

**REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
NO. 213**

**SUBMITTED PURSUANT TO EXECUTIVE ORDER 12636,
DATED APRIL 20, 1988,
AND SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED**

**Investigation of a dispute between the Chicago and North
Western Transportation Company and certain of its employees
represented by the United Transportation Union.**

(National Mediation Board Case No. A-11913)

**WASHINGTON, D.C.
JULY 1, 1988**

1890

1891

1892

1893

1894

1895

1896

1897

1898

WASHINGTON, D.C.

July 1, 1988

THE PRESIDENT
The White House
Washington, D.C.

DEAR MR. PRESIDENT:

On April 20, 1988, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12636, you established an Emergency Board to investigate a dispute between the Chicago and North Western Transportation Company and certain of its employees represented by the United Transportation Union.

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

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

Respectfully,

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

TABLE OF CONTENTS

I.	Creation of the Emergency Board	1
II.	Parties to the Dispute	1
	A. The Carrier	1
	B. The Labor Organization	3
III.	Activities of the Emergency Board	4
IV.	History of the Dispute	5
	A. The Short Term Dispute	5
	B. The Long Term Dispute	7
V.	The Position of the Parties	10
	A. The Carrier's Position	10
	B. The Organization's Position	13
VI.	Findings and Recommendations	15
	A. Crew Consist Manning Levels	16
	B. Separation Allowances	20
	C. Other Issues	22
	D. Moratorium	24
Appendix		
Executive Order 12636		

I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 213 (the Board) was established by the President pursuant to Section 10 of the Railway Labor Act, as amended, 45 U.S.C. §160, and by Executive Order 12636. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes, primarily involving the "crew consist" or crew size issue, between the Chicago and North Western Transportation Company (hereinafter the Carrier) and certain of its employees represented by the United Transportation Union (hereinafter the Organization or the UTU). A copy of the Executive Order is attached as Appendix "A".

On April 26, 1988, the President appointed Robert O. Harris, of Washington, DC, as Chairman of the Board. Richard R. Kasher, of Bryn Mawr, Pennsylvania, and Robert E. Peterson, of Briarcliff Manor, New York, were appointed as Members of the Board. The National Mediation Board (the NMB) assigned Roland Watkins as Special Assistant to the Board.

II. PARTIES TO THE DISPUTE

A. The Carrier

The Chicago and North Western Transportation Company is a Class I line haul rail carrier and a carrier within the meaning of the Railway Labor Act. Although primarily engaged in hauling freight traffic, it also operates, under contract, a suburban commuter passenger service in Chicago, Illinois.

The Carrier has been operating under its current name since June 1, 1972, when the then current employees of the Carrier purchased the transportation assets and assumed the transportation obligations of the former Chicago and North Western Railway from Northwest Industries and formed the Chicago and North Western Transportation Company. At present, approximately 13 percent of the outstanding shares of Carrier stock are owned by its employees.

In terms of total operating revenues, \$957.1 million for the year 1987, the Carrier ranks as the eighth largest railroad operation in the

United States. Such operating revenue represents approximately one-quarter the average operating revenues of the larger rail carriers, i.e., \$824 million for the Carrier as compared with a \$3.2 billion average total operating revenues of the seven larger Class I carriers.

The Carrier is the nation's ninth largest railroad in terms of miles of road operated. It operates approximately 6,400 miles of railroad lines in the ten states of Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, South Dakota, Wisconsin, and Wyoming. In most of the states named, it principally handles grain, intermodal traffic, motor vehicles, chemicals, and allied products. In Wyoming and Nebraska the Carrier primarily hauls coal.

Most of the freight traffic handled by the Carrier is between Chicago, Illinois and the Omaha/Fremont Gateway in Nebraska, connecting and interchanging in the west principally with the Union Pacific Railroad, and in the east with the lines of the major eastern railroads, i.e., Conrail, CSX and Norfolk Southern. A north-south route of lesser traffic density operates between Kansas City, Kansas and Minneapolis/St. Paul, Minnesota. Other routes operate between St. Louis, Missouri through Chicago to Minneapolis/St. Paul; to Duluth/Superior, Wisconsin, and to Green Bay, Wisconsin.

