REPORT

TO

THE PRESIDENT

BY

EMERGENCY BOARD

NO. 200

Appointed by Executive Order 12405, dated February 14, 1983, Pursuant to Section 10 of the Railway Labor Act, as amended

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To investigate the dispute between the Brotherhood of Locomotive Engineers and the Consolidated Rail Corporation.

(National Mediation Board Case Nos. A-10392, A-10835, A-10836, A-10857 and A-10858)

Washington, D. C.

March 30, 1983

LETTER OF TRANSMITTAL

Washington, D. C.

March 30, 1983

The President
The White House
Washington, D. C.

Dear Mr. President:

On February 14, 1983, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12405, you created an Emergency Board to investigate the dispute between the Brotherhood of Locomotive Engineers and the Consolidated Rail Corporation.

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

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

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

Respectfully,

George S. Ives, Chairman

Harold M. Weston, Member

Dana E. Eischen, Member

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I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 200 was created by President Reagan on February 14, 1983, by Executive Order 12405, pursuant to Section 10 of the Railway Labor Act, as amended, 45 U.S.C. Section 160. The President had been notified by the National Mediation Board (NMB) that, in the judgment of the NMB, a threatened strike by the Brotherhood of Locomotive Engineers (BLE) against the Consolidated Rail Corporation (ConRail) threatened substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service.

The President appointed George S. Ives, an arbitrator and former Member and Chairman of the NMB, as Chairman of the Board. Harold M. Weston and Dana E. Eischen, labor arbitrators with substantial experience in the railroad industry, were appointed as Members of the Board.

II. PARTIES TO THE DISPUTE

A. THE ORGANIZATION

The Brotherhood of Locomotive Engineers represents some 35,000 locomotive engineers on railroads in the United States. Approximately 3,500 engineers are employed by the carrier involved in this dispute.

B. THE CARRIER

The Consolidated Rail Corporation is the fifth largest railroad in the United States, with a 14,700 mile system covering fifteen northeastern states and the District of Columbia. ConRail was created in 1976 by the merger of bankrupt railroads in the northeastern United States pursuant to the Regional Rail Reorganization Act of 1973, 45 U.S.C. Section 701 et seq., the "3R Act." ConRail is owned by the Federal Government.

At the time it was created, ConRail was the largest railroad in the country, with a 17,000-mile system and almost 100,000 employees. Subsequent railroad mergers among other carriers, and the abandonment of unprofitable lines, have reduced ConRail's relative size. However, ConRail remains a major rail carrier, handling approximately 10% of total rail freight. In 1982, ConRail handled 2.9 million carloads, or 70.2 billion revenue-ton miles.

ConRail's principal freight includes motor vehicles, where ConRail has one-quarter of the U. S. market; food; pulp and paper products; and primary metals.

Under the provisions of the Northeast Rail Service Act of 1981 (NRSA), Title XI, Subtitle E of Public Law 97-35, ConRail must meet certain profitability tests which will determine how ownership will be transferred to the private sector. Section 1142 of NRSA adds a new Title IV to the Regional Rail Reorganization Act of 1973. In 1983, the Board of Directors of the United States Railway Association will make two such profitability determinations. If ConRail is determined to be profitable, it will be sold as a single entity. If it is not determined to be profitable, the Secretary of Transportation will arrange for the sale of the rail properties and service responsibilities in sections to interested buyers. Employees are entitled to a first offer of stock in the amount equal to wages foregone pursuant to Section 1134(4) of NRSA, if ConRail is sold as a single system.

III. ACTIVITIES OF THE EMERGENCY BOARD

The Board held organizational meetings in Washington, D. C., on February 15-16, 1983. On February 16, 1983, the Board conducted on-the-record ex parte hearings with the representatives of the BLE, and on February 17, 1983, the Board conducted similar hearings with representatives of ConRail. The hearings focused on a formal presentation of the parties' positions and their justifications for them.

Transcripts and exhibits of the formal ex parte hearings were exchanged on February 18, 1983, and the parties were given time to review them and to prepare responses for the subsequent on-the-record rebuttal session with the Board.

The Board met in executive session on February 24, 1983. On February 25, 1983, the Board conducted a joint rebuttal session with the parties in Sarasota, Florida. The hearings resulted in 248 pages of transcripts and 77 exhibits.

