Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

CREATED BY EXECUTIVE ORDER 11127 DATED NOVEMBER 9, 1963, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To Investigate a Dispute Between Florida East Coast Railway and Certain of its Employees Represented by Eleven Cooperating Railway Labor Organizations

(NMB CASE A–6627, Sub No. 1)

WASHINGTON, D.C.
DECEMBER 23, 1963

(Emergency Board No. 157)

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *December 23, 1963.*

THE PRESIDENT,
The White House.

MR. PRESIDENT: The Emergency Board created by President John F. Kennedy on November 9, 1963, by Executive Order 11127, pursuant to Section 10 of the Railway Labor Act, as amended, to investigate a dispute between the Florida East Coast Railway and certain of its employees represented by 11 cooperating labor organizations, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted.

HARRY H. PLATT, *Chairman.*
DEREK BOK, *Member.*
PAUL N. GUTHRIE, *Member.*

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REPORT TO THE PRESIDENT BY EMERGENCY BOARD NO. 157

Created by Executive Order 11127 dated November 9, 1963, pursuant to Section 10 of the Railway Labor Act, as amended

This is an Emergency Board Report which relates the facts and makes recommendations concerning a dispute between the Florida East Coast Railway (FEC) and certain of its nonoperating employees represented by 11 cooperating railway organizations. A determination has been made that this dispute threatens to interrupt interstate commerce to such a degree as to deprive a section of the country of essential transportation services.

I. INTRODUCTION

The 11 cooperating organizations represent 73 (ICC) classes of nonoperating employees, numbering a half million persons. These individuals have jobs on more than 200 line-haul railroads. Among them are approximately 1,300 nonoperating personnel employed by the Florida East Coast Railway.

The Carrier was first incorporated on May 28, 1892, under the name of the Florida Coast & Gulf Railway Co. The present name was adopted in 1895. The Florida East Coast Railway currently owns some 572 miles of road and 1,257 miles of track, all of which are situated in the State of Florida. A main trunk line commences in Jacksonville and runs in a southerly direction through Fort Lauderdale, West Palm Beach, and Miami, terminating in Florida City. Branch lines extend from the trunk to Maytown, Benson Springs, South Miami, and Lake Harbor. In addition, the railroad is presently constructing a spur which will connect with a line being built by the U.S. Government so as to link the main trunk with the complex of defense installations on Cape Kennedy and Merritt Island.

Apart from its railroad equipment and facilities, the Carrier owns various industrial properties and also holds all the capital stock of the Florida East Coast Highway Dispatch Co., a firm engaged in the carriage of freight by truck. In addition, the railroad owns part interest in certain terminal facilities, namely, the Atlantic & East Coast Terminal Co. and the Jacksonville Terminal Co.

The FEC was placed in receivership in 1931. In the ensuing years, various reorganization plans were submitted. After several proposals had been rejected by the courts, a plan was finally approved in 1960, and the present management took over the company on January 1, 1961. Pursuant to the reorganization, the Railroad was capitalized at approximately $85 million. The capitalization included $22.5 million in first mortgage bonds, an equal amount of second mortagage bonds, and $36 million in common stock.[1] A majority of the first and second mortgage bonds and most of the common stock were held, and are still owned, by the estate of Alfred I. Du Pont, either directly or through a wholly owner corporation, the St. Joe Paper Co.

II. THE DISPUTE

The origin of this dispute may be traced to September 1, 1961, when the 11 nonoperating organizations served identical "Section 6" notices on virtually all Class I railroads throughout the country. In these notices, the organizations informed the carriers of their desire to revise existing agreements in order to provide for an across-the-board wage increase of 25 cents per hour and a requirement of 6 months' advance notice from the Carrier prior to laying off or abolishing the positions of employees, save in certain emergency situations. Thereafter, all the carriers submitted identical counterproposals to the organizations providing for wage reductions of 20 percent and more, and for 24 hours' advance notice in the case of abolition of jobs or reductions in force. When efforts to settle the dispute through collective bargaining and mediation proved unsuccessful, Emergency Board No. 145 was created on March 3, 1962. After extensive hearings, this Board made the following recommendations:

1. That all rates of pay be increased by 4 cents per hour effective February 1, 1962.

2. That all rates of pay existing on May 1, 1962, be increased as of that date by 2½ percent.

3. That the parties agree not to file Section 6 notices to revise rates of pay before May 1, 1963.

4. That the parties agree upon a rule requiring at least 5 working days' notice to all regularly assigned employees before abolishing their jobs, except as provided in Article VI of the agreement of August 24, 1954.

After the submission of this report, the parties negotiated and agreed to convert the 2½-percent increase to a uniform cents-per-hour

[1] The first mortgage bonds are 50-year debentures carrying a fixed interest obligation of 5 percent. The second mortgage bonds are 50-year debentures with contingent interest at the rate of 5½ percent, payable to the extent earned and cumulative up to an amount not exceeding 16½ percent. In addition to the first and second mortgage bonds and the common stock, the capitalization included $4,070,588 in equipment obligations.

equivalent, which was computed at 6.28 cents. Subject to this one amendment, all Class I railroads signed agreements in June of 1962 on the basis of the Emergency Board's recommendations except for the Florida East Coast and two other carriers. The two other railroads had not been served with the original Section 6 notices since one was in the process of going out of business while the other was about to be absorbed by another carrier. Hence, the Florida East Coast became the only Class I carrier in the country which did not accept the terms of the national agreement.

For many years the Florida East Coast had regularly participated in the national handling of negotiations between the carriers and the nonoperating employee organizations. The organizations submitted the same Section 6 notice to FEC in 1961 as they served on all other Class I carriers. Moreover, FEC joined in submitting identical counterproposals to the organizations. On February 9, 1962, however, FEC notified the organizations that it would not participate in the national handling or consider itself bound by the settlement resulting from these negotiations. As previously noted, the Carrier subsequently declined to accept the agreement of June 5, 1962.

After FEC had rejected the national settlement, mediation was invoked on July 20. Following the appointment of a mediator, bargaining took place on August 20–23. In these negotiations, the Carrier claimed it could not afford to meet the terms of the national settlement. Instead, it offered a series of proposals which varied in detail but were designed primarily to achieve two objectives. In the first place, FEC sought to extend the moratorium on changes in compensation for a longer period than was provided in the national settlement. Second, it attempted to reduce the cost of the settlement by providing for lower wage increases, at least for 1962 and 1963.

When the organizations were unable to accept any of the Carrier's proposals, the negotiations terminated. Pursuant to Section 5 of the Railway Labor Act, the National Mediation Board requested both parties to submit their differences to arbitration. The carrier and the organizations declined this request.

In November 1962, the railroad atempted without success to induce the National Mediation Board to initiate steps oward he creation of an emergency board. Clarifying its position on January 23, 1963, the Board declared:

> . . . the issues in this dispute are the same as were fully and adequately heard by Presidential Emergency Board No. 145. . . . The Railway Labor Act never contemplated that Presidential Emergency Boards would be created to consider identical issues arising on separate railroads. To proceed in that manner would weaken or destroy the effectiveness of the Act. The Board feels that this dispute could and should be resolved by a small amount of bona fide collective bargaining.

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Further negotiations took place in December 1962. At this time, the Carrier presented a final offer to the organizations. Under the terms of this proposal, the Carrier agreed to provide a wage increase of 1⅔ percent from February 1962 to March 1963; a further increase of 1⅔ percent from March 1963 to August 31, 1963; and a final increase of 1⅔ percent effective September 1, 1963. According to the Carrier's estimates, this offer would result in higher rates of pay after September 1963 than the 10.28 cents per hour provided in the national settlement. On the other hand, the organizations were asked to agree to a moratorium extending to March 1, 1964, and to rates of pay below the national settlement from February 1962 until September 1963. The organizations replied that they would seriously consider this offer if the Carrier would agree to an additional increase of 7 cents per hour effective March 1, 1963, to compensate for the longer moratorium. When the Carrier rejected this proposal, the negotiations were terminated.

