)

WASHINGTON, D.C.
NOVEMBER 10, 1962

(EMERGENCY BOARD No. 153)

LETTER OF TRANSMITTAL

November 10, 1962.

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

MR. PRESIDENT: The Emergency Board appointed by you under your Executive Order 11050 on October 1, 1962, pursuant to Section 10, Railway Labor Act, as amended, to investigate and report on a dispute between the Railway Express Agency, Inc., and certain of its employees represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, has the honor to submit herewith its report and recommendations based on the investigation of the issues in dispute.

Respectfully submitted,

ROBERT J. ABLES, *Member.*
J. GLENN DONALDSON, *Member.*
JACOB SEIDENBERG, *Chairman.*

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I. INTRODUCTION

This Emergency Board No. 153 was established by Executive Order No. 11050, dated September 14, 1962, pursuant to the provisions of section 10 of the Railway Labor Act, as amended, to investigate and report upon a dispute between the Railway Express Agency, Inc. (hereinafter referred to as the "Agency" or "Company") and certain of its employees represented, under a national and Local Agreement, by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the "Union" or the "Teamster"). The Executive Order is attached as Appendix "A."

On October 1, 1962, the President appointed Jacob Seidenberg, Falls Church, Virginia, Robert J. Ables, Falls Church, Virginia, and J. Glenn Donaldson, Denver, Colorado, to membership on this Emergency Board.

The Railway Express Agency provides a complete nationwide transportation service, usually from the premises of the shipper to the premises of the consignee by the fastest transportation means available, principally passenger trains, and in the Air Services Department, airplanes. The Agency drivers perform part of this service by the pickup and delivery of express. They also perform the interterminal transfer of express.

Employees involved in this dispute are the vehicle employees of the Agency located in Chicago, Illinois; Cincinnati, Ohio; Cleveland, Ohio; Newark, New Jersey; Philadelphia, Pennsylvania; San Francisco, California; St. Louis, Missouri; and in a number of suburbs of these cities. These employees are covered by what is known as the "National Agreement" between the Agency and the Union. The dispute involving these employees and the Agency was certified to this Board as National Mediation Board case Number A–6671. In addition, the vehicle employees of the Agency located in and about New York City, New York, are parties to this dispute under the so-called "Local Agreement" between the Agency and Local Unions 459 and 808 of the Teamsters Union. This dispute is identified as Case Number A–6696.

Approximately 3,200 employees are involved, of which 1,549 are in the New York Metropolitan area. Throughout the United States the

Agency has about 30,000 employees, of whom approximately 28,000 are represented by labor organizations. The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as "Clerks") represents about 90 percent of the total unionized employment of the Agency. Included in the Clerk's representation are approximately 6,000 vehicle employees working at points other than those involved in this case. There are also approximately 500 shop-craft employees of the Agency represented by the International Association of Machinists and the International Brotherhood of Boilermakers and Blacksmiths.

The Board convened for organizational purposes at New York, New York, on October 3, 1962, Jacob Seidenberg serving as Chairman by appointment of the President, and confirmed the appointment of CSA Reporting Corporation as official reporters.

Hearings were conducted by the Board in New York City and Washington, D.C., commencing October 10, 1962, and ending on November 2, 1962.

Although the dispute concerning the New York Local Group was certified by the National Mediation Board separately from the dispute between the employees under the National Agreement and the Agency, all testimony and exhibits introduced on behalf of the employees party to this dispute were introduced and considered as a joint presentation of the Local and National Teamster groups.

The transcript of the proceedings in this dispute totalled 1,928 pages. In addition, the Unions introduced 20 exhibits and the Agency 58 exhibits. A post-hearing brief was filed by the Agency on November 2, 1962. The members of the Board have studied this entire record and have given consideration to all the evidence, exhibits, and arguments presented by the parties in arriving at the findings and recommendations contained in this report.

It appeared on October 10, 1962, that the Board would not be able to complete its investigation and make its report to the President within the 30 days specified in Executive Order 11050. The parties thereupon stipulated to grant an additional 30 days, or not later than November 10, 1962, for the Board to report to the President on this dispute. This request was duly transmitted to the President by the National Mediation Board and the extension was approved on October 15, 1962 (Appendix "B"). The Union did not agree to a further extension of time after the conclusion of hearings, for the Board to submit its report to the President.

II. CHRONOLOGY OF THE DISPUTE

On November 27, 1961, in anticipation of the termination of the then existing contract on December 31, 1961, Mr. Albert Evans, General Organizer of the Teamsters, notified the Agency by letter that the Union wished, on behalf of all Union locals, including the New York Metropolitan Group, to reopen all the terms and conditions of the current agreement. The Agency filed counter-demands on December 8, 1961.

The Union demands were negotiated on January 9, 1962, but these negotiations did not include Locals 459 and 808 of the New York Metropolitan Group. On January 15, 1962, these two local Unions filed separate demands with the Company. On January 23, 1962, the Agency filed counter-demands on these two local Unions. Negotiations on the Local demands were scheduled for February 15, but on February 12 Local 808 advised the Agency that it would not attend the scheduled conference and instead was joining the National Teamsters Group in negotiating changes in their local contract.

On February 9, 1962, new demands from the National Group were filed on the Company. The National Teamsters Group and the Agency negotiated these latter demands on March 6, 7, and 8, 1962. Representatives of Local 808 attended these negotiations but did not participate actively. The Company maintained at this time and maintained during the Emergency Board proceeding that it could not negotiate with Local 808 as a part of the National Group because Local 808 was joined with Local 459 in a separate agreement and because it had a common seniority list with Local 459.

On February 9, the National Teamsters Group invoked the mediation services of the National Mediation Board. The National Mediation Board included both New York Local Unions with the National Group for mediation purposes and Mediation Docket No. A–6671 was assigned to the dispute. Mediation began on May 9, 1962, but the only question considered was who should represent the parties for collective organizing as between the Local and National Teamsters Groups. On May 11 the National Mediation Board assigned a separate Docket Number (A–6696) to the New York Metropolitan Group. On June 29, the Agency negotiated with the Local Group on the demands filed by the Local Group on the Agency in its notice of January 15, 1962. On July 2, the Company invoked the mediation services of the National Mediation Board.

The Local demands were mediated on July 16 and 17 and the National demands were mediated on July 18. On August 1 the National Mediation Board proffered arbitration to all the parties. This das declined by Local 459 on August 13, by the National Group

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on August 14, and the Agency on August 15. On August 17 the National Mediation Board terminated its services and certified to the President that a dispute existed between the parties affecting essential national transportation services.

Pursuant to section 10 of the Railway Labor Act, the President promulgated Executive Order 11050, creating this Emergency Board.

III. PROCEDURAL ASPECTS OF THE DISPUTE

This is the twelfth time an Emergency Board has been appointed by President to investigate and report on a dispute involving the Teamsters and the Railway Express Agency. Except with respect to the agreement in 1960, no collective bargaining dispute since 1941 (when national negotiations started) has been settled short of exhausting all of the procedures in the Railway Labor Act for the adjustment of such disputes. Other Emergency Boards involved in disputes between the parties are identified in Appendix "C."

Among other things, the frequency of such Boards raises the fundamental question whether the parties are negotiating their differences in accordance with traditional free collective bargaining principles or in the manner or spirit contemplated in the Railway Labor Act. More importantly, perhaps, is the question whether the frequency of such Boards contributes to a break-down in collective bargaining negotiations by promoting the thought that the dispute will reach a national forum in any event; and, accordingly, that there is a tactical advantage to be gained to wait for the Board's recommendations before making the concessions which the parties might otherwise have been prepared to make. The danger is this, of course, is that after positions have been taken in formal proceedings such as this it is difficult for the parties to make concessions.

Whatever the reasons are for the break-down in negotiations on the property, there is no question that in this dispute the parties made no more than nominal efforts to compose their differences.

Complicating the problem in adjusting the differences of the parties without third party participation is the intense rivalry between the Clerks and Teamsters to represent the Agency's vehicle employees. Further, the Teamsters are divided almost evenly between the New York Group and the National Group, with contracts which differ substantively. Clearly, this Board has no function to consider representation questions as such; but just as clearly it is obliged to consider how the position of each side to the dispute is conditioned by the competition between the representatives of the employees. The merit of a proposal should depend on pertinent legal, economic and social

considerations and not exclusively, or even largely, on the successes of other unions.

