

# **Report**

TO

# **THE PRESIDENT**

BY

# **EMERGENCY BOARD NO. 199**

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**APPOINTED BY EXECUTIVE ORDER 12393, DATED  
NOVEMBER 16, 1982, PURSUANT TO SECTION 9A OF THE  
RAILWAY LABOR ACT, AS AMENDED.**

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**To investigate disputes between The Long Island Rail Road and  
certain labor organizations.**

**(National Mediation Board Case Nos. A-10935, A-11051,  
A-11052, A-11055, A-11056, A-11057, A-11062, A-11063,  
A-11064, A-11065, A-11066, A-11067, A-11068 and A-11072)**

**WASHINGTON, D.C.**

**JANUARY 4, 1983**



## LETTER OF TRANSMITTAL

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NEW YORK, NEW YORK,  
*January 4, 1983*

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

DEAR MR. PRESIDENT:

On November 16, 1982, pursuant to Section 9A of the Railway Labor Act, as amended, and by Executive Order 12393, you created an Emergency Board to investigate the disputes between The Long Island Rail Road and certain labor organizations representing its employees.

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

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

The Board acknowledges the assistance of David M. Cohen and Mary L. Johnson of the National Mediation Board's staff, who rendered invaluable aid to the Board during the proceedings, and particularly in the preparation of this Report.

Respectfully,  
ARVID ANDERSON, *Chairman*  
DANIEL G. COLLINS, *Member*  
RICHARD T. NINER, *Member*



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## **I. CREATION OF THE EMERGENCY BOARD**

Emergency Board No. 199 was created by President Reagan on November 16, 1982, by Executive Order No. 12393, pursuant to Section 9A of the Railway Labor Act, as amended, 45 U.S.C. Sec. 159a. The New York Metropolitan Transportation Authority (MTA), on behalf of its subsidiary, The Long Island Rail Road (LIRR), had requested the creation of such a board on November 11, 1982.

The President appointed Arvid Anderson, Chairman of the New York City Office of Collective Bargaining, as Chairman of the Board. Richard T. Niner, an investment advisor from Greenwich, Connecticut, and Professor Daniel G. Collins of the New York University School of Law, were appointed as Members of the Board.

## **II. PARTIES TO THE DISPUTE**

### **A. THE CARRIER**

The Long Island Rail Road is a Class I railroad subject to the jurisdiction of the Interstate Commerce Commission and the provisions and procedures of the Railway Labor Act. Every week day the LIRR carries approximately 283,000 passengers, a majority of them commuters, and more than any other Class I railroad in the United States.

The Long Island Rail Road is a public benefit corporation owned and operated by the Metropolitan Transportation Authority, an agency of the State of New York. The LIRR is the only mode of public transportation that provides through-service from the eastern end of Long Island to Manhattan, and is a vital link in the mass transportation system of the New York City metropolitan area. Its freight and passenger service operates over a system covering approximately 330 miles of track. The LIRR employs about 7,300 persons, 6,700 of whom are covered by collective bargaining agreements.

The primary business of the LIRR is its commuter traffic. Its revenue from passenger operations should approach \$200 million in 1982, an increase of 11 percent over the 1981 level. (A fare increase averaging 25 percent went into effect on July 1, 1982, and accounts for much of the growth in passenger revenue.) The population of Suffolk and Nassau Counties relies heavily on LIRR service.

The freight business of the LIRR amounted to over \$19 million in 1981, but is expected to add only \$13 million to operating revenues in 1982. The LIRR interchanges traffic with the Consolidated Rail Corporation (Conrail) and the Boston & Maine, and in 1981 handled over 31,000 freight cars. Slightly more than 22,000 freight cars will be handled in 1982, a drop of 41 percent. The major commodities hauled by the LIRR are pulp and paper products, food products and lumber.

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

The LIRR's financial position, however, has consistently declined. Its commuter operation has a large annual operating deficit, and receives substantial subsidies from the Metropolitan Transportation Authority and the Federal Government. In 1981, government transfer payments to the LIRR amounted to \$190 million, or 48 percent of the carrier's total railway operating revenues. Massive fare increases in 1983 were averted by enactment of new business taxes by the State, and by enactment of a program of operating subsidies by the Federal Government, which together are intended to provide the MTA with an additional \$300 million.

The last round of labor negotiations between the LIRR and its employees was twice punctuated with strikes: a six-day walkout in December 1979 and a two-day walkout in April 1980. Emergency Board No. 192 was created December 14, 1979, ending the first of these strikes.

## B. THE ORGANIZATIONS

Fourteen labor organizations are parties to these disputes:

1. ARASA Division—Brotherhood of Railway and Airline Clerks (ARASA), representing Technical Engineers, Architects, Draftsmen and Allied Workers; Supervisors and/or Foremen in the Maintenance Departments; and Train Dispatchers.



2. Brotherhood of Locomotive Engineers (BLE), representing Locomotive Engineers.
3. Brotherhood of Railroad Signalmen (BRS), representing Signalmen.
4. Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (BRAC), representing Clerical, Office, Station and Storehouse Employees.
5. Brotherhood Railway Carmen of the U.S. and Canada (BRC), representing Carmen and Coach Cleaners.
6. International Association of Machinists and Aerospace Workers (IAM&AW), representing Mechanics.
7. International Brotherhood of Boilermakers and Blacksmiths (IBBB), representing Boilermakers.
8. International Brotherhood of Electrical Workers (IBEW), representing Electricians.
9. International Brotherhood of Firemen and Oilers, (IBFO), representing Laborers and Stationary Engineers.
10. International Brotherhood of Teamsters (IBT), representing Maintenance of Way Employees.
11. Police Benevolent Association (PBA), representing Police Officers Below the Rank of Captain.
12. Railroad Yardmasters of America (RYA), representing Yardmasters.
13. Sheet Metal Workers International Association (SMWIA), representing Sheet Metal Workers.
14. United Transportation Union (UTU), representing Conductors, Trainmen, Special Service Attendants, and Maintenance of Way Supervisors.