The Carrier has a high proportion of branch line miles which causes traffic patterns of shorter hauls and lighter density than are experienced by most other Class I railroads. The Carrier's average length of haul in 1986 was 312 miles as compared with 664 average haul miles of other Class I railroads.

Since 1968, a total of 6,680 miles of the railroad have been abandoned or sold by the Carrier; and the Carrier is presently negotiating the sale of additional segments of its railroad to regional carriers. In this respect, the Carrier reports that it considers the sale of lines to regional carriers a preferable alternative to abandonment.

Since July 1, 1975, the Carrier has operated its Chicago suburban commuter service under a purchase of service agreement with the commuter Rail Division of the Regional Transportation Authority, commonly known as "Merta". The Carrier is reimbursed for the costs of suburban operations which exceed revenue fares collected, and receives a return for operating this service. In 1987, Carrier suburban operating revenues were reported to have amounted to \$74.0 million dollars. In addition, the Carrier received \$5.0 million from Merta during 1987 for the authority's share of track improvements in suburban operations territory.

In October 1984 the Carrier established a coal hauling rail subsidiary, the Western Railroad Properties (hereinafter the WRPI) to transport low-sulfur coal from the Powder River Basin coal mines along a 210-mile track which extends from eastern Wyoming to

western Nebraska. Employees represented by the Organization work on the WRPI and on other rail lines of the Carrier.

As a percentage of total gross freight revenues, coal (excluding coke) represented 25.1 percent of principal product groupings hauled by the Carrier in 1987. This compared to 11.0 percent in 1983, or the year prior to formation of the WRPI subsidiary, and 7.5 percent in 1978. In 1987, the WRPI had a pretax income of \$39.8 million. This was 42 percent over pretax income in 1986.

On June 21, 1985 the Chicago North Western Corporation was incorporated as a holding company for the Carrier.

In addition to the Carrier, which is the principal subsidiary of the CNW Corporation, and the WRPI subsidiary, another major business unit of the CNW Corporation is Douglas Dynamics, Inc.

Douglas Dynamics, Inc. is reported by the CNW Corporation to be the nation's largest manufacturer of medium-size snowplows. It was acquired by the CNW Corporation on May 22, 1986. It has approximately 300 non-unionized employees who work at plants located in Milwaukee, Wisconsin and Rockland, Maine. In 1987 it had a pretax income of \$17.0 million on sales of \$57.9 million. The CNW Corporation has indicated to stockholders that it is exploring possibilities of selling this subsidiary.

Other subsidiaries of the CNW Corporation include a freight broker and a trucking company, which began operations in late 1985 and 1987, respectively. In late 1986 the CNW Corporation also formed a subsidiary to market computer software packages, and, in 1987, another subsidiary to market training and implementation materials for what it described as quality improvement programs in the transportation industry.

B. The Organization

The United Transportation Union (UTU) is a labor organization national in scope. Through two separate General Grievance Committees of Adjustment, the UTU is the collective bargaining representative under the Railway Labor Act regarding the rates of pay, rules and working conditions for employees of the Carrier engaged in train and yard ground service operations. These employees are classified as road and yard conductors or foremen, road and yard brakemen, switchmen, locomotive firemen, and hostlers of engines. The UTU and its local General Grievance Committees of Adjustment represent 2,148 of the Carrier's 8,464 employees, or approximately 25% of the total number of employees.

Since 1972, the year in which employees purchased the Carrier, there has been a 34% decline in the number of UTU-represented ground service employees on the property of the Carrier.

III. ACTIVITIES OF THE EMERGENCY BOARD

On April 28, 1988, the parties, as requested by the Emergency Board, submitted pre-hearing written statements regarding the collective bargaining issues in dispute.

