

Report
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD
No. 192

**APPOINTED BY EXECUTIVE ORDER 12182, DATED
DECEMBER 14, 1979, PURSUANT TO SECTION 10 OF THE
RAILWAY LABOR ACT, AS AMENDED**

To investigate disputes between the Long Island Rail Road Company and certain of its employees represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Signalmen, the Brotherhood of Railway Carmen of the United States and Canada, the International Brotherhood of Teamsters, the Police Benevolent Association, the Railroad Yardmasters of America and the United Transportation Union.

(National Mediation Board Case Nos. A-10412, A-10434, A-10441, A-10442, A-10456, A-10457, A-10472, A-10489, A-10493, A-10512 and A-10527)

WASHINGTON, D.C.

JANUARY 14, 1980

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *January 14, 1980.*

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

DEAR MR. PRESIDENT: On December 14, 1979, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12182, you created an Emergency Board to investigate disputes between The Long Island Rail Road Company and certain of its employees represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Signalmen, the Brotherhood Railway Carmen of the United States and Canada, the International Brotherhood of Teamsters, the Police Benevolent Association, the Railroad Yardmasters of America and the United Transportation Union.

Following its investigation of the issues in dispute, including both formal hearings on the record and informal meetings with the parties, the Board has prepared its Report and Recommendations for settlement of the disputes.

The Board now has the honor to submit its Report to you, in accordance with the provisions of the Railway Labor Act, and its Recommendations as to an appropriate resolution of the disputes by the parties.

Respectfully submitted,

- (S) JAMES J. REYNOLDS, *Chairman.*
- (S) IDA KLAUS, *Member.*
- (S) NICHOLAS H. ZUMAS, *Member.*

I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 192 was created by President Carter on December 14, 1979, by Executive Order No. 12182, pursuant to Section 10 of the Railway Labor Act, as amended, 45 U.S.C. 160. The President had been notified by the National Mediation Board (NMB) that, in the judgment of the Board, the existence of a strike on the Long Island Rail Road (LIRR) threatened substantially to interrupt interstate commerce to a degree such as to deprive Long Island and New York City of essential transportation service.

The President appointed James J. Reynolds of Washington, D.C., a former Under Secretary of Labor and retired President of the American Institute of Merchant Shipping, as chairman of the Board. Ida Klaus of New York City, a member of the New York State Public Employment Relations Board, Attorney and Labor Arbitrator; and Nicholas H. Zumas of Washington, D.C., a member of the District of Columbia Public Employee Relations Board, Attorney and Labor Arbitrator, were appointed as members of the Board. The Board was ordered to investigate the disputes and report its findings to the President within 30 days.

II. PARTIES TO THE DISPUTE

A. The Organizations

The seven Organizations¹ involved in these disputes are:

- Brotherhood of Locomotive Engineers (AFL-CIO) (BLE)
- Brotherhood of Railroad Signalmen, Local 56 (AFL-CIO) (BRS)
- Brotherhood of Railway Carmen of the United States and Canada, AFL-CIO and CLC Queens Lodge No. 886 (BRC)
- International Brotherhood of Teamsters, Local 808 (IBT)
- Police Benevolent Association, Long Island Railroad Police, Inc. (PBA)

¹ Ten other Organizations were involved in negotiations with the Carrier and reached agreement on terms of new contracts on December 14, 1979. These 10 are: American Railway Supervisors Association, Local 851; American Railway Supervisors Association, Local 851A; American Railway Supervisors Association, Local 853; American Railway Supervisors Association, Local 857; Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; International Brotherhood of Boilermakers and Blacksmiths; International Brotherhood of Firemen and Oilers; and Sheet Metal Workers International Association.

Railroad Yardmasters of America (AFL-CIO), Local Lodge No. 91 (RYA)

United Transportation Union (AFL-CIO), Locals, 645, 645 B, 1934, 1831 (UTU)

These Organizations represent yardmasters, trainmen, special service attendants, maintenance of way employees and supervisors, engineers, conductors, firemen, brakemen, signalmen, carmen and police—a total of approximately 4,000 out of 6,200 represented LIRR employees.

While each of these Unions had individual demands, they formed an informal coalition for collective bargaining purposes. Their joint economic position was presented to the Emergency Board by their attorney and their economist.

B. The Carrier

The Long Island Rail Road Company is a Class I railroad subject to the jurisdiction of the Interstate Commerce Commission and the provisions and procedures of the Railway Labor Act. Every week day the LIRR carries approximately 265,000 passengers, a majority of them commuters. The LIRR carries more passengers than any other Class I railroad in the United States. In 1978, freight produced revenues of \$18 million, as compared to revenues of almost \$119 million from passenger service.

The LIRR is the only mode of public transportation that provides through service from the eastern end of Long Island to Manhattan, and it is a vital link in the mass transportation system of the New York City metropolitan area. Its freight and passenger service covers approximately 330 miles of main line trackage.

