REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 209

SUBMITTED PURSUANT TO EXECUTIVE ORDER 12557,
DATED MAY 16, 1986,
AND SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED.

Investigation of disputes between the Maine Central Railroad Company/Portland Terminal Company and certain of their employees represented by the Brotherhood of Maintenance of Way Employes.

(National Mediation Board Case Nos. A-11478 and A-11479)

WASHINGTON, D.C.
JUNE 20, 1986

Washington, D.C.
June 20, 1986

THE PRESIDENT
The White House
Washington, D.C.

DEAR MR. PRESIDENT,

On May 16, 1986, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12557, you established an Emergency Board to investigate disputes between the Maine Central Railroad Company/Portland Terminal Company and their employees represented by the Brotherhood of Maintenance of Way Employes.

The Board now has the honor to submit its Report and Recommendations to you concerning an appropriate resolution of the disputes between the above named parties.

The Board acknowledges the assistance of Roland Watkins of the National Mediation Board's staff, who rendered valuable assistance and counsel to the Board during the proceedings and in preparation of this Report.

Respectfully,

ROBERT O. HARRIS, *Chairman*
RICHARD R. KASHER, *Member*
ROBERT E. PETERSON, *Member*

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I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 209 (the Board) was established by the President pursuant to Section 10 of the Railway Labor Act, as amended (45 U.S.C. §160), and by Executive Order 12557. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between the Maine Central Railroad Company/Portland Terminal Company (hereinafter the Carrier) and certain of their employees represented by the Brotherhood of Maintenance of Way Employes (hereinafter the Organization or the BMWE). Copy of the Executive Order is attached as Appendix "A".

On May 23, 1986, the President appointed Robert O. Harris, of Washington, D.C., as Chairman of the Board. Richard R. Kasher, of Bryn Mawr, Pennsylvania, and Robert E. Peterson of Briarcliff Manor, New York, were appointed as Members of the Board. The National Mediation Board appointed Roland Watkins as Special Assistant to the Board.

II. PARTIES TO THE DISPUTE

A. The Labor Organization

The Brotherhood of Maintenance of Way Employes, a labor organization national in scope, is the bargaining representative for employees of the Carrier who principally perform track laying and surfacing work, roadway maintenance, and certain bridge, building and structural work, i.e. sectionmen or women who work in track crews, motor equipment operators, truck drivers, cooks for camp cars, and skilled craftsmen, such as carpenters, painters, bricklayers, masons, welders, and their foremen.

On or about March 3, 1986, employees represented by the Organization exercised their legal right to strike the Carrier. At that time a total of approximately 100 maintenance of way employees were in the active service of the Carrier. As of July 1982 there were as many as 390 maintenance of way employees working for the Carrier on a seasonal and special project basis. Seniority rosters in January 1981 were said to have included the names of 498 persons. Such rosters listed 247 persons in January 1986.

B. The Carrier

The Maine Central Railroad Company, and its wholly-owned subsidiary, the Portland Terminal Company, is a common rail carrier which was acquired on June 16, 1981 by Guilford Transportation Industries, Inc. (hereinafter Guilford).

Railroad operations and facilities of the Maine Central Railroad Company are principally situated in the State of Maine, with some of its overall trackage of about 740 miles extending into the States of New Hampshire and Vermont.

The Portland Terminal Company operates railroad facilities in Portland, South Portland, and Westbrook, Maine. It provides terminal services for both the Maine Central Railroad Company and the Boston & Maine Corporation, and connections for both railroads and its own account on traffic to and from the Grand Trunk (Canadian National System) at Portland.

Guilford also owns the Boston & Maine Corporation and the Delaware & Hudson Railway Company. Including the Carrier, the three railroad companies constitute Guilford's "Rail Division." Although these rail companies are distinct legal entities, effort has gone into the integration of these three components into one system, i.e., common officers and consolidation, to the extent possible, of sales and marketing activities, finance and control functions, data processing, and the pooling of equipment.

Guilford also owns a newly-formed motor carrier subsidiary, Guilford Motor Express, Inc., an authorized common and contract carrier.

Guilford currently operates over approximately 4,000 route miles of track and trackage rights, extending east-west from Maine to Buffalo, New York, and north-south from Montreal, Canada, to Washington, D.C. In addition, Guilford operates rail commuter service in the City of Boston and its suburbs under contract with the Massachusetts Bay Transportation Authority.

Guilford has also entered into an agreement with the Norfolk Southern Corporation (NS) for the latter to transfer certain midwest rail lines and operating rights to Guilford in the event of the NS acquisition of the Consolidated Rail Corporation (Conrail). Guilford would then operate over approximately 5,100 miles of line from the New England states to traffic gateways at Chicago, Illinois and St. Louis, Missouri.

