

Report
TO
THE PRESIDENT
BY
EMERGENCY BOARD
No. 196

**APPOINTED BY EXECUTIVE ORDER 12384, DATED
OCTOBER 1, 1982, PURSUANT TO SECTION 510 OF
THE RAIL PASSENGER SERVICE ACT, AS AMENDED**

WASHINGTON, D.C.
DECEMBER 6, 1982

I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 196 was created by President Reagan on October 1, 1982, by Executive Order 12384, pursuant to Section 510 of the Rail Passenger Service Act, as amended by the Northeast Rail Service Act of 1981 (NERSA), 45 U.S.C. Section 590. The Board was ordered to investigate the dispute between the Southeastern Pennsylvania Transportation Authority (SEPTA), the Delaware Transportation Authority (DTA), and certain labor organizations representing Consolidated Rail Corporation (Conrail) employees to be transferred to SEPTA, pursuant to NERSA.

The President appointed Dr. Herbert R. Northrup, Professor of Industry and Director of Industrial Research and Chairman of Labor Relations Council at the Wharton School, University of Pennsylvania, as Chairman of the Board. Marjorie B. Broderick, Assistant Dean of Temple University Law School and Morris Gerber, Attorney and former County Judge of Montgomery County, Pennsylvania, were appointed as Members of the Board.

II. PARTIES TO THE DISPUTE

A. THE ORGANIZATIONS

The fifteen labor organizations involved in this dispute are:

- American Train Dispatchers Association
- American Railway and Airway Supervisors, a
Division of the Brotherhood of Railway,
Airline and Steamship Clerks, Freight
Handlers, Express and Station Employees
- Brotherhood of Locomotive Engineers
- Brotherhood of Maintenance of Way Employees
- Brotherhood of Railway, Airline and Steamship
Clerks, Freight Handlers, Express and
Station Employees
- Brotherhood Railway Carmen of the United States
and Canada
- Brotherhood of Railroad Signalmen
- International Association of Machinists and
Aerospace Workers
- International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers and Helpers

International Brotherhood of Electrical Workers
 International Brotherhood of Firemen and Oilers
 Railroad Yardmasters of America
 Sheet Metal Workers' International Association
 Transport Workers Union of America
 United Transportation Union

In 1981, nearly 1,500 Conrail employees were engaged in providing passenger service, 1,400 of whom were covered by collective bargaining agreements with the above labor organizations.

B. THE CARRIER

SEPTA was established to provide a uniformed transportation system for the five county metropolitan Philadelphia area. Philadelphia, Bucks, Chester, Delaware and Montgomery Counties. Four separate, but integrated divisions form the basis of SEPTA's operations: the City Transit Division, formerly the Philadelphia Transportation Company, which provides service generally within Philadelphia's city limits and into three surrounding counties; the Red Arrow Division, formerly operated by the Philadelphia Suburban Transportation Company, which provides service primarily in Delaware and Montgomery Counties, as well as limited service within the Philadelphia city limits; the Frontier Division, which is an extension of the former Schuylkill Valley lines and provides service in Norristown and the surrounding area; and the Trenton Phila Coach Company, which operates service primarily between Trenton and the Bridge and Pratt Street Terminal in Philadelphia.

In providing this service, SEPTA utilizes the following modes of transportation:

Rapid Rail

A fleet of 405 electrically powered cars provides this service on lines running not only through Philadelphia but neighboring cities as well.

Light Rail (Streetcar and Subway Surface)

SEPTA uses 305 electrically powered vehicles on a combination of exclusive and mixed right-of-ways located in the city of Philadelphia and Delaware County. These vehicles constitute 11.2% of SEPTA's total fleet of vehicles.

Trackless Trolley

The 110 electrically powered trolley coaches operated by SEPTA on five routes throughout Philadelphia constitute only 4.1% of the Carrier's power source.

Buses

The largest portion of SEPTA's service, 56.7%, is provided by diesel powered buses. These vehicles serve Philadelphia, Bucks, Chester, Delaware and Montgomery Counties.

Commuter Trains

Use of this mode constitutes only 13.2% of SEPTA's power source. These trains are currently operated by Conrail. This service is provided under an operating agreement that Conrail has negotiated with SEPTA, the owner of much of the track, stations and operating equipment. SEPTA determines the services to be performed by Conrail and sets the fare structure.

SEPTA currently transports approximately 1.2 million passengers daily, 1.1 million of whom utilize buses, rapid rail vehicles, light rail vehicles and trackless trolley coaches, while only 90,000 passengers ride the currently Conrail operated commuter trains. The chart below shows the percentage of daily SEPTA passengers utilizing each mode of transportation:

Type	Passengers Per Day	Percentage	Passenger Miles Per Day	Percentage
Rapid Rail	310,600	26	1,683,000	35
Light Rail	138,900	12	321,000	7
Trackless Trolley	49,400	4	94,000	2
Buses	605,500	50	1,593,000	34
Commuter Trains	90,000	8	1,053,000	22
(Currently Conrail Operated)				

III. HISTORY OF THE DISPUTE

The Northeast Rail Service Act of 1981, which amended the Rail Passenger Service Act (RPSA), requires that Conrail terminate its rail passenger service operations by January 1, 1983. This transfer is allowed in preparation for the Federal government's planned sale of Conrail's freight operations to the private sector. Since 1976, Conrail has provided passenger service under agreements with a number of state and local governmental transportation authorities. These authorities have decided to operate the service themselves, either directly or through contractors, once Conrail ceases to provide passenger service. Commuter rail service in the metropolitan Philadelphia area, currently operated by Conrail's Penn Central and Reading Lines, will be transferred to SEPTA on January 1, 1983.