Despite its importance to New York City's mass transportation system, the LIRR has long been a financially unsuccessful enterprise. From 1949 to 1954, while a wholly-owned subsidiary of the Pennsylvania Railroad Company, the LIRR was in bankruptcy. It subsequently became a railroad "redevelopment corporation", still owned by the Pennsylvania Railroad, receiving tax and financial incentives from the State. In 1966, the Metropolitan Commuter Transportation Authority (now the Metropolitan Transportation Authority (MTA)), seeking to preserve this transportation link, acquired the LIRR as a wholly-owned subsidiary. The enabling legislation² authorizes the MTA to establish and collect such fares, rentals, charges, etc., as may be "necessary to maintain the combined operations of the Authority and its subsidiary corporations on a self-sustaining basis."

² Public Authorities Law, Article 5, Title II.

The LIRR's financial position, however, has consistently declined. The last fare increase was in 1975. It is recognized that any fare increase is a politically charged issue and has a negative impact on ridership, as well. The LIRR receives substantial subsidies from the State of New York and from the Federal Government. In 1978, the LIRR received over \$110 million in such subsidies. Projections by the Carrier indicate it will require over \$131 million in 1979 and over \$146 million in 1980 for the LIRR to meet its expenses.

III. ACTIVITIES OF THE EMERGENCY BOARD

The Board held organizational meetings in Washington, D.C., on December 15, 1979, and December 17, 1979, during which the members met with Federal mediators and received thorough briefings on the history of the disputes. On December 18, 1979, the Board commenced on-the-record ex parte hearings with the seven labor Organizations. Similar hearings were held with the Carrier on December 19, 1979, and the Organizations returned on December 27, 1979, to supplement their previous presentation. The hearings focused on a formal presentation of the parties' positions and their justifications for them, and resulted in 502 pages of transcript and numerous individual exhibits. The Board throughout sought to have the parties narrow the issues and focus on only those which were most important to them. On December 22, 1979, at the Board's request, the Board and the Carrier received copies of revised work rule demands from each of the seven Unions through an exchange in New York facilitated by a member of the Board's staff.

Transcripts and exhibits of the formal ex parte hearings were exchanged on December 27 and 28, 1979, and the parties were given time to review them and prepare responses for subsequent off-the-record ex parte sessions with the Board.

On January 2, 1980, the Board commenced such off-the-record discussions with the Carrier, and on January 3, 1980, similar discussions began with the Organizations. On January 4, 1980, intensive mediation efforts began. By the evening of that day it was clear that, while some of the issues had been narrowed and some different and possibly acceptable approaches had been developed, the parties were still far apart on the basic issue of the dimensions of an appropriate economic package. The situation was further complicated by the fact that, even after the exchange of revised proposals noted above, there were still over 200 proposed work rule changes on the table. The Board then determined that further mediation would not be fruitful in settling the issues in dispute, and turned to a consideration of its report and recommendations.

IV. HISTORY OF THE DISPUTE

Beginning in mid-1978, and continuing in 1979, the Unions involved in this dispute, pursuant to Section 6 of the Railway Labor Act, individually served on the railroad notices of demands to amend numerous provisions of their collective bargaining agreements with the Carrier. These Section 6 Notices were served as follows:

BLE—June 14, 1978	RYA—July 17, 1978
October 20, 1979	July 17, 1978
BRS—June 30, 1978	November 30, 1978
October 15, 1978	UTU—(Trainmen)—June 29,
BRC—May 24, 1978	1979
November 30, 1978	February 16, 1979
IBT—June 29, 1978	UTU—(Spec. Svc. Attendants)
June 29, 1978	June 29, 1978
November 17, 1978	December 27, 1978
PBA—August 14, 1978	UTU—(M/W Supvrs.) June 29,
January 1, 1979	1978
	December 15, 1978

On March 14, 1979, Management served its Section 6 Notices requesting a substantial number of amendments in the current collective bargaining agreements. Separate Notices were given to the BLE and the UTU, and a single Section 6 Notice covered all the other Unions.

On March 8, 1979, the LIRR applied to the NMB for mediation services in relation to the Section 6 Notices served on it by BRC. Over the next several months, either the Carrier or the Organizations filed additional applications for mediation on the Section 6 Notices pending between them. Each of these applications was separately docketed, although for practical purposes, and at the request of the parties, they were handled jointly by a single mediator. The schedule of filing and case numbers were as follows:

Date of Application	Organization	NMB Case No.
March 8, 1979.....	BRC	A-10412
March 20, 1979.....	UTU	A-10442
March 22, 1979.....	BRS	A-10456
March 23, 1979.....	BLE	A-10457
April 4, 1979.....	RYA	A-10441
April 9, 1979.....	IBT	A-10434
May 18, 1979.....	BRS	A-10489
May 23, 1979.....	PBA	A-10472
July 6, 1979.....	BLE	A-10493
July 31, 1979.....	BRC	A-10527
July 31, 1979.....	IBT	A-10512

On March 30, 1979, Mediator Francis J. Dooley commenced mediation with LIRR Management and several of the Unions involved in these disputes, with the other Unions on the property joining in at later dates.³ It was not until on or about July 20 that the top levels of MTA Management directly entered the negotiations, and it was not until on or about July 24 that the Unions formed into bargaining coalitions. Two informal coalitions resulted. One group was referred to as the "non-operating employees." The second group, consisting of the seven Unions involved in these disputes, is known as the "operating employees."

