

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD
No. 178

**APPOINTED BY EXECUTIVE ORDERS 11558 AND 11559
DATED SEPTEMBER 18, 1970, PURSUANT TO SEC-
TION 10 OF THE RAILWAY LABOR ACT, AS AMENDED**

To investigate disputes between certain carriers represented by the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees and certain of their employees represented by the United Transportation Union, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, the Brotherhood of Maintenance of Way Employees, and the Hotel and Restaurant Employees and Bartenders International Union.

(NMB Cases A-8830, and A-8853 Sub Nos. 1, 2, and 3)

WASHINGTON, D.C.

NOVEMBER 9, 1970



LETTER OF TRANSMITTAL

WASHINGTON, D.C.,
November 9, 1970.

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

DEAR MR. PRESIDENT: The Emergency Board created by your Executive Orders Nos. 11558 and 11559 of September 18, 1970, pursuant to Section 10 of the Railway Labor Act, as amended, to investigate the disputes between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, the Brotherhood of Maintenance of Way Employees, the Hotel and Restaurant Employees' and Bartenders' International Union and the United Transportation Union, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted,

(S) LEWIS M. GILL, *Chairman.*
(S) ROBERT O. BOYD, *Member.*
(S) WILLIAM H. COBURN, *Member.*
(S) JACOB SEIDENBERG, *Member.*
(S) ROLF VALTIN, *Member.*

(III)



HISTORY OF THE DISPUTE

The dispute involves four Unions. Three of them are "non-ops"—Unions which represent railroad employees engaged in various services other than actually operating the trains. They are: the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC); the Brotherhood of Maintenance of Way Employees (BMW); and the Hotel and Restaurant Employees' and Bartenders' International Union (HRE). Together, these three Unions represent approximately 220,000 railroad employees. The fourth Union is the United Transportation Union (UTU), which represents about 180,000 employees. It came into being, on January 1, 1969, through the merger of four "ops"—the Brotherhood of Railroad Trainmen, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railroad Conductors and Brakemen, and the Switchmen's Union of North America.

At various stages in 1969, the four Unions served notices on the Carriers, requesting improvements in wages and various other benefits. Such notices are known as Section 6 Notices—the reference being to Section 6 of the Railway Labor Act, as amended. Also at various stages in 1969, the Carriers served Section 6 Notices on the Unions, countering the Unions' Notices and requesting changes in various existing contractual arrangements.

There followed negotiations by the parties at both the local and the national level. With the failure of these negotiations to produce agreements, the parties invoked the services of the National Mediation Board. This Board worked on the disputes over the course of several months and carried out the statutory requirement of proffering arbitration. It terminated its services on August 10, 1970. Upon this, the Unions announced their intention to strike the Carriers on September 10, 1970.

On September 8, 1970, in a further effort to achieve a settlement, the Assistant Secretary of Labor and the Chairman of the National Mediation Board reconvened negotiations. The mediation sessions were attended by representatives of the Carriers and all four Unions. Despite their intensity, these efforts also failed, and, on September 15, 1970, three of the Nation's railroads—the Baltimore and Ohio, the Chesapeake and Ohio, and the Southern Pacific—were struck. Given their selective nature, the stoppages were halted by a temporary

restraining order of the U.S. District Court for the District of Columbia. There followed the President's decision to proceed with the appointment of an Emergency Board.

CREATION OF THE EMERGENCY BOARD

Emergency Board No. 178 was created by Executive Orders 11558 and 11559, issued on September 18, 1970, pursuant to Section 10 of the Railway Labor Act, as amended. The Board was appointed to investigate and report on the disputes between the Nation's Class 1 railroads represented by the National Railway Labor Conference (comprised of the Eastern, Western, and Southeastern Carriers' Conference Committees) and their employees represented by the four Unions listed above—the BRAC, the BMW, the HRE, and the UTU.

President Nixon appointed the following persons as members of the Board: Lewis M. Gill, arbitrator, Merion, Pa., chairman; Robert O. Boyd, arbitrator, Washington, D.C., member; William H. Coburn, attorney and arbitrator, Washington, D.C., member; Jacob Seidenberg, arbitrator, Falls Church, Va., member; and Rolf Valtin, arbitrator, Washington, D.C., member.

The Board convened in Washington, D.C., on September 24, 1970. A procedural meeting with representatives of the parties was held on the following day. Public hearings were held in Washington, D.C., in the period from September 30 through October 17, 1970. During the course of the hearings, the parties agreed to request the President to extend, until November 10, 1970, the period in which the Board was to submit its Report. The President granted the request.

Following the hearings, and with the parties' consent, the Board conducted a series of informal discussions with various representatives of the parties. Though unable to work out a full agreement, the Board succeeded in significantly narrowing many areas of the controversy, and it otherwise obtained valuable guidance toward the formulation of the many judgments which must be made if a Report of this sort is to fulfill its function.

The Board commends all the parties for their courtesy, patience, and constructive cooperation during both the hearings and these informal discussions.

STRUCTURE OF THE REPORT

We will deal first with the general wage issue, then with a number of related Union demands for other improvements, and finally with the Carrier demands for a number of changes in work rules and pay practices. (Some of these items overlap, with both Union and Carrier demands on the same subject.)

Before going into the specifics, some comments are in order as to our general approach to the case. The main thrust of the Unions' position is that the rising cost of living and the correspondingly rising level of wage settlements demand a very substantial increase in wages and related benefits. The main thrust of the Carriers' position is that the industry is in serious financial trouble, that wage and other improvements should accordingly be kept at very moderate levels, and that in any case the Carriers are entitled to some long-overdue relief from a host of restrictive and outmoded work rules and pay practices.

Our general approach to the case is to recognize real merit in *both* positions, and to fashion our recommendations so as to meet the most pressing immediate needs of both sides, as we see them. And perhaps most important of all, we are concluding with a recommendation for a new procedure for the developing long-range solutions for some of the more complex problems.

As will appear, we are recommending very sizable wage increases, thus going as far as we reasonably can to meet the most pressing immediate needs of the employees, but deferring some of the possibly meritorious but less pressing improvements for later consideration. Similarly, we are recommending very substantial relief for the Carriers as to a number of restrictive work rules, thus going as far as we reasonably can to meet *their* most pressing immediate needs in that area—and again deferring for later consideration some other possibly meritorious but less pressing changes in work rules and pay practices.

However, it should be frankly stated that it is simply not within our province to afford the kind of relief which would meet the basic financial problem of the railroads. The changes in work rules will afford some relief, primarily in the area of increased efficiency, but it will take time for that to be translated into actual financial savings. And while we are taking some account of the Carriers' immediate financial problem in moderating the retroactive part of the wage increases, we do not believe that the needed financial relief for the Carriers can fairly be expected to come from the employees, by asking them to forego the financial relief which *they* need in the form of wage increases.

Nor can the Carriers' financial problem, we think, be solved by further reduction of the work forces through attrition. There will undoubtedly be some softening of the impact of the wage increases by that method. However, the extent to which the forces have already been reduced through attrition makes it unlikely that more than a small fraction of the needed savings can come through that means, without a cutback in essential services which would aggravate, rather

than improve, the problem of competing successfully for the Nation's freight business.

The Carriers assert that in any case, the financial problems of the industry will require direct governmental action, through rate increases and possible subsidies. Some action along that line is already in progress, notably through the rate applications before the ICC and certain subsidies for passenger operations which are appearing in the daily press as this report is being written. It is not within our province or our competence to make any judgment as to the merits of possible further subsidies or as to the pending applications before the ICC—although we must say we are impressed with the thoughtful study of the whole problem set forth in the so-called ASTRO report of June 1970, a report in depth issued by a committee of the Association of American Railroads (Carriers' Exhibit 1B). What we can properly suggest, however, is that the ICC should give priority attention to the pending applications, using whatever administrative shortcuts may be available within their procedures.

So much for preliminary comments—we turn now to the specific issues.

THE GENERAL WAGE ISSUE

The non-op Unions (BRAC, BWM, and HRE) request the following increases: 12 percent effective on January 1, 1970; 12 percent effective on January 1, 1971; and 12 percent effective on January 1, 1972. The UTU proposes a 2-year agreement and requests 15 percent increases as of January 1, 1970, and January 1, 1971.

The Carriers have concentrated their discussion of the wage question on the year 1970, but they express their belief that a longer-duration agreement would be beneficial to all concerned. They make the following wage offer: for 1970, a 5-percent increase effective on January 1, and 4-cent increases effective on April 1 and August 1; for 1971, a 3-percent increase effective on January 1; for 1972, a 3-percent increase effective on January 1.

Broadly speaking, the Carriers make three arguments in defending their wage proposal: (1) the need in the railroad industry for the application of the "pattern" principle; (2) the high cost of the wage proposal relative to the industry's precarious financial condition; and (3) the adequacy of the wage proposal when judged by the time-honored standard of wage-progress comparison with "outside" industries.

The "pattern" argument, in substance, runs as follows: the railroad industry is organized along craft lines, and no less than 15 so-called standard railroad Unions represent a majority of the industry's employees; the multiplicity of Unions—particularly where there is over-

lapping representation—generates rivalry; many types of employees, though differently represented, work with one another and are bound to compare their wages and other benefits; nondiscriminatory treatment among the Unions is therefore of truly vital importance; since the Unions bargain neither as one body nor concurrently, there is no escaping *some* Union (though sometimes it has been a group of Unions) becoming the leader in any particular round of wage movement; it is thus that a pattern is established; and, once established, the pattern must be adhered to if crippling blows to collective bargaining in the industry are to be averted—for, to exceed the pattern with the “next up” Union is inevitably to commence a spiralling process and thus is to signal to all Unions not only that to settle early is to make a bad bargain but that to hold out until the last is to make the only good bargain.

The Carriers’ position for the application of the “pattern” principle for 1970 wage increases is based on the 1969–70 Agreement between the Carriers and four Shop Craft Unions—the Machinists, the Electrical Workers, the Boilermakers, and the Sheet Metal Workers. (The Agreement was additionally accepted, respectively in early and mid-1970, by the Carmen and the Firemen and Oilers.) The following are the wage increases under that Agreement :

Effective date:	Wage increase
January 1, 1969-----	percent-- 2
July 1, 1969-----	do----- 3
July 1, 1969-----	cents-- *5
September 1, 1969-----	do----- 10
February 19, 1970**-----	do----- *7
January 1, 1970-----	percent-- 5
April 1, 1970-----	cents-- 4
August 1, 1970-----	do----- 4

*Applicable to mechanics only (as distinguished from both mechanics and helpers).

**This effective date had been negotiated to be the date of ratification—it became the February 19 date by virtue of the failure of a majority of the Sheet Metal Workers to ratify the proposed agreement and the subsequent enactment of that agreement by congressional action.

Comment must preliminarily be made on the three “middle” increases—the 5-cent, 10-cent, and 7-cent increases. The Carriers’ twofold contention on this score is: (1) that these increases were special adjustments—the 5-cent increase was an inequity adjustment, and the 10-cent and 7-cent increases, together, were granted in return for the significant relaxation of work rules prohibiting the crossing of craft lines; (2) that developments requiring from-time-to-time special adjustments to one or another particular group of employees are inevitable, and that it has long been recognized that such special adjustments are properly taken as falling outside the pattern.