Considerable confusion existed at the beginning of these proceedings as to what demands were before the Company, and by whom made, because of the differences between the Local and National Teamster Groups on which employees were being covered by which agreement. This was resolved during the proceedings when all Teamster groups joined in presenting their case.

In this connection, the Board strongly urges the National and New York Teamster Groups in the future to bargain jointly as they did in this proceeding. A single contract for the two groups with appropriate provisions to cover local or special circumstances would be even better. This united effort would be consistent with the Teamster Union's repeated requests for greater uniformity of treatment of the employees it represents and with the desire of the Agency to reduce the amount of its labor relations negotiations.

The issues before this Board are much the same as the issues before prior Boards; i.e., demands for higher wages (including fringe benefits) and shorter hours. There are, however, important differences between the circumstances surrounding this dispute and all previous disputes—differences which require peculiar examination. These differences result from the substantial changes made in the corporate, financial, and organizational structure of the Agency in 1959. This reorganization changed the Company's operational goals and practices and (depending on the point of view) the character of the business. This Board is the first to investigate and report on a dispute between the parties in the light of these changed circumstances.

IV. APPLICABILITY OF RAILROAD OR TRUCKING PATTERN

This Board concludes that the answer to the basic question whether railroad or trucking wage, benefits and rule patterns should apply depends on existing circumstances, to be weighed in the light of future trends as well as on historical relationships.

In the past, more numerous times than the Board thinks was necessary, the fundamental question was raised, in successive Emergency Boards since 1941, whether vehicle employees of the Railway Express Agency are to be treated as a part of the railroad industry, or whether they are to be looked upon as part of the trucking industry, specifically that part of the latter which is covered by local cartage agreements in the cities affected by this case.

The arguments of the parties on either side of the question have been stated so often and are so well known that no useful purpose would be served to detail those positions here. The answer to this fundamental question given by these prior Boards was, repeatedly, that the employees are part of the railroad industry and that the railroad pattern has been followed on labor relations issues.

The difficulties likely to be encountered by disregarding the railroad pattern for Agency employees was summarized by the Edwards Board (1947):

> If the employees involved in this dispute were not granted an increase in excess of the increase awarded to the nonoperating railroad employees and in excess of the increase negotiated with the three other organizations for 90 percent of the Express Agency employees, the differentials established and maintained throughout the years between Express employees and the other employees of the rail industry, and between the employees involved in this dispute and the other Express employees, would be destroyed. This would again throw the entire wage structure of the railroad industry, and particularly of the Express Agency, out of balance. This would cause dissatisfaction and unrest among the nonoperating railroad employees and would immediately precipitate new demands by the three organizations representing the 90 percent of the Express employees who have accepted the 15.5 cents increase.

The only remaining aspect of the question to be examined about railroad vs. trucking pattern in this proceeding is the effect of the substantial reorganization of the Agency in 1959.

The President of the Company, Mr. Johnson, testified as to this in considerable detail. According to his testimony, an extreme financial crisis developed in 1958 and the Company was at the threshold of dissolution or nationalization. In a calculated effort to preserve the Agency as a private enterprise, 157 participating railroads agreed to rehabilitate the Company by permitting fundamental changes to be made in the conduct of its business. Most importantly, the Agency was given freedom of routing, freedom of pricing and required to operate on a profit or loss basis. In Mr. Johnson's words, the Company was put on a "sink or swim" basis—to be determined by January 1, 1963—since the participating railroads made it clear that further subsidization of the Express Company should not be expected. Drastic economies were put into effect and modernization of plant and motor vehicles was begun. Great emphasis was placed on removing prior and subsequent rail haul restrictions on the carriage of express by motor truck. The Company was successful in all of these efforts to a material degree.

Due to these measures, the Agency was able to retain about 1 percent of its gross revenues in 1961 as profits—or about 2.5 million dollars—and is continuing to hold this advantage at the present time. The

critical point, Mr. Johnson stated, is January 1, 1963, when its favored treatment with the railroad will end and the Company will be required to pay the railroads for the cost of transporting express, much like any other shipper.

Significant to the question of reliance on rail, air and motor carriers in the carriage of express was evidence to the effect that the goal of the Company is to increase from 7 percent to 25 percent the amount of express that moves exclusively by motor vehicle. In addition, the direction the Agency is taking in the use of different transportation services is indicated by the establishment of express stations completely removed from rail heads or available rail transportation and the dramatic increase of truck miles—up about 100 percent in the last 5 years—to the point where truck miles exceed train miles.

Despite this significant shift of emphasis on the use of trucks in the Company's business, Mr. Johnson emphasized that about 95 percent of the ton-miles (as distinguished from train or truck miles) still moves by rail and that because of railroad ownership and control, the realities of the business are that the Company is and will be, for the foreseeable future, railroad oriented.

One may argue long enough that a given thing is so, even if it is not, and in time, the character of the thing may take on some of the features of what it is argued to be, for sometimes unexplainable reasons. It may also be, of course, that the position maintained was correct in the first instance and time is required to prove its validity. Or, it may be that the position was incorrect in the first instance, and remained so, but with the passage of time circumstances change so that the original premise is given substance.

Because dates or events serve to mark changes in history, this Board believes that in 1959, due to changed operations, the Teamsters' original premise that the Railway Express Agency should not be regarded as a railroad in the full sense of the word was given substance. This is not to say that circumstances changed so that the opposite is true, viz., that the Agency should be regarded as a part of the trucking industry. The only conclusion drawn is that this Board is free to consider operating conditions as they are, and as they are tending and is not bound by all the historical reasons to regard the vehicle employees of the Railway Express Agency as railroad employees irrevocably tied to railroad patterns in wage, benefits and rules settlement.

This Board's view on following railroad or trucking patterns in the present dispute is that although a significant change in operations is indicated, leading to a significantly reduced railroad oriented business and a much increased trucking oriented business, the scales still weigh heavily on the railroad side, and that much more would be lost than

gained in the overall labor relations of the Agency, including the overwhelming majority of its employees, if railroad patterns were not observed in adjusting wage, benefits and rules disputes. There is no reason to remain tied to the past, however, if trends continue as they have recently and the movement accelerates in the other direction.

V. WAGE ADJUSTMENTS

A. General Wage Adjustments

The Union's wage demands include the following matters:

1. A Uniform hourly rate of $3.02 for all regular drivers in all localities, including the suburbs. On a 40-hour basis, this yields a weekly rate of $120.80. The current weekly rate in effect in the eight cities in which the IBT represents the vehicle employees ranges from $102.40 in Cleveland, Cincinnati and St. Louis to $106.80 in New York and San Francisco.

2. A weekly wage scale for the following job classifications:

Money Deliverymen	$123.00
Regular Helpers	108.80
Garagemen	109.60
Loaders	108.80

3. A weekly rate of $123.00 for all drivers who carry firearms, which is the same rate proposed for money deliverymen.

4. A weekly rate of $129.00 for all drivers assigned to piggyback runs or required to pull 40-foot trailers.

5. Restoration of a cost-of-living provision which was in effect prior to the 1960 Agreement.

6. A 10% differential per day for work commenced between 3:00 P.M. and midnight.

B. Union Position

1. *General Wage Adjustment*

The principal reason underlying the Union's wage demands are that the drivers it represents are entitled to but do not receive the wage rates which are paid to Teamsters engaged in local cartage as a result of Agreements that the Union negotiates in the same localities where its REA members are employed.

The Union maintains that its REA members perform basically a trucking function and therefore its members should be classified as truckers and be paid the trucking rate rather than be classified as railroad workers and bound by the railroad wage pattern.

It further contends that the character of the Company's operations are changing and greater emphasis is being devoted to motor truck operations and air express, with a corresponding lessor dependence on rail operations. The Union states that the REA is in competition with local cartage firms, and the nature of REA's ownership does not determine the character of its operations and function. The Union

insists that the REA has not rigidly followed the wage pattern of the non-operating brotherhoods, and that frequently the IBT has exercised leadership in setting the pattern of wage adjustment and fringe benefits in its bargaining relations with this Company. The Union maintains that it is a characteristic of the Teamsters to set the pace in obtaining measurable benefits for its membership and that it has done this in this Company.

