

**REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
NO. 187**

**APPOINTED BY EXECUTIVE ORDER 11876, DATED SEPTEMBER 2, 1975,
PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED**

**To investigate a dispute between certain carriers represented by the National Railway Labor
Conference, and certain of their employees represented by the Railway Employees'
Department (AFL-CIO).**

(National Mediation Board Case No. A-9699)

WASHINGTON, D.C.

October 10, 1975

LETTER OF TRANSMITTAL

Washington, D. C.
October 10, 1975

The President
The White House
Washington, D. C.

Dear Mr. President:

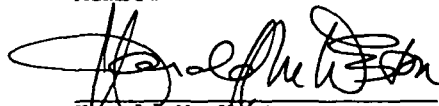
On September 2, 1975, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 11876, you created an Emergency Board to investigate a dispute between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the Railway Employees' Department (AFL-CIO) composed of the following labor organizations: International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; Brotherhood Railway Carmen of the United States and Canada; International Brotherhood of Electrical Workers and the International Brotherhood of Firemen and Oilers.

Based upon its investigation of the issues in dispute, this Board has the honor herewith to submit its report and recommendations.

Respectfully submitted,


Charles M. Rehms
Chairman


Dana E. Eischen
Member


Harold M. Weston
Member

HISTORY OF THE DISPUTE

The Carriers before this Board include over 95% of the Nation's Class I railroads. The Organizations represent approximately 70,000 employees who are engaged primarily in the maintenance, rebuilding and repair of locomotives, passenger and freight cars and other railroad work equipment as well as the maintenance and operation of stationary power plants. The employees involved in this dispute constitute approximately 15% of all workers engaged in collective bargaining with the Nation's Class I railroads.

On July 1 and August 1, 1974, the Organizations served notices on the Carriers, pursuant to Section 6 of the Railway Labor Act, outlining desired changes in their collective-bargaining agreements. The July 1, 1974, notices covered changes in wages and cost of living increases and changes in scheduled rules as well as proposed amendments and revisions of the Agreement of September 25, 1964, which deals broadly with job protection for shopcraft employees. The August 1, 1974, notice covered revisions and amendments to the Health and Welfare Agreement including establishment of a Dental and Vision Plan.

Bargaining on the issues raised in the notices did not begin until November 6, 1974, due to the fact that the parties were involved with the proceedings to modify the Railroad Retirement Act then pending before the Congress. It was jointly agreed that this matter should be resolved before realistic bargaining could take place. With the passage of the revised railroad pension legislation by Congress on October 16, 1974, the way was open for negotiation on the notices.

During the months of November and December 1974, and early January 1975, negotiations proceeded on both the common issues and on issues affecting only individual unions. On January 16, 1975, the unions comprising the Railway Employees' Department

(RED) terminated negotiations. On January 26, 1975, the National Railway Labor Conference (NRLC) invoked the services of the National Mediation Board to mediate the dispute and thereby ended a one-day walkout by the RED on the Burlington Northern, the Chesapeake & Ohio, and the Louisville & Nashville.

Throughout the first two weeks of March the parties agreed to hold direct conferences since a mediator was not available. These conferences were terminated on March 14, 1975, and the Carriers served counterproposals dated March 24, 1975. On April 1, 1975, formal mediation began and continued until an impasse was reached whereupon the National Mediation Board made a proffer of arbitration on July 11, 1975. On August 4, 1975, the Board notified the parties that arbitration had been rejected. The RED issued a strike call for 12:01 a.m., September 4, 1975.

Later in August, the National Mediation Board resumed mediation in the public interest. These negotiations did not resolve all of the issues, however, and the National Mediation Board notified the President that in its judgment the dispute threatened substantially to interrupt interstate commerce to such a degree as to deprive sections of the country of essential transportation services. On September 2, 1975, the President created this Emergency Board pursuant to Section 10 of the Railway Labor Act.

CREATION OF THE EMERGENCY BOARD

Emergency Board No. 187 was created by Executive Order No. 11876, issued on September 2, 1975. President Ford appointed the following members of the Board: Charles M. Rehmus, Co-Director of the Institute of Labor and Industrial Relations, the University of Michigan - Wayne State University, Ann Arbor, Michigan, Chairman; Harold M. Weston, Attorney and Labor Arbitrator, New York, New York, member; Dana E. Eischen, Attorney and Labor Arbitrator, Liverpool, New York, member.

The Board convened in Washington, D.C. on September 3, 1975, for a procedural meeting with the parties. Ex-parte hearings were held in Washington on September 9, 1975, with the Railway Employee's Department (AFL-CIO), representing the employees, and on September 10, 1975, with the National Railway Labor Conference, representing the Carriers. Transcripts and exhibits submitted to the Board were exchanged by the parties on September 11, 1975. Joint hearings were held on September 16, 1975, and rebuttal statements were presented. The President approved a request by the National Mediation Board, in which the parties had concurred, for an extension of the date for submission of the Board's report until October 11, 1975.

The parties were given full opportunity to present evidence and argument before the Board, and the Board received the complete cooperation of both parties at all times. The Board is appreciative of the parties willingness to make themselves available after the formal hearings to provide additional analysis of their positions. These informal meetings were useful in clarifying the issues and beneficial to the Board in preparing its recommendations.

WAGE INEQUITY ISSUES

The Pattern Principle

As in a number of Emergency Board proceedings in recent years, the parties initially suggested to the Board how the so-called "pattern principle" affects the issues in dispute between them. From the Carriers' point of view the principle originates in the fact that in any round of negotiations they must deal with some 15 standard railroad organizations plus a roughly equal number of unions holding representation rights on only one or several railroads. They remind the Board that this multi-union structure breeds rivalry and a tendency toward leap-frogging among the various employee organizations. Hence, the Carriers contend that it is important that when they are able to reach an agreement on a basic wage and fringe package with organizations representing a preponderance of their employees that this pattern settlement must be applied uniformly, at least as to labor costs, throughout the industry. The Carriers insist that any other approach to collective bargaining settlements would compromise the movement toward coordinated negotiations which has characterized the last several negotiating rounds.

