

REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 211

**SUBMITTED PURSUANT TO EXECUTIVE ORDER 12562,
DATED JULY 15, 1986,
PURSUANT TO SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED.**

**Investigation of disputes between certain railroads represented
by the National Carriers' Conference Committee of the
National Railway Labor Conference and their employees
represented by certain labor organizations.**

**(National Mediation Board Case Nos. A-11411, A-11536, A-11537,
A-11538, A-11540, A-11543, A-11544 and A-11545)**

**WASHINGTON, D.C.
AUGUST 14, 1986**

LETTER OF TRANSMITTAL

WASHINGTON, D.C.
August 14, 1986

THE PRESIDENT
The White House
Washington, D.C.

DEAR MR. PRESIDENT:

On July 15, 1986, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12562, you established an Emergency Board to investigate disputes between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by certain labor organizations.

The Board now has the honor to submit its Report and Recommendation 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,

GEORGE S. ROUKIS, *Chairman*
JOHN B. LAROCO, *Member*
DAVID P. TWOMEY, *Member*

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A—Executive Order

I. CREATION OF THE EMERGENCY BOARD

The President of the United States established Emergency Board No. 211 (the Board) pursuant to Section 10 of the Railway Labor Act, as amended (45 U.S.C. § 160), and by Executive Order 12562. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by certain labor organizations. Copy of the Executive Order is attached as Appendix "A".

On July 18, 1986, the President appointed Dr. George S. Roukis, Professor of Management and Industrial Relations at the Hofstra University School of Business, Hempstead, New York, as Chairman of the Board. Arbitrator John B. LaRocco, Esq., of Sacramento, California and Professor David P. Twomey of the Boston College School of Management, Chestnut Hill, Massachusetts, were appointed as Members of the Board. The National Mediation Board appointed Roland Watkins, Esq., as Special Assistant to the Board.

II. PARTIES TO THE DISPUTE

A. THE SIX LABOR ORGANIZATIONS

The dispute before this Board involves six labor organizations that collectively represent approximately 107,000 employees or some 38 percent of the total number of railroad employees involved in the current national bargaining round. Four of these organizations represent the carriers' Shop Craft employees: the Brotherhood Railway Carmen of the United States and Canada (BRC), the International Association of Machinists and Aerospace Workers (IAM), the International Brotherhood of Electrical Workers (IBEW), and the International Brotherhood of Firemen and Oilers (IBF&O). These organizations represent crafts or classes of the carriers' employees who inspect, maintain, and repair (i) all types of locomotives and freight cars, (ii) work equipment such as cranes, hoists, work cars and wreck equipment, and (iii) shop machinery and equipment. Such employees also operate and maintain the carriers' stationary power plants and power stations.

The two remaining organizations involved in this proceeding are the Brotherhood of Maintenance of Way Employees (BMW) and the Brotherhood of Railroad Signalmen (BRS). The BMW represents employees who principally perform track laying and surfacing work, roadway maintenance, and certain bridge, building, and structural work. The BRS represents employees who generally are engaged in the installation, maintenance, and repair of railroad signal devices and equipment.

B. THE CARRIERS' CONFERENCE

The Carriers involved in this dispute include most of the Nation's Class I line haul railroads and terminal and switching companies. They are named in the attachment to Appendix "A". The Carriers are represented in this dispute through powers of attorney provided to the National Railroad Labor Conference (NRLC) and its negotiating committee known as the National Carriers' Conference Committee (Carriers).

III. HISTORY OF THE DISPUTE

On March 15, 1984, the BRS served notice on the Carriers to change numerous provisions of the existing collective bargaining agreements. The other labor organizations served notices on April 2, 1984. The BRC served additional notices relating to employee protection and coupling, inspecting and testing of train air brakes systems on May 22, 1984. The Carriers served their counter-notices on various dates during March and April, 1984.

Bargaining commenced on June 21, 1984. Beginning in January of 1985, each of the organizations, believing that an impasse had been reached with respect to direct negotiations with the Carriers, applied to the National Mediation Board (NMB) for its mediatory services. Those applications were docketed by the NMB as follows' A-11536 (BRS), A-11537 (BRC), A-11538 (BRC), A-11540 (BMWE), A-11543 (IBEW), A-11544 (IAM) and A-11545 (IBF&O). An earlier BRC request for mediation on its September 15, 1980 notice was docketed by the NMB as Case No. A-11411 and was handled as part of the BRC's current dispute with the Carriers.

During this round of railroad bargaining, the Carriers reached final agreements with three organizations: the United Transportation Union (UTU), the Brotherhood of Locomotive Engineers (BLE), and the Brotherhood of Railway, Airline and Steamship Clerks (BRAC). In addition, the Carriers negotiated tentative settlements with two shop craft organizations, the International Brotherhood of Boilermakers and Blacksmiths (IBB&B) and the Sheet Metal Workers' International Association (SMWIA).

Mediation was undertaken by NMB Member Helen Witt and Mediator Joseph W. Smith, but was unsuccessful.

On June 2, 1986, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered the BMWE and the four Shop Crafts the opportunity to submit their controversy to arbitration. A proffer on the dispute with the BRS was issued on June 4, 1986. The Carriers accepted the proffer of arbitration but the organizations declined. Accordingly, on June 24, 1986, the NMB notified the parties that it was terminating its mediatory efforts.

On July 1, 1986, pursuant to Section 10 of the Railway Labor Act, the NMB advised the President of the United States that, in its judgment, the disputes threatened to substantially interrupt interstate commerce to a degree such as to deprive various sections of the country of essential transportation service.

The President, in his discretion, issued Executive Order 12562 on July 15, 1986 to create this Board to investigate and report concerning these disputes.

IV. THE EMERGENCY BOARD'S ACTIVITIES

The parties to the disputes met with the Emergency Board in Washington, D.C. on July 21, 1986 to discuss procedural matters.

Formal hearings commenced with a presentation by the Carriers on July 22, 1986. On July 23, 1986, the Brotherhood of Railroad Signalmen made its presentation. The BMWE followed on July 24, 1986. On July 25, 1986, the BRC made its presentation on its proposal. The four shop craft unions made a joint presentation on July 26 and 28, 1986. The Carriers followed with a presentation on specific issues on July 29, 1986. All of the parties presented their rebuttals on July 30, 1986.

During eight days of hearings, the parties were given full opportunity to present oral testimony, documentary evidence and argument in support of their positions. The record of the proceedings consisted of 1999 pages of testimony from 46 witnesses. Seventy nine volumes containing the exhibits and supplements of the parties were also received by the Board. The parties submitted post-hearing statements by August 4, 1986.

V. WAGES

A. WAGE DISPUTE BACKGROUND

In 1925, the rail industry hauled 80% of all freight ton miles in the United States. By 1985, its market share had dwindled to 37 percent. The trucking industry usurped a considerable portion, aided in major respects by the federal government's development of interstate highway systems. Market loss wrought other changes for railroads. Railroad employment declined 40 percent between 1960 and 1979 and by almost 59 percent between 1960 and 1984. By 1986, total employment in the rail industry stood at 320,000 down from 365,000 in 1984. If one could characterize the transportation industry within recent years, and this would include the airlines, trucking, barges and pipelines, it is highly competitive, with each transportation segment focusing aggressively on cost containment. Industry competitiveness has pervaded the proceedings before Presidential Emergency Board No. 211.

1978, the airlines were deregulated by Federal legislation. The roads were subsequently deregulated in 1980 by the passage of the Staggers Act. This deregulatory measure brought significant changes. Railroads received the right to raise and lower freight rates within appreciable limits without advance approval by the Interstate Commerce Commission (ICC). Railroads were permitted to negotiate confidential tariff contracts with shippers, and roads can now abandon lines and merge with greater speed. Branch and secondary lines spun off from class I railroads have increased the number of short line operators. The Motor Carrier Act of 1980 virtually eliminated regulatory restrictions on trucking, practically permitting trucks to go anywhere and transport anything.

Capital expenditures increased quite dramatically since the inception of deregulation, thus directly affecting productivity. Much more investment was allocated for new tracks, yards, terminals and equipment. In 1984, for example, \$3.7 billion was invested in track improvements, an increase of 36 percent over 1983. In 1985 total expenditures aggregated \$4.5 billion. As a complement to investment efforts, technology streamlined railway operations. The ratio of long-term debt to investment has generated increased cash funds to meet capital needs. We note that such investment was not uniform among all the Class I railroads. In the main, productivity improvement has been encouraging, and the amount of costs absorbed less of each revenue dollar.

Other improvements include the introduction of centralized traffic control systems, which were installed on 56,000 miles of track, and growth in intermodal traffic. The railroads implemented these changes in an effort to increase their market share. In effect, we are witnessing the reconceptualization of the strategic place of the railroad industry in the United States. Both the rail carriers and shippers have accepted, though with differing perspectives, the dynamic dynamics of the change.

The analysis of this dispute is heavily influenced by the Carriers' Conference settlements with the UTU, BRAC and the tentative settlements with the IBB&B and the SMWIA. The arbitrated BLE settlement disposition is also a settlement precedent.

The UTU negotiated a wage increase of 10.5 percent over 4 years (1988) but the increase was offset by measureable productivity improvements. The settlement provided for the freezing of all over-miles and arbitrary payments from the general and cost of living increases. In addition, changes in the terminal delay and deadheading rules provided additional savings. In through freight service, the number of miles per basic day was increased to 108 miles from 100 miles over the life of the contract. When these savings offsets are factored into the 10.5 percent increase, it is estimated that the net compensatory results will vary from 4.8 percent and 5.5 percent.

A combination of lump sum payments and percentage increases was provided to employees represented by BRAC. Service workers and intermodal employees were excluded from the general wage increases, which amount to 2% on December 1, 1985; 2.25% on December 1, 1986; 2.25% on December 1, 1987. Instead these employees receive lump sum payments creating a two tier wage system. New employees are subject to entry rates of 75% of the applicable permanent rate. BRAC adopted the same five-year step arrangement for new employees as the operating crafts and in addition, the question of wage levels for certain employees was referred to an advisory Study Commission.

The IBB&B and the SMWIA agreed to the same annual percentage increases 2%, 2.25%, 2.25%, but lower rates for helpers and apprentices who were treated much like BRAC service workers. Rates of pay for these workers were set at approximately 75% of present rates and lump sum payments were accorded present employees in lieu of percentage rate increases. The outcome of the ratification process will be announced after we issue this report.

