Report

TO

THE PRESIDENT

BY

EMERGENCY BOARD No. 194

APPOINTED BY EXECUTIVE ORDER 12370, DATED JULY 8, 1982, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate the dispute between the Brotherhood of Locomotive Engineers and certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference.

(National Mediation Board Case No. A-10872)

WASHINGTON, D.C.

AUGUST 19, 1982

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *August 19, 1982.*

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

DEAR MR. PRESIDENT:

On July 8, 1982, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12370, you created an Emergency Board to investigate the dispute between the Brotherhood of Locomotive Engineers and certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference.

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 dispute.

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 dispute by the parties.

The Board acknowledges the assistance of David M. Cohen and Roland Watkins of the National Mediation Board's staff, who rendered valuable aid to the Board during the proceedings and in preparation of this Report.

Respectfully,

ARNOLD R. WEBER, *Chairman.*
JACOB SEIDENBERG, *Member.*
DANIEL QUINN MILLS, *Member.*

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Note: On September 22, 1982, Congress passed and President Reagan signed into law, PL 97-262, which provided that the Report and Recommendations of Emergency Board No. 194 shall be binding on the parties as though arrived at by agreement. PL 97-262 ended a strike by the Brotherhood of Locomotive Engineers which began at 12:01 a.m. on September 19, 1982.

I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 194 was created by President Reagan on July 10, 1982, by Executive Order 12370, signed on July 8, 1982, 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, a threatened strike by the Brotherhood of Locomotive Engineers (BLE) against certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference (NRLC) threatened substantially to interrupt interstate commerce to a degree such as to deprive the country of essential transportation service.

The President appointed Dr. Arnold R. Weber, President of the University of Colorado, as Chairman of the Board. Dr. Jacob Seidenberg, an arbitrator with substantial experience in the railroad industry, and Dr. Daniel Quinn Mills, Professor at the Harvard University Graduate School of Business Administration, were appointed as members of the Board.

II. PARTIES TO THE DISPUTE

A. The Organization

The Brotherhood of Locomotive Engineers (BLE) represents approximately 35,000 locomotive engineers on railroads in the United States. Some 26,000 engineers are employed by the carriers who are parties to this dispute.

B. The Carriers

The National Carriers' Conference Committee of the National Railway Labor Conference (NRLC) represents the major railroads in collective bargaining with the various labor organizations which represent rail industry employees. A complete list of the carriers involved in this dispute is attached to the Executive Order creating the Emergency Board, which is appended to this Report.

The railroads involved in this dispute operate approximately ninety percent of rail track miles in the United States, and include every major railroad except ConRail. Only Rhode Island, among the contiguous states, is not served directly by these railroads.

Freight hauling by American railroads now exceeds 900 billion revenue ton miles on Class I carriers, up substantially in recent years. Rail transportation accounts for almost 38 percent of ton miles, exceeding by a significant margin trucking, water, pipeline, or air transport. Although the railroads have increased dramatically their business, competition from other modes of transportation has

reduced the overall share of the market going to the railroads. While the total tonnage shipped has increased, the size of the nation's rail system has declined. Over the last decade, trackage has declined by 30,000 miles, and there has been a loss of over 100,000 railroad jobs.

III. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an organizational meeting in Chicago, Illinois, on July 15, 1982, at which the members met with Federal mediators and received a thorough briefing on the history of the dispute. By stipulation between the BLE and the NRLC, the Emergency Board requested that the NMB request an extension of the time for submission of its report to the President, from August 9, 1982, to August 19, 1982. On July 26, 1982, President Reagan approved the extension of time.

On July 20-21, 1982, the Board conducted on-the-record ex parte hearings with the BLE. Similar hearings were held with the NRLC on July 26-27, 1982, in Reston, Virginia. The hearings focused on a formal presentation of the parties' positions and their justifications for them, and resulted in 958 pages of transcripts and forty-nine exhibits.