BRAC and IBT have concluded negotiations, and their agreements are in effect. BRS, IBBB, IBFO, and SMWIA have reached agreement with LIRR on all issues, and only formal ratification procedures remain to be carried out, as described below. IBEW and ARASA 851 reached tentative agreement with LIRR, but ratification was not accomplished, as described below.

### **III. ACTIVITIES OF THE EMERGENCY BOARD**

The Board held an organizational meeting in New York City on November 18, 1982, during which the members met with National

Mediation Board Member Walter C. Wallace and Mediator Francis J. Dooley, and received a thorough briefing on the history of the disputes. On November 19, 1982, the Board met informally with representatives of the parties.

By stipulation of the parties, on December 10, 1982, the Board requested that the National Mediation Board request that President Reagan grant it an extension of time within which to submit its report, to January 4, 1983, and that the status quo period be extended to April 4, 1983. President Reagan approved this request on December 16, 1982.

Written submissions were filed by most of the parties on December 13, 1982, at the direction of the Board. A hearing was held on December 20-21, 1982, with all parties, at which each party described its proposals and the unresolved issues. The hearing resulted in 14 exhibits and a transcript of 247 pages.

On December 22, 1982, the Board commenced informal discussions with the parties in an attempt to narrow the issues in dispute.

#### IV. HISTORY OF THE DISPUTES

Beginning in 1981, the unions involved in these disputes, pursuant to Section 6 of the Railway Labor Act, individually served on the railroad notices of demands to amend numerous provisions of their collective bargaining agreements with the carrier. These Section 6 Notices were served as follows:

ARASA	November 23, 1981
BLE	December 1, 1981
BRS	November 30, 1981
BRC	December 1, 1981
BRAC	November 1, 1981
IAM&AW	December 28, 1981
IBBB	December 7, 1981
IBEW	December 14, 1981
IBFO	November 30, 1981
IBT	October 1, 1981
PBA	December 29, 1981
RYA	Oct. 5 and Dec. 1, 1981, (2 notices)
SMWIA	December 26, 1981
UTU	Oct. 8 and Dec. 29, 1981 (2 notices)

On December 21, 1981, LIRR served its Section 6 Notices requesting a substantial number of amendments in the current agreements. The parties served revised Section 6 Notices at various times during the course of negotiations. Subsequent to being released from mediation in October 1982, the LIRR withdrew all mod-

ifications of its original Notices, and returned to its original Notices.

Applications for mediation were subsequently filed, and the cases were docketed by the National Mediation Board (NMB) as follows:

Date of Application	Organization	NMB Case No.
March 26, 1982	BRAC	A-10935
March 28, 1982	IBT	A-11052 LIRR April 5, 1982
April 1, 1982	UTU	A-11051
April 1, 1982	ARASA	A-11055
April 1, 1982	IAM&AW	A-11056
April 1, 1982	BRS	A-11057
April 1, 1982	BRC	A-11062
April 1, 1982	PBA	A-11063
April 16, 1982	BLE	A-11064 LIRR April 1, 1982
April 1, 1982	IBFO	A-11065
April 1, 1982	RYA	A-11066
April 1, 1982	IBEW	A-11067
April 1, 1982	IBBB	A-11068
April 1, 1982	SMWIA	A-11072

Mediator Francis J. Dooley commenced mediation in Case No. A-10935 on May 3, 1982.

Mediator Robert J. Brown commenced mediation on June 25, 1982, on Case Nos. A-11051, 11056, A-11062, A-11065, A-11067, A-11068, and A-11071. Mediator Dooley commenced mediation on Case Nos. A-11052, A-11055, A-11057, A-11063, A-11064, and A-11066 on August 18, 1982.

Subsequently, the NMB determined that the parties were deadlocked, and on October 15, 1982, the NMB proffered arbitration in accordance with Section 5, First, of the Railway Labor Act. On October 19, 1982, the UTU rejected the NMB's proffer with respect to its dispute. Also on that date, LIRR declined to arbitrate the disputes with respect to each of the organizations. Therefore, on October 19, 1982, the Board released the parties from mediation, and the statutory 30-day "status quo period" began to run.

Although the parties were freed from formal mediation sessions, from November 1 through November 13, 1982, intensive mediation sessions with each of the parties were conducted by NMB Member Wallace and Mediator Dooley.

On November 11, 1982, the LIRR requested that President Reagan create an emergency board pursuant to Section 9A of the Railway Labor Act, which governs publicly funded and operated commuter authorities. This Board was established on November 16, 1982, and a new status quo period was established.

## V. REPORT AND RECOMMENDATIONS

### A. INTRODUCTION

The carrier has already reached agreement with BRAC and IBT on all items, and the agreements have been ratified by all parties and placed into effect. In addition, IBBB, IBFO, BRS, and SMWIA have reached tentative agreement with LIRR, and these agreements await ratification by the MTA board before they become effective. According to an IBEW representative at the hearing, a tentative agreement with IBEW was rejected by the MTA board because of the incidental work rule issue. A tentative agreement with ARASA-851 was rejected by the membership of that organization.

The Board urges the parties to ratify all of the tentative agreements immediately, and to put them into effect. Neither the MTA, LIRR, nor ARASA-851 put forward any persuasive arguments for changing already agreed upon contracts, which follow the BRAC-IBT pattern in many respects.