On January 23, 1963, the employees struck. Seven days before the commencement of the strike, the Carrier gave notice that all nonoperating jobs were abolished as of the strike date. Picket lines were established, which were honored by the operating employees. As a result of these actions, the Carrier was totally shut down for approximately a week. Thereafter, the railroad began to advertise jobs and to hire new employees when the strikers refused to bid on the available positions. With the aid of these replacements, supplemented by supervisory personnel and by a few returning strikers, the railroad began to resume freight operations on a limited scale.

As the strike continued, Secretary of Labor Wirtz sought to arrange a peaceful settlement of the dispute. On April 3 and on May 17, he requested that the parties agree to resolve their differences through arbitration. Although the organizations now expressed their willingness to arbitrate, the Carrier once again refused.

On September 24, 1963, the Carrier served Section 6 notices on both the operating and nonoperating organizations, proposing sweeping changes in the existing agreements. For example, under the FEC proposals, management was to exercise exclusive control over such matters as discipline, promotions, job assignments, and work rules. Seniority lists were to be reorganized to abolish traditional craft lines and substitute four master seniority groups in their place. Wages were adjusted to provide the same rates of pay for employees performing substantially similar work. Strike ballots were to be conducted prior to the initiation of any work stoppage, and further ballots would be required every 30 days until the conclusion of the strike. Of the various organizations receiving these notices, only

the International Association of Railway Employees and the Brotherhood of Railroad Trainmen agreed to negotiate with the company. As a result, the Carrier placed its proposals into effect on October 30 with respect to the nonoperating organizations and took similar action on November 4 for those operating crafts which had not agreed to negotiate with the company.

By the late summer of 1963 the Carrier had succeeded in restoring the greater part of its normal freight operations. Nevertheless, it refrained from restoring passenger service, claiming that it would be unsafe to do so in view of the numerous acts of vandalism occurring on the railroad. Moreover, the Carrier did not attempt to provide less-than-carload service. For these and other reasons, numerous complaints were made to public officials by shippers, civic groups, and business organizations protesting the lack of adequate rail service on the Florida East Coast. On July 31, 1963, the Florida Public Utilities Commission issued a report in which it reviewed these complaints and concluded that the railroad had failed to maintain adequate service, disregarded standards of safe operation, and neglected to maintain its right-of-way, structures, switches, signals, and rolling stock in a safe or satisfactory manner.

On September 24, President Kennedy ordered that an investigation be held to determine the effect of the strike on the Nation's defense and space programs.[2] A Board of Inquiry comprised of representatives from the Departments of Defense and Labor and from the National Aeronautics and Space Administration was constituted to conduct the investigation. After holding hearings in Florida, the Board of Inquiry submitted a report on October 10 which concluded that "this labor dispute is currently and potentially detrimental to our Nation's defense and space efforts." The Board recommended that the parties resume negotiations and give serious consideration to submitting their differences to arbitration.[3]

On October 14, President Kennedy acknowledged receipt of the report. Expressing concern over the continuing impact of the strike, he urged the National Mediation Board to contact the parties and persuade them promptly to resume negotiations.[4] After further mediation efforts proved unsuccessful, the Board again made a proffer of arbitration. Although the organizations reaffirmed their willingness to arbitrate, the Carrier declined the proffer. The Mediation Board then determined that the dispute threatened to deprive a section of

[2] App. A–5.

[3] The Board also recommended that NASA and the Air Force establish an embargo until the dispute was settled on all shipments traveling over the Florida East Coast under Government bills of lading. We are unaware of the extent, if any, to which the embargo has been placed in effect.

[4] App. A–7.

the country of essential transportation services, and President Kennedy issued Executive Order 11127 on November 9, creating Emergency Board No. 157. Named to the Board were Harry H. Platt of Detroit, Mich., as Chairman, and Derek Bok of Cambridge, Mass., and Paul N. Guthrie of Chapel Hill, N.C., as members.

The Emergency Board convened in Jacksonville, Fla., on November 20, 1963. By this time, the Carrier had hired 417 replacements and 76 strikers; in addition, the company's 250-odd supervisors performed at least some of the tasks formerly done by the craft employees. With this work force, the Carrier had restored freight operations and had achieved a level of car loadings during the first 2 weeks of November which it claims was at least as great as the figure for the corresponding period in 1962. On the other hand, the Carrier was still not accepting less-than-carload shipments and had not resumed passenger operations.

The Emergency Board held hearings from November 20 until December 9. The hearings were recessed from November 23 to December 3 because of the death of President Kennedy. In view of the recess, both parties agreed that the date for the submission of this report might be extended to December 19. Thereafter, the parties agreed to support a further extension to December 24. Both extensions were subsequently granted by President Johnson.

III. SCOPE OF ISSUES AND POSITIONS OF THE PARTIES

A threshold issue in this dispute is whether the striking employees should be reinstated by the Carrier. The organizations contend that the Carrier is obliged by Section 10 of the Railway Labor Act to reinstate all of the strikers immediately. The railroad denies that it is under any legal obligation to return the strikers to their jobs and insists it will not discharge any of the replacements to enable the strikers to return to work. As a result, though the Carrier has not refused categorically to rehire the strikers, it is only willing to take them back as job openings become available. Some 300 jobs may be restored when FEC resumes normal passenger operations, but since the Carrier insists that it can operate efficiently with many fewer men than were employed before the strike, it does not anticipate hiring more than a fraction of the strikers in the foreseeable future.

The second issue to be considered involves the wage rates to be paid by the Carrier. The organizations have argued that FEC should grant wage increases on the same terms as provided in the national settlement of June 1962. The organizations stress the importance of uniform national wage movements in maintaining stable relations in the railroad industry; they deny that the financial position of the

railroad or its future prospects are materially different from those of many other carriers which signed the 1962 agreement. On the other hand, the Carrier points out that it did not participate in the national handling and contends that it cannot afford to meet the terms of the 1962 agreement. Moreover, the railroad argues that the wages now paid to its nonoperating personnel greatly exceed the rates paid to employees performing comparable work in other industries in Florida.

The Carrier and the organizations also disagree on the question of whether advance notice should be required of the company before abolishing jobs or effecting a reduction in force. The organizations insist that FEC should agree to give 5 working days' notice, as provided in the 1962 national agreement. While the Carrier has not clearly indicated its views on this matter during the hearings, it presumably takes the position reflected in its Section 6 notice of September 24, 1963, that no notice whatever should be required.

The parties agree that the issues set forth above fall within the scope of the inquiry to be conducted by this Board. The Carrier indicated in its opening argument, however, that the Board should also consider all of the proposals included in its Section 6 notice of September 24, 1963. The Carrier further suggests that the Board should consider all unresolved issues between FEC and the operating organizations, arguing that these differences must be resolved before a lasting settlement of this dispute can be achieved.

Having considered these arguments, the Board has concluded that the scope of this report should not be broadened to include the additional issues suggested by the Carrier. In the first place, we doubt whether the Carrier genuinely desires the Board to consider these matters, since it did not make a serious attempt to introduce evidence on the questions involved. Moreover, it should be observed that the Executive order creating this Board did not refer to the operating crafts nor did these organizations participate in any way in these hearings. As a result, it seems clearly inappropriate to make any recommendations respecting their differences with the railroad. As for the company's notice of September 24, 1963, we note that the proposals contained therein contemplate drastic changes in the conditions previously in effect on this and other railroads. We further note that the parties have not engaged in any negotiations on these proposals and that a vast number of separate issues are involved. As a result, it would be premature and hardly feasible for this Board to comment on the proposals.