Based on this extraction of the 22 cents from the package, the Carriers submit that the 1970 pattern is 5 percent effective on January 1, 4 cents effective on April 1, and 4 cents effective on August 1—precisely what the Unions in the present proceeding have been offered. The Carriers insist that the settlement with the Shop Craft Unions is of sufficient scope to be respected as a pattern—the settlement covered well over 100,000 employees, or about 23 percent of all railroad employees. And, for the reasons outlined above, the Carriers urge that the pattern be adhered to.

It is entirely true, as the Carriers stress, that the “pattern” argument has been sustained by a number of Emergency Boards. Nor has the present Board been disposed to treat the argument as anything less than a most substantial one. It is, however, the Board’s opinion that there are in this proceeding too many surrounding difficulties to go the “pattern” route which the Carriers are urging.

To begin with, though true that the “pattern” argument has in the past been sustained, it is not true that past Emergency Boards have either readily accepted it or seen it as the one clearly determinative consideration before them. To the contrary, the Emergency Board literature reflects a considerable struggle on the conflict between the Carriers’ plea for adherence to the pattern, on the one hand, and the plea by one Union or another that it has the right to bargain for itself and cannot be expected slavishly to follow what another Union has bargained, on the other. For confirmation that this has been seen as indeed a troublesome dilemma, one need go no further than the last three Emergency Boards concerned primarily with wage disputes—Boards 174, 175, and 176.

Thus, there is the following statement in the report of Emergency Board 174:

“This Board agrees with the Organization that the fact that other unions may have accepted a particular pattern of wage increases is not of itself adequate reason why ORCB should accept the same pattern. Each organization is entitled to have its wage demands considered on their own merits. Nevertheless, the fact that a large number of other unions have accepted a particular settlement is a fact of which the Board must take cognizance. A wage increase acceptable to the majority of major railroad unions representing more than a majority of railroad employees is presumably not grossly unfair or inadequate. . . .”

Emergency Board 175 saw the problem no differently. Indeed, by quoting this “pattern” excerpt from the report of Emergency Board 174, it showed that its view exactly paralleled that of Emergency Board 174.

If anything, Emergency Board 176 was even more troubled by the conflict. It made clear that it was not prepared simply to dismiss, in favor of the "pattern" consideration, the plea of the Unions before it to bargain for themselves; it also went on record with the conclusion that the conflict is both "irreconcilable" and a grave handicap to successful bargaining in the railroad industry. The following is its statement on the matter:

"It is not only the relationship of Government to the parties' bargaining, however, that needs reexamination. It is also the basic structure of independent multiunion bargaining which has evolved in the railroad industry and which has shaped the major issues in this dispute. The 'wage pattern' issue, which has been a major obstacle to the settlement of this case, is an inevitable product of that structure. The contention of the shopcrafts that their wage claims should be considered on their merits regardless of what other railroad unions have agreed to and the contention of the carriers that they must adhere to the pattern of general increases established for the majority of their employees are understandable and irreconcilable. Imaginative and energetic wage bargaining, alone, will not suffice to resolve the dilemma, for basically it is not a wage issue. It is an issue which concerns the basic framework of railroad bargaining and the ability of the railroad organization to participate in the setting of any wage pattern to which it is to be bound."

If true, then, that the "pattern" issue is a troublesome one, it presumably follows that there *can* be situations where the "pattern" argument must be overridden. And in our opinion, if there ever are to be such situations, this is one of them. We do not mean to suggest that the Shop Craft Unions should be seen as incapable of establishing a pattern—obviously, if patterns are to be *imposed* on them, so must they be seen as in a position to *establish* them. Nevertheless, all of the following points must be kept in mind: the Shop Craft Unions broke away in the mid-sixties and have been going it alone ever since; theirs has been a special skilled-inequity problem; their last Agreement is one which is out of step with most of the other railroad Unions as to duration and terminal point; thus, whereas 1970 constitutes the first year of a new wage round for the Unions before us, it constitutes the second year of a 2-year Agreement for the Shop Crafts; and, sizable as is the number of Shop Craft employees, they constitute less than a quarter of the railroads' workforce whereas the employees represented by the Unions before us constitute more than three-quarters of it. In upshot, we have before us the vast majority of railroad employees—a majority of operating and nonoperating employees alike—coming

to bat for a new wage round, and we are asked to conclude that there is no independent wage negotiating for them to do for their first year because of the existence of wage terms for the second year of the Shop Craft Agreement. To adopt the "pattern" argument as decisive under these circumstances, it seems to us, would be to push it to unreal proportions.

We turn, next, to the Carriers' plea for wage restraint based on the industry's competitive and financial difficulties. We have stated earlier in the Report our general conviction that the Carriers are genuinely in need of financial relief, but that the answer does not lie in lagging wage levels for the industry's employees. There is something, however, that we *can* recommend in the wage area which ties in with the Carrier's application for rate increase approval from the ICC.

With respect to what we view as the clear need for prompt ICC action on these rate increases, it will be seen that our wage proposal includes an element which is in tune—and designedly so—with this need. We have kept the retroactive wage adjustment to a 5 percent level. The retroactive period is by now a 10-month one, and, as we understand it, there is no way for the Carriers to obtain retroactive rate increases. We are thus responding—and we think appropriately—to the Carriers' immediate financial plight. (As will also be seen, we are providing for a large increase near the end of the first year, partly to compensate the employees for accepting the less-than-normal amount of retroactivity.)

It is also in order to point out here, though it does not relate directly to the wage question, that our response to the Carriers' plea based on the industry's deteriorated competitive and financial position is not confined to the lid which we have put on the retroactive wage adjustment. It has also entered into our thinking on the other issues. We have been convinced that there *are* unduly restrictive work rules, that the dual system of pay *is* outdated, that there *are* many unwarranted arbitraries, and that, indeed, the industry's labor relations in general are in need of modernization. We are making a series of recommendations in this area. One of them—the appointment of a high-echelon, joint standing committee to be chaired by a neutral—is of a long-run nature but, we think, is potentially of the greatest benefit to the Carriers and Unions alike. Apart from this, we are specifically recommending present changes in certain work rules.

These, then, are our responses to the Carriers' plea for relief from the distress in which the industry finds itself. We think, to repeat the basic point, that meager wage increases are not the proper response. To the contrary, we believe that the renovation and revitalization of the industry—the fundamental objective of all concerned—will not be advanced if railroad workers cease to be high wage earners.

We turn now to the standard of wage-progress comparison with "outside" industries. Here, we agree with the Carriers that the application of this standard has been the dominant theme in past Emergency Board reports. The Unions have not basically challenged this proposition—though their application of it would differ sharply from that of the Carriers—and we are ourselves pursuing this route.

One major difference between the parties in this area has to do with the weight to be given to the recent Teamsters settlement. For reasons which need not be gone into, this settlement is of special relevancy to the BRAC. We fully appreciate the problem and we have given every consideration to it. But we simply cannot give controlling weight to the Teamsters settlement. If we were to entertain going on the basis solely of that settlement—which was a huge one—we do not see what would bar us, or other Emergency Boards, from going on the basis of any one particular settlement which might be very low and for the application of which the Carriers might make a strong case. If such an approach were to be followed, in other words, it would obviously have to be taken as capable of cutting both ways. We think it would be most inadvisable to inaugurate such an approach.

We are proceeding, then, on the basis of the whole bundle of comparative wage data. It is obvious that they do not inescapably lead to one precise figure. There are the usual problems as to statistical methodology, as to the inclusion versus the exclusion of one or another settlement in the tables before us, as to the inclusion versus the exclusion of a cost-of-living escalator clause in the settlements, as to how much weight to give to variations in fringe benefits, as to short-term versus long-term agreements and as to differences in the size of the wage increase in one year as compared to another within a long-term agreement, as to whether any weighting is to be done in considering settlements in nonmanufacturing relative to manufacturing industries, as to the existence versus the nonexistence of incentive programs and as to the size of the incentive component in relation to total remuneration where an incentive program exists, etc., etc. We are foregoing the presentation of the analyses we have gone through. Our net conclusion on the entire picture before us is that a wage increase of about 9 percent per year is the realistic figure which emerges as the "outside industry" pattern.

Though this is the figure which we have centrally kept in mind, we have additionally been influenced by a number of considerations which bring the figure somewhat above 9 percent. One is the persistent and sharp rise in the cost of living. It is currently climbing at an annual rate of more than 6 percent. We cannot pass judgment on the current mass of conflicting expert opinion as to whether the peak has been reached

and a declining rate of increase will set in, or whether it may continue accelerating. The one sure way to guard against any need to speculate on this score, of course, is to adopt a cost-of-living escalator clause. We are not so recommending principally because we think the Carriers, not in the same position to proceed with price increases as are other industries, should have the benefit of firm predictability of wage costs. But we do note—and we *have* been influenced by this—that the application of the productivity-plus-cost-of-living principle (assuming continuation of the current annual 6 percent increase in the cost of living) would yield an increase of somewhat in excess of 9 percent per year.

Another factor which has influenced us is the already-discussed fact that we have kept down the size of the retroactive adjustments. We have here designedly spared the Carriers, and we think it must follow that the employees are entitled to some make-up for it.

And a further factor yet lies in our recommendation for an Agreement of 3 years duration. Long-term stability has traditionally been seen as advantageous to industry and therefore as properly being of some upward influence on the size of the wage package.

One other general comment on our approach to the wage issue may be in order. Each side has presented us with extensive data and analyses, buttressed by impressive expert testimony at the hearings, designed to show that the railroad employees have (a) lagged behind the wage progress of other industries and the productivity trends (Union version), or (b) kept well ahead of such trends (Carrier version), depending on which base periods are used and which standards of comparison are utilized. We are impressed with the expertise with which each side can demolish the theories of the other, arguing from essentially the same facts, and we declare an approximate draw, or Mexican stand-off, in this battle of the economists.

However, it makes little difference in our general approach anyway, because we believe, as have other Emergency Boards, that we should start with the assumption that the parties' last agreements represented a fair balancing of all these arguments as of that time, and that we should start our wage and cost of living calculations *from that point*. Accordingly, we have concentrated almost exclusively on the developments since the last agreements between these parties in 1968.

These are our general explanatory comments. More specific explanatory comments will be made after presenting our precise wage recommendations. They are as follows:³

³ For 3-year agreement expiring December 31, 1972. All increases across the board.

First year :

January 1, 1970-----	5 percent.
November 1, 1970-----	32 cents per hour.

Second year :

April 1, 1971-----	4 percent.
October 1, 1971-----	5 percent.

Third year :

April 1, 1972-----	5 percent.
October 1, 1972-----	5 percent.

One particular aspect of the arrangement of these increases should be explained. That is the familiar question of whether the increases should be in terms of flat cents-per-hour, or in terms of percentages.

The cents-per-hour approach favors the lower-paid classifications, giving them a larger proportionate slice of the pie than would percentage increases. The percentage approach favors the higher-paid classifications, who are also the higher-skilled. In this industry as in others, the interests of both groups have been recognized over the years by varying between cents-per-hour and percentage increases.

As is apparent from the above tabulation of the recommended increases, we have leaned rather heavily toward percentage increases, but have recognized the interests of the lower-paid classifications by putting the largest single increase in terms of cents-per-hour, and by placing it in the first year, thus making the later percentage increases more meaningful to the lower-paid groups.