The Board has been made very aware of the fiscal uncertainties facing MTA in 1983—indeed, events in Washington and Albany have transpired concurrently with this Board's existence. The primary obstacle to ratification by the MTA, uncertain funding for 1983, has now been resolved by Congress and the State Legislature. Accordingly, we recommend ratification.

Because we recommend implementation of these tentative agreements, the balance of our Report will be devoted to issues relating to the remaining organizations which did not reach agreement with the carrier. References to a "pattern" will encompass all of the agreements discussed above, unless otherwise noted.

### B. WAGES

The pattern of wage settlements already reached provides a three-year agreement retroactive to January 1, 1982. Wage increases are six percent on January 1, 1982; seven percent on January 1, 1983; and seven percent on January 1, 1984.

LIRR offered this same pattern to a number of the organizations during the negotiations which preceded the creation of the Emergency Board. At the hearings before the Board, however, the carrier offered only five percent each year, citing its then-uncertain funding situation.

The organizations have made varying wage demands, which may be summarized as follows:

ARASA:	6%-7%-7%
BLE:	20%-20% plus COLA (two-year agreement)
BRC:	12%-12% plus COLA (two-year agreement)
IAM:	12%-12% plus COLA (two-year agreement)
PBA:	8%-8%-8%
RYA:	6%-7%-7%
UTU:	25%-25%-15% plus COLA

The Board recommends that the parties follow the pattern already established with half of the organizations. While we understand the reason why the carrier reduced its wage offer, the needed subsidies now will be forthcoming, and the carrier should put the 6%-7%-7% pattern back on the bargaining table.

This package is comparable to agreements between MTA and the unions representing bus and subway employees, as well as the recommendations of Emergency Board 198 with respect to the Metro-North Railroad which MTA also operates. The package is intended to provide protection against anticipated increases in the cost of living, while permitting LIRR to accurately predict its direct labor costs for the term of the agreement. Inflation has abated in recent months, and the wage increases which we recommend are intended to provide a real increase under current conditions.

It is undisputed that large commuter railroads are not self-sufficient, and have relied on subsidies for years. The LIRR has not produced an operating surplus in at least thirty years, and commuters pay only 47% of the railroad's operating costs. Taxpayers subsidize the LIRR in an equal amount, with the balance coming from other sources such as advertising. The increases recommended here, while partially offset by the recommended changes in existing work rules, nevertheless may cause an increase in costs which can only be met by increasing fares or subsidies. We are unwilling to recommend still higher increases sought by five of the organizations. Our wage recommendations thus are based upon the MTA's ability to pay, the comparable wages paid on its other commuter operations, changes in the cost of living index, and consideration of the total compensation—benefits as well as wages—received by the employees.

The PBA sought percentage increases comparable to those received by police officers in the metropolitan area, rather than percentage increases comparable to those received by railroad employees. We note that the base rate for LIRR police is higher than the base rate for New York City Police and Transit Authority Police. The Board recognizes the dangers inherent in police work, and the special needs of police officers. The recommendations which we

make below with respect to PBA demands are designed to accommodate these needs as they relate to LIRR police.

With respect to the BLE's demands for Engineers, we have carefully considered the increases sought, and find them unwarranted by present circumstances. Engineers earn over \$110 per day, and under the pattern recommended will earn approximately \$125 per day in 1983, and an additional 7% in 1984. By comparison, Metro-North Engineers will earn \$126.32 and Amtrak Engineers will earn \$133.92, in 1983. Neither of those agreements includes the supplemental pension applicable to the LIRR, which will be worth an additional \$35.62 per day to LIRR Engineers under the pattern settlement in 1983. Therefore, the Board finds that LIRR Engineers have a high level of compensation relative to other locomotive engineers on commuter railroads.

In addition, the Board does not find any basis in the record before it for recommending additional compensation for Engineers in order to restore any "historical differential" above Conductors. The Board is aware that this differential exists on Amtrak, Conrail and Metro-North. Since 1972, Engineers and Conductors have earned the same daily rate on the LIRR, and successive agreements have maintained that relationship. The BLE's complaint is not that the pattern would not produce a fair wage, but that the Conductors have been offered the same pattern. We do not regard such a claim as a legitimate basis for a higher recommendation.

With respect to the UTU, the 1983 pattern rate of \$125 a day plus \$35.62 in pension benefits earned by LIRR Conductors so substantially exceeds the \$111.44 Amtrak rate and the \$114 Metro-North rate that no deviation from the LIRR pattern is justified, particularly where that would advance the Conductor rate above the Engineer rate.

In summary, we recommend that the pattern settlement of 6% in 1982, 7% in 1983, and 7% in 1984, be applied to the remaining organizations which have not settled.

### C. PENSIONS

Employees of the LIRR enjoy the benefits of a supplemental pension plan which is almost unique in the railroad industry. At the present time, the carrier is engaged in litigation which will determine whether the Employee Retirement Income Security Act (ERISA) applies to the plan. On December 23, 1982, the U. S. Court of Appeals for the Second Circuit remanded the case to the District Court for fuller consideration of certain issues.

Because of this litigation, the parties have discussed postponing negotiations related to changes in the plan until final adjudication of

the issue. For this reason, the parties have not presented the Board with substantive proposals. Therefore, the Board recommends that further negotiations on the pension issue be held in abeyance during the litigation.

## D. SICK LEAVE AND PERSONAL LEAVE

### 1. NON-OPERATING EMPLOYEES

This part of the Report relates solely to non-operating employees, and concerns the LIRR's demand for changes in sick leave and the organizations' demands for increased personal leave.