Thereafter, on May 5, 6 and 10, 1988, the Board conducted hearings on the issues in dispute in Chicago, Illinois. The parties were given full and adequate opportunity to present oral testimony, documentary evidence and argument in support of their respective positions. A formal record was made of the proceedings. They were also provided opportunity to offer post-hearing statements, which were received by the Board on May 13, 1988. The Board also afforded the parties the opportunity to meet with it privately.

After the close of public hearings, the Board met informally with the parties in an effort to secure agreement through mediation. As a result of these meetings, the parties and the President agreed to an extension of the time that the Emergency Board had to report its recommendations until July 4, 1988. This extended the period during which the parties could not resort to self-help through August 3, 1988. During this extension of time the Board continued to meet with the parties on an informal basis in an attempt to get them to resolve the dispute. These efforts were unavailing. The Board then went into executive session to prepare this report and recommendations.

The Carrier presented its position through a written statement of James R. Wolfe, Chairman, President and Chief Executive Officer, and written and oral testimony of James A. Zito, Senior Vice President—Operations; Robert W. Schmiede, Senior Vice President—Administration; Ronald J. Cuchna, Vice President—Labor Relations; John M. Butler, Senior Vice President—Finance and Accounting, all officers of the Carrier; Charles I. Hopkins, Jr., Chairman, National Railway Labor Conference and Chairman, National Carriers' Conference Committee, of Washington, DC; and, Robert W. Anestis, President, Anestis & Company, an investment banking and financial consulting firm in Westport, Connecticut.

The Organization made its presentation through an ex parte submission and oral testimony of Gerald R. Maloney, International Vice President of the UTU, Donald F. Markgraf, General Chairman, and Paul H. Bauch, General Chairman of the General Committees of Adjustment. Also appearing on behalf of the Organization was David R. Haack, Vice General Chairman.

The Carrier was represented by counsel, Ralph J. Moore, Jr., Esq., and Nancy C. Shea, Esq., both of Shea & Gardner of Washington, D.C.

IV. HISTORY OF THE DISPUTE

There is both a long term and a more recent history to the dispute.

The short term history concerns those events evolving from the current contract negotiations and creation of this Board.

The long term history concerns the manner in which the issue of crew consist or manning levels was given review and study in the past; and focuses particularly upon the manning disputes addressed by the parties over the last several years.

A. The Short Term Dispute

On May 15, 1987, the Carrier, pursuant to Section 6 of the Railway Labor Act, served notice on the Organization of its intent to revise schedule rules and agreements to permit it the unrestricted right, under any and all circumstances, to determine when and if any ground service employees shall be used on each crew employed in all classes of road freight and yard service, including all miscellaneous and unclassified services.

In its notice the Carrier offered employees adversely affected by implementation of rule changes concerning manning levels the option of a one-time severance allowance of \$25,000 or, in the alternative, a supplemental unemployment allowance for a year.

The Organization rejected the Carrier's notice, and, on June 29, 1987, served a counterproposal upon the Carrier. The proposal consisted of 26-page draft agreement, with 11 side letters and 25 questions and answers clarifying and interpreting the language of the draft agreement. Briefly stated, the counterproposal contained the following items:

1. The standard crew would consist of not less than one conductor/foreman and two brakemen/helpers.
2. Reduction of the size of train crews would be made solely on an attrition basis.
3. The minimum crew size would consist of not less than one conductor/foreman and one brakeman/helper.
4. All road and yard crews must be regularly assigned.
5. The Carrier could only operate trains of 72 cars or less with a reduced crew; all other trains would need additional agreement from the Organization to operate with a reduced crew or must be operated with a standard crew if over 122 cars.
6. Each protected employee (defined as any employee on road/passenger service and/or yard service seniority rosters as of the date of the proposed agreement) would receive a monthly earnings allowance, or what amounts to a lifetime earnings guarantee.