B. CONTENTIONS OF THE LABOR ORGANIZATIONS

1. *Signalmen's Contentions.* The BRS expressed serious concern about the pace and manner of negotiations. It argues that it was not allowed the necessary time essential for the consummation of an agreement and, as such, this hiatus placed the BRS in a disadvantaged position. It disclaims that any pattern relationship existed with other organizations and most pointedly asserts that the BRAC agreement is inapplicable to its unique needs. It avers that the May 1, 1964 and the December 29, 1964 Signalmen Agreements were not pattern agreements and furthermore, the January 13, 1967 Agreement was cooperatively negotiated with other non-operating crafts. According to the BRS, the 1967 Agreement was decidedly different than the "so called" pattern agreements reached by the other organizations. It acknowledges that the January 29, 1975 Agreement was negotiated jointly with the UTU and the BMWIE, but contends the final contracts focused on the distinct needs of each craft. It further argues that the Signalmen's 1978 Agreement was different from the Carriers' Conference's 1978 National Agreement with BRAC. Accordingly, the BRS contends that based on the historical collective bargaining dissimilarities between the signal and clerical crafts, the BRAC Agreement is irrelevant to signal employees.

As an additional justification for its wage proposal, it points out that the duties of signal employees are significantly unique in the railroad industry and the attendant signal responsibilities are not equaled by any other railroad craft. For example, Signal Maintainers work alone without direct supervision and in remote areas. They are responsible for knowing Federal law and applicable regulatory requirements promulgated by the Federal Railroad Administration (FRA) and the ICC.

The BRS further avers that signal employees, of necessity, must continually upgrade their skills to meet the everchanging operational requirements of the railroad industry. It argues that the railroads are financially sound, as compared to the trucking industry, according to the relevant financial indices. It asserts that net revenues have increased while costs have decreased thus truly reflecting quantitatively and qualitatively enhanced performance.

Upon these findings, it argues that it is entitled to wage increases, that equitably address its singular needs, as follows: 2% on July 1, 1984; 3% on January 1, 1985; 3% on January 1, 1986; 3% increase on June 1, 1987; and 2% on January 1, 1988.

2. *Maintenance of Way Employees' Contention.* The BMW E organization argues that the BRAC settlement is irrelevant to their concerns since there are inherent inequities and asymmetrical wage relationships between the crafts. The BMW E argues that reliance on the pattern principle requires by definition a host of pivotal considerations. It asserts that there is no clear pattern in this instance and that it would be unfair for the Board to apply the BRAC pattern. As part of its wage position it asserts that the Board must consider the traditional dispute settlement criteria delineated in the Transportation Act of 1920 which have been historically applied to railroad disputes. These factors include: 1) scale of wages paid for similar kinds of work in other industries; 2) the relationship between wages and cost of living; 3) hazards of employment; 4) training and skill required; 5) degree of responsibility; 6) character and regularity of employment; 7) any qualities of increases in wages. It is the BMW E's position that the evidence adduced on the aforesaid criteria clearly justifies its wage requests.

BMW E avers that the BRAC pattern would disparately affect its members. It notes that the BRAC agreement adjusts wages upward by 6.5% over the term of a contract for 89% of the BRAC unit but if the same pact were applied to the BMW E only 52 percent of its members would receive a wage rate increase. It asserts that 48 percent of the BMW E unit is subject to the wage freeze proposed by the Carrier, amounting to only a 1.6% increase over the four year term. It argues that this is untenable result that is patently inconsistent with the above criteria. It further notes that notwithstanding the changes in the UTU pay rules and pay structure (including the new entry rate levels and progressions, change in the dual basis of pay including the elimination or freezing of arbitraries) these items even by Carriers' own definition, have traditionally fallen outside the purview of a pattern precedent. It contends that the Clerks' classifications have rates of pay which significantly exceed the average hourly earnings of all similar workers surveyed by the Bureau of Labor Statistics. If the same

measurement criteria are applied to the BMW E, the results are noticeably different, so it contends that applying the BRAC settlement would have an adverse and destabilizing effect. It argues that the aggregate number of lump sum settlements in all industries was minimal in 1985 (approximately 6%), and the number of two-tier settlements was also minimal (amounting to 11%).

In defense of its wage proposal, the BMW E asserts that construction workers who perform the identical work and endure the same occupational hazards and employment irregularities as BMW E employees are paid higher than BMW E workers. It notes that transit workers and public utility employees holding comparable positions receive considerably higher pay. It disputes the Carriers' Conference contention that material handling laborers are substantially similar in skill content and responsibility to railroad trackmen and notes that the BLS indicated the two were not comparable.

It contends that the Board should recommend a wage settlement that conforms generally to those settlements obtained by workers elsewhere in the economy, which it asserted amounted to wage rate increases of at least 3.5 percent per year, including cost of living adjustments. The BMW E delineated what it considered a representative sample of normative inter-industry settlement patterns. It avers that the duration of unemployment is 20 percent higher for Trackmen than the industry average and only 41% of Trackmen are employed full time each year compared to the 70% for the entire industry. It maintains that BMW E employees have higher occupational injury rates than other railroad employees, and are exposed to greater occupational hazards. It argues that the industry has the financial ability to underwrite the compensatory increases due to the high level of net income and profit margins enjoyed since deregulation. Within this context it maintains that the recommended increases will produce the lowest rate of wage increases since the early 1960's. Moreover, it observes that given the accelerated pace of productivity improvement, unit labor costs will decrease and the railroad industry will effectively meet the competitive challenges in the deregulated transportation marketplace.

3. *Contentions of the Four Shop Craft Organizations.* The shop craft organizations propose the following wage settlement lump sum of (at ratification) \$565; wage rate increases of 1% on November 1, 1985; 2% on January 1, 1986; 1.5% on July 1, 1986; 2.25% on January 1, 1987; 1.5% on July 1, 1987; 2.25% on January 1, 1988; and 2% on June 30, 1988 but figured on the July 1, 1984 base and applied to the June 30, 1988 base. They also recommend that the full COLA be rolled into the base rate on June 30, 1988.

In support of their economic position the four unions argue that railroad craft employees, who are highly skilled, are currently underpaid in comparison to their counterparts in other industries including comparable transit systems. They note that with ever increasing productivity, decreases in unit labor costs make it possible to finance the increases. The shop crafts also charge that because of the delay in these negotiations, their members suffered wage losses. The shop workers assert that unlike the operating employees they derived no benefit from mileage rates or arbitrations. In essence, they contend that their wage proposal merely grants shop employees the percentage wage rate increase given to the operating employees.

Further, contrary to the Carriers' position, the shop crafts argue that when compared with agreements in other industries, as well as the negotiated increase with the UTU, their wage proposal is reasonable. They maintain that skilled craft workers in the railroad industry are more highly paid than less skilled employees represented by BRAC. Therefore, it is unjustifiable to compress shop workers wages which are also out of step with their counterparts in other industries. They aver that freezing wage rates for these workers would aggravate the wage disparity. They argue that over the four years of the prior contract, the cumulative productivity increase was 43.7% contrasted with a 25% wage increase. They argue that in light of productivity increases and increased profit margins, an ability to pay exists.

The four unions note that only a small percentage of agreements in recent years have included any form of two-tier systems, and point out that most of these have occurred in companies in dire financial straits. They aver that the detailed economic information provided to this Board with respect to other industries and specifically with respect to the compensatory relationships between journeymen and helpers, demonstrates that shop workers deserve the UTU wage package plus a 2% backload to compensate for the bargaining hiatus.

C. CONTENTIONS OF THE CARRIERS' CONFERENCE

The Carriers' Conference argues that rates of pay for lower rated workers represented by the four shop craft organizations, the BMW and the BRS are similar to those designated as "service employees" in the BRAC Agreement. It asserts that pay increases should not apply to such positions and incumbents should be given lump sum payments. Also it argues that all new employees should start at 75 percent of the permanent rate for present employees with a five-year step progression.

A correlative question relates to the methodology of characterizing lower rated wages. The Carriers' Conference avers that twelve dollars an hour is the benchmark figure, and accordingly, 18 percent of all 1984 railroad workers were lower rated. The unions that represent journeymen, i.e. IBEW, IAM, BRC, IBB&B, and SMWIA, have only 3 percent of their constituent membership in the under \$12 per hour category. It contends that the proportion is 11.6% for Clerks. The carriers calculated that .4% of the Signalmen are in the lower rated category and, 47.8% of the Maintenance of Way Employees receive less than \$12 per hour, and 91.5% of the IBF&O craft is considered lower rated. The Carriers' Conference asserts that laborers, helpers, apprentices, and miscellaneous employees are over valued when compared with prevailing rates in other industries. It also compared pay rates with the trucking industry and asserted that it was essential to bring wage costs into line so as to be competitively effective in the marketplace.

In gathering its wage justification data, for these proceedings the Carriers' Conference utilized recent studies and surveys from the Bureau of Labor Statistics Area Wage Surveys and the Federal Wage System data.

These contentions were referenced against a number of job descriptions prepared by the Railroad Personnel Association in 1981. As part of its argument that some of the craft workers actually perform production type work, Carriers point out that the variety of work that is the hallmark characteristic of the craftsman trade is absent in the railroad shops where activities and tasks are ostensibly equivalent to manufacturing production. In essence, it contends that the work performed is unskilled.

The NRLC observes that very few shop craft employees are assigned exclusively to "intermodal" facilities. Most employees at intermodal facilities are represented by the BRAC organization. On this point, the Carrier argues that the BRAC organization, recognized the competitive realities in the transportation marketplace and agreed to a lower rate of pay for intermodal workers to enable carriers to more effectively compete against the trucking industry.

In response to the organizations' positions, the Carrier's Conference indicates that the groups at impasse did not fully articulate their requested wage adjustments. It appeared to the Carrier's Conference that the unions were arguing that higher rated employees and laborers were underpaid, and that the rate of increase in rail compensation has lagged behind that in other industries. It argues that the unions improperly compared railroad positions with workers in the unionized construction trades, public

unities, rapid transit operations and positions under the Davis-Bacon Act.

The Carriers assert that rail pay rates have never been compared with the unionized construction sector or public utilities. It argues that using the CPI and statistical regression techniques to analyze the relationship between the rate of increase in average hourly earnings for workers in the domestic economy and the increase in railroad workers' earnings, rail wages are far higher than they would have been if they increased at the same rate for workers generally. As a result, it avers that between 1980 and 1985 railroad wages increased by 34.5 percent, while wages established by major collective bargaining settlements (1,000 or more employees), increased by 30.7 percent.

The Carriers' Conference further contends that the 1982 settlements in the rail industry were high compared to other major industries. It indicates that notwithstanding the impact of the 1982 recession upon the economy, the railroads, nevertheless, accorded workers higher wages and did not seek wage modifications during the term of the contract. It maintains that in the present competitive environment which it foresees as extending into the indefinite future, the railroads will have to maintain judicious control over costs.

