

REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
NO. 197

APPOINTED BY EXECUTIVE ORDER 12385
DATED OCTOBER 1, 1982, PURSUANT TO
SECTION 510 OF THE RAIL PASSENGER
SERVICE ACT, AS AMENDED BY THE
NORTHEAST RAIL SERVICE ACT OF 1981

TO INVESTIGATE THE DISPUTE BETWEEN NEW JERSEY
TRANSIT RAIL OPERATIONS, INC. AND CERTAIN
LABOR ORGANIZATIONS.

WASHINGTON, D.C.
NOVEMBER 1, 1982

EMERGENCY BOARD NO. 197

Washington, D.C.
November 1, 1982

The President
The White House
Washington, DC

Dear Mr. President:

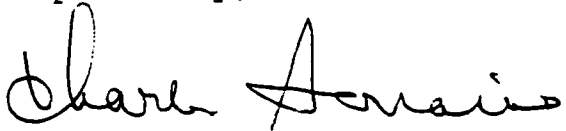
On October 1, 1982, pursuant to Section 510 of the Rail Passenger Service Act, as amended by the Northeast Rail Service Act (NERSA) of 1981, 45 U.S.C. §590 and by Executive Order 12385, you created an Emergency Board to investigate the dispute between New Jersey Transit Rail Operations, Inc. (NJTRO) and certain labor organizations representing Conrail employees to be transferred to NJTRO, pursuant to NERSA.

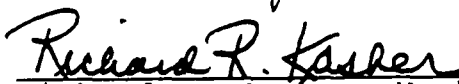
Following its investigation of the issues in dispute, including both formal hearings on-the-record and informal meetings with the parties, the Board has prepared its Report and Recommendations for settlement of the dispute. The Board now has the honor to submit this Report to you, in accordance with the provisions of the Northeast Rail Service Act.

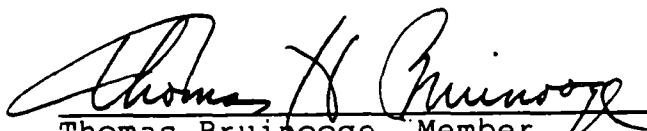
It is our hope that the parties will engage in fruitful negotiations over the next 15 days prior to the submission of final offers to this Board. If no agreement is reached between the parties the Board will, thereafter, issue a report selecting the most reasonable final offer.

The Board acknowledges the cooperation of the National Mediation Board and its staff, particularly the assistance of Gale L. Oppenberg and Laurette M. Piculin, who rendered valuable aid to the Board during the proceedings and in preparation of this report.

Respectfully,


Charles Serrano, Chairman


Richard R. Kasher, Member


Thomas Bruinooge, Member

I. CREATION AND DUTIES OF THE EMERGENCY BOARD

Emergency Board No. 197 was created by President Reagan on October 1, 1982, by Executive Order No. 12385, pursuant to §510 of the Rail Passenger Service Act, as amended by the Northeast Rail Service Act of 1981, 45 U.S.C. §590. The President appointed Charles Serraino of Hasbrouck Heights, New Jersey, a labor consultant of the New Jersey Supreme Court and a former Commissioner of the New Jersey Department of Labor and Industry, as Chairman of the Board. Thomas H. Bruinooge of Allendale, New Jersey, an attorney with the firm of Clapp and Eisenberg in Newark, New Jersey and Richard R. Kasher of Bryn Mawr, Pennsylvania, a professional labor arbitrator and former General Counsel for the National Mediation Board, were appointed Members.

The Board was ordered to investigate the dispute between New Jersey Transit Rail Operations, Inc. (NJTRO) and certain labor organizations, and conduct a public hearing at which each party was to appear and provide testimony. On the basis of this investigation, an initial report was to be submitted to the President within 30 days (on November 1, 1982), after the date of the Board's creation. If within 10 days (on November 11, 1982) after the issuance of the report the parties had not settled, they would be directed to submit final offers for settlement and would have 5 days (November 16, 1982) in which to do so. The Board then would be required to submit a final report to the President within 15 days (on or about December 1, 1982) setting forth its selection of the most reasonable offer.

II. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an organizational meeting in Philadelphia, Pennsylvania, on October 11, 1982, during which the Members received thorough briefings on the history of the dispute and met with the parties. The Board established a schedule for public hearings and informed the parties that written statements of position 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 25 for the parties to engage in direct negotiations.

On October 25, 1982, the Board commenced on-the-record public hearings with the parties. The written submissions previously received were entered into the evidentiary record of the hearing. Oral argument was presented by representatives of NJTRO and the organizations in support of their submissions,

with time allocated for rebuttal. The Board Members developed lines of questioning with respect to matters not raised or not sufficiently developed, and sought to have the parties narrow the issues and focus on the principal areas of dispute. The proceedings resulted in 191 pages of transcript and 25 individual exhibits.

III. BACKGROUND OF THE DISPUTE

Under §1136 of the Northeast Rail Service Act of 1981, (NERSA), 45 U.S.C. §744a, the Consolidated Rail Corporation (Conrail) is relieved of its obligation to provide rail passenger service, effective January 1, 1983, in preparation for the Federal government's planned sale of Conrail's freight operations to the private sector. Conrail has provided passenger service under service agreements with a number of state and local governmental transportation authorities since 1976. These authorities have decided to operate the service themselves, either directly or through contractors, once Conrail ceases to provide passenger service.

On March 30, 1982, New Jersey Transit Corporation (NJT) exercised its option under NERSA to take over operation of commuter service in the state when Conrail ceases to operate it on January 1, 1983. In April of 1982, NJT created New Jersey Transit Rail Operations, Inc. (NJTRO), a wholly owned subsidiary, to serve as its rail operating entity.

Section 506 of the Rail Passenger Service Act (RPSA), 45 U.S.C. §586, which was added by NERSA, provides for the transfer of rail properties to the commuter authorities and §508, 45 U.S.C. §588, provides for the transfer of employees. Section 510, 45 U.S.C. §590, establishes procedures for negotiation of new collective bargaining agreements concerning rates of pay, rules, and working conditions for the employees who are being transferred from Conrail to the commuter authorities.

In accordance with §508, representatives of NJTRO, Conrail, and rail labor unions representing employees on Conrail attempted to negotiate an implementing agreement providing for the transfer of employees from Conrail to NJTRO as prescribed by §508(c). After several months of unsuccessful negotiations, the parties notified the National Mediation Board (NMB) on August 5, 1982, of their inability to reach an implementing agreement.

On September 7, 1982, the NMB in its Determination and Order 9 NMB No. 144, determined among other matters, that an arbitration proceeding conducted pursuant to §508 would be structured with the following parties: NJTRO, Conrail, operating unions, non-shop non-operating unions, and shop craft unions. By letter dated September 14, 1982, the NMB appointed Richard R. Kasher as the neutral referee for this arbitration proceeding.

Mr. Kasher issued his awards establishing implementing agreements on October 15, 1982. These awards resolved only issues relating to the transfer of employees from Conrail to NJTRO as required by §508 of RPSA, and did not deal with the substantive terms of collective bargaining agreements which were to be resolved pursuant to the procedures in §510 of RPSA.

As the parties had not reached agreement on the terms of new collective bargaining agreements, NJTRO and the Brotherhood of Locomotive Engineers, on September 15, 1982, requested that the President establish an Emergency Board as provided for in §510 (b) of RPSA, as amended by NERSA.

On October 1, 1982, this Emergency Board was created by Executive Order. Under §510, the Emergency Board is required, as the first phase of its duties, to investigate the dispute concerning the terms and conditions of new collective bargaining agreements for employees who are being transferred to NJTRO, and report to the President within 30 days of the date of the Board's creation. This report is submitted within that time-frame.

IV. PARTIES TO THE DISPUTE

THE ORGANIZATIONS

The sixteen organizations involved in this dispute are:

- American Train Dispatchers Association
- ARASA Division, 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 Electrical Workers
- International Brotherhood of Firemen and Oilers
- International Brotherhood of Teamsters
- Railroad Yardmasters of America
- Sheet Metal Workers International Association
- Transport Workers Union of America
- United Transportation Union
- International Brotherhood of Boilermakers and Iron
Ship Builders, Blacksmiths, Forgers and Helpers

While each of these unions had distinctive concerns, they formed a coalition for purposes of presentation to the Emergency Board. Their joint economic position was presented by their attorney and their economist. Each union presented individual proposals on work rules.