After the initial formation of the coalitions, no single spokesman or negotiator acted for all of the Unions, and each of the Unions kept demanding that its unique problems be addressed. Substantial confusion resulted from negotiations conducted with two levels of management (LIRR and MTA), numerous Unions, and hundreds of proposed rule changes contained in the Section 6 Notices. The parties' positions were far apart, and despite the mediator's best efforts, those positions were altered only slightly over the course of mediation. Additionally, there was frequent disagreement about the cost of various items and packages, with estimates varying by as much as \$10 million for the identical package.

On October 10, 1979, NMB Member George S. Ives entered the negotiations and proposed the appointment of a Special Board of Inquiry to help resolve the dispute. Each side insisted upon restrictions which made the plan unworkable. Negotiations intensified over the next several weeks, but on November 5, 1979, all parties agreed that they were deadlocked. Management had offered a 2 percent wage increase in each year of a 3-year contract, and refused to offer more. The Unions made some concessions, but determined that this wage offer was inadequate for a settlement, and that they would make no further concessions.

The NMB determined that the parties were in fact deadlocked and on November 5, 1979, proffered arbitration. On November 7, 1979, the UTU rejected the proffer of arbitration, and the Carrier, stating that it saw no useful purpose to arbitration that did not include all the Unions, also rejected arbitration on that date as to all of the Unions. The NMB released the parties from mediation on November 7, 1979, and the statutory 30-day "status quo period" began to run.

³ Fourteen unions represent employees on the property. Several Locals of some of the Internationals were involved in the disputes, and there was a total of 21 mediation cases on file with the National Mediation Board.

From December 3, 1979, through December 7, 1979, intensive mediation sessions with the parties were conducted by NMB Member Ives and Mediator Dooley, in a final effort to prevent a strike. Management made a proposal; the Unions, acting together, made a joint counterproposal. On December 8, 1979, the UTU struck the Carrier. IBT, BRS, and RYA followed suit. As a result, all operations of the LIRR ceased.

Negotiations with all of the parties continued on December 11, 1979, in Washington, D.C., under the auspices of the NMB. Early on the morning of December 14, 1979, agreement was reached with the "non-operating employees." That agreement⁴ provided for a wage and benefit increase of approximately 22½ percent over three years, with the first wage increase of 7 percent being retroactive to January 1, 1979. If any later settlement with the Unions that did not accept that agreement provides better or different terms, a "me too" clause affords the opportunity to obtain the same benefits. The package is estimated by the Carrier to cost \$67 million over the 3 years of its term if applied to all organized employees, including those not signatory to the agreement.

V. THE ISSUES IN DISPUTE

The issues in dispute in these cases may be divided into two distinct categories. The first category consists of the package of economic demands of the labor Organizations, and the second consists of rule changes sought by the Organizations.

The seven Organizations, that did not accept the December 14, 1979, agreement, formulated a Joint Economic Proposal covering wage increases, a cost of living allowance, health and welfare benefits, the cost of obtaining various rule changes, pension improvements, and job stabilization.

In addition, each individual Union had a list of rule changes applicable only to its particular collective bargaining agreement. At the Board's request, each Union reviewed its Section 6 Notices and presented a list of the most important of the changes sought, categorized into economic rules, non-economic rules, and rules which the Union believed it already had in practice. The Carrier was provided with copies of each of these lists, from which it prepared a response, including cost estimates for the changes. As late as December 22, 1979, when the exchange took place, these Section 6 Notices still covered a total of 230 proposed changes.

⁴ Appendix A contains the text of the agreement entered into by the other 10 Unions.

A. Economic issues

Wages and Cost of Living Allowances

The labor Organizations seek wage increases according to the following schedule:

1. Make cost of living adjustment previously granted part of base wage, effective January 1, 1979.
2. Effective January 1, 1979, a wage increase of 8 percent.
3. Effective January 1, 1980, a wage increase of 2.5 percent.
4. Effective January 1, 1981, a wage increase of 2 percent.

In addition to the above increases, the Unions seek an uncapped cost of living allowance (COLA) of 1 cent per hour for each 0.3 rise in the U.S. All-Item Consumer Price Index (w), 1967=100. These increases would be paid each January 1, beginning in 1980, based upon the increase for the 12-month period ending the previous November. Under the Unions' proposal, all COLA increases would be made part of the base rate immediately upon the effective date.