The BRAC settlement as well as the tentative settlements with the IBB&B and SMWIA, are the settlements that the Carriers contend should be adopted. As noted before, the general wage settlement proposed by the Carriers' Conference calls for an amalgam of lump sum payments, wage rate increases and general cost of living increases. The first lump sum payments would be \$565.00 payable on ratification. Three other lump sum bonuses would be paid on December 1986, December 1987 and June 1988.

The proposed general increases consist of 2% effective December 1, 1985, 2.25% effective December 1, 1986 and 2.25% effective December 1, 1987, totalling 6.5%, which becomes 6.6% compounded.

The Carriers' Conference proposed a two-tier wage system for certain positions and an entry rate progression system that commences at 75% of current rates and escalates in increments of 5% to full rates at the end of five years.

D. FINDINGS AND RECOMMENDATIONS

1. *Discussion.* In developing settlement recommendations, the Board must consider and properly weigh the application of the normative settlement criteria used in interest disputes. These criteria include comparability, ability to pay, cost of living, and the criteria set forth in the Transportation Act of 1920. These are not exclusive. Other indices of

measurement are also employed. We cannot be unmindful of the pattern and practices historically established in the railroad industry and the general findings and observations of past Presidential Emergency Boards. We must carefully consider the imperative need for maintaining stability and predictability in the railroad industry and the parallel need for insuring that all parties are treated fairly and consistently when applying the settlement criteria.

By definition, a balanced and objective perspective must guide our deliberations. In the instant disputes, where six rail unions are involved, this is a formidable task.

The wage proposals before us seek special equity adjustments and regular wage adjustments. The UTU and BRAC negotiated settlements are pervasive influences that cannot be ignored. The Carriers' evidence with regard to the economic savings of the offsets in the UTU Agreement was unrefuted by the labor organizations. Thus, the uncontroverted evidence before this Board shows that the net overall earnings increase under the UTU Agreement is between 4.8% and 5.5%. The BLE arbitrated wage agreement, aside from certain retroactivity features, is similar to the UTU Agreement.

We generally agree that rail earnings are favorable when compared with outside industries, but certain crafts are lagging behind because of the absence of wage increases since the expiration of the predecessor agreements. The duration of this lag has effectively deprived employees of any wage increase.

We also recognize that Carriers urgently need to respond competitively to the dynamic forces in the transportation market.

In considering the wage issues before us, the Board recommends the application of the aggregate BRAC settlement, but distinguishes the adjustments needed to develop a fair and equitable wage package. The BRAC structure is not readily adaptable to the crafts before us. We must make recommendations based on the distinctive features of each craft. Strict adherence to the BRAC structure would not only result in wage inequities and inconsistencies, but it would also create an infeasible wage configuration. Our recommending the basic BRAC pattern would be tantamount to a decision without judgment.

2. *Recommendations.* The recommendations regarding the wage proposals will be set forth by the involved craft or class. This permits the Board the opportunity to articulate its rationale for the recommendations. During this round of national negotiations, all settlements have contained identical COLA terms. The pattern is unequivocal. The Board recommends that the six labor organizations and the Carriers incorporate the uniform COLA formula, including the cap, the offsets and the percentage roll in at the end of the term, into their agreements.

Organization contends that it was not provided opportunities to conduct meaningful negotiations. It expressed considerable frustration over its inability to negotiate a labor contract.

While the Board understands the Organization's expressed disquiet, the intensified pace of Emergency Board deliberations requires us to construct a labor agreement that is fair, equitable and acceptable. We cannot be preoccupied with the process leading to the Board's establishment, particularly, since we are dealing with numerous and complicated issues.

The Board assures the Organization that we have carefully analyzed the extensive record and arrived at an independent assessment of its proposals.

The Board notes that the labor market for Signalmen is indeed tight. In effect, trained Signalmen are in short supply. The skills of this craft are comparable to the Shop Craft's journeymen and rigorous training is needed to attain operational sophistication. The employees in this craft must deal with complicated everchanging technologies and their assignments are oftentimes unenviable. They are on call 24 hours a day and frequently work alone in remote areas. They earn \$13.26 per hour as compared to laborers who earn \$11.24 per hour. However, we are not persuaded that the record before this Board contains a rational basis for deviating from the BRAC Agreement.

Overall the Signalmen's package will be more favorable than the BRAC settlement since an entry level progression will not be recommended. Neither the two tier wage system nor the entry level progression are applicable because these employees are comparable in skill to the shop crafts journeymen.

We recommend the same combination of lump sum payments and percentage pay rate increases contained in the BRAC Agreement, but not the two-tier structure.

There are only thirty Signal Helpers and Signal Maintainer Helpers actively employed on the railroads. Helpers are currently subject to the twenty-four month (85%, 92%) entry rate progression set forth in Article XI of the January 8, 1982 National Agreement. To maintain the traditional wage differential between helpers and mechanics, we reject the Carriers' proposal to place helpers in a lower wage tier. However, based on the statistical evidence regarding comparable trade helper hourly wages, this Board recommends that the Article XI progression be extended to five years with a starting rate of 75% of the full helper rate. In addition, the expanded entry rate progression shall apply to the same group of signal workers presently covered by Article XI.

b. *Brotherhood of Maintenance of Way Employees.* We find the BRAC settlement more persuasive and relevant to the BMWWE wage impasse. In adopting this position we hasten to add that the two-tier wage structure agreed to by BRAC and affecting not more than 11% of clerical employees would have a visibly disparate impact upon the BMWWE. Approximately 48% of the BMWWE craft would be required to move to the lower paid second tier. By comparison, trackmen possess greater skills than the service employees represented by BRAC. Those BMWWE employees comprise a significantly greater proportion of the craft than the ratio of service workers to total clerical employees. Therefore, it is fair to make a simple across-the-unit wage adjustment rather than to single out 48% of the craft for a significant wage adjustment.

To equalize the package with the overall BRAC wage settlement, a lump sum bonus should replace a portion of the first general rate increase. For example, a bonus of 2 percent, more or less, should replace the 2 percent of the first general increase, more or less. The precise amount of the percentage wage rate increase to be converted to and to be replaced by a lump sum depends on two factors: (1) the percentage of BRAC "service" employees in the second tier (see Article VII, Section 1(a) of the April 15, 1986 BRAC Agreement) compared to the total number of employees in the Clerical craft, and (2) the depression of the BMWWE wage rate necessary to make the overall package worth the same as if an equivalent percentage of BMWWE employees were placed in the second tier.

To avoid needless employee acrimony at intermodal terminals where BRAC employees are in the lower wage tier, the BMWWE employees at these locations, if any, must also be placed in the second tier.

We find no reason to preclude application of the entry rate five years progression and it is accordingly recommended. The UTU, the BLE and the BRAC agreements now provide for this progression. Newly hired BMWWE employees will enter the railroad industry at 75% of current rate and they reach the full rate in five year.

Our recommended wage formula for the maintenance of way unit will preserve the existing wage differences among machine operators, craftsmen, track laborers, trackmen, helpers, and bridge and building apprentices. Since we are endorsing some compression in the wage rate across the unit, there is no economic justification for further reducing helper rates.

c. *Shop Crafts.* The fundamental wage issues for shop craft employees revolve around the amount of wage rate increases, entry rate progressions and the two-tier wage structure.

Except as stated below, it is the recommendation of this Board that the aggregate BRAC package, including the combination of wage rate increases and lump sum payments, be applied to shop craft employees. Unless specified below, the two-tier structure will not apply to shop workers.

(1) *Intermodal Facilities.* BRAC represents a preponderance of employees working at intermodal facilities. Presently, there are 53 carmen, 24 machinists, 4 electrical workers and 3 laborers performing work at intermodal terminals.

For two reasons, we recommend adoption of the Carrier's proposed pay provisions which applies the BRAC lower tier arrangement to all intermodal employees. First, placing intermodal workers in the second compensation tier maintains intercraft wage consistency. And, second, the Carriers convincingly showed that they need to lessen the costs of loading and unloading TOFC (trailer on flat car) or COFC (container on flat car) equipment to effectively compete with trucks. For example, the Burlington Northern Railroad expects to reduce its intermodal competitive break even point to well below 700 miles if it achieves more competitive wage levels, invests in new equipment and develops hub terminals.

To reiterate, we recommend that the parties adopt the Carriers' proposal including the entry rate progression starting at 75% of the intermodal rate. In accord with the BRAC pact, all intermodal employees will be excluded from application of the COLA increases.

(2) *Carmen Exception.* Addressing the coach cleaners, we find that their tasks and functions are akin to the work performed by service employees represented by BRAC and, as such, we recommend that they be placed in the second tier and excluded from COLA increases.

(3) *Entry Rate Wage Progression.* We have evaluated the merits of extending the entry rate wage progression to the shop journeymen, but we are not convinced that it is a feasible approach. If adopted, some apprentices would be earning more money than the newly hired skilled mechanic. For instance, a fourth year apprentice who earns approximately 90% of the full journeymen's rate would be compensated more than the newly hired journeymen who would be paid at 75% of the rate. In fact, the newly hired journeymen would be earning less than presently employed intermodal employees. The resulting disparities are obvious. There is no basis for penalizing the skilled and experienced journeymen. Conversely, we recommend that the five year entry rate progression be extended to the employees represented by the IBF&O with the exception of the Powerhouse Mechanics. These latter employees, representing approximately 3.5% of the IBF&O's total membership, undertake rigorous training and their normative work

activities are more comparable to a journeyman than an unskilled or semi-skilled laborer's position. They perform duties that stand apart from the laborers represented by the IBF&O.

(4) *Wage Rates for IBF&O Laborers.* A study of all of the intricate evidence before this Board has convinced the Board that IBF&O laborers' pay rates are out of line with relative wages in the railroad industry. Therefore, in lieu of percentage rate increases, we recommend that IBF&O employees receive lump sum bonuses during the term of the Agreement. The lump sums should total \$4,290.00 which is the same as the Carriers' Conference negotiated with BRAC for intermodal employees. However, the total sum is subject to modification depending on when the bonuses are actually paid and could be correlated to the existing base rate. We have further considered the efficacy of establishing a two tier wage system for these employees, but we believe that it would best serve the interest of both the IBF&O and the Carriers' Conference to have them paid on a single tier basis. Opting for a single level pay system for laborers is fair and equitable since any two tier system would affect more than 90% of the IBF&O represented workers. Thus, maintaining a constant pay rate during the contract term must be tempered with an end of term wage rate adjustment. We advise the parties, except for IBF&O laborers working at intermodal facilities and Powerhouse Mechanics who are to be treated as if they were craft journeymen, to compute a wage rate adjustment (to be rolled into the basic rate on June 30, 1988) which will raise the total IBF&O laborer compensation increases closer to the aggregate raises in the BRAC Agreement. The adjustment should not exceed 2% to avoid the recurrence of wage compression. These wage recommendations will bring this craft's pay rates into line with the other crafts in the railroad industry.