In the current round the Carriers point out that only the four labor organizations represented by the RED, comprising 15% of railroad employees, have not accepted the uniform pattern settlement. The Carriers maintain that this pattern settlement is generous. They note that two other unions representing shopcraft employees are among the other rail labor organizations that have already accepted the pattern. Under these circumstances the Carriers are strongly insistent that any departure from the pattern in the recommendations of this Board would be doubly mistaken: Wrong in compounding labor costs in a hard-pressed industry and wrong in disturbing established relationships and creating friction among employees.

The RED reiterates to the Board some of the objections that have often been raised by railroad unions to the pattern principle, but nevertheless stipulates that it is willing to accept the pattern economic settlement in the current round. But as a precondition to such acceptance certain non-common or side issues of special relevance to its members must first be resolved. Among these are wage inequities from which the RED alleges its members are suffering. The RED observes that the correction of wage inequities is provided for even in these situations where past Emergency Boards have adhered to the pattern principle. The RED cites in this respect the following statement of Emergency Board No. 181 which was repeated and reaffirmed by Emergency Board Nos. 185 and 186:

This Board has concluded that where a pattern is clearly established and ascertainable, as here, and where the union involved cannot clearly demonstrate an inequity or a rational and convincing basis for a changed wage structure, the pattern should be followed.

The RED undertakes to demonstrate to this Board that its members currently suffer from three different wage inequities in the amount of 6¢, 7¢, and 2¢ per hour, respectively.

The 6¢ Inequity

In 1971 the RED was dissatisfied with the wage offer made by the Carriers Conference Committee during negotiations, requesting an additional 6¢ per hour. The Carriers refused to increase their wage offer above that already on the table, but did propose a Supplemental Sick Leave Insurance Plan to provide additional monetary benefits to RED members unable to work because of illness or accident. The cost of this plan was equivalent to 6¢ per hour, that cost specifically stated to be a "wage equivalent" in a letter dated October 7, 1971, from the Chairman of the National Railway Labor Conference to the Chairman of the RED.

In subsequent negotiations during the 1971 round the Carriers then agreed to provide the same Supplemental Sick Leave Insurance Plan to organizations representing some other railroad employees. The RED now asserts that none of the other organizations to whom the plan was offered gave up 6¢ per hour out of their proposed wage increase, as had the RED, and therefore, that there now exists a 6¢ wage inequity between RED rates and those of the other organizations that received the plan. The RED asks this Board to recommend that its members recoup this 6¢ wage inequity during the current round of negotiations.

With respect to all three of the alleged wage inequities, the Carriers contend that the issues were not raised in the RED's Section 6 notices, that the claims are therefore not properly at issue at this time under the Railway Labor Act, and thus not properly before us. This Board makes no finding on this contention, believing that its merit, if requiring resolution, should be left to the courts. The Carriers also contend that all three inequities were raised as issues by the RED late in separate negotiations which suggests they are not serious problems. The RED explains and minimizes both of these Carrier contentions.

Specifically with regard to the claimed 6¢ inequity, the Carriers concede that in their 1971 agreement with the RED a Supplemental Sickness Plan was established at a cost to the Carriers of \$19.25 per month per employee, an amount equivalent to 6¢ per hour. The Carriers also concede that they subsequently agreed with several other organizations of non-operating employees to provide the same fringe benefits to employees represented by those organizations. The Carriers do not concede, however, that any wage inequity was thereby created or that the RED lost a wage advantage which it had obtained in relation to these other organizations.

This Board has concluded that the RED has not shown that it suffers a 6¢ per hour wage inequity in relation to some other labor organizations which should now be remedied. Certainly in 1971 the RED successfully negotiated an improved sick leave plan, a fringe benefit it accepted in lieu of its request for a wage increase larger than the Carriers were prepared to offer. But nothing in the record proves or even suggests that the Supplemental Sickness Plan resulted in a reduction of 6¢ per hour from wages which the RED would otherwise have received. The plan was simply an additional fringe benefit which the RED successfully achieved out of the give-and-take of negotiations which had a per-hour cost of 6¢. The Carrier was willing to characterize this as a "wage equivalent", but this does not prove the same 6¢ was available in the form of increased wages — in fact, it seems clear it was not. On this record this Board has concluded that in 1971 the RED set a pattern of improved sick leave benefits for some of the other unions of non-operating crafts. The fact that other organizations were subsequently offered and accepted the same fringe benefit in no way derogates from the RED's achievement, or from the wages or benefits that it has negotiated for its members. Hence, no wage inequity arises.

The 7¢ Inequity

The RED claim of a 7¢ inequity flows from the fact that this amount of wage increase was granted to the RED by the Carriers in return for their agreement in 1969 to the incidental work rule. The RED notes that a Carrier representative testified before Presidential Emergency Board No. 179 that 7¢ per hour was the amount of money offered by the Carriers in return for the increased flexibility which the incidental work rule gave them in their maintenance and repair shop operations. Further in testimony before Board 179 the Carriers contended that the Brotherhood of Railroad Signalmen's request for wage adjustments equal to those granted the shopcrafts was inappropriate

because the Signalmen had never had a classification of work rule similar to that which the shopcrafts had relaxed. Hence, the Signalmen, having no similar rule relief to grant, had no 7¢ payment coming to them. Before this Board the RED echoes the contention made by the Carriers before Board 179, that any other organization not granting work rule relief worth a comparable 7¢ per hour, but which nevertheless received the same 7¢ wage increase, is now in the position of receiving an unearned 7¢ advantage over the shopcrafts, an inequity requiring correction. RED asks that this 7¢ inequity now be remedied not only in the interest of justice but also to make it possible for the RED to be willing in the future to consider negotiating other productivity bargains, trading modernization of the rules for a share of the productivity gains resulting therefrom.