IV. GENERAL DISCUSSION, FINDINGS AND CONCLUSIONS

A. Reinstatement of Striking Employees

Both parties have advanced legal arguments bearing on the question of whether the Carrier is obliged to reinstate the strikers under Section 10 of the Railway Labor Act. Having considered these arguments, the Board is of the opinion that the Federal courts provide a more suitable forum for resolving the *legal* issues involved. We are also informed that an action under Section 10 has recently been brought against FEC by the Department of Justice and that a district judge has declined to order the Carrier to reinstate the strikers. Under these circumstances, the Board has concluded that it would be inappropriate to express an opinion on the application of Section 10.

By deferring in this manner to the Federal courts, the Board is not relieved of all responsibility with respect to the reinstatement of the striking employees. Emergency boards have traditionally undertaken the task of making recommendations which will provide a basis for settling the dispute in a fair and reasonable manner. As a result, this Board feels obliged to explore the issue of reinstatement, for whether or not the Carrier is legally bound to take back the strikers, it may still be found that the reinstatement of these men would contribute to an equitable and lasting settlement of this dispute.

Both the striking employees and the replacements have an interest in filling the jobs that now exist on the railroad. In evaluating the positions of these two groups, the Board has placed great weight on the long periods of service that the strikers have given to the Carrier. It is universally recognized, as a matter of sound labor relations, that seniority provides the employee with an equitable interest in continued employment. Representatives of the Carrier have suggetsed that the strikers do not deserve any special consideration for their years of service because they elected to strike and thereby caused the Carrier to incur substantial losses. Nevertheless, it is important not to overlook the fact that the striking employees have likewise suffered financially during the strike. There is no apparent reasons why they should be penalized further, since it does not appear that they were any more to blame than the railroad for the strike out of which these losses arose. As a result, having considered the argument of the Carrier, we are unable to agree that the employees' seniority can be discounted in this fashion simply because they chose to exercise their traditional prerogative to engage in a lawful strike.

Turning to the employees now working on the railroad, the Board notes that 76 of these men were employed by FEC prior to the strike. Presumably, these employees have accumulated considerable seniority. In choosing not to support the strike, they exercised their legal rights just as the employees who refused to return to work. Hence, the Board believes that the seniority of these men should be considered on the same basis as that of the strikers in evaluating their interest in continuing to work for the company.

In contrast to the employees heretofore considered, the men who were newly hired during the strike have worked only a few weeks or months for the Carrier. It is true that many of these individuals may have taken their jobs with the hope that they might remain permanently in the employ of the railroad. Nevertheless, in view of the experience in many strikes over a long period of years, these employees must be deemed to have accepted employment subject to the risk that their services might be terminated upon the settlement of the dispute. Hence the Board is inclined to believe that the interest of the strikers in regaining their jobs outweighs any claim that these new employees may have acquired as a result of their brief period of service with the Carrier.

There may be some who will find fault with this analysis, arguing that employees must take their chances on being permanently replaced when they elect to go on strike. There is little doubt that striking employees have lost their jobs in many firms through the application of this principle. On the other hand, we are concerned in this case not with an ordinary private business but with a common carrier in an industry vital to the public. As the Supreme Court long ago observed:

> More is involved than the settlement of a private controversy without applicable consequence to the public. The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern.[5]

Experience suggests that the prospects for achieving a "peaceable settlement" of this dispute will remain in jeopardy so long as the striking employees are prevented from working by the presence of the newly hired replacements. While this situation persists, the organizations can be expected to employ every legitimate means to put pressure on the company to reinstate the strikers. Controversy of this kind may interfere with the legitimate needs of passengers and shippers and may even disrupt defense and space activities which depend on the services of the railroad. Moreover, other railroads may be tempted to follow the example of this carrier, thus provok-

[5] *Virginian Railway* v. *System Federation*, 300 U.S. 515, 552.

ing bitter and disruptive disputes in other sections of the country. As a result, with due regard for the public interest in a sound and viable settlement, and bearing in mind the long service of the striking employees, we recommend that the Carrier replace the present occupants of the jobs covered by agreements between the Carrier and the organizations with striking employees to the extent necessary to permit these jobs to be filled on the basis of seniority.

In making this recommendation, we are aware that the parties may disagree as to the number of jobs required to operate the railroad. The parties, however, have not presented sufficient evidence for us to consider this question, even if we were otherwise disposed to do so. As a result, we have concluded that a determination concerning the number of positions on the railroad would involve the Board in matters that are better left to negotiation between the parties. The Board also recognizes that the organizations have not yet annulled their strike notices and that they are continuing to picket the railroad. We presume that the strike and the picketing will be terminated when the parties resolve the issue of reinstatement and the other matters of dispute between them.

B. Wage Increase

The central issue in this dispute concerns the amount of wage increase, if any, which should be paid to the employees. The Section 6 notice served upon virtually all Class I railroads, including the Florida East Coast, stated the wage proposal of the cooperating labor organizations as follows:

> 1. All rates of pay shall be increased by the addition to the rates existing on November 1, 1961, of twenty-five (25) cents per hour, this increase to be applied to all types of rates so as to give effect to the requested increase of twenty-five (25) cents per hour.

In their counterproposals, the railroads, including the FEC, proposed certain wage reductions for nonoperating employees. Presidential Emergency Board No. 145 considered these counterproposals and recommended that they be withdrawn. In the proceedings before this Board, the Carrier did not expressly urge such wage reductions. Moreover, it claimed at the hearing that it had no intention under its Section 6 notices of September 24, 1963, to pay less than the existing rates.

In the proceedings before this Board, the organizations did not argue for the amount of wage increase originally asked in their Section 6 notice of September 1, 1961. Rather, they asked that the Florida East Coast accept and put into effect the 10.28 cents per hour increase which was agreed to nationally. In arguing for this action the orga-

nizations emphasized the importance of pattern bargaining in the railroad industry and cited the fact that this system has been developed over the years by the carriers and the labor organizations as a method for stabilizing labor relations in the industry.

The Carrier, on the other hand, expressed its unwillingness to make the increases in wages which had been agreed to nationally. It cited data purporting to show that its wages are already above the rates in the Florida labor market for comparable work. The Carrier took the further position that in any event its financial position is such that it cannot afford to make the requested increases.

(a) *Railroad industry wage pattern*

The record of the proceedings before the Board points up the importance of national handling in wage and rules movements in the railroad industry. Prior to the present controversy, the FEC had for many years participated in the national handling of such movements. It is also clear that the rates of pay for the positions comprehended in the various agreements between the FEC and the 11 labor organizations here involved are comparable with those obtaining on other Class I railroads prior to the national agreement of June 5, 1962.

In the course of its deliberation, Presidential Emergency Board No. 145 considered extensive data regarding changes in wages for railroad employees over the years. It also considered the appropriateness of various criteria which could be used in making a judgment regarding the amount of increase which might be recommended. The criteria enumerated by the Board were:

1. The selected industries standard.
2. The standard of comparison with wages by production workers in all manufacturing or durable goods.
3. The standard of recent wage movements in industry generally.
4. Changes in the cost of living.
5. Financial position and prospects of the industry.

The Board analyzed the data before it in terms of these criteria. It is unnecessary for the purposes of this report to repeat the thorough analysis made by Board No. 145 of the application of the cited criteria to the wage issue before it. Suffice it to say that after analysis and deliberation the Board issued recommendations which formed the basis for the wage increase of 10.28 cents per hour which was embodied in the national settlement of June 5, 1962. As a result of this agreement a national pattern was established for the railroad industry.