In addition, the Union inists that the prior pre-eminent wage position which REA drivers occupied, compared to what the Company itself regarded as comparable driving occupations, i.e., general trucking, furniture delivery, parcel drivers, department store delivery, etc., no longer obtains. The wage rates of REA drivers now not only lag behind the wage rates of these comparable driving trades, but they also lag behind the average union driver's rate, and in some instances, even behind the average union rate for drivers' helpers. All these comparisons are based on the prevailing rates being paid in the same cities where REA drivers are employed.

The Union stresses the recent substantial wage increases obtained in the New York Metropolitan Area by local cartage and United Parcel drivers averaging better than 25¢ an hour as evidence that an already large wage differential is being increased without an opportunity to lessen it as long as REA drivers are categorized as railroad rather than trucking employees.

2. *Wage Rate Uniformity*

This Union demand is predicated on the principle that equal work should receive equal pay. The Union maintains there is no valid reason why employees doing identical work should receive different rates merely because they work in a different city or in a suburban rather than a main office.

The Union is constantly seeking to eliminate geographical wage differentials in the local cartage agreements it negotiates, and the REA has acknowledged this principle and itself has narrowed regional wage differentials in several cities in the course of its various negotiations with both this Union and the Brotherhood of Railway Clerks.

3. *Night Shift Differential*

The Union urges that recognition that a premium should be paid for work done on the second and third shift has been gaining acceptance in transportation industries and other continuous process industries and there is no valid reason why it should not be part of the pay structure of this Company.

4. *Additioal Pay for Carrying Firearms*

The Union stresses that drivers who are required to carry firearms should receive the same compensation as money deliverymen. The additional hazard and responsibilities in protecting valuables merit this extra pay.

5. *Cost-of-Living Provision*

The Union states that this provision protects a worker's purchasing power from the erosion of inflation, without contributing to inflation because wage adjustments made pursuant to this clause are the result of prior price increases and are not the cause of present upward price movements. Cost-of-living provisions are common in master local cartage agreements as well as in hundreds of individual local cartage contracts.

C. Company's Position

1. The Company urges that the wage adjustments this Company grants should be determined by the pattern of railroad and not the trucking industry's adjustments. The Company maintains that it is an integral and essential component of the railroad industry, i.e., it is the Express Department of the railroad industry. The Company states that it is owned and controlled by the railroads. Because of this close and intimate relationship with the railroad industry, the Company's wage movements have developed in concert with those of the railroads, especially with those obtained for the employees requested by the nonoperating brotherhoods. These wage movements, for the most part, have been national in scope; they applied to all employees in all locations in the same amounts, regardless of occupational classification or union affiliation.

The Company contends that throughout the entire history of its wage movements the overriding policy consideration has been to maintain parity between the groups represented by different labor organizations within the Company. This history also clearly establishes that any adjustment which destroys parity or does not restore it has an adverse effect on the employees until it is adjusted.

It further states there is no valid reason for the IBT to abandon the railroad industry's prevailing wage standards because it has a substantial membership in other industries outside the railroads. In this Company the Teamsters are a distinct minority. They represent approximately 35% of the drivers and about 10% of the total employment. There are a number of other standard railroad labor organizations which have substantial membership in non-railroad industries. Nevertheless when these organizations bargain within the framework of the railroad industry, they apply and follow the railroad rather than the non-railroad wage patterns. For example,

the International Association of Machinists has many of its members employed by and on railroads. However, in bargaining for these machinists the IAM follow railroad and not machinists' industrial wage patterns.

The Company emphasizes that its employees enjoy all the statutory protections and beneficial privileges which accure to all railroad workers. The Company, like all rail carriers, is regulated by the Interstate Commerce Commission. The Company's labor relations come within the purview of the Railway Labor Act. All of these aforementioned measures are not generally appliable to the employees in the vast majority of industries with which the Teamsters bargain collectively. For this reason much of the wage data relating to outside industries which the Union has cited, are inapplicable in making appropriate comparisons with terms and conditions of employment within this Company.

If an effort is made to apply the Teamsters' wage criteria, it can only result in destroying parity among the Company's employees with concomitant unrest and poor morale as well as with devastating results on the already precarious financial condition of the Company.

2. *Cost-of-Living Provision*

The Company maintains that none of the labor organizations with which it has contractual relations now has such a provision in its agreement. The only two times the employees of this Company, represented by the IBT, had an escalator provision, the IBT followed the formula contained in railroad agreements. The Company believes this provision should not be included since it is not in current railroad agreements.

3. *Night Shift Differential*

It is an accepted principle in the railroad industry that senior men working earlier hours should not receive less pay than junior men working later hours. Employees enter this industry with the knowledge that junior men are assigned night work. If the Union's night shift differential proposal was accepted, the Seniority system would be distorted because senior men would have to bid for less desirable assignments in order to enjoy higher rates of pay.

The basic purpose of the night shift differential is to discourage use of late hour assignments. This industry cannot do away with such assignments because it is required to operate 24 hours a day. Therefore, the net result of such a differential would be to penalize the Company. Many employees start to work between 3:00 P.M. and midnight because of existing train schedules. This is the time of the greatest passenger potential and many passenger trains carrying the great bulk

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of express business are scheduled to leave at those hours. In addition, night shift differentials are not part of the railroad industry, and recently the Presidential Railroad Commission recommended against its establishment.

4. *Additional Pay for Carrying Firearms*

The Company states that drivers who carry firearms do not do the same work as money deliverymen. Many of the armed drivers do not transport jewelry, currency, securities, etc. They carry firearms because Company regulations require it, which may or may not depend on the value of the express shipment. The Company further states that an armed guard receives $6.80 a week less than a regular driver, and the Company suggests that the sole factor of carrying firearms should not yield a regular driver the same rate as received by a money deliveryman, in view of the fact that the duties and responsibilities are not the same.

D. Board's Discussion and Recommendation

1. *General Wage Adjustment*

The extent and scope of the wage recommendations in this matter depend in large measure upon the comparability of the Company's operations with either the railroad or the motor truck industry.

The Board has already, in a prior section of this report, stated its opinion that despite changes in Company operations, the REA is basically still a railroad oriented business, and that its labor relations policy, especially its wage and rule movements, are inspired and motivated by the developments within the railroad and not the motor trucking industry.

The Board feels compelled, however, to note the change which has occurred since 1959 and which is still occurring in the character of the Company's operations, and which indicate that the motor carrier functions and activities will loom larger in the future. Such a change will require the Company to pay more respectful attention to trucking wage patterns than it has in the past. The record of this case indicated that from 1957 to 1961 there has been an increase in the percentage of highway mileage utilized by REA as compared to railroad mileage, i.e., an increase from 10.8% to 21.2%. The record also indicates that in the same period from 1957 to 1961, while total employment declined from 37,188 to 30,382, vehicle department employment only dropped from 10,122 to 9,227. This disproportionate drop caused the percentage of vehicle department employment to rise from 27.22% to 29.04%.

The shift in the character of Company operations is also reflected in the current revisions of the Standard Express Operations Agree-

ment executed between the Company and 157 railroads establishing the basic relationship between the Company and its stockholders. One of the important revisions provided for by the agreement was to allow REA greater freedom of routing by permitting it to select any instrumentality for the transportation of express, subject to the right of the railroad from whom such express business was being diverted, to protest to REA's Board of Directors. Another important revision of the agreement relieved the Company from certain restrictions in pricing its services to which it had formerly been subjected. Other evidence of increased reliance on motor transportation is the establishing of motor truck terminals, such as the one at Ardsley, New York, located away from any railhead, and designed exclusively for motor truck use. But above all, is the policy expressed by the Company's chief executive, in public utterances, stressing the Company's objective of utilizing motor transport in increasing amounts in order to give greater scope and flexibility to its operations.

The record also indicates that the trend toward greater use of motor truck service will continue and increase. As passenger train service continues to be curtailed, there is less rail service available to move express business. It can be safely assumed that, if the many rail carrier merger proposals already initiated, are eventually consummated, there will be less rather than more passenger train facilities available for express movements.