The Board met in executive session on several occasions. Following the conclusion of the formal presentations, the Board recessed to deliberate about the issues in dispute. On March 23-24, 1983, the Board convened in Sarasota, Florida, to prepare its Report to the President.

With the concurrence of the parties, the Board requested that the NMB seek an extension of the time within which the Report would be submitted, until March 30, 1983, and an extension of the status quo to April 29, 1983. On March 1, 1983, the NMB recommended that the President grant these extensions. President Reagan approved the extensions.

IV. HISTORY OF THE DISPUTES

On September 29, 1978, the BLE served a local Section 6 Notice with respect to the compensation relationship between locomotive engineers and other operating employees on ConRail. This issue is referred to as the maintenance of differential issue, and the notice was served following the signing of a crew consist agreement between ConRail and the United Transportation Union (UTU).

On October 20, 1979, the BLE served a local Section 6 Notice with respect to the design, construction, and use of all locomotives and other motive power units. This notice was similar to a notice which the BLE served on the members of the National Railway Labor Conference for national handling, and which is the subject of a separate mediation case.

On January 30, 1981, the BLE served a local Section 6 Notice with respect to rates of pay, rules and other working conditions for engineers on ConRail. This notice provided for increased wages and cost-of-living allowances; vacations and leave; and insurance benefits.

On February 11, 1981, the BLE served a local Section 6 Notice with respect to improvements in the three railroad insurance programs: GA-23000 (life, health, hospitalization), GA-46000 (retirees), and GP-12000 (dental). The BLE also sought to establish a vision care program.

On January 4, 1979, ConRail served a notice seeking the right to control movement of motive power and/or cars in yard and road service by remote control without a locomotive engineer.

The BLE invoked the services of the NMB on January 15, 1979, with respect to the issue of the maintenance of a differential over conductors and brakemen. The case was docketed on February 14, 1979, as NMB Case No. A-10392, and mediation commenced on March 28, 1979. Mediation efforts continued with different mediators through October 1982.

ConRail invoked the services of the NMB on October 22, 1981, with respect to the issues of rates of pay, rules and working conditions, and insurance benefits; and locomotive design standards. These applications were docketed as NMB Case Nos. A-10835 and A-10836, respectively, on October 23, 1981.

The BLE invoked the NMB's services on November 9, 1981, and its applications were docketed as NMB Case Nos. A-10857 and A-10858, dealing with its January 30 and February 11, 1981, notices, respectively.

Mediation under the NMB's auspices began on November 16 1981, with respect to these latter four cases, and continued through October 1982. At that time, mediation in all five cases was combined under the handling of NMB Chairman Robert O. Harris and Staff Mediation Director E. B. Meredith.

On December 10, 1982, the NMB notified the parties that the mediators had reported that they were unable to bring about a settlement of the issues despite their best efforts. The NMB therefore proffered arbitration in accordance with Section 5, First, of the Railway Labor Act.

By letters dated December 27, 1982, the BLE declined the NMB's proffer of arbitration in each case. The NMB notified the parties of the declinations on January 4, 1983. On February 3 1983, the parties agreed to maintain the status quo until February 15 1983.

On February 7, 1983, the NMB, pursuant to Section 10 of the Railway Labor Act, informed the President that in its judgment these disputes threatened substantially to interrupt interstate commerce so as to deprive a section of the country of essential transportation service.

V. REPORT AND RECOMMENDATIONS

A. LOCOMOTIVE DESIGN

The BLE seeks to establish standards of safety and comfort for locomotives in the United States. As part of this effort, it is engaged in national bargaining with the National Railway Labor Conference (NRLC). Since ConRail is not part of the NRLC bargaining with respect to this issue, BLE has served a similar notice on ConRail.

Before this Board, the BLE takes the position that locomotive design is not an issue in this dispute, that the parties have not exhausted their efforts to settle the issue, and that it has not threatened to strike over the issue. The BLE notice indicates that the matter is one which may be handled nationally, and states that the General Committee of Adjustment is willing to authorize the President of the BLE to handle the notice as part of the national agreement.

ConRail has offered to adopt the settlement reached in national handling with respect to locomotive use, design, and construction, with the further proviso that both BLE and ConRail may participate in the national negotiations.