A comparison between the FEC wage rates and those paid by Class I railroads generally to nonoperating employees is of basic significance here in view of the manner in which the compensation of

railroad employees has been determined over the years. For many years in the railroad industry, national or pattern bargaining has been of major significance. It has been so regarded by the labor organizations who represent railroad employees, and it has been likewise recognized by the railroads. There have been many factors in the history of railroad labor relations which have led to the development of national handling of wage and rules movements. In Employees' Exhibit 6, introduced in this proceeding, there is reproduced an excerpt from testimony given by a carrier witness before Presidential Emergency Board No. 137 concerning the role of pattern bargaining in the railroad industry. In that testimony the witness gave two major factors which have led to national handling and pattern bargaining in the industry. These were:

> (1) The extraordinary degree to which railway employees from different carriers and classes of employment are thrown together in their work, and (2) the unusual manner in which railroad employees are represented, resulting in intense rivalry among the different labor organizations.

In this same testimony the carrier witness emphasized the importance of pattern bargaining in the maintenance of stable and harmonious labor relations in the railroad industry. He stated:

> Pattern collective bargaining in the railroad industry has resulted from the fact that employee morale and stable and harmonious labor relations can be maintained, and endless turmoil and strife avoided, only if uniform and nondiscriminatory adjustments are made in the rates of pay and in the rules governing the compensation and working conditions of all classes and crafts of employees that are similarly situated with respect to each proposed adjustment.

It is clear, therefore, that this system of national handling has been achieved over the years as a plan to stabilize labor relations in the industry to the advantage of both the employees and the railroads.

While the Florida East Coast did not participate in the national handling of the wage and rules movement of 1961 for nonoperating employees, it is still a part of the national railway system, and it is legitimate to consider wage adjustments in the whole system in determining the amount of wage increases which should be made on the Florida East Coast. The fact that a series of increases for these classes of employees has been agreed to by the labor organizations and every other Class I railroad in the United States is a compelling reason for concluding that the same increase of 10.28 cents per hour should be granted by the Carrier here involved. In these circumstances, this Board is reluctant to recommend a departure from the 10.28 cents per hour increase in the absence of persuasive reasons for doing so. For to do so might invite chaos and instability in employer-employee relations in the railroad industry.

(b) *Area wage comparisons*

In arguing that no wage increases were justified, the Carrier pointed out that wage rates for comparable work in other industries in Florida were substantially less than those paid by FEC. In support of this position the Carrier cited average straight-time hourly earnings of production workers in manufacturing industries in Florida, which were in general lower than the average straight-time hourly rate of $2.42 on the Florida East Coast. This comparison is of relatively little value, since no data have been submitted with respect to the kind of manufacturing industries being cited or the skill levels of the employees involved. In short, there is inadequate information to enable the Board to make a meaningful comparison.

The Carrier also cited certain data regarding the rates paid laborers engaged in State highway maintenance work in Florida. It was alleged that these rates could be properly compared with the rates paid laborers engaged in maintenance of way work on the Florida East Coast. While there is probably some basis for this comparison in relation to the nature of the work performed by the two groups, it involves such a small segment of the Florida East Coast employees that the comparison is of very limited value to the Board.

In further support of its position that no wage increase is justified, the Carrier submitted two wage surveys, one made by the Southern Bell Telephone & Telegraph Co., and the other by the National Office Management Association. In general, these data purported to show that the rates of pay for Florida East Coast nonoperating employees are higher than the rates paid for comparable work in various enterprises in the major cities of Florida. These exhibits do show on their face that rates for the jobs surveyed were higher on the Florida East Coast than in the other enterprises reviewed. Nevertheless, there is inadequate information available regarding job contentment and the levels of skill which would enable the Board to make meaningful comparisons.

A review of the above comparisons by the company leads to the conclusion that they are of limited value in judging the merits of the requested wage increase involved in this case. Historically, the pattern of wage rates in the railroad industry has had an integrity of its own. Comparisons between railroad wage rates and wage rates in local labor market areas have been regarded as less significant than comparisons between wage rates within the railroad industry.

A more meaningful comparison than those mentioned above could be derived from relating the rates paid by FEC to those paid by its two major competitors, the Atlantic Coast Line and the Seaboard Air Line Railroads. While the Board does not have a detailed break-

down of position rates on the Atlantic Coast Line and the Seaboard for nonoperating employees, it is clear that they have been adjusted upward by the 10.28 cents per hour agreed to nationally on June 5, 1962. Certainly the Board has not been presented with any data to show that Florida East Coast rates for these positions were any higher than those of the Atlantic Coast Line and the Seaboard at the time of the national settlement. It appears that historically the rates on these three carriers have been generally comparable, and that increases from time to time have been about the same on the three carriers. In the absence of compelling reasons, it is difficult to find justification for lower rates for these positions on the Florida East Coast. The employees work and live in the same labor market area and the duties of the respective positions are comparable.

In its Exhibit 2 the Carrier presented data purporting to show that the Florida East Coast has since 1957 paid out a relatively larger percentage of each dollar received in wages than either the Atlantic Coast Line or the Seaboard. For example, the exhibit shows that in 1959 the Florida East Coast paid out in wages 56.15 cents of each dollar received in revenue, whereas in that year the Atlantic Coast Line paid out only 47.41 cents and the Seaboard 45.50. However, the exhibit also shows that since 1959 the Florida East Coast's position in this respect has improved substantially with the result that in 1961 and 1962 its position was comparable with the other two railroads. Thus, at a time when the Florida East Coast is taking the position that it cannot afford a wage increase for the nonoperating employees, its wage costs as a percentage of each dollar in revenue compares favorably with that of the two competing roads.

Having considered the wages paid by various other employers, the Board concludes that the most relevant comparisons suggest no reason why the FEC should not adhere to the national pattern. We turn, therefore, to the remaining contention of the Carrier that it is financially unable to pay the wage increases contained in the national agreement.

(c) *Inability to pay*

Another issue in this dispute is the Carrier's alleged inability to pay a wage increase. Where such condition exists it surely is not irrelevant to a wage determination. An employer's financial status is either an implied or explicit consideration in practically every wage decision. And it is not an alien consideration in the railroad industry or in any case where it is claimed that a wage raise will cause financial distress or possibly spell bankruptcy for a firm. Yet while its relevance is acknowledged, this Carrier's financial condition can hardly be the sole criterion. Financial hardship is one among several wage-

influencing factors; as has already been indicated, equally relevant factors are community and intraindustry wage comparisons and national settlement patterns. All these factors, including financial hardship, were carefully considered by Emergency Board No. 145 in making the recommendations on which the national settlement was based. The issue here, therefore, is whether the financial problems of the Carrier are sufficient to warrant a departure from the national agreement.