Most of the freight traffic handled by Guilford reportedly originates on other rail carriers, and is interchanged at key points with, among other rail carriers, Conrail, CSX, and Norfolk Southern. However, most of the freight traffic on the Maine Central is

originating traffic. Approximately 55% of the Maine Central Railroad Company/Portland Terminal Company current gross freight revenue by commodity comes from pulp and paper. Other principal commodities handled by the Maine Central Railroad/Portland Terminal Company as a part of its traffic base include chemicals (10.8%); lumber/wood (10.0%); stone/clay/glass (8.4%); and grain mill products (5.2%).

III. ACTIVITIES OF THE EMERGENCY BOARD

The parties submitted pre-hearing position statements and then met with the Board on May 27, 1986 to discuss procedural matters.

Formal hearings commenced with a general presentation by the BMWE on May 28, 1986. On June 3, 1986, the BMWE continued its presentation. It presented testimony through William E. LaRue, International Vice President of the BMWE; John J. Davison, General Chairman of the Northeast System Federation of the BMWE; Thomas R. Roth, Economist and President of the Labor Bureau, Inc.; and, George Lawson, a laid-off member of the BMWE.

The Carrier made its presentation on June 3 and 5, 1986. It presented testimony through Bradley L. Peters, Director of Human Resources for the Carrier; Byron E. Rice, Jr., Vice President, Human Resources for Guilford; Daniel J. Kozak, Staff Officer, Labor Relations for the Guilford; Robert W. Anestis, President of Guilford; and, David A. Fink, President of the Rail Division of Guilford.

The parties were given full opportunity to present oral testimony, documentary evidence and argument in support of their respective positions, including rebuttal on June 6, 1986, and post-hearing statements on June 10, 1986.

Both parties were represented by Counsel. Louis P. Malone, III, General Counsel of the BMWE represented the Organization and Ralph J. Moore, Jr., of the law firm of Shea & Gardner, represented the Carrier.

IV. HISTORY OF THE DISPUTE

On April 2, 1984, in accordance with Section 6 of the Railway Labor Act, the BMWE served notice on the Carrier of its desire for changes in numerous provisions of the existing collective bargaining agreements. In keeping with the literal meaning, but not necessarily the intent of the statutory requirement for an initial conference, the parties conferred by telephone on May 3, 1984.

Since the parties did not meet to negotiate, on September 19,

1984, the BMWE applied to the National Mediation Board (hereinafter NMB) for its mediatory services. Its applications were docketed by the NMB as Case Nos. A-11478 and A-11479.

Mediator Ralph T. Colliander of the NMB met with the parties on December 4, 1984, and thereafter on a number of other days including September 24, 1985. On the latter date, NMB Board Member Helen M. Witt participated in the mediation efforts.

On September 26, 1985, in accordance with Section 5, First of the Railway Labor Act, the NMB proffered arbitration. The BMWE, on October 2, 1985, declined the proffer. Accordingly, on October 2, 1985, the NMB notified the parties that they were required to maintain the status quo for 30 days before they would be free to resort to self-help under the Railway Labor Act.

On October 23, 1985 the NMB advised the parties that commencing October 29, 1985, it would hold further conferences in the "public interest." The parties met with Board Member Witt and Mediator Colliander on several subsequent dates.

On November 13, 1985 the parties entered into a Letter of Understanding which provided a moratorium on job abolishments and a moratorium on the exercise of self-help by either party through February 28, 1986. Prior to expiration of the moratorium, on February 19, 1986, the parties met informally. They subsequently met with Mediator Colliander on February 25 and March 3, 1986.

When the parties were unable to resolve their differences, they resorted to self-help on March 3, 1986, with the BMWE initiating strike action against the Carrier.

At the request of the NMB, the parties resumed negotiations on March 12, 1986. NMB Chairman Walter C. Wallace participated with Mediator Colliander in the negotiations. At that time, Mr. O.M. Berge, International President of the BMWE, and Mr. David A. Fink of Guilford, entered the negotiations. These negotiations continued on April 1, 2 and 3, 1986. However, the parties were unable to reach agreement.

The BMWE thereafter extended its strike action to include the picketing of other Guilford railroads. A further escalation of the dispute occurred when the BMWE initiated a legal action against the Association of American Railroads, contending that certain railroads had provided Guilford assistance under a mutual aid arrangement.

On April 10, 1986, the BMWE further extended its job action to selected railroads outside the Guilford System. Litigation followed this escalation in job action. Several federal district courts issued orders restraining the picketing. However, three federal courts of appeals dissolved certain injunctions against picketing by the BMWE on non-Guilford railroads, and the BMWE resumed its picketing.

On May 16, 1986 the President issued Executive Order 12557, which established an Emergency Board to investigate and report concerning this dispute; on May 23, 1986, the Members of the Board were appointed.

V. THE ISSUES IN DISPUTE

A. Scope of the Dispute

This Board is faced with an unusual situation. Despite the breakdown in negotiations and the subsequent strike by the Organization, the parties have been unable to agree on what they disagree about. As will be discussed more fully below, the Organization has cited as the core of its disagreement with the Carrier the fact that there has been a steady diminution of jobs in the maintenance of way craft. This has caused the Organization to focus its concern on ensuring that its members receive substantial job protection, including protection for employees no longer working for the Carrier.