The first-year increases are fashioned to take into account (a) the Carriers' legitimate concern in avoiding heavy retroactive pay which cannot be recaptured through rate increases, (b) the employees' entitlement to a correspondingly higher increase at the end of the year, in return for accepting a smaller amount of retroactivity than would normally, be recommended, (c) a catch-up factor for the rise in cost of living of more than 6 percent since the last negotiated increase, and (d) maintaining some reasonable degree of consistency with the total package provided in the Shop Craft Agreement, taking into account the sharp rise in cost of living since that agreement was negotiated. We think the increases recommended for the first year, and their timing, realistically take into account these various relevant factors.

As to the second and third years, the increases conform rather closely to the basic guidepost figure of something over 9 percent a year. We have deferred the effective dates of these later increases for a number of reasons. First of all, the large increase toward the end of the first year (about 8½% on the average), provides a rather large base from which to jump off for the second and third year percentage increases. Because of this large increase in November 1970, we think it is in order to give the Carriers some breathing room before the next in-

crease, in April 1971, by which time they hopefully may receive some answer on their rate applications. Thereafter, we have spaced the increases at 6-month intervals, which seems equitable all around.

The net result for the whole 3-year period, as can be seen from the recommended schedule of increases, is well *over* 9 percent per year in total increases (13½% the first year, 9 the second, 10 the third), but well *under* 9 percent per year in actual cost to the Carriers, because of the deferred effective dates (about 6½% the first year, 4⅓ the second, and 5¼ the third).

This somewhat paradoxical result is not accidental; we have tried to fashion our recommendations so as to conform as closely as possible to the practical needs of both parties, and we believe this arrangement does so.

APPLICATION OF THE ABOVE INCREASES

A special problem, relating to the operating employees represented by the UTU, must be faced in applying the above increases. As will be discussed later in the Report, there are a number of issues concerning mileage allowances, arbitraries, and car-scale additives, with the Carriers seeking to modify or eliminate such extra payments, and the UTU seeking to maintain or increase them.

How we are treating these issues for the future (mainly referring them to the high-level Standing Committee for further consideration along with related aspects of the pay system), will be explained later. But at this point we must determine how the above wage increases are to be applied—specifically, whether the increases should or should not be applied to these extra allowances, arbitraries, and additives. The Carriers say they should not, and should be applied only to the base rates of pay; the UTU says they should be applied to these extras.

We think the soundest approach is to follow the existing practice in regard to applying general increases to these items, and we accordingly recommend that the above increases be applied to these allowances, arbitraries and additives in the same manner as were the general increases under the last contract. Our understanding is that the increases *were* applied to the mileage allowances, and were applied to some but not to others of the arbitraries and additives. But we need not explore that in detail here—whatever the practice was the last time around, it should be followed here.

FUTURE STATUS OF PAY-RELATED ITEMS

As to the determination of the status of these issues in the future, some further explanation is in order as to how we are leaving those

issues, because not *all* of them are being referred to the Standing Committee.

These issues are bottomed in the dual system of pay for operating employees.

Our fundamental comment echoes the one already made in the preliminary discussion of the wage question: the dual system of pay is outdated, far too many serious problems inhere in it, and the system in its entirety must come under thorough review and be substantially revised, if not abandoned altogether. It is obvious that the magnitude of the undertaking is such as to lie beyond the capacity of a short-lived Board. We are recommending, accordingly, that the whole dual system of pay be referred to the high-level Standing Committee. We add only that we see this issue as one of the truly significant ones facing the industry.

However, certain immediate requests as to the mileage holddown should be determined now, in our judgment: (1) the UTU asks for the recapture of the rate compression which resulted from the 1964-68 holddown; (2) the Carriers ask for the restoration of the (1968-abandoned) holddown.

We think it is clear that the UTU's request lacks merit. The 1964-68 holddown was a compromise response to the finding of the PRC; it represented a modest inroad into the anomalies engendered by the mileage basis of pay; and, the holddown was the product of the parties' *agreement*. When these things are coupled with our belief that the dual system of pay is ripe for overhaul, we think it would be the height of incongruity for us to recommend in favor of the make-up request which the UTU is making. We recommend that this make-up request be withdrawn.

As to the Carriers' request for the restoration of the mileage holddown, we have considered the merits of the request as a matter of the beginnings of a revision of the dual system of pay. We believe, however, that it would be one thing to recommend the continuation of the holddown were it still in effect, and that it is quite another to recommend the *restoration* of the holddown. The parties agreed in the last wage round—despite the recommendation to the contrary of Emergency Board 174—to abandon the holddown, and we think that this must be given overriding weight. Given our recommendation for the review and revision of the dual system of pay, we think that the maintenance of the status quo, rather than piecemeal surgery, is the sound approach. Accordingly, we are not recommending the restoration of the holddown at this point. The future status of the holddown, along with other features of the dual system of pay, are being referred to the Standing Committee.

ARBITRARIES

Arbitraries are special allowances in one form or another which represent components of the overall pay system for operating employees. We think it unnecessary to review the parties' contentions on this score. With one exception—the so-called radio issue, which we are giving separate treatment—we are taking the same approach on arbitraries as we are on the holddown issue: the maintenance of the status quo pending the review of the dual system of pay by the high-level Standing Committee. By "status quo," we mean to convey two things: (1) no elimination of existing arbitraries; and (2) no upward or downward adjustments in any arbitraries other than through the application of the general wage increases to arbitraries in the same manner as in the past. In so recommending, we are not saying that the record is without evidence concerning an overabundance of arbitraries and the unwarranted or outmoded nature of some of them. We are saying only that arbitraries are part of the dual system of pay and that it is the system as a whole which needs reform.

THE CAR-SCALE-ADDITIVE ISSUE

The UTU requests substantial revisions of the car-scale additive applicable to train-service employees. Emergency Board 174 had much the same request before it and recommended that the UTU withdraw the request but that the issue be subjected to study and subsequent negotiations. We are aware that the study has been made and that it indicates justification for some expansion of the car-scale-additive formula (though not nearly as much as the UTU is here asking for). Despite this, we cannot in good conscience recommend such expansion at this time. The car-scale additive is another part of the dual system of pay, and, just as we are recommending the maintenance of the status quo on the issues of holddown and arbitraries, so do we think that this is not the time to tamper with the car-scale-additive formula. The UTU can indeed point to the possibility of some developing inequity for the train-service employees vis-a-vis the engine-service employees by virtue of the relatively greater yield of the weight-on-drivers formula. But there are a great many other disparities—and some of them far more serious—growing out of the dual system of pay. And, to say it once again, we think the concern at this stage must be with the overall rather than piecemeal revamping of that system. Accordingly, we will refer the additive question to the Standing Committee as part of the review of the dual system of pay.

THE RADIO ARBITRARIES

This issue has for some reason aroused particular heat between the parties, and we think it therefore deserves somewhat more detailed discussion than some of the others.

The Carriers request us to recommend a National rule which will declare that the use of radio communications by train service, engine service and yard employees, is an integral part of these employees' jobs, and consequently they are not entitled to be paid any additional and separate compensation for using such equipment.

The following radio communications systems are in increasingly widespread use in this industry :

1. End-to-end communications systems which operate between the locomotive and the caboose.
2. Wayside-to-train communications systems which operate between the locomotive or caboose and the track-side stations or towers.
3. Train-to-train communications which operate between passing trains.
4. Communications systems ("walkie-talkies") which operate between ground crews, engine crews, yardmasters, and other personnel responsible for switching and other yard functions.

Prior to the introduction of radio communications, the communication system primarily relied upon in these industries consisted of hand signals, lanterns, flags, fusees, and wayside telephones. The Carriers observe that these methods of communication were subject to the limitations of distance, obstructions, and adverse weather conditions. Radio communications have overcome these inherent limitations and possess the advantages of safety and flexibility. The Carriers assert, by way of example, that in the event a conductor might see a condition which necessitated stopping the train, he could now speak to the engineer, rather than run the hazard of stopping the train by making an emergency application of air brakes from the caboose. In another situation, the engineer might talk to his dispatcher without having to halt his train and walk to a wayside telephone. Again, a yardman engaged in switching operations whose view of the locomotive was obstructed, now would not have to walk to a point where he could give observed hand or lantern signals to other members of his crew. The Carriers assert that there can be no reasonable doubt that radio communications both facilitate and expedite the work of the employees, as well as make it considerably safer. The Carriers further note that all neutrals who have analyzed and studied the problem have concluded that the use of the radio was an invaluable aid to the employee in terms of safety and ease, and its use should be encouraged rather

than discouraged. These neutrals have also found that the use of radio equipment created no hazards or undue work burdens for employees. It was in light of these conclusions that the neutrals held that there was no valid basis for granting the employees' request for the payment of an arbitrary when they were required to use radio equipment.

The Carriers quote the most recent pronouncement on this subject which is found in the Report of Emergency Board No. 177, stating in part:

"There is real merit to the Carriers' position that the use of portable radios is an integral part of job duties of the classification involved here. Furthermore, technological change is essential to the growth of the railroad industry and there should be no road blocks to such reasonable change."

The Carriers further state that the radio issue has been virtually settled by the Brotherhood of Locomotive Engineers when it agreed in the March 1969 contract that the use of radios was part of an engineer's duties in both road and yard service. (The Carriers concede that on about seven or eight railroads, engineers still continue to receive arbitraries, albeit on a reduced scale, because of the continuation of some early agreements to pay such arbitraries.)

The Carriers add that there are numerous Section 6 Notices filed by the UTU on various properties wherein it seeks both to initiate or expand radio arbitrary payments; they say it is necessary for the industry to get a favorable recommendation from this Board before this system of arbitraries becomes as widespread as are some other arbitraries, and saddles the industry with substantial but unnecessary costs.

The UTU contends that this is a matter for local handling, and that it is not properly an issue before this Board. The procedural history need not be reviewed here. We are satisfied that the radio issue *is* properly before us.

Apart from that procedural point, the UTU states that this subject is a very technical matter and requires extensive, expert evidence and testimony in order to demonstrate the validity of the UTU position, and that it has not had the opportunity to do this in this proceeding. The UTU also denies any comparability between the issue here and the disposition of this matter between the BLE and the Carriers. It notes that whereas an engineer uses a radio fixed to his cab, the UTU yardman often has to climb off and on boxcars with a 14-pound radio strapped to his back, a condition both dangerous and burdensome.

In sum, the UTU urges that we take no action at this time on the Carriers' request because the request is premature and unnecessary.

We believe that the Carriers have submitted substantial evidence in support of their request. Radio communication is a modern technological development with great potential for making railroad operations much safer than they currently are. Railroading is hard and dangerous work, and any means or techniques which minimize or eliminate occupational hazards should be encouraged. From the evidence on record we are convinced that the use of radio equipment makes the employees' duties and tasks considerably easier. For example, it is far more desirable for a yardman to be able to receive and transmit instructions from where he is located, rather than be compelled to go to a position where his hand or lantern signals may be visually observed.

It is undoubtedly true that in the initial stages of radio equipment development, some portable sets were bulky and had to be carried by hand by the employees. But the development of transistors has greatly reduced the bulk and weight of these instruments, and they are now more likely to be clipped to the belt, rather than carried around by the employee. The weight of this equipment is apt to be measured currently in terms of ounces rather than pounds.