Transcripts and exhibits of the formal ex parte hearings were exchanged in Washington, D.C., on July 28, 1982, and the parties were given time to review them and to prepare responses for subsequent on-the-record rebuttal sessions with the Board.

On August 4, 1982, the Board commenced such sessions with the NRLC, and on August 5, 1982, the BLE had its opportunity for rebuttal. On August 10, 1982, informal discussions between the parties were held in Chicago, Illinois. These efforts continued through August 12, 1982. They were recessed in order to give the parties additional time to consider the various issues in dispute. Final discussions were conducted in Washington, D.C., on August 16, 1982.

IV. HISTORY OF THE DISPUTE

On January 26 and February 2, 1981, the Brotherhood of Locomotive Engineers, the Organization, in accordance with Section 6 of the Railway Labor Act, served on the members of the NRLC notices of demands to amend numerous provisions of their collective bargaining agreements. On February 5, 1981, the NRLC served its Section 6 Notices requesting a substantial number of changes in the collective bargaining agreements.

After several months of negotiations during which the parties were unable to reach an agreement, the NRLC applied to the National Mediation Board (NMB) for mediation services in relation to the

Section 6 Notices served by the respective parties. This application was docketed as NMB Case No. A-10872. Mediation was undertaken under the auspices of Staff Mediation Director E. B. Meredith and NMB Chairman Robert O. Harris. Intensive mediation sessions were held in Washington, D.C., through the end of May 1982.

On June 1, 1982, the National Mediation Board proffered arbitration to the parties in accordance with Section 5, First, of the Railway Labor Act. The NRLC accepted the request but the Organization declined to enter into an agreement to submit the controversy to arbitration. Subsequently, the NMB notified the parties that it was terminating its mediation services on June 10, 1982.

On June 30, 1982, the Organization informed the NMB that its members would engage in a nation-wide strike commencing on July 11, 1982.

The National Mediation Board, pursuant to Section 10 of the Railway Labor Act, informed the President that in its judgment this dispute threatened substantially to interrupt interstate commerce so as to deprive a section of the country of essential transportation service.

V. REPORT AND RECOMMENDATIONS

A. Wages and Cost-of-Living Allowances

The NRLC has already reached agreement with eleven other labor organizations in national handling with respect to wage increases and a cost-of-living allowance (COLA). These agreements are retroactive to April 1, 1981, and extend to June 30, 1984. The NRLC offered the same pattern agreement to the BLE.

The pattern established with the other organizations provides:

1. Wage Increases

April 1, 1981	2%
October 1, 1981	3%
July 1, 1982	3%
July 1, 1983	3%

2. COLA

   Adjustments every July 1 and January 1 through January 1, 1984, of 1 cent per hour for each .3 point change in the Bureau of Labor Statistics CPI-W during the six-month periods ending in March and September, respectively. Adjustments are limited to 4% every six months and 8% per year.

3. Roll-In

   No roll-in until December 31, 1983, at which time the entire COLA in effect on January 1, 1983, will be rolled-in. On June 30, 1984, one-half of the outstanding COLA will be rolled-in.

The BLE has demanded the following wage and COLA provisions:

1. Wage Increases

April 1, 1981	15%
January 1, 1982	10%
January 1, 1983	10%

2. COLA
   Semi-annual adjustments of 1 cent for each .25 point rise in CPI-W City Average, with no maximum or cap.
3. Roll-In
   Immediate roll-in of all COLA increases.

In addition to these gains, BLE seeks to apply all general wage and COLA increases to overmiles, arbitraries, and special allowances; increase the fireman-off arbitrary (lonesome pay) by 50% plus future increases; increase the overmile rate to 1/100 of the basic daily rate; and increase the present 56 cents differential in local and way freight to 10% above through freight rates. The NRLC position on these issues is discussed below under the "Holddown" section of this Report.