The Carrier believed that its plans for expansion of its system (the western line acquisition from NS) would solve the Organization's concerns regarding job protection by providing increased employment opportunities. At the same time, the Carrier indicated high concern regarding its determination that there were inefficiencies in the assignment of maintenance of way crews due to differing seniority districts. The Carrier proposed to merge these separate districts. As a matter of fact, this was the Carrier's principal concern at the time the NMB proffered arbitration and continued to be the priority issue for the three months thereafter that the parties attempted to resolve their problems short of self-help. The Carrier's last proposal prior to the strike was very much in line with this limited view of the dispute, e.g., the resolution of the principal issues of job protection and system seniority for production maintenance crews.

After the strike began the Carrier changed its bargaining stance and has progressively asked for greater and greater changes in the collective bargaining agreement. It has also asked this Board to consider recommending major substantive changes to the President (and Congress) in the Railway Labor Act and in the Railroad Retirement Act. In his submission to this Board, Mr. Robert W. Anestis, the President of Guilford, stated:

> "This panel has an historic opportunity. Maine Central certainly believes that amicable resolution of disputes is preferable where that is possible. In this case it was not possible, and, once the

strike ensued, self-help was being exercised by both parties without serious interruption of the flow of commerce until a sweeping, new interpretation of the Norris-LaGuardia Act permitted 100 people to extend pickets to uninvolved neutral carriers for the acknowledged purpose of interrupting commerce on a nationwide basis and causing the empanelling of this Board. We will argue in an appropriate forum that this interpretation of the law frustrates the purpose of the Rail (sic) Labor Act which was intended to permit self-help to play out its course once the procedures of the Act had been exhausted, but this Panel should be aware that the current status of the law could force every substantial dispute involving the Railway Labor Act into a political forum. This could result in the inability of any railroad (large or small) to bargain effectively for changes which may be essential to improve the Industry's competitive or financial health.

We do not believe that this result is helpful, but it may suggest that this Panel should view its responsibility differently than in the typical case. Because the normal Railway Labor Act procedures are, in effect, impaired by virtue of the current interpretation of Norris-LaGuardia, this Panel has the opportunity, and indeed the need, to play a greater than normal role, a more active role in helping with the evolution of the ancient machinery of the Railway Labor Act. We submit that dramatic change is clearly required in light of the dramatic effects of deregulation and by the current judicial limitations on the self-help mechanism. We would therefore respectfully request that the Panel recognize this unusual context in attempting to arrive at a recommendation here that will have the prospect of working in this new environment."

Likewise, in his testimony before the Board, Mr. David A. Fink, President of the Rail Division of Guilford, noted the need for changes in the Railway Labor Act and continued:

"I would hope sincerely that you would look at this situation. I grant you we are here because of the Maintenance of Way situation. It is bigger than that. We have to start someplace to address the Railroad Retirement Act.

"You know, labor has a right to strike, I have no problem. Strike all you want, but strike me. Don't secondary boycott, don't do the whole thing.

"I did not agree with it; I still don't agree with it. Change it. Make it reasonable."

After receiving these requests that the scope of the Board's work be expanded to include recommendations for structural change in the laws affecting the railroad industry, the Board asked the Carrier and the Organization to agree to request the President to extend the time which the Board had to report its recommendations. The Carrier refused to join in the request for an extension.

Whatever the Board's personal views may be, for this Board to undertake the type of review suggested by the Carrier in the 30-day period allowed by the statute for an Emergency Board to investigate the facts as to the dispute and formulate recommendations is patently impossible. When parties to a dispute involving engine and train service employees agreed to form a Study Commission to investigate and make recommendations for the ultimate resolution of problems involving the system of work and pay rules for those crafts, it took that Commission two days short of a year to arrive at its recommendations. The only service that this Board can perform is to clearly define the issues out of which the dispute had arisen between the Carrier and the Organization, and to make recommendations to resolve that narrow dispute. We leave to others more skilled in the arts of drafting legislation and in the law the basic problems which the Carrier perceives to be burdensome to the railroad industry.

The dispute is over notices served for changes in rates of pay and working conditions of the employees represented by the Organization. The Board does not find that any problems which may exist involving the railroad industry, generally, or other railroads owned by Guilford are properly before the Board. If Guilford wishes to join with other carriers to pursue what it says are industry-wide concerns, or to consolidate its bargaining for all of its subsidiaries, there are other mechanisms than this Board to accomplish that purpose. Similarly, the financial well-being of the Delaware and Hudson or the Boston and Maine railroads is not before this Board. The Board is charged to address the breakdown in negotiations resulting from the Section 6 notices on which the NMB proffered arbitration and which resulted in the present situation. Accordingly, we turn to those issues.