The Carriers concede that an impasse in negotiations during 1969 had been overcome when the Carriers increased their wage offer in return for agreement by the shopcraft unions on an incidental work rule. The Carriers also concede that during subsequent negotiations with the Brotherhood of Railroad Signalmen they urged that union to settle for 7¢ less per hour than had the shopcraft organizations inasmuch as similar work rule relief was not involved with the Signalmen. The same argument was made by the Carriers to Emergency Board No. 179, and was rejected. The Carriers subsequently accepted that Board's recommendation that the Signalmen's increase should include the contested 7¢. The Carriers now contend that the rejection of its argument by Emergency Board No. 179 should end the matter. This Board should neither disregard the recommendation of a predecessor Board on such a specific issue — namely, whether the 7¢ payment without comparable work rule relief constituted an inequity — nor should the Carriers be prejudiced in this proceeding because they accepted that recommendation.

Any other conclusion would leave the Carriers whip-sawed between the recommendations of past, present, and possible future Boards.

After careful consideration, the Board recommends that the RED request for a 7¢ per hour inequity increase over the pattern settlement be withdrawn. This conclusion results largely from the circumstances surrounding the adoption of the incidental work rule in 1969 and 1970. Preceding 1969, and during the negotiations of that year the Carriers had proposed that there be created a so-called "composite mechanic" who would be able to do the work of any or all of the six shopcrafts. In short, the Carriers had repeatedly requested the right to make work assignments across the traditional lines of craft severance in the maintenance and repair shops. The shopcraft organizations strongly resisted this proposal. Ultimately, however, the parties did agree to the incidental work rule under which one craft might perform the work of another if the performance of this out-of-craft work was incidental to a preponderant main assignment. As noted previously, this new rule granting the Carriers an increase in flexibility and hence productivity in performance of shopcraft work was valued at 7¢ per hour.

We cannot conclude that the granting of this same 7¢ per hour to the Signalmen, as recommended by Emergency Board 179 and agreed to by the Carriers, created a 7¢ per hour wage inequity between the signalmen and the shopcrafts. The reason is that for all practical purposes the signalman is a kind of composite mechanic within the realm of signal departments. Signalmen generally do whatever work is necessary in order to maintain and repair signal systems. For this reason Board 179 concluded that the signalmen should not be penalized in their wages relative to the shopcrafts. Signalmen's wages had always been approximately the same as those of shopcraft mechanics, and

that Board concluded that in light of what was now even greater similarity in work practices than before, that the two groups should continue to receive approximately the same wage.

We agree with the RED's conclusion that when one or more crafts agree to modernize their rules they should in return receive a share of the resulting productivity gains, usually in the form of a higher than normal wage increase. But we do not agree with the contention that these crafts should then enjoy a permanently higher wage than other crafts who perform analogous work and whose wages were formerly substantially identical, but whose rules are not appropriate for or do not require similar modernization. Since that was the situation in 1970, as well as now, no 7¢ wage inequity arose which is appropriate for correction.

The 2¢ Inequity

The RED's request for an inequity wage increase of 2¢ has a somewhat different rationale than those for 6¢ and 7¢. In this case the RED, rather than trying to obtain or restore what it contends are advantages it should have over other unions, is attempting to correct a disadvantage that it perceives in its rates in relation to those of signal mechanics. In order to understand this request one must look to the rates paid for over half of century to signal mechanics and shopcraft mechanics.

Presidential Emergency Board No. 159, in considering the skill levels of signal mechanics, reported:

... under General Order 27 of the Director General of Railroads, as supplemented in 1920 – which both parties have referred to as the last time when there was a systematic classification of the various skilled crafts of railroad labor – signalmen and signal maintainers were placed in the category of electrical workers, first class, and received the same hourly rate as shop craft employees in the journeymen or mechanics category.

In fact, according to exhibits supplied to this Board, in 1920, shopcraft mechanics enjoyed a one-half cent per hour advantage over signalmen. By 1937, and through 1942, signalmen and shopcraft mechanics were paid at an identical rate. Beginning in 1943, and through 1966, shopcraft mechanics held only a slight pay advantage over signal mechanics; throughout most of this time it was either 1¢ or 1.2¢ per hour.

This well-established tandem relationship that had existed for nearly 50 years was shattered, beginning in 1967, under the award of the so-called Morse Board. The shopcraft mechanics received four 5¢ per hour adjustments during 1967 and 1968 in addition to other substantial percentage increases. The signalmen did not receive these 5¢ per hour increments and neither did they receive identical percentage increases as the shopcrafts during those years. In fact, during this same period the signalmen strove to regain some kind of parity with shopcraft mechanics including requiring recommendations on wages from Emergency Board Nos. 175 and 179. Emergency Board No. 175 concluded with regard to the appropriate relationship between shopcraft mechanics, particularly the electricians, and signal mechanics:

Disregarding the figures which apply from January 1, 1967, the day from which the Morse Board determination was effective, it seems to us that one cannot help but conclude that these three parties (the Electricians, the Signalmen, and the Carriers) have for years in effect been saying that Electricians and Signalmen are "worth" just about the same wage.

Similarly, Emergency Board No. 179 concluded on this same issue:

In this respect we have examined the evidence presented by the Brotherhood [of Railroad Signalmen] as to the skills of its members, but we are not persuaded on the record before us that these skills are measurably superior to those possessed by the shopcraft mechanics. Only 2 years ago, in a similar proceeding concerning the same parties, Emergency Board No. 175 concluded that the most appropriate yardstick for measuring skills was the parity relationship between signalmen and electricians.