The Board has carefully assessed the merit of the proposals by BLE, which seek to depart from the pattern settlement which has been reached between the NRLC and the eleven organizations. We note that the percentage increase in pay and benefits provided to employees under the pattern settlement is comparable to that received in other major collective bargaining agreements negotiated in the 1981 round of bargaining.

It is correct, as BLE points out, that the pattern settlement, under reasonable assumptions about future increases in the cost of living, provides smaller percentage increases for locomotive engineers than for other crafts due to the impact of the uniform cents-per-hour increases provided by the COLA on the higher level of pay received by the engineers. We have carefully reviewed assertions concerning the compression in pay rates which may have occurred between engineers and other crafts. BLE argues that this compression requires a higher cents-per-hour increase for engineers.

We are not persuaded by this argument. A study of *earnings* of the various crafts, as opposed to wage rates, indicates far less compression than BLE asserts. Further, some compression of rates has been a general phenomenon in major collective bargaining agreements in recent years. The position of locomotive engineers in the occupational earnings structure of the railroad industry is not so compressed currently as to justify a departure from the wage and benefit pattern that has been established in the industry.

Further, there are additional reasons not to disturb the pattern settlement which has been reached between the carriers and eleven organizations. The record of collective bargaining on the railroads creates an expectation that uniform and nondiscriminatory treat-

ment will be given to all crafts or classes of employess if stability of labor-management relations is to be preserved in this industry. Several previous Emergency Boards have reached the same conclusion. We do not find sufficient reason in the current situation to recommend any departure from the pattern settlement.

The BLE notes that the pattern settlement appears to be deficient in several aspects, making the 1981-82 pattern less favorable to employees than the 1978 pattern. First, there is a different schedule for COLA payments than in 1978; second, there is a different roll-in arrangement for COLA payments. Also, the pattern settlement continues the inclusion of a cap on the COLA, as was the case in the 1978 agreement.

The Board notes that there is an interplay between the COLA provisions, including the cap, and the level of general increases, which protects the carriers from uncontrolled pay increases during the term of this agreement, while providing reasonable economic gains for employees. On balance, the Board concludes that the pattern settlement provides an adequate basis for the wage and benefit adjustments for the BLE.

Therefore, it is recommended that the pattern settlement be accepted by the parties, and that other requests for increases in wage-related benefits be withdrawn.

B. Holddowns

The Carriers urge that the general wage increases and cost-of-living increases not be applied to overmiles, arbitraries, and special allowances. This proposal is linked to another Carrier request for the establishment of a Study Commission to focus on these elements of compensation. (The Study Commission is discussed in greater detail in a subsequent section of this Report.)

The basic unit of pay for freight and yard employees is either a basic day of eight hours or 100 miles run. As a practical matter, yard employees do not exceed the 100 miles, and therefore are effectively hourly employees. All of these employees receive the basic day's pay even if their assignments are completed in less than eight hours.

Overmiles are miles over 100 in a day, for which employees receive additional compensation. Until 1964, overmiles were compensated at a rate of 1/100 of the basic day's pay. From 1964 to July 1, 1968, the overmile rate was frozen as a consequence of the "White House Agreement", whereby special adjustments were made in the base pay of yard employees. Subsequent wage increases, including COLA, have been applied to overmiles. According to the Carriers, overmiles now constitute more than one-fourth of the total compensation for through freight service, and 13% of annual earnings for all operating employees.

Arbitraries and special allowances are payments for performing tasks which are paid in addition to the basic daily rate and overmiles. These arbitraries and special allowances constitute approximately seven percent of total earnings of operating employees.

Arbitraries and special allowances may be expressed in dollar amounts, hours, or miles. They may be fixed, such as the $4.00 per day arbitrary for operating without a fireman, or they may be subject to general wage and COLA increases, such as those expressed in time or miles. Examples of the arbitraries designated by the Carriers for the holddown include those paid for initial and final terminal delay, coupling air hoses, lonesome pay, and changing engines.