FEC strongly urges a present inability to pay a wage increase to its employees in any amount. It declares that to be compelled to do so would force it into bankruptcy. In the 1962 wage negotiations with the representatives of its non-operating employees, it took a less firm position. It claimed then that an unfavorable cash position made it impossible to meet the national settlement figure of 10.28 cents an hour increase, but offered the employees what it called "a more liberal overall increase" under terms which, it urged, would enable it to "generate sufficient funds with which to pay the proposed increase." [6]

The Carrier has sought to demonstrate its inability to pay by introducing evidence bearing on its declining revenues, its present financial position, and its prospects for the future. In so contending, it draws our attention to various aspects of its operating and financial conditions which it asserts have undergone reverses since the railroad was reorganized and also since the strike began on January 23, 1963. Among them are the low rate of return on investment, increasing ratio of transportation expenses to revenues, failure to meet contingent interest payments and sinking fund requirements, a decline in operating revenues from $38,938,061 in 1957 to $29,505,302 in 1962, and an increase in its accumulated deficit from $352,876 at the end of 1962 to $1,541,429 at October 30, 1963. Also it stresses that for the past 7 years the railroad has been unable to meet its fixed charges out of railroad operating revenues, and adds that unless interest payments on the mortgages and sinking fund requirements are met, the Carrier will be hampered in obtaining funds for necessary improvements, expansion of the properties, or for retirement of obsolete equipment. In order to earn fixed and contingent charges alone, it states, would re-

[6] As stated earlier, the counteroffer, made Dec. 5, 1962, called for a 1⅔-percent increase effective Sept. 1, 1962, a further 1⅔-percent increase effective Mar. 1, 1963, and a third increase of 1⅔ percent effective Sept. 1, 1963. It also specified that retroactive payment in the amount of 1⅔ percent for work in the period from Feb. 1 to Aug. 31, 1962, would be made if the counteroffer were adopted within 1 week. A further condition was that a moratorium on changes in rates of pay would be in effect until Mar. 1, 1964.

According to Carrier Exhibit 6, the cost of the organizations' demand for the period between Feb. 1, 1962, and May 1, 1963, would have been $331,082.52, as compared to an outlay of $169,628.21 under the Carrier's proposal. However, after Sept. 1, 1963, the percentage increase under the Carrier's proposal would have been 5 percent, or 12.1 cents an hour.

quire either an increase in operating revenue from $29,500,000 to about $37,500,000, or else a reduction in the present ratio of expenses to revenue from 82 percent to 75 percent. While a 3-percent to 5-percent future growth in revenue can be expected, according to a carrier witness, such an amount would hardly be sufficient to meet the present company needs, in his opinion, even if no wage increase is granted.

The Carrier points to several factors to explain its declining revenues over the past several years. Of principal importance, it notes, is the loss of traffic to and from Cuba which formerly provided some $2½ million of revenue each year. And it adds that since the strike, conditions have worsened. For example, a barge line has been established to move rock from the Miami area by water. The Carrier estimates the resulting revenue loss at $650,000 a year. The Carrier states that also since the strike it has lost mail business in an amount estimated at $1,200,000 a year.

FEC has called attention to various factors which allegedly cloud its future prospects. Among these considerations, it says, the most serious is the prospective merger between Seaboard Air Line Railroad and the Atlantic Coast Line, which has recently been approved by the Interstate Commerce Commission.[7] FEC officials testified that this merger could divert more than $5 million of revenue from the railroad and might even sound the "death knell" of the Florida East Coast. Apart from the merger, the railroad may lose at least $500,000 from an expected adjustment in the division proportions from through rates shared by Northern and Southern carriers.

The Carrier also anticipates a loss of $350,000 annually from relocation of industry from downtown areas to outlying areas around Miami. Further losses in the amount of $250,000 a year may result from the application by the Atlantic Coast Line to extend its lines into the fruit and vegetable producing areas in the Belle Glade area. The Carrier thus estimates it might lose some $11 million a year from the above factors.

Further, as regards general business prospects, FEC complains of increased competition from other modes of transport, principally motor, air carrier, water, and pipeline. It especially emphasizes its heavy freight revenue losses which result from a diversion of vegetables and fresh fruit products to unregulated motor carrier traffic, pointing out that of all the fruit and vegetables traffic which originates in FEC territory, only 28 percent was carried by it and 72 percent moved by unregulated or exempt carriers.

There are obvious difficulties in appraising all this evidence and evaluating its bearing on the ability of the Carrier to pay the na-

[7] ICC Finance Docket No. 21215, decided Dec. 2, 1963 (service date Dec. 13, 1963).

tional wage rates. An adequate assessment would require separate analysis of the many facts and circumstances connected with each alleged instance of revenue loss. All of the necessary evidence for this task has not been introduced in these hearings, nor could it be in a proceeding of this kind. Moreover, any conclusions that are reached concerning the prospects of this carrier must depend in part on contingent factors, such as the effects of the merger, which are necessarily speculative in nature. Further difficulties result from the absence of detailed information relating to other railroads. Having enumerated these handicaps, the Board must still proceed to formulate the best judgment it can muster regarding the ability of this Carrier to meet the terms of the national settlement.

With regard to the Carrier's declining revenues, it must be observed that evidence of recent trends, standing alone, is not entitled to great weight. One cannot safely assume that such tendencies will continue unless the underlying causes will persist. We are not persuaded that they will. The major reason for the recent decline is undoubtedly the loss of Cuban traffic; this traffic has already disappeared and no reasons have been advanced to suggest that the resulting losses will be any larger in the future than they have been in the past. Moreover, new developments have taken place on the railroad which cast doubt on any attempt to extrapolate from the past. In particular, new management has recently taken over the company and is making a vigorous attempt to improve the railroad's position. As a result of these efforts, railway operating revenue actually increased in 1962 over 1961, thus reversing the downward trend of the past 4 years. Net railway operating income also rose in 1961 and again in 1962. Indeed, if we include the $578,738.45 earned from FEC's nonoperating properties, the company appears to have suffered a deficit of only $5,225.72 in 1962 even after paying its heavy fixed charges. In view of these developments, an appraisal of the Carrier's ability to pay must depend more on its present financial position and on specific evidence as to its future prospects than on inferences drawn from trends over the past several years.

Any analysis of the company's present financial condition must recognize the fact that the railroad has been losing money. Even if we take account of income from sources other than railway operations, the Carrier has not quite succeeded in earning enough to meet its fixed and contingent charges. No interest has been paid on the second mortgage bonds and the prospects for common stock dividends are remote, to say the least. Yet we cannot overlook the fact that the plight of this carrier is shared by many other railroads which have accepted the national settlement. At least 25 Class I railroads suffered

deficits in net income in 1961, and the great majority of these carriers, unlike FEC, incurred deficits in net railway operating income (before deduction for fixed charges). Moreover, a number of these railroads with lower net investment than FEC sustained significantly larger deficits.

It is true that FEC, unlike the other carriers, has experienced a long strike with a resulting deterioration of its cash position. This fact is not without significance and will be considered further in connection with the problem of retroactive pay. On the other hand, even considering the effects of the strike, it is doubtful whether the financial predicament of the Florida East Coast is any worse than that of several of the railroads which were considered by Emergency Board No. 145 and accepted its recommendations. In any case, the financial status of this carrier cannot be fully evaluated without considering its future prospects.

In describing the outlook for this carrier, FEC witnesses pointed to numerous problems confronting the railroad. It is worth noting, however, that the two spokesmen for the Carrier were not completely in agreement on the outlook for the railroad. Mr. T. C. Maurer, the company's Chief Freight and Passenger Traffic Officer, suggested that the prospects for increasing revenue were "very bleak." On the other hand, the Chief Finance Officer, Mr. C. D. Lane, estimated a steady growth in revenues on the order of 3–5 percent each year.

Turning to the estimates supplied by Mr. Maurer, we would observe that his testimony is subject to question on several points. For example, he predicted a loss of over $5 million in revenue each year as a result of the Atlantic Coast Line-Seaboard merger. It should be noted initially that the validity of the merger has not been finally determined and that appellate proceedings and possible action by the Justice Department may delay its consummation for several years. Of greater pertinence here, however, is the fact that the Interstate Commerce Commission reached very different conclusions from Mr. Maurer in assessing the impact of the merger on the Florida East Coast. The Commission concluded that most of the diversion predicted by Maurer would not take place because the newly merged company would not risk retaliatory action which FEC could take by routing its originating traffic over other lines. Thus, the Commission estimated the probable diversion at only a few hundred thousand dollars. It was also pointed out that even this loss might be offset by certain conditions for FEC with routes running to Birmingham and Montgomery. In summary, the Commission concluded:

> The opening of the Jacksonville gateway and the new reprisal routes would be particularly beneficial to East Coast in that it will assure open routing for that carrier in conjunction with the merged company. The increased reprisal power

of East Coast, in our opinion, will substantially reduce and perhaps eliminate any traffic loss from the diversionary activities of the merged company.

