

**REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
No. 203**

**APPOINTED BY EXECUTIVE ORDER 12481,
DATED JUNE 20, 1984, PURSUANT TO SECTION 9A
OF THE RAILWAY LABOR ACT, AS AMENDED.**

**To investigate disputes between The Long Island Rail Road and the
Brotherhood of Railway, Airline, and Steamship Clerks, Freight
Handlers, Express and Station Employees, and the American Railway
Supervisors Association.**

(National Mediation Board Case Nos. A-11290 and A-11308)

**WASHINGTON, D.C.
JULY 20, 1984**

LETTER OF TRANSMITTAL

THE PRESIDENT
The White House
Washington, D.C.

WASHINGTON, D.C.
July 20, 1984

DEAR MR. PRESIDENT:

On June 20, 1984, pursuant to Section 9A of the Railway Labor Act, as amended, and by Executive Order 12481, you created an Emergency Board to investigate the disputes between The Long Island Rail Road and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and the American Railway Supervisors Association.

Following its investigation of the issues in dispute, including both formal hearings 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 between the parties.

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

Respectfully,

RICHARD R. KASHER, *Chairman.*
MARGERY F. GOOTNICK, *Member.*
RODNEY E. DENNIS, *Member.*

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I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 203 was created by President Reagan on June 20, 1984, by Executive Order No. 12481 issued pursuant to Section 9A of the Railway Labor Act, as amended, 45 U.S.C. Section 159a. The Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC) had requested the creation of such a board on June 18, 1984.

The President appointed Richard R. Kasher, an attorney and arbitrator, as Chairman of the Board. Margery F. Gootnick an attorney and arbitrator and Arbitrator Rodney E. Dennis were appointed as Members of the Board.

II. PARTIES TO THE DISPUTES

A. The Carrier

The Long Island Rail Road (LIRR) 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 325 miles of track. The LIRR employs approximately 7,300 persons, 6,700 of whom are covered by collective bargaining agreements.

The primary business of the LIRR is its commuter traffic. Every weekday the LIRR carries approximately 280,000 passengers. Its revenue from passenger operations was approximately \$200 million in 1982 (the last year for which data are available), 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 rely heavily on LIRR service; more than 60 percent of the people who work in Manhattan, and more than 20 percent of those who work in Brooklyn, use the LIRR service.

The freight operating revenues were only \$13 million in 1982. The LIRR interchanges traffic with the Consolidated Rail Corporation (Con-

rail) and the Boston & Maine, and in 1982 handled slightly more than 22,000 freight cars, a drop of 41% from 1981 levels.

The LIRR 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.

The last round of labor negotiations between the LIRR and its employees was in 1983. Issues were resolved without a work stoppage, through Presidential Emergency Board Nos. 199 and 201. These were the first boards appointed pursuant to Section 9A of the Railway Labor Act (RLA), an amendment to the RLA, added by the Northeast Rail Service Act of 1981 and applicable to labor disputes between publicly funded and operated commuter railroads and their employees.

B. The Organizations

There are two Organizations involved in these disputes. The Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC) represents the Clerical, Office, Station and Storehouse Employees. The ARSA Division of BRAC represents the Technical Engineers, Architects, Draftsmen and Allied Workers; the Supervisors and/or Foremen in the Maintenance Departments; and the Train Dispatchers. Two hundred and thirty five employees represented by BRAC are involved in these disputes. Thirty five employees represented by ARSA are involved.

III. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an Organizational meeting on June 25, 1984 in Washington, D.C. By request of the Board, the parties submitted preliminary statements of position by June 30, 1984. On July 5, 1984, the Board conducted an on-the-record hearing with representatives from BRAC, ARSA, and the Carrier. The parties presented additional written evidence and oral testimony at this time. The Board held informal meetings with the parties on July 5, and 6 in an attempt to narrow the disputes in issue. The Board met in executive sessions subsequent to the hearing and on July 12, 1984, convened in Washington, D.C. to deliberate on the issues.

IV. HISTORY OF THE DISPUTES

BRAC served its Section 6 Notices on the Carrier on June 1, 1981.

A joint application for the National Mediation Board's mediation services was filed July 1, 1983. This case was docketed as NMB Case No. A-11290 on July 6, 1983.

ARSA served its Section 6 Notice on the Carrier on May 22, 1981. ARSA and The Long Island Rail Road filed a joint application for mediation on July 20, 1983. This case was docketed as NMB Case No. A-11308 on August 11, 1983.

Mediator Francis J. Dooley commenced mediation on August 11, 1983. Mediation continued until May, 1984. On May 15, 1984, the NMB determined that the parties were deadlocked and proffered arbitration in accordance with Section 5, First, of the Railway Labor Act. The Organizations rejected the Board's proffer on May 18, 1984. On May 21, 1984, the Board released the parties from mediation and the statutory 30 day "status quo" period began.