THE CARRIER

The carrier involved in this dispute is NJTRO which will be assuming the passenger service Conrail now provides for New Jersey. This commuter rail system is divided geographically between north and south Jersey, and is composed of lines which were owned by Central Railroad of New Jersey, Penn Central Railroad, The Reading Railroad, Erie-Lackawanna Railroad, and Pennsylvania-Reading Seashore Line, before these railroads entered bankruptcy and were replaced by Conrail.

In 1981, Conrail carried more than 36 million passengers in New Jersey. Conrail operated 451 trains daily over a route structure covering 422 miles. Three thousand employees of Conrail were involved in providing passenger service, 2900 of whom were covered by collective bargaining agreements. Expected revenues for 1982 amount to \$69.7 million, \$122.5 million less than the \$192.2 million that will be needed to operate the service.

V. CHALLENGES TO THE EMERGENCY BOARD'S AUTHORITY

At the opening of the hearing on October 25, 1982, the Cooperating Railway Labor Organizations formally raised five challenges to the Board's authority. These objections were first voiced, in part, at the October 11, 1982, organizational meeting.

First, the unions contended that §510(a)(1), which reads that:

"Not later than September 1, 1982, the commuter authorities that intend to operate commuter service and the representatives of the various classes or crafts of employees to be transferred to such commuter authorities under agreements entered into under section 508 of this Act shall enter new collective bargaining agreements with respect to rates of pay, rules, and working conditions.",

was not complied with in view of the fact that, at the time that the Emergency Board was appointed, no such §508 implementing agreements were in place. Thus, the unions contend that the Statute is not self-executing and the appointment of the Board is, therefore, void.

In view of the excruciatingly tight timetable required in the Statute, the Board has not had the opportunity to seek appropriate legal counsel to determine the validity of the unions' position. We maintain that it is in the public interest to proceed, in the hope that this Emergency Board will aid in the settlement of the dispute and we will leave the resolution of the question of compliance with the statutory timetable to a judicial forum, if such question still exists at the conclusion of our efforts.

The second challenge raised by the unions concerns an allegation that during the fourteen months of NERSA's life no significant collective bargaining, as that term is recognized in the railroad industry, has occurred regarding agreements to be reached under §510. It is the position of the unions that due to the lack of collective bargaining there are no disputes on any specifically identified issues to present to the Board. Therefore, the unions contend that without a dispute §510 cannot operate, and there can be no valid appointment of an Emergency Board.

As will be more fully discussed below, this Board recognizes the unfortunate lack of any significant collective bargaining between the parties. Nonetheless, we believe that it is appropriate to report our findings regarding the parties' perceptions of the issues which are significant to them, and which may be in dispute. Failure to act by this Board, under §510 (c), would, in our view, contribute to the unnecessary postponement of the possibility of amicable resolutions of the disputes.

The third challenge by the unions concerns an allegation that, because certain Members of the Board may be taxpayers who subsidize the commuter service or may be fare-paying commuters who use the service, they may be subject to a subconscious bias in favor of the commuter authority. On this basis, the unions have asked that those Members who may have such bias recuse themselves.

The Board believes that the mere fact that we may be taxpayers in the jurisdiction or users of the commuter service, is not sufficient to create any bias and accordingly we are not prepared to accept the unions' request for recusal.

As a fourth basis of challenge the unions contend that an ex parte meeting took place between the Members of Emergency Board No. 197 and representatives of NJTRO. The unions contend that such an act, although committed innocently, is highly prejudicial to the interests of the employees, and thus, challenge any further actions by the Board affecting employee-NJTRO relations. The unions request that the Members who participated in such meetings recuse themselves from this case.