In effect, these two Boards recommended that signalmen and shopcraft mechanics should receive practically identical wages. But out of the negotiations which followed these recommendations the signalmen moved 2¢ per hour ahead. This disparity resulted partly from a recommendation by Board 179 that a 2¢ increase be granted signalmen to overcome a "lag in timing" of wage increases between signalmen and the shopcraft mechanics. The Carriers had originally opposed this increase, but acceded to it after the Board's recommendation. More immediately, the 2¢ difference came as a result of a special minimum hourly rate the parties agreed upon for signal mechanics to be effective on February 1, 1971. On that date the signal mechanics' basic rate went 2¢ per hour ahead of that of shopcraft mechanics. This small differential, now, unlike former years, to the advantage of the signalmen, has continued to the present time. Because of percentage increases scheduled to go into effect under the pattern settlement during the next several years the differential will increase to 3¢ per hour by January 1, 1978. It is this 2¢ per hour, soon to be 3¢, which the RED now seeks to overcome.

The Carriers oppose this claim of an alleged 2¢ inequity on much the same basis as those previously discussed. They assert that these proposals were made late in the negotiations in the present round, almost as an afterthought by the RED, and therefore they must be assumed not to be serious. The Carriers insist that any wage increases over and above its pattern settlement are wholly inappropriate. The Carriers note that they opposed the 2¢ increase before Board 179 and acceded to the recommendation only after that Board overruled their objections. They reiterate that this Board should not find an inequity in a payment which an earlier Board recommended. Finally, the

Carriers argue that the RED has enjoyed an advantage in total earnings over signal mechanics during the 11-year period between 1964 and 1974, an advantage which would remain even if the alleged 2¢ inequity were not corrected during the present round of negotiations.

This Board has concluded that the existing 2¢ differential between shopcraft mechanics and signal mechanics does represent an inequity which should be remedied. From the 1920s to this date government representatives and Emergency Boards have concluded that the skills of signal mechanics and shopcraft mechanics, particularly electricians, are approximately identical. For this reason the two groups of skilled mechanics have received approximately identical wage rates for nearly 50 years. The advantage, if any, during this whole period was that of the shopcrafts. Beginning in 1967, however, this long-established tandem or parity relationship was disrupted. Following the recommendations of various government boards the two groups of skilled craftsmen began to leapfrog each other. The shopcraft mechanics pulled ahead by as much as 15¢, dropped back to the point where they were 5¢ behind signal mechanics, and then pulled ahead again by nearly 31¢ in late 1970. Approximate parity was not reached until the beginning of 1971. But by now the Carriers had negotiated a rate whereby the signalman was 2¢ ahead. This last 2¢ was achieved, not after an Emergency Board recommendation, but in joint agreement on a new wage floor for signal mechanics.

It may well be that this 2¢ differential was appropriate in 1971. For several years shopcraft mechanics had enjoyed substantially greater annual earnings and thus only a differential favoring signal mechanics for a time would equalize employee earnings. But this earnings differential will be eroded before long and there is nothing in the record

to suggest that the traditional equation of the skills of signal mechanics and shopcraft mechanics has changed in any way. In short, it is this Board's conclusion that the 2¢ differential is inappropriate either at that level or at the coming 3¢ level. This Board does not conclude, however, that the RED has made a persuasive case for immediate elimination of the inequity, either in terms of its member's past earning or in terms of the general pattern settlement which has been established in the current negotiating round.

There can be little doubt that the pattern settlement established on January of 1975, and which the RED states that it is willing to accept, is generous. It includes a general wage increase of 10 percent effective January 1, 1975, 5 percent effective October 1, 1975, 3 percent effective April 1, 1976, and 4 percent effective July 1, 1977. Four cost-of-living wage adjustments will be made beginning January 1, 1976, and at six month intervals thereafter. Additionally, the parties agreed to a tenth holiday, increased Carrier payments to continue the benefit levels in the existing health and welfare plan, and a new national dental plan. The wage portion of the pattern settlement, assuming cost-of-living adjustments based on present rates of inflation, provides for a 36.2% increase over a three-year period. The other benefits make the total increased cost of the pattern agreement 40.7%, or an average annual cost increase of 12.2%.

As noted previously, this basic pattern settlement was agreed to by a number of railroad organizations in January of 1975. Other organizations agreed to accept this same pattern at later times during the year. It now covers 85% of rail employees; in fact, all except those represented by the RED. The cost to the Carriers of the pattern settlement over its three year exceeds 4 billion dollars, or in excess of 1 billion dollars per year in increased direct labor costs. In 1974, the Class I railroads enjoyed their most prosperous year since 1966 and net ordinary income reaching 747 million dollars. The relative

prosperity of 1974 no doubt had something to do with the size of the pattern settlement negotiated in January 1975.

By now, however, it is clear that projections that might have been made in January of 1975 for the coming year were optimistic. Substantial declines in our nation's production combined with continuing inflationary increases in the cost of labor, materials and supplies in 1975 have caused severe financial distress for the railroads along with so many other American industries. Declines in earnings of prosperous railroads have been substantial during the first six months of 1975; deficits among the less favored have also increased. Unless there is a substantial pickup in the economy in the last quarter of 1975 the U.S. railroad industry as a whole may be in a deficit position for the year.

In light of these changed circumstances in the railroad economy, this Board has concluded that despite the 2¢ inequity in shopcraft rates we have found to exist we cannot at this time recommend further labor cost increases beyond those from the pattern that the Carriers have offered. In terms of intercraft stability and good employee relationships on the properties we believe the inequity should be eliminated soon. A delay of a year or two more in doing so is not unreasonable, however. We note what the disparity in annual earnings between shopcraft mechanics and signal mechanics which existed in the late 1960s and early 1970s will not wholly be eliminated, although it will be substantially diminished if the inequity continues for the next two years. Finally, although correction of an inequity is permitted under the pattern principle, the belated claim of an inequity by the last organization to settle in a given round might raise suspicion or even hostility among other organizations that waived or did not assert such claims in order to achieve the pattern. We cannot recommend a wage increase that gives even the appearance of an unjustifiable pyramid. Coordinated bargaining has done

much to bring stability to railroad labor-management relationships in recent years. It must be maintained and strengthened.