Except for Powerhouse Mechanics, all new hires in the classes represented by the IBF&O will be subject to the five year entry rate progression. Applying the hiring rate pattern progression in this fashion is consistent with the BRAC settlement, and the pay structure recommended for the maintenance of way employees.

(5) *Apprentices.* One of the reasons we refrain from suggesting adoption of an entry rate progression for shop craft journeymen is that the comprehensive apprentice and student mechanic programs serves many of the same purposes as a new hire progression. New workers are paid less while they acquire skills and experience during their early years of employment. Although apprentices (along with helpers) were placed in the second wage tier in the IBB&B and SMWIA tentative contracts, the number of apprentices in the two crafts is negligible. For example, there are approximately 134 machinists apprentices compared to 25 sheet

etal worker apprentices and 14 boilermaker and blacksmith apprentices. A wage term in these two unratified agreements which has little *de facto* effect on the bargaining units hardly creates a pattern for all crafts when the pay provision affects a greater number of employees in the other units. Thus, because the apprenticeship wage structure functions like a journeymen's entry rate progression, we recommend that the upper tier BRAC settlement be applied to the present apprentice wage structure, except for those apprentice positions at intermodal facilities.

(6) *Helpers.* Where helper wages fit on the spectrum of railroad work or compensation presents a perplexing problem. The difficulty arises due to the advent of two tier wage structure for certain categories of shop craft employees. This Board is reluctant to disturb the historical wage relationship between journeymen and their helpers and yet we recognize, based on the statistical data before us that, at least at the entry level, railroad helper rates exceed comparable trade helper hourly wages. We note that there are only 329 helpers employed in the electrical, machinists and ironmen crafts. Nonetheless, the number of workers is substantially more than the 16 sheet metal worker helpers and the 76 boilermaker-blacksmith helpers.

We conclude that because helpers are closely aligned with journeymen in terms of traditional shop work practices, helpers should not be placed in the lower wage tier except for helpers stationed at intermodal facilities. Applying the two tier structure would undermine the usual wage differential between mechanics and helpers. Also, apprentice wage rates would eventually exceed helper wage levels. We acknowledge that our recommendation will use a limited incongruity. Shop helpers will eventually receive more compensation than journeymen performing intermodal service. We believe the parties can cope with this minor inequity.

The 1981 national agreements contain modest 85%, two year entry rate progressions for helpers in the three crafts (although the ironmen helper and electrician helper progressions are calculated according to actual service days instead of calendar months). To bring helper rates into line with comparable trade helper wages, entry rate progression for helpers in all crafts should be extended to five calendar years (commencing with 75% of the full regular or intermodal rate).

VI. FRINGE BENEFITS

A. THE HEALTH AND WELFARE PLAN

Carriers' Position. The Carriers' Conference urges the Board to recommend the settlement terms agreed to by the UTU, BLE and BRAC. Specifically, these terms include the following changes in the Group policy Contract known as GA-23000: (1) adoption of a hospital pre-admission utilization review program; (2) elimination of the current reinsurance arrangements; and (3) termination of the practice of permitting furloughed employees who receive vacation pay to qualify for additional coverage under GA-23000. The Carriers' Conference also asks that a Special Committee composed of Carrier and Organization members be established to undertake a review of the Plan. The Committee, chaired by a neutral person would study and make recommendations on such topics as cost containment, cost sharing, financing, joint policy holder structure and the cost-benefit feasibility of submitting the plan to competitive bid.

Organizations' Position. The Organizations have generally objected to this proposal but their objections are not directed toward the concept of cost containment. Rather, they are concerned with the possibility of losing complete control over plan policy.

Their objections also extend to the proposed elimination of reinsurance, based on the belief that premium savings will accrue solely to the Carriers. They would like to see a shared allocation between premium reductions and increased benefits.

Recommendation. The pattern set by the prior settlements is persuasive and the Board recommends the Carriers' Conference proposal. We must add, however, that we understand the Organizations' apprehensions and, accordingly, caution the neutral chairman of the Study Committee to examine carefully the questions dealing with the joint policy committee structure and shared allocations. These are significant concerns and deserve studied deliberation.

B. SUPPLEMENTAL SICKNESS BENEFITS

The BRS proposes certain changes to the supplemental sickness plan. The BRS plan is essentially identical to the plans covering the other organizations before this Board. These plans provide benefits that supplement the payments provided under the Railroad Unemployment Insurance Act (RUIA) when railroad employees become sick, injured or disabled.

The BRS proposes to change Section 2(c)(ii) to conform to the compensation qualifications of the RUIA, as amended by the Railroad Retirement Solvency Act of 1983, which raised qualification levels from \$1000 in a base year received in at least five months, and counting only the first \$400 of compensation in any one month, to \$1500 and \$600 respectively. Should a violation of law exist, the parties may well wish to address the matter.

The BMW, all of the shop crafts and the carriers all made proposals for changes in the plans. The BMW and the carriers, agreed at both sides would withdraw their proposals and their plans would continue unchanged. The SMWIA and the IBB&B settlements call for the plans to continue unchanged. The BRC, IAM, EW and IBF&O have not pursued their proposals before this board. The BRS then is the sole proponent of changes to its supplemental benefit plan.

Recommendation. The Board recommends that the BRS withdraw its proposal on supplemental sickness benefits and that the carriers withdraw their proposal for changes as well. Further, it is recommended that the BRS and the carriers continue the current plan unchanged. No basis exists to treat the BRS differently from the other crafts which have essentially identical plans. And certainly in the next round of bargaining, the matters raised by the BRS may be again raised and considered.

C. OFF-TRACK VEHICLE ACCIDENT BENEFITS

The BRS proposes an increase in off-track vehicle accident benefits to 5% of earnings for a period of ten years. The BRS states that off-track vehicle benefits have not been upgraded since 1978. It contends that these benefits are needed more by signalmen than workers in other crafts because of the great deal of time spent travelling in off-track vehicles under adverse weather conditions. It states that benefits of \$150.00 a week for a period of three years are no longer adequate.

The Carriers contend that no basis exists for signalmen alone to have better benefits under this program. The off-track vehicle accident benefit is applicable to all railroad labor organizations. While both the BRS and the BMW proposed amendments to the plan, the BMW has not pursued its proposal before this Board leaving only the BRS proposal.

Recommendation. The Board recommends that the BRS withdraw its proposal on off-track vehicle benefits. It is further recommended that the carriers continue the current plan unchanged. The Board cannot justify recommending that the BRS alone should have higher benefits under the off-track vehicle benefit program than employees represented by the five other labor organizations covered by this program.

VII. WORK RULES

A. MORATORIUM PROVISION

The existing National Agreement expired on June 30, 1984 and has remained indefinitely in effect. There is no dispute that the successor agreement should run for four years. The parties concur that, until April 1, 1988, they are barred from filing any new Section 6 Notices covering the contents of current Section 6 Notices except for those matters referred to local handling or pending local notices. A substantial conflict centers on whether pending Section 6 Notices to amend local agreements as well as those issues remanded to the railroad properties should be handled under the peaceful procedures of the Railway Labor Act or whether the parties, upon impasse, may resort to self help.

Carriers' Position. The Carriers urge us to adopt a blanket moratorium with all issues but one progressed solely under the peaceful dispute resolution procedures of the Railway Labor Act. Having recently suffered the devastating effects of secondary activity emanating from the Guilford Industries bargaining dispute, the Carriers insist on a labor peace guarantee. The Carriers argue that to permit self help at the local level would only lead to rail disruptions. Ironically, the Carriers want the full procedures of the Railway Labor Act to apply to the outstanding health and welfare issues.

Organizations' Position. The Organizations contend that individual railroads have not bargained seriously over matters under the peaceful procedures process. They point to numerous Section 6 Notices, several more than five years old, which are still pending on rail properties. They assert that without the threat of a strike, the railroads lack any incentive to negotiate in good faith.

Recommendation. As a matter of historical record, the Railway Labor Act (1926) was purposely enacted to minimize the risk of disruption to interstate commerce. The statute provides a definable dispute resolution process to assist impasse parties in reaching an agreement. Indeed the Emergency Board, as a major final step in the process is now trying to persuade the parties that any reasonable compromise is preferable to a strike or a lockout.

Although the process generates understandable frustration, the lengthy and peaceful procedures have worked remarkably well over the years. In their last National Agreement, the parties incorporated a broad moratorium provision limiting the handling of local issues to the peaceful procedures of the Act. In early 1986, a major dispute on a small regional carrier in New England spilled over to other rail carriers. The BMW conducted secondary picketing at various locations across the nation effectively disrupting transportation services. The affected railroads, having only a remote connection with the primary employees, sought injunc-

tions against the secondary activity. The courts ruled that the Norris-La Guardia Act (1932) prevents the courts from enjoining secondary activity which, unlike the Taft-Hartley Act, is permissible under the Railway Labor Act. Obviously, the breadth of the moratorium clause is an important issue to both parties in light of the current events.

In considering the issue, the Board concludes that given the condition of the industry, the parties must agree to forego use of their ultimate economic weapons for the remainder of the contract term. Secondary strikes and picketing wreak enormous and unnecessary havoc. Often with little warning, the secondary employer must cease operations because of a work stoppage over which it can exert little, if any, control. Thus, an efficient and competitive rail system cannot be continually impaired by the spectre of secondary activity. Avoiding the potential turmoil that emanates from primary and secondary activities clearly outweighs the pyrrhic gains that either the Carriers or the rail unions could achieve through self-help.

The Organizations charge that certain Carriers have refused to bargain and assert that only the threat of a work stoppage will induce them to bargain in good faith. We understand this position, but we disagree with it for several reasons. First, the moratorium provision will expire in less than two years. Second, the Board is sending some critical interrelated issues back to the local level. The issues hold great significance for the parties. There is plenty of room for negotiation, since each party has something to trade. The Carriers, for example, desire more work assignment flexibility while the Organizations seek restraints on contracting out work. Third, we recommend that with the moratorium provision the parties adopt the mediation and advisory fact findings procedures contained in Article X of the April 15, 1986 BRAC Agreement and Article XIII of the January 8, 1982 BRS Agreement. This will help alleviate impediments to local bargaining.

Finally, an admonition is in order. During our extensive hearings, the Organizations presented evidence that some railroads have practiced dilatory, surface bargaining on some important issues. We must point out that local handling presupposes good faith bargaining including promptly initiated discussions, meaningful communication and consummate efforts to achieve an agreement or at least a mutually acceptable understanding. The absence of a sincere bargaining climate over issues at the local level will persuade a future Emergency Board to reevaluate the efficacy of peaceful procedures.

B. SUPERVISORS' SENIORITY RETENTION

The BRC and the BRS presented proposals requesting that agreement covered employees promoted to supervisory positions be required to pay dues while in a non-union status.