7. All ground service employees working on reduced crews would receive a special allowance of \$7.72, adjusted for future wage increases and cost of living adjustments subsequent to the date the agreement would take effect, for each tour of duty worked.
8. For each tour of duty worked by a reduced crew, the Carrier would pay \$48.25 into a trust fund which will be distributed to ground service employees at the end of the year.
9. All protected employees would be entitled to 11 personal leave days [floating holidays] each year even if this required the Carrier to recall furloughed employees and/or hire new employees.
10. All protected employees in active service in the year following the first year the Carrier operates 75% of its engineer trips with reduced crews would receive a one time lump sum payment or signing bonus.
11. Six months after the effective date of the agreement, the Carrier would pay to each employee each month for 10 years, a productivity arbitrary.

After several months of negotiations failed to bring about agreement, the parties, by separate notices dated July 8, 1987, applied to the NMB for mediation. The application was docketed by the NMB as Case No. A-11913.

Mediation was undertaken by NMB Regional Head Mediator E. B. Meredith, who met with the parties beginning on August 25, 1987 and thereafter on various dates through December 2, 1987.

The NMB brought the parties to Washington, DC, for further mediatory sessions on December 17, 1987, and again on various dates in January 1988. A final mediatory meeting was held on March 2, 1988. NMB Member Walter C. Wallace participated with Mediator Meredith in the Washington sessions.

On March 15, 1988, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered the parties the opportunity to submit their controversy to arbitration. The Carrier accepted the proffer of arbitration contingent upon the parties executing a mutually satisfactory arbitration agreement prior to the close of business at 5:00 P.M. on March 18, 1988. However, when that time passed, and the UTU had not indicated an intention to accept the proffer, the Carrier, on March 21, 1988, declined the proffer of arbitration. Accordingly, on March 22, 1988, the NMB notified the parties that it was terminating its mediatory efforts.

On March 23, 1988, the Carrier wrote the Organization, making reference to the NMB notice of March 22, 1988, and suggested that it was still willing to have the dispute resolved through arbitration.

The NMB made another attempt to compose the parties' differences at meetings in Washington, DC on March 29 and 30, 1988.

On April 12, 1988, the Carrier advised the Organization that it was going to promulgate the rule changes set forth in the Section 6 Notice which it had served on the Organization to be effective at 12:01 A.M. on May 15, 1987.

The Organization subsequently announced that its members would withdraw their service from the Carrier and conduct a strike on April 20, 1988.

On April 18, 1988 the NMB, pursuant to Section 10 of the Railway Labor Act, advised the President that, in its judgment, the dispute between the parties threatened substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service.

The President issued Executive Order 12636 on April 20, 1988, to create this Board to investigate and report concerning the dispute.

B. The Long Term Dispute

Disputes involving manning levels for both engine and train service crews, as with pay rules, have long been at issue between virtually all the nation's carriers and the operating craft labor organizations for a number of years.

In 1959 the railroads served Section 6 notices on a national basis proposing that management have the unrestricted right to determine the size of crews to be used in any and all classes of train service.

Eventually, the dispute was investigated by a fifteen-member commission appointed by President Eisenhower. The Presidential Railroad Commission (PRC) determined that trains were over-manned. It also determined that there should be changes in various pay and work rule issues.

When the recommendations of the PRC did not form the basis for final agreement, Congress enacted Public Law 88-108, 45 U.S.C. §157, which required arbitration of the crew consist dispute and a related dispute concerning the need for locomotive firemen. President Kennedy appointed Arbitration Board 282 to conduct the arbitration.

The Award of Arbitration Board 282 became effective June 24, 1964, for a period of two years. The Award prohibited changes in main line crews consisting of a conductor and two trainmen in road service, and authorized changes in main line crews consisting of a conductor and either more than two or less than two trainmen. The Award also authorized changes in branch line and yard crews irrespective of the number of persons theretofore employed in such crews. It also provided for the arbitration of disputes not resolved by agreement regarding the number of persons to be employed in crews in which changes were authorized in accordance with certain specified guidelines, one of which was practices regarding the consist of crews in

comparable situations where such practices are not in dispute. It also provided for protection of the employment of certain persons.