DTA will not operate any rail service but will contract with SEPTA for its services in the Wilmington area.

Under Section 508 of RPSA, as amended by NERSA, SEPTA, Conrail and representatives of the pertinent labor organizations were given until May 1, 1982, to enter into negotiations for an implementing agreement which would:

1. Determine the number of employees to be transferred to the commuter authority;
2. Identify the specific employees of Conrail to whom the commuter authority offers employment;
3. Determine the procedure by which the employees may elect to accept employment with the commuter authority;
4. Determine the procedure for acceptance of such employees into employment with the commuter authority;
5. Determine the procedure for determining the seniority of the employees in their respective crafts or classes with the commuter authority. This procedure should preserve the employees' prior seniority rights to the extent possible;
6. Ensure that the employees will be transferred to the commuter authority no later than January 1, 1983; and
7. Ensure the retention of prior seniority on Conrail of employees transferring to the commuter authority while providing for the least disruption to the operations of Conrail or the commuter authority.

In accordance with the above mandate and criteria, Conrail, SEPTA, and the labor organizations attempted to negotiate an implementing agreement. Unable to reach an agreement, the parties notified the National Mediation Board (NMB) of their inability to successfully resolve the dispute.

On September 7, 1982, the NMB, pursuant to its statutory responsibilities under Subsection 508 (d) of RPSA, as amended by NERSA, ordered that arbitration proceedings be conducted with the following groupings as parties: 1) SEPTA, Conrail, operating unions, and non-operating unions and 2) Delaware, Maryland, Conrail, operating unions, and non-operating unions.

The NMB appointed Francis X. Quinn as the neutral referee to resolve all implementing agreement disputes between SEPTA, Conrail and the labor organizations. Mr. Quinn issued his awards on October 10, 1982.

Section 510 (a) of RPSA, as amended by NERSA, required that the parties enter into new collective bargaining agreements with respect to rates of pay, rules and working conditions by September 1, 1982. Unable to successfully and timely resolve this dispute, SEPTA, the Northeast Commuter Services Corporation and Brotherhood of Locomotive Engineers requested that the President establish an

emergency board.

IV. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an organizational meeting in Philadelphia, Pennsylvania, on October 11, 1982, during which the Members and the staff were briefed on the history of the dispute and met with all the parties. On or before October 23, 1982, the parties timely submitted written statements of position regarding outstanding collective bargaining issues.

On October 26, 1982, the Board conducted a public hearing on the dispute. The parties were given full and adequate opportunity to present evidence and arguments before the Board and a formal record was made of the proceeding. Board Members questioned the parties with respect to matters not raised or not sufficiently developed.

In accordance with Section 510 (c) of RPSA, as amended by NERSA, the Board submitted its Initial Report to The President on November 1, 1982.¹ In its Report, the Board urged the parties "to engage immediately in direct and meaningful negotiations to resolve this dispute." The Board also stated its belief that any settlement must be based on "local conditions" and that the employees who are to be transferred must be treated with "dignity, decency and humanity."

The dispute was not resolved within 15 days after the issuance of the Initial Report. Thus, as required by statute, the Board directed the parties to submit final offers for settlement of the dispute. The parties agreed to extend the period for submission of final offers and such extension, to November 23, 1982, was approved by The President. Those submissions were timely received.

V. LABOR ORGANIZATIONS' FINAL OFFERS

Fifteen labor organizations submitted final offers to the Board for settlement of the dispute. These final offers constituted hundreds of pages and as such were too voluminous to reproduce in this Report. The final offers submitted are summarized below.

A. AMERICAN TRAIN DISPATCHERS ASSOCIATION

The American Train Dispatchers Association (ATDA) submits as its final offer a proposal which is almost identical to the current collective bargaining agreement in effect between ATDA and Conrail. ATDA contends that the time constraints in the statute have not enabled the Organization to engage in meaningful negotiations.

¹The text of the Initial Report appears as Appendix B.

**B. AMERICAN RAILWAY AND AIRWAY SUPERVISORS. A DIVISION OF THE
BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES**

The American Railway and Airway Supervisors (ARASA), a division of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, has proposed its submission of October 23, 1982, as the Organization's final offer.

C. BROTHERHOOD OF LOCOMOTIVE ENGINEERS

As its final offer, the Brotherhood of Locomotive Engineers (BLE) submitted the new collective bargaining agreement between BLE and the Amtrak Commuter Services Corporation (Amtrak). This agreement calls for the eventual elimination of the dual basis of pay and other arbitraries. Under this agreement, a basic hourly rate is established. Necessary side letters were also proposed. BLE feels that this proposal recognizes "the necessity of running a modern, efficient commuter operation, and at the same time, considers the historic traditions of the railroad industry."

D. BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

The Brotherhood of Maintenance of Way Employees submitted a document entitled "Agreement between Southeastern Pennsylvania Transportation Authority and the employees represented by Brotherhood of Maintenance of Way Employees - Track and Bridge and Building Department Employees," as its final offer. The proposed agreement covers rates of pay, hours and work rules.

**E. BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES**

Two final offers were submitted by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC). One would cover Clerical, Office, Station and Storehouse employees and the other Station, Tower and Telegraph Service employees. Under these proposals, employees would retain the same rates of pay, fringe benefits, and work rules currently enjoyed at Conrail.

F. BROTHERHOOD OF RAILROAD SIGNALMEN

The existing agreement applicable between Conrail and the Brotherhood of Railroad Signalmen (BRS) was proposed by the Organization as its final offer for settlement of this dispute. In addition,

BRS proposed that the terms and conditions, including the moratorium provision, of the National Agreement be applied.

G. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

The final offer from the International Association of Machinists and Aerospace Workers (IAM & AW) is the current collective bargaining agreement between the IAM & AW and Conrail. Previously sought after increases in wages and health and welfare benefits were withdrawn.

H. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS

The final offer of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers would allow its represented employees to retain the same wages, fringe benefits and work rules currently in effect on Conrail. The Organization contends that the wages and benefits should not be less than those in the agreement dated December 7, 1981, between the Organization and the National Carriers Conference Committee.

I. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

As its final offer, the International Brotherhood of Electrical Workers (IBEW), proposes that the parties adopt the rules, wages and working conditions of the Conrail agreement covering the Maintenance of Equipment Department, Electric Traction Department, Communication Workers and Assistant Engineers, Supervisors, Assistant Supervisors and Foremen in the Electric Traction Department. In addition, IBEW seeks certain benefits in the National Agreement. As part of its offer, IBEW proposes a wage increase.

J. INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS

Like so many of the above organizations, the International Brotherhood of Firemen and Oilers selected the Conrail agreement as its final offer. The Organization also seeks a 12% wage increase and improvements in several benefits.

K. RAILROAD YARDMASTERS OF AMERICA

The Railroad Yardmasters of America (Yardmasters) has submitted a final offer which is virtually identical to the existing Conrail agreement.

L. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

It is the position of this Organization that sheet metal workers transferred to SEPTA should work under the terms of the Conrail agreement.

M. TRANSPORT WORKERS UNION OF AMERICA

The final offer of the Transport Workers Union of America (TWU) is the present collective bargaining agreement between Conrail and the TWU.

N. BROTHERHOOD RAILWAY CARMEN OF THE UNITED STATES AND CANADA

This Organization has also submitted its collective bargaining agreement with Conrail as its final offer.

O. UNITED TRANSPORTATION UNION

For historical reasons, the United Transportation Union (UTU) has three divisions of the Union representing certain employees of Conrail. UTU has thus submitted three final offers.

In one final offer, the UTU proposed the collective bargaining agreement which was signed with Amtrak on November 8, 1982, with certain modifications. This agreement lifts restrictions on certain work rules and eliminates that dual basis of pay and constrictive allowance payments.

As another final offer, the UTU proposed an agreement identical to its submission of October 23, 1982.

Finally, in its third offer, the UTU submitted its position statement of October 23, 1982.

VI. SEPTA'S FINAL OFFERS

SEPTA's final offer submission consists of four proposed labor agreements between SEPTA and:

1. Brotherhood of Locomotive Engineers and The United Transportation Union
2. Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees
3. Railroad Yardmasters of America, the American Railway and Airway Supervisors and the American Train Dispatchers Association
4. Brotherhood of Maintenance of Way Employees, the International Brotherhood of Electrical Workers, the Brotherhood of Railroad Signalmen, the Brotherhood Railway Carmen of the

United States and Canada, the International Association of Machinists and Aerospace Workers, the Sheet Metal Workers' International Association, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, the International Brotherhood of Firemen and Oilers, and the Transport Workers Union of America

SEPTA's final offer is composed of two elements - a basic labor agreement, and a transition program. The basic agreements incorporate current transit employee wage rates. The proposed work rules are predominately transit rules. SEPTA contends that these "local conditions" are necessary if the system is to continue to function. The transition program recognizes the adverse economic impact of imposing transit system conditions upon the employees who will be transferred. It attempts to minimize this impact by providing supplemental wage payments and certain supplemental benefits. The payments are designed so that no Conrail employee will be "significantly disadvantaged." SEPTA states that it will not provide employment "to more employees than it actually needs to operate the service." Admittedly, there will be individuals who will become unemployed if SEPTA's version of work rules go into effect. It is SEPTA's position that Congress has provided for these employees through a federally funded assistance program.

The proposed wage rates are those currently in effect on SEPTA. These rates will be adjusted by 3% increases effective July 1, 1983; July 1, 1984; and July 1, 1985. There will also be cost-of-living adjustments. Contrary to most railroad agreements, SEPTA would base such adjustments on the Philadelphia All Urban Consumers Index rather than a national Consumer Price Index figure. Also, there would be only one annual adjustment unlike most railroad agreements which make several adjustments each year. For purpose of wage progression (a new concept to the Conrail employees), transferred employees commencing work on January 1, 1983, will be credited for years of service with Conrail.