At the behest of the Carriers, the Organizations, some years ago, agreed that employees moving up from a craft job to a supervisory, managerial or exempt position would retain and continue to accumulate craft seniority. The new supervisor generally entered the bargaining unit represented by the American Railway Supervisors' Association (ARSA). The supervisor was no longer a member of the union representing his former craft although the supervisor held and continued to accrue craft seniority under the terms of the applicable collective agreement. The purpose of the rule was twofold. First, the Carriers were able to attract qualified and experienced persons from within their own ranks to fill supervisory positions. This meant that the Carriers obtained the services of a loyal employee, who was familiar with the Car Department or Engineering Department, and craft seniority retention gave the promoted employee considerable job security. If a promoted supervisor lost his position due to an abolishment, reorganization or transfer of work, he could return to his former craft without impairing his accumulated seniority. Second, the rules recognized that seniority is a valuable employment right. Employees would not be compelled to relinquish their seniority so long as they maintained their railroad employment.

Over the years, the Carriers have drawn a large number of supervisors from the car and signal crafts. In the post Staggers Act period, the Carriers greatly reduced both supervisory and rank and file positions. As a result, a significant number of promoted supervisors have been exercising their craft seniority. When supervisors revert to their former craft, they displace a junior employee. This is not always accepted with equanimity. Some supervisors had been absent from their former craft for a lengthy period. According to the BRS and the BRC, some supervisors displaced employees who had actively performed longer service within the craft than the returning supervisor yet they were junior to supervisors on the seniority roster.

To alleviate their members concern, the BRS and the BRC propose that supervisors begin paying fees in exchange for retaining craft seniority. In effect the Unions' argument is simple. To relieve the obvious inequities, supervisors should be compelled to pay for the seniority benefits they gained pursuant to the collective agreement. The proposals do not involve any cost to the Carriers other than a perfunctory, insignificant ministerial burden. The proposals differ slightly but neither organization advocates deletion of the seniority retention rule. The BRC proposal states, in part: "...all employees promoted to supervisory positions from crafts or classes represented by the Brotherhood Railway Carmen...

shall be required to pay appropriate fees... to retain seniority." The BRC proposal contains a grandfather clause. Those workers promoted prior to the date of the BRC's Section 6 Notice could retain their current seniority, but would be required to pay a fee to accumulate additional seniority while working in their supervisory positions. The BRC represented to the Board that the fee would be equivalent to union dues but without compulsory union membership. The BRS proposal, on the other hand, would require a supervisor to relinquish his present seniority unless he paid the fee.

The Carriers contend that since some individual railroads have negotiated provisions requiring supervisors to pay fees as a condition of maintaining craft seniority, it would be best to leave this issue for local handling. In addition, they argue that the proposal may force supervisors to simultaneously pay dues to two labor organizations.

Recommendation. The Board concludes, after reviewing this sensitive issue that both the Carriers and the Organizations have a common interest in a uniform rule that fixes the status of craft workers promoted to supervisory or managerial positions. Requiring supervisors to pay a fee to maintain a right derived from the labor agreement would eliminate the friction within the crafts as well as between the rank and file and their supervisors. The new rule would simply require supervisors to make a choice: either contribute to the Organization which was responsible for obtaining the seniority benefit or relinquish the benefit. Put differently, we believe that the beneficiaries of this valuable employment right have an inherent obligation to tender reciprocal consideration.

Other crafts have not proposed identical rules, but perhaps those crafts have not experienced problems created by returning supervisors.

We recommend that the parties adopt the BRC proposal with slight modifications. The effective date of the new rule should be October 1, 1986. Due to the elapse of time since the Section 6 notices were served, the grandfather clause should cover all supervisors promoted on or before October 1, 1986. They will retain their present seniority even if they elect not to pay a fee, but payment will be necessary to accumulate additional seniority. Persons promoted on or after October 1, 1986 must pay the appropriate fee to retain and accumulate seniority. To avoid seniority forfeiture, the rule must contain a safeguard so that a supervisor whose payments are delinquent be given written notice of the amounts owed and a reasonable period to cure the delinquency.

C. TERMINATION OF SENIORITY

The Carriers propose that any employee whose seniority is established after the date of the new agreements, and who subsequently is furloughed for 365 consecutive days, will have his seniority terminated provided he has less than three years of service. It argues that this proposal was accepted by the organizations which have already settled in the current round of negotiations and accordingly, a pattern has been established. It avers that no craft will be adversely affected by adoption of this proposal.

The BMWWE opposes this proposal because it contends that its members experience greater spells of lengthy unemployment. The other organizations have not set forth such detailed rebuttal as the BMWWE.

Recommendation. The Board recommends that the Carriers' Conference proposal be accepted. We recognize that BMWWE employees experienced greater yearly unemployment than the other crafts or classes but the record evidence does not show how many employees will lose their seniority as a result of this proposed rule. This proposal should not affect BMWWE employees who only experience seasonal unemployment.

D. SPECIAL RULES RELATING TO BMWWE AND BRS EMPLOYEES

1. *Regional and System Gangs/Work Schedules/Travel Time.*

Carriers' Position. On most railroads, existing work rules provide for signal and maintenance of way production gangs to work within their own seniority district. The size of a gang's territory varies from carrier to carrier. Characterizing the seniority territorial limits as artificial, costly and burdensome, the carriers seek the right to establish regional and system gangs.

In a related proposal designed to achieve work assignment flexibility, the carriers want the unrestricted discretion to specify the length of the work day and work week (including ten hour days and four day weeks) and flexible starting times. They also wish to eliminate compensation for the time production gang members spend travelling from their away from home quarters to the daily work site. The Carriers characterize this as commuting time. In the event that travel from lodging facilities to the work site would exceed two hours, the carriers would pay the members at the straight time rate for travel time in excess of two hours. The overall objectives of the Carriers' proposals are to efficiently utilize maintenance of way and signal production gangs, reduce labor costs and adjust to fluctuations in the work load.

The Carriers argue that seniority district lines, inflexible starting times and fixed work weeks create onerous work scheduling problems. They assert that increased flexibility would result in higher labor productivity at a lower cost. For example, they note that Conrail has twenty-two (22) separate signal seniority districts, none of which coincide with the

Organizations' Position. The two organizations succinctly argue that these issues have been traditionally and successfully handled at the local level. They assert that a national rule will not be able to take into account the unique circumstances present on each property. They aver that the carriers' proposal would discourage employees from accepting regional assignments. In essence, they contend that system gangs would work an extreme hardship on employees who would then be forced to travel great distances from their homes to gang headquarters without any compensation. The BRS asserts Conrail voluntarily forwent an opportunity to establish regional gangs in preference for the present fragmented structure. According to the BRS, Conrail is now attempting to rectify its error at the national level.

Recommendation. The Board agrees with the Organizations. The present rules should remain in effect until changed at the local level. Flexible work weeks, starting times, and seniority districts are matters which are inextricably related to knowing the exact limits of the geographic territory served by production gangs and thus it is prudent to remand these issues to the local level. We note that this subject matter is well suited to the advisory factfinding mechanism in the recommended moratorium provision. While we are confident that the parties will be able to achieve a settlement based on the factfinder's report, numerous impasses will only cause a future emergency board to reconsider implementation of a national rule. Both parties, have a common interest in these subjects. The Carriers need greater operational flexibility and the organizations should be interested in removing the inequities which result when the gangs in one seniority district are overworked while employees in an adjacent district are furloughed.

If the parties are unable to reach agreement on the specific establishment of regional gangs and work schedules, we expect the parties, at a minimum, to provide the neutral factfinder with a list of factors to consider when he decides whether or not it is appropriate to establish the gang and, if so, the new limits of the territory. The criteria might include: the present scope of seniority districts; the purpose of seniority district segmentation; the effect of regionalization on the distance between workers' homes and the gang's headquarters; the method of awarding assignments involving employees or more than one seniority list; and, other objective, relevant criteria.

2. Maintenance of Way Intracraft Lines. The Carriers object to the constraints on productive utilization of maintenance of way workers ostensibly caused by the class line between building and bridge workers and track employees. For example, B&B gangs rehabilitate bridges but the construction project is often delayed

because the Carrier must assign trackmen to take up and lay down bridge track. There are similar problems with the rigid craft groupings within the Building and Bridge unit. Without abolishing the existing intracraft jurisdictional lines, the Carriers seek greater work interchangeability within the maintenance of way craft.

The BMWWE argues that class seniority segregation protects workers from being displaced by employees from another area of maintenance of way operations. It contends that class lines appropriately divide work according to employee skills.

Recommendation. On some properties, the BMWWE and the Carriers have negotiated special agreements establishing composite B&B crews. Thus, this issue is best addressed on a local basis pursuant to our recommended moratorium clause. The BMWWE has been receptive to eliminating those class distinctions which no longer serves a legitimate purpose.

3. Maintenance of Way and Signal Incidental Work. The Carriers propose that railroads have freedom to assign work now "owned" solely by employees of the BRS craft to workers from the BMWWE craft, and vice versa, if the task involved is an inherent part of the job being done or if it could be performed more efficiently by that worker.

The Carriers contend that although the bulk of work assigned to the BRS requires a great deal of skill and training, certain other tasks require little or no technical expertise and could be performed equally well at a lower cost by BMWWE workers. The Carriers refer to certain examples including: welding of bond wires at rail joints; painting of signal masts; lubrication of power switches; digging of trenches for signal cable; hauling of materials for construction and maintenance work; and cutting brush around signals and pole lines. The BRS forces consist almost entirely of signalmen and signal maintainers. The Carriers contend that it simply makes no sense to have such highly skilled employees perform what often amounts to laborers' work when laborers (BMWWE) are available to do such work.

The BRS contends that to permit employees of another craft to perform the work of Signalmen would do violence to all of the rules that are in effect between the parties. The BRS contends that certain work must be performed by the signalmen's craft in order to conform with FRA regulations. Should employees of another craft perform signalmen's duties they would come within the hours of service law. The BRS asserts that safety rules of the carriers prevent BMWWE employees from performing any work duties that would interfere with the operation of signaling and safety devices.

Recommendation. The Board recommends that the proposal be handled on a local basis on the individual carrier properties subject to our recommended moratorium provision.

E. SUBCONTRACTING

1. *BMWE Subcontracting.* In an effort to prevent outside contractors from making further inroads on maintenance of way work, the BMWE served Section 6 Notices on five carriers seeking to prohibit the subcontracting of maintenance of way work. The Carriers desire the right to out source work without any restrictions. The Brotherhood and individual carriers have negotiated over 200 working agreements addressing complex subcontracting issues. Since the Carrier has moved off its initial insistence upon a national subcontracting rule, the Carriers' Conference Committee and the BMWE concur that subcontracting should be handled at the local level. However, the BMWE advocates that the subject matter should be resolved under the full limits of the Railway Labor Act.