After the expiration of P.L. 88-108 a new emergency board had to be appointed to issue recommendations to settle the regenerated crew consist disputes. In its Report to the President, dated December 13, 1968, Emergency Board No. 172 said:

"These proposals are practically identical with those served in 1959 and 1960, which were before the Presidential Railroad Commission. The issue is precisely the same. Neither party to the dispute professes to want crews undermanned or overmanned, but therein, of course, lies the core of the dispute.

The dimension of the problem before this Board cannot be measured in terms of the number of railroads and employees involved. The dispute can only be properly judged in the context of its history.

This same dispute has been in one or more stages of handling for more than 9 years without any lasting results. Three Presidents, the Congress, the Courts, a Presidential Railroad Commission, various Boards, and other Tribunals have been drawn into the controversy. All have made lasting contributions. However, at the end of their productive and painstaking labors, all of our predecessors were agreed that the matter can best be resolved with finality through the conscientious collective bargaining efforts of the directly interested parties.

The Presidential Railroad Commission found that a negotiated rule, as opposed to managerial discretion, was desirable; but, that the negotiated rule should allow for either party to propose changes in crew consists after conducting a survey to support its proposed changes; and, upon the parties' failure to agree, that the dispute should be submitted to a tribunal which, in turn, would decide the dispute on the basis of:

- (1) The adequacy or necessity of the proposed crew consists in terms of the safety of operations; and,
- (2) Whether the proposed crew consist would impose an unreasonably burdensome or onerous workload on the members of the crew or would be necessary to avoid such workload.

The Commission further recognized that the consist of train crews in road and yard service would have to be updated (not more than once a year) to keep pace with the changing times.

The operating crafts, in train service, rejected then, as now, the idea of surrendering their statutory powers to negotiate and make agreements, and the vesting of that power and final authority in some tribunal, permanent or temporary. The President and the Congress reluctantly forced such a temporary measure upon them in 1963 [Public Law 88-108, August 28, 1963] but only in the face of compelling evidence that the peace and tranquility of the Nation were threatened because the carriers and the duly constituted representatives of their employees, bargaining nationally, could not settle the crew consist issue, among others in controversy, without a test of their economic strength.

On November 26, 1963, Arbitration Board No. 282 submitted its Award to the President and the parties. The Award became effective on January 25, 1964, 60 days after it had been filed in the District Court, District of Columbia.

The Presidential Railroad Commission's report and recommendations had emphasized the 'safety' and 'workload' concepts for measuring crew size. The Award of Arbitration Board No. 282 supplemented and enlarged upon those concepts by the enumeration of 'guidelines,' all but one of them already agreed upon by the parties, to assist them in resolving questions of proper crew size on different properties—the issue which is in dispute here.

Arbitration Board 282 also concluded that the crew size in yard and road service (other than engine service) which was needed to assure 'safety' and prevent 'undue burden' should be determined primarily in conformity with local conditions and demands of the service on each property. The Board then remanded the dispute to the individual properties for resolution by collective bargaining if possible.

In any case, where the parties could not agree, the dispute was to be arbitrated by a special tribunal using the 'guidelines' as the test for deciding 'safety' and 'workload' on a crew-by-crew basis. The Award also established procedures for creating Special Boards of Adjustment, on individual properties, to settle unresolved crew consist disputes."

Under the various awards issued pursuant to the established guidelines of Arbitration Board 282, about 8,000 ground service positions were reportedly eliminated on the nation's railroads. The Award of Arbitration Board 282 remained in effect only two years,

however, from January 25, 1964 to January 25, 1966. At the expiration of such period of time, as result of court actions and agreements reached by 1970 the industry was back where it had started a decade before with a conductor and two brakemen on every crew.

Under the procedures of Arbitration Board 282, the CNW obtained authority to employ a conductor and less than two trainmen in 72 out of a total of 113 branch line or way-freight and local assignments that were subject to review by a local arbitration board. It also was given authority to reduce to a foreman and less than two helpers, 143 out of a total of 296 yard crews then subject to review by the local arbitration board.