All transitional payments will apply only to employees transferring to SEPTA on January 1, 1983. These payments will be paid on a "regular payroll period basis." The transitional wage payment program would freeze the relevant Conrail wage rate at its August 1, 1982, level. SEPTA would pay the difference between the prevailing SEPTA wage rate and the Conrail rate. Such payment would continue only until the SEPTA rate equals the Conrail rate or until June 30, 1986, whichever is earlier. For operating employees, the payments would be capped at total annual compensation of \$35,000 for engineers and \$31,000 for conductors. SEPTA proposes a basic crew of one engineer and one conductor. Few, if any, trainmen would be employed and thus subject to transition benefits. SEPTA states that it "will add passenger

attendants where necessary to collect tickets. These passenger attendants will receive the wage rate set forth in the basic labor contract and will not be eligible for a supplemental payment." While the above mentioned caps on compensation for operating employees could result in reduced wages, the supplemental transition payments assure that eligible employees will not be "significantly disadvantaged" as a result of their transfer to SEPTA.

SEPTA contends that it is not subject to the Railroad Retirement Act (the Act). SEPTA proposes that all employees vested in Railroad Retirement receive the same level of benefits, including spouse's pensions, cost-of-living increases, death benefits and disability benefits as provided by that program. Such employees would have to continue to make contributions equal to those required by the Act to a separate SEPTA pension plan. That plan would provide the benefits less the vested benefits provided by the railroad retirement plan. Nonvested employees (those with less than 120 months of credited service under the Act) will be covered by the SEPTA pension plan. Conrail service will be credited in determining benefits under the SEPTA plan.

Health and Welfare benefits (including hospital, surgical, life, accidental death, and dismemberment, major medical, dental and early retirement major medical protection) have been the area of least difference in SEPTA's basic agreements and the Conrail agreements. In this area, SEPTA has modified its previous position of October 23, 1982. It now proposes that all "who transfer to and commence work for SEPTA as of January 1, 1983" will have substantially the same level of benefits now enjoyed. In addition, SEPTA also now proposes to pay the entire cost of these benefits as is currently done under the Conrail agreements.

SEPTA proposed 11 holidays for both operating and nonoperating employees. Currently, certain operating employees do not receive paid holidays under the Conrail agreements.

SEPTA proposes the same level of benefits currently in effect on Conrail regarding vacations, death in family, and jury duty. A paid sick leave plan is also proposed which provides for up to 150 days of leave in a twelve month period. This plan is in effect for other transit employees.

In the area of grievance handling, SEPTA proposes a major change from railroad practice. SEPTA's proposal entails a four step grievance handling process with the final step being arbitration. If arbitration is invoked the arbitrator's decision must be rendered within 30 days of the hearing. Arbitration costs would be shared by the parties. This would replace the current railroad system, including use of the National Railroad Adjustment Board (Adjustment Board). The unions or an individual can now have grievances heard by the respective division of the Adjustment Board at no cost to the parties.

SEPTA feels that scope rules designed to limit work assignments to specific labor organizations are responsible for low productivity, and are based on an outmoded craft structure. SEPTA would replace the Conrail scope rules with a "more flexible and economic system generally found in the transit industry."

SEPTA believes that the additional funding necessary to implement its proposals would not be forthcoming unless new collective bargaining agreements were reached which (1) would provide the transition benefits only for a specified time period and (2) allow SEPTA to effectuate transit system work rules that it feels are essential to achieve operating efficiencies and cost reductions. SEPTA feels that without "transitional funding" it cannot implement its proposed contracts, and, without those agreements, the rail commuter system will not survive.

VII. SEPTA'S FINANCIAL CHARACTERISTICS

SEPTA's financial plight is a matter of public record. SEPTA's situation is so severe that it will not be able to fund the commuter rail service past February 1983, unless it obtains additional funding. As the figures below project, additional funding will be needed for years to come:

ACTUAL OPERATING DEFICIT FOR THE FISCAL YEAR ENDING JUNE 30, 1982: PROJECTED OPERATING DEFICITS FOR THE FISCAL YEARS ENDING JUNE 30, 1983 THROUGH 1985
ASSUMING EXISTING COST LEVELS WITH NO INCREASES AND CONTINUED FEDERAL OPERATING SUBSIDY THROUGH 1985

INCOME	(Amounts in Millions)			
	Actual		Projected	
	FY 1982	FY 1983	FY 1984	FY 1985
Revenue	\$44.4	\$42.5	\$44.6	\$46.9
Subsidy	44.4	37.7	40.6	44.1
Total Income	88.8	80.2	85.2	91.0
Operating Expense	98.4	98.4	98.4	98.4
Unfunded Deficit	\$(9.6)	\$(18.2)	\$(13.2)	\$(7.4)

The governing legislation (Pennsylvania Urban Mass Transportation Law) requires SEPTA to "maintain at all times a fast, reliable and economical transportation system suitable and adapted to the needs of the municipalities served by (it) and for safe, comfortable and convenient service." In an effort to blunt the evermounting deficits, SEPTA made the following reductions on its commuter railroad system in 1981:

Units	Oct. 15, 1980	Oct. 15, 1981	Percent Reduction
Route Miles	364.47	245.57	32.6
Weekday Trains	791	555	29.8
Annual Train Miles	5,057,115	3,177,004	37.1
Annual Car Miles	11,979,033	9,031,483	24.6
Average Cars/Elec. Train	2.46	2.84	(15.4)
Road T & E Assign.	459	330	28.1

SEPTA derives its funding from two main sources - passenger fares (and other revenues) and subsidies (Federal, State and Local). Passenger fares and other revenues cover 51% of SEPTA's expenses, while Federal (10%), State (25%), and Local (10%) subsidies cover only 45%, leaving 4% of SEPTA's expenses unfunded. No evidence has been presented to this Board to show that subsidies will be increased in the future to cover SEPTA's expenses. The prospect that the State will materially increase SEPTA's funding is remote. Evidence presented shows declining subsidies for SEPTA from the Federal Government.

SEPTA is not supported by any specific tax base like many other transportation authorities. Such tax bases guarantee revenues. There are no indications that SEPTA seeks such a source or would be able to obtain one if it did.

Passenger revenues have increased four times since 1979. However, the figures below demonstrate that higher fares result in a substantial loss of passenger traffic. In view of this demand elasticity, any future attempt to increase fares or curtail services will have a negative result on SEPTA revenue.

COMMUTER RAILROAD FARE INCREASES APRIL 1, 1979 TO JANUARY 1, 1981 AND
ANNUAL PASSENGERS CARRIED ON THE COMMUTER RAILROAD SYSTEM FOR THE FISCAL
YEARS 1979 THROUGH 1982

Fare Increases		Annual Passengers Carried in Millions	
Date	Percentage	Fiscal Year Ended June 30.	Number of Passengers
April 1, 1979	10	1979	31.5
April 7, 1980	10	1980	32.2
July 25, 1980	30	1981	27.1
January 1, 1981	25	1982	21.8
Effective Fare Increase - 97%		Reduction in Passengers - 31%	

VIII. SELECTION OF THE FINAL OFFERS

A.

The concept of final offer resolution of a collective bargaining dispute is not a new one. However, the manner in which the term is used in Section 510 of RPSA, as amended by NERSA, is unique and as such warrants comment by this Board.

In most instances, the submission of a final offer is the last step in the collective bargaining process. Parties who have been unable to successfully resolve their disputes present final offers to a neutral who renders a final and binding decision on the offers. The decision then resolves the dispute. It is important to note in such cases that the method of final offer resolution removes the parties' right of self-help and assures a resolution of the dispute.

The present statute does not embody the typical meaning of final offer as it is stated above. The Board notes that selection of a final offer does not resolve the dispute but is just another step in this process. Moreover, the few pages constituting the legislative history do not provide any guidance to the Board in its effort to fulfill the mandate of Executive Order 12384.

Thus, this Board before it selects the most reasonable final offer must give its interpretation of final offer. Final offer, in this Board's opinion does not mean that the Board can select specific items from both the final offer of SEPTA and that of the applicable labor organization. Final offer means, unless, stated to the contrary, an acceptance or rejection of one party's entire offer. Furthermore, this Board interprets the statute as giving the Board the authority to view each final offer by the labor organization as a separate offer for settlement of that particular labor organization's dispute with SEPTA.

B.

This Board strongly believes that SEPTA should be viewed as a transit operation and not as a railroad. Thus the terms and conditions of work for individuals employed by Conrail and transferred to SEPTA should not be passed down to SEPTA. Economy and efficiency require that the rail operations be assimilated into the existing transit system. With due respect for craft dignity and tradition, the rail operation will become a segment of an area transit system and it must be operated accordingly.

The entire thrust of the Northeast Rail Service Act is that the commuting operations must be viewed as a transit operation and not as a railroad. If this were not the case, there would have been no rationale for the Congressional action requiring that Conrail turn over its commuting facilities to the various transit authorities.

If this is true generally, it is especially pertinent for the commuting facilities in the metropolitan Philadelphia area. Unlike those in the New York City area, the metropolitan Philadelphia commuter lines are relatively short distance ones; trains are also short with typically one, two, and three car makeups; and the number of commuters serviced are dramatically fewer in Philadelphia than in New York.

Two other differences between New York and metropolitan Philadelphia commuter facilities are extremely significant. In the Philadelphia area, unlike New York, an efficient alternative, parallel transit service has long existed near virtually every rail commuter line. Moreover, Philadelphia is not nearly as overburdened with automobile traffic as is Manhattan Island. This permits commuters in Philadelphia a choice of transit facilities and accounts for the fact that when the commuter passenger rates are raised, a substantial number of passengers desert the trains for other types of transportation, even though rail commuting is more efficient and pleasant.

In New York, however, there are no alternate transit facilities for commuters, and Manhattan is oversaturated with automobile traffic. The demand for commuter service in New York is therefore much more inelastic in the face of fare increase because New York commuters are much more captive customers than their metropolitan Philadelphia counterparts.

The Board must point out here again that SEPTA has no tax base and must go hat-in-hand to governments to seek additional funding at a time in history when such funding is least likely to be doled out by the financially hard-pressed governments. Given the relatively small Philadelphia commuting population and the alternative methods of transportation, large new sources of operating funds are not a likely prospect for SEPTA. It follows, therefore, that should the Conrail agreements be adopted for SEPTA, the financial burden which would ensue would sound the death knell for commuter services in metropolitan Philadelphia. The result would be a hollow victory for the labor organizations - wages and work rules that they desire, but no jobs for their members and therefore no benefits to anyone - labor, management, or the public.