B. Principal Issues Joined by the Parties

As noted earlier, the principal concern of the Organization involved the problems it had been experiencing with the decline and instability of maintenance of way employment. The Carrier on the other hand gave its highest priority to the right to establish System Production Maintenance Crews. That is, it believed that the use of maintenance work force groups would increase employee productivity. The Carrier intended such crews to work throughout the geographical extent of the Carrier as opposed to being restricted to work within the limited confines of three currently separate seniority divisions of the Maine Central Railroad and an additionally separate seniority division for the Portland Terminal Company.

With some minor exception, the record reflects that both the Job Protection and the System Production Maintenance Crew issues were the only issues to have received somewhat extended discussion and to have been the subject of an exchange of meaningful draft proposals of agreement during the time collective bargaining did take place. The other issues in the respective Section 6 Notices were, for the most part, afforded little or no discussion, or were generally treated as being subject to the outcome of nationally negotiated agreements.

Since this Board believes resolution of these two principal issues should offer a sound and rational basis for the peaceful disposition of their contractual dispute, the Board will set forth its studied consideration of both the Job Protection and the System Production Maintenance Crew issues. The Board will offer but limited commentary with respect to other issues contained in the Section 6 notices of both parties or those issues which were advanced to the Board during its hearing on the dispute.

1. **Job Protection**

a. *Legislative History, Regulatory History, and Voluntary Bargaining*

The issue of job stabilization/employee protection is not something new to this Organization or this Carrier. It is a matter which has been of serious concern to both railway labor and management over the last five decades.

Job protection of railroad employees against the adverse effects of mergers, coordinations, consolidations and other transactions which affect an employment relationship have been mandated in one form or another by national legislation dating back to the Emergency Rail-

road Transportation Act of 1933 which provided for a "job freeze" and Orders of the Interstate Commerce Commission (ICC) pursuant to the Transportation Act of 1940, which mandated "a fair and equitable arrangement to protect the interests of the employees affected" by ICC authorized transactions.

Job protection has also been a part of the Regional Rail Reorganization Act of 1973; the Railroad Revitalization and Regulatory Reform Act of 1976; the Staggers Rail Act of 1980; and, the Northeast Rail Service Act of 1981.

Job protection has also been the subject of collective bargaining, and a number of agreements have been entered into by carriers and their employees voluntarily on both a national and a local basis.

The longest tenured voluntary agreement is the *Washington Job Protection Agreement of 1936.* This Agreement entered into by most of the nation's rail carriers and 21 separate unions, stipulates procedures to be used in the coordination of railroads whereby two or more carriers unify, consolidate, merge or pool their facilities in whole or in part and thereby affect the employment and earnings of employees. The Maine Central Railroad Company and the Portland Terminal Company were each separate parties to the Agreement, as was the Brotherhood of Maintenance of Way Employes.

A number of other protective agreements have also been entered into on a national basis. One such agreement, commonly known as the *February 7, 1965 Job Stabilization Agreement,* provides protection from the effects of technological, operational or organization changes for employees, other than seasonal employees, who were in active service as of October 1, 1964. In exchange for such protection "the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines." The Carrier and the Organization are parties to this Agreement.

Agreements between the Carrier and another labor organization, the Brotherhood of Railway, Airline and Steamship Clerks (BRAC), on both February 27, 1981 and October 17, 1984, amended the February 7, 1965 Job Stabilization Agreement to stipulate: "An employee holding a seniority date of *October 1, 1982* who owns a regular position on the effective date of this [October 17, 1984] Agreement, or any date thereafter when such employee is assigned to a regular position by bulletin, displacement or assignment, will become a protected employee." (Emphasis added)

Job stabilization agreements were also entered into between the other Guilford rail lines and BRAC on October 17, 1984, albeit the Carrier states "the 1984 agreements were prompted by the Guilford roads' desire to avoid a debilitating strike over an outstanding Sec-

tion Six notice served by BRAC on the B&M in 1977 [and that after] seven years in mediation a strike seemed imminent if the issue could not be peacefully settled."

As a consequence of the various protection arrangements, the Carrier reports that since August 1983 it has paid $28,881 in ICC imposed protection benefits to certain unidentified employees; $233,883 to shop craft employees under the 1964 National Shopcrafts Agreement; and, $1,930,534 to clerical employees pursuant to the National Agreement of 1965 and local agreements of 1984. Additional protective payments have been paid on rail lines of Guilford in the amount of $1,849,633, resulting in a total of $4,009,931 for the entire Guilford system since August 1983. No protective allowances were specifically identified as having been paid to any of the Carrier's or Guilford's maintenance of way employees.

b. *The Organization's Position*

The Organization states that the issue of job protection came to the forefront as a result of the Carrier's desire to utilize technological advancements involving track maintenance as well as both organizational and economic changes within the Carrier.

The Organization also contends that use of private contractors to perform certain cyclical and capitalized work has also contributed in recent years to the steady decline in total employment opportunities available to Carrier employees represented by the Organization.