The Unions justify their demands based upon a number of factors. First, they maintain that their proposal totals 22.025 percent (including fringe benefits and health and welfare benefits), and thus falls within the limits of the 1979 Presidential wage guidelines for a 3-year agreement. Second, the Unions contend that during the period July 1976–December 1979, assuming an 8-percent increase in 1979 wage rates, the average employee lost 8.67 percent in real wages. Thus, the Unions argue, the employees would need a large increase to recapture lost earning power. Third, the Unions point to the expected high rates of inflation for 1980 and 1981, and that their proposal would provide better protection from inflation than the Carrier's proposal. Fourth, the Unions assert that employees' average wages have fallen behind the National Metropolitan Budget for a family of four, whereas in the Fall of 1978 they were \$700 per year ahead of the Budget. This, they assert, indicates the further erosion in the employees' standard of living, and justifies their COLA proposal. Fifth, the Unions contend that their proposal is lower than settlements in the auto, trucking, and rubber industries, each of which included generous cost of living allowances. Finally, the Unions maintain that, since 1974, increased ridership, coupled with a decrease in the number of employees, justifies the wage demand based on increased productivity.

The Carrier has offered the same wage and COLA package which, with some modification, was negotiated by the 10 labor Organizations

who reached agreement after the strike commenced. This package provides:⁵

1. Roll-in cost of living increases from the previous agreement, effective January 1, 1979.
2. Increase the basic rate by 7 percent on January 1, 1979.
3. Increase the basic rate by 6.4 percent on January 1, 1980.
4. Provide a 17 cents per hour "cost of living" increase on July 1, 1980 (1.6 percent).
5. Increase the basic rate by 6 percent on January 1, 1981.
6. Provide an 18 cents per hour "cost of living" increase on July 1, 1981.

Management asserts that this agreement represents the maximum amount of money it can offer to fund wage and benefit increases for its employees, and that even this amount will increase an already-serious operating deficit during the life of the agreement. For the 3-year period 1978-1980, the Carrier's actual and estimated expenditures will total \$978 million. Deducting disbursements from receipts, there will remain a deficit totalling \$388 million. This deficit must be made up by the MTA, which estimates that just for the year 1980, it must raise almost \$300 million to cover the deficits of all of its operating subsidiaries, including the LIRR. In the face of these enormous cash shortages, Management argues that it must hold the line on expenses.

In addition, the Carrier asserts that its employees enjoy superior wages and fringe benefits, including a unique pension plan discussed below. Where LIRR employees enjoyed parity with New York City Transit employees up to 1972, their wages are now ahead of the transit employees; and LIRR employees enjoy wage rates that are substantially above the national wage rates in the railroad industry. Finally, the Carrier contends that the Unions' economic calculations are misleading, and that during the period June 1976-January 1980, the employees actually received wage increases at a rate that placed them 9.4 percent ahead of inflation, so that there has been no loss of real earning power.

The labor Organizations contend that Management should raise fares, which were last increased in 1975, and that a series of phased-in increases would generate the money needed to pay for their proposals. The Governor and legislative leaders in New York have pledged to avoid any fare increase. Management has not sought fare increases because it wants to stimulate increased ridership during a time of

⁵ Although the Carrier refers to the 17 cents and 18 cents increases in its proposals as cost of living adjustments, these increases are not based upon the cost of living, and are merely across-the-board wage increases.

rising energy costs and fuel shortages, and fears that fare increases will lead to a fall-off in ridership.

Management estimates that the cost of the Unions' proposal would be \$90.5 million, or a 32.9 percent increase, as compared with \$67 million, or a 22.5 percent increase, agreed to with the other ten Unions.

Health and Welfare

At the present time, a Joint Benefit Fund receives Carrier contributions and purchases insurance covering employees represented by the labor Organizations that participate in such Joint Benefit Fund, including BRC, BRS, and RYA.

The IBT, BLE, PBA, and UTU have elected to administer their own separate plans. They contend that they are unable to maintain the level of benefits previously enjoyed because of the rapid rise in the cost of health insurance. Management responds that there could be great cost efficiencies if those Unions that have chosen to administer their own plans would join the Joint Benefit Fund. Management further states that, while there may be cash flow problems causing temporary difficulties, there are in fact sufficient funds to maintain benefits. It notes that, to the extent that contributions are based on a percentage of employee earnings, the Unions have built-in protection from rising insurance costs as wage rates rise.

Unions that administer their own plans seek full and complete maintenance of existing health and welfare benefits, and demand that the Carrier increase its contributions.

Management has offered to increase dental care payments from \$15 to \$20 per month per employee, and eye care payments from \$1.80 to \$2 per month per employee for all Unions, as was agreed with the other ten Unions.

Rules or Other Benefits

The Unions have demanded that one percent of the Carrier's payroll be set aside as of January 1, 1980, to be used to obtain rule changes or benefits. Management has offered these Unions the 17 cents COLA payable as of July 1, 1980, for this purpose in lieu of taking it as wages, as it had agreed with the other 10 Unions.