The Organization opposes any attempt to freeze overmiles, arbitraries and special allowances, either during the period of a study or thereafter. The Organization's proposals would apply all wage and COLA increases to these payments, as well as providing additional increases for some arbitraries.

The Board has determined that implementation of the Carriers' holddown proposal would have a significant impact on the magnitude of the pay increase which the pattern settlement would provide to employees represented by BLE. As noted above, overmiles and arbitraries constitute about twenty percent of the pay of operating employees. Thus, failure to apply the pay increases in the pattern settlement to these components of pay would reduce by a comparable amount the pay increases received by operating employees under the new agreement.

While there have been isolated instances of holddowns in the post-World War II period, the preponderant practice of the parties, including all major agreements in the last decade, is clear: Pattern increases have been applied to overmiles and to designated arbitraries and special allowances.

For what reasons do the Carriers propose a holddown? First, they view overmiles, arbitraries and special allowances as gross distortions of the wage structure which should be eliminated. Because of the importance of this issue to the overall wage structure, we recommend that this matter be studied in depth by the proposed Study Commission.

Second, the Carriers seek to use the holddown as leverage in their negotiations with the Organizations concerning overmiles and arbitraries. By denying the application of the wage and COLA increases to overmiles, arbitraries and special allowances, the Carriers hope to create a powerful negative incentive to induce the Organization to consider actively the revision of these pay practices.

We are not prepared to take this step. The Carriers seek the holddown for tactical purposes which would be improper for the Board to advance or endorse. In addition, the proposal for a holddown would be applied on a uniform basis without regard to the merit of

any particular pay practice, and without the guidance of the Study Commission that the Carriers press so vigorously. Thus, we recommend that the parties continue their established practice of applying the pattern settlement increases to overmiles, arbitraries and special allowances.

The Board is aware that certain arbitraries and special allowances on certain Carriers' properties do not provide for increases when there are general wage adjustments or COLA increases. The practice of the parties with respect to the application of these elements of arbitraries and special allowances should continue unchanged.

C. The Study Commission

The issue that commanded the most extended discussion by the Carriers is their proposal for the establishment of a "Joint Productivity Commission with finality". The Carriers urge that the Commission be tripartite in nature and be a mechanism for intensive review and negotiation of basic pay concepts and work rules. These include the basis of pay, the whole range of arbitraries, interchange service, and the road-yard division of work. The Carriers also contemplate that the Commission would deal with protection of employees and additional benefits, such as supplemental sickness and disability pay.

The proposal for the establishment of a Study Commission (as we refer to it), does not break new ground. As both parties testified, such a device occupies a venerable position in the history of railroad labor relations. The new element would be the introduction of "finality" into the Commission's determinations. That is, where the Carriers and the Organization fail to resolve their differences, the issues in dispute would be settled by final and binding arbitration.

The Carriers' argument for linking the Study Commission to binding arbitration is based on three elements. First, they assert that the record is clear that without "finality", the most searching review of pay provisions and work rules is unlikely to result in contract changes which are required in the new technological and market environment. And if the changes are forthcoming, the process is excruciatingly slow, so that serious economic harm will be inflicted on the industry in the interim. In particular, the Carriers cite experience with the Presidential Railroad Commission (PRC) in 1960-62, and the Standing Committees set up on the recommendation of Emergency Board No. 178. According to the Carriers, most of the recommendations of the PRC have not been implemented and the Standing Committees have not had a perceptible impact on the web of work rules and pay practices in the railroad industry. They further assert that this glacial pace of change can no longer be accepted in the face of heightened competition engendered by deregulation.

Second, the Carriers state that existing pay practices are broadly obsolete and give rise to severe inefficiencies in the utilization of manpower and equipment. Also, the current system of relating pay to mileage and the arbitraries leads to an irrational relationship between actual work performed by the operating employees and the distribution of individual earnings. In other words, the stakes involved in a revision of pay practices and work rules are sufficiently large to justify resort to final, binding arbitration in resolving interest disputes.