Several of the competitive factors emphasized by Mr. Maurer are also of doubtful relevance, either because he failed to demonstrate that the competition would be worse in the future than it had been in the past, or because he did not show that the competition bore more heavily on the Florida East Coast than on other railroads throughout the country. For example, testimony was introduced that FEC had encountered severe competition from trucks in the carriage of fruits and vegetables. Nevertheless, uncontradicted evidence from the organizations revealed that while FEC carries less than half the available produce, its share of the business has, if anything, increased somewhat over the past 15 years. Similarly, much of the carrier's general testimony regarding the impact of trucking, air transport, and water carriers suggests only that FEC has been subject to the same sort of competition as most other railroads in the United States. Evidence concerning the effect of weather on the traffic in fruits and vegetables seems likewise immaterial in the absence of any showing that crop freezes will become more frequent in the future.

While the company has understandably emphasized the sources of potential losses in revenue, consideration must also be given to various offsetting factors which may strengthen the Carrier's position. For example, the organizations have introduced evidence to show FEC's rapid progress in the carriage of automobiles due to its "piggyback" operations. Traffic of this kind has grown since 1958 from 13 million tons to 68 million tons in 1962; revenue from this business increased from $363,000 to $1,157,000 over the same period. Of much greater significance are the gains which will be realized once materials and equipment begin to travel over the new spur linking FEC with the massive defense facilities on Cape Kennedy and Merritt Island. Mr. Maurer testified that the revenue derived from these shipments may be less than anticipated due to the unexpected use of other modes of transport. Nevertheless, the Board of Inquiry established by President Kennedy on September 24, 1963, indicated that substantial revenues would accrue to the railroad from this source. According to the Board, the Corps of Engineers estimates that 521,000 tons of construction materials will be shipped over the Florida East Coast in the next 12 months alone. In addition, NASA estimates that 1,600 carloads of supplies will be required during the same period, quite apart from the construction materials mentioned above. These demands can be expected to remain at a high level in 1965, since major construction in the Cape Kennedy area will continue through that year.

In addition to these specific examples of increased revenue, further gains should be realized through general improvements in economic conditions. Florida remains the most rapidly growing State in the Southeast area, and although Mr. Maurer tended to discount this factor, it is hard to believe that FEC will not share to some extent in the growth of business activity. Moreover, prospects for the tax cut as well as other business indicators suggest that 1964 will be a prosperous year for the national economy. Indeed, responsible railroad officials have very recently predicted a continuing improvement in the economic situation of the railroads during this period.[8]

There are also several possibilities for decreasing expenditures on the Florida East Coast so as to improve its deficit position. The company has already made great strides in 1961 and 1962 in reducing its labor costs to a level comparable to its competitors. Moreover, FEC is currently engaged in litigation which could materially reduce its tax base and thereby save the company in excess of a half million dollars per year. It is also possible that savings will be achieved in personal injury claims and resulting litigation expenses which were abnormally high in 1962 because of a backlog of unsettled claims and a severe accident in 1960. As the organizations have pointed out, the gains to be realized from any one of these sources would more than offset the increased cost of the national settlement. And while it is true that these savings are merely contingent, they are as relevant to this inquiry as the various contingent losses which company witnesses have emphasized.

In assessing the overall significance of the Carrier's evidence, the Board is guided by the principle that inability to pay should be clearly demonstrated in order to justify a departure from the uniform national wage rates that are so important to railroads and Unions alike. In the judgment of the Board, the evidence presented by the Carrier does not meet this standard. In the first place, the financial position of the company appears no worse, and indeed may be better, than it was during many prior years when it was willing to accept the national wage pattern. Moreover, while the company has pointed to examples of actual and prospective losses in revenue, important facets of this testimony are subject to question, and no real showing has been made that the losses will not be outweighed by gains in revenue from other sources and from continued improvements in the efficiency of operations. Finally, the company has made little effort to distinguish its predicament from that of many other railroads which accepted the national settlement in the face of financial difficulties which appear more serious than those of the Florida East Coast.

[8] For an assessment of the situation, see address by Stuart R. Saunders, reported in Wall Street Journal, Dec. 11, 1963.

In reviewing the history of this dispute and the evidence presented by FEC, one suspects that the position of the Carrier must be influenced not so much by its belief that it is afflicted with unique financial hardships as by its conviction that national handling does not insure sufficient consideration for the peculiar conditions and problems confronting the individual railroad. This is an old and vexing problem in the field of collective bargaining and one for which there is no universally correct solution. In considering the railroad industry, however, we are necessarily influenced by the fact that unions and carriers alike have sought to bargain on a national basis and that the weak railroads have joined with the strong in support of this principle. In taking this position, the carriers and the organizations have expressed the view that individual negotiations would promote unrest and enhance the possibility of disruptive strikes. Experienced and impartial observers have joined in this conclusion. This Board is not prepared to disturb the consensus that has been reached concerning the manner in which collective bargaining should be carried on in the railroad industry. Accordingly, the Board recommends that FEC agree to pay the 10.28-cent increase in conformance with the 1962 national agreement.

(d) *Retroactivity*

Under the national settlement, FEC would be obliged to pay retroactive wage increases dating back to February 1962. The amount of this obligation would approximate $250,000 for the period up to the commencement of the strike, and more would be added if retroactivity were extended to the employees who worked during the strike.

The question of retroactive pay involves somewhat different considerations than those connected with the prospective rates to be paid by the Carrier. In this case, for example, we would suppose that the striking employees, having experienced the hardships of a long strike, would be more concerned with regaining their jobs at the standard wage than in obtaining retroactive pay for the period preceding the strike. Moreover, retroactive pay involves a lump-sum obligation of rather formidable proportions. This obligation will impose a burden on a carrier which will have just emerged from a long and costly strike during a period in which other railroads have enjoyed relative prosperity. While the employees may be no more at fault than the Carrier for the strike, the fact that the company's cash position has greatly deteriorated during the past year cannot be ignored. As a result—and solely because of the special circumstances of this case—we believe that the Carrier should not be obliged to grant retroactive compensation.

It might be argued that retroactive pay could be granted without financial hardships if the company were given a period of time in which to make the payments. The Board has considered this possibility. We have already pointed out, however, that the prospects for this railroad are somewhat uncertain over the next few years. While we are not persuaded that a departure from the important principle of standard national wage rates is warranted, we cannot be confident that the Carrier will be able 1 or 2 years hence to pay a large lump sum in retroactive compensation. As a result, we recommend that the organizations refrain from seeking any retroactive pay in negotiating a settlement of this dispute.

C. Advance Notice

The organizations propose that the Carrier agree to give 5 days' notice, as provided in the national settlement, prior to abolishing jobs or effecting a reduction in force. We may presume that the Carrier opposes any notice requirement in light of the proposals which it served on the organizations on September 24, 1963. In approaching this question, the Board notes that Emergency Board No. 145 recommended a minimum of 5 days' notice after a thorough study of the problem. In the words of the Board:

> This is the type of agreement we believe gives employees reasonable advance notice. It is not the type of agreement that imposes a job freeze; nor do we believe it to be detrimental to the carriers.