Essentially, the Organization submits that the Carrier's maintenance of way force has experienced severe declines since Guilford assumed control of the Carrier in mid-1981. The Organization presented the following statistical data:

MAINTENANCE OF WAY EMPLOYEES

YEAR	*JANUARY*	*JULY*
1981	261	341
1982	268	390
1983	177	285
1984	160	207
1985	162	163
1986	116	N/A

The Organization asserts that the maintenance of way work force was reduced to about 100 employees in November 1985, and states that, "generally speaking, between 15 and 20 years prior service or

seniority" is now needed to hold a regular position in the maintenance of way force.

The Organization also submits that it lost 54 jobs when the Carrier reorganized its forces under the Job Stabilization Agreement of February 7, 1965. The Organization also points out that this reorganization was accomplished by the Carrier without payment of job protection benefits for the affected employees since the Agreement of February 7, 1965 protected only those employees who had been in active service as of October 1, 1964. One of the Organization's major concerns thus is that the February 7, 1965 Agreement has not been updated to include within its protection a later date of employment.

The Organization initially sought blanket job protection for employees who, effective July 1, 1984, had an employment relationship with the Carrier for 60 days or more. This proposal would have covered approximately 390 employees. The Organization also sought by other proposals protective coverage for any employee hired during 1985.

The Organization proposed that employees be given lifetime work or monetary guarantees based upon the work they had performed either in 1984 or 1985 in exchange for the Carrier to have "leeway" in the utilization of the protected employees. In this same regard, the Organization stated that it was agreeable to there being an understanding that refusal to take another position or to be used as needed by the Carrier would result in forfeiture of protective rights for an employee.

c. *The Carrier's Position*

The Carrier states that although it had in the past and during negotiations been willing to grant or to consider granting labor protection, that these "prior occurrences should not be viewed as precedent for the type of agreement that the Organization has demanded." In this respect, the Carrier maintains the affects of the strike by the Organization has caused "irreparable damage to Maine Central, drastically altering the incentive to agree to protection demands that are predominantly inconsistent with the economic validity of the railroad."

Moreover, the Carrier states that labor protection "is the product of a former era [and that by] any objective yardstick this period is over." It says the reasons for this are many. First and foremost, the Carrier maintains, is the inability of the railroad industry in a deregulated environment to pass on labor protection to shippers.

Additionally, the Carrier states that railroads must bring their labor costs in line with the remainder of industry; while other industries have limited forms of labor protection such as supplemental unemployment benefit plans or minimum work or pay guarantees, no other major industry has labor protection obligations similar to those already in existence in the railroad industry.

The Carrier thus argues that existing protection obligations burden the railroad industry with major labor costs not faced by its competitors, and that because of competitive pressures, this is not the time to expand these burdens by assuming added labor protective costs through labor protective enhancements.

d. *Efforts to Resolve the Job Protection Issue*

Pursuant to the parties' November 14, 1985 Understanding to maintain the status quo, the Carrier agreed to cancel all lay-offs or abolishments that were to have been implemented on November 12, 1985, and to retain in its employ all those employees who were actively employed as of November 12, 1985, which was believed at the time to be a total of 116 employees. However, on November 15, 1985, it came to the attention of the parties that seven employees who the Carrier had considered temporary had been laid off at the end of their tours of duty on November 14, 1985. While the Carrier maintained in discussions at that time that the seven employees were not part of the force of 116 it had agreed to retain during the moratorium, the Carrier did subsequently agree to recall the seven employees to active duty as extra employees to fill any position which became available to them.

The Carrier submitted this commitment cost about $45,000 in protective allowances.

On February 28, 1986 the Carrier furloughed 23 of the remaining employees. Although both parties were free to resort to self-help they continued to discuss and exchange written proposals for a resolution of the issue. One proposal by the Carrier called for an interim understanding pending the outcome of national negotiations. It also provided for an allocation of $138,000, to be derived from application of a wage increase to maintenance of way employees identical to that increase negotiated nationally for train service employees. This fund could be used alternatively to increase jobs "from 110 to approximately 120"; to split it up between 147 furloughed employees; or, to buy out the continuing job rights of 27 employees at $5,000 per employee. The proposal also provided future job openings on both the Boston & Maine and the Delaware & Hudson lines of Guilford be available to furloughed Maine Central employees.

Counterproposals by the Organization called for the buy-out of 110 employees at $5,000 per employee and the buy-out of 70 inactive employees at $2,000 per employee and, in another instance, a year's pay to all active employees and $1,500 per year to furloughed employees based upon their years of seniority.

The Carrier's last proposal, as presented prior to the Organization resorting to self-help, was drafted on March 2, 1986 and was presented to the Organization on March 3, 1986. It reads as follows, with notations as hand-written and added by the Carrier at the March 3, 1986 negotiating session being shown here in brackets:

"1. All currently furloughed employees will continue to be subject to the terms of the Working Agreement.

2. $20,000 lump sum separation allowance payable to currently active employees in the event of job loss or job abolishment.