In summary, the 2¢ in dispute here is a rate inequity which should not be allowed to continue indefinitely. It has not created an earnings inequity up to the present time, however, and will not for the next two years. We therefore recommend that the 2¢ inequity request be withdrawn at the present time, but that this rate inequity be eliminated without offset against the general wage settlement in the parties' next wage negotiation.

WORK RULE ISSUES

Subcontracting

Subcontracting has long been regarded by the RED as one of the most troublesome problems confronting shopcraft employees. The RED's complaint is that work opportunities have been eroded over the years by the carriers' subcontracting practices. It maintains that this condition has persisted despite its Agreement of September 25, 1964, which restricted the Carriers' right to subcontract and the later establishment of a bipartisan Standing Committee to consider problems arising under the 1964 Agreement. In 1973 the parties agreed that subcontracting would be restricted to situations where subcontracting is "genuinely unavoidable." The RED maintains that notwithstanding these attempts at resolution, the problem continues.

The September 25, 1964 Agreement was entered into pursuant to recommendations of Emergency Board No. 160, which concluded that subcontracting, up to that time largely unregulated, should be subject to specific restrictions. Under the terms of Article II of the Agreement, the subcontracting of "work set forth in the classification of work rules" of the shopcrafts is permitted when (1) managerial skills, (2) skilled

manpower from active or furloughed employees or (3) essential equipment are absent on the property involved, or (4) where the required time of completion of work cannot be met otherwise or (5) where the work cannot be performed by a carrier except at a significantly greater cost. The Agreement also provides protective benefits for employees laid off or otherwise adversely affected by a subcontract and requires a carrier to give advance notice with documentary support to the appropriate general chairman of any subcontract, unless it concerns a "minor transaction." In addition, it establishes a special board of adjustment, now designated as Board No. 570, to resolve disputes regarding the interpretation and application of the Agreement and provide remedial relief where a railroad violates the Agreement.

The RED's subcontracting proposals have been narrowed down in the course of the 1974-1975 negotiations from an initial demand for outright prohibition of all subcontracting to amendments of the September 25, 1964 Agreement. These proposals would materially expand the type of work that is to be protected under Article II and, with respect to the second and third criteria mentioned in the immediately preceding paragraph, would require each major carrier to train and maintain a pool of skilled employees to handle any shopcraft work that comes along instead of contracting it out and to preserve essential equipment in good condition to the same end. The RED contends that amendments in these areas are necessary to "plug loopholes" in the Agreement and to clarify terms that because of ambiguities have led to adverse adjustment board decisions.

It is the Carriers' position that the RED proposals lack merit and encroach on management's prerogatives. They contend that the Organizations have not shown a

compelling need for any change in Article II or any other provisions of the Agreement, and point out that they have already entered into Agreements with the Sheet Metal Workers and International Association of Machinists during this round of negotiations that do not provide for changes as sweeping as those sought by the RED. The Agreement with the Sheet Metal Workers provides for no new subcontracting amendments. The Machinists agreement modifies Article II to the extent of (1) expanding the work coverage of Article II to encompass all other work historically performed and generally recognized as work of the crafts at the facility involved pursuant to classification of work rules; (2) modifying the first criterion, relating to managerial skills, to include a provision that the criterion is not intended to permit subcontracting on the ground that an insufficient number of supervisory personnel is available; (3) clarifying the fifth criterion to stipulate that no regularly assigned employees would be furloughed if any covered work is subcontracted because of excessive costs, and (4) providing that if a railroad failed to serve the advance notice of subcontract as prescribed by the Agreement, arbitrators would have discretion to award a limited penalty. The Carriers have offered the same modification of Article II to the RED but the latter insists that they are inadequate.

After considering these contentions, this Board has concluded that the Machinist and Sheet Metal Worker settlements do not constitute controlling precedents, either on the basis of the pattern principle or any other theory. Basically they may be distinguished on the ground that in the aggregate the RED organizations, particularly the Electricians, are considerably more affected by subcontracting than are some other shopcraft employees. In addition, several of the RED proposals relate to work coverage problems that are peculiar to the Firemen and Oilers and to the linemen Electricians.

The first of the RED proposals relates to the type of work that is to be protected under Article II of the 1964 Agreement. At the present time such work is limited under the first sentence of Article II to "work set forth in the classification of work rules of the crafts parties to this agreement." Considerable question exists as to whether that provision, in view of its restrictive language, encompasses work covered by scope rules in the absence of classification of work rules and whether subcontracting limitations even apply to the purchase of new equipment or component parts. Both of these issues have been resolved in the negative by adjustment board awards.

Adjustment board awards have held that work covered by scope rules is not protected under Article II since the provision in question specifies "classification of work rules" and not scope rules. Accordingly, since work of the Firemen and Oilers and, in many instances, linemen is covered by scope rather than classification of work rules, it has been held that carriers may subcontract such work without regard to the requirements of Article II. Accordingly, a disparity has developed in regard to protection from subcontracts between such work and that of other shopcraft employees. This disparity is exacerbated by the fact that adjustment boards have ruled that employees performing service under generally worded scope rules do not have exclusive rights to that work unless it is shown to have been performed on a system-wide basis; where classification of work rules are applicable, the decisions are to the contrary and a system wide practice need not be established.

We are satisfied from our discussions with the parties that it is desirable to clarify Article II and dispel any ambiguity regarding the type of work it covers. The Firemen and Oilers and linemen have been deprived of some of the protection that Article II is

designed to provide, a result that is plainly incompatible with the intent and objectives of the Agreement. To assure that those employees are afforded the same safeguards under Article II as are other shopcraft employees, we recommend that the first paragraph of Article II be amended to include work performed under the scope rules at the facility involved when an agreement contains no classification of work rules. We also recommend, to make certain that all work now performed by shopcraft employees is properly covered, that the first paragraph of Article II be expanded further to embrace all other work historically performed and generally recognized as work of the crafts.