Third, the Carriers argue that the threatened imposition of binding arbitration will create incentives for the parties to reach agreement on a voluntary basis so that, in most cases, the final step will not be utilized. They note experience with the resolution of disputes involving interdivisional runs and pooled cabooses to support the notion that the primary effect of building "finality" into a system of dispute resolution is to induce the parties to avoid its imposition rather than to create a framework for widespread compulsion. In other words, the threat of final and binding arbitration will advance, rather than retard, voluntary agreement.

The Organization counters these assertions with traditional arguments against undermining free collective bargaining, embellished by recognition of the special history of labor relations in the railroad industry. It states that most of the arbitraries were negotiated voluntarily by the Carriers and were put into effect as the *quid pro quo* for settling existing disputes. For example, the air hose coupling arbitrary was introduced to resolve work jurisdiction disputes between carmen and trainmen. Similarly, lonesome pay for the locomotive engineer was adopted when the fireman was removed from most freight and yard service.

The Organization also contends that the Carriers are not blameless with respect to the limited achievements of prior study commissions. That is, sharp policy differences among the Carriers, which reflect different economic and operating conditions, have thwarted the development of the consensus that is necessary to carry out fruitful negotiations with the Organization. Moreover, the administration of the basis of pay and the system of arbitraries are both complicated and varied, so that effective negotiations on these issued are best carried out at the local, rather than the national level.

In our judgment, the question of imposing "finality", or binding arbitration, on the procedures of a Study Commission has the most serious implications for the nature of collective bargaining in the railroad industry. Undoubtedly, some of the work rules and arbitraries have outlived their usefulness and are not conducive to a modern, efficient railroad system. The dual basis of pay, which relates earnings to a combination of mileage traveled and elapsed time, has remained substantially the same for sixty-five years,

resisting sweeping changes in motive power, traffic control systems, and other key elements of railroad operation. And, as the Carriers assert, when adjustments in work rules and pay practices are introduced, they are generally the outcome of negotiations that extend far beyond the practical time frame of managerial requirements and most bargaining relationships. Progress on this front is likely to be seriously impeded by political considerations that play on both parties, the sheer complexity of the issues under consideration, and a multi-tiered bargaining structure that diffuses decision-making authority.

The key issue then, is whether these considerations justify a recommendation by the Board that the parties adopt, over the strong opposition of the Organization, a Study Commission approach which embraces final, binding arbitration. We do not believe that this course of action would be constructive or desirable. It may be true that binding arbitration is necessary in those situations where the parties are denied the usual forms of self-help associated with collective bargaining. Such is not the case in this industry. The Railway Labor Act imposes elaborate procedural requirements on the parties, but in the end both the Carriers and the Organizations are free to invoke a wide range of sanctions as part of the bargaining process. The substantive concerns expressed during the course of the formal hearings are themselves the product of collective bargaining. The fundamental principles of this institution should not be set aside because one of the parties finds the results to be onerous or perceives a chronic tactical disadvantage in negotiations. Binding arbitration is, of course, a widely accepted element in contract administration. It is quite another matter, however, to endorse the concept of "finality" in vital interest disputes. Indeed, a reasonable conclusion may be reached that the problems of collective bargaining in the railroad industry arise, in a large measure, because of the parties' excessive reliance on intervention by the Government and third-parties.

On weighing all of the arguments, we endorse the desirability of the broad Study Commission concept proposed by the Carriers. The testimony presented to the Board clearly demonstrated that an intensive review should be conducted by the parties of various work rules and pay practices in light of the new technological and economic circumstances of the industry. Lectures on the virtues of free collective bargaining, no matter how stern, will not change the present character of railroad collective bargaining. Accordingly, we recommend a set of guidelines that go beyond past experiences while stopping short of binding arbitration, which we believe would further weaken the bargaining process. These recommendations reflect our judgment that a more detailed structure should be specified for the Study Commission, while creating both incentives

and the opportunity for resolving differences through mutual agreement.