Florida East Coast has not advanced any argument tending to show that such a notice requirement would be inappropriate or burdensome. Moreover, the requirement would not appear to add perceptibly to the financial difficulties of the Carrier. As a result, we recommend that the parties agree to a 5-day notice period on the terms set forth in the national settlement of June 1962.

RECOMMENDATIONS OF THE BOARD

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

1. The Carrier should replace present occupants of the jobs covered by agreements with the cooperating labor organizations parties to this dispute with striking employees to the extent necessary to permit jobs on the railroad to be filled on the basis of seniority.
2. That all rates of pay existing on November 1, 1961, be increased by 10.28 cents per hour.
3. That in light of the special circumstances shown, the organizations should withdraw any claims for retroactive payment.

4. The Carrier's counterproposal of September 18, 1961, for a reduction in rates of pay of employees in various classifications and crafts, as stated in paragraphs 1, 2, and 3, thereof be withdrawn.

5. That the organizations' proposal and Carrier's proposal dealing with layoffs or furloughs be withdrawn.

6. That the parties negotiate a rule requiring not less than five (5) working days' advance notice to regularly assigned employees (not including casual employees or employees who are substituting for regularly assigned employees) whose positions are to be abolished before reductions in force are to be made, except as provided in Article VI of the Agreement of August 21, 1954. Any rules presently in effect more favorable to the employees should be continued.

Respectfully submitted.

HARRY H. PLATT, *Chairman.*
DEREK BOK, *Member.*
PAUL N. GUTHRIE, *Member.*

WASHINGTON, D.C., *December 23, 1963.*

APPENDIX A–1

EXECUTIVE ORDER NO. 11127

WHEREAS a dispute exists between the Florida East Coast Railway Company, a carrier, and certain of its employees represented by the Eleven Cooperating Railway Labor Organizations, designated in List A attached hereto and made a part hereof; and

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

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

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

The Board shall report its findings to the President with respect to this dispute 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 thirty days after the Board has made its report to the President, no change, except by agreement, shall be made by the Florida East Coast Railway Company, or by its employees, in the conditions out of which the dispute arose.

JOHN F. KENNEDY.

THE WHITE HOUSE, *November 9, 1963.*

LIST A

International Association of Machinists
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
Sheet Metal Workers' International Association
International Brotherhood of Electrical Workers
Brotherhood of Railway Carmen of America
International Brotherhood of Firemen and Oilers
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees
Brotherhood of Maintenance of Way Employes
The Order of Railroad Telegraphers
Brotherhood of Railroad Signalmen
Hotel & Restaurant Employees & Bartenders' International Union

APPENDIX A–2

APPEARANCES

ON BEHALF OF FLORIDA EAST COAST RAILWAY

William B. Devaney, attorney, Steptoe & Johnson.
Edward Ball, chairman of the board, Florida East Coast Railway.
William B. Thompson, Jr., president, Florida East Coast Railway.
C. D. Lane, Jr., vice president and chief finance and accounting officer, Florida East Coast Railway.
Winfred L. Thornton, vice president and chief operating officer, Florida East Coast Railway.
Raymond W. Wyckoff, assistant vice president and director of personnel, Florida East Coast Railway.
T. C. Maurer, vice president and chief freight and passenger traffic officer, Florida East Coast Railway.

ON BEHALF OF THE EMPLOYES

Lester P. Schoene, general counsel, Employes' National Conference Committee, 11 Cooperating Railway Labor Organizations.
Eli Oliver, W. M. Homer, economists, Labor Bureau of Middle West.
G. E. Leighty, chairman, Employes' National Conference Committee, 11 Cooperating Railway Labor Organizations.
Michael Fox, president, Railway Employes' Department, AFL–CIO.
Joseph W. Ramsey, general vice president, International Association of Machinists.
Russell K. Berg, international president; Edward H. Wolfe, vice president, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers.
J. W. O'Brien, general vice president, Sheet Metal Workers' International Association.
Thomas Ramsey, international vice president, International Brotherhood of Electrical Workers.
A. J. Bernhardt, general president, Brotherhood Railway Carmen of America.
Anthony Matz, president, International Brotherhood of Firemen, Oilers, Helpers, Roundhouse & Railway Shop Laborers.
C. L. Dennis, grand president; J. D. Bearden, vice grand president, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.
O. C. Jones, vice president, The Order of Railroad Telegraphers.
H. C. Crotty, president, Brotherhood of Maintenance of Way Employes.
Jesse Clark, president, Brotherhood of Railroad Signalmen.
T. H. Gregg, vice president, Brotherhood of Railroad Signalmen.
Richard W. Smith, vice president, Hotel and Restaurant Employes and Bartenders' International Union.

APPENDIX A–3

NOTICE

SEPTEMBER 1, 1961.

R. W. WYCKOFF,
Asst. Vice President and Director of Personnel,
Florida East Coast Railway,
St. Augustine, Florida.

DEAR SIR: Please consider this letter as the usual and customary thirty-day notice under the Railway Labor Act, as amended, of our desire to revise and supplement all existing agreements, effective November 1, 1961, as follows:

1. All rates of pay shall be increased by the addition to the rates existing on November 1, 1961, of twenty-five (25) cents per hour, this increase to be applied to all types of rates so as to give effect to the requested increase twenty-five (25) cents per hour.

2. Revise and supplement existing agreements so as to include therein rules requiring that:

Prior to any reduction in force or any abolition of a position or positions resulting in reduction in the number of employes in any seniority district or other unit covered by a seniority roster, all employes who may be affected by such reduction in force or abolition of position *will be given not less than six months' advance notice thereof.* However, this rule shall not operate to require more than sixteen hours such advance notice to each employe who may be affected under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employes involved in the force reductions no longer exists or cannot be performed. Whenever forces are reduced or positions are abolished with less than six months' advance notice pursuant to the preceding sentence all employes affected thereby shall be recalled to service as soon as the suspension of the carrier's operations has ceased or the work of the employes affected can again be performed, and any notice of force reduction or abolition of position pursuant to the preceding sentence shall state that employes affected will be so recalled to service. Any rule, agreement or understanding now in effect more favorable to the employe is preserved and undisturbed by this rule.

It is our desire that conferences on this notice be held at the earliest practicable date and in any event prior to the expiration of thirty days from the date of this notice, and that you, within ten days after receipt of this notice, suggest a date, time and place for this conference. In the event that we are unable to reach an agreement upon the foregoing requests at such separate system conferences, we further propose that the matter be handled on a joint national basis.

In accordance with established procedure which has been followed for more

than twenty years, and on the assumption that an agrement may not be reached in separate system conferences, our organization has joined with other organizations serving a similar notice upon you and other carrier managements, in the creation of an Employes' National Conference Committee, composed of the Chief Executives of the Cooperating Railway Labor Organizations.

In the event an agreement is not reached in our separate system conferences, we request that you join with other carrier managements who are receiving a similar notice, in the creation of a Carriers' National Conference Committee, to negotiate to a conclusion in accordance with the procedures of the Railway Labor Act, the subject matter of this notice.

This request is in addition to any other requests we have submitted to you and which are now pending.

Very truly yours,

G. E. LEIGHTY,

Chairman, Eleven Cooperative Railway Labor Organizations.