The pattern settlement on sick leave provides that newly-hired employees will receive one day of sick leave per two months of service during their first calendar year of service, and eight days total in the second calendar year. All employees earn 12 days from the third year. New employees receive no pay for one- or two-day absences. Medical certificates may be required for all employees after two two-day sick leave absences. Employees will be allowed a lump sum payment upon retirement equal to half of the number of unused sick leave days accumulated, at the employees' prevailing rate, up to \$5,000.

The pattern on personal leave provides no personal leave during the first two years, three days in the third and subsequent years, four days after ten years, and five days after twenty years. The BRAC and IBT agreements do provide one day in the first year and two in the second year. However, those organizations agreed to reduce paid holidays for new employees to offset these leave days.

Before this Board, the carrier seeks the pattern sick leave agreement and the BRAC-IBT personal leave pattern. Because the savings generated by these changes will provide funds for part of the wage settlement, and are tied to wages as part of an over-all economic package, the Board recommends that the remaining non-operating organizations adopt the carrier's proposals. However, the organizations should have the option of accepting the alternative pattern contained in the tentative agreements, rather than the BRAC-IBT agreements.

### 2. OPERATING EMPLOYEES

With respect to operating employees, LIRR seeks the reduced benefits for new employees discussed above, and offers the \$5000 lump sum retirement payment.

UTU and BLE seek payment for sick leave from the first day of

sickness, rather than the fifth day, and they seek to accumulate 72 days of unused sick leave, rather than 60 days.

The Board recommends that the carrier's proposed changes be implemented, since the increased costs appear to be offset by the changes for new hires. Until recently, operating employees did not receive sick leave of any kind, and the organizations' proposed extension of this fringe benefit without an offsetting productivity increase is unwarranted. Should either organization desire to liberalize sick leave, it should identify rules changes which it is prepared to give the carrier to pay for the increased cost.

### E. NEW HIRE PROGRAM

The LIRR seeks to implement a "new hire package" for non-operating employees which provides a wage and benefit progression for new employees. Changes in sick leave and personal leave have been noted above.

The carrier seeks a five-year new hire entry rate. New employees would receive 80% of the full rate in their first year, and an additional five percent each year thereafter until they reached 100%. Shift differentials would change from the present rate of 10% to 8% the first year, plus one-half a percent each year until the employee reached 10% in the fifth year. The carrier also seeks a reduction of four paid holidays during the first year and two during the second.

Under the pattern settlement with the shop crafts, journeymen have an entry rate progression of 80% in the first year and 90% in the second year, with shift differentials of 8% and 9% respectively. Employees other than journeymen, including those covered by BRAC and IBT agreements, receive the rates proposed by the LIRR.

The tentative agreements provide for a reduction of only one holiday per year for new employees, which is accounted for by the lack of any personal leave days during the first two years of employment. The BRAC-IBT agreements provide some personal leave days with the reduced number of holidays.

The Board recommends that the pattern settlement, providing separate progressions for journeymen and others, be adopted, with the graduated shift differentials. However, the organizations should have an option in balancing holidays and personal leave days in accordance with either pattern.

### F. RESTRICTIONS ON BIDDING

#### 1. NON-OPERATING EMPLOYEES

The carrier seeks to limit bidding for non-operating employees



(other than police) to four-month intervals, and to return employees to the job they left upon return from an extended absence. Presently, openings are posted as they arise, and employees returning to duty may bid into any job which opened during their absence if their seniority would entitle them to the job.

Some of the tentative agreements do provide for bidding every four months, while others include no such restrictions. The Board recommends that the organizations agree to limit bidding to four-month intervals. However, since the pattern agreements do not restrict the employees' right to a second bump upon returning from an extended absence, the Board recommends no change in this right.

## 2. OPERATING EMPLOYEES AND POLICE

The carrier proposes to end the semi-annual posting of *all* assignments, to advertise vacancies twice a month, and to limit bumping. The carrier argues that most employees retain their current assignment anyway, and that there will still be numerous opportunities to change assignments.

The carrier argues for a change which would eliminate the right to rebid every six months primarily because it takes so long to go through the necessary steps. The carrier also seeks to eliminate the claims of some operating employees that minor schedule revisions create a new bidding opportunity.

The Board recommends continuation of the present semi-annual bidding process, with the following modifications. The Board recommends that the carrier devise a method for computerizing what is now apparently a manual task, and seek ways to reduce the amount of paperwork associated with semi-annual bidding. The Board further recommends that, when minor revisions are made in a operating employee's assignment, such as those cited in the carrier's submission, these revisions should not provide a basis for the affected employee to displace another employee.

## G. JOB STABILIZATION

Under existing stabilization of forces provisions, employees hired prior to January 1, 1976, are protected from layoff, and are guaranteed employment within their craft or class. The organizations are seeking to extend this protection to more-recently hired employees.

The carrier offers to change the job stabilization date to January 1, 1979, provided that it can give employees employment in *any* craft or class in the event of a reduction in force.

BRAC and IBT accepted the LIRR proposal. None of the tentative agreements contains any provision changing present stabilization of forces agreements.

While we understand why some of the organizations may be prepared to accept such a proposal, the Board is not persuaded that there should be an across-the-board change in the existing rule. Emergency Board 192, which recommended the January 1, 1976, date, noted that "[s]uch an arrangement provides protection to employees who have served the Carrier for a significant number of years while preserving essential managerial flexibility." Approximately 2500 employees were brought under this provision as a result.

Since we recommend no change in the seniority date, and given the carrier's over-all 5% annual turn-over rate, only two-thirds of the workforce will have a no-furlough provision.

With respect to the unique problem of Special Service Attendants, the carrier has proposed that Special Service Attendants who cannot qualify as Trainmen be guaranteed positions in other departments, should it be necessary to eliminate their positions. The Board recommends that the UTU agree to permit these employees to transfer to other positions in the event the carrier cannot legally continue platform liquor sales. In the event there are no Attendants for Special Service Supervisors to supervise, these employees should likewise be offered other positions.