We recommend that a Study Commission be established by the parties in accordance with the following guidelines:

1. The Study Commission should be organized on a tripartite basis. It should be composed of an equal number of Carrier and Organization representatives. The chairman should be a neutral who should be selected by mutual agreement of the parties within 45 days after the ratification of the new labor agreement. In the event that the parties fail to agree on a selection of a neutral within 30 days, the parties shall confer with the Chairman of the National Mediation Board regarding the selection.

2. The chairman shall confer promptly with the parties to establish the agenda of the Study Commission. If the parties fail to agree on the agenda in 30 days, it shall be determined by the neutral. In any case, the agenda should be restricted to a limited number of items. Drawing on the concerns expressed by the parties in their testimony, the Board recommends that the Commission's agenda should be limited to the following issues: the basis of pay and related alternatives, initial and final terminal delay, the air hose coupling arbitrary, the exchange of engines arbitrary, road/yard restrictions, supplemental sick pay, disability pay, personal leave, and principles and procedures for stabilizing the pay structure of the operating crafts in response to earnings adjustments arising from crew consist agreements.

3. In consultation with the parties, the neutral shall establish a time table for bilateral negotiations between the Organization and Carrier representatives on the designated issues. In general, this period of bilateral negotiations should not exceed 90 days. If the parties fail to reach agreement or demonstrate evidence of substantial progress in resolving the issues within the specified time period, the neutral shall convene hearings on the matter in dispute and formulate substantive guidelines to further advance negotiations. The parties will then negotiate within these guidelines for a period not to exceed 60 days.

4. If, at the end of this second negotiating period, no agreement is reached, the neutral shall exercise the right to publish a non-binding recommendation concerning the unresolved issue or issues.

5. On or before December 1, 1983, the chairman shall issue recommendations. If, after 60 days, the parties have not been able to resolve the matters at issue, either party may serve

proposals within the framework of the recommendations, and pursuant to Section 6 of the Railway Labor Act.

6. Most of the issues proposed for the agenda are equally applicable to the other organization of operating crafts. Therefore, the Board strongly recommends that active consideration be given to establishing a combined Study Commission or insuring that there is effective coordination between the two Commissions through the appointment of the same neutral for both Commissions.

We believe that the structure and operating guidelines of the proposed Study Commission will facilitate progress by the parties in resolving many important and complex problems. The need to modify long-established work rules and practices to conform to changing conditions is overdue. As in all such experiments, success or failure will depend, in a large measure, on the good faith of the parties and their commitment to make the procedures work. We fully expect that future Emergency Boards will, as we have done, carefully weigh the experience of the Study Commission concept in developing their recommendations if subsequent disputes arise over the same set of issues that we have addressed here.

D. Expenses Away from Home

Among its various proposals to adjust total compensation, the Organization seeks to enhance existing provisions concerning expenses away from home. The proposals include increasing the current meal allowance, changing the basis for calculating lodging allowances, and extending the coverage of away from home expenses to employees who are not presently entitled to such payments.

The weight of the testimony before the Board, and apparently the precedent negotiations, related to the meal allowance. An explicit meal allowance was first agreed to by the parties in 1964. An initial allowance is provided to an operating employee when held for four hours or more at a designated terminal. An additional stipend is payable after the employee is held for eight subsequent hours. When it was first instituted, the allowance was $1.50. It has been adjusted twice, in 1972 and 1978. The allowance is presently set at $2.75.