This Board acknowledges that it did have an ex parte meeting with the representatives of NJTRO at the conclusion of the October 11, 1982, organizational meeting. Unfortunately, the time constraints were such that the Board was unable to conduct numerous ex parte meetings with both major parties to this dispute. It is the Board's view that ex parte meetings are appropriate in view of the nature of an Emergency Board proceeding and that such meetings are commonplace for Emergency Boards established pursuant to the Railway Labor Act. In any event, the substance of this ex parte meeting, not unlike the direction given to the parties at the close of the oral

arguments on October 25, 1982, was to encourage NJTRO to narrow their dispute so that, in the event final offers were made to the Board, such offers would not cover the universe of all subjects contained in collective bargaining agreements. Thus, this Board finds no impropriety in conducting ex parte sessions with the parties, and in fact, should make known here that it intends to continue ex parte meetings and discussions during the course of this proceeding.

As a fifth challenge, the unions request that Members of the Emergency Board who may lack experience in collective bargaining, arbitration or mediation under the Railway Labor Act, recuse themselves.

This Board recognizes the benefits that might obtain if one had a complete and thorough background in Railway Labor Act history and subject matters. However, we believe the essential issue here concerns how the parties may enter into agreements which will recognize the necessity of running a modern, efficient commuter operation and which will give consideration to the historic precedents and traditions of the railroad industry. We are rejecting the unions' request that Board Members recuse themselves, just as we would reject a request from NJTRO that those Members who may lack experience in commuter authority operations or commuter authority collective bargaining procedures, recuse themselves.

VI. RECEIPT OF EVIDENCE

The parties, working within extraordinarily tight time constraints, produced an impressive and detailed compendium of information and argument. The submissions of the parties, received on October 23, 1982, were catalogued and entered into the evidentiary record as Board Exhibits 1-21, by Special Assistants Gale Oppenberg and Laurette Piculin. These submissions were as follows:

- New Jersey Transit Rail Operations, Inc.
- American Train Dispatchers Association
- ARASA Division, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees - Maintenance of Equipment Supervisors
- Brotherhood of Locomotive Engineers
- Brotherhood of Maintenance of Way Employees
- Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees
 - consisting of 2 parts (a) Station, Tower & Telegraph Services; and (b) Clerks
- Transport Workers Union of America and Brotherhood Railway Carmen of the United States and Canada (Joint submission)
- Brotherhood Railway Carmen of the United States and Canada

International Association of Machinists and Aerospace
Workers
International Brotherhood of Teamsters
International Brotherhood of Electrical Workers
Sheet Metal Workers International Association
Railroad Yardmasters of America
International Brotherhood of Firemen and Oilers
Brotherhood of Railroad Signalmen
United Transportation Union (submitted by C.P. Jones)
United Transportation Union (submitted by L.W. Swert)
United Transportation Union (submitted by L.R. Davis)
ARASA Division, Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers, Express and
Station Employees - Maintenance of Way, Structures,
Communications and Signals
Memorandum filed on behalf of the Cooperating Railway
Labor Organizations
International Brotherhood of Boilermakers and Iron
Ship Builders, Blacksmiths, Forgers and Helpers

During the hearing, additional documentation designated Board Exhibit 22 (Slide Presentation by NJTRO), and Board Exhibit 23 (Statement on "The Law, The Railroad, The Public Interest" by G. H. Bunde, Vice President of the United Transportation Union) were presented.

The hearing generated discussion on the legislative history and intent of RPSA and the Board requested the parties to submit an analysis of their interpretation of this issue. These were received on October 28 and 29, 1982, from NJTRO and Mr. Clinton J. Miller, III, representing the Cooperating Railway Labor Organizations, and were marked Board Exhibits 24 and 25.

The Board wishes to commend the parties for their cooperation. The restrictive and inflexible time limits of the Statute under which the parties and this Board were compelled to operate, combined with the complexity of the issues, renders the parties' accomplishments even more extraordinary. Over 2000 pages of material were expeditiously provided to the Board. The efforts of the parties enabled this Board to fulfill its mandate in a timely fashion.