Pensions

Employees of the Long Island Rail Road are covered by the Railroad Retirement Act (RRA) and by a second separate LIRR pension plan. With the exception of several small railroads serving the steel industry, it appears that the LIRR plan is unique among railroads in the United States. The pension plan became effective on July 1, 1971, and was amended in 1974.

Under the RRA pension system provided by Federal law, railroad employees receive retirement benefits commencing no earlier than age 60. The LIRR pension plan is designed to permit an employee with 20 years of service to retire as early as age 50, on an immediate pension; and to continue to receive that pension even after the employee begins to draw the RRA pension. The railroad reduces the retiree's LIRR pension payments when the retiree attains age 65.

Under the LIRR plan, an employee may elect a survivor option, and receive a reduced pension during his lifetime. Such an election originally required 180 days' notice in writing. Under the terms of the agreement reached with the other 10 Unions, the pension program was improved in the following ways: the waiting period for election of the survivor option has been reduced to 1 day; if no election was made and the employee dies prior to retirement, it is presumed that the employee elected the most favorable option; employees who were employed by the carrier on July 1, 1971, will be credited for all time on the LIRR if they had a break in service of less than 10 years. Additionally, a board has been established as part of the agreement to hear appeals from pension denials, consisting of three Carrier and three Union representatives and a neutral chairman.

In addition to the items agreed to with the other 10 Unions, the Unions involved herein want cost of living protection for all retirees, based upon the cost of living increases granted under the Railroad Retirement Act. At the present time, no retired employees receive cost of living adjustments under the LIRR plan. Alternatively, the Unions insist that the Carrier stop deducting the RRA increases from an employee's LIRR pension after age 65.

These additional demands have arisen because the Unions claim that their representatives in 1971 were not skilled in negotiating pensions, and the LIRR plan as implemented by the Carrier was contrary to their understanding of the set-off provisions. Management counters that the plan was negotiated by skilled and experienced labor negotiators who then spent a year helping to draft the language of the plan, and that the Unions have received everything they bargained for in 1971 and 1974. While Management does not assert that pension improvements are non-negotiable for these employees, it notes that it receives funds from the State, and that public policy as expressed in New York State law presently prohibits negotiations for improvements in pensions for public employees.

Job Stabilization

The Unions seek a job stabilization rule which would protect from layoff or displacement all employees presently on the Carrier's pay-

roll. At the present time, most of the Unions have a job stabilization agreement protecting all employees hired before January 1, 1972. The BLE and Trainmen have never sought a job stabilization agreement.

Management contends that the 1976 date agreed upon with the ten Unions provides sufficient protection without unduly hampering managerial flexibility in case it becomes necessary to either temporarily or permanently reduce the work force. In addition, it notes that there were no layoffs during the previous agreement, and that no significant layoffs are forecast. The Unions assert that total protection is required because the 1976 date offered by Management would leave 40 percent of the work force unprotected, and recent MTA and LIRR pronouncements concerning automation have caused employee concern.

B. Section 6 Rules Changes (Economic and Non-Economic)

The seven Unions involved in these disputes presented several hundred proposed rule changes in their Section 6 Notices. With the exception of the changes discussed above, there was little bargaining over work rules prior to the convening of this Board. Management took the position that it could not negotiate rule changes until the economic package was settled, so that it would know how much it could negotiate for rules with economic impact, contending that all rule changes must be purchased out of funds earmarked for that purpose in the economic settlement.

At the request of the Board, each Union reviewed its Section 6 Notices in an attempt to reduce the lists to a manageable size. Each Union spent several days revising its proposals, and divided its changes into three categories: rules with economic impact; rules with no economic impact; and rules which the Union believed were already in effect on the Carrier's property, either because of past practice or interpretation.

Following receipt of the revised packages, the Board arranged a simultaneous exchange and provided Management with a copy of each Union's presentation. Management prepared a response and presented it 1 week later. Included in this response were cost estimates for each proposed rule change.

Although the Board commends the Organizations for their efforts to reduce the number of their requested rule changes, it notes that approximately 236 such requests remain before the Board. It is impossible for the Board to consider and properly evaluate each of these proposals in the thirty days provided by the Railway Labor Act, and in any event, the parties themselves are better able to consider the merits of each rule. For this reason, the Board will make no attempt

to discuss the individual Union presentations or Management's response in this report.

VI. RECOMMENDATIONS

Wages and Cost of Living Allowances

The Board has carefully considered the economic presentations of both management and the Unions. The data presented provided a full explanation of the financial condition of the LIRR and the MTA; the wages, benefits, and working conditions of LIRR employees; the parameters of the Federal wage guidelines; and the economic impact of the Unions' demands and of Management's offer.