The Board commends the BLE and UTU for negotiation of the Amtrak agreement which greatly modernizes pay practices on long distance passenger services. Their submission of this agreement as the final offer for the Philadelphia commuter operations is certainly a move in the right direction. Regretfully, however, it does not go far enough to meet the local conditions which this Board specified must govern the resolution of this dispute. Long distance passenger trains and Philadelphia short distance commuting trains are far too different in so many ways that we cannot find the Amtrak agreement appropriate to recommend as the most reasonable final offer.

C.

In our preliminary report, this Board laid down two basic criteria that would guide its selection of a final offer:

1. that "this dispute must be settled within the confines of local conditions;" and
2. that "those employees who will be transferred to SEPTA should be treated with dignity, decency and humanity."

SEPTA's final offers demonstrate a strong effort to adhere to these criteria and, therefore, are selected as the most reasonable final offers. SEPTA's final offers will allow the commuter authority the opportunity to run a smooth and efficient transit operation. The alternative is the elimination of the commuter rail line in metropolitan Philadelphia, the loss of jobs, a diminution of the business climate in the area, greater congestion in the city, and a general decline in the economic standards of the area.

The wages proposed by SEPTA are comparable to those of employees in the metropolitan Philadelphia area. In addition, the fringe benefits are very similar and in some cases superior to those currently enjoyed by the Conrail employees who will be transferred. SEPTA has even proposed to establish a pension plan for these employees with payments equal to those that the employees would receive under the Railroad Retirement Act.

The grievance procedure proposed by SEPTA will lead to a speedy and fair resolution of grievance disputes. This system would replace the current railroad system where an individual or labor organization can process a grievance through the National Railroad Adjustment Board. The Board notes that studies of the National Railroad Adjustment Board, including the official one sponsored by the National Mediation Board (*The Railway Labor Act At Fifty*, Chapter VIII), demonstrate that the procedures of the National Railroad Adjustment Board are cumbersome and time consuming. Furthermore, the tremendous backlog which exists at the Adjustment Board shows that a grievance currently filed by an individual will not be heard and resolved in an expeditious manner. Although airline carriers and unions have the authority to establish an Adjustment Board, they have chosen not to do so for these same reasons.

In our judgment, SEPTA should not be burdened with the work rules which exist in the railroad industry. Former Emergency Boards have questioned the efficiency of such rules, even on the railroads. For example, Emergency Board No. 194 noted that "some of the work rules and arbitrations have outlived their usefulness and are not conducive to a modern efficient railroad system." In its Report, which was issued on August 19, 1982, that Emergency Board recommended that a Commission be established to consider procedures for stabilizing the pay structure in the railroad industry in light of the new technological and economic circumstances of the Industry. The Board feels that SEPTA

should not be burdened by these rules; and that the rules are particularly inapplicable to a transit-commuter system.

D.

Pursuant to the duty imposed upon this Board by Executive Order 12384 and Section 510 (e) of RPSA, as amended by NERSA, this Board must report to the President its selections of the most reasonable offer for settlement of this dispute.

In the dispute between SEPTA and the American Train Dispatchers Association, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

In the dispute between SEPTA and the American Railway and Airway Supervisors, the Board selects the final offer submitted by SEPTA as the most reasonable offer.

In the dispute between SEPTA and the Brotherhood of Locomotive Engineers, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

In the dispute between SEPTA and the Brotherhood of Maintenance of Way Employees, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

In the dispute between SEPTA and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

In the dispute between SEPTA and the Brotherhood Railway Carmen of the United States and Canada, the Board selects the final offer submitted by SEPTA as the most reasonable offer.

In the dispute between SEPTA and the Brotherhood of Railroad Signalmen, the Board selects the final offer submitted by SEPTA as the most reasonable offer.

In the dispute between SEPTA and the International Association of Machinists and Aerospace Workers, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

In the dispute between SEPTA and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

In the dispute between SEPTA and the International Brotherhood of Electrical Workers, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

In the dispute between SEPTA and the International Brotherhood of Firemen and Oilers, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

In the dispute between SEPTA and the Railroad Yardmasters of America, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

In the dispute between SEPTA and the Sheet Metal Workers' International Association, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

In the dispute between SEPTA and the Transport Workers Union of America, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

In the dispute between SEPTA and the United Transportation Union, the Board selects the final offer submitted by SEPTA as the most reasonable final offer.

IX. RECOMMENDATIONS

A.

This Board urges that all of the parties to this dispute give serious consideration to a one time early retirement program. This program should allow individuals with long service, for example 25 years, who are near retirement age, for example, 55 years or over, the opportunity to respectfully retire and would help to ensure that SEPTA would have a work force able to run the transit operations. Such a plan would require not only the assistance of the parties but other governmental and legislative entities as well.

If this proposal is adopted and funding can be found, other Conrail employees should not be entitled to bump onto the SEPTA employment list to replace early retirees. The purpose of the provision is to take care of employees adversely affected by the transfer of facilities and not to provide opportunities for other Conrail employees. In addition, those thus retired should not be permitted to collect unemployment compensation. This plan could eventually lead to significant savings in unemployment benefits and other costs.