Nevertheless, despite this recital of the significant changes which have taken place in the operations of the Company, especially since 1959, the Board is still of the opinion that as far as wage movements are concerned, the Company is still an integral part of the railroad industry, with 95% of its ton mileage being carried by rail. Ninety per cent of its unionized employees are intimately connected with and represented by the Railway Clerks Brotherhood. Their wages and work rules are governed by the labor relations policies of the railroad and not the trucking industry. The tone of collective bargaining for the REA is largely determined by the carriers and the railroad brotherhoods rather than by this Company and the International Brotherhood of Teamsters. While there have been departures from the railroad wage pattern from time to time, the orientation and emphasis has always been on railroad and not trucking labor relation activities.

It is for the foregoing reasons that the Board believes that, at this time, the railroad wage pattern should continue to be followed.

Recommendation: The Board recommends that the 10.28¢ an hour increase granted by the Company to the employees represented by the

Brotherhood of Railway Clerks in 1962 should be the basis for wage negotiations between the parties.

2. *Other Wage Adjustments*

(*a*) *Wage Rate Uniformity.*—The Board believes that the principle of equal work for equal pay is a just one, and in keeping with a developing trend in collective bargaining, i.e., the elimination of regional wage differentials. The parties should make every effort in good faith to achieve this principle in view of the fact that they have already taken steps to reach this goal.

Recommendations: The parties should negotiate for the purpose of reducing or eliminating regional wage differentials for the same work being done in different localities, including work done in the suburbs of the principal cities herein involved.

(*b*) *Night Shift Differential.*—The Board is of the opinion that this proposal is foreign to this Company's operation and is not yet found in the railroad industry. The Company cannot eliminate night work and it would be inequitable to penalize them as well as require senior employees to take less desirable assignments in order to earn more than junior employees.

Recommendation: The Union should withdraw this proposal.

(*c*) *Cost-of-Living Provision.*—The Board is unable to urge the adoption of this provision because it notes that this provision is gradually being eliminated from most collective bargaining agreements, and this is especially true in the railroad industry. Futhermore, the record does not indicate any persuasive case was made for its restoration to a contract from which it was recently removed with consent of the parties.

Recommendation: The Union should withdraw this proposal.

(*d*) *Additional Pay for Carrying Firearms.*—The Board believes that the record clearly indicates that there is a valid distinction in the job duties and attendant responsibilities between money deliverymen and drivers carrying firearms, and that further the record does not support adoption of this proposal.

Recommendation: The Union should withdraw this proposal.

E. Retroactivity

1. *Union's Position*

It seeks to have retroactivity for all its money demands back to January 1, 1962, and for its fringe benefits demands to the date of the signing of the new contract.

The Union states that there has been a long delay in resolving this matter principally due to the procedures of the Railway Labor Act, despite the various measures it took including court action to accelerate the rate of progress. It further states that there is nothing

unusual in seeking full retroactivity for protracted periods of negotiation. It is the usual demand in collective bargaining and is an effective means for assuring the Company that there will be no work stoppages during negotiations. The Union has, in the past, on several occasions obtained full retroactivity from the Company. Other labor organizations in the railroad industry operating under the time consuming processes of the Railway Labor Act have also obtained full retroactivity despite an extended period of negotiations. It is unfair to penalize the workers for delays not due to their fault and beyond their control.

2. *Company's Position*

Any demand for retroactivity overlooks the fact that the Company has been required to meet its normal operating expenses and any increases in wages would have to be secured by an increase in rates or a substantial increase in the volume of business. With regard to getting increases in rates, a considerable time lag occurs between filing the tariffs with the regulatory commissions and the time they are granted. Sometimes a year may elapse.

The Company does not look with favor on increasing its rates because of the adverse effect it has on the volume of business and employment. The Company instead seeks to meet increased costs by greater sales effort and productivity. These efforts, however, cannot be made retroactive. While there has been some delay in this case, it cannot be attributed to the Company. It is due in large part to the processes of the Railway Labor Act, but there have also been some problems arising within the Union which have contributed to the delay.

3. *Board Discussion*

As a general rule the Board subscribes to the practice of granting full seniority, where none of the parties have been guilty of dilatory tactics, in order that employees should not be adversely affected in continuing to work, while the labor organization which represents them is engaged in protracted negotiations with the employer.

However, the record of this case makes it abundantly clear that part of the delay in getting negotiations under way is attributable to the inability of getting agreement for joint negotiations between the International Union and the Local Unions representing the New York Metropolitan Area. The record reveals that the National Group of Unions negotiated with the Company on March 5, 1962, but the New York Group was not able to do this until June 29, 1962. There were in fact no acceptable joint negotiations and presentation of demands until the commencement of this Board's public hearings on October 10, 1962.

Because the intra-union disagreement was partly responsible for delaying negotiations, the Board believes that the Union should share part of the cost of resulting from delayed negotiations.

4. *Board Recommendation*

The Board recommends that whatever increase the parties may negotiate in the hourly rates, should be retroactive to July 1, 1962.

VI. FRINGE BENEFITS

A. Health, Welfare and Pension Plans

1. *Union Proposals:*

(*a*) Health and Welfare Plan Revisions,
(*b*) Post-retirement Benefits—Pensions.

The existing and proposed Health and Welfare Plans are set forth in a Comparative Table in a Union exhibit which is reproduced below:

HEALTH AND WELFARE

Benefit	*Present Plan*	*Union Proposal*
Financing	Employees pay $1 per month	Co. to pay full cost
Life Insurance	$2000	$6000
A.D. & D. (Accidental Death & Dismemberment)	$2000	$6000
Hospital—Employee and Dependent	Full cost of semi-private room for 21 days; one-half cost for next 180 days. (Private room—up to $10 for 21 days; up to $5 for next 180 days.)	Full Blue Cross & Blue Shield coverage; $500 surgical schedule; include eye and dental coverage.
Surgical—Employee	$300 maximum	(See above)
Surgical—Dependent	$200 maximum	(See above)
Accident & Sickness (non-occupational)	$100 ($90 for garagemen) per mo. for 13 weeks. 7-day waiting period for sick benefits.	$35 per week—7-day waiting period for sick benefits.
In-Hospital Medical	$4 per call—2d day accident; 4th day sickness. Maximum—$480	Same as present
Ambulance — Employee and Dependent	$25 maximum	Same as present
Private Anesthetist — Employee and Dependent	$25 maximum	Same as present
Diagnostic X-ray, lab., etc.	$20 maximum	Same as present

This plan is the same for the National Group, the New York Metropolitan Group, and Railway Express Motor Transport, Inc., except that private anesthetist fee is not included in the New York Metropolitan booklet.

The increased benefits and coverages are self evident. It should be noted that under the present plan the employees contribute $1 per month towards its cost and under the proposal the entire cost would be borne by the Company. The Local Plan does not provide a fee for the use of a private anesthestist. Such a fee is proposed for addition to the benefit structure of the Local Plan.

In addition to the above changes in the Health and Welfare Plan, the Unions propose that when an active employee of the Company retires that he shall continue to be covered by the life, as well as the casualty coverages of the Plan, that is, Blue Cross and Blue Shield, surgery and hospitalization. Finally, the Unions propose that the Company establish a pension plan for its employees to provide a pension of $50 per month at age 60 or after thirty years of service, above, and in addition to whatever retirement benefits the employee is eligible for under the Railroad Retirement System.

2. *Union Position*

The Unions contend that benefit levels of major negotiated health and accident insurance programs were increased in the past four years in an effort to keep pace with rising wages and the higher cost of hospital and medical care. They point to the fact that in the railroad industry the nonoperating employees recently acquired life insurance benefits for the first time and that the coverage was $4,000. In respect to the latter group, supplemental major medical benefits were extended to active workers' dependents.

The Unions argue that employee pension plans have been established throughout American industry and that an overwhelming majority of those plans are financed solely by the employer.