Between 1965 and 1973, the parties were engaged in negotiation and litigation regarding the crew consist issue. On September 26, 1973, the parties reached agreement to permit a reduction of crews on an attrition-type basis through the free exercise of seniority to jobs that might otherwise be blanked on certain branch line and yard assignments.

The issue again came to be a dominant dispute when the Carrier sought, commencing in June 1986, to amend existing agreements so as to expedite crew reductions by elimination of the attrition factor and by offers of protective severance benefits. These efforts at voluntary resolution not being successful, the Carrier served formal notice for changes on May 15, 1987.

V. The Position of the Parties

A. The Carrier's Position

The Carrier submits that its operations are subject to intense competition for freight traffic from other rail, motor, water, and pipeline carriers. It says that deregulation under the Staggers Rail Act of 1980 has enhanced the ability of railroads to compete with other modes of transportation. However, the Carrier suggests that the most significant immediate effect of deregulation has been increased intensity of rate competition with other railroads and with motor carriers, putting downward pressure on traffic rates and thereby lower revenues per unit of traffic. The Carrier says that, while business is up, rates are down. It therefore maintains that it has an urgent need to extend cost reductions to the elimination of unproductive work rules which among other things essentially require the same basic ground service crew that has been required since the early 1900's.

The Carrier says that although current collectively bargained agreement rules require its road freight trains be crewed by an engineer, a conductor, two brakemen and sometimes a fireman, that virtually every train it operates can function with only an engineer and one other employee. The Carrier's Section 6 Notice would give it the unrestricted right to determine the size of crews in all classes of road freight and yard service.

The Carrier estimates that savings from the elimination of some 1,400 train service positions, which it maintains perform no productive function, would be \$55 million annually.

The Carrier says that support for its contention that virtually all trains can be operated with a crew consist of an engineer and one other employee is to be recognized from the fact that Arbitration Board 282 had concluded that an engineer and one ground service employee would be sufficient at the head end of a train; there are conductor-only operations on all through freight trains on seven unionized regional lines and on eight non-union regional lines; and, on some through freight trains on four unionized and one non-union regional line.

The Carrier also cites the Florida East Coast Railway as having conductor-only operations and also cites a number of Class I Railroads that have agreements for conductor-only operations with train length limits for expeditor trains.

The Carrier also urges that a video tape demonstration which it had presented to the Board shows that an engineer and conductor, working alone without the assistance of other crew members as at present, could safely and efficiently perform all road and yard service duties assigned to engine and train service employees.

At present, the Carrier says that under its September 26, 1973 Agreement with the Organization that it is still required to operate 514 trains with a second brakeman—282 in through freight service; 61 in way-freight service; and, 171 in yard service.

The Carrier submits that on an attrition-basis, or free exercise of seniority basis, crew reduction program as at present, and as continually being proposed by the Organization, it would take three attritions to yield one blank position. Thus, it says that to blank 303 positions under the Organization's proposal, with retirement at age 62, that the 909 attritions needed to blank 303 positions would not occur until the year 2007.

The Carrier questions the Organization's request to increase the price the Carrier now pays for operating reduced crews from a basic daily differential of \$10.75 to each crewman on each reduced crew, to a payment of \$48.25 per crew into the trust fund plus a basic \$7.87 individual arbitrary for the remaining employees that would automatically be adjusted upwards in future years. It urges that there is

simply no justification for what it terms the large and misnamed "productivity" payments set forth in agreements and that it is questionable whether any sort of extra payment to remaining ground service employees can be justified on the basis that the jobs of other employees have been eliminated because there was no work for them to do.

The Carrier argues that new enormously efficient motor carrier operations with much lower labor costs threaten to capture significant additional railroad traffic and revenues unless something is done to remedy problems associated with rule requirements that continue non-productive positions, and in particular the overmanning of trains. It submits that as a result of current competitive pressures, the return on investment of major railroads, including its own, is virtually the lowest of any major American industry. It suggests that the Class I part of the industry is simply not earning enough to avoid further disinvestment and the eventual disappearance of much of the industry that remains if it does nothing about excess labor costs.