VII. LEGISLATIVE INTENT

During the presentation of oral argument it became apparent that the parties had a philosophical dispute as to the extent of changes contemplated by the phrase in §510 which requires the parties to "...enter into new collective bargaining agreements with respect to rates of pay, rules, and working conditions." The Board solicited each party's interpretation of the legislative intent on this particular point. The parties analyzed certain excerpts of the legislative history and submitted post-hearing arguments.

RAIL LABOR

The representatives of rail labor assert that Congress did not care if the negotiations or the Emergency Board recommendations resulted in the continuation of the Conrail agreements on the commuter authorities, if that is what the parties desired. They state that Congress did not care what the parties agreed to, trusting in each party to protect its own interests. In rail labor's view, the claim that Congress desired the changes proposed by NJT is contradicted by the evidence of Congress' rejection of each of NJT's attempts to secure those changes during the legislative process.

Rail labor contends that the representatives of NJTRO have argued to this Board that the use of the term "new collective bargaining agreements with respect to rates of pay, rules, and working conditions", evidences a Congressional intent to prohibit the incorporation, integration, adoption, or use of any term or provision of the current Conrail agreements covering commuter service employees in the agreements to be entered into between them and the representatives of rail labor pursuant to §510 of NERSA. The unions allege that this contention is wholly unsupported by the language of the Statute and the Statute's legislative history and necessarily conflicts with the overriding Congressional goal to effectuate a smooth transition of commuter service responsibilities from Conrail to other entities, in an expedited fashion over a relatively short period of time. Rail labor respectfully submits that the use of the term "new" in §510 does not, in and of itself, require totally changed collective bargaining agreements. The organizations stress that, while good faith negotiations may result in "new agreements" containing provisions that are "different" from analogous provisions in existing Conrail agreements, the necessity for wholesale and indiscriminate rejection of the existing Conrail agreements is not mandated by the procedures created by Congress under §510. Moreover, they argue that the fundamental Congressional requirement that the collective bargaining process between the parties be completed in a four month period is irreconcilable with NJT's position that the parties were to start from scratch and to negotiate and ultimately agree upon unprecedented and radical departures from the wages, rules, and working conditions that have been an essential element of railroad employment for generations. The unions aver that it is clear that the only way the procedures outlined in §510 of NERSA can be completed prior to the pivotal January 1, 1983 date, effectuating the Congressional goal of a smooth transition of commuter service responsibility from Conrail to commuter authorities, is to use the existing Conrail agreements as a starting point for negotiations.

NJTRO

NJTRO contends that the basic issue facing this Emergency Board is whether the status quo in rates of pay, rules, and working conditions for commuter service at Conrail is to be accorded considerable weight, so that NJTRO would bear a great

burden in requesting this Board to recommend any negotiated changes to Conrail agreements.

NJTRO argues that the status quo is not the starting point, the point of reference. In the passage of NERSA, in NJTRO's view, Congress refused to preserve the status quo. NJTRO argues that Congress terminated Conrail's freight dominated collective bargaining agreements, required the parties to improve productivity in operating practices and procedures, and directed the parties to negotiate new rates of pay, rules, and working conditions which focused on the financial realities of state-run commuter service.

NJTRO maintains that inefficiencies existed in Conrail agreements because freight rules had little relationship to conditions in current commuter service. NJTRO asserts that, in response to testimony of the inappropriateness of Conrail's freight oriented agreements to passenger service, of the waste and inefficiency that existed in operating practices and procedures, of the financial peril of commuter authorities, and of the need for a procedural framework to compel change, Congress rejected the status quo model of the Regional Rail Reorganization Act of 1973. In its place Congress adopted NERSA which, in NJTRO's opinion, terminated existing Conrail agreements, imposed a factfinding procedure on the parties at the inception of their negotiations, and established a new Emergency Board process to move the parties to agreements which reflected the changed realities.

NJTRO believes that the Conference Committee, in recommending §510 as a resolution of the differences between the Senate and House versions of the labor transfer provisions of NERSA, expressed its unequivocal intent that existing Conrail agreements would not carry over to the commuter authorities.