Recommendation. For the reasons discussed in the moratorium section, the subcontracting proposals and counterproposals are remanded to the local properties to be processed in accord with the recommended moratorium provision.

2. *BRC Subcontracting.* In its Section 6 Notice, which has been outstanding since September 15, 1980, the BRC sought the adoption of a rule absolutely forbidding the Carriers from contracting out work previously or presently performed by employees represented by the BRC. According to the Organization, the Carriers have blatantly farmed out work in violation of Article II of the September 24, 1965 Mediation Agreement. It alleges that Carriers have leased equipment and facilities and financially supported contract car shops. With ever greater sophistication, the Carriers have constructed devious contracting out arrangements without satisfying the conditions precedent in Article II. Thus, the BRC argues that the present national rule has failed to ebb the outward flow of car rebuilding and reclamation work. The BRC is willing to allow the subcontracting of a carman's work if the Carriers first satisfy the provisions of Article II of the September 24, 1965 Agreement. While the Organization urges us to adopt broad prohibition against all subcontracting, the BRC claims that it would be willing to enter into local understandings when it is absolutely necessary to outsource carmen's work.

The Carriers resist further restriction on their discretion to subcontract work but are agreeable to handling the issue on a local basis.

Recommendation. The Organization's Section 6 Notice goes far beyond the original intent and spirit of Article II of the September 24, 1965 agreement. Therefore, the Organization's Section 6 Notice should be withdrawn. The Carrier's proposal is remanded to the properties for local handling under our recommended moratorium clause.

3. *Car Rebuilding Recommendation.* This Board carefully considered recommending wage rate adjustments for carmen working in car rebuilding and revitalization programs. We suggest that the Carriers and the Carmen's organization explore, at the local level, the possibility of a second tier wage structure for car rebuilders. Car rebuilding work is tantamount to an assembly line manufacturing process; making it an attractive subcontracting target. Separating these employees from their counterparts within the craft may encourage Carriers to perform car rebuilding work in their own shops. A competitive wage level preserves more work than a broad ban on contracting out work.

We recommend that a Special Committee be created to study the appropriateness of creating a second tier wage system for Carmen car rebuilders and employees of other crafts employed in car rebuilding shops. We stress, however, that the Special Study Committee should only recommend the two tier wage system if it finds that there will be a demonstrable reduction in the contracting out of car rebuilding work.

4. *Wrecking Service.* Article VII of the December 4, 1975 Agreement was the first national wrecking service rule. In essence, the provision allows the Carriers to utilize an outside wrecking service. Although the contractors may use their own equipment operators, the Carriers must call a complementary force of Carmen to constitute the ground crew. The Carriers propose eliminating the mandatory use of Carmen on wrecking service. The BRC is content to retain the present national rule.

Not surprisingly, there was a sharp factual conflict in the record concerning the function of the ground crew. A Carrier witness testified that, for efficiency and insurance liability reasons, the outside contractor usually brings its own ground gang and so the Carmen ground crew is often idle. Conversely, a regularly assigned member of a wrecking crew testified that he often arrives at the derailment site before the wrecker to perform preparatory work and sometimes does not leave the site until long after the wrecking contractor departs.

Recommendation. Carmen working on the wrecking crew perform service for extended time periods outside of their regular hours. They are instrumental in assisting an outside contractor in clearing the derailment and expeditiously bringing trackage back into service. The few instances when there is insufficient work for the carmen ground crew appear to be the exception rather than the typical experience. Consequently, we support the current national wrecking service rule. The Carriers' proposal should be withdrawn.

The Carrier progressed a proposal to eliminate pay for the wrecking service carmen as if they rode the wrecking outfit and to reduce travel time pay to the pro rata rate. We remand this issue to the local level to be handled in accordance with the recommended moratorium provision.

F. UTU INCIDENTAL WORK RULE AND CAR INSPECTIONS

1. *Background on UTU Incidental Work Rule.* Article VIII, Section 3(a) of the October 31, 1985 National Agreement between the Carriers' Conference and the United Transportation Union states:

"Section 3—Incidental Work

(a) Road and yard employees in ground service and qualified engine service employees may perform the following items of work in connection with their own assignments without additional compensation:

- (1) Handle switches
- (2) Move, turn and spot locomotives and cabooses
- (3) Supply locomotive and cabooses except for heavy equipment and supplies generally placed on locomotives and cabooses by employees of other crafts
- (4) *Inspect cars*
- (5) Start or shutdown locomotives
- (6) Bleed cars to be handled
- (7) Make walking and rear-end air tests
- (8) Prepare reports while under pay
- (9) Use communication devices; copy and handle train orders, clearances and/or other messages.
- (10) Any duties formerly performed by firemen." (Emphasis Added.)

In a letter of understanding attached to the October 31, 1985 UTU National Agreement, the UTU and the Carriers agreed that the underlying intent of Article VIII, Section 3 was

"...to remove any existing restrictions upon the use of employees represented by the UTU to perform the described categories of work and to remove any existing requirements that such employees, if used to perform the work, be paid an arbitrary or penalty amount over and above the normal compensation for their assignment. *Such provisions are not intended to infringe on the work rights of another craft as established on any railroad.*" [Emphasis Added.]

The BRC immediately objected to the UTU incidental work rule, specially to subsection (4), and demanded that the Carriers delete the rule from the UTU agreement or refrain from enforcing the provision. The BRC and other shop craft organizations were not assuaged by the Carriers' Conference offer to send an information letter to member roads

declaring that, where a union held exclusive rights to work, the UTU rule would not impair that exclusivity.

The BRC petitioned the United States District Court to enjoin implementation of the UTU incidental work rule. On November 27, 1985, the District of Columbia Federal Court issued a permanent injunction prohibiting the Carriers' Conference and its members from implementing or applying Article VIII, Section 3 of the UTU agreement so far as it pertained to the assignment of car inspection work. The injunction remains in effect until the BRC and Carriers exhaust the Railway Labor Act's process for resolving the work assignment controversy which the Court characterized as a major dispute compelling maintenance of the *status quo* between the Carriers and the BRC. The Carriers appeal of the District Court's order is pending.

The four shop craft unions perceived the UTU rule as an attempt by another labor organization, with the Carriers' assistance, to encroach upon work either historically and traditionally performed by shop craft workers or expressly reserved to those employees in their classification of work rules. To prevent the UTU rule from operating to deprive machinists of any work, the IAM proposed a rule vesting machinists with all work "contractually, customarily, and historically" performed by the machinist craft.

On September 15, 1980, the BRC had served a Section 6 Notice on the Carriers seeking a broad work preservation clause. Apparently, the September 15, 1980 notices were held in abeyance due to the 1981 national moratorium provision. In April 1984, the Carriers made counterproposals to be concurrently handled with the BRC's September 15, 1980 notice. The Carriers advocated abolishment of all limits "...on the work which any employee of any craft may perform."

2. *Car Inspections and Air Brake Tests.* Even before the UTU and Carriers agreed to their incidental work rule, the BRC and NRLC negotiations focused on mechanical inspection and air brake testing work. The BRC served a May 22, 1984 Section 6 Notice proposing the following rule to be effective on July 1, 1984:

"At locations where inspections and tests are made on air brakes and appurtenances of carriers' trains and cuts of cars, carmen only shall perform such inspection and tests and the related coupling of air, signal and steam hose incidental to such inspection and tests. This rule will not prohibit train crew members from giving set and release tests on cuts of cars collected at industries preparatory to returning to yards and terminals."

The car inspection assignment dispute is not new. Two prior Presidential Emergency Boards confronted the alleged misassign-

ment of mechanical inspections and air brake tests to operating craft employees. In 1964, Emergency Board No. 160 fashioned a recommended rule which became Article V of the September 25, 1964 National Agreement. In summary, Article V reserved work consisting of the "... inspecting and testing of air brakes ... and the related coupling of air ... hose ..." to carmen provided the work was performed in a departure yard or terminal and, provided further, a carmen was on duty in the yard. While it successfully resolved the dispute, Emergency Board No. 160 did not explain its rationale for denying carmen the right to perform such work to the exclusion of all other crafts yet granting exclusivity to carmen at specified locations. However, the locality distinction survives. Eleven years later, Presidential Emergency Board No. 187 specifically found that the Carriers were circumventing the spirit and intent of Article V by moving carmen away from departure tracks. Board No. 187 concluded that literal compliance with Article V was possible. The 1975 Emergency Board recommended freezing the allocation of inspection, testing and related coupling work between carmen and operating employees which was in effect on July 1, 1974.

Based on Board No. 187's recommendations, the parties amended Article V to implement the work freeze. Article VI of the December 4, 1975 Mediation Agreement obligated the Carriers, retroactive to July 1, 1974, to assign carmen to perform inspections and air brake tests in departure yards where Carmen were employed provided there was sufficient work to justify the employment of a Carman. If a dispute developed over the last proviso, the Agreement called for a joint check to measure the amount of work.

a. *The BRC's Contentions.* From the BRC's perspective, Article V as amended by Article VI created loopholes permitting the Carriers to evade the work freeze causing the furlough of approximately 42.2% of all car inspectors between 1980 and 1984. The Organization also charges that the Carriers breached classification of work rules which expressly relegated car inspecting work to carmen. By moving the work out of departure yards for just a short period, the BRC contends, the Carriers, at a joint check, can technically claim that there is no longer sufficient work to justify the continued employment of Carmen. They contend that since up to ten car inspectors have been simultaneously laid off at a single point, it is incredible that the work evaporated overnight. Inasmuch as the UTU incidental work rule relieves the Carriers from paying arbitraries when train service workers perform the inspection, the BRC expects a massive shift of work to trainmen upon expiration of the injunction.

The BRC states that aside from the Carriers' intentional violations of the current rule, there is a more important reason for writing a new air brake test and inspection rule. According to the BRC, the legislative history of the 1958 Power and Train Brakes Safety Appliance Act reveals that Congress recognized that Car Inspectors in the Carmen's craft were uniquely qualified to conduct the tests and inspections. At the time, Carriers conceded that Carmen have been performing in bound brake tests and initial terminal inspections since 1925. The BRC asserts that since today trains transport hazardous materials and chemicals through populous areas, the absence of a thorough inspection raises the risk of a tragedy. It asserts that, unlike Carmen, the operating crafts are not trained to discover car defects and, in the past, trainmen have shown little propensity for conducting comprehensive inspections. Under blue flag protection, Carmen painstakingly inspect the brakes and mechanical condition of each car, and they crawl between and underneath cars to closely examine wheels, trucks, couplers, safety appliances and other mechanical components. The car inspectors also confirm that air brakes properly set and release on each car in the train. The BRC asserts that Carmen and only Carmen are familiar with FRA regulations and by assigning the work to unqualified personnel, the Carriers are gambling with the public's health and safety. The BRC states that the FRA has cited railroads for numerous inspection violations and, in each instance, a member of the train crew had conducted an inadequate inspection.