NMB Chairman Walter C. Wallace and Mediator Thomas B. Ingles conducted public interest mediation on June 14, 1984. On June 18, 1984, BRAC requested that President Reagan create an emergency board pursuant to Section 9A of the Railway Labor Act, which governs publicly funded commuter authorities. Emergency Board No. 203 was created by Executive Order No. 12481 on June 20, 1984. Section 9A(c) provides that the parties may make no changes in the conditions out of which the dispute arose for 120 days after the creation of the Board.

V. REPORT AND RECOMMENDATIONS

A. Background

Between 1976 and 1979, ARSA, BRAC, the Brotherhood of Railway Carmen, and the Office and Professional Employees International Union filed applications with the National Mediation Board to represent certain "supervisory" and "professional" employees on the LIRR. The NMB conducted hearings in 1980 to determine if any of the involved employees were subordinate officials under the Railway Labor Act, *The Long Island Rail Road*, 7 NMB No. 164 (1980). The LIRR stipulated at the outset of the hearings that certain job titles were subordinate officials. The Board ordered an election. BRAC was certified as the duly designated representative of employees described as "Transportation; Internal Audits; Administration and Finance; Personnel; Public Affairs; Law; Customer Services; and Office Service an accretion to the craft or class of Clerical, Office, Station and Storehouse Employees" in 8 NMB No. 126 (1981). ARSA was certified as the representative of certain supervisory employees in 8 NMB No. 115 (1981). The LIRR filed a legal action in the Federal District Court for the Eastern District of New York and subsequently in the United

States Court of Appeals for the Second Circuit challenging the validity of the certifications. Both courts upheld the NMB's certifications. The Court of Appeals decision issued on March 25, 1983, *Long Island Rail Road Co. v. National Mediation Board*, 703 F. 2d 680 (2nd Cir. 1983).

Below is a representative listing of some of the job titles in the BRAC dispute:

- Manager-Community Relations
- Manager-Customer Communications
- Project Leader
- Supervisor of Materials
- Supervisor-Payroll
- Claims Agent
- Systems Analyst
- Auditor
- Accountant Analyst
- Computer Programmer
- Contract Administrator
- Assistant Trainmaster

The ARSA represented employees involved in this dispute are:

- Supervisor of Equipment
- Assistant Supervisor of Equipment
- Material Coordinator
- Supervisor Budgets and Expenditures
- Supervisor Cost Control
- Assistant Supervisor Cost Control

B. Issues

1. SENIORITY

In their preliminary submissions and at the hearing, the parties addressed five major issues. After consideration of the material presented, the Board is persuaded that the significant obstacle to agreement is the seniority issue.

It is the LIRR's position that the employees in this dispute represent "the heart of LIRR middle management." The Carrier maintains that a seniority system has no application to "managerial" and "professional" employees. In its offers to both BRAC and ARSA the Carrier proposes that it retain the right to hire, promote, and assign on the basis of merit, without consideration of seniority. However, the Carrier offered to give preference to present employees in filling vacan-

cies, provided the internal candidates are at least as well-qualified as the outside candidates.

BRAC and ARSA propose that seniority be considered as one of the factors in promotion. The Organizations recognize that due to the supervisory nature of many of the jobs in question, the Carrier should retain some flexibility. However, it is the Organizations' position that where there is no seniority system "the door is left open for any number of abuses" such as discrimination and nepotism. BRAC and ARSA maintain that some type of seniority system is necessary to promote job security.

The Board is faced with a dispute created by substantial philosophical differences between the LIRR management and the Organizations. The Board recognizes that the significant level of supervisory responsibility of some of the job classifications requires that the Carrier retain certain management prerogatives. However, there are many jobs at issue which fall into a natural career progression system. These positions, in the Board's opinion, do not require a promotion-by-merit-only policy.

With respect to the jobs which entail a significant degree of authority, the Organizations have conceded that management should retain a degree of flexibility in the areas of hiring, promotion, and assignments. This Board agrees that the Carrier should retain the right to fill high level positions and establish certain working conditions without being bound by seniority restraints.

However, certain job categories involved in these disputes are traditionally part of the Office Clerical, Station and Storehouse craft or class in the railroad industry. Certain titles, such as Systems Analysts and Computer Programmers, have been determined by the NMB to be properly part of the Office Clerical craft or class on many properties within the industry. Generally, the incumbents do not exercise any significant management responsibility. The Board believes that these employees are entitled to the benefits of union representation, including certain benefits of seniority. The Organizations have expressed, both through their written presentations and oral evidence, that they are willing to make accommodations in this area. The Board notes that these accommodations in the form of "Excepted Positions" and other limits on the application of seniority are not uncommon in the railroad industry, and in particular of commuter lines.