3. In lieu of the $20,000 separation allowance, a supplemental monthly allowance capped at $20,000 to be paid in increments spread over 15 months.

4. Allowances for travel and moving expenses; i.e., Washington Job, to furloughed Bridge & Building mechanics who accept offers of employment on other Guilford railroads. [And if job is abolished you get paid to return. 5 days looking $800—laced curtain—moving van—P.T.—Waterville.]

5. First right of hire to all Maine Central furloughed Maintenance of Way employees for employment on the B&M and/or D&H—no moving expenses.

6. Modification of the Working Agreement to provide for system seniority for all employees represented by MofW throughout the entire Maine Central and Portland Terminal.

7. No back pay allowances would become payable to any MofW employee.

8. Agreement on all of the above would constitute full and final settlement of Mediation Cases A-11478 and A-11479.

9. [Wages & Health and Welfare adopted on the basis of national handling & effective upon ratification.]"

The Organization's response and final pre-strike settlement proposal as hand-written and presented to the Carrier on March 3, 1986 reads as follows:

"1. 70 of current furloughed employees will be granted 1500.00 for each year of seniority for option of severance.

2. Same—except employee will get 1 year salary—26,000.

3. Delete 15 months.

4. In addition guarantee period of work and benefits.

5. No change.

6. Production Gang only, except P.T.

7. [Blank]

8. No change.

9. No change.

10. Supplemental Sec. 6 of Sept. to be negotiated."

Although Item 7 of the Organization's counterproposal was left blank, the Organization submits that a notation was made on the Carrier proposal to show that the total question of wages, including the issue of back pay allowances would be subject to the outcome of national negotiations.

Public interest discussions continued during the strike, and the parties exchanged written proposals. The Board finds that no constructive purpose would be served to detail these proposals, since the parameters of the dispute became vastly broadened, even to the extent that issues were advanced that had not been the subject of negotiations between the parties in the handling of the respective notices.

e. *The Board's Conclusions Regarding the Issue*

It is apparent that throughout the handling of the issue of job protection that neither the Organization nor the Carrier was pressing strictly for their original demands, and that much progress had

been made to resolve the issue up to and prior to the parties resorting to self-help.

There is no question that, for the most part, the subject of job stabilization or employee protection has mostly been reserved for handling on an industrywide basis, either through legislation, regulatory actions, or national agreement. It is likewise apparent that the subject has received considerable local attention. The Carrier has entered into local agreements, principally with its clerical forces, to enhance protective benefits. These benefits have not accrued to other Carrier employees, specifically its maintenance of way employees.

While it may be, as the Carrier subsequently has come to argue, that the issue of job protection merits further consideration on an industrywide basis, the fact remains that the Carrier had offered the Organization several proposals as a solution to cover circumstances more or less peculiar to the Carrier and its maintenance of way employees.

There is no question that the Carrier had substantial need to embark upon a major change in the manner in which it would maintain its right-of-way. There is also no question that the magnitude of such change adversely affected an inordinate number of maintenance of way employees and altered their employment relationship with the Carrier. Evidence of this conclusion is found in the statement of Carrier's President, Mr. David A. Fink:

> "[U]pon the purchase of the Maine Central we went through the railroad. You must understand that the Maine Central was a family, for all intents and purposes.
>
> People had been there for years and years; and, in my judgment, they were maybe 35 years behind mechanization. Along the line, every eight to ten miles, you had a shanty and you would have your foremen and you would have your folks there, and every shanty had a gas car in 1981 or '82.
>
> I don't think there is any other railroad, at least to my knowledge, that did not mechanize. It became quite evident that if, in fact, we were going to stay in business and if, in fact, we were going to stop our derailment experience on the Maine Central, we had to move and move rapidly, which I did.

> We went out and bought all new equipment, mechanized equipment; and it was during that period of time that, yes, we were letting people go, which, by God, is a very, very distasteful thing and I don't care in what area you are talking."

Thus the Board recognizes that although the Carrier had a need, prior to 1981, for a substantial number of maintenance of way employees, once mechanized equipment had been purchased and the Carrier had completed its capitalized track project work, the need for maintenance of way employees was reduced drastically.

In the circumstances, it is not difficult to comprehend why employees of the Carrier represented by the Organization came to believe that they were subject to disparate treatment regarding job protection. For the first time, in 1981 and 1982, as a result of the sale of the Carrier to Guilford, the employees experienced the adverse affects of both technological and organizational changes. Because only a limited number of employees had a protected status under the February 7, 1965 Job Stabilization Agreement, the vast majority of the maintenance of way employees found themselves without the protection which had been accorded to their fellow craft members on other carriers who had not taken 26 years to mechanize their work forces. Furthermore, the Carrier's maintenance of way employees found it difficult to comprehend why protection afforded under the same February 7, 1965 Job Stabilization Agreement was being extended to other employees on the property, principally, the clerical employees some of whom had less seniority, and not to them.