In light of the evidence presented to this Board no persuasive basis is perceived for imposing restrictions on Carriers' right to purchase new equipment, particularly since such purchases do not appear to have trespassed unduly on shopcrafts' work rights. We are satisfied, however, that the purchase of component parts does constitute a threat to employees and recommend that a provision be added to Article II in the opening paragraph immediately preceding Section 1 to stipulate in substance that where a carrier desires to purchase a component which it had been manufacturing to a significant extent, the purchase be subject to the terms and conditions of Article II.

To dispel any ambiguity that may still remain regarding the parties' intent to restrict subcontracting, we also recommend that Section 1 of Article II be revised to include an opening statement that "subcontracting of work, including unit exchange, will be done only when genuinely unavoidable." In 1973, the parties agreed that genuine unavailability was the controlling concept underlying Article II. We believe that the express language of their agreement should state this mutual understanding.

We recommend further that the first criterion, regarding managerial skills, be amended to indicate that the provision is not intended to permit a carrier to subcontract solely on the basis that an insufficient number of supervisory personnel possessing normal skills is available. It is also suggested that the fifth criterion, concerning greater cost, be modified to include the assurance that no regularly assigned employee will be furloughed if covered work is subcontracted because of excessive costs. Both of these provisions are reasonable and consistent with the expressed intent of the parties. The recommended modification of the fifth criterion would make it virtually certain that no employee would be laid off because of a subcontract, there being little likelihood of a furlough resulting from any of the other four criteria.

As thus revised, Article II should provide viable protection from improper subcontracting practices and remove ambiguities as to coverage and purpose that proved misleading to adjustment boards and frustrating to the Organizations. The changes, in our judgment, correctly express the objectives of the parties, and at the same time do not impose additional undue cost on the Carriers or encroach on their managerial prerogatives.

The Organizations have also emphasized their concern with criteria (2), relating to absence of skilled manpower, and (3), lack of essential equipment. They contend that both criteria have been misapplied at the local level as a means of circumventing the requirements of Article II. As to criterion (2), they propose that to avoid subcontracts each Carrier must be required to institute a training program to assure that a pool of skilled mechanics is available. With respect to criterion (3), their proposal is that the Carriers be obligated to preserve existing machinery and equipment in their shops.

An examination of the evidence presented by the parties does not establish that the eleven year experience with Article II is so unsatisfactory as to warrant such remedial measures. These proposals would increase very substantially an already costly bargaining package and would certainly interfere with management's right to adjust its work force to meet business requirements. Under the proposals concerning criteria (2) and (3), the Carriers would have to tie up capital and equipment and maintain forces that might only be intermittently used. We have been referred to no evidence, moreover, that during the eleven year experience with Article II any shopcraft employee was laid off or otherwise placed in a worse position as a result of the Carrier's subcontracts. On the contrary, there is competent evidence that the decline in employment of shop mechanics during the past ten years is attributable, in large measure, to the reduction in passenger and freight cars and improved procedures and equipment, and that subcontracting has not increased in proportion to the Carrier's expenditures for the purchase and repair of equipment.

In the light of these considerations we are not persuaded that the proposed changes should be recommended with respect to criteria (2) and (3). The parties are urged to discuss with the Standing Committee any problems that may arise in regard to these criteria or other provisions of the September 25, 1964 Agreement. A real effort should be made to convert the Standing Committee into an effective means of correcting misunderstandings and errors and preventing real or imagined abuses from mushrooming into serious and costly disputes.

Finally, it has also been brought to our attention that although carriers on occasion fail to comply with the advance notice requirement of Article II, no damages are awarded

as long as it is shown that the subcontract transaction itself is not improper in other respects. Notice requirements, particularly of this type, should be meaningful. They are designed to provide a reasonable opportunity for the parties to dispose of any dispute regarding the transaction before it assumes unreasonable and costly proportions. We therefore recommend that a provision be included in the Agreement that will permit the Board of Adjustment to award, in the event of a violation of the advance notice requirement, an amount not in excess of the product of ten percent of the man hours billed by the contractor multiplied by the weighted average of the straight time hourly rate of pay of the Carriers' employees who would have performed the work. We recommend that the award of damages be at the discretion of the Board to allow some latitude for close cases where a carrier might reasonably have believed that the subcontract was a "minor" transaction.

Job Protection Procedure

In accordance with the recommendations of Emergency Board 160 with respect to job protection, the parties included in Article I of the September 25, 1964 Agreement a substantial portion of the Washington Job Protection Agreement benefits and extended them to employees displaced or deprived of employment as a result of operational changes by a single carrier.

The Organizations point out that although Board No. 160 recommended that all provisions of the Washington Protection Agreement be extended to shopcraft employees, the provisions of Section 5 of that Agreement were not included in the 1964 Agreement. That provision requires that before any transfer or selection and assignment of employees takes place the carrier must reach an implementing agreement with employee representatives and if that is not possible refer the issues to an arbitrator for determination. Section

11 of Article I of the 1964 Agreement follows the same procedure except that it does not require that the implementing agreement and arbitration precede the transfer or selection and assignment. According to the Organizations, Section 11 has failed to provide the protection needed and employees are placed in a difficult position in having to go to arbitration after the work has already been transferred or reassigned without advance notice.

The Carriers have furnished ample consideration in the form of protective benefits under Articles I and II for the privilege of making operational changes expeditiously. We conclude that there is no justification for adding at this time a requirement that would prevent transfers or reassignments until the nine or more months that would be consumed before the notice, conference and arbitration process could be completed.

Inspection, Testing and Air Hose Coupling

Of special interest to the Brotherhood of Railway Carmen in this dispute is Article V of the September 25, 1964 Agreement. Article V relates to the inspection and testing of air brakes and appurtenances on trains and related coupling of hose incidental to such inspection. Neither the rule nor the awards interpreting it reserve exclusively to carmen all such work. Indeed, other than in the situation and circumstances expressly covered by the rule, such work is and has been performed either by carmen or by certain operating employees represented by the United Transportation Union.