The BRC avers that Carmen learn to spot and quickly repair mechanical defects during lengthy apprenticeships. While trainmen, whose entire car inspection training may consist of a forty minute film, are, capable of detecting only the most obvious defects. According to the BRC, UTU officers conceded that because train crews are neither trained nor instructed on car inspection, the quality of intermediate (1000 mile) inspections has deteriorated. The BRC contends that the great reduction in the number of car inspectors demonstrates that the Carriers are exposing the public to unnecessary dangers.

b. *The Carriers' Contentions.* Assuring the Board that the UTU incidental work rule will not infringe on Carmen's work, the Carriers contend that past Emergency Boards have emphatically rejected the BRC's car inspection exclusivity proposals. The Carriers state that due to the BRC's shrinking membership, the Organization renews once again a plan to expand its jurisdiction to encompass all air brake and inspection work.

The Carriers aver that the FRA advised a House Subcommittee in 1984 that there was no safety basis for designating a particular craft to perform federally mandated work.

compliance checks according to the Carriers, reveal that trainmen have been and can continue to perform proper initial terminal car checks. Since the regulatory agency had found no safety basis for exclusivity, the Carriers assert that the BRC exaggerates the safety ramifications. The Carriers maintain that exclusivity would neither improve safety nor endanger the public health and welfare because Congress did not see fit to reserve brake tests exclusively to Carmen. The Carriers contend that over the last several years, the industry has compiled an excellent safety record.

The Carriers point out that the work freeze recommended by Emergency Board No. 187 constrains the railroads from efficiently assigning the work. They contend that train crews stand idly by while a carman performs the inspection. The Carriers recommend that instead of awarding the work exclusively to carmen, the Board should eliminate all existing restrictions on assigning tests and inspection work. In effect, they assert that rather than impose further restrictions, the rules should be revised to allow BRC represented workers to throw yard switches and assist trains in and out of yards. They argue that this is necessary in a competitive transportation environment.

The Carriers observe that if the Organization has correctly pointed to provable violations of the present rule, the BRC's remedy is to file and progress claims under Section 3 of the Railway Labor Act. The Carriers estimate that the adoption of the BRC's proposal would necessitate the hire or recall of about three thousand employees at an annual cost of 21 million dollars. They aver that the purpose of the UTU incidental work rules was to eliminate arbitraries and to prevent their establishment; not to enlarge the scope of Trainmen's work. Carmen rights would not be altered by the UTU rule.

Finally, the Carriers contend that the court injunction was designed to maintain the *status quo* and the court did not pass judgment on the substantive validity of the BRC's pending proposal.

3. *Recommendation.* While the parties substantially disagree on the air brake and car inspection aspects of this issue, they seemingly concur that the UTU incidental work rule is not a sword for the operating employees to conquer work reserved to shop craft workers but, at most, shields work already performed by train and yard service workers and eliminates arbitraries. However, the four labor unions, correctly point out that the rule could easily be misconstrued since it is the first time any reference to car inspection work has appeared in a UTU National Agreement. As part of its justification for issuing the injunction, the United States District Court objectively observed that the "... controverted provision in the UTU contract goes to the very heart..." of the

Carriers' goal of attaining work flexibility. Thus, the Carriers should have no objection to our recommendation which will precisely spell out that application of the UTU rule shall not encroach upon work reserved to shop employees.

At departure yards where Carmen are employed, and there is sufficient work, Article VI of the 1975 Mediation Agreement granted Carmen the exclusive right to perform air brake tests and inspections. The BRC does not seek to expand its jurisdiction to cover set and release tests which, as the Carriers state, have been traditionally performed by operating employees. For several reasons, this Board favors retention of the existing division of inspection work.

After carefully reviewing the record, we found sufficient evidence demonstrating that even though some trainmen may be qualified to inspect cars, members of the carman's craft are peculiarly adept at conducting a meticulous, thorough initial terminal inspection. Without doubt, train service employees are able to observe obvious problems with brakes and cars. Carmen are better suited for detecting latent defects. In addition to discovering mechanical problems which trainmen might overlook, carmen are trained (and experienced) in diagnosing the cause of the problem and are skilled in making immediate yard repairs when feasible. Quickly repairing defects, which might later impede the train, enhances railroad operating efficiencies. Also, the elimination of the 500 mile inspection requirement in 1982 placed greater dependency on the thoroughness of the initial terminal inspection.

While the 1000 mile inspection is less comprehensive, the work has traditionally been assigned to Carmen at those points with sufficient work to justify the employment of a Carman. The BRC persuasively argues that some Carriers evaded the intent of Article VI. We cannot interfere with the claims pending under Section 3 but we can recommend revisions to Article VI so that the language will conform to the parties' prior intent. However, externalities unassociated with Article VI caused the loss of most car inspector positions. During the 1981-1982 recession and thereafter, the Carriers operated fewer trains. In October 1982, the FRA raised the intermediate inspection from 500 to 1000 miles. Thus, our recommended rule must refrain from requiring the Carriers to recall car inspectors furloughed due to factors beyond the railroads' control. In sum, the BRC failed to justify complete exclusivity and the Carriers offered no compelling justification for deviating from the present allocation of work.

To insure the current division of work and to insulate the carmen from the potentially adverse effects of the UTU incidental work rule, the revised car inspection rule must concentrate on the quantity of work performed by car inspectors as opposed to the location of the work.

that the parties formulate a revision to Article VI which grants carmen the right to perform the air brake testing and mechanical inspection work (described in Article VI (a) and (b)) that they were performing as of October 30, 1985 (the day before the UTU Agreement was signed). Accordingly, the work belongs to the Carmen's craft even if the Carriers transfer work, which Carmen were performing on October 30, 1985, to any other location. If car inspection work which Carmen performed on October 30, 1985 has been shifted to another craft, the Carrier shall restore the amount of work to carmen. It is unlikely that any work was transferred from carmen to operating craft employees since October 30, 1985 due to the permanent injunction issued on November 27, 1985. However, nothing shall prevent the Carriers from abolishing carmen positions due to a lack of car inspection work if the work is eliminated by causes other than a transfer of work. The Board recognizes that problems may arise regarding the assignment of new car inspection work. We believe any new car inspection work should be assigned according to principles identifying the traditional delineation between carmen's work and work belonging to operating employees. We leave it to the parties to work out a fair arrangement for assigning new car inspection work. Finally, Carmen will not have the exclusive right to couple air hoses except where the task is inherently related to their inspection duties. Our recommendation does not mean that we condone the Carriers' assignment of work to other than Carmen prior to October 30, 1985. Whether the Carriers properly shifted car inspection work from carmen to train service personnel is a minor dispute. This Board's recommendation should neither influence nor interfere with the outcome of the Section 3 grievance process.

Other shop craft organizations have expressed apprehensions about the UTU incidental work rule. At most points where they are employed, workers represented by the IBF&O fuel and sand locomotives and machinists conduct locomotive inspections, repairs and load tests. This Board strongly reaffirms that the UTU incidental work rule shall not be applied to take away or otherwise encroach on work performed by electricians, machinists, carmen and laborers. Work should be assigned and craft work assignments disputes resolved by traditional criteria without regard to the UTU incidental work rule.

G. COMPOSITE SHOP CRAFT MECHANIC

Carriers' Position. The Carriers propose carrying over the composite mechanic provisions found in the IBB&B and SMWIA tentative agreements. According to the Carriers, the time has come to relax the

stringent classification of work rules and to allow a reasonable degree of cross craft utilization. The Carriers emphasize that their proposal does not contemplate the abolition of craft distinctions. They say that a single worker from any craft is sometimes capable of performing an entire task such as changing out a traction motor. If completion of a certain job requires the assignment of employees from three separate crafts, the Carriers allege that two of the workers are always waiting for the third to perform his portion of the work. The Carriers contend that although inflexible class lines at one time served a rational purpose, segregating work assignments today is expensive, inefficient and unjustifiable. The Carriers' Conference contends that by agreeing to relax strict craft demarcations on short line railroads, the Organizations have placed the Carriers at a competitive disadvantage. If work interchangeability is possible on short line roads, it can be achieved on all railroads.

Organizations' Position. The Organizations pose a rhetorical question: How can anyone other than a journeyman Communication Maintainer repair the complicated electronic device which replaced the caboose on many trains? Clearly, public safety demands that the work be assigned only to the competent and skilled individuals within each craft. Finally, the Organization submits that the composite craft provisions in the tentative IBB&B and SMWIA pacts are misleading and legally questionable. In exchange for acceding to the so-called composite mechanic concept, the two organizations obtained guaranteed pro rata representation; that is, the IBB&B and SMWIA would continue to represent the same proportion of actively employed shop workers which the two unions represented as of July 1, 1986. Those two organizations represent only 8% of shop workers compared to 10% a decade ago. Confronted with an inexorable loss of members, the IBB&B and SMWIA stand to gain from the representation ratio. In the extreme, if the work in those crafts decreases to zero, the two labor organizations will still represent (and presumably collect dues from) 8% of shop workers. The four shop craft organizations aver that tampering with craft representation lines not only runs counter to the history of union organizing in the industry but also violates the class and craft union certification procedures embodied in the Railway Labor Act. If there are some functions which can be readily performed by workers in more than one craft, the particular situations, according to the Organizations, are best handled as they arise at the local level. Local level handling worked well on short line railroads. Also, the Board must realize that the crafts received additional benefits in exchange for relaxing craft classification rules on short lines.

Recommendation. Except for isolated instances, the record contains little evidence that craft classification of work rules unreasonably restrict the Carriers from efficiently allocating shop work assignments. There are tasks, such as operating forklifts, which most workers may easily perform, but generally, craft demarcations accurately divide shop employees according to each group's unique training, skills and qualifications. Journeymen in the shops are the experts of their craft. They are among the most skilled workers in the industry. Productivity has markedly increased in the past four years. Setting aside the serious legal questions raised by the Organizations, the Board finds that at this juncture in the evolution of progressive railroad labor relations, there is insufficient justification for a national composite craft rule. Work interchangeability might forment more problems than it solves. If misassigned work must be redone, cross-utilization of craft workers is hardly more efficient. For their part, the Carriers failed to quantify the savings which would be generated from composite mechanics. Also, the Carriers recognize that apprentice programs are not obsolete. Undoubtedly, the IBB&B and SMWIA agreed to the provisions in their composite crew contracts knowing that the four remaining shop crafts vigorously oppose the idea. Without the agreement of all six shopcraft labor organizations, the composite mechanic terms in the two unratified pacts are possibly unenforceable. In addition, the IBB&B appeared to have received some form of employee protection for agreeing to the composite crew language. The present shop craft incidental work rules provide the Carriers with a reasonable amount of discretion in assigning work (at least at running repair locations). Since we are referring this subject matter back to the properties, we suggest that the parties consider extending the incidental work rule to the back shops. In any event, the Organizations proved to the Board's satisfaction that they are amenable to amending classification of work rules. Indeed, on short lines as well as one Class I railroad, the rules have been modified to grant the carrier more discretion in assigning work without abolishing craft distinctions. On each system, the parties can ascertain if composite crews are financially justifiable and if a particular job requires no special skill or expertise. We recommend that this matter be remanded to the local level to be handled in accordance with the recommended moratorium provision.