The Board finds that the issue of locomotive design, as encompassed by the BLE's Section 6 Notice, is properly before it. Locomotive design was an issue in negotiations between the parties, was the subject of the NMB's mediatory efforts, and was not settled. The NMB proffered arbitration on this issue, and the proffer was rejected. Although BLE has stated before this Board that it does not now intend to strike on this issue, nevertheless, the procedures of the Railway Labor Act have been exhausted, and all of the unresolved cases are before the Emergency Board.

The Board has not been presented with any evidence concerning locomotive use, design or construction, and only minimal evidence regarding ConRail's desire to automate movement of locomotives and cars. Therefore, the Board does not have any basis for making substantive recommendations on this issue.

Since the parties now take the position that they are not at impasse, and are amenable to further bargaining in an effort to resolve the issue, the Board recommends that the issue be remanded for further negotiations under the peaceful procedures of the Railway Labor Act.

B. GENERAL WAGE AND BENEFIT INCREASES

Under the terms of the National Agreement of July 26, 1978, between the NRLC and the BLE, and the January 1, 1979, Agreement between the BLE and ConRail, the final wage increase was a cost-of-living adjustment (COLA) effective January 1, 1981. In the 1981 round of rail industry negotiations, ConRail and the labor organizations negotiated separately from the NRLC, as they had done in the Wage and Rules Movement of 1978. In January and February 1981, the BLE and NRLC exchanged Section 6 notices proposing to amend and supplement, among other things, wage rates and benefits, effective April 1, 1981. The ensuing BLE/NRLC negotiations culminated at impasse, leading to the appointment of Emergency Board No. 194, which issued its Report and Recommendations to the President on August 19, 1982.

Thereafter, the Congress on September 22, 1982, enacted Public Law 97-262, making the Report and Recommendations of Emergency Board No. 194 binding upon the BLE and NRLC as though arrived at by agreement of the parties. In conformity with that holding, the BLE and the NRLC on September 28, 1982, executed an "Agreed Upon Implementation of Public Law 97-262" (National Agreement), providing general wage increases, cost-of-living allowances, and other terms and conditions of employment for the railroad engineers represented by the BLE on most of the major rail carriers in the country.

In the meantime, pending Section 6 Notices proposing changes in the BLE/ConRail agreement remained unresolved. Among those proposals were Section 6 Notices served upon ConRail by the BLE under dates of January 30, 1981, and February 11, 1981. The January 30, 1981 Notice (designated by the BLE as "Attachment A, Sections I-XIX") proposed improvements in general wages, cost-of-living adjustments, expenses away from home, paid holidays, personal leave days, paid vacations, disability benefits, earnings guarantees, retirement medical benefits, jury duty, night differential, and terminal delay pay. The February 11, 1981 Notice (designated by the BLE as "Attachment B, Sections I-V") called for increased and improved group life, accident and medical insurance benefits. Negotiations on those proposals, as well as other unresolved issues, resulted in an impasse, notwithstanding the execution of the BLE/NRLC National Agreement in September 1982. Thus, unlike their brothers on the other railroads in the nation, the 3,500 engineers employed by ConRail have not received a wage increase since the January 1981 COLA payment.

Before this Board, the BLE urged that we recommend adoption of its Section 6 proposals for wage, benefit and insurance improvements. Failing total acceptance of its proposals, the BLE appears to seek, at a minimum, adoption on ConRail of the National pattern, as set forth in the statutorily mandated BLE/NRLC National Agreement dated September 28, 1982. ConRail,

however, maintains that even the National Agreement settlement is so far beyond its ability to pay as to result in the financial ruin of the Carrier. In order to place these positions in perspective, it is necessary to review some of the bargaining and financial history leading to the present dispute.

Conrail was formed out of the properties of six bankrupt rail carriers in the Northeast, primarily the Penn Central. Section 504(d) of the 3R Act provides that the numerous collective bargaining agreements between the component lines and the various labor organizations representing their employees be consolidated into a single agreement between ConRail and each of the crafts. The resulting BLE/ConRail Agreement, effective January 1, 1979, incorporated the economic terms of the 1978 BLE/NRLC National Agreement.

Under the 3R Act, the U. S. government began investing billions of dollars in ConRail common stock, much of which has been used to rehabilitate physical facilities. Since 1973, the continuing goal of the United States has been to return ConRail to the private sector as a viable self-sustaining rail carrier. Original traffic and cost projections proved overly optimistic. ConRail has not yet achieved self-sustaining status and continued federal funding has been necessary to sustain ConRail operations.