Article V has its genesis in the recommendations of Emergency Board No. 160 relative to a demand by the Brotherhood of Railway Carmen in the 1962 round of negotiations that all such work be vested exclusively in car inspectors represented by that Organization. As finally recommended and agreed upon the rule is not so comprehensive

but rather reserves such work to carmen only under certain conditions; i.e., in yards, or terminals where carmen are employed and are on duty in departure yard, coach yard or passenger tracks from which trains depart. It must be observed that while Emergency Board No. 160 did not develop an elaborate rationale for its recommendation, the rule proposed and finally adopted with some modification by the parties as Article V is consistent with the overall design of Board 160 to balance and accommodate insofar as possible the legitimate but somewhat divergent interests of the Carriers in efficiency and the Organizations in security. In our view the same interests are at stake in this dispute and the same balancing is required.

Among the Section 6 notices served upon the Carriers on July 1, 1974, was a demand that Article V be amended to provide that all coupling, inspection and testing on all trains and cuts of cars shall be carmen's work. The record shows that although this demand has been modified in several respects during the negotiations and mediation preceding the appointment of this Board, the essential demand of exclusive jurisdiction remains the Organization's position.

The Organization contends that it is vital to the future safety of train operations that air brake tests and inspections and related coupling be performed only by car inspectors. A corollary argument is that carmen are the only employees fully qualified by training and experience to perform such work. Thus, the Organization concludes that the decline in numbers of car inspectors and abolishment of many such positions has had a pernicious effect upon rail safety and contributed significantly to train accidents.

The Organization further maintains that carmen are entitled at least to work reserved to them by Article V as negotiated pursuant to the recommendation of Emergency Board

No. 160. In this connection, it is asserted that, especially in recent years, there has been an accelerating movement by the Carriers to transfer inspection, testing and coupling work in increasing measure away from car inspectors and over to operating employees. This shift is accomplished by the simple expedient of moving carmen away from departure tracks or abolishing their positions thereby obviating the conditions precedent to application of Article V. Thus, the Carmen argue that Carriers are taking advantage of a "loophole" to avoid the manifest spirit and intent of Article V.

The Carriers have opposed the inspection, testing and coupling demand of the Carmen throughout and so far as the record shows have presented no counterproposal to either the original or modified demands. The Carriers point out that the Carmen claim of exclusivity has been rejected previously by boards of adjustment, by the so-called Cheney Award, and by Emergency Board 160. Moreover, the Carriers contend that the demand is unsupported by safety considerations, unique or esoteric qualifications, or by history, custom or tradition. The Carriers deny abuses of Article V whereby the meaning and intent of that rule has been circumvented. Finally, the Carriers affirmatively resist the Organization's demand on the ground that it would require the hiring of nearly 8,000 additional carmen at an annual cost in excess of \$100 million, as well as create operating inefficiency and service delays.

This Board has considered carefully the positions of the parties and the supporting data introduced on the record. Upon such analysis the record before us does not demonstrate a causal connection between the diminution in numbers of car inspectors and the incidence of accidents on railroads in the United States. In our overall view, the demand that all air brake inspection and testing as well as related duties be vested henceforth

exclusively in carmen is supported neither by safety considerations, evidence of unique qualifications nor by historical division of labor. Moreover, the cost impact, related inefficiencies and disruption of historical patterns of work allocation attendant upon such an exclusive grant all militate against the Organization's demand.

In our considered judgment, however, the plea of the Carmen that Article V has been to some degree circumvented stands on firmer footing. Compliance with the literal wording of the rule is possible despite circumvention of its spirit and intent through deliberate manipulation of carmen assignments by a carrier. We are persuaded on the record that some abuses of this type have been and are occurring in the industry, and that they should not continue. At the same time the corrective action that we recommend should not create a necessity of hiring numbers of new employees, but simply is designed to protect the legitimate interests of present employees from such practices.

In our judgment the interests of both parties under Article V may be accommodated by amending the rule to provide for freezing of the status quo relative to allocation of inspection, testing and related coupling work under the rule, as between carmen and operating employees, effective July 1, 1974. Should future traffic patterns render continuation of this freeze unjustifiable at specific locations, Article IV, the Outlying Points Rule, is available to resolve the problem. Finally, we recommend that the Standing Committee be used by the parties to study and resolve any factual disputes over the actual status quo in given locations on July 1, 1974.

Wrecking Service

The work that carmen perform in wreck service is among the issues in this dispute. Railroad wreck work involves the clearing of track which may be blocked by disabled

cars or locomotives, rerailing of equipment and salvaging of equipment and lading. When negotiations began this subject matter was handled as a subcontracting issue but as discussions progressed and proposals were exchanged the parties agreed to consider the wrecking service in terms of a national rule.

No national wreck service rule now exists. A number of local agreements contain wreck service rules which are substantially similar in content and trace their common parentage to rules of the National Railroad Administration dating from 1919. Presumably the effect of a national rule such as that now being considered by the parties would be to establish a rule for carriers without a wreck service rule, to amend local rules where applicable, and to abrogate local rules where inapposite. In this latter connection we note that the Organization Section 6 Notice contains the following savings clause:

The organizations reserve the right to preserve existing rules or practices on any individual carrier or carriers which they consider more favorable than any rule resulting from negotiations on the foregoing proposals.

The single most controversial facet of this wreck service dispute is that concerning the use by Carriers of off-track subcontractors to perform wreck service. The Carriers argue that such flexibility is an operational necessity in light of the improved technology, expedited service and relative cost advantage accruing to carriers who use outside contractors rather than traditional wreck trains and wreck service techniques. The Organization contends on the other hand that employees it represents can perform the work as efficiently as outside forces and that wreck service work traditionally has been Carmen's work.