The Organization has pressed to raise the meal allowance to $6.00, citing the erosion by inflation of the real value of this payment since it was instituted in 1964. The earlier adjustments arrested this decline, but the sharp rise in the meals-away-from-home component of the Consumer Price Index since the last increase in 1978 has further depressed the purchasing power of the allowance. The Carriers, on the other hand, contend that the $2.75 is supplemented by 12 cents

specific work situation justified such a payment. They also assert that the meal allowance for maintenance of way employees—the other group which receives such a payment—is not as generous as the formula applicable to the operating crafts. In recognition of the impact of inflation, however, the Carriers have offered to increase the meal allowance by 75 cents to $3.50, under the existing rules for eligibility.

We recommend that an adjustment be made that will restore the real value of the meal allowance when it was last increased in 1978, but does not compensate for the loss of purchasing power since the allowance was instituted in 1964. In previous negotiations the parties accepted fluctuations in the real value of the payment; but, inflation has been so prodigious since 1978 as to justify a more generous increase than has been offered by the Carriers. Insufficient evidence was offered to support any modification of the other rules governing expenses away from home, and we do not recommend that changes be made in these provisions.

E. Moratorium

At the time the BLE and Carriers executed the 1978 Agreement, they also executed a side letter which stated that the moratorium provision of the Agreement was not applicable either to pending or prospective notices that sought to adjust compensation relationships between the engineer and other members of the crew, where compensation had been modified for those other crew members as a result of a change in the crew consist. A similar exception had been agreed upon in the 1975 Agreement.

The Carriers urge that we recommend the elimination of this exception to the Moratorium. They further ask the Board to recommend a comprehensive Moratorium provision that would ensure stable labor relations and certainty of labor costs during the term of the Agreement.

The Carriers concede that they made an error when they granted the above-cited exceptions, and state that to accede to the BLE's request for a "flexible" moratorium will ensure that the two Operating Organizations will continue to "leap frog" over each other in order to gain a "lonesome pay" advantage to the financial detriment of the Carriers. The Carriers insist that to permit the BLE to serve a "crew consist" notice in those instances where individual carriers have negotiated a crew consist agreement with the United Transportation Union (UTU), results in the UTU subsequently filing a Section 6 Notice to again adjust compensation because the carrier and the BLE have negotiated a parallel agreement. The Carriers assert that this leap frogging must stop. They also contend that they are entitled to correct their prior mistake, and that the Board should not perpetuate this sequence of events.

The BLE accepts the general concept of the Moratorium as a means for the maintenance of labor peace and stability of labor costs. It strenuously objects, however, to the Carriers' proposal to eliminate the existing exception which would bar it from progressing proposals for an engineer wage differential on those properties where the carrier and the UTU had executed a crew consist agreement. The BLE insists that it must preserve the means to protect the traditional differential in pay between the engineer and other train crew members. It stresses that it cannot accept the crew consist agreements between the UTU and the Carriers which relegate the engineer's pay position to a subordinate status.

The BLE asserts that the Carriers recognized the soundness of its position when they agreed to the moratoria exceptions in the 1975 and 1978 Agreements. The initial reasons for continuing the exception have not lost their validity. The BLE further argues that the Board would create an inequitable situation if it denied the Organization's request to retain its right to negotiate with the Carriers on this issue.

The Board recognizes and accepts the need of the parties to enjoy a degree of surcease from prolonged bargaining. It is an established practice in the American collective bargaining system that, after the ratification of the agreement, the parties should enjoy a period of labor stability. While the Board is aware of the BLE's problem, we give somewhat greater weight to the unsettling impact on industry labor relations of continuous negotiations between the parties over the issue of adjusting the pay differential between members of the train crew.

The Board, therefore, recommends that BLE be allowed to file new notices and to progress those notices already filed, dealing with changes in engineer compensation where there is a change in the compensation relationship as a result of the negotiation of a crew consist agreement between a given Carrier and the UTU. However, during the life of this Agreement, the BLE may only progress such notices within the peaceful procedures of the Railway Labor Act for resolving disputes.

Notwithstanding this limited exception, the Board strongly urges the parties to accept the discipline underlying a comprehensive moratorium so that they will enjoy labor stability during the term of the agreement. Moreover, they should not attempt to erode this Moratorium provision by creating loopholes or technical evasions.