There is no doubt that any settlement will worsen the dismal financial position of the LIRR and the MTA. Even without any improvement in the collective bargaining agreements on the LIRR, the MTA will need to raise \$200 million in subsidies in 1980 to meet its expenses. In addition to the LIRR negotiations, bus and subway employees will be negotiating new agreements in the near future. These settlements will further burden an already-troubled MTA.

On the other hand, the Board finds that the LIRR's employees enjoy good wages, benefits, and working conditions. Factors which might otherwise tend to evoke a sympathetic reaction—low wages, poor fringe benefits, unconscionable working conditions—are noticeably absent on the LIRR. Contrary to the Unions' assertions, the Board does not find that these employees have suffered inordinately from the ravages of inflation.

Although both Management and the Unions presented proposals which assertedly meet the existing Presidential wage guidelines, it is clear that the actual total cost of the Union's demands over the 3-year period far exceeds the cost standards applied under the guideline regulations. In this respect, the guidelines are almost meaningless as a basis for our recommendations when they arbitrarily assume an inflation rate less than half of the actual rate of inflation, and when two proposals \$23 million apart can each be said to come within the guidelines.

It should be noted that this Board's wage recommendation includes provision for a cost of living adjustment (COLA) based on a consumer price index (CPI) as compared to a COLA not based on a CPI in the agreement negotiated by the other 10 Unions. The COLA payments recommended by this Board could total as much as 53 cents per hour in 1980 and 59 cents in 1981, or \$1.12 per hour. Aside from the fact that the Unions in these disputes had COLA provisions in their

previous agreements⁶ and desired that they be continued, it is the Board's finding that a COLA is a rational method of assisting workers to recover purchasing power lost through consumer price increases.

The Board further finds that a cap on the COLA is desirable not only because the employees in these disputes, as noted earlier, enjoy good wages, benefits, and working conditions, or that the trend in major settlements appears to favor a cap on COLA,⁷ but also because this Board firmly believes that automatic, unlimited, "uncapped" COLAs tied to the Consumer Price Index have the effect of heightening the wage-price spiral and as such, are not in the public interest.

In view of all of the factors present in these disputes, and noting particularly the Carrier's financial condition and the employees' needs, the Board recommends that the parties adopt the following settlement:

1. Cost of living increases from the previous agreement shall be made part of the base wage rate, effective January 1, 1979.

2. Effective on January 1, 1979, an increase in the base rate of 7 percent.

3. Effective on January 1, 1980, an increase in the base rate of 2.5 percent.

4. Effective on January 1, 1981, an increase in the base rate of 2.5 percent.

5. A cost of living adjustment of 1 cent per hour for each full 0.3 point rise in the Consumer Price Index, U.S. Bureau of Labor Statistics, Metropolitan New York Region 1967=100 will be applied, to be limited to a maximum 8 percent increase in the index in each year. The first adjustment will be made effective on January 1, 1980, based upon the increase for the period November 1978–November 1979. The second adjustment will be made effective on January 1, 1981, based upon the increase for the period November 1979–November 1980. The adjustments will not be made part of the base wage rate.

6. Effective on January 1, 1980, dental care payments will be increased from \$15 to \$20 per month per employee, and eye care payments will be increased from \$1.86 to \$2 per month per employee, with equivalent increases paid to Unions that administer their own health and welfare programs.

⁶ The previous agreements provided increases of 1 cent per hour for each 0.4 point increase in the CPI, with a 6 percent cap.

⁷ The latest national agreements between the railroads and the Brotherhoods (including the International affiliates of the Locals in this dispute) have a 0.33 COLA with an 8 percent cap.

The Board estimates the total cost of this package to be \$68.5 million, as follows:

[Estimated Cost in Millions]

	1979	1980	1981	Total cost
Roll in current COLA, Jan. 1, 1979-----				
7 percent wage increase, Jan. 1, 1979-----	\$9. 3	\$10. 0	\$10. 5	\$29. 8
2.5 percent wage increase, Jan. 1, 1980-----		3. 8	4. 0	7. 8
COLA, Jan. 1, 1980-----		8. 2	8. 2	16. 4
2.5 percent wage increase, Jan. 1, 1981-----			4. 1	4. 1
COLA, Jan. 1, 1981-----			9. 6	9. 6
Subtotal wages and COLA-----	9. 3	22. 0	36. 4	67. 7
Dental and eye care, Jan. 1, 1980-----		. 4	. 4	. 8
Total 3 year cost-----	9. 3	22. 4	36. 8	68. 5

Rule Changes

The Board further recommends that the Unions be granted the option of using part or all of the 2.5 percent wage increase due on January 1, 1981, for obtaining rule changes or other benefits, to be effective January 1, 1981. In negotiating the rule changes, the Board recommends that the parties utilize the procedure contained in Appendix B.

Health and Welfare

The UTU and PBA, which administer their own plans, seek full and complete maintenance of existing health and welfare benefits. The Board recognizes the legitimate concern of these Unions in providing adequate protection for their members. However, in light of the LIRR's financial plight, the Board is concerned that this protection be provided in the most cost effective way possible.