In providing another year of funding for ConRail under the Staggers Rail Act of 1980, Congress required that the Interstate Commerce Commission (ICC), the Department of Transportation (DOT), the United States Railway Association (USRA), and ConRail management submit reports on what changes might be necessary to provide for private sector rail freight service for the Northeast. A consensus emerged that transfer to the private sector was necessary to solve ConRail's financial difficulties. However, two contrasting approaches were recommended to Congress in March 1981. The ICC and DOT proposed elimination of ConRail, and disposition of its assets through sale to the highest bidder. ConRail and USRA recommended restructuring, internal efficiencies and other modifications to allow transition of ConRail, as an entity, into the private sector. One of the efficiencies viewed as essential was a reduction in labor costs during the short term to allow ConRail rapidly to achieve "profitability."

In Spring 1981, with the threat of an imminent break-up of ConRail and consequent loss of thousands of jobs as a backdrop, the labor organizations representing ConRail employees entered into negotiations with ConRail management regarding ways eventually to improve ConRail's profit picture and, in the interim, to secure additional federal funding. On May 5, 1981, ConRail management and the representatives of thirteen (13) labor

organizations, 1/ representing over 90 percent of ConRail employees signed an "Agreement for Labor Contributions to Self-Sufficiency for ConRail": the May 5 Agreement. The stated intent of the May 5 Agreement is "to provide for the deferral of certain wage increases, without reduction in current rates of pay, for Agreement employees as a means of enhancing ConRail's prospects to become self-sustaining." In order to accomplish that objective, the parties agreed that ConRail would adopt and apply the terms of the National Agreements reached between the industry (NRLC) and signatory organizations subject to "deferral" (actually giving up) of the first 12 percent of wage increases under the Natonal Agreements. Thus by "contributing" the first 12 percent of the wage increases otherwise due to them under the National Agreements, the signatory labor organizations granted some $200 million in annual savings to ConRail during each year in the period January 1981-January 1984.

The record shows that a condition of the foregoing labor contribution was a "most favored nations" proviso that, in the event ConRail negotiated with a labor organization not signatory to the May 5 Agreement a different agreement which did not contain "substantially identical" wage deferrals, the more favorable wage provisions shall be immediately applicable to employees represented by the 13 signatory organizations. In other words, the May 5 Agreement is conditioned upon all employees making the same sacrifices to promote the profitability and future viability of ConRail. At the time the other 13 labor organizations signed the May 5 Agreement, the BLE and two other labor organizations decided not to do so, although they did consent to consider the matter further. Subsequently, the other two unions both acceded to the terms of the May 5, 1981, Agreement. At this writing, the BLE, alone of the 16 labor organizations representing Conrail employees has declined to accept the wage "deferrals" called for in the May 5 Agreement.

The Congress in August 1981 enacted NRSA, providing for two and one-half years of additional federal funding for ConRail, subject to the achievement of specified goals and objectives. The stated goal of NRSA is to provide ConRail the opportunity to become "profitable", so that the United States government may sell its common stock holdings to private investors. Should ConRail fail to become a "profitable carrier", NRSA requires the sale of ConRail's assets to the highest bidder. Profitability for ConRail is defined statutorily to mean "a carrier that

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1/ International Brotherhood of Teamsters Brotherhood of Railway and Airline Clerks, American Train Dispatchers Association, United Transportation Union, International Association of Machinists, Brotherhood Railway Carmen, Transport Workers Union, International Brotherhood of Boilermakers and Blacksmiths, American Railway Supervisors Association (BRAC), International Brotherhood of Electrical Workers, Brotherhood of Maintenance of Way Employes, Railroad Yardmasters of America, International Brotherhood of Firemen and Oilers.

generates sufficient revenues to meet its expenses, including reasonable maintenance of necessary equipment and facilities, and will be able to borrow capital in a private market, sufficient to meet all its capital needs." NRSA requires that ConRail pass this "profitability test" in June 1983 and again in November 1983, or face dissolution and sale of its assets.

Implicit in NRSA's provisions is the understanding that suppliers, shippers, non-Agreement personnel and Agreement employees undertake financial sacrifices to provide ConRail the opportunity to become profitable. Specifically, Section 1134(4) requires that "Conrail should enter into collective bargaining agreements with its employees which would reduce Conrail's costs in an amount equal to $200,000,000 a year, beginning April 1, 1981, adjusted annually to reflect inflation." Since the May 5, 1981, Agreement with the 15 signatory organizations was a fait accompli in August 1981 when NRSA was enacted, it appears that the foregoing provisions were specifically applicable to the BLE, which had not agreed to the labor contributions.