3. *Company Position*

The Company testified that for 1961 the Health and Welfare Plan cost the Company 7.95 cents per straight time hour for the Local Group, and 8.42 cents per straight time hour for the National Group and that the cost trend is upward; that the estimated increase in costs under the Union's proposals would be approximately 10 cents per straight time hour, excluding the cost of the extension of the Plan to retirees. The Company argues that to establish the proposed pension plan particularly in view of the ages and high service records of these groups of employees, its cost would be staggering. The Company emphasizes the facts (1) that I.B.T. and members of the Railroad Brotherhoods are covered under the same Group Insurance Plan, and (2) that its employees are subject to the Railroad Retirement Act rather than the Social Security Act, hence the railroad pattern in these matters, rather than those of other industries, should control.

4. *Board Discussion*

Those Company employees who are subject to the Clerks, Machinist and Blacksmith Agreements are covered by the so-called nonoperating employees health and welfare plan in the railroad industry, last revised, effective February 1, 1961. Under this settlement the health and welfare plans of employees, other than the Teamsters, were considerably enlarged. This has resulted in a substantial difference in costs and benefits of the Plans as between the two groups of employees. The costs of the improved benefits granted members of the Clerks Union in 1961 were estimated to be 6.34 cents. Parity should be achieved between the two groups of employees in respect to their Health and Welfare Plans.

The Teamster Unions, however, present further proposals which should be treated in connection with the Health and Welfare Plan. They first propose that upon retirement an employee's premium for life, Blue Cross and Blue Shield coverage, should be paid by the Company. They further propose that a pension in the amount of $50 per month be provided for the employee retiring after the age of 60 or after 30 years of service, over and above his regular Railroad Retirement benefits. The average Railroad Retirement annuity in 1961 was stated to be $150 per month whereas the average under Social Security amounted to but $76.09 per month. To supplement the benefits received under the Railroad Retirement Act is quite different from supplementing the more modest payments received by the retired employees in other industries under the Social Security Act.

The Unions should recognize the actuarial and financial difficulties inherent in initiating a pension plan of any significance for a group whose average age is as abnormally high as here. Neither pension nor post-retirement benefits proposals, however, are revolutionary or beyond the scope of consideration. They are supported by respectable trends in American industry; and if considered in lieu of a wage increase, their adoption need not disrupt intra-Company wage relationships.

As previously suggested, to achieve parity with the Clerks Union, 6.34 cents is available. To what extent it should be used in bettering the benefits presently available to the working members, or, in instituting new benefits to retired employees is a decision which, in the first instance, should be decided by the Unions and then implemented by a revised proposal.

It seems inadvisable for this Board in view of the specialized knowledge called for and the limited time at its disposal to deal with the details of the proposals.

5. *Board Recommendation*

Accordingly, the Board recommends that the Unions formulate a new proposal and present it for further negotiation incorporating such parts or revisions of their original proposals as they may determine equitable to both active and retiring members, considering the availability of the coverage and the costs involved, but within the over-all cost limits of 6.34 cents per employee hour, which cost should be assumed by the Company.

B. Annual Reports: Joint Committee

The Union proposes that the Company be required to furnish an annual report concerning the operation of the Health and Welfare Plan. It further proposes that the Company join with the Unions in establishing a Joint Welfare Committee to study the operation of the Plan and if the Committee be unanimous, make such suggestions for changes as may be called for.

The Company stated that it had no objection to the adoption of the above proposals, and the Board so recommends.

C. Sick Leave with Pay

The Union makes the following proposal:

Every employee to be granted fifteen (15) days a year sick leave with pay.

The Company and its employees are covered by the Railroad Unemployment Insurance Act which provides substantial sick leave benefits to employees in the railroad industry. For the first two weeks of illness, the employee would receive $71.40, and for each succeeding two-week period, $102.00 thereunder. There is a waiting period of seven days in the case of sickness, but for non-occupational accidents, the payments begin the day following the accident. The employees are also entitled to $100.00 per month accident and sickness benefit for 13 weeks under the Health and Welfare Plan. A 7-day waiting period is required.

1. *Board Discussion*

Extended discussion of the sick leave proposals, held during the course of the hearings, has convinced the Board that this proposal should not be treated separately from the existing sick benefit plans. There is good reason to believe that the granting of a paid sick leave by the Company would prevent the counting of such compensated days in computing the waiting period provided for under the Railroad Unemployment Insurance Act.

A reasonable waiting period before such benefits become payable serves to discourage absenteeism for trivial reasons. From the show-

ing made the Board does not believe that seven days is an unreasonable waiting period or that compensation in addition to the existing sick benefits are warranted.

2. *Board Recommendation*

The Board recommends that the Union reconsider its proposal for paid sick leave in the light of the statutory limitations of the existing sick leave plan.

B. Paid Holidays

This proposal will be considered in its several parts.

1. *The Holidays*

The National Union seeks to increase the present number of paid holidays from seven to eleven which would conform to the Local Agreement. The additional days are: Columbus Day, Election Day, Armistice Day, and Lincoln's Birthday. Further, both Union Groups propose that in addition to the eleven named holidays there should be added the phrase, "and any holiday called by the State."

2. *Union Position*

The National Group contends that for sake of conformity the four additional holidays appearing in the Local Agreement since 1957 should be included in the National Agreement. It further seeks to demonstrate that there has been a constant trend upwards in the number of paid holidays granted under labor contracts and that something more than the present seven days was justified.

No attempt was made during the course of the hearing to make a case for the adoption of the above-quoted phrase relating to State holidays. Both for this reason and because of indefiniteness in scope or application, the Board recommends that the "State holiday" proposal be withdrawn.

3. *Company Position*

The Company presented uncontroverted evidence to show that the Local Group agreed in the 1957 negotiations to take the four extra holidays in lieu of 3¢ of a 7¢ increase that it was entitled to under the railroad wage pattern. The Company further contended that the four days in question are not widely observed as holidays. It presented evidence to show that those days necessarily would be worked in full force and that, therefore, the proposal would amount to a wage increase.

4. *Board Discussion*

The data submitted reflects that the number of paid holidays prevalent in American industry ranges from 4 to 12 with predominant clusters at the 7- and 8-day level. The data shows that seven paid

holidays is the most common provision currently found in major labor agreements. Seven paid holidays also is standard in the railroad industry. Insufficient showing has been made to justify the Board to recommend an increase in the present number of paid holidays in the National Agreement.

To recommend the change for the sake of uniformity between the two Agreements would require the Board to ignore the basis of the settlement of 1957 which brought the non-conformity about. This could create a future claim of wage inequity by the Local Group.

5. *Board Recommendation*

The Board recommends that the Union withdraw its proposal for an increase in the number of paid holidays in the National Agreement.

C. Pay for Holidays

The National Group proposed that a clause be inserted in the National Agreement to provide that if the listed holiday falls on the employee's day of rest and is not worked, that it shall be paid for at the straight time rate; that if worked, at the rate of time and one-half.

The present practice under the National Agreement is that if a holiday falls on a non-schedule work day, the employee is given the next day off. This is provided for under Rule 63, the Basis of Pay Rule.

1. *Union Position*

The Union argues that pay for holidays constitutes a sort of annual benefit to employees, regardless of the day of the calendar week on which the holiday occurs. It asserts a vested or earned right to the pay for such day and considers it part of the general wage increase arising from negotiations. The Union characterizes this request as being in the interests of conformity and equality because the proposed provision is already contained in the Local Agreement as Rule 28.

2. *Company Position*

The Company's position is premised on the theory that the purpose of a paid holiday is to maintain the employee's regular earnings. It explains that despite the clear provisions of Rule 28 of the Local Agreement for a paid holiday when the same falls on employee's day of rest it has never been applied and that in practice the employee takes a day off in lieu of the holiday. It also states that it has followed the practice of paying the time and one-half rate if the employee is required to work on the named holidays. It argues that the result of the proposed change would be a twenty-five percent increase in the rate of pay for the workweek in which the holiday occurs. It

warns of a conflict with the provisions of Rule 63, the Basis of Pay Rule.

3. *Board Discussion*

The Board considers the better view to be that the employee has an earned or vested right to pay for the holidays not worked. Payment rather than days off would seem more appropriate in the continuous-process operation here involved, particularly in view of the Company's insistence in connection with other proposals that the workload is constant and fairly evenly distributed over the weekdays.