#### H. INCIDENTAL WORK, SUBCONTRACTING, AND ARBITRATION

The carrier has proposed an incidental work rule, a rule permitting subcontracting, and a rule to establish a permanent arbitration body on the LIRR. These proposals are the same as proposals advanced by the MTA with respect to the Metro-North Railroad before Emergency Board 198:

##### INCIDENTAL WORK

LIRR Position: Where work on a job calls for the performance of an incidental amount of work of another craft, any employee may perform such incidental work, provided the time normally associated with the performance of such incidental work shall not represent the preponderant job functions of the work being performed.

##### CONTRACTING OUT

LIRR Position: When the LIRR desires to contract out work that otherwise might be performed by bargaining unit employees, the Carrier shall give favorable consideration to having such work performed with existing facilities,

provided the work can be performed without adding employees and that the cost of such work will be competitive with outside contractors as to quality, price, and time of performance.

The decision with respect to the contracting out of any particular work shall remain solely that of the LIRR.

The organizations unanimously assert that this Board lacks jurisdiction over these three subjects because they were never part of a carrier Section 6 notice, were never discussed in conferences with the unions, and were never handled in mediation. The carrier submitted a legal memorandum setting forth its opinion that the Board does have jurisdiction over these items.

Despite the legal objections raised to our consideration of the above proposals, we are not persuaded that the Board lacks jurisdiction over the subjects of incidental work and subcontracting since the record establishes that these issues were noted or addressed by the carrier and a number of the organizations, including some of the shop crafts.

Our recommendations with respect to the Metro-North disputes were generally favorable to the MTA on the issues of incidental work and subcontracting. All other things being equal we would make the same recommendations here for the reasons stated in the Report of Emergency Board 198. However, none of the eight agreements reached on the LIRR thus far contains any of these rules, either in the confirmed agreements with BRAC and the IBT, or in the tentative agreements with ARASA, BRS, IBBB, IBFO and SMWIA. The latter three are clearly identified as shop craft unions and are directly concerned with incidental work and subcontracting issues. At best, some of the agreements provide for further efforts in reducing barriers to incidental work, but they impose no changes. Therefore, since these rules are not part of any pattern on the LIRR, we do not recommend them here.

## I. SKILL DIFFERENTIAL

Several of the non-operating organizations seek a skill differential for certain employees. Four of the tentative agreements contain differentials ranging from 12 cents to 25 cents per hour for certain journeymen. In exchange for a new life insurance arrangement plus the differential, each of the four organizations agreed with the carrier to forego carrier contributions for supplemental life insurance.

The Board recommends that each organization which seeks a differential do so on a similar basis, or agree to other concessions which will fund such a differential.

## J. ISSUES RELATING TO OPERATING EMPLOYEES

### 1. ISSUES RELATING TO BLE AND UTU

#### a. CLASS OF SERVICE

The carrier has proposed a number of changes which relate to classes of service for the operating crafts. These proposals would eliminate the distinctions between yard and road service, and would establish a general service category.

There are at present four classes of engine service on the LIRR: passenger, freight, yard and hostling. The carrier proposal would eliminate hostling as a class, and combine all non-passenger and non-freight service into one class, general service. Employees in general service would perform all work not categorized as either passenger service or freight service, e.g., roustabouts, work trains, snow patrols. Trainmen on the LIRR are divided into three classes of service: passenger, yard and freight, and the carrier proposes that yard and freight service be combined.

In support of this proposal, the LIRR cites two major advantages: increased flexibility in assignments and a corresponding reduction in penalty payments. Presently, employees are compensated a day's pay when assigned work outside of their particular class of service, even if the alternate assignment is of short duration.

The carrier proposes the elimination of the hostling class because the need for hostlers has been eliminated over the years.

Since 1966, freight business on the LIRR has declined significantly, with a correlative decrease in the number of freight jobs. The combination of yard and freight service would permit the carrier to assign work where it is actually needed, without having to pay a "penalty." Implementation of this proposal would, therefore, also result in the elimination of the need for three "extra lists."

Although the BLE and the UTU are opposed to these changes, the Board is persuaded that such changes would result in financial savings for the carrier, savings which can be passed on to both the employees and the commuting public in the form of better benefits and more efficient service.

In line with this change, the carrier also proposes the elimination of the distinction between road and yard service, for both engine service and train service employees. Currently, yard crews wash trains after the road crew has left the train at a certain time and place. The LIRR argues that this is an inefficient and time consuming procedure as most road crews pass through the washing facility on their way to the yard.

Both the BLE and the UTU oppose this change unless the carrier is prepared to make additional payments.

Emergency Board 198 recommended that the distinction between road and yard service be completely eliminated for Metro-North operating employees. This Board recommends that road crews on the LIRR wash trains, as the time savings would be substantial and the inconvenience to the road crews would be minimal. If the Engineers and Conductors take the responsibility of following the simple precautions of reducing train speed to 3 mph, and ensuring that all doors and windows are secured, more than twice the current number of cars could be washed on a daily basis.

#### b. MEAL PERIODS

The present agreements provide that passenger service employees are entitled to a twenty minute meal period between the end of the third and the end of the sixth hour of a given assignment. Meal periods are taken where there is at least a 35 minute interval between the arrival of one train and the departure of the next. If, however, this requirement is not met (e.g., the period overlaps into the seventh hour), the employee receives thirty minutes additional payment. The LIRR proposes ending these penalty payments and applying that money to a general wage increase. The carrier argues that not only would this change save money, but it would discourage the "temptation to dally" and thus result in more timely operation of trains.