Having rejected the status quo, Congress saw the need for a procedural framework which would replace the old with the new, NJTRO declares, and they changed the typical Emergency Board procedures found in the Railway Labor Act. NJTRO submits that NERSA's requirement for a two-step Emergency Board report, when coupled with a final offer provision and the economic penalties which attach to the rejection of a final offer, is calculated to impel the parties to negotiate new agreements which reflect the realities of state-run commuter service and its financial condition in an environment free from the precedents and concerns of national freight railroad issues.

NJTRO concludes that Congress rejected the status quo of national freight agreements and required the parties to negotiate around the realities of state-run commuter service.

THE EMERGENCY BOARD VIEWPOINT

The legislative history is subject to interpretation and the Board is not satisfied that there is sufficiently clear guidance as to intent. What is clear is that Congress intended that the parties reach collective bargaining agreements before January 1, 1983, to ensure a smooth transition of service from Conrail to NJTRO.

Additionally, in our view, Congress clearly did not intend that the existing collective bargaining agreements would "carry over". Had Congress so intended, it would have used collective bargaining agreement inheritance language similar to that found in §504 of the Regional Rail Reorganization Act of 1973.

It is obvious that the Statute does not limit the freedom ordinarily associated with collective bargaining. Thus, in our view, the parties can agree to maintain the status quo, negotiate entirely new terms and conditions of employment, or retain certain rules and practices while establishing some new ones.

VIII. CONTRAST BETWEEN EMERGENCY BOARD NO. 197 AND TYPICAL EMERGENCY BOARD PROCEEDINGS

The Statute under which Emergency Board No. 197 is operating utilizes a modified Emergency Board procedure as a method of dispute resolution. These procedures are well known in the labor relations context and have been long established in the railroad industry. However, the Statute has removed them from the context in which they normally operate and has placed them in a rigid framework of pre-determined, artificial and unalterable deadlines.

Emergency Boards under the Railway Labor Act have been utilized since 1926. Nineteen Emergency Boards were created between 1970 and the present time, including one Board created pursuant to the Airline Deregulation Act of 1978. On the average, a period of 8 to 9 months passes between the time a dispute first arises and the parties invoke the mediation services of the NMB. During this time the parties engage in direct negotiations. There is an additional 7 to 8 months of negotiations under the auspices of the NMB before the NMB determines that further mediation will be unsuccessful.

The NMB then proffers arbitration and if such proffer is rejected, the parties enter a 30 day "cooling off" period. Only after all of these procedures have been exhausted is an Emergency Board normally created.

Thus, by the time an Emergency Board hears a dispute and is called upon to evaluate the situation, the parties have had an opportunity to discuss and resolve those issues which can be settled by the parties without this type of intervention, and to crystallize their positions on those issues which they cannot resolve themselves. The result is that the presentation to such an Emergency Board usually focuses on a limited number of clearly defined issues.

The procedures for Emergency Board No. 197, under §510 of RPSA, established October 1, 1982, as the date on which the Emergency Board process was to be activated. Creation of the Emergency Board on that date reflected the fact that settlements had not been reached and did not take into account whether the parties had engaged in a period of significant, direct negotiations with sufficient opportunity to settle among themselves or at least narrow the issues, to the extent such negotiations are normally conducted under the Railway Labor Act.

IX. LACK OF COLLECTIVE BARGAINING AND FAILURE TO
NARROW THE ISSUES

The parties did not engage in substantial collective bargaining resulting in a narrowing of the issues prior to the submission of this dispute to the Emergency Board. A review of the submissions of the parties and the testimony presented at the hearing demonstrates this clearly. In many instances, only initial proposals had been exchanged and the parties did not know if their proposals were acceptable or unacceptable, in whole or in part. The parties had had few meetings and it was apparent that the sessions were unproductive. Nothing of significance was presented to this Board as having been agreed to. In effect, the submissions that were presented to the Board and exchanged between the parties were the first opportunity they had to review each others full and complete positions, and they did not, therefore, have an opportunity to clearly respond and counter the arguments of the opposing party. Virtually all issues remain open and the avenues for resolution have not been properly explored.