F. Withdrawal of Notices

During their presentations, the parties put forward various other proposals concerning changes in the Agreement. These proposals

were advanced either during the formal hearings or the informal discussions between the parties and the Emergency Board. To the extent that these proposals have not been treated above, or referred to the Study Commission, the Board recommends that they be withdrawn.

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Respectfully submitted,

ARNOLD R. WEBER, *Chairman*
JACOB SEIDENBERG, *Member*
DANIEL QUINN MILLS, *Member*

APPENDIX

EXECUTIVE ORDER 12370

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND CERTAIN RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE OF THE NATIONAL RAILWAY LABOR CONFERENCE

A dispute exists between the Brotherhood of Locomotive Engineers and certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference designated on the 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:

Section 1. *Establishement of the Board.* There is established effective July 10, 1982, 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.

Section 2. *Report.* The board shall report its finding to the President with respect to the dispute within 30 days from the date of its creation.

Section 3. *Maintaining Conditions.* As provided by Section 10 of the Railway Labor Act, as amended, from the date of the creation of the Emergency Board 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 or by their employees, in the conditions out of which the dispute arose.

RONALD REAGAN

THE WHITE HOUSE,
July 8, 1982.

APPENDIX OF RAILROADS

Ann Arbor Railroad
Atchison, Topeka and Santa Fe Railway Company
Belt Railway Company of Chicago
Boston and Maine Corporation
Burlington Northern Railroad Company
Camas Prairie Railroad Company
Canadian National Railways:
    St. Lawrence Region, Lines in the United States
Central of Georgia Railroad Company
Central Vermont Railway, Inc.
The Chessie System:
    Baltimore and Ohio Railway Company
    Baltimore and Ohio Chicago Terminal Railroad Company
    Chesapeake and Ohio Railway Company
    Staten Island Railroad Corporation
Chicago and North Western Transportation Company
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Colorado and Southern Railway Company
Denver and Rio Grande Western Railway Company
Detroit, Toledo and Ironton Railroad Company
Elgin, Joliet and Eastern Railway Company
The Family Lines:
    Seaboard Coast Line Railroad Company
    Gainesville Midland Railroad Company
    Louisville and Nashville Railroad Company
    Clinchfield Railroad Company
    Georgia Railroad
    Atlanta and West Point Railroad Company:
        The Western Railway of Alabama
Ft. Worth and Denver Railway Company
Grand Trunk Western Railroad Company
Houston Belt and Terminal Railroad Company
Illinois Central Gulf Railroad Company
Indiana Harbor Belt Railroad Company
Joint Texas Division of the CRI&P and FW&D Railway Company
Kansas City Southern Railway Company:
    Louisiana and Arkansas Railway Company
Longview, Portland and Northern Railway Company
Minnesota Transfer Railway Company
Missouri-Kansas-Texas Railroad Company:
    Oklahoma, Kansas and Texas Railroad Company
Missouri Pacific Railroad Company
New York Dock Railway
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk and Western Railway Company
Northwestern Pacific Railroad Company
Ogden Union Railway and Depot Company

APPENDIX OF RAILROADS—Continued

Pittsburgh and Lake Erie Railroad Company
Pittsburgh, Chartiers & Youghiogheny Railway Company
Portland Terminal Railroad Company
Richmond, Fredericksburg and Potomac Railroad Company
Sacramento Northern Railway
St. Louis Southwestern Railway Company
Soo Line Railroad
Southern Pacific Transportation Company:
    Western Lines
    Eastern Lines
Southern Railway Company:
    Alabama Great Southern Railroad Company
    Atlantic and East Carolina Railway Company
    Terminal Railroad Association of St. Louis
Toledo Terminal Railroad Company
Union Pacific Railroad Company
Western Pacific Railroad Company
Youngstown and Southern Railway Company