The UTU counters with the argument that schedule delays are not the result of dallying, but the result of mismanagement on the part of the LIRR which "schedules [the meal periods] incorrectly in the first place." The Board notes that the LIRR claims to have an on-time average in excess of 90%. It is the union's position that the number of penalty payments could be reduced through scheduling changes, and that the employees should not lose any portion of their meal periods without compensation. In fact, the organizations ask for an extension of the twenty minute meal period, pointing out that many employees on the LIRR receive longer meal periods. There is also a disparity between the time allotted for passenger and yard service versus those in road freight who receive forty minutes. The UTU proposes a one hour meal period for all Trainmen with a payment of one and a half hours straight time if the meal period is not granted.

The Board is not persuaded that elimination of the penalty payment would result in both the increased savings and improved productivity that the carrier anticipates. Neither is the Board of the opinion that the additional costs of the UTU's proposal are war-

ranted, in light of the Board's recommended wage increases. Therefore, on this issue, the Board recommends that the current contract provision remain unchanged.

### c. NIGHT SHIFT DIFFERENTIAL

The organizations also request a night shift differential, such as that granted to employees in other crafts or classes. Employees in certain non-operating crafts or classes receive a night shift differential of 10% between the hours of 6:01 PM and 5:59 AM, and 10% between 6:01 PM on Friday and 5:59 AM the following Monday. Trainmen receive 4.5% between the hours of 8:00 PM and 5:59 AM. Engineers receive a 5% night differential. The UTU asks for a 15% differential between 6:00 PM and 5:59 AM on weekdays for all its members and the same percentage on the weekend between 6:01 PM Friday and 5:59 AM Monday. The BLE also seeks an increased differential.

The Board finds no basis for changing the present night differentials of operating employees.

## 2. ISSUES RELATING TO BLE

### a. GUARANTEED EXTRA LIST

The LIRR proposes a change in the extra list provisions for Engineers to conform to the provisions applicable to UTU-represented employees. Currently, Engineers on the extra list are available for call on a "first-in, first-out basis" for an 8 hour period. If they are not called, they are guaranteed 8 hours' pay. Additionally, if an employee starts an assignment within 22 ½ hours of the starting time of the prior assignment, the employee is compensated at a time and half rate.

Under the provisions applicable to the UTU, Trainmen select assignments on a seniority basis, with a 24 hour availability period for those employees who do not select assignments. Once the extra list is exhausted, the "relief day list" is used.

The carrier argues that elimination of the "first-in, first-out" rule would result in significant savings in overtime payments, as the UTU provision allows available "straight-time" employees to be used to cover assignments.

The parties have not presented the Board with sufficient evidence to warrant any recommendation for changing the present practice.

### b. ENGINEERS MAKING ANNOUNCEMENTS

The LIRR proposes that Engineers may be required to make an-

nouncements to passengers when there are delays. The current practice is that Trainmen typically make the announcements, but often they are unable to do so, and no announcements are made. The carrier maintains that this practice is a disservice to the riding public. The LIRR points out that the first source of information regarding delays is usually the Engineer, and since Engineers routinely use the radio it would not place a great burden on them.

The Board is in agreement with the carrier on this issue. Implementation of this system would not inconvenience the Engineer, but would result in improved service to the commuting public.

#### c. TRAINING

The present training period for Engineers is 18 months. The LIRR proposes reducing this to 15 months. The trainee would receive 12 months of classroom training and three months "hands-on" operating experience. This training would be provided by veteran Engineers (who would receive additional payment).

The BLE opposes this change, arguing that 15 months is inadequate time to fully train an Engineer.

The Board recommends that the training period for Engineers be reduced to 15 months, as the provision for 3 months "hands-on" experience, combined with other safeguards already in the agreement with the BLE, will ensure that only capable employees will be permitted to operate trains.

#### d. GRIEVANCES

The BLE asks for a time limit on the amount of time the carrier takes to render a "final" decision on a grievance. Since no grievance can be presented to an arbitration board before all the steps in the grievance procedure have been taken, the lack of a time limit can delay the final determination for years. This Board recommends that the carrier and the union negotiate a time limit on these claims, so that the union can progress its grievances in an expeditious manner. The Board can conceive of no sound reason why the carrier cannot give a prompt answer to any grievance.

#### e. HEALTH AND WELFARE

The Board recommends that the carrier provide the BLE employees with a modernized health and welfare plan, as the provisions currently applicable to these employees are out of date. In view of the organization's expressed willingness to contribute to a more expensive plan which provides better coverage, the Board recom-

mends that the LIRR and the BLE negotiate improvements in health and welfare benefits for engine service employees in line with benefits available to other LIRR employees.

### 3. ISSUES RELATING TO UTU

Blanking is the practice of not filling a job when the regularly-assigned employee is absent. The current contract provides that Trainmen who are unable to report to work due to illness or injury must notify the railroad at least three hours before their reporting time. The current practice is for the carrier to cover these absences with employees called from either the guaranteed "Extra List" or "Relief List." However, the short notice frequently results in no coverage at the beginning of a run, or with none on the first train of an assignment. The carrier asks for the right to "blank" positions where the lack of requisite notice (i.e., less than 3 hours) prevents an assignment from being completely fulfilled by a replacement employee.

The UTU opposes a change in this work rule, or any other work rule, which represents what they term a "give-back" from an already "bare-bones" contract.

The LIRR has not presented the Board with sufficient evidence to warrant any recommendation for changing the present practice.

### K. ISSUES RELATING TO ARASA

As stated previously, the Board recommends that ARASA Lodge 851 accept the tentative agreement it has reached with the carrier. For ARASA Lodges 851-A, 853, and 857, the Board recommends that the same general terms and conditions apply, with certain exceptions.