In support of its plea for an exception from coverage of the May 5 Agreement, the BLE points out that the 12 percent "deferral" would impact most heavily upon its members, who generally earn more per annum than other railroad employees. Moreover the BLE contends that ConRail will enjoy increased earnings in 1983-84, which likely would make it a "profitable carrier," notwithstanding some rescission of the labor contributions provided in the May 5 Agreement. Finally, the BLE points out that the statutory objective of labor contributions from Agreement employees in NRSA is couched in precatory rather than mandatory language, and should not be construed as a statutory requirement for BLE to accede to the May 5 Agreement. In the latter connection, the BLE cites a Stipulation of Dismissal filed June 22, 1982, before the Special Court under the Regional Rail Reorganization Act of 1973, to the effect that the Section 6 Notices here in dispute are "valid and bargainable" under the Northeast Rail Service Act.

This Board understands that NRSA does not require the BLE to agree to the labor contribution provisions of the May 5 Agreement. We also are aware of the organization's depth of commitment to improve the wages, benefits and working conditions of the employees it represents. The evidence of record, however, persuades us that full realization of the organization's wage and benefit objectives very likely would set in motion a chain of events leading to the death knell of ConRail.

In our system of labor relations, labor unions do not lightly or readily agree to forego wage increases. Pragmatism and economic necessity, however, occasionally compel a realization that full attainment of bargaining goals may be a pyrrhic victory. The grim realities of ConRail's fiscal fragility obviously motivated 15 labor organizations on this property to agree to the labor contributions in the May 5, 1981, Agreement.

Largely on the strength of the labor contributions from May 5 Agreement, Congress agreed to fund ConRail for another two and one-half years, after which it must pass the profitability test and survive or expire through a forced sale of assets. Should the BLE obtain wage concessions superior to those granted in the May 5, 1981, Agreement, however, the other 15 labor organizations now signatory to that Agreement will invoke the "most favored nation" proviso. In that event the $200,000,000 annual savings granted by the May 5 Agreement will evaporate. If this occurs, ConRail will fail to pass the profitability test of June 1983, its assets will be sold off, and, undoubtedly, thousands of employees will lose their jobs. If, on the other hand, the labor contributions from the May 5 Agreement continue at or above the $200,000,000 annual rate, ConRail stands a good chance of being a "profitable carrier" which can be sold by the federal government after June 1983. Indeed, the record shows that among interested potential purchasers of ConRail is a consortium of rail labor organizations, including the BLE.

Adherence of the BLE to the terms of the May 5 Agreement, which 15 other labor organizations have adopted, does not appear to us unreasonable or inequitable in the circumstances. The public, the other labor organizations, and both Agreement and non-Agreement employees all have been required to sacrifice for the continued viability of ConRail. By signing the May 5, 1981, Agreement, BLE will forego the first 12 percent of wage increases payable to engineers on other properties under the National Agreement, but will receive an immediate 7 percent wage increase retroactive to July 1, 1982, and another 9 percent in increases during the life of the Agreement. Upon consideration of all of the equities and facts of record, our course is clear. We recommend that the BLE and ConRail enter into a settlement of the general wage, cost-of-living and insurance benefit dispute consistent with the May 5, 1981, Agreement.

C. THE COMPENSATION DIFFERENTIAL

In the main, the parties' presentations centered on the compensation relationship between locomotive engineers on one hand and conductors and brakemen on the other. 2/ This compensation differential issue is not unique to ConRail. It is an industry-wide question of national concern and the key issue in this dispute.

While ConRail insists, contrary to the BLE's contention, that there are no reliable historic pay differentials, we are satisfied from the evidence that on any particular train the wage rates and annual earnings of engineers have over the years been consistently higher than those of conductors and brakemen. It is a matter of concern to the engineers that in recent years their compensation differential has been eroded, to some extent, by so-called crew consist agreements negotiated by the UTU with a number of different railroads. According to the BLE, that ratio has been reduced to a "dangerous" degree and, in some instances, conductors serving on reduced train crews earn more than engineers do. The BLE contends that these developments seriously impair morale and could adversely affect the supply of available engineers.