Each of the parties submitted argument and voluminous data in support of the respective positions. No useful purpose can be served by reviewing that material in detail

herein. We do note, however, that each of the parties directed the attention of the Board to a recent agreement dated February 6, 1975, between the Penn Central Transportation Company and its shopcraft employees; which agreement deals in pertinent part with the issue of wreck service including the use of other than Carrier-owned equipment for wreck work. After informal talks with the parties, we believe that their views might be reconciled by adoption of a national wrecking rule incorporating some of the principles contained in the Penn Central wrecking rule.

MORATORIUM

A final but important issue is that of the moratorium provisions relative to the service or progression of Section 6 notices by the parties. Typically, moratorium provisions in railroad agreements serve as the functional equivalent of a duration or term clause. Each of the parties has proposed a different approach to this issue. Their proposals differ in significant respects and each of the parties has indicated to the Board that their moratorium differences have been a major impediment to resolution of the dispute.

The Carriers have taken the position that the industry is entitled to a period of uniform labor peace and relative predictability of labor costs once a bargain is struck. The Carriers concede that not all moratorium provisions already agreed upon in this round have been uniform but contend that each has an internal consistency with the moratorium provisions agreed upon by each respective organization in the 1973 and 1970-71 settlements. Accordingly, the Carriers urge the adoption of a moratorium provision which would bar the RED from serving new notices relating to the subject matter contained in the national agreement and in the national Section 6 notices that have been served, except for notices concerning apprenticeship and union shop. Under this approach, new

notices covering subject matters not specifically covered and existing notices of this type could be progressed locally but not beyond the peaceful procedures of the Railway Labor Act; *i.e.*, not beyond voluntary interest arbitration. Further, local notices on subjects covered either by the RED notices or the NRLC counterproposals would have to be withdrawn.

The RED view of the moratorium issue is that any provision limiting further handling should contain no more than 1) an agreement to withhold any notice or proposal or changing the provisions of whatever agreement is reached between the Carriers and RED until January 1, 1977 (not to become effective until January 1, 1978) and 2) an agreement to refrain from serving proposals covered by the notices served by RED on the Carriers on July 1, 1974, which initiated this dispute.

The Organizations argue that a moratorium such as the one they seek was negotiated with another shopcraft union and that they should be accorded like treatment. Additionally, the RED points out that it has a number of outstanding notices on local or individual railroad properties, the subject matter of which are peculiarly amenable to handling on a local basis. Included in this latter category by the Organizations are notices relating to classification of work and automatic car identification (ACI). The Organizations insist that they must have the right to progress such notices through the procedures of the Railway Labor Act, including resort to self-help if necessary, to arrive at settlements of these local issues through collective bargaining.

As we perceive the positions of the parties it appears that the crux of their impasse on the moratorium issue is the treatment to be accorded outstanding local notices. It cannot be denied that there is considerable merit in the Carriers' position that the industry

is entitled to a period of labor stability in return for their contract settlement. If that were the only legitimate interest to be considered in the instant dispute we would have no hesitancy to recommend adoption of the Carriers' moratorium proposal. But there are other factors bearing on this point to which we must give appropriate consideration, particularly the Organizations' position that the local issues, many of which have been pending in various stages of handling for years, should be resolved and not withdrawn. The record shows that some of the pending local issue were taken out of national handling and placed in local railroad handling at the suggestion of the Carriers. They contended the subject matters involved were not susceptible of appropriate handling at the national level. We believe it possible that continued failure to address some of these long-standing local issues could contribute to the very labor instability which both parties wish to avoid. In this latter connection, however, it should be understood that we are not persuaded that the strike threat is, in the peculiar facts and circumstances of these local notices, a *sine qua non* to negotiated settlement of them.

Upon careful consideration of all of the foregoing we recommend that the parties adopt moratorium provisions which encompass the following principles:

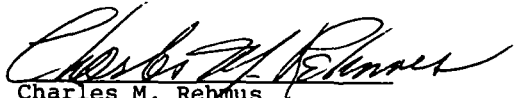
- 1) No notice or proposal for change in the provisions of whatever agreement results from the instant bargaining round shall be served before January 1, 1977 (not to become effective before January 1, 1978).
- 2) No new proposals on subjects covered by the notices in the instant dispute served on the Carriers July 1, 1974, shall be served before January 1, 1977 (not to become effective before January 1, 1978).


3) Local notices pending in various stages of handling need not be withdrawn but may be progressed on the properties. Such proposals shall be progressed within but not beyond the specific procedures for peacefully resolving disputes which are provided in the Railway Labor Act.


4) Where impasse develops in handling of these local notices and arbitration is proffered by the National Mediation Board, such arbitration shall be held at the request of the Organization on any proposal not a significant cost item to the carrier and on any reasonably related counterproposal served by the carrier.

5) Disputes regarding arbitrability of proposals and counterproposals shall be referred to a joint committee of Carrier and Organization members, plus a neutral member if needed. If the committee determines that the proposal and counterproposal, if any, are arbitrable such proposals and counterproposals will be disposed of on the property of the particular carrier under the arbitration provisions of the Railway Labor Act.

Respectfully submitted,


Charles M. Rehmus
Chairman


Dana E. Eischen
Member


Harold M. Weston
Member

THE WHITE HOUSE

EXECUTIVE ORDER # 11870

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CREATING AN EMERGENCY BOARD TO INVESTIGATE
A DISPUTE BETWEEN THE CARRIERS REPRESENTED
BY THE NATIONAL RAILWAY LABOR CONFERENCE
AND CERTAIN OF THEIR EMPLOYEES

A dispute exists between the carriers represented by the National Railway Labor Conference, designated in lists attached hereto and made a part hereof, and certain of their employees represented by the Railway Employees' Department, AFL-CIO; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers; Brotherhood Railway Carmen of United States and Canada; International Brotherhood of Electrical Workers and the International Brotherhood of Firemen & Oilers;

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

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

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

The board shall report its finding to the President with respect to the dispute within 30 days from the date of this Order.

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

/s/ Gerald R. Ford

THE WHITE HOUSE,
September 2, 1975