These individual Union plans have high administrative costs relative to the number of people served. The Board, for example, does not feel that the over \$200,000 annual expense of administering the UTU plan is cost effective. While the Carrier makes equivalent per capita payments to the Joint Benefit Fund and to UTU and PBA, the Joint Benefit Fund has been able to provide better benefits for its members through the GA 23000 insurance plan.

The LIRR has invited the Unions which administer individual plans to become members of the Joint Benefit Fund, and the Board recommends strongly that those Unions not participating in the Fund become members. Additionally, the Board recommends that no present

members withdraw in favor of creating self-administered health and welfare programs.

Pensions

The Board recommends that the pension plan improvements accepted by the ten Unions, which are outlined in Appendix A, be incorporated into an agreement between the Carrier and the Unions involved here.

In addition, the Board notes that the dispute concerning Railroad Retirement set-off and cost of living protection for retirees relates to the interpretation and application of an existing collective bargaining agreement. The Board does not believe that this type of issue is properly before this Board for consideration. We recommend that the parties utilize the dispute procedures of Section 3 of the Railway Labor Act, which are designed for this purpose.

Job Stabilization

The Unions seek job stabilization to protect all employees currently on the Carrier's payroll from layoff or displacement. Most of the Unions currently have agreements that protect employees hired before January 1, 1972.

The ten Unions negotiated an extension of job stabilization to cover employees hired before January 1, 1976. Management has made the same offer to the Unions in these disputes.

The Board believes this is an equitable proposal. This protection will be extended to approximately 1,400 employees in all crafts or classes hired between January 1, 1972, and December 31, 1975. In addition, approximately 300 engineers and 800 trainmen hired before 1972, who were never protected by job stabilization before, will enjoy this benefit. Such an arrangement provides protection to employees who have served the Carrier for a significant number of years while preserving essential managerial flexibility.

The Board recommends that the Unions accept the Carrier's offer to extend job stabilization protection to January 1, 1976.

VII. CONCLUSION

Since 1969, three American Presidents have seen fit, under the law, to appoint four Emergency Boards to investigate and report as to disputes between the Long Island Railroad and its represented employees. It is hoped that this Board will be the last, notwithstanding the Carrier's perennially worsening financial predicament, the legitimate frustrations of a work force struggling to keep current with inflation and its turbulent effects, and the unique and complicated problems of this commuter railroad.

The Board has been concerned during its deliberations with seeking the best possible accommodation of the interests of the public, the LIRR employees, the Metropolitan Transportation Authority and the involved labor Organizations. These competing interests cannot be reflected in a manner considered by each to be entirely equitable. Nevertheless, the Board hopes that its recommendations will provide the basis for settlement of difficult and protracted labor disputes that will serve to encourage a period of stable labor relations at the LIRR, in order that the public interest will be served by reliable and uninterrupted service.

Respectfully submitted,

(s) JAMES J. REYNOLDS, *Chairman.*

(s) IDA KLAUS, *Member.*

(s) NICHOLAS H. ZUMAS, *Member.*

APPENDIX A

TERMS OF THE AGREEMENT BETWEEN THE LIRR AND THE TEN NON-OPERATING EMPLOYEE UNIONS

DECEMBER 14, 1979.

1. The Agreement will constitute a full, final and complete settlement of the issues.

2. Roll in COLA earned under previous contract.

3. 7 percent hourly rate increase as of January 1, 1979, with prorating for employees who retired or died during the year, or who were dismissed during the year and subsequently reinstated.

4. 8 percent average hourly rate increase during 1980, paid as a 6.4 percent hourly rate increase on January 1, 1980, and a 17 cents per hour COLA increase on July 1, 1980, which may, at the option of a union, be taken for equivalent cost fringe benefits reasonably acceptable to management rather than as a COLA increase.

5. 6 percent hourly rate increase on January 1, 1981; a 9 cents per hour COLA increase on July 1, 1981; and a 9 cents per hour COLA increase on January 1, 1982.

6. Dental care payment will be increased from \$15 to \$20 per month, eye care payments will be increased from \$1.86 to \$2.00 per month, effective January 1, 1980. Equivalent increases will be paid to unions administering their own health and welfare plans.

7. Pensions: Joint Board membership of 3-3-1: no 180 day notice for a change in option; presumption of survivor benefit option for deceased employees who were eligible for retirement but failed to exercise an option. Employees who were in active service as of July 1, 1971, and who have had a break in service not exceeding 10 years will be granted creditable service and months of service with the LIRR only under the pension plan provisions. An employee who is discharged from train service and is rehired in another represented position within one year of his termination date, will be given creditable service and months of service with the LIRR only for pension purposes.