However, to insure that employees are not subjected unduly to onerous working conditions, the Board suggests to the parties that they negotiate specifications concerning the weight and size of portable radios that are to be, or are being, utilized. The Board does, however, believe that the overall use of this equipment should be encouraged, because it is a tool that makes employees' jobs easier and safer, and its use does not create or introduce new or undue components to the job. Its use should be regarded as an integral part of the job, and therefore it would be unwarranted for us to recommend that employees receive separate and additional compensation for using this equipment. In the interests of consistency and recognition of existing rights, we also recommend that the parties negotiate procedures for gradual elimination of the several radio arbitraries which are currently in effect, together with procedures for phasing out the bulkier types of walkie-talkies still in use.

OTHER ASPECTS OF THE PAY STRUCTURE

Apart from items just discussed, the notices served by both sides contain a large variety of proposals regarding changes in the wage structure, as well as some other issues closely related to the wage structure. The scope of these myriad proposals is succinctly outlined in the following passage from the Carriers' brief: (pp. 51-52)

"The general wage issue as it relates to the operating employees represented by the UTU presents a special, and especially com-

plicated, case. It is impossible to make a wage settlement with these employees and to appraise its effects without determining the parts of the compensation structure to which the settlement is applicable and without understanding the inter-relationship of those parts to total compensation. As the Board is aware, the earnings of road service employees are made up of basic daily rates, which differ among the several classes and grades of service and are graduated according to locomotive weight (in engine service) or number of cars in the train (in train service); overtime rates, whose threshold is determined by a combination of time and distance; mileage rates, which take effect after the miles constituting the basic day have been run; daily and monthly guarantees; and a myriad of arbitrary payments and constructive allowances for specific tasks and events. The earnings of yard service employees, though lacking the mileage component and graduated rates for ground service employees and providing for overtime after eight hours rather than after a varying time determined by speed, are otherwise complicated by arbitraries.

"The UTU has proposed two specific changes in the pay structure of road service employees: elimination of the mileage holddown originally instituted by the White House Agreement of June 25, 1964, so that mileage rates would be increased to 1/100th (1/150th for passenger train service) of basic daily rates; and an increase in the car scale additive for conductors and brakemen in freight service along with a complete restructuring of that particular system of graduated rates.

"The carriers have proposed a general overhaul of the operating employees' pay structure, including the complete elimination of the dual basis of pay with its mileage rates and speed basis of overtime, and elimination of all earnings limitations and guarantees, all arbitraries, and all graduations and additives—all these elements to be replaced by hourly rates of pay with overtime after eight hours at one-and-one-half times the hourly rate. Recognizing that the time and resources available to this Board will permit no more than a general appraisal of these proposals, the carriers have refined their position to request certain specific substantive recommendations together with a procedural recommendation for prompt but deliberate resolution of the general wage structure issues. For the moment, the carriers ask that the general wage increases recommended by this Board not be applied either to the mileage rates or to the arbitraries and special allowances applicable to operating employees, that all pending notices for new

or increased arbitraries be held in abeyance, that arbitraries not be applicable to new employees, and that one arbitrary in particular—the radio allowance that has been instituted on about 20 railroads—be immediately abolished. Beyond that, the carriers ask of this Board only that the Board recognize the serious nature of the pay structure problem, acknowledge the need for change, and recommend an effective procedure for fashioning and effectuating the needed reforms.”

Some of these issues we have already disposed of; as to the others, we are in effect adopting the Carriers’ procedural suggestion at the end of the quoted passage, with one important exception.

As requested in the last sentence of the above quotation from the Carriers’ brief, we “recognize the serious nature of the pay structure problem, acknowledge the need for change, and recommend an effective procedure for fashioning and effectuating the needed reforms.” This “effective procedure” consists of the high-level Standing Committee, chaired by a neutral to be selected and paid by the parties themselves, rather than appointed and paid by the government. But for reasons which will be set forth in the concluding portion of this Report, we do not adopt the Carriers’ proposal, stated later on in its brief, that there should be established in advance “terminal procedures for final and binding arbitration of any issues that the parties are unable to resolve themselves.”

We now turn to certain demands for fringe benefits, starting with vacations and holidays.

VACATIONS AND HOLIDAYS

Though with variations as to a series of particulars, all of the Unions before us seek expansions of vacation and holiday benefits. By way of general orientation: as to vacations, the demand is to go above the current maximum of 4 weeks (after 20 years of service) and to lower the number of years of service required for qualifying for less than 4 weeks of vacation; as to holidays, the demand is to expand the current benefit of eight holidays. Our general response is twofold. First, the “outside industry” evidence respecting vacations and holidays fails to support the Unions’ requests. One would have to rely on selective data, rather than on what is true of the bulk of American industry, to accommodate the Unions in their requests in these areas. Second, given the industry’s financial difficulties and the large wage package which we are nonetheless recommending, we think that this is not the time to make the railroad industry go beyond prevailing vacation and holiday benefits. We therefore recommend that these proposals be withdrawn.

It remains to deal with certain particulars.

Vacations

Except for the UTU request mentioned at the end, the requests here are all non-op requests. We see no justification for the following: going from time-and-a-half to double-time pay (aside from vacation pay) for work performed during a vacation; vacation pay at a rate higher than the employee's regular rate; rendering vacation pay in advance of vacation-taking time. We recommend that these requests also be withdrawn.

On the other hand, there are requests going to such things as broadening the pertinent service for a Carrier which "counts" for vacation purposes, reducing the number of days per year applied as a qualifier both currently and in terms of counting past years of service, applying years spent in military service toward vacation rights, and permitting employees to take their vacation in two installments. On these, though true that the evidence is sparse, we pass no judgment because it is equally true that we have not been presented with convincing answers by the Carriers. Clearly, these items are not of crucial importance in relation to the case as a whole. We would think that they can be resolved through further discussion, with each party having an open mind to the problems of the other, and we so recommend.

The UTU request is for the payment of time-and-a-half for work performed during a vacation. We dispose of this in similar fashion. Unless it is true that it happens frequently that an employee has to work in his scheduled vacation time—in which event there presumably ought to be some sort of deterrent—this issue simply cannot be of great importance to either side. We also refer this request back to the parties for further discussion.

Holidays

There are five non-op requests. As to four of them, the record is bare of any evidence. As did the Unions, we refrain from pursuing them. As to the fifth, it is a request for the payment of double-time wages (in addition to holiday pay) for work performed on a holiday. For lack of support by way of "outside industry" evidence, we recommend against this request.

The UTU has a request which is of major cost proportions: paid holidays for road-service employees. It is an issue of long standing, having been passed on as long ago as the time of the PRC investigation and as recently as the time of the Emergency Board 174 proceeding. Both bodies sided with the Carriers, substantially on the grounds that these employees' mileage basis of pay affords them many chances for short hours without loss of basic pay. We do not accept the UTU's assertion that this was an erroneous conclusion; and we add that the matter is yet another ramification of the dual system of pay. We recommend against this request.

There is a request by the HRE for eight paid holidays (to be arrived at by raising their monthly pay) for dining-car employees. These employees now receive two paid holidays, and the request is thus of significant cost proportions. Without passing on the dispute between the parties as to whether, in the 1968 negotiations, the dining-car employees specifically withdrew the holiday demand in return for obtaining a reduction in hours, we note that the request now before us is the same as that which was but recently made and withdrawn, and that it *is* a request which bears a relationship—more leisure time without loss of pay—to the important gain made by the dining-car employees in the last wage round. We are therefore not disposed to recommend in favor of this holiday request.

The UTU's Section 6 Notices include a request for the elimination of the working requirement—to be eligible for holiday pay—respecting the days surrounding a holiday. The request was not pursued before us, and the eligibility requirement is both soundly based and of wide existence in American industry. We recommend against the granting of the request.

There are, finally, two requests from the Carriers (applicable to the non-op Unions). One concerns the local holiday "shift rules." Under these rules, despite the fact that a holiday falling on a rest day is nowadays—in contrast to what used to be true, and in response to which the "shift rules" sprang up—recognized as a holiday and covered by holiday pay, premium rates must be paid for work performed on the day after the holiday. The Carriers ask for the elimination of the "shift rules." The other request is concerned with the "birthday" holiday—many employees have insisted (as they apparently have the right to do) on working this holiday and, rather than get a day of rest and rather than let the day be worked by another employee at straight-time rates, these "birthday" employees have been collecting a day of work at premium rates. The Carriers ask for authority to "blank" the employee's position on his birthday. We have heard nothing in opposition from the UTU, and, so far as we can see, there is real merit in both requests. Our recommendation on them, accordingly, is in the affirmative.

One other fringe benefit calls for specific mention.

INSURANCE COVERAGE

The nonoperating Unions have submitted the following proposal:

**"PAYMENTS TO OR ON BEHALF OF EMPLOYEES IN
THE EVENT OF INJURY OR DEATH UNDER CER-
TAIN CIRCUMSTANCES.**

"Effective January 1, 1970, the carriers shall enter into an agreement with the organizations parties to this notice providing

for payments to or on behalf of employees represented by such organizations who sustain personal injuries or death as the result of accidents occurring while such employees are riding in, boarding, or alighting from off-track vehicles authorized by the carrier and are dead-heading under orders or being transported at carrier expense. Such agreement shall provide benefits for employees not less than those provided in agreements on this subject between the carriers and the operating organizations and the Signalmen's organization."

The stated purpose of the proposal is to extend to these employees the personal injury and liability group insurance coverage now allowed other railroad employees when travelling in off-track vehicles authorized by the Carrier, while dead-heading under orders, or while being transported at the Carrier's expense.

National agreements granting the insurance coverage here sought have been entered into by the Carriers and other Unions,¹ the most recent of which is that contained in Article IV of April 21, 1969, Agreement with the Brotherhood of Railroad Signalmen. We suggest that the detailed and comprehensive provisions of that agreement should serve as a model for this type of insurance protection for non-operating employees.

The evidence establishes that each year a substantial number of railroad employees have suffered casualties as a result of accidents involving motor vehicles operated on public and private highways in both train and nontrain service. Moreover, it is widely recognized today that the number of automobile accidents causing serious injuries and the rate of deaths per thousand of people involved in motor vehicle accidents have been steadily increasing.

The fact that in recent years there has been a substantial increase in the use of off-track motor vehicles in this industry for the transportation of railroad workers to and from work and between work sites is another valid reason for the allowance of the kind of relatively low-cost protection requested by these Unions.

In view of the foregoing, the Board recommends adoption of the Unions' proposal.

OTHER ECONOMIC BENEFIT DEMANDS

In addition to the fringe benefits already discussed, the Unions have presented a considerable list of wage-related proposals which tie in rather directly to the general wage increase issue. Our basic approach as to these proposals has been that the wage package here

¹ Agreement of March 10, 1969, Brotherhood of Locomotive Engineers and Carriers, is typical.

should be concentrated on general wage increases, rather than diffused between a variety of wage-related benefits. Accordingly, we are recommending that most of these proposals be withdrawn.

Two of them in particular warrant special mention; the rest will be lumped together.