B.

This Board also recommends that the National Mediation Board provide mediation assistance to the parties as they prepare for the transfer of operations and employees.

X. PERSPECTIVE ON THE DISPUTE

This Board hopes that this Report will provide the means for an early resolution of these collective bargaining disputes. Failure of the parties to successfully resolve these disputes would cause a disruption in

commuter rail operations on January 1, 1983, with serious adverse consequences for the metropolitan Philadelphia area.

By making these selections and recommendations, this Board is attempting to preserve one of the Nation's finest rail systems. While we recognize that there would be individual hardships, we have sought to do the most good for the most people. Moreover, Congress understood that individual hardships would result and therefore in sections of NERSA provided for special benefits to mitigate such hardships. This Board is attempting to avert the tragic consequences which would follow a collapse of the commuter rail system - loss of thousands of jobs, loss of business and other harmful effects to the public. The breakdown of this system means a loss of business for the entire metropolitan Philadelphia area. The economies of the Counties of Philadelphia, Bucks, Chester, Delaware and Montgomery, as well as contiguous areas in the States of Delaware and New Jersey, will suffer irreparable damage. Loss of commuter rail service would have a detrimental effect on retail activities, on business locations and will greatly increase the commuting time and costs.

Thus, failure of the parties to resolve this dispute before January 1, 1983, will result in permanent harm not only to the transferred Conrail employees but to the entire metropolitan Philadelphia area as well. The parties must work together to avoid these hardships for themselves and the entire metropolitan Philadelphia area.

Respectfully,

HERBERT R. NORTHRUP, *Chairman*

MARJORIE B. BRODERICK, *Member*

MORRIS GERBER, *Member*

APPENDIX A

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 1, 1982

EXECUTIVE ORDER 12384

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY AND THE DELAWARE TRANSPORTATION AUTHORITY, AND CERTAIN LABOR ORGANIZATIONS

A dispute exists between the Southeastern Pennsylvania Transportation Authority (SEPTA) and the Delaware Transportation Authority (DTA), and certain labor organizations, designated on the list attached hereto and made a part hereof, representing those employees of the Consolidated Rail Corporation (Conrail) who are to be transferred to the SEPTA and DTA as part of the transfer of commuter rail service responsibility from Conrail to the SEPTA and DTA, pursuant to Section 1145 of the Northeast Rail Service Act of 1981.

The dispute concerns the terms and conditions of new collective bargaining agreements, which were required to be negotiated by September 1, 1982, by Section 510(a) of the Rail Passenger Service Act, as amended ("the Act"). As of this date, the parties have not entered into new collective bargaining agreements, and the SEPTA, the Northeast Commuter Services Corporation, and the Brotherhood of Locomotive Engineers have requested the President to establish an emergency board pursuant to Section 510(b) of the Act.

Section 510(c) of the Act provides for the President, upon request of a party, to appoint an emergency board to investigate such dispute and to make a report and recommendation for settlement.

NOW, THEREFORE, by the authority vested in me by Section 510 of the Rail Passenger Service Act, as amended (45 U.S.C. § 590), it is hereby ordered as follows:

1-101. *Establishment of Board.* There is established, effective October 1, 1982, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any commuter authority providing commuter rail service. The board shall perform its functions subject to the availability of funds.

1-102. *Public Hearing.* The board shall conduct a public hearing on the dispute at which each party shall appear and provide testimony.

1-103. *Initial Report.* The board shall report on the dispute within 30 days after the date of its creation.

1-104. *Final Offers.* If the parties have not settled the dispute within ten days after

the board's report, the board shall require the parties to submit, within five days, their final offers for settlement of the dispute.

1-105. *Final report.* Within 15 days after the submission of final offers, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

RONALD REAGAN

THE WHITE HOUSE.

October 1, 1982

Pennsylvania/Delaware:

LABOR ORGANIZATIONS

American Train Dispatchers Association
 ARASA Division, Brotherhood of Railway and Airline Clerks
 Brotherhood of Locomotive Engineers
 Brotherhood of Maintenance of Way Employes
 Brotherhood of Railway and Airline Clerks
 Brotherhood Railway Carmen of the United States and Canada
 Brotherhood of Railroad Signalmen
 International Association of Machinists and Aerospace Workers
 International Brotherhood of Boilermakers and Blacksmiths
 International Brotherhood of Electrical Workers
 International Brotherhood of Firemen and Oilers
 Railroad Yardmasters of America
 Sheet Metal Workers International Association
 Transport Workers Union of America
 United Transportation Union

APPENDIX B

Report

TO

THE PRESIDENT

BY

EMERGENCY BOARD

No. 196

**APPOINTED BY EXECUTIVE ORDER 12384, DATED OCTOBER 1, 1982,
PURSUANT TO SECTION 510 OF THE RAIL PASSENGER SERVICE
ACT, AS AMENDED.**

**To investigate the dispute between the Southeastern Pennsylvania Transportation
Authority, the Delaware Transportation Authority, and certain labor organizations.**

**WASHINGTON, D.C.
NOVEMBER 1, 1982**

(21)

EMERGENCY BOARD NO. 196

PHILADELPHIA, PA, *November 1, 1982*

THE PRESIDENT
The White House
Washington, D.C.