Conrail entered into a crew consist agreement with the UTU on September 8, 1978. That agreement provides for the elimination on certain trains of the second brakeman position as attrition occurs. In consideration for the resulting labor savings, the conductor and remaining brakeman of the train receive under that agreement an arbitrary payment of $4, which has increased by subsequent general wage increases and now amounts to $6.08.

Productivity bonuses also are paid under the crew consist agreements; they vary slightly across the system. In some areas $48.25 is paid into a trust fund each time a reduced crew is operated. The fund, with interest, is distributed annually to train service employees with seniority dates prior to September 8, 1978, the date of the agreement. On other ConRail territories, a $22.00 productivity bonus is paid "up front" to train crew members who work a "short crew," in lieu of the annual trust fund distribution. These crew consist productivity bonuses will end when the last of the trainmen in service on the date of the crew consist agreement leaves ConRail as the result of attrition.

2/ Most locomotive engineers in the industry are represented by the BLE, whereas the conductors and brakemen are, for the most part, represented by the United Transportation Union (UTU).

On September 29, 1978, twenty-two days after the crew consist agreement was signed, the BLE served a Section 6 Notice on ConRail proposing that the compensation differential in effect on October 31, 1978, be maintained. In effect, it seeks to have engineers serving on trains with reduced train crews receive the same arbitrary that conductors and brakemen are paid under the crew consist agreement.

In the BLE's view, these extra allowances for trainmen create a pay relationship inequity that must be corrected without delay in view of what it terms the differential's "historic" basis as well as the engineers' duties, responsibilities and pressures. It maintains that about 41% of the nation's 35,000 engineers are covered by agreements that maintain the compensation differential. Such agreements have been executed on the Burlington Northern, Chicago and North Western, Missouri Pacific, Atchison, Topeka & Santa Fe, Richmond, Fredericksburg and Potomac, Amtrak and New Jersey Transit Railroads. The BLE urges that since 41% of the nation's engineers are already protected by such maintenance agreements, the national picture would not be influenced materially by a similar agreement covering ConRail's engineers, who constitute 10.6% of the country's locomotive engineers.

While the fact that some railroads have signed differential maintenance agreements with the BLE is of interest, those agreements, in and of themselves, do not constitute a bargaining pattern. Moreover, those railroads are not confronted with the same kind of economic problem that faces ConRail, and none are required to pass profitability tests in 1983 in order to survive. Amtrak's agreement, moreover, is not a persuasive precedent since, unlike ConRail, its engineers operate passenger trains at exceptionally high speeds in a controlled setting; productivity gains for Amtrak were agreed to in consideration for differential maintenance.

A critical question that arises with respect to the differential maintenance issue is whether engineers are entitled to the arbitrary when, as here, the crew consist agreement results in no additional work, responsibility or productivity on their part. ConRail insists that differential maintenance agreements undermine desirable productivity bargaining since a union furnishing genuine productivity consideration would have to share any gains with another craft that has made no contribution to the process. Moreover, ConRail contends, the maintenance agreement would result in leapfrog contests between competing unions and additional labor costs that would be incompatible with NRSA's objectives. According to ConRail, other crafts would also have to be paid the amount paid the engineers in line with the most favored nation letter of May 5, 1981, that was discussed in the preceding Section of this Report.

The foregoing problems were not addressed by the May 5 Agreement. The BLE did not take part in those negotiations or sign the Agreement. Nor was the issue dealt with, so far as ConRail is concerned, in the 1982 BLE/NRLC contract negotiations. ConRail was not represented at those negotiations. The Report of Emergency Board No. 194, issued on August 19, 1982, recommended that a Study Commission be established on the familiar tripartite basis, consisting of an equal number of railroad and union representatives with a neutral chairman. The Study Commission is required to review and make recommendations with respect to a number of issues regarding basic pay, arbitraries, road/yard restrictions, supplemental sick pay, disability pay, personal leave and

> "principles and procedures for stabilizing the pay structure of the operating crafts in response to earnings adjustments arising from crew consist agreements."

A like Report with identical Study Commission recommendations was handed down the following day, on August 20, 1982, by Emergency Board No. 195, which was investigating disputes that arose in national UTU negotiations. The Study Commissions' procedures include hearings and two periods of negotiation between Carrier and Organization representatives prior to the time the neutral "shall exercise the right to publish a non-binding recommendation concerning the unresolved issue or issues."