ARASA Lodge 853 is the only ARASA Lodge which represents categories of employees in which there may be new hires. The Board therefore recommends that the carrier's new hire program be applied to this group, but not to the other ARASA Lodges.

The new contract between the IBT and the LIRR provides that Maintenance of Way Employees who must work in the rain be compensated an additional two hours pay, and be provided with foul weather gear. The Board recommends that all supervisory employees represented by ARASA be accorded the same benefits as are provided to the employees whom they supervise.

ARASA 853 addresses an issue unique to the 51 employees it represents. The organization maintains that employees with the same job title and responsibilities are compensated at different rates of pay, and proposes a wage equalization program to correct this situ-



ation. The Board recommends the establishment of a joint labor-management study committee to review the salaries and responsibilities of these employees.

The LIRR proposes a change in the "Tour of Duty" rule applicable to ARASA 853. Rule 2(b) of the current contract states that the work day starts no earlier than 7:00 AM and ends no later than 5:00 PM. The carrier argues that this rule operates as a restriction in situations where ARASA 853 employees are needed to supervise construction projects which are undertaken during hours outside the parameters of Rule 2(b). Presently, supervisors who do work a tour of duty other than 7:00 AM to 5:00 PM are paid at a time and half rate for those hours which fall outside of the 7:00 AM to 5:00 PM tour of duty, even if they only work eight hours. These employees want an additional 8 hours pay for not working a day shift.

The carrier proposes an alternative to the present practice that ARASA 853 employees be paid at the usual rate of the position plus a 10% shift differential, and the Board recommends that this proposal be adopted. This revision would be consistent with the shift differential policy currently applicable to some other employees on the LIRR.

#### L. ISSUES RELATING TO BRC

LIRR makes few demands relating solely to the Carmen. However, BRC has advanced a lengthy set of proposals for increased wages and benefits, and changes in work rules. The principal demands are discussed below.

BRC seeks exclusive jurisdiction over terminal testing of air brakes, which it now shares with Trainmen represented by UTU. It is clear that neither organization has exclusive jurisdiction over testing of air brakes, as evidenced by the award of Public Law Board No. 1691. That PL Board denied a BRC claim which was premised upon the organization's assertion that it had exclusive jurisdiction over this work, and that the LIRR violated the BRC's agreement when Trainmen tested air brakes. Testing of air brakes has long been a shared task in the railroad industry, and the Board recommends that BRC withdraw its demand for exclusivity.

Similarly, the Board recommends that BRC withdraw its demand for jurisdiction over piggy-back work. By the union's own admission, the carrier does not perform this service, and BRC is seeking jurisdiction over non-existent work. Should the LIRR begin piggy-back service, the organization can renew its demands at that time.

#### M. ISSUES RELATING TO IAM&AW

The LIRR has made no proposals which specifically relate to the

IAM. The organization, on the other hand, has made a number of proposals of its own. Among these proposals are a request for the right to repair all motor vehicles on the property, a tool allowance, provision of rain gear, and the establishment of a joint safety committee.

The IAM proposal on motor vehicle repair reflects agreements on Conrail and Amtrak, where IAM employees perform such work. The Board has not been furnished with enough information to make a recommendation regarding the vehicle repair request. The Board recommends that the IAM develop a more detailed analysis of the costs and benefits of having motor vehicle repairs performed in-house, rather than having the work contracted out, and that further negotiations be conducted, to establish standards for performing such work in-house.

On the issues of a tool allowance and rain gear, the Board notes that the carrier provides a tool allowance and rain gear to some other crafts or classes, and recommends that the IAM employees receive the same benefits.

Finally, the Board recommends that the LIRR and the IAM establish a joint safety committee which would operate under the guidelines established by the Occupational Safety and Health Act.

## N. ISSUES RELATING TO THE PBA

The LIRR has two proposals with respect to Police Officers represented by the PBA. First, the carrier wants 30 days to respond to grievances, rather than the present 15 days. Second, the carrier wants the right to appoint up to 25 officers to special duty assignments. Presently, the limit is five percent of the 150 officers.

PBA is willing to give the carrier 30 days to respond to grievances, provided the union has 30 days to file them. The Board recommends that both time limits be adjusted to 30 days.

PBA not only opposes changing the special duty limit to 25 people, but seeks to abolish the concept altogether in favor of a requirement that all jobs be posted for bidding. According to the union, the carrier has consistently abused this provision by appointing more than 5% of the force to special duty.

In addition, PBA seeks to increase the uniform allowance from \$265 per year to \$500, and to institute a \$500 dry cleaning allowance. The organization argues that this is comparable to benefits received by other police officers in the New York Metropolitan area. Police Officers on the LIRR are required to purchase their own equipment such as belts, guns and handcuffs.

Trainmen covered by the UTU agreement are also required to wear a uniform. Unlike Police, who must buy their own uniforms

and equipment, Trainmen receive a complete uniform from the carrier, including replacement pieces as needed. Trainmen, like Police Officers, are responsible for maintenance of the uniform.

PBA also demands four hours minimum recall pay if an employee is recalled to work and then not needed, and a guarantee of six hours work if the employee is needed.

The Board recommends that the number of special duty assignments be limited to ten percent of the total police force. The Board further recommends that the Police Officers receive four hours minimum recall pay, provided that the carrier may utilize any officer on recall for any other assignment if the original assignment fails to materialize or is completed in less than four hours.

With respect to uniforms and equipment, the Board recommends that the parties agree to end the present practice, effective upon signing of a new agreement. In its place, the carrier should provide Police Officers with replacement uniforms on the same basis and under the same conditions as it now does for Trainmen. New hires should receive an initial uniform at the time of hire. The current uniform allowance should be converted to a one-time equipment allowance to cover the cost of police equipment which officers would still be required to buy on their own. When replacement equipment is needed, provisions should be negotiated for reasonable replacement of equipment. Police Officers would be responsible for cleaning of the uniforms, as they are presently.