We have dealt with the escalator-clause issue in our discussion of the wage question. The other issue which bears separate comment concerns the UTU's request for broadened coverage and an increase in expenses-away-from-home allowances. It appears to use that some expansion in this area is in order and, also, that there is a relationship between the expenses-away-from-home request and the interdivisional-run issue. However, time does not permit us to deal in in-depth fashion with the expenses-away-from-home issue, and we are therefore referring it to the Standing Committee. In doing this, we do not mean to foreclose negotiations on it as part of the negotiations respecting the interdivisional-run issue.

As to all the other requests for wage-related benefits—longevity pay classification evaluation fund, increased overtime premiums, job stabilization fund, paid sick leave, overtime in passenger service, reduction in the work month of dining-car stewards, salary and supplemental wages for patrolmen, weekly pay, and guaranteed annual wage—we believe that there is too little by way of supporting evidence to regard these requests as requiring action in this wage round. We are not saying that they are without intrinsic merit. We are saying that we do not see them as being of the sort of priority which would warrant either letting them reduce the size of the general-wage increases or having them adopted on top of those increases. Accordingly, we recommend that these requests be withdrawn.

WORK RULES

We now turn to what may fairly be described as the second major part of the whole case, consisting broadly of the Carriers' demands for modification or elimination of a host of restrictive work rules and practices. In effect, it is now the Carriers' turn at bat.

During our informal discussions with the parties, the Unions have indicated a willingness to make concessions on certain of these work rules, provided suitable protective provisions are worked out to cushion the impact of the changes on incumbent employees. We will deal with those matters first.

INTERDIVISIONAL RUNS

Here the Carriers are asking for immediate relief from what they regard as the antiquated and confining limitation of the current rules pertaining to interdivisional and interseniority district assignments.

These rules generally confine road crew assignments to operating "divisions" of 100 miles or less. Because operating employees accrued seniority over the road territory on which they operated, the seniority districts of these employees also tended to become coextensive with the geographical confines of the operating divisions. The Carriers note that in the era of steam locomotives, there was a rational basis for establishing operating divisions and seniority districts which approximated 100 miles. Steam locomotives generally required fueling, servicing and maintenance after running this distance, and employees also required about 8 hours to cover this distance. Under these circumstances, the Carriers agree that there was an operating logic to dividing the line of road into operating divisions of approximately 100 miles with seniority districts coextensive thereto, and restricting road operating employees to working assignments of such length and such a period of time.

However, say the Carriers, with the advent of diesel locomotives, which were able to operate much greater distances than the prescribed ones, without servicing and maintenance, the existing divisional and seniority districts became archaic and inefficient. They frequently compel the Carriers to stop the train and change road crews even before 100 miles has been run. This not only slows down the running time of the trip, but also results in road crews receiving pay for 100 miles even when they run a lesser distance and work a shorter time than 8 hours.

The Carriers stress that not only can present runs be accomplished in a quicker time because of more powerful locomotives, but there have also been concomitant developments such as centralized traffic control, reduction in road grades and track curvatures—all of which have contributed to facilitating the movement of traffic in a speedier manner over a greater distance in a shorter time.

The Carriers complain that when they have attempted to extend and modify the existing divisional and seniority boundaries, the Unions, in the main, successfully resisted their efforts. The Unions were generally able to convince the National Railroad Adjustment Board that the established practice of running road operating employees only to a designated away-from-home terminal, precluded the carrier from instituting a longer assignment for these employees by extending or changing existing divisional or seniority boundaries. The Carriers say that as a result of these NRAB awards, the Unions assumed an intransigent attitude whenever the Carriers sought to

negotiate rules which would modify existing divisional or seniority lines.

The Carriers note that many boards of disinterested public members have reviewed this problem. Emergency Boards No. 33, No. 37, and No. 81 all have stressed the desirability of the affected parties working out mutually satisfactory procedures which would permit the establishment of interdivisional runs.

In 1951 the then Brotherhood of Railroad Trainmen did agree to a national rule on interdivisional assignment disputes. In this rule, the parties agreed that they would negotiate on proposed interdivisional runs and make fair and reasonable arrangements in light of the interest of both parties. If the parties were unable to agree, they would then submit the dispute to final and binding arbitration. The Carriers thereafter negotiated a similar national rule in 1952 with the other road operating Unions, except that no provision was included for final and binding arbitration as to unresolved disputes. Consequently, the Carriers never utilized the 1951 BRT Agreement because they were convinced that arbitration machinery which only encompassed one operating craft was virtually useless.

The matter then was considered at length by the Presidential Railroad Commission. That body recommended that the parties negotiate proposals for the establishment of new runs or the rearranging of existing runs in interdivisional service, and that failing agreement, the dispute should be submitted to final and binding determination before a tribunal to be established. The Commission also set forth certain qualifications pertaining to the establishment of these interdivisional runs: the runs should not create undue onerous or burdensome working conditions upon the employees; the mileage was to be ratably distributed among the employees of the seniority district affected; protective allowances were to be granted employees required to move and sell their homes as a result of the establishment, abolishment or change in terminals; allowances should be given to cover wage losses resulting from such relocations. The Commission also recommended against arbitrarily changing crew terminals in such a manner as to require unduly frequent relocation of employees.

The Carriers accepted the PRC's recommendations; the Unions rejected them. The Carriers then tried to handle this matter at the time that the 1964 "White House Agreement" was being negotiated, but were unsuccessful. Finally, the two special mediators appointed by President Johnson to work on this problem concluded, on April 23, 1966, that *they* were unable to resolve the dispute.

The Carriers say that in view of this long and dreary history of unsuccessful attempts to obtain relief from the waste and inefficiency

resulting from the present restrictions, they are now entitled to receive prompt relief from this Board. In response to the UTU contention that the Board should refer the issue back to the several properties for local handling, the Carriers say this would simply be another path to the same frustrating conclusion that has attended all the prior efforts. The Carriers say this problem is plainly national in scope and calls for national handling.

The Carriers concede that substantial and basic cost relief will only come when the dual system of pay is drastically revised. They are also aware that increasing the mileage component on certain interdivisional runs will *increase* their wage bill, but nevertheless many railroads would derive some real and immediate benefits from the economies inherent in this reform. Some Carriers, such as the Lehigh Valley Railroad, have many seniority districts under 100 miles; others, like the Santa Fe Railroad, have to make as many as 4 crew changes on such through freight runs as that between Chicago and Kansas City (about 450 miles). Abolition of unnecessary terminals would permit substantial savings in terminal maintenance costs and terminal delay allowances; the reduction of crew changes would also bring about both speedier service and attendant savings. Such cost items as per diem charges and delays resulting from change in cabooses where restrictions still exist on pooling of cabooses, would also be appreciably reduced by longer road assignments.

The Carriers concede that certain disruptions may occur in the lives of employees and even in their earnings as a result of the requested changes; they are agreeable to granting certain protective benefits to be worked out through negotiations or arbitration if necessary.

The UTU, in reply to all this, asserts that the Carriers have magnified the issue of interdivisional runs all out of proportion. It alleges that this problem is not nearly as pressing as the Carriers portray it to be. It states that many Carriers already possess the contractual right to institute interdivisional runs and have fully utilized that right. Other Carriers have been able to resolve the issue through voluntary local bargaining. The UTU states that the matter of interdivisional runs is basically a local problem that should be negotiated on the property. It is on the property that all problems can be fully explicated and handled in a responsive and meaningful manner. The UTU says the Carriers have been purposively vague as to what protective conditions they are willing to grant, and says that the resolution of the problem of interdivisional runs hinges almost exclusively upon adequate protective provisions. When such runs are established where they do not presently exist, the UTU emphasizes, terminals may be abolished and employees discharged or at least required to

move to different locations in order to remain employed. This will perhaps necessitate taking different jobs at lower earnings, sale of their homes, and uprooting from their communities. These employees may also be required to work long and burdensome hours on extended runs, and be forced to spend inordinately long hours at away-from-home terminals with little or no compensation or expenses. For all these reasons, the UTU is skeptical at best about working out interdivisional runs, although it *has* indicated a willingness to negotiate on the matter if realistic protective provisions are afforded.

The Board concludes that the differences between the parties on this issue are more a matter of degree than of kind. While there may well have been in the past a wide gap between them on instituting interdivisional runs, time and circumstances appear to have narrowed the hiatus.

The UTU does not effectively dispute that modern-day equipment permits existing runs beyond the confines of 100 miles, and permits them to be done in appreciably less than 8 hours. It also does not dispute that as a result of instituting extended runs, the Carriers could achieve substantial operating economics. On the other hand, the Carriers are ready to admit that by establishing certain interdivisional runs, they may create hardships on certain affected employees who therefore should be eligible to receive reasonable protective benefits, particularly if those affected employees have demonstrated a substantial attachment to the industry.

We therefore recommend that the Carriers be granted the right to institute interdivisional runs which are reasonable in regard to the miles run, the hours worked, and other conditions of the assignment, upon the service of reasonable written notice. The employees should have the right to grieve and to take to final and binding arbitration any matter pertaining to the conditions of the interdivisional assignment. We also recommend that the parties negotiate and establish reasonable and adequate protective benefits for employees who may be adversely affected as a result of being compelled to sell their homes, incur moving expenses, or receive less favorable earnings by virtue of crew terminals being either changed, abolished, or established. The application of these protective benefits should also be subject to grievance and arbitration proceedings.

We believe that there are currently persuasive reasons for recommending this course of action which did not exist in the past. The recent passage of the Revised Federal Hours of Service law places a partial but effective restraint on any particular Carrier's inclination to establish inordinately long road runs. If a Carrier should seek to establish that kind of a run, which its road crews could not ordinarily

cover within the prescribed time, it would then be forced by this law to dispatch another crew to relief the "outlawed" road crew. This would become an expensive and uneconomical operation for the Carrier, and would militate against the very purpose of establishing extended runs. We are also constrained to state that in the course of these proceedings, we did not receive much probative evidence that those Carriers who already possessed the authority to establish interdivisional runs, have in fact created undue and burdensome working conditions when they established these runs.

While we do not dismiss out of hand the UTU's concern over the problem of adequate protective provisions, we believe that by recommending grievances and arbitration procedures, the employees will be protected in those cases where they can prove that the Carrier was arbitrary and unreasonable in establishing particular working conditions on a given interdivisional assignment. And finally, as an overall consideration, we are convinced that the financial plight of the Carriers requires that they should be permitted to realize and achieve the benefits of modern technology, subject to granting the affected employees reasonable protection.

INTERCHANGE

Interchange operations involve the delivery of cars by a road or yard crew to a receiving Carrier's yard. These operations are not generally the subject of any specific agreement between the Carrier and the Unions, but are normally governed by practices which have grown up on the property as well as by awards rendered by the National Railroad Adjustment Board.

The Carriers request relief from this Board because they contend that these past practices, when they are coupled with restrictive and poorly reasoned awards, have limited their operations in such a manner that they have been prevented from making effective and economical interchange of traffic.

The UTU urges us to reject the Carriers' plea, saying that the Carriers are seeking, on this issue as well as some others, the abolishment of basic craft and jurisdictional lines between road and yard work which have been in effect for many decades in this industry.