In view of both the Carrier's need for flexibility and BRAC and ARSA's willingness to make certain accommodations, the Board recommends that the parties attempt to negotiate the application of a seniority system to certain job titles encompassed by these disputes. Where employees in these certified groups have responsibilities which are neither managerial nor supervisory in nature, there is no basis to exclude seniority as a factor in the areas of promotion and work assign-

ment. These employees, once having chosen representation, should be treated as represented employees. The LIRR should not attempt to use these proceedings as a means to re-litigate the propriety of the certifications.

The Board, in making this recommendation, is aware of the external political context of these disputes. However, the Board views the disputes between BRAC, ARSA, and the LIRR as distinct from any other non-Railway Labor Act disputes involving the Metropolitan Transportation Authority. The disputes before this Board arose under a Federal statute, which governs particular crafts or classes of railroad employees. This Board was appointed by the President, pursuant to the Act, to make recommendations regarding these disputes. This Board has made its recommendations in the context of well-recognized railroad collective bargaining relationships.

2. WAGES AND FRINGE BENEFITS

Currently, "management" employees on the LIRR are paid under the Hay System. The Carrier proposes to eliminate the Hay System and establish a single base rate of pay. This base rate would equal 90% of the Hay range in existence on March 1983. Employees receiving less than 90% would be raised to the base rate. Employees earning the 90% rate would continue to receive the same salary. Employees earning more than the 90% rate would be "red circled" until the base rate reaches their actual rate of pay. New hires would be subject to a wage progression of 80%-85% — 90%-95% every 240 days until the full rate of pay is attained.

BRAC and ARSA assert that the Carrier's wage proposal serves to broaden the gap between rank and file employees and the "supervisory" employees involved in these disputes. The Organizations propose that these employees receive the same percentage increases that the represented employees have received since 1981. These percentages were: 9% in 1981; 6% in 1982; 7% in 1983, and 7% in 1984.

In October 1983, the LIRR offered a 7% increase to all employees who had not received a Hay System increase in 1983. BRAC and ARSA accepted the offer and their members received the increase.

This Board endorses the LIRR's proposal to discontinue the use of the Hay System and recommends the establishment of a system of pay that reflects the traditional bases of compensation enjoyed by union-represented employees. The Board is convinced that the parties' differences on the wage issue will be settled when the seniority issue is resolved.

The LIRR has offered BRAC and ARSA the same health and welfare and leave packages currently in effect for the larger groups the unions represent.

BRAC and ARSA propose that the certified employees receive the "management fringe benefit package."

In addressing the subject of fringe benefits, the Board recommends that the personnel represented by BRAC and ARSA in these disputes receive the same level of benefits as those received by the other BRAC and ARSA represented employees on the LIRR.

3. MORATORIUM PROVISIONS

The Board recommends that these agreements run concurrently with existing agreements on the property.

VI. CONCLUSION

1. While the Carrier should retain a degree of flexibility with regard to hiring, promotion and assignment of certain employees covered by these disputes, a modified system of seniority should be applied to other of the covered employees.

2. This Board was appointed pursuant to Section 9A of the Railway Labor Act. The Act was crafted by railroad managers and unions who were willing to allow subordinate officials to be organized. The Board has dealt with these disputes in the context of the Railway Labor Act only.

3. This Board believes that, when the seniority issue is resolved, the other issues in these disputes will be settled without third party intervention.

4. In the context of these disputes the question of seniority does not justify a strike. Nor would the Carrier be justified in promulgating rates of pay, rules, and working conditions. Such actions might unfairly deprive the public of critical commuter rail service.

The Board is impressed with the fact that the parties recognize that the newly organized employees are "the guts of the Carrier's middle management." The parties acknowledge that through cooperation and extraordinary efforts major improvements in the Carrier's operations have been achieved during the past 3 years. The employees, however, for a number of reasons have sought representation by a union. Among the major reasons were lack of a seniority system and failure to keep up with wage increases granted to organized employees on the railroad.

It is this Board's opinion that establishment of a workable seniority system and the negotiation of an equitable wage increase will result in stability and increased morale in the work force. This in turn will reaffirm and expand the cooperation that has existed in the past. This

increased cooperation will result in more efficient operation of the railroad and improved service to the riding public.

The Board wishes to give special recognition posthumously to Mediator Francis J. Dooley, who exercised devoted and dedicated efforts in the dispute and in previous disputes involving these parties.

Respectively,

RICHARD R. KASHER, *Chairman.*

MARGERY F. GOOTNICK, *Member.*

RODNEY E. DENNIS, *Member.*

EXECUTIVE ORDER

12481

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN THE LONG ISLAND RAIL ROAD AND THE BROTHERHOOD
OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES

A dispute exists between The Long Island Rail Road and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, 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").

A party empowered by the Act 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 such a request, 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:

Section 1. *Establishment of Board.* There is established, effective June 20, 1984, 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.

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

Section 3. *Maintaining Conditions.* As provided by Section 9A(c) of the Act, as amended, from the date of the creation of the 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.

Section 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

THE WHITE HOUSE,
June 20, 1984.