## O. ISSUES RELATING TO RYA

For employees represented by the RYA, the LIRR has proposed the elimination of the current rule which provides that a tour of duty will neither begin nor end between midnight and 6:00 AM. This restricts the railroad in its freight operations. Specifically, where a freight facility has only two tours of duty (7 AM to 3 PM, and 3 PM to 11 PM), there will be no coverage in those situations where a train arrives after midnight. The LIRR proposes the establishment of a 5 PM to 1 AM tour of duty for Yardmasters. The Board recommends that the RYA accept this proposal, as it will allow the carrier greater flexibility in its freight operations, an area in which the carrier is attempting to attract more business.

The RYA has asked for a shift differential. The Board recommends that Yardmasters assigned to the new shift described above receive a differential of 5% for all hours worked after 11 PM, in consideration of eliminating the current restriction.

The RYA also asks for an increase in the current meal allowance for Yardmasters who work more than 10 consecutive hours in a 24 hour period, and a paid 30 minute lunch period during an 8 hour

tour of duty. The current agreement provides for a \$4.00 meal allowance after two consecutive hours of overtime.

Other employees on the LIRR who receive a meal allowance are paid \$4.00. Therefore, the Board recommends no change in the current meal allowance. However, both engine service and train service employees on the LIRR are entitled to a paid meal period, and it is not unreasonable to provide the Yardmasters a 30 minute paid meal period during an 8 hour tour of duty.

#### P. ISSUES RELATING TO UTU SUPERVISORS AND SPECIAL SERVICE ATTENDANTS

The LIRR proposes a switch of holidays for Special Service Attendants represented by UTU. Lincoln's Birthday is a holiday for these employees, while the day after Thanksgiving is not. However, the converse is generally true for the passengers on the LIRR. Special Service Attendants are paid at two and one half day's pay for working holidays. By substituting the day after Thanksgiving as a holiday for Lincoln's Birthday, the carrier, the employees, and the passengers would benefit. The Board recommends that this proposal be adopted.

The railroad has two proposals which apply to supervisory employees represented by UTU 645B.

At present, these employees receive the same health and welfare benefits as do management employees on the LIRR. The carrier proposes that the UTU 645B employees instead receive the same benefits as do the ARASA-represented supervisors.

The Board recommends that the UTU 645B employees remain under their current health and welfare coverage, as the change would result in a reduction of the benefits currently enjoyed.

The new contract between the IBT and the LIRR provides that Maintenance of Way Employees who must work in the rain be compensated an additional two hours pay. The UTU requests that this provision be applied to these employees' supervisors, who also must work in the rain. The Board recommends that this provision be applied to these supervisors.

#### Q. MISCELLANEOUS PROVISIONS

Numerous other proposals have been advanced by the organizations and the carrier covering items not discussed in this Report. The fact that the Board has not treated each of these items individually is not intended to reflect a judgment that they lack merit, or to imply that they were not carefully considered during the preparation of this Report. However a number of these other items, re-

ardless of their individual merit, could not be justified on the basis of their cumulative cost above and beyond the package here recommended.

The Board recommends that, in the interest of settlement, the parties withdraw the balance of their notices.

## VI. CONCLUSION

We are encouraged that half the organizations have already reached final or tentative agreement with the carrier on the basis of a fair economic pattern and a recognition of the need to remove outdated work rules that hinder efficient and cost-effective operation of a commuter railroad. We encourage the other organizations and the carrier to settle on a comparable basis.

This Emergency Board is the first one created pursuant to the Commuter Rail Amendments in Section 9A of the Railway Labor Act. We recognize that there are additional procedures that may be utilized before the hearing and mediation provisions of the Act are exhausted. Nevertheless, we believe that the parties have the power to reach agreement promptly by engaging in intensive collective bargaining, and we urge that they do so.

Respectfully,

ARVID ANDERSON, *Chairman*  
DANIEL G. COLLINS, *Member*  
RICHARD T. NINER, *Member*



## APPENDIX

### EXECUTIVE ORDER 12393

#### ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE LONG ISLAND RAIL ROAD AND CERTAIN LABOR ORGANIZATIONS

A dispute exists between The Long Island Rail Road and certain labor organizations, designated on the list attached hereto and made a part hereof, representing employees of The Long Island Rail Road.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ("the Act").

The New York Metropolitan Transportation Authority, the parent body of The Long Island Rail Road, has requested that the President establish an emergency board pursuant to Section 9A of the Act.

Section 9A(c) of the Act provides that the President, upon request of a party, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, as amended (45 U.S.C. § 159a), it is hereby ordered as follows:

1-101. *Establishment of Board.* There is established, effective November 16, 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 carrier. The board shall perform its functions subject to the availability of funds.

1-102. *Report.* The board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

1-103. *Maintaining Conditions.* As provided by Section 9A(c) of the Act, as amended, from the date of the creation of the Emergency Board, and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees, in the conditions out of which the dispute arose.

1-104. *Expiration.* The Emergency Board shall terminate ninety (90) days after the submission of the report provided for in paragraph 1-102 of this Order.

RONALD REAGAN.

THE WHITE HOUSE,  
November 16, 1982.

#### LABOR ORGANIZATIONS

ARASA Division, Brotherhood of Railway and Airline Clerks  
Brotherhood of Locomotive Engineers  
Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express  
and Station Employees  
Brotherhood of 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  
International Brotherhood of Teamsters  
Police Benevolent Association  
Railroad Yardmasters of America  
Sheet Metal Workers International Association  
United Transportation Union