The areas of relief which the Carriers are seeking on this issue include the following:

1. Removal of restrictions which prevent the delivering Carrier's road crews from performing any interchange within switching limits. The Carriers state that interchange deliveries are not switching, and, therefore, are not within the purview of yard work. They maintain that an interchange is actually a short

train movement, rather than a form of yard classification work. Nevertheless, NRAB awards have held that road crews which make interchange movements within switching limits have improperly invaded the contractual rights of yard crews, and therefore the road men are entitled to an additional and separate day's pay for being required to perform work which exceeds the limit of their craft jurisdiction. Such awards, for example, are an effective barrier to the Carriers' efficient handling of pre-blocked trains. The industry is increasingly developing classification methods to permit solid trains to be delivered directly to connecting Carriers. However, these restrictive NRAB awards now require these blocked trains to be yarded, and turned over to yard crews for delivery. Were these restrictions eliminated and road crews permitted to deliver these preblocked trains directly to the connecting Carriers, the Carriers contend that deliveries could be expedited and unnecessary yard congestion avoided, reducing the cost of having two crews do the work of one.

2. Elimination of restrictions which require the receiving Carrier to designate a specific track, or set of tracks, upon which interchange cars must be deposited; elimination of requirements preventing a receiving Carrier from changing interchange tracks as the demands of traffic warrant; and elimination of the requirement that the receiving tracks must be filled to capacity before the overflow tracks may be utilized. The Carriers contend that these rules are unduly restrictive and seriously impede the effective and expeditious movements of interchange. They state that *where* the cars are delivered, or whether the tracks are filled to capacity, are matters of no legitimate concern to the employees, because they do not change the character of the employees' work. However, these matters seriously affect the flexibility of operations, and interfere with the yardmaster's ability to manage the yard efficiently.

3. Limitation of the restrictions which prevent, where the situation otherwise would permit, interchange crews from bringing back other interchange cars after they have made their delivery. The Carriers say it is wasteful to have these crews return "light" to their home yard, when such time and effort could be used productively. While the Carriers concede that there may be certain situations where it is not feasible for crews to return with cars, they do request that where it is practical they be allowed to perform this work.

The UTU, on the other hand, contends that the Carriers are seeking to have this Board, without adequate proof and competent evidence,

wipe out work rules and craft differentials which the parties have painstakingly created over the years. It asserts that the Carriers are seeking by one stroke to turn the clock back and to eliminate work rules which have been reached by the parties, either by voluntary understandings, awards of the NRAB, recommendations of Emergency Boards, or awards by special Boards of Arbitration.

The UTU maintains that the Carriers have seized upon a few isolated cases on some railroads to magnify the alleged difficulties which they have encountered. These few cases prove nothing, it is contended, with regard to the overall merit or lack of merit of the existing system of interchange. The UTU states that it could equally cite a few "horror" stories, but that it would serve no purpose and prove nothing about this general problem.

The UTU further asserts that we should first recognize that many of the practices in effect are practices which the Carriers themselves initially instituted. Secondly, that these practices and rules have been construed differently on different railroads, and sometimes even differently on different locations of the same railroad. Furthermore, these local rules and practices were framed in response to particular problems existing on a particular railroad, and there was a valid reason for the initial adoption of the given rule or practice. The UTU also insists that there is adequate machinery available to the parties under the Railway Labor Act which would enable them voluntarily to settle, either locally or nationally, many of the problems raised by the Carriers. The UTU labels the Carriers' requests as unreasonable because they are seeking to have this Board make fundamental changes in basic rules and practices without allowing it adequate time or granting it resources to study the problem in the depth necessary to make recommendations.

While the Board is aware of the long existing distinctions between road and yard work, it also believes that adjustments must be made therein from time to time when rigid adherence thereto redounds to the serious detriment of the Carriers, and ultimately to the employees. The Board is convinced that the Carriers should be afforded some relief from these practices because they put undue restrictions on the Carriers without particularly advantaging the employees.

It may well be true that the adoption of many practices and requirements of interchange were initially instituted by the Carriers themselves, but if so, they were instituted for purposes unrelated to the distinctions between road and yard work. The Carriers instituted these practices to enable them to cope with management problems such as determining who had the responsibility for damaged lading or cars, or for determining the liability for per diem charges, et cetera, not

for the restrictive purposes for which they are currently being used. It has become apparent that these rules and practices impede the efficient and flexible operations of Carriers' yards, and therefore, we believe that the Carriers should be permitted to make certain adjustments in these interchange rules in order that traffic may flow more expeditiously.

Accordingly, we recommend that the parties negotiate a rule which would allow road crews conveying a train of preblocked cars to deliver these preblocked cars to the connecting Carrier without being required to turn them over to a yard crew. To deny the Carriers this privilege is to deny them the advantages which have been introduced into the industry by computer programing of consist arrangements.

We also urge the parties to negotiate a rule which would not confine the Carriers to a specified interchange track or tracks, but rather would permit them to use reasonable adjacent tracks when yard conditions so warrant. The Board also sees no merit in the requirement that an interchange track must be completely filled before an overflow track may be utilized, and therefore urges the parties to negotiate for the removal of this unduly restrictive practice.

The Board also believes that when it is consistent with existing arrangements, interchange crews should be allowed to bring back cars to their yard, rather than be compelled to return "light." This practice makes for the underutilization of the existing work force and appears to be clearly nonproductive and inefficient.

We urge these measures be taken because the Board is convinced that with more speedy and economical deliveries of interchange traffic, the Carriers can compete more effectively with other modes of transportation, resulting in obvious overall benefits for both the Carriers and their employees.

We now move into a somewhat related area, involving a proposal to combine road and yard work generally.

COMBINING ROAD AND YARD SERVICE

The main thrust of the Carriers' proposal is to eliminate the line of demarcation now dividing road and yard service into two classes, each with a different pay structure, separate seniority rosters, and mutually exclusive work rights.

The theory of the Carriers' case before the Board is that existing road-yard rules have created wasteful, inefficient and costly practices which must be eliminated, or at least substantially changed, to permit the industry to take advantage of recent technological improvements in rail transportation and to improve services to its customers and the general public.

To effect what the Carriers call a "true combining" of road and yard services, they propose abolishment of all existing restrictions on the use of roadmen in yard service and yardmen performing switching outside switching limits; the merging of road and yard seniority rosters; and the unilateral right to change switching limits—these rules changes to be made in conjunction with the elimination of the dual system of pay and of arbitraries and constructive allowances.

In what appears as a tacit recognition of the complexity and scope of these proposals, the Carriers recommended that the problem of a complete combination of the two services be referred by this Board to another impartial agency for further study and final and binding resolution.

The Carriers do request immediate action, however, in two areas: first, that the Board recommend implementing, by agreement, certain findings made by the Presidential Railroad Commission on the road-yard dispute;² and second, that the current switching limits agreement be amended to permit yard crews serving new industries located not more than 4 miles outside switching limits also to serve those industries already located between switching limits and the new industry.

The UTU response to these Carrier proposals appears to be that no national rule is needed; that the problem is one which can and should be handled more appropriately on a property-by-property basis because of a variety of differing conditions and requirements present on each of the railroads; and that the suggested changes would inevitably lead to the loss of jobs and seniority rights of adversely affected employees, who now have no protection against losses stemming from such substantial changes in their working conditions.

The UTU urges the Board to recommend that the road-yard dispute be remanded for further negotiation by the parties on a local basis.

² From Carriers' Exhibit Number 1, page 58:

"1. Provisions should be made that, regardless of whether yard crews or hostlers are employed or are on duty, road crews may be required (a) to accompany or handle engines of their own trains from engine facilities or ready tracks to departure tracks or from arrival tracks to engine facilities or ready tracks, (b) to switch out defective or 'no bill' cars from their own trains, (c) to handle cabooses of their own trains and to exchange cabooses from one train to another, provided the road crew handles either train into or out of the terminal, (d) to pick up or set out cars of their own trains as required from or to the minimum number of designated tracks which could hold the same, and (e) to pick up or set off cars which are part of the road train consist in more than one yard in consolidated terminals subject to reasonable restrictions concerning the maximum number of such yards.

"Such provisions should further make it clear that where yard crews are not on duty road crews may be required to perform all of the work enumerated in a, b, c, d, and e above and in addition may be required to handle all switching in connection with their own trains. It should further be made clear that road crews operating in other than through freight or passenger service where yard crews are not on duty may be required to perform any switching or station work." (PRC Report, p. 179.)

The historical development of the concept that road and yard services should be treated as two separate and distinct classes of service, and the largely unsuccessful efforts of the Carriers to break the strict line of demarcation between the two, lend little support to the Union's contention that the whole problem can be solved through local negotiations. That suggested approach has been tried again and again over the years and, as the record in this case shows, there have been few substantial changes in the basic concept or the rules implementing that concept. There have been local "escape agreements" which grant the Carrier a certain measure of relief from the restrictions of the road and yard rules, but always under limited conditions and for a price—special arbitraries and allowances as well as other monetary considerations. These local agreements obviously cannot be treated as substantive changes in the standard road-yard agreements now in effect.

It is significant that as early as the turn of the century the distinction between road and yard service as two separate crafts with mutually exclusive work rights and jurisdiction was beginning to be an accepted fact of life in this industry. From there on the distinction became more meaningful when the line of strict demarcation between the two services was clearly drawn by rulings of the Director General in the period of Federal control of the railroads, awards of adjudicatory agencies under the Railway Labor Act, and by agreements of the parties. Thus in 1919 the Director General ruled that regularly assigned yard crews could not be used in road service when road crews were available except in emergencies and even then would have to be paid either miles or hours whichever was the greater for the class of service performed in addition to their regular yard pay. Early awards of the National Railroad Adjustment Board expanded upon this rule by holding that where yardmen perform road work, they are entitled to a day's pay for their yard work; and that the roadmen who could have performed the road work also were entitled to a day's pay. The same ruling generally was followed where roadmen performed yard work.

These rulings and awards led to the Carriers' attempting in 1937, 1941, and 1945 wage movements to obtain relief from some of the road-yard rule restrictions through a national rule. The attempt failed and the Carriers' notices were withdrawn from the agreements subsequently consummated.

Since that time the Carriers have consistently sought relief from these rules restrictions by submitting proposals to every appropriate tribunal, including Emergency Boards, having jurisdiction of the subject matter. In each case, the Carriers' basic proposal for a complete

merger of road and yard service was either withdrawn or remanded for local handling. And in no case did the latter procedure result in any substantial progress toward combining the two services.

From the foregoing, it ought to be clear that no effective remedy lies in seeking a solution of this complex problem through local negotiations, as urged by the UTU in this case. It appears to the Board, therefore, that a new national rule is required if this long-standing dispute is ever to be resolved.

In 1962 the Presidential Railroad Commission (PRC) after a thorough study and analysis of the problem recommended such a rule. Its suggested provisions were rejected by the Unions. However, in the subsequent so-called "White House" Agreement of June 25, 1964, the parties agreed to two substantial changes: first, to permit road crews to perform yard service at points where yard crews were assigned during some but not all tricks, and, second, a procedure was established whereby certain yard assignments could be abolished on a showing that only a minimal amount of switching work was being performed at that location, and, thereafter, that road crews could perform all switching at that point. Existing switching arbitraries and allowances were required to be paid the roadmen performing this yard work.

The Carriers are urging the Board to recommend, as a matter of immediate relief from current road-yard rule restrictions, that the parties agree to accept the remaining PRC recommendations quoted herein in the earlier footnote. Those recommendations would, in effect, permit road crews to handle the engines, cars, and cabooses of their own trains within switching limits where yardmen are on duty without the payment of additional compensation to anyone. Roadmen (except those in passenger or through freight service) could also be required to perform all switching or station work at places where yardmen are employed but not on duty.