The Board recognizes that this failure to narrow the issues was due in large part to the unique situation and the unrealistic procedures under which the parties were compelled to operate, and the Board does not seek to place blame. It should be remembered that at the same time the parties were preparing for collective bargaining negotiations, they were also engaged in negotiating implementing agreements under §508 and in preparing for §509 factfinding. We are now faced, however, with the monumental task of reconciling the parties' differences on essentially every element of new collective bargaining agreements. It would be inappropriate and unworkable for this Board to attempt to dictate solutions to the parties on all the issues presented to the Board. It is incumbent upon the Board, therefore, to attempt to focus and guide the parties to meaningful negotiations on a limited number of critical issues which can realistically be resolved in the brief time left before the transfer of operations to NJTRO on January 1, 1983.

X. SPECIAL SUBJECT MATTERS WHERE THERE SHOULD BE AGREEMENT

NJTRO has proposed that there be certain reclassifications of job functions, particularly involving the six existing shop craft jurisdictions. NJTRO's proposal presumes that with the reclassification of shop craft positions, four new job classifications will emerge, and that certain work presently reserved to one craft or class of employees would be performed by employees who do not presently enjoy the right to perform such work.

NJTRO has presented several equitable arguments supporting its contention that certain work, within the jurisdiction of one particular shop craft, should be performed by a different craft or class when the work in question is incidental to the primary duties performed by that craft or class of employees. NJTRO states that rearranging shop craft work, as it proposes, would result in a more efficient system of maintaining and repairing mechanical equipment. It is their contention that productivity would, thereby, be increased and that this result was the primary motivation for the enactment of §510 of the Statute.

This Board is not unsympathetic to NJTRO's position that efficiency could be increased by the combination of certain primary and incidental functions within the shop craft jurisdictions. We also recognize that NJTRO would like to address the shop craft labor organizations in a collective bargaining forum with a lesser number of spokespersons and organizations participating in the process. NJTRO is apparently concerned that railroad craft or class jurisdictions have historically and legally been changed only when the parties have either voluntarily agreed to such changes or the NMB has issued a craft or class determination that has effected such changes.

We wish to point out that the shop craft organizations have, for many years, been the leader in the field of coordinated or coalition bargaining and have created throughout the United States so-called system federations, under which the employees represented by the individual labor organizations bargain through single spokespersons. Where cross-representation has existed within a particular craft or class, the different organizations have formed a joint council arrangement whereby one spokesperson addresses the issues for all the employees.

NJTRO has certain plans and designs to create a new shop facility in the Hackensack Meadowlands Development District which, in NJTRO's view, would function more efficiently if there were to be a consolidation of certain job functions. We do not discern that the labor organizations oppose the principle of efficiency in the shops, but they have contended that shop employees consistently perform "eight hours work for eight hours pay".

The question of how the representation rights of the labor organizations, who have been certified in accordance with the Railway Labor Act to represent employees in the various crafts or classes, are going to be affected, is significant.

Therefore, we recommend to the parties that they engage in bargaining which recognizes NJTRO's need to reassign certain incidental shop craft functions, and at the same time incorporate a form of coalition bargaining that preserves representation rights.

XI. ADDITIONAL SUBJECT MATTERS WHERE THERE SHOULD BE AGREEMENT

Although time has not allowed this Board to conduct an intensive review of all of the existing collective bargaining agreements compared to NJTRO's proposal that all operating crafts be covered by one agreement and that all non-operating crafts be covered by another, we have discerned that there are numerous subject-matter areas which are not in significant dispute, nor should they be.

For example, we are not aware that significant or substantial differences exist between the parties regarding rules and working conditions such as abolishment of positions, advertising positions, basic day rules, bereavement pay, seniority provisions, holidays, jury duty, physical examination rules, and a variety of other rules which can be generally classified as "housekeeping" rules, as well as a number of rules concerning basic elements of compensation.