4. *Board Recommendation*

The Board recommends that the Union's proposal for change in the existing holiday rule to provide pay to eligible employees for holidays not worked be granted by the Company. The seeming conflict with the Basis of Pay Rule, noted by the Company, can be resolved through proper draftsmanship.

In respect to the Union's proposal to reduce the vacation eligibility requirements by requiring only one rather than three days of work in the pay week in which the holiday occurs, insufficient showing was made to justify granting the proposal.

C. Holiday Pay—Over the Road Drivers

The Union also proposes that the National Agreement be amended to include the following provision as Rule 64(9):

> Over-the-road drivers shall be paid for the recognized holidays not worked.

The testimony showed that less than 50 Teamster employees are involved in this proposal. There would seem no valid reason for us to apply a different concept of holiday pay and to deny to this segment of workers the benefits heretofore recommended to the others; hence we recommended that the Company agree to this proposed change.

D. Vacations

1. *Union Proposals:*

(*a*) The present vacation service requirements for Teamsters and Clerks are:

	Teamsters	*Clerks (10–31–60)*
1–5 years of service	5 working days	1 year 1 week
5 years or more	10 working days	3 years 2 weeks
15 years or more	15 working days	15 years 3 weeks

The following changes are now proposed in the Teamsters' schedule:

1–5 years	10 working days
6–9 years	15 working days
10–19 years	20 working days

(*b*) *Earned Rights to Vacation:*

The following new provision is proposed as addition to the Local Agreement:

> In the event any employee is entitled to vacation and becomes disabled by sickness or injury, dies, or leaves the employment of the Agency for any reason other than dismissal for cause, he, or his beneficiary, shall be paid in the amount he would have received had he gone on his vacation while in the employ of the Agency.

In short, the Union proposes to reduce the service requirements for the second and third week of vacation to 5 and 9 years, respectively, and to obtain a fourth week of vacation after ten years. It also desires to establish a contractual vested right to earned vacation in its Local Agreement identical to that negotiated into the National Agreement in 1957.

2. *Union Position*

The Union case is centered around the liberal trends developed in industry generally and in the trucking industry in particular. For instance, an increasing number of cartage agreements provide for the vacations requested.

3. *Company Position*

The Company contends that the vacations proposed are unwarranted and, in some respects, are in excess of the railroad pattern. It submits two counter-proposals which will be later discussed.

4. *Board Discussion*

The lowering of service requirements for the ten working-day vacation from the existing 5 years to 3 years is dictated by the negotiation of a similar provision into the BRC Agreement of October 3, 1960. This should be done in respect to the instant Agreements in the interest of equality and comparability within the Company.

The data pertaining to major Union contracts in 1961 indicates that 15 years is still the predominant service requirement for the granting of three weeks vacation. The Board finds no convincing reasons why the present provision for three weeks vacation should be changed.

The Union's proposal for four weeks vacation lacks support at this time in industry generally as well as in the Railroad industry. The impact of a four weeks vacation upon this Company would be unduly severe because of the unusual high service record of its employees. The company showed that 77.65% of its National Group employees have been in Company service for 10 years or more and 79.53% of the Local Group employees hold 10 or more years tenure with the Company.

The predominant number of agreements in arbitration awards treat vacation pay—with various limitations—as an earned right. The Company has already recognized this principle by including identical language in its National Agreement in 1957. There is no reason why uniformity should not be achieved in this regard, particularly in view of the fact that the Company in its counter-proposals of December 8, 1961, has accepted the principle of earned right to vacation pay, subject to the adoption of a qualifying period for determining vacation eligibility.

The Company has made counter-proposals to both Agreements. It points out that both Agreements are presently silent with respect to specific qualifying periods, and, therefore, seeks to amend the Agreements to provide for a qualifying period based on a sliding scale related to the employee's years of service with the Company. The Company's proposal is identical with the qualifying period provided for in the Railroad Non-Operating Agreement effective January 1, 1961.

Part of the Company's counter-proposals on vacations is to have the Union recognize its managerial discretion to make vacation assignments.

The Board beleives that the Company's counter-proposals are sound. Such ground rules should serve to avoid future misunderstandings and controversies.

5. *Board Recommendations*

The Board makes the following recommendations in respect to the vacation proposals and counter-proposals:

(*a*) That the Union withdraw its proposals concerning service requirements and lengths of vacation periods and accept the following schedule in lieu thereof:

After 1 year	5 working days vacation
After 3 years	10 working days vacation
After 15 years	15 working days vacation

and that the Company grant the same.

(*b*) That the proposal for payment of earned vacations, concurred in by the Company, be inserted in the Local Contract.

(*c*) That the Company's counter-proposals be accepted relating to the establishment of minimum service qualifying periods upon a sliding scale and that the Union recognize management's discretion to schedule vacations.

E. Premium Pay for Excessive Overtime

1. *Union Proposal*

The Union proposes to incorporate the following paragraph in the National Agreement as a deterrent to assignment of abnormally long work periods:

> Note. It is agreed that in no instance shall an employee be required to work beyond ten hours in any one day. Except in case of breakdown, for all time worked in excess of ten hours, in addition to time and one-half rate for actual time worked beyond assigned day, an additional minimum allowance will be made of four (4) hours at time and one-half rate.

The above proposal is presently contained in the Local Agreement, Rule 24, except that the bonus penalty commences after eleven hours rather than ten hours as herein proposed. It was stated that this reduction from eleven to ten hours is based upon the requested reduction of the work day from 8 to 7 hours.

2. *The Union Position*

While the Unions failed to show that any particular problem existed at this time in respect to long work assignments it apparently feels that any labor agreement should contain provisions such as that proposed to protect against future managerial abuse of overtime work. The data presented by the Unions show that in contracts where the subject was treated double time was frequently provided for work in excess of 12 hours. Because the bonus penalty provision is presently contained in the Local Agreement, the National Union argues that, in the interest of uniformity and comparable treatment of employees, the Company should agree to its appearance in its Agreement.

3. *Company Position*

The Company refers to the Note to Rule 24 of the Local Agreement as the "Bingo" provision. It explains that if an employee works any time past eleven hours of continuous service he is automatically entitled to an additional minimum allowance of four hours at time and one-half rate in addition to the time and one-half rate for actual time worked beyond the assigned day.

The Company stated that the provision was negotiated into the Local Agreement in 1941 when its facilities and equipment were overtaxed, its employment situation critical due to the war manpower demands and as a consequence it was necessary to work the drivers more and long hours daily of overtime to move the traffic. It was hoped that the provision would act as an effective control on overtime work and payments. The Company further claims that the provision did not act as a deterrent because there was no other alternative but to work the hours of overtime if traffic was to be moved.

It is the Company's position that there is no existing similar condition to justify the adoption of this drastic overtime pay provision, and even if there was, experience has shown that in connection with this Company's operations, such a rule does not accomplish its intended purpose.

The Company also pointed out that its over-the-road drivers were subject to I.C.C. restrictions which limit driving time to ten hours but because station time is also involved, the proposed rule would be impractical in its application to that service.

4. *Board Discussion*

The Board notes that overtime pay is based traditionally on time worked. This is not the measure of the compensation provided for under this proposal.

On the other hand, the Board agrees that some deterrent, beyond payment of the time and one-half rate, for the imposition of exceedingly long work periods, is reasonable. The Board finds from the data presented that a substantial number of labor contracts in the United States contain a provision calling for double time after twelve hours. Based upon this Company's past experience such a provision would seem justified as a deterrent to the working of excess hours.

5. *Board Recommendation*

The Board recommends that in lieu of the proposal presented that the parties adopt a provision calling for double time after eleven hours of continuous service and that uniformity between the National and Local Agreements be achieved upon such basis.

F. Premium Pay for Weekend Work

1. *Union Proposals*

The Union proposals contemplate a Monday-to-Friday workweek with premium pay for Saturday and Sunday work; time and one-half for Saturday, and double time for Sunday work.