APPENDIX A–4

COUNTERPROPOSALS OF THE RAILWAYS

ATTACHMENT A

Effective November 1, 1961

1. Establish new rates of pay, applicable to all employees in the following classifications and employees doing similar work, which shall in each instance be not more than 80% of the respective existing rates:

Clerical and Station Employees:

Typists
Telephone switchboard operators
Office assistants
Messengers and office boys
Elevator operators
Office attendants
Watchmen
Motor vehicle and motor car operators
Janitors and cleaners
Baggage, parcel room and station attendants
Callers, loaders, scalers, sealers, and perishable-freight inspectors
Truckers (stations, warehouses and platforms)
Laborers (coal and ore docks, and grain elevators)
Common laborers (stations, warehouses, platforms, and grain elevators)

Maintenance of Way Employees:

Maintenance of way and structures helpers
Maintenance of way and structures apprentices
Portable steam equipment operator helpers
Pumping equipment operators
Extra gang men
Sectionmen
Maintenance of way laborers, gardeners and farmers
Bridge operators and helpers
Crossing and bridge flagmen and gatemen
Camp cooks

Shop Crafts:

Skilled trades helpers
Helper apprentices
Regular apprentices
Coach cleaners

Stationary Engine and Boilerroom Employees and Shop and Roundhouse Laborers, etc.:

Classified laborers
General laborers
Stationary firemen
Oilers
Coal passers
Water tenders

Signalmen:

Assistant signalmen
Assistant signal maintainers
Signalman helpers
Signal maintainers helpers

Dining Car Employees: Kitchen helpers

2. Establish a rule, or amend existing rules, to provide that the entering rates of pay in the following and similar classifications shall be 80% of the established rates with increases of 4% of the established rate effective on completion of the first and each succeeding year of compensated service in such classifications until the established rate is reached:

Clerical and Station Employees:

Clerks
Mechanical device operators
Stenographers

Telegraphers:

Clerk-telegraphers
Clerk-telephoners
Telegraphers
Telephoners

3. Establish a rate of $1.25 per hour applicable to all dining car waiters and other employes serving food or drinks.

4. All rates of pay not affected by Sections 1, 2 or 3 shall remain unchanged.

5. Eliminate all rules, regulations, interpretations or practices, however established, which require that more than 24 hours advance notice be given before positions are abolished or forces are reduced.

APPENDIX A–5

MEMORANDUM

To: Honorable W. WILLARD WIRTZ,
Secretary of Labor.
Honorable ROBERT S. MCNAMARA,
Secretary of Defense.
Honorable JAMES E. WEBB,
Administrator, National Aeronautics and Space Administration.

The prolonged labor dispute between the Florida East Coast Railway Company and its non-operating employees, which began January 23, 1963, has been a matter of increasing concern to me because of its current and potential impact upon vital defense and space programs.

I, therefore, request that you designate a representative of your Department to serve on a Federal Inquiry Board under the chairmanship of the Department of Labor.

The Board shall investigate the current and potential impact of this labor dispute on the Nation's defense and space efforts.

I expect the Board to report to me through the Secretary of Labor within ten days, stating its findings together with any appropriate recommendations.

JOHN F. KENNEDY.

SEPTEMBER 24, 1963.

APPENDIX A–6

U.S. DEPARTMENT OF LABOR,
Washington 25, D.C.

THE PRESIDENT,
The White House,
Washington 25, D.C.

DEAR MR. PRESIDENT: Enclosed is the report of the Federal Inquiry Board which you established on September 24, 1963 to investigate the current and potential impact of the labor dispute between the Florida East Coast Railway Company and its nonoperating employees on the Nation's defense and space efforts.

The Board has concluded that this labor dispute is currently and potentially detrimental to our Nation's defense and space efforts and should be settled as expeditiously as possible. It has recommended that the parties promptly resume negotiations in an effort to resolve their differences and, in the event negotiations are not successful, that they give serious reconsideration to my recommendations of May 13, 1963, that the dispute be submitted to final and binding arbitration. To avoid intolerable interruptions in vital construction programs at Cape Canaveral and Merritt Island, the Board recommends that, until the dispute is resolved, an embargo be placed on all goods shipped under government bills of lading via the Florida East Coast Railway to these facilities, and that after the railroad spur now being constructed at these locations is completed, the Florida East Coast not be permitted to operate on that portion of the spur constructed by the U.S. Corps of Engineers.

I am in full accord with the recommendations of the Board.

I would strongly urge that the parties recognize the critical impact of this dispute on our defense and space programs as well as upon the economy of the region served by the railroad and now engage in meaningful collective bargaining.

Pursuant to your request, this Board only assessed the impact of this dispute on our defense and space efforts. However, the broad impact of the strike upon the economy of the region was made quite apparent to the Board. Since this dispute began the Federal Government has been requested by the Governor of Florida, the Florida delegation to the U.S. Congress, the Florida Public Utilities Commission, and other affected parties to take such action as may be required to bring about a resolution of this controversy.

Hopefully, the dispute will now be resolved by the parties without the need for further Government action. Such a solution would be in the best interests of all concerned. In view of the prolonged and increasingly critical nature of this controversy, I will keep you fully apprised of the responses of the parties and will make further suggestions for Government action, including the possible establishment of an Emergency Board pursuant to Section 10 of the Railway Labor Act, in the event that developments appear to warrant such measures.

Respectfully yours,

W. WILLARD WIRTZ, *Secretary of Labor.*

APPENDIX A–7

THE WHITE HOUSE,
October 14, 1963.

DEAR MR. SECRETARY: I have reviewed the report of the Federal Inquiry Board on the Florida East Coast Railway dispute. The report reaffirms my concern over the impact of this dispute on our defense and space programs. It is in the public interest that this dispute be promptly resolved.

Accordingly, I am requesting the National Mediation Board to immediately contact the parties with a view to the prompt resumption of negotiations. If these bargaining efforts prove unproductive, I urge the parties to give serious consideration to your recommendation to submit their issues to final and binding arbitration.

In addition, I request that you keep me informed of all subsequent developments with regard to this dispute in the event that additional actions are required.

Sincerely,

J. F. KENNEDY.

Honorable W. WILLARD WIRTZ,
Secretary of Labor,
Washington, D.C.

APPENDIX A–8

NATIONAL MEDIATION BOARD,
Washington (25) 20572, December 11, 1963.

EMERGENCY BOARD NO. 157

FLORIDA EAST COAST RAILWAY CO. AND ELEVEN COOP. RWY. LABOR ORGS.

Mr. HARRY H. PLATT,
Chairman, Em. Bd. No. 157,
2080 Penobscot Building,
Detroit 26, Michigan.

Dr. PAUL N. GUTHRIE,
Member, Em. Bd. No. 157,
University of North Carolina,
Chapel Hill, North Carolina.

Professor DERRICK BOK,
School of Law, University of California,
Los Angeles, California.

GENTLEMEN: Reference is made to Emergency Board No. 157, Florida East Coast Railway Company and certain of their employees represented by the Eleven Cooperating Labor Organizations, and to the stipulation made between the parties, as shown on the record, agreeing to an extension of time for the emergency board to file its report and recommendations to the President.

We are enclosing copy of letter dated December 5, 1963, addressed to Chairman Francis A. O'Neill, Jr., National Mediation Board, from Mr. Ralph A. Dungan, Special Assistant to the President, wherein he states that the President has approved the recommendations of the National Mediation Board for an extension of time permitting such Emergency Board No. 157, created by Executive Order No. 11127, dated November 9, 1963, to file its report and recommendations not later than December 19, 1963.

Very truly yours,

E. C. THOMPSON, *Executive Secretary.*

(Enclosure)

APPENDIX A–9

THE WHITE HOUSE,
Washington, December 18, 1963.

E.B. 157

DEAR MR. CHAIRMAN: This is to inform you that the President approves the recommendation of the National Mediation Board for an additional extension of time permitting Emergency Board No. 157, created by Executive Order No. 11127, of November 9, 1963, to file its report and recommendations not later than December 24, 1963, inclusive.

Sincerely,

RALPH A. DUNGAN,
Special Assistant to the President.

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

U.S. GOVERNMENT PRINTING OFFICE:1964