NJTRO seeks to make some of these rules uniform for all crafts so that, for example, a claim or grievance filed under one agreement would be handled exactly as a claim or grievance filed under another agreement. Philosophically, we see the advantages and rationale of such a system of agreement administration. However, we are at an extremely late stage in this proceeding and attempts to "unify" or to create identical procedures for all crafts, on all issues, appears to be counterproductive in view of the necessity for the parties to use their best efforts in the resolution of major and significant issues. The labor organizations who are party to this proceeding received NJTRO's proposal, for a single non-operating crafts collective bargaining agreement and a single operating crafts collective bargaining agreement, not more than two days prior to the October 25, 1982, oral argument and rebuttal. In our view, it would be virtually impossible for the parties to meet, analyze, discuss, and negotiate single rules for each craft that would have uniform application throughout the system. We should also observe that NJTRO will apparently employ former railroad supervision over the new system. It is more than likely that a new single "uniform" collective bargaining agreement which would cover all non-operating employees, including such diverse crafts as dispatchers, electricians, and signalmen, for example, would initially result in as much confusion for management as it would for the employees.

This Board would encourage the parties to quickly attempt to resolve certain differences regarding uniformity of rules for all crafts. We see a certain benefit, for example, in having a uniform rule for the processing of claims and grievances for all crafts. Additionally, a uniform renegotiation date for all collective bargaining agreements would, in our view, be mutually beneficial. However, we cannot blind ourselves to the practicalities of time. It would be foolish indeed, if the parties were to so heavily concentrate in the little remaining time on rules, such as meal periods or leaves of absence, that do not have a significant impact on the smooth and orderly transition process.

XII. ISSUES THAT THE BOARD DEEMS SIGNIFICANT

The parties have disagreed as to whether NJTRO should be viewed for purposes of rates of pay, rules, and working conditions as an entity subject to a "railroad model" or to a pure "commuter model". To the extent that the Board has been able to assess the evidence presented, we are led to the conclusion that neither model is totally appropriate and that the projected future operations of NJTRO will contain features of both the railroad and the commuter models. Accordingly, while clear recognition should be given to the fact that the proposed operations involve a "peak hour" environment, certain railroad rules and practices should be retained.

We see merit in the parties pursuing negotiations that would address the historic dispute over "basis of pay" for the operating crafts. The parties should look to the recent agreement between one of the operating crafts and the National Railroad Passenger Corporation in which significant changes in the historic method of compensating operating craft employees have been made. Obviously, any changes which the parties propose to the current method of calculating compensation should result in fair and reasonable wages for the employees affected.

We also believe that no significant changes should be made either upwards or downwards in employees' present rates of compensation, but that some formula for future employees be developed which gives recognition to the commuter authority's concern regarding a percentage of "extraordinarily high earners".

The parties are also encouraged to negotiate a procedure to broaden or develop split shifts to meet the needs of the service and to establish reasonable conditions for the application of such an approach to employee assignments.

With regard to NJTRO's proposals concerning a reduction in manning, this Board recommends that a system of attrition and/or severance pay be explored in reaching the staffing level goal that NJTRO believes to be appropriate. We recommend that careful analysis be performed before staff is reduced so that the reductions do not result in inadequate manning levels in the event of unanticipated natural attrition.

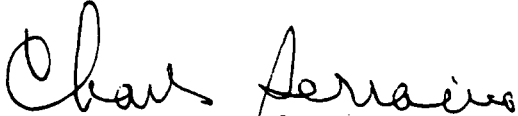
XIII. CONCLUSION


We think that it is critical to the strength of a hopefully long-term relationship between these parties that NJTRO recognize and affirmatively state during these negotiations that certain elements of compensation, specific work rules, and working conditions that these employees have historically enjoyed, which were obtained through the diligence and dedication of their labor organization representatives, should be preserved. Constructive collective bargaining agreement negotiations during the next several weeks cannot be optimistically projected if there is no recognition that the employees come to this new employer with certain rights and privileges firmly in place.

At the same time, in our view, it is incumbent upon the labor organizations to recognize NJTRO's need for an efficient and productive commuter system, and to aid the process of achieving such a system by agreeing to necessary proposed improvements in operating rules and practices.

It is our belief that the achievement of the above-stated goals will lead to survival of the system and the jobs associated with the service.

Respectfully submitted,


Charles Serraino, Chairman


Thomas Bruinooge, Member


Richard R. Kasher, Member