2. *The Union Position*

The Union states that employees should not be required to work on Sundays, traditional family days of rest, except in cases of absolute necessity, and in those cases, premium pay should be granted in order to compensate for the undesirable features of the work. It contends that workers in other industries generally receive premium pay for weekend work as such and that it is unfair and discriminatory not to extend the same treatment to the employes involved herein. The Union argues that the Company has recognized the principle of premium pay for certain days by paying premium pay for work on holidays.

3. *Company Position*

The Company points out that while its operations are curtailed on weekends, consistent with the demands of the service, that its operations are such that they cannot come to a halt. Perishables, live animals, and air express must be continuously moved at all times. More important, it states, is the need to carry on transfer operations at the important railroad terminals at which these employees work. Such movements must be made weekends to avoid an accumulation of work which, it states, would stagger the terminal and delivery crews on the following Monday. To suspend the transfer operations over the weekend would also overtax storage facilities and create a car shortage, it claims. A Company witness testified that 75% of the total traffic volume in Chicago represents transfer or interchange traffic passing through the City.

4. *Board Discussion*

This proposal has been before numerous Emergency Boards. It has been said before that the necessity for weekend work in the railroad express business is "an established fact which rules cannot change." True, much of the local delivery and pickup work is suspended for the weekend but an important part, including the significant transfer work, must be carried on. Represented in numbers of workers, the percentages of employees used on Saturdays and Sundays is small. In Chicago, 14.1% of the working force is used on Saturday and 9.6% on Sundays. At St. Louis, the percentages are 10.9% and 9.1%, respectively.

The data supplied reflects that premium pay for weekend work is common in American industry. However, it is to be noted that striking differences in practice exist between industries. The railroads, to which this operation so closely relates, is one of those industries in which premium pay for weekend work has gained no foothold. Similar considerations argue against its adoption in the operations of this Company.

5. *Board Recommendation*

The Board recommends that the Union withdraw this proposal.

G. Severance Pay

1. *Union Position*

The Union is seeking severance pay only for the limited situation where the business is dissolved, rather than for layoffs or reduction in force which is customary in many collective agreements. Despite apparent coverage under applicable statutes or the Washington Job Protection Agreement in the case of merger, consolidation or abandon-

ment of facilities, the Union is seeking such protection in their contract with the Agency. In addition, the Union requests protection for employees adversely affected in the case of dissolution of the Company.

2. *Company's Position*

The Company contends that the aforementioned statutory and contractual provisions adequately protect the employee in the event of merger, consolidation and abandonment. It vigorously opposes the extension of the provision to dissolutions because in such contingency employees in the railroad industry possess greater protection under the Railroad Unemployment Insurance Act than employees in general industry.

3. *Board Discussion*

The Board believes that with regard to all the other contingencies mentioned other than dissolution, there are adequate statutory and administrative protection for the employees of the Company. With regard to severance pay being paid upon the dissolution of the Company, the Board believes that this would be a drastic innovation and so far-reaching in its consequences as to affect the credit standing of the Company and impair its ability to raise needed capital funds.

4. *Board Recommendation*

The Union should withdraw the proposal with regard to dissolution. The Board further recommends that the parties negotiate for the protection of employees adversely affected by the merger, consolidation or abandonment of facilities.

H. Uniforms

1. *Union Proposal*

The present rule contemplates that all uniforms for employees, other than cap and jumper, *required* by the Company will be paid for by the Company. The Union proposal would extend this cost to include maintenance of the uniforms. It also would include coveralls as a required uniform for employees who have to operate and service Stricktainers as well as over-the-road drivers and garagemen. The proposal would also shift the cost of supplying caps and jumpers from the employee to the Company.

2. *Union Position*

The Union explained that the Stricktainer is an articulated trailer operable as a single or as a dual unit and that the employee must frequently go underneath the unit to make connections and that his clothes get covered from the grease and road oil. The Union relies in the main upon master area cartage agreements to support its request

that necessary uniforms even if not required should not only be furnished free to the employee but maintained and cleaned. The Union points to a provision in the labor contract of a subsidiary company which specifically requires the employer to provide protective coveralls and rain gear to employees who are required to join or disjoin Stricktainers.

3. *Company Position*

The Company explains that the fittings on the Stricktainer are undergoing alteration so that soon the employee will not have to go underneath the unit to make connections, hence, the conditions complained of will soon be eliminated.

4. *Board Discussion*

Uniforms and protective clothing required by the job are furnished by management in an increasing number of contracts in American industry. The Board believes that the caps and jumpers, when required, are essentially for the benefit of the Company in identifying its service to the general public and should therefore be paid for by the Company. The inclusion of coveralls as a required uniform of the employees regularly compelled to go under the Stricktainer to effect the connections appears justified. While it is anticipated by the Company that this need will soon be eliminated we believe until that event occurs, that the Company should furnish coveralls to such restricted group of employees. Insufficient showing has been made to justify the Board to recommend maintenance of uniforms at this time.

5. *Board Recommendations*

The Board recommends that the Company pay for the cap and jumper when required and furnished coveralls to those employees required to go under the Stricktainers to effect connections until such condition is corrected.

VII. WORK RULES

A. Assigns and Successors

1. *Proposal*

The Union proposes a new rule to provide for the continued validity of the collective bargaining agreement where there is a transfer of Company title or interest. Its purpose is to prevent the Agency from avoiding obligations under the agreement through sale or other transfer of the business.

2. *Union Position*

The Union maintains that an assigns and successors clause is required to make existing contracts binding upon the successors in inter-

est of the employer and the union. This is designed to protect both parties against the interruption of the collective bargaining relationship. Illustrative clauses for such protection were cited by the Teamsters and it was maintained that such a clause is now a common provision in master and cartage trucking contracts. In addition, an arbitration award issued under the auspices of the National Mediation Board was cited to the effect that the basic agreement between the parties should contain a provision binding successors and assigns in case of consolidation or merger. Even in those contracts which do not include a specific provision for the continuation of the collective bargaining agreement, the Union states that employers attempt to insure continuation of the agreement upon transfer of title or interest. Finally, the Union justified its request for the inclusion of this provision on the grounds that the new Standard Operations Agreement between the Railway Express Agency and the railroads contains a successors assigns clause.

3. *Company Position*

The Agency states that there is no need for such a provision because it is not a "fly by night" outfit. The provision has been borrowed from the trucking industry because the ease of entry into the business permits many small and financially irresponsible operators to leave the business without meeting their financial obligations.

4. *Board Discussion*

This is the first time the Union has presented a demand on the Company for the inclusion of an assigns and successors clause. No information or evidence was presented by either party to the dispute to indicate what legal consequences could flow from the inclusion of such a provision. Accordingly, it is not known whether such a provision would be legally binding on a successor in interest. More importantly, this Board is not certain about the desirability of binding the parties to an agreement under the circumstance where the successor in interest might want to materially alter the operations of the Company in order not to experience the same economic consequences which might have befallen its predecessor.

5. *Board Recommendation*

It is recommended that consideration of this demand be deferred until such time as more information is available on the scope of its application.

B. Report on Accidents

1. *Proposal*

The Union proposes to amend the present rule in the National Agreement to include "reporting on accidents" in the type of work for which

a minimum of four hours at time and one-half rate is provided. This provision is presently contained in the Local Agreement.

2. *Union Position*

The Teamsters' justification for this proposal is essentially to achieve uniformity and parity among employees it represents in this Company.

3. *Company Position*

The Agency contends that most drivers report accidents on Company time; therefore, no practical problem is involved. The principal problem is serious accidents where drivers have a legal duty to report such accidents. The Agency maintains that drivers have a moral and social responsibility to make a full disclosure of the pertinent facts as well as a legal duty; therefore, it should not be penalized for the exercise of this responsibility.

4. *Board Recommendation*

Having granted this coverage to the Local Group, the Company is hard-pressed to argue on legal or moral grounds that the same privileges should not be extended to other drivers who are confronted with identical risks. The demand should be granted.

C. Reduction in Workweek

1. *Proposal*

The present provisions in the National Agreement provide for the standard 8-hour day, 40-hour week. The management is not obliged to permit two consecutive days off but agrees to do so, so far as practicable.

The Local Agreement is similar but it provides that the workweek shall be Monday to Saturday.

The Union proposes that each agreement shall be changed to provide that the basic workweek shall consist of five days of seven consecutive hours each, exclusive of meal time, during the period Monday to Friday.