ConRail urges that the Study Commission provisions of the national BLE/NRLC Agreement, along with its limited moratorium aspects, be applied to the BLE/Conrail compensation differential problem. More specifically, ConRail cites the case of its principal eastern competitor, the Chessie System, which also received the BLE compensation differential maintenance notice after it had entered into a crew consist agreement with the UTU. ConRail emphasizes that Chessie is protected from unsettled labor relations by the Study Commission provisions and the national moratorium limiting negotiations on this issue to the peaceful procedures the Railway Labor Act. At least six other railroads, ConRail observes, have already been accorded the same protection. In ConRail's view, the only proper way to consider the compensation differential issue is through the Study Commissions.

The BLE insists that ConRail cannot validly seek the benefits of the 1982 BLE National Agreement at this late date, particularly since it never signed that Agreement or played any part in negotiating it. As the BLE maintains, ConRail chose to bargain locally with the representatives of its employees and indeed selected that same course in discussing the BLE Notice regarding differential maintenance. The BLE points out that the

railroads that signed the National Agreement did not obtain a 12% wage increase deferral. It is the BLE's view that ConRail should not be permitted to pick and choose the best of both agreements, the one it chose to negotiate locally and the national agreement in which it played no part and made no sacrifice. There certainly are instances where it would be inappropriate and indeed impermissible for an employer to switch bargaining units between single and multi-employer units.

We are persuaded, however, for several reasons that the Study Commission approach should be applied to the present differential issue.

The May 5, 1981, Agreement is unique to ConRail. It had to be negotiated locally by ConRail for its very survival. Only by obtaining labor cost savings under the terms of that Agreement could ConRail avoid dismemberment and comply with NRSA requirements. National issues were not at stake in those negotiations; no other railroad was faced with the problem of passing 1983 profitability tests.

The compensation differential issue is plainly a national question that may affect virtually all railroads. The fact that some railroads have entered into such differential agreements, and others have not, does not detract from the national character of the issue.

The question before us falls logically and clearly within the agenda that has been established for the national Study Commissions. A whole set of interdependent pay elements, rules and relationships must be reviewed and analyzed by those Commissions. They have already begun consideration of these extremely complex pay structures which have been established over the years for operating employees. It would be counterproductive for this Board to take action, on an emergency basis, that would interfere with the Commissions' long range study of the question.

The UTU is not a party to the proceeding before our Board. It is entirely clear that the UTU is a necessary party in any proceeding that contemplates a resolution of the pay relationship issue between locomotive engineers and conductors and brakemen. The UTU must be offered an opportunity to present its views and evidence regarding the issue. A contrary conclusion would not be in the interests of labor relations stability.

The national Study Commissions have before them the UTU as well as the BLE. One Commission has been set up for each Organization, but they meet jointly to the extent possible and are chaired by the same neutral. An excellent opportunity, therefore, is presented for the Commissions to consider the issue along with the entire operating craft pay structure in a coordinated manner.

In the light of these considerations, the only practical and realistic course is to refer the dispute to the national Study Commissions that are already in operation chaired by a neutral who has been selected by both the BLE and the UTU. The Study Commissions' deadline for reporting and making recommendations is December 1, 1983.

Accordingly, it is this Board's recommendation that the compensation differential issue be referred to the Study Commission established pursuant to Public Law 97-262, subject to the procedures and moratorium provision that already apply to that Commission.

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Respectfully,

George S. Ives, Chairman

Harold M. Weston, Member

Dana E. Eischen, Member

APPENDIX

Executive Order 12405. February 14, 1983

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE CONSOLIDATED RAIL CORPORATION AND THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

A dispute exists between the Consolidated Rail Corporation and the Brotherhood of Locomotive Engineers.

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

This dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service.

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

1-101. Establishment of Board. There is established, effective immediately, 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.

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

1-103. Maintaining Conditions. As provided by Section 10 of the Act, as amended, from the date of the creation of the Emergency Board, and for 30 days after the board has made its report to the President, no change, except by agreement of the parties, shall be made by the carrier or by the employees, in the conditions out of which the dispute arose.

1-104. Expiration. The Emergency Board shall terminate upon submission of the report provided for in paragraph 1-102 of this Order.

Ronald Reagan

The White House,
February 14, 1983.