The PRC report and recommendations on the road-yard issue are entitled to be given great weight as reflecting an exhaustive and intensive study and analysis of the subject. We recommend that they be taken as an appropriate basis for the further examination by the Standing Committee of the entire matter of combining road and yard services. In the meantime, on the two matters as to which the Carriers are requesting immediate relief, we are convinced from the record before us, as well as the PRC report, that something should be done now. There is an immediate need for the removal of certain prevalent restrictions on the performance of work by road crews in connection with their own trains within yards and terminal limits where yard crews are assigned. The Carriers should be free to have such work

performed without payment of additional compensation to such crews or to any other employees. The following changes would permit road freight crews, at points where hostlers or yard crews are on duty, to do the following:

- (1) Pick up and set out cars of their own trains in more than one yard in a terminal, subject to a reasonable restriction upon the number of such yards;
- (2) Set out defective or "bad order" cars from their trains;
- (3) Handle the engines and cabooses of their trains, and exchange engines and cabooses, provided the road crew handles either train into or out of the terminal;
- (4) Pick up and set out cars of their trains as required from or to the minimum number of designated tracks which could hold the cars.

The Board recommends that the parties agree to a national rule incorporating the foregoing provisions, and that such rule also make specific provision for appropriate and adequate protection of those employees shown to have been adversely affected thereby.

MERGER OF SENIORITY

The Carriers also propose a rule reading as follows:

"Road and yard seniority rosters shall be merged. All men on the merged seniority rosters shall have rights to both road and yard assignments. Existing road service men shall have prior rights to road assignments, and existing yard service men shall have prior rights to yard service assignments."

The rationale of this proposal is that a merger of the seniority rosters of present road and yard employees is a logical and necessary concomitant to the combining of the two services.

The proposal contemplates that existing road employees will have first choice to bid on the road assignments and, similarly, that existing yard employees will have first choice of yard work assignments.

The evidence before the Board indicates no real dispute between the parties on the desirability of negotiating such a rule. We understand that appropriate and adequate protection will be provided for those employees adversely affected as a result of the proposed merger. The concept of dual seniority among operating crafts is not a new one. Firemen and Engineers have held dual seniority rights for a long time in this industry. We can conceive of no reason why a similar system could not be made to work with operating employees in yard and road service.

Accordingly, the Board recommends the negotiation of a rule by the parties incorporating the provisions of the Carriers' proposal and

making effective provision for the protection of employees adversely affected thereby.

SWITCHING LIMITS

The Carriers also request the Board to recommend approval of an amendment to the current switching agreements which would add the sentence: "Industries already located between the switching limits and the new industry referred to herein may also be served by the yard crew serving the new industry." They further request with respect to matters subject to arbitration under those agreements, that the intervening step of mediation by the National Mediation Board be eliminated as unnecessary and too time-consuming.

The Board finds merit in these proposals. Under the present rule a yard crew may be required to serve *new* industries located not more than 4 miles outside switching limits but may not serve established industries located en route. No valid reason for this anomalous situation has been given the Board. A restriction of this kind can result only in a waste of money and manpower to the detriment of efficient and economical operation as well as a disservice to the Carriers' customers and a loss of business to other modes of transportation.

The Board recommends, therefore, that the parties agree to adopt the suggested amendment.

On the record there appears to be no opposition to the Carriers' proposal to eliminate the mediation provisions of present switching agreements. Accordingly, the Board recommends the proposal also be agreed to by the parties.

As indicated earlier, we recommend that the balance of the Carriers' proposal in this area be referred to the Standing Committee which is described at the end of this Report.

ELIMINATION OF HOSTLER POSITIONS

One other proposal of the Carriers in this general area calls for specific discussion, because it was given considerable attention during the hearings. That is the Carriers' proposal "E," reading as follows:

"All agreements, rules, regulations, interpretations and practices which limit the right of the carrier to establish and abolish yard and hostling service and yard and hostling service assignments shall be eliminated."

As in the olden days when the hostler handled the traveler's horse to, from and about the stables, so in the railroad industry the hostler handled the "iron horse" to, from and about the round house. When the steam engine was the motive power there was considerable work required in servicing the steam locomotive. The engines had to be moved

from the incoming track to the ash pit, to the coal dock, the water plug, the turntable, to the round house stall, and then back through the same steps when the engine was ready for dispatch on its next trip. The hostler handled the steam engine in making these moves. In addition, the hostler was also required to clean, oil and, in general do much dirty work in and about the engine.

Now that diesel power has supplanted the steam engine, the work of the hostler has materially changed and almost disappeared. While the engine house procedures vary somewhat from railroad to railroad, generally the hostler now does nothing but move the engine from place to place in engine house territory and sometimes from the engine house to a point in the yard or to the station. These latter moves are by the outside hostler who is accompanied by a helper (fireman). The work of servicing the engine—supplying fuel, sand, water, lubricating, washing, cleaning, inspecting, and light and heavy repairs—is performed by the shop and mechanical forces. Even the work of moving the engines has been greatly reduced, as much of the work of servicing the diesel is done at one spot.

The Carriers have argued that it is expensive, inefficient, and unnecessary to maintain hostlers for the exclusive purpose of such a limited amount of work. It is their contention that qualified engine house employees could easily perform the work.

The UTU, in reply, points out that there is no national rule defining the scope of the work of hostlers. It admits that with the advent of the diesel engine, the work of hostlers has diminished, but says that the number of hostlers and hostler helpers positions has already been reduced by more than 75 percent. It points out that, on many railroads, agreements have been made giving to hostlers additional duties such as cleaning the locomotives and furnishing fuel, sand, water and other necessary supplies. It is argued that because of the different rules on the railroads regulating the use of hostlers, and because circumstances on each railroad differ, the problem can better be handled by negotiations with the individual Carriers.

We are in general persuaded that there should be a national rule on this subject, and that it should be designed to facilitate the phasing out of unnecessary hostler positions, with appropriate and adequate protective provisions. But we are also aware of certain possibly serious complications, especially in the area of whether and to what extent hostlers may be reassigned to other work within the yards.

Under all the circumstances, it is our best judgment that we should not try to prescribe any specific guidelines for the parties in negotiating on this subject, but should refer the issue to the Standing Committee, where it can be given the kind of deliberate study which may be required for intelligent resolution.

WORK RULE ISSUES RELATING TO NON-OPS

Most of the work rule issues involve operating employees represented by the UTU, but there are some which involve the BRAC and BMW. They will be discussed briefly, since they were not gone into during the hearings with anything like the depth accorded to the UTU rules issues.

THE CLERK-TELEGRAPHER ISSUE

The Carriers are seeking a free hand to make work assignments interchangeably as between clerks and telegraphers, without being burdened with disputes as to which has jurisdiction over particular types of work.

This issue loomed large at one point in the proceedings, but the informal discussions following the hearing have produced an apparent meeting of the minds on the subject. We are advised that the chief spokesmen for the Carriers and the BRAC have reached substantial agreement on the basis of a Carrier proposal submitted during the hearings, except that pending retroactivity claims are not to be waived, and that appropriate and adequate protective provisions are to be worked out.

We commend the parties on this apparent resolution of the issue, and recommend that it be reduced to writing and put into effect.

FORCE REDUCTION NOTICE

The Carriers' proposal here is cast in broad terms, seeking a rule that "no advance notice shall be necessary to abolish positions or make force reductions." This would be a sweeping change indeed from the present requirements of 16-hour notice of force reductions during emergencies, and 4 or 5 day notices for force reductions in other circumstances. We do not find any warrant for recommending such a total abolition of notice requirements.

However, we *do* find merit in a modified form of relief on this subject. In the 1969 Shop Craft Agreement, the parties adopted a recommendation of Emergency Board No. 176 which substantially modified the existing notice requirements. The same provision has since been accepted by two other Unions—the Carmen and the Firemen. It is rather detailed, and we see no need to quote it here, since it is in the record (Carrier Exhibit 26, pp. 7-8). We recommend that it be adopted here.

RULE ON ABSORBING OVERTIME

The Carriers propose the following:

“Revise rules covering ‘absorbing overtime’ so as to permit employees to perform duties of other positions where necessary.”

This goes way back to a 1918 ruling by the Director General of Railroads, which made applicable to clerical forces and other employees the following provision:

“Employees will not be required to suspend work during regular hours to absorb overtime.”

It appears that the original intent of the rule was to stop a practice that had been in effect requiring employees who had worked overtime to lay off without pay on subsequent days to offset the overtime which had been worked. For a number of years it was not considered that this rule was a restriction on the right of a Carrier to take an employee from his usual position or work and use him on other work during his regular hours where the ultimate effect was to avoid payment of overtime to any employee. Starting in 1945, however, a number of awards of the Third Division of the NRAB have held that the rule prohibited the Carrier from taking an employee from his regular assignment and using him to perform work of another position, where it would result in depriving the employee of the other position of overtime which would otherwise accrue. Some recent awards of the Third Division have not followed this interpretation of the rule, but have held that the rule did not restrict the Carrier from suspending an employee from particular work or position so long as he was not required to suspend work altogether during regular hours.

We are persuaded that the Carriers have a justified request for a uniform rule on this subject, and that it should be one permitting the efficient use of its regular work force. The Carriers’ proposal seems reasonably and fairly designed to that end, and we recommend its adoption.

OTHER NON-OP RULES CHANGES

There are a rather large number of other rules changes relating to the non-ops which the Carriers have proposed. The evidence as to some of them seems fairly convincing; as to others it is less so. But our problem is that we have simply run out of time to give them adequate consideration. In any case, we feel that we have bitten off about as much as we or the parties can chew, in this already quite extended Report. Under these circumstances, we are recommending that the other requested rules changes relating to the non-ops be referred to the Standing Committee.

OTHER MATTERS

Virtually all of the proposals contained in the parties' Section 6 Notices have been covered, either by specific recommendations or by referral to the Standing Committee. As to any such proposals which have not been covered in either of these fashions, we recommend that they be withdrawn.

We come now to the next-to-last issue to be treated in this Report. It is one of the most troublesome.

MORATORIUM

The Carriers urge this Board to recommend a broad Moratorium which will enable the industry to secure a period of labor peace and cost stability. They claim that they are entitled to have the same surcease from bargaining demands for a given period of time that other American industries enjoy.

The Carriers urge that the moratorium recommendation cover: (1) all notices which pertain to the provisions of the National Agreement which will be negotiated based upon this Board's recommendations; (2) all proposals which both sides advanced in the proceedings before this Board; (3) a limitation on all other Section 6 Notices which may be filed during the life of the prospective National Agreement, the limitation being that they may not be processed beyond peaceful resolution under the Railway Labor Act or under any other agreements providing for finality.

The Carriers state that a moratorium which only bars wage demands and fringe benefits contained in the Union's Section 6 Notices is virtually useless because the Unions have displayed great ingenuity in framing Section 6 Notices which allegedly are not covered by the terms and provisions of a newly negotiated National Agreement. This results in the Carriers being flooded with all sorts of Section 6 Notices, with the result that bargaining continues in an unremitting fashion in this industry. As soon as the ink is dry on a National Agreement, the Carriers say, they are confronted with a plethora of demands for fringe benefits or demands stemming from some loophole in the National Agreement. The cost which flows from these demands can assertedly overshadow the compensation provided for in the National Agreement.