2. *Union Position*

The Union states that "the primary argument for a shorter working week stems from a desire to spread employment during periods of contracting job opportunities." It argues that the urgency for reduction is justified by the steady growth of productivity and output in recent years, most of which is due to modernization of plant and equipment. The Teamsters say this demand is one which the labor movement is pushing in order to create new job opportunities to maintain and increase current employment levels. Selected industries were cited where the workweek was shorter than 40 hours. The Teamsters emphasize that the arguments against the seven hour a day, thirty-five

hour workweek, are the same as were made when the workweek was reduced from 48 to 40 hours and the experience with this reduction was not as painful as contended by management.

3. *Company Position*

The Agency contends that the Union's workweek proposal would result in drastic changes in current operations. In addition to reducing working hours during a single day and in the workweek, the proposal would establish the workweek as Monday through Friday. This latter proposal would eliminate the Agency's prerogative to establish rest days other than Saturday and Sunday. Since this is a continuous operation business, the Company contends the vehicle employees would have to be assigned on the weekend anyway and would, accordingly, draw time and one-half pay for this work. In short, the Agency maintains that the Union objective is to get penalty rates for Saturday and Sunday work and not to secure these days as rest days. Such penalty rates would create an unbearable financial burden. Further, the Agency argued that similar demands were considered by a number of Emergency Boards and denied in each case.

4. *Board Recommendation*

Since the Railway Express Agency is a continuous operating business following the industry practice with which it is aligned and no unique circumstances indicating hardship on vehicle employees have been shown by the Union, there is insufficient justification to support these proposals. The Board recommends that they be withdrawn.

D. Balance of Company's Counter-Proposals

1. *National Agreement*

(*a*) *Rule 1—Scope.*—The Company requests that the scope of the Agreement be limited to local work in each of the locations named. It would define "local work" as being pick-up and delivery of express traffic and work in connection therewith by employees covered by this Agreement, and transfer service including the movement of traffic to and from suburban offices designated by the management. Over-the-road service to and from locations herein named may be performed by employees represented by another labor organization.

The Company states reason for this request is that as motor truck routes have been substituted for inadequate or eliminated rail service, it becomes necessary to run a route from a city where the drivers are represented by the Teamsters to one where they are represented by the Brotherhood of Railway Clerks. Under present arrangements, on through runs, the Company has to stop at the first office where the BRC has jurisdiction and let the IBT driver slip seat with the BRC driver and continue the run. If in the course of the run, an IBT city

is entered, the BRC driver has to slip seat with his IBT counterpart. On certain through runs, the IBT has refused to yield jurisdiction, which has required the Company to engage in round-about and circuitous routing in order to avoid jurisdictional fights. The Company insists it must have a clear understanding of the jurisdiction of the several Unions before it can undertake to make any capital commitments for equipment for these routes.

Board Recommendation: The Board finds that it is without jurisdiction or authority to rule on the proposal limiting the scope of the Agreement. The party must seek other forums to adjudicate this issue.

(*b*) *Rule 62—Qualifying Period for Holiday Pay.*—The Employer proposes that employees work three days in a pay week in which a holiday occurs in order to get holiday pay. This is the rule in the New York Metropolitan Agreement.

Board Recommendation: The Board finds reasonable the Company's request to make the National Agreement conform to the existing Local Agreement with respect to requiring an employee to work three days in a pay week in order to receive holiday pay, and accordingly recommends that the parties negotiate to that end.

2. *New York Metropolitan Agreement*

(*a*) *Rule 1—Scope.*—The Company wishes to be able to recruit persons for such supervisory positions as foremen, supervisors, inspectors and dispatchers from other than the membership of the Vehicle Department, as presently required. This provision interferes with the management training program whereby the Company seeks to recruit new and young blood from a wide source.

Board Recommendation: The Company, by following a promotion "from within" policy, has offered an incentive to its employees to apply themselves diligently in order to be promoted to better paying, more responsible jobs. Such a policy should not be treated lightly. However, in order to meet the Company's need for a management training in all facets of its operations, the parties should negotiate a provision which would permit management trainees to hold such positions temporarily for training purposes without having to be selected from the Vehicle Department.

(*b*) *Rule 3—Use of Trailers.*—The Company seeks to eliminate the sentence "all tractor or trailer work shall be confined to transfer work." This restriction exists only in New York. Furthermore, no other transportation company in New York is so restricted. Tractors can be used very effectively for pick up and delivery work, but under this restriction the Company is forced to purchase four wheel vehicles which it does not need, while useable equipment lies idle.

Board Recommendation: The Board is of the opinion that the restrictions on the use of tractor-trailer for pick up and delivery work within the jurisdiction of the Local Union Agreement are unreasonable. If the Union's contentions are to be taken seriously that this Company is partaking increasingly more of trucking operations, then it ill behooves it to limit or hinder it in functioning efficiently and effectively in the trucking field by denying it the full use of tractor-trailers. For the Union to prohibit, at the present time, the Company from the full use of tractor-trailers in cartage work such as pick up and delivery and, at the same time, demand that it pay area trucking wages is to take an inconsistent position.

The Board urges that this restriction be removed from the Agreement.

(*c*) *Rule 10—Recall of Employees.*—The Company wishes to amend the rule that men be recalled in strict seniority, subject to the need for licensed drivers. Up to now the Union's interpretation of the rule has required the recall of men in strict seniority, so that if the Company needed 10 drivers, but 5 helpers were first on the seniority register, these 5 had to be recalled first even if there was no need for their services before the drivers could be reached for recall to work.

The Company further proposes that this rule be amended so that employees recalled after layoff have to report within 48 hours instead of the present 7 days.

The Company also proposes that the rule be amended so that if an unassigned employee is not recalled within 180 days he loses his seniority.

Finally, the Company proposes to eliminate from this rule the provision which limits the Company from hiring outside equipment unless a driver from the vehicle division is assigned to ride with the hired equipment while engaged in REA work. The Company is willing to assign an IBT driver if available, but does not want to be barred from hiring such equipment if a driver is not available. The National Agreement has such a provision and the Company wants the Local Agreement to conform to it.

Board Recommendation: The Board believes the Company's proposals have merit.

(*d*) *Rule 11—Seniority Roster.*—The Company wants to establish a separate seniority roster for drivers, helpers, and garagemen. This will enable it to recall classifications of employees as they are needed, rather than be compelled to use one seniority register.

Board Recommendation: This proposal appears to have merit. Appropriate safeguards for the employees now on the existing roster should be provided.

APPENDIX A

EXECUTIVE ORDER NO. 11050

CREATING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN THE REA EXPRESS AND CERTAIN OF ITS EMPLOYEES

WHEREAS disputes exist between the REA Express, a carrier, and certain of its employees represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; 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 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 carrier, or by its employees, in the conditions out of which these disputes arose.

JOHN F. KENNEDY

THE WHITE HOUSE,
September 14, 1962

APPENDIX B

THE WHITE HOUSE
Washington 25, D.C., October 15, 1962.

Honorable FRANCIS A. O'NEILL, Jr.
Acting Chairman, National Mediation Board
Washington, D.C.

DEAR MR. CHAIRMAN: This is to inform you that the President approves the recommendation of the National Mediation Board for an extension of time permitting Emergency Board No. 153, created by Executive Order 11050, of September 14, 1962, to file its report and recommendations not later than November 10, 1962, inclusive.

Sincerely,

(S) RALPH A. DUNGAN,
Special Assistant to the President.

APPENDIX C

Emergency Boards Involving Teamsters and REA Since 1941

Emergency Board No.	*Date*	*Chairmen*
12	Nov. 17, 1941	Stone
29	Oct. 31, 1945	Swain
50	Oct. 13, 1947	Edwards
52	Jan. 15, 1948	Meyer
59	Apr. 30, 1948	Lapp
93	Nov. 2, 1950	Lewis
111	Aug. 1, 1955	Simmons
117	Mar. 21, 1957	Sanders

In addition, three Emergency Panels were convened during World War II.

Feb. 1, 1944	Calkins
Feb. 18, 1945	Mitchell
Aug. 24, 1945	Stacy

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