In the Board's view, the factual setting of the present dispute constitutes substantial reason to conclude that an appropriate resolution of the job protection issue would be for the parties to adopt the terms of the Carrier's proposal of March 2, 1986. The Board believes the parties should defer the question of whether and to what extent, if any, changes need be made in industry-wide protective agreements to national consideration and handling.

2. **System Production Maintenance Crews**

As its major demand during collective bargaining sessions, the Carrier proposed the establishment of system seniority for maintenance of way employees.

Prior to negotiations on their current notices, the Carrier was able to effect organizational change regarding the rearrangement of track section crew work. This was the result of an Implementing Agreement entered into with the Organization on August 9, 1983

pursuant to the February 7, 1965 Job Stabilization Agreement. This Implementing Agreement permitted the consolidation of 59 basic section crews into 22 basic section crews, with a net reduction of 54 employees.

a. *The Carrier's Position*

In its notice served upon the Organization on September 26, 1984, the Carrier stated that to improve its ability to compete in the transportation marketplace in an efficient and economical manner it was necessary for existing rules and practices to be revised or eliminated with respect to:

> "Restrictions on realigning and combining of seniority districts or on rearranging forces and/or work, including impediments to establishment of territorial and/or system gangs without limits.

On March 13, 1985, the Carrier served a supplemental notice, stating in part as follows:

> "The following changes will improve the Carrier's ability to compete in the transportation marketplace by revising or eliminating existing rules and practices that restrict efficient and economical operations.
>
> 1. The Carrier shall have the right without restrictions to establish system production crews.
>
> 2. System seniority will be established (including Portland Terminal).
>
> 3. The Carrier shall have the right to combine, abolish, or modify sections without restrictions.
>
> 4. The Carrier shall have the right to contract any work where management believes it is necessary to do so.
>
> 5. The Carrier shall have the unrestricted right to establish four (4) day, ten (10) hour work weeks.
>
> 6. All requirements for outfit cars are eliminated.
>
> 7. Employees who have not worked for twelve (12) consecutive months will be removed from the seniority roster.

8. Positions may be abolished and employees laid off with a forty-eight (48) hour notice.

9. All machine operators must become qualified in each class of machine operation. Management will be the sole judge of qualification for machine operators.

10. In addition to 9 above, for certain sophisticated specialized machines, management shall choose the operators from a pool of previously qualified operators.

11. Any requirement for use of machine operators on small equipment which requires a minimum of qualification for operation will be eliminated.

12. Newly hired employees must work ninety (90) days to gain seniority.

13. When foremen, assistant foremen, track repairmen or machine operators are needed for spare work they will be called from the appropriate spare work list in seniority order.

14. Management shall have the unrestricted right to establish starting time at any time, change such starting time at its discretion and establish a work week other than Monday through Friday.

15. The Carrier shall have the right at management's discretion to assign the most qualified person to any special assignment, even though not a senior rostered employee.

16. Overtime will be distributed at the sole discretion of management."

The Carrier's next detailed proposal regarding the issue was set forth in meetings with the Organization on April 24 and 25, 1985. The Carrier proposal requested the right to establish System Production Crews with no assigned headquarters to work over any portion of the Maine Central and the Portland Terminal Company seniority districts. Other sections of the proposal covered:

Written notice to the Organization indicating the type production crew; estimated territory over which the crew will work; es-

timated length of time the crew will operate; number of positions by class to be assigned; and number of days per week the Production Crew will work.

Bulletining and assignment procedures on the basis of seniority; performance of primary duties of positions and any other work generally recognized as work of their particular classification without regard to seniority; and, the right of new employees who may be assigned to a system crew to select their home seniority district from the current separate districts.

Normal work week hours to consist of four days of 10 straight-time hours each, with rest days of Friday, Saturday and Sunday, with procedures for changing to five days of 8 straight-time hours on notice to the Organization.

Per diem allowance in lieu of all compensable meals, lodging, transportation and travel expenses; Carrier option to provide camp cars in place of per diem allowance.

Use of production crews to perform service through the entire system in addition to the territory in which the crew is programmed to work.

Meeting within 60 days of the effective date of this new agreement to adapt the provisions to the basic Schedule Agreement.

The Carrier's final offer on the issue as contained in its proposal, dated March 2, 1986, simply reads:

"Modification of the Working Agreement to provide for system seniority for all employees represented by MofW throughout the entire Maine Central and Portland Terminal.

b. *The Organization's Position*

Although not directly stated, the objections of the Organization appear to stem from a concern that establishment of System Production Maintenance Crews could mean decreased employment opportunities for its membership.

The Organization's proposed disposition of the issue, as offered in a counterproposal to the Carrier on June 25, 1985, would establish a strict line of demarcation between work to be performed by a

system production crew and normal, day to day, maintenance work. It would also provide prolonged bulletining and assignment provisions in addition to the payment of 25 cents per hour above the basic rates of pay for all hours worked on a system production crew. The Organization's proposal would also establish various levels of travel allowance and expenses associated with meals and lodging.