DEAR MR. PRESIDENT:

On October 1, 1982, pursuant to Section 510 of the Northeast Rail Service Act of 1981 (NERSA), 45 U.S.C. §590, and by Executive Order 12384, you created Emergency Board No. 196 to investigate the dispute between the Southeastern Pennsylvania Transportation Authority (SEPTA), the Delaware Transportation Authority (DTA), and certain labor organizations representing Consolidated Rail Corporation (Conrail) employees to be transferred to SEPTA, pursuant to NERSA.

The fifteen labor organizations involved in this dispute are:

American Train Dispatchers Association
American Railway and Airway Supervisors, a
Division of the Brotherhood of Railway,
Airline and Steamship Clerks, Freight
Handlers, Express and Station Employees
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes
Brotherhood of Railway, Airline and Steamship
Clerks, Freight Handlers, Express and
Station Employees
Brotherhood Railway Carmen of the United States
and Canada
Brotherhood of Railroad Signalmen
International Association of Machinists and
Aerospace Workers
International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
Railroad Yardmasters of America
Sheet Metal Workers' International Association
Transportation Workers Union of America
United Transportation Union

SEPTA, a transit operation, services the metropolitan Philadelphia area. SEPTA utilizes the following modes of transportation - rapid rail, light rail (streetcar and

and subway surface), trackless trolley, buses and commuter trains. Commuter rail service in the metropolitan Philadelphia area, currently operated by Conrail's Penn Central and Reading lines, will be transferred to SEPTA on January 1, 1983. DTA will not operate any rail service but will contract with SEPTA for its services in the Wilmington area.

Section 510(a) of NERSA required that new collective bargaining agreements be completed by September 1, 1982. However, the parties did not exchange initial proposals until August 1982, with several proposals not exchanged until October 1982. As of this date, the parties have not consummated new agreements and, in fact, have engaged in little, if any, direct negotiations. A dispute now exists between SEPTA and the above-named labor organizations. This dispute concerns the terms and conditions, including but not limited to wages, hours and work rules, of the collective bargaining agreements under which the employees so transferred will work.

On or before October 1, 1982, SEPTA, the Northeast Commuter Services Corporation, and the Brotherhood of Locomotive Engineers requested that you establish this board.

Emergency Board No. 196 was established by Executive Order effective October 1, 1982. The Board was ordered to investigate this dispute between SEPTA and certain rail labor unions.

The Board held an organizational meeting in Philadelphia, Pennsylvania, on October 11, 1982, during which the Members and the staff, Special Assistants Samuel J. Cognata and Roland Watkins, were briefed on the history of the dispute, and met with all the parties. The Board established a schedule for public hearings and informed the parties that written statements of position regarding outstanding collective bargaining issues should be submitted to the Board and exchanged with the other parties, no later than October 23, 1982. The Board received timely submissions from all the parties. The Board established the period of time between October 11 and October 23 for the parties to engage in direct negotiations.

On October 26, 1982, the Board conducted a public hearing on the dispute at which each party appeared and provided testimony. The hearing focused on formal presentations of the parties' positions and justifications. Written submissions previously received were entered into the evidentiary record. Board Members questioned the parties with respect to matters not raised or not sufficiently developed. This proceeding resulted in 227 pages of transcript and numerous individual exhibits.

If the parties have not settled within ten days after this report is issued, they are required to submit to the Board, within five days, their final proposals for settlement. If settlement is still not reached, within fifteen days after the submission of the final proposals, the Board shall submit a report to you setting forth its recommendations regarding the most reasonable offer for settlement.

Notwithstanding the specific time constraints of NERSA, which were enacted in August 1981, the parties have failed to engage in meaningful and direct negotiations. The Board notes this fact with great concern.

SEPTA and the labor organizations are worlds apart in resolving this difficult situation. SEPTA has argued for substantial concessions from these employees but apparently has not seriously dealt with the economic effect of its demands on the lives of the individuals involved. On the other hand, the labor organizations have not adequately dealt with what appears to be SEPTA's inability to meet the increase in labor costs which SEPTA contends will occur with the transfer of these employees either presently or in the future.

This Board strongly urges all of the parties to engage immediately in direct and meaningful negotiations to resolve this dispute. The fine presentations of the parties indicate that the creative and innovative capabilities exist to reach an agreement through the collective bargaining process. We believe that this dispute must be settled within the confines of local conditions. Those employees who will be transferred to SEPTA should be treated with dignity, decency and humanity. It would be tragic for Philadelphia, for the

suburban areas, and for the railroad workers, and a shame for SEPTA, DTA and the labor organizations to allow this dispute to go unresolved. Should the matter remain unresolved, there will be no jobs for the workers involved and no service for the metropolitan Philadelphia area, with serious adverse effects on the local economy.

If this dispute is unresolved by November 16, 1982, and final offers for the Board's consideration are submitted, the Board will submit its final report to you shortly thereafter.

Respectfully,

HERBERT R. NORTHRUP, *Chairman*

MARJORIE B. BRODERICK, *Member*

MORRIS GERBER, *Member*