The Carriers state that in the preceding national contract negotiations with these Unions, moratorium provisions were negotiated covering all matters included in the National Agreement, as well as proposals advanced in connection therewith, and further provided that Section 6 Notices on subjects *not* covered by the agreement were re-

stricted to handling up to but not beyond peaceful settlement. However, certain subjects were exempted from the terms of the moratorium, and the Carriers state that this time there should be *no* exemptions. The Carriers deny that their proposal amounts to a suspension of the provisions of the Railway Labor Act, saying their proposal is the only method for obtaining labor peace, which is the fundamental purpose of the Railway Labor Act.

The Unions, on the other hand, contend that the Carriers' request is too broad and is, in effect, seeking to suspend the operations of the Railway Labor Act and to deny the employees their statutory bargaining rights. The Unions concede that those matters which have been disposed of by national handling properly should not be the subject of renewed and continued negotiating on the local properties during the period for which the newly negotiated National Agreement is in effect. But they point out that there are many Section 6 Notices filed which purport to deal with problems primarily local in scope, matters that have not been covered by national handling and which cry out for local action. These primarily local matters must be handled by the parties to the full extent permitted by the Railway Labor Act, notwithstanding the fact that the parties have recently negotiated a National Agreement covering matters normally and usually included in a National Agreement, such as wages and certain work rules. The Unions say the only way in which employees can correct and modify local working conditions which are covered by local rules or practices is to serve a Section 6 Notice upon the Carriers. If this Board were to recommend the all-inclusive moratorium requests by the Carriers, it would in the Unions' view be abridging and curtailing the employees' basic bargaining rights during the period of the moratorium, as to matters not covered by national handling.

The Unions state that when they granted the moratorium requested by the Carriers in the last set of negotiations, it was intended to be only a "one shot" trial, not the start of a regular practice. The granting of this sort of moratorium provision has now caused a big backlog of local Section 6 Notices to remain unprocessed on the several properties. Since January 1, 1970, to be sure, the Unions have been legally free to move on these matters, but this has chiefly been a right without a remedy. The National Mediation Board does not have a sufficient number of available mediators to handle very many of these problems on the local properties, and thus the local Section 6 Notices still remain unprocessed. The Unions contend that not only have these pressing local disputes been held up for many months as a result of the previous moratorium, but now, even before these local problems can be belatedly resolved, the Carriers are pressing for an even more

inclusive moratorium provision which will again tie up subsequently filed Section 6 Notices on local working conditions. The Unions say this is patently unreasonable.

The Board is fully aware of the merits of the positions of both parties in this matter. Certainly it is difficult to deny the poignancy of the Carriers' appeal that they be afforded a period of surcease from the Unions' unremitting bargaining demands, and that they be permitted to operate for a reasonable length of time with their wage bill stabilized, if not fixed, for the period of the National Agreement. The Section 6 Notices pertaining to fringe benefits, admittedly outside the proposed moratorium, can in themselves have a very heavy cost impact.

But the Board is also aware that the basic relief which the Carriers seek would indeed nullify, for the period of the Agreement, some basic rights granted by the Railway Labor Act. Under that Act, these employees can only change working conditions which they find burdensome, be they national or local in scope, by invoking the processes of the Act starting with a Section 6 Notice. The Board is also aware that there are legitimate areas of bargaining which are not covered or included in any given National Agreement. For an industry as far-flung geographically, and operating under variegated working conditions, it is only reasonable to assume that there are many problems which can best be treated by local handling.

We have found it exceptionally difficult to formulate a recommendation on this issue. To put a freeze on the statutory processes of the Railway Labor Act on matters covered by or closely related to issues covered by the Agreement (including issues which were raised and withdrawn in negotiations) is one thing, and we favor that as do the Unions. But to rule out the exercise of these statutory rights on *other* issues, which have *not* been bargained out or dropped after being presented as demands, is quite another matter, and that we do not favor.

The real problem, then, is to determine, as to any particular Section 6 Notice, whether or not it is strictly local in character and without relationship, reasonably construed, to the national issues disposed of in this wage round. This will have to be a matter of case-by-case interpretation. In the making of the interpretations, we urge that the approach be broad and extensive rather than narrow and limited—that doubts be resolved in favor of moratorium coverage.

We also urge that questions concerning such interpretations be referred to the National Mediation Board. We do not minimize the administrative problem of securing prompt decisions on that point, but after all, that *is* the statutory duty and responsibility of the National Mediation Board. It is beyond our province to make suggestions

as to how they can expedite their procedures for deciding such questions, within their staff and budgetary limitations. All we can suggest is that the parties may wish to consult with the National Mediation Board officials to try and work out some expedited and workable procedures on this problem.

CONCLUDING RECOMMENDATION

We come, finally, to the last and most important of our recommendations. We have referred frequently to the Standing Committee which we are recommending, and we are pleased to report that in our informal discussions, the parties have expressed their agreement on this recommendation, with only one significant exception, about to be discussed.

We will not list here the issues being referred to the Standing Committee—they are adequately identified in the various sections of the Report. It is enough to say here that the Committee will be dealing with a large number of issues on which the Carriers want final and binding arbitration, and on which the Unions do not.

We are thus brought face to face with a really major policy question, that of compulsory arbitration. And if we reject the proposal for compulsory arbitration, there is an important related question of whether voluntary arbitration should be recommended on these issues, and if so, how to create a climate in which voluntary arbitration will be accepted.

First, as to compulsory arbitration. The Carriers contend that they have tried for years to secure relief from some of these work rules and practices; that recommendations from the Presidential Railroad Commission for Union concessions on some, and voluntary arbitration on others, have been largely thwarted by Union rejections, and that the time has come to impose arbitration if the Unions will not agree to it.

The Unions contend that imposed or compulsory arbitration is unwarranted, that the Carriers have not made genuine efforts to bargain out these issues, and that most if not all the Carriers' requests are unsuitable for national handling anyway and should be returned for local bargaining.

To state our broad conclusions at the outset, we are persuaded (a) that further efforts at bargaining *are* in order, (b) that voluntary arbitration should be encouraged if those efforts fail, (c) and that a new procedure should be set up to carry out these objectives. But we stop short of recommending *compulsory* arbitration.

We do not propose here to make any full-scale commentary on the arguments which have been advanced over the years for and against it. It is enough to say that most of the industry and labor spokesmen, and

most of the impartial participants in the labor relations field, have taken the position that compulsory arbitration should be avoided except in cases of genuine emergencies which seriously threaten vital public services—and there is some real controversy as to how far the government should go even in those cases, if the disputes can possibly be settled by means short of that final step.

We can understand and even sympathize with the Carriers' sense of frustration over their inability to secure the relief which they earnestly feel they need in the work rules area, but it would be a long and unprecedented step indeed for the government to impose compulsory arbitration simply to relieve the frustration, no matter how justified or deeply felt, of one of the parties in its efforts to achieve what it regards as its due at the bargaining table.

At the very least, we think it would be unwise to recommend that drastic final step unless and until the parties had exhausted every reasonable effort to resolve the issues through voluntary means—either by agreement or some kind of voluntary arbitration. The Carriers of course cry out that they *have* exhausted every reasonable effort, but we think the new approach we are recommending represents a further "reasonable effort" which should be given a fair trial before the drastic step of compulsory arbitration is seriously entertained.

As to *voluntary* arbitration, that is a much different proposition. There are precedents for submitting certain aspects of work rules to arbitration by voluntary agreement, and here we think the Carriers' proposal, that we recommend voluntary arbitration on certain issues, has a great deal more to commend it than the compulsory arbitration request. However, there are two types of voluntary arbitration—one is a broad *advance* agreement to arbitrate whatever issues cannot be resolved by agreement. The other is a limited agreement, *after* negotiations have been fully exhausted, to arbitrate specific and limited issues. We think the second type offers much the more promising approach to these issues, and our recommendation is designed to provide the most favorable setting for achieving *that* kind of agreement for voluntary arbitration of unresolved issues.

Our proposal is that a new, high-level committee be set up for concentrated study and negotiations on these issues, with an important and hitherto untried innovation—the addition to such a committee of a neutral chairman selected and compensated by the parties themselves, rather than appointed and paid by the government.

The exact composition of this Standing Committee should be worked out by the parties, and we have no particular advice as to how many it should contain on each side, except a general view that the smaller the committee, the more workable. Our principal recommendation has to do with the neutral member, and his role on the committee, which

ties in of course with the intended functions of the committee as a whole.

First of all, what the committee should *not* be is a mere device for sweeping all these problems under the rug. Our view is that it should have specific goals, with realistic deadlines for meeting those goals, and as will appear, we envision the neutral as playing a major role in achieving these objectives.

It is not appropriate for us to try to spell out in detail the agenda and procedures of the committee; if the general idea is accepted by the parties, and a neutral appointed, he and the committee should work out their own ground rules and procedures. But in general, we envisage this as a virtually full-time working committee, with the neutral clothed with broad discretion as to scheduling meetings, presiding at them, meeting informally with his colleagues and other interested representatives on both sides; consulting with outside experts when desirable, and perhaps employing one or more staff assistants after consultation with the committee as to their functions. He should have appropriate office quarters and an adequate expense budget.

It must be obvious from all this that we see this as a major operation, designed and structured to go into the issues in depth and get results, and not just "another committee" to meet once in a while and talk. In the light of this concept of the committee's work, it seems clear that a *single* neutral is more adapted to the role than a group of neutrals. And parenthetically, we note that the parties may well be more inclined to shoulder the substantial cost of securing a full-time commitment from a single top-flight neutral than they would the cost of getting, say, three such men.

This last, we should underscore, we regard as a minor consideration. If this program works as we think it will if given a fair chance, the resulting savings, both direct and indirect in terms of a better relationship, would far outweigh the cost of even a very substantial outlay for the neutral and the operation of the committee.

That brings us finally to the authority of the neutral in resolving deadlocks within the committee. The parties have indicated to us, in our informal talks, that they are favorably inclined to the general idea of this committee *except* as to this matter of the neutral's authority. The Carriers want him to have authority to make final and binding decisions after impasses have been reached within the committee; the Unions do not.

As indicated earlier, we think the best way to encourage voluntary arbitration in this situation is through specific agreements to arbitrate particular issues, reached *after* the impasses have developed, rather than an advance agreement. Apart from our general preference

for that approach, we think the chances are good that the neutral would be able to encourage such agreements to arbitrate or better yet make them unnecessary by securing agreement, if this committee works as we intend.

For one thing, the neutral, being selected and paid by the parties themselves, would start off with a considerable reservoir of good will and confidence. And if he is the kind of man who could command that confidence at the outset, he would be likely to build up more of it as he went along. After working with him over a period of time, we think the parties may well become receptive to submitting some specific and sharply defined issues to him for binding determination, or to working out, with his help, agreements to submit such issues to decision by some other agreed arbitrator, again selected and paid by the parties.

For these reasons, we are not recommending that the parties agree in advance to place final and binding authority in the neutral.

We realize that there may be some, in or out of the industry, who will take a cynical view as to anything really useful coming out of this venture. We do not share that view. On the contrary, we are convinced that the parties can and will make this new procedure work, with significant benefits to the Carriers, the Unions, the employees, and the public.





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