8. Personal leave days which are not taken will be paid before Christmas each year, but not carried forward.

9. A side agreement will be signed establishing a process for resolution of a short list of outstanding noneconomic work rule issues under the peaceful provisions of the Railway Labor Act.

10. Medical excuses signed by a chiropractor will be accepted.

11. Employees hired before January 1, 1976, will be granted job stabilization.

12. A separate letter will provide for "me too" provisions with respect to settlements reached with LIRR unions not signatory to this document.

13. There will be a moratorium with respect to all Section 6 Notices by either the unions or the carrier, which may not be served until October 1, 1981, and may not be effective until December 31, 1981.

14. All the foregoing shall be subject to ratification by the signatories, as required.

Edward A. Hanley, General Chairman, BRAC

William F. Mitchell, General Chairman, IAM&AW—pending ratification

John McCabe for A. V. Robey, General Chairman, Boilermakers and Blacksmiths

J. J. Bove, General Chairman, IBEW

Thomas Firriolo, General Chairman, F&O #311

Angelo Mazzone, General Chairman, ARSA 851

W. M. Styziack, General Chairman, ARSA 851A

John Covello, Chairman, SMWIA

W. C. Caggiano, General Chairman, ARSA 853

D. B. Arter, General Chairman, ARSA 857

Richard Ravitch, Chairman, MTA

APPENDIX B

RECOMMENDED PROCEDURES FOR RESOLUTION OF RULE CHANGES AND BENEFITS

The Board recommends that the parties enter into a Memorandum Agreement that would contain the following principles :

Economic Rules

1. Each Union may elect to allocate all or part of its pro rata share of the 2.5 percent wage increase (effective January 1, 1981) for the purpose of "buying out" economic rules or benefits.

2. Such election must be made in writing to the Carrier on or before May 1, 1980, and must include a listing of all economic rules/benefits sought to be purchased with such allocated funds. Failure to make the election and to provide such list constitutes a waiver of such right, and the funds will be paid as wages.

3. The economic rules or benefits that may be negotiated are limited to those still before this Emergency Board as of December 28, 1979, and those rules or benefits that were the subject of negotiation between the Carrier and the ten other Unions as of December 14, 1979.

4. Carrier and the Union will negotiate for a period not to exceed 30 days on the rule or benefit sought.

5. If the parties fail to agree, either party may request that the matter be submitted to a three-member arbitration panel (one Carrier member, one Union member, and one Neutral). If the parties cannot agree to the selection of the Neutral, the selection will be made by the National Mediation Board.

6. The panel shall consider and determine (and reflect in its award) : the monetary value of the economic rule or benefit sought; the question of whether there is additional or indirect economic/monetary impact on the Carrier and other Unions; whether such rule or benefit sought would seriously impede the Carrier's ability to effectively operate the railroad or would adversely impact on the Carrier's labor relations with other Unions.

7. The award of the panel must be rendered not later than December 1, 1980, and will be a final and binding resolution of the matter in dispute during the term of the schedule agreement.

8. The costs and expenses of the Arbitration Panel shall be borne equally between the parties.

Non-Economic Rules

1. Commencing immediately upon the signing of this agreement, the parties shall begin negotiating the non-economic rules sought to be changed or amended by either party.

2. The non-economic rules sought to be changed or amended shall be limited to those identified in paragraph 3 above.

3. At the conclusion of a negotiating period of 90 days, any unresolved non-economic matter may be submitted by either party to an Advisory Fact-Finding Panel consisting of three members (one Union member, one Carrier member, and a Neutral member). If the parties cannot agree on a Neutral member, selection shall be made by the National Mediation Board.

4. The Advisory Fact-Finding Panel shall investigate promptly the facts as to the dispute and make a written report to the parties, setting forth advisory recommendations for resolution of the dispute.

5. The costs and expenses of the Advisory Fact-Finding Panel shall be borne equally between the parties.

Moratorium

1. There shall be no right to exercise self-help, either as to economic rules/benefits or as to non-economic rules, during the term of the schedule agreement between the parties.

2. There will be a moratorium with respect to all Section 6 Notices by either the Unions or the Carrier, which may not be served until October 1, 1981, and may not be effective until December 31, 1981.

APPENDIX C

EXECUTIVE ORDER 12182

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE LONG ISLAND RAIL ROAD AND CERTAIN OF ITS EMPLOYEES

A dispute exists between The Long Island Rail Road and certain of its employees represented by Participating Labor Organizations designated in list attached hereto and made a part hereof.

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 the authority vested in me by Section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), it is hereby ordered as follows :

1-101. *Establishment of Board.* There is established a board of three members to be appointed by the President to investigate this dispute. No member of the board shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier.

1-102. *Report.* The board shall report its finding to the President with respect to the dispute within 30 days from the date of this Order.

1-103. *Maintaining Conditions.* 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 Long Island Rail Road, or by its employees, in the conditions out of which the dispute arose.

JIMMY CARTER.

THE WHITE HOUSE,
December 14, 1979.