It is noteworthy that in response to the Carrier's last written proposal, quoted above, the Organization's response read:

"Production Gang only, except P.T."

c. *The Board's Conclusions Regarding the Issue*

The Board believes that the Carrier should have the right to establish System Maintenance Production Crews.

There is no question that certain of the Carrier's initial proposals on the subject were far-reaching in the context of the existing collective bargaining relationship. However, the Organization's proposal would compel the Carrier to increase its maintenance force, establish minimum size force requirements, restrict or limit work available to the crews, and adhere to notice requirements that would be burdensome and hamper the use of such crews.

In the Board's opinion, the parties should negotiate an agreement which establishes system seniority for production work on the Carrier, and provide that production crews will be restricted from performance of normal, day to day, maintenance work that could efficiently be handled by employees of the separate seniority districts. This agreement should also contain an appropriate per diem allowance in lieu of meals, lodging, transportation and traveling expenses when camp cars are not provided. The allowance should not be less than that which is currently paid to maintenance of way employees under other agreements or arrangements throughout the Guilford System.

Should the parties not be able to reach such an agreement within 30 days of an initial meeting on the subject, it would then be appropriate that any unresolved questions be determined by final and binding arbitration.

C. *Other Issues*

This Board will not address each of the other desires for change included by the parties in their respective Section 6 notices. These other issues, important as they now may be to the parties, were not

shown to have been fully or specifically addressed in direct negotiations or mediation. They were not included as part of settlement proposals drafted and discussed between the parties in their efforts to resolve the dispute before each party resorted to "self help." In some instances, certain issues were injected into the post-strike collective bargaining talks, as tough-minded rhetoric replaced reason in the expostulation of settlement terms.

Moreover, since both the Organization and the Carrier served notices identical to those notices served for changes in rates of pay, rules and working conditions on a national basis, and since there has not yet been national disposition of such issues, the Board concludes that it would best serve the interests of the parties for current industry-wide bargaining to form the basis for resolution of such issues.

In making this determination, the Board is mindful that both the Organization and the Carrier have historically either participated in concerted national handling for changes in rates of pay, rules and working conditions, or agreed to be bound by the terms of such national settlements. In this same regard, it is recognized that the Organization had initially requested that the Carrier waive local meetings, and that all issues be progressed in concerted national handling. Although the Carrier had, at first, expressed a desire to reserve judgment on such proposition, subsequently the Carrier indicated it was willing to join with the Organization in a standby agreement regarding changes is rates of pay and health and welfare programs that emerged from national bargaining. The Carrier also stated a willingness to provide for peaceful disposition of all other rules and working conditions on a local basis.

The foregoing considerations convince the Board that issues which relate to changes in rates of pay and health and welfare programs should be reserved for resolution, as in the past, on the basis of changes which flow from national handling. The parties should agree to handle changes in local rules and working conditions under the peaceful and orderly procedures of the Railway Labor Act, up to but not including mandatory arbitration or resort to self-help.

VI. RECOMMENDATIONS

In summary, the Board recommends that the dispute should be resolved in the following manner:

1. The Carrier's proposal dated March 2, 1986 for job protection for then currently active employees, as subsequently modified and

presented to the Organization on March 3, 1986, should be adopted; the protective allowance to be $26,000.

2. The parties should negotiate a comprehensive agreement for System Production Maintenance Crews to be used throughout the entire geographical confines of the Maine Central Railroad and the Portland Terminal Company similar to those agreements negotiated on the Boston & Maine and the Delaware & Hudson rail lines of the Guilford System.

3. Consistent with the parties' proposals of March 2 and 3, 1986, and in view of their past practice, the parties should agree to be bound by the results of the national negotiations involving rates of pay and health and welfare programs.

4. The parties should agree to handle changes in work rules and practices contained in notices which had been served prior to Executive Order 12557 under the orderly and peaceful procedures of the Railway Labor Act, as amended, up to and including mediation, and without resort to self-help.

Respectfully submitted.

ROBERT O. HARRIS, *Chairman*
RICHARD R. KASHER, *Member*
ROBERT E. PETERSON, *Member*

APPENDIX A

EXECUTIVE ORDER 12557

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN THE MAINE CENTRAL RAILROAD COMPANY/PORTLAND TERMINAL COMPANY AND CERTAIN OF THEIR EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Disputes exist between the Maine Central Railroad Company/Portland Terminal Company and certain of their employees represented by the Brotherhood of Maintenance of Way Employes.

These disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

These disputes, in the judgment of the National Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation services.

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

Section 1. *Establishment of Board.* There is hereby established, effective May 16, 1986, a board of three members to be appointed by the President to investigate these disputes. 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.

Sec. 2. *Report.* The board shall report its findings to the President with respect to these disputes within 30 days from the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 10 of the Act, from the date of the creation of the 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 carriers or the employees in the conditions out of which these disputes arose.

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

RONALD REAGAN

THE WHITE HOUSE,
May 16, 1986.