H. EMPLOYEE PROTECTION

Organizations' Position. Three organizations, the BRS, BMW and BRC have proposed broad employee protection coverage to serve as a safety net for workers deprived of employment. The BRS and BMW

seek amendments to the February 7, 1965, Job Stabilization Agreement which covers employees having an employment relationship before October 1, 1962. The BRS proposal would expand coverage to all signal workers with three years of service as of July 1, 1984. The BMW seeks an even broader expansion to encompass any present or future employees who attain two years of service. The BRC proposes to convert the September 25, 1964 Agreement to an attrition type employee protection agreement. Under the BRC's proposal, workers actively employed as of October 1, 1982, would be certified as protected employees but the Carriers would be liable for retroactive benefits only for the period subsequent to October 1, 1984.

The BRS and BMW argue that the February 7, 1965 Agreement currently covers only a small number of employees. They seek to upgrade the Agreement to protect employees adversely affected by the introduction of modern technology.

Since October 1, 1982, the BRC, for example, has absorbed a dramatic loss of membership. This loss bears some relationship to the FRA's extension of the car inspection requirement from 500 to 1,000 miles. Hundreds of carmen were furloughed without protection. Complementing this impact, the steady but certain elimination of cabooses forced the abolishment of a substantial number of carmen positions. The BRC points out that other organizations, such as BRAC, have successfully negotiated attrition agreements.

The BRC argues that the September 25, 1964 Mediation Agreement provides inadequate protection since employees are entitled to benefits only when a rail carrier completely abandons a rail point. The BRC asserts that by taking advantage of the loop holes in the aforesaid agreement, the Carriers have laid off some 362 employees without protective benefits by simply maintaining one or two actively employed carmen at a facility.

Carriers' Position. The Carriers stress that the proliferation of employee protective arrangements has impeded their ability to compete successfully in the transportation marketplace. They assert that the cost of these agreements is enormous. They maintain that if all rail employees had been covered by the February 7, 1965 Stabilization Agreement during the July, 1981 to June, 1982 recession, the railroads would have paid more than \$1.5 billion in protection, including \$380 million to employees represented by the BMW. They note that during 1985, seven major railroad paid more than \$338 million in employee protection which amounted to approximately 19.2% of the \$1,762 million net income of all Class I carriers. They contend that the trend is toward less labor protection as evidenced by the recent BRAC Agreement which raised eligibility standards under all property protection agreements.

Recommendation. We have considered the Organizations' contentions, but we are not persuaded that expanded protection is warranted. Additional expensive protection would detract from the cost containment efforts the railroad industry is undertaking to compete in the marketplace. The trucking industry is not layered with protection agreements and this places the truckers in a more advantageous position when competing with railroads. Thus, the Organization's national Section 6 Notices should be withdrawn.

The four unions also alluded to pending local Section 6 Notices which request protection for displaced or dismissed employees when a railroad sells or abandons a large amount of its track. The shop crafts brought to the Board's attention instances where railroads intentionally divested themselves of entire divisions. The ICC refused to impose *Oregon Short Line* protective conditions for employees adversely affected by these actions. Thus, even though the sales transaction affected employees like a merger or abandonment, many lost their jobs and livelihood without the safety net of protection.

Therefore, the Board's recommendation that the unions withdraw the national Section 6 Notices is inapplicable to the pending local Section 6 Notices addressing protection for workers affected when railroads sell or abandon their lines. Such local notices should be progressed under the recommended moratorium clause.

I. EMPLOYEE INFORMATION

The BRS proposes that the Carrier provide it with information on changes in the status of BRS covered employees. It premises its request on its duty to represent its members.

The Carriers oppose the inclusion of such a provision in the National Agreement, but they are agreeable to furnishing the Organization with wage and payroll data previously furnished to the ICC.

Recommendation. The Board agrees with the BRS proposal. The Organization has a statutory duty to represent its members and should not be precluded from obtaining general information pertaining to employment status. If the Organization seeks specific information on individual employees, the Carriers should provide the data subject to federal and state privacy laws. Railroads already generate data concerning transfers, furloughs, retirements, resignations, promotions, leaves of absences and deaths and a system is available to disseminate such information. It would not be costly or inconvenient for the Carriers to provide this data.

VIII. CONCLUSION

It is important for the Board to point out that during the course of informal discussions, we learned that the parties were close to agreement

on some issues. The parties, however, were unable to pursue these promising efforts and strategically retreated to more extreme positions. The Board was not privy to how close they came to agreement. Since we were compelled to reconstruct the careful work distinctions existing among the crafts, we found that the parties probably did not comprehend fully the true dimensions of the inter craft intricacies, as they applied to the settlements already reached in the industry. Therefore, we have left room for further negotiations.

Mr. President, we have addressed the issues in a forthright and comprehensive manner and we are very confident that our recommendations provide an equitable solution to the multiplicity of labor-management problems before this Board.

Respectfully submitted,
 GEORGE S. ROUKIS, *Chairman*
 JOHN B. LAROCO, *Member*
 DAVID P. TWOMEY, *Member*

APPENDIX A

EXECUTIVE ORDER 12562

**ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE
DISPUTES BETWEEN CERTAIN RAILROADS REPRESENTED BY
THE NATIONAL CARRIERS' CONFERENCE COMMITTEE OF THE
NATIONAL RAILWAY LABOR CONFERENCE AND THEIR EMPLOYEES
REPRESENTED BY CERTAIN LABOR ORGANIZATIONS**

Disputes exist between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by certain organizations designated on the lists attached hereto and made a part hereof. These disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

The 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 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:

Section 1. *Establishment of Board.* There is established, effective July 15, 1986, a board of three members to be appointed by the President to investigate the 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.

Section 2. *Report.* The board shall report its findings to the President with respect to these disputes within 30 days from the effective date of this order.

Section 3. *Maintaining Conditions.* As provided by Section 10 of the Railway Labor Act, as amended, from the date of the establishment 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 the disputes arose.

Section 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
July 15, 1986.

RAILROADS

Alton & Southern Railway Company
Atchison, Topeka & Santa Fe Railway Company
Bessemer and Lake Erie Railroad Company
Canadian National Railways—
 St. Lawrence Region, Lines in the United States
 Great Lakes Region
Canadian Pacific Limited
Central of Georgia Railroad Company
Chicago & Illinois Midland Railway Company
Chicago and North Western Transportation Company
Chicago and Western Indiana Railroad Company
Chicago South Shore and South Bend Railroad
Chicago Union Station Company
Colorado and Wyoming Railway Company
Consolidated Rail Corporation
CSX Transportation
 The Baltimore and Ohio Railroad Company
 The Baltimore and Chicago Terminal Railroad Company
 The Chesapeake and Ohio Railway Company
 CXS Transportation, Inc.
 Former Seaboard System Railroad, Inc. which includes
 the former Seaboard Coast Line Railroad, Louisville
 and Nashville Railroad (including C&EI and Monon),
 Cinchfield Railroad, Georgia Railroad and Atlanta
 and West Point Rail Road
 The Toledo Terminal Railroad Company
 Western Maryland Railway Company
 Western Railway of Alabama
Davenport, Rock Island and North Western Railway Company
Denver and Rio Grande Western Railroad Company
Denver Union Terminal
Des Moines Union Railway Company
Duluth, Missabe and Iron Range Railway Company
Duluth, Winnipeg & Pacific Railway Company
Elgin, Joliet and Eastern Railway Company
Galveston, Houston and Henderson Railroad Company
Grand Trunk Western Railroad Company
Houston Belt and Terminal Railway Company
Illinois Central Gulf Railroad
Kansas City Southern Railway Company
 Louisiana & Arkansas Railway Company
 Milwaukee-Kansas City Southern Joint Agency

Lake Superior Terminal & Transfer Railway Company
 Los Angeles Junction Railway Company
 Manufacturers Railway Company
 Meridian & Bigbee Railroad
 Minnesota and Manitoba Railway Company
 Minnesota Transfer Railway Company
 Missouri-Kansas-Texas Railroad Company
 Missouri Pacific Railroad Company
 Weatherford, Mineral Wells and Northwestern Railway
 Monongahela Railway Company
 Montour Railroad Company
 National Railroad Passenger Corporation
 Newburgh and South Shore Railway Company
 New Orleans Public Belt Railroad
 Norfolk and Portsmouth Belt Line Railroad Company
 Norfolk and Western Railway Company
 Oklahoma, Kansas and Texas Railroad Company
 Peoria and Pekin Union Railway Company
 Pittsburgh and Lake Erie Railroad
 Pittsburgh, Chartiers & Youghiogheny Railway Company
 Portland Terminal Railroad Company
 Port Terminal Railroad Association
 Richmond, Fredericksburg and Potomac Railroad Company
 Sacramento Northern Railway Company
 St. Joseph Terminal Railroad Company
 St. Louis Southwestern Railway Company
 Soo Line Railroad Company
 Southern Pacific Transportation Company—
 Western Lines
 Eastern Lines
 Southern Railway Company—
 Alabama Great Southern Railroad Company
 Atlantic East Carolina Railway Company
 Carolina and Northwestern Railway
 Cincinnati, New Orleans and Texas Pacific Railway Company
 Georgia Southern and Florida Railway Company
 Interstate Railroad Company
 Live Oak, Perry and South Georgia Railroad Company
 Louisiana Southern
 New Orleans Terminal Company
 St. Johns River Terminal Company
 Tennessee, Alabama and Georgia Railway Company
 Tennessee Railway Company
 Terminal Railroad Association of St. Louis
 Texas Mexican Railway Company

Union Pacific Railroad Company
 Western Fruit Express Company
 Wichita Terminal Association
 Yakima Valley Transportation Company

LABOR ORGANIZATIONS

Brotherhood of Maintenance of Way Employees
 Brotherhood of Railway Carmen of the U.S. and Canada
 Brotherhood of Railroad Signalmen
 International Association of Machinists & Aerospace Workers
 International Brotherhood of Electrical Workers
 International Brotherhood of Firemen & Oilers