The Carrier says that since it is the smallest of the seven dominant Class I Railroads, its average density is lower and its fixed costs and switching costs must be spread over a shorter average length of rail. Further, it suggests that it is faced with unique competitive pressures, because its main lines are paralleled not only by the larger railroads, but also by regional railroads not saddled with onerous crew consist agreement costs and major interstate truck corridors.

For these reasons, the Carrier maintains that its situation is far more perilous than that of the larger members of the industry. It says that it has taken every other step possible to reduce costs and increase revenues. It submits that since it was purchased by its employees in 1972, it has never paid a dividend. Instead, it says it has invested heavily in rebuilding its main east-west line, constructing its Global One container facility, and constructing the western coal project. These investments, the Carrier says, have made it possible for it to become a major coal railroad in the west and to become the UP's principal link with Chicago in transportation in the highly competitive east-west corridor.

The Carrier contends that without the new traffic it has attracted that it would probably not survive, but that competitive pressures on rates leave the railroad with a rate of return well below that of the larger railroads.

The Carrier notes that in recent years, its basic railroad, other than the new western coal line, has operated at a loss; its cash flow has been extremely limited, requiring the railroad to borrow heavily with a resulting debt of approximately \$800 million.

The Carrier says that even if it were in robust economic health, there is no justification for continuing to saddle it with large numbers

of unproductive jobs. It says: "If a railroad can provide the same service at lower cost, it can reduce its rates, attract *more* business, provide *more* job opportunities, and provide a secure future on an economically sound basis for the people it does need to employ. Everyone is better off: employees, shippers, and the U.S. economy as a whole, in its world-wide competition with foreign suppliers."

The Carrier maintains that it was for these reasons that it served its notice proposing that the Carrier be given the right to determine the size of its train crews. In this respect, it asserts that while it sought the right to eliminate unneeded jobs at once, it has offered what it would term generous severance pay to the employees it would no longer need. It says that it has been willing to bargain on the issue, but that the only counter-offer it has received from the Organization would actually increase its crew costs and that no net cumulative savings would accrue under that proposal until the next century.

B. The Organization's Position

The Organization says that the gravamen of the current dispute is that the Carrier is seeking to eliminate *all* operating ground service employees.

It contends that an existing agreement, which had been entered into on September 26, 1973, permits the Carrier opportunity to reduce crews on various road and yard assignments to a complement of a conductor and brakeman in road freight service and a foreman and yard helper in yard service. It estimates that approximately 35 per cent of the assignments have been reduced in such a manner.

While it recognizes that main line road freight assignments may not be blanked under the present agreement, and that jobs may be blanked on the covered assignments only on an attrition-basis arrangement, the Organization says that this method of blanking jobs has nonetheless "saved millions and millions of dollars for the Carrier."

The Organization places great emphasis on the history of crew consist disputes in the industry and, in particular, on this Carrier. The Organization maintains that this history and its resulting precedents are important to a proper consideration of the issue. In this respect, it related to the Board various aspects of negotiations and litigation which have taken place since 1964 regarding the subject matter of crew consist.

The Organization does not deny that at meetings on the property, officers from the Carrier's financial, government affairs, and labor relations departments had discussed and reviewed the company's financial condition, its shortfall and cash flow problems, its marketing situation, the impact of deregulation under the Staggers Act, and

the impact of competition being experience from regional and short line rail carriers as well as by trucks. However, the Organization says that just because the Carrier could show that it was in dire straights financially, and that various portions of the Carrier were up for sale, that the employees it represents should not be required to bear the burden for all such problems. In this same regard, the Organization suggested that certain of the Carrier's financial problems are the result of business decisions that the Organization characterized as "very inept".

The Carrier's financial presentations notwithstanding, the Organization says that it has attempted to be reasonable with the Carrier in "expediting" trains on the property. It points to an agreement which it entered into with the Carrier on October 12, 1983 for the operation of trains on the Carrier's coal hauling rail subsidiary, WRPI, with a road crew consist of one conductor and one brakeman. It also cites a special agreement, dated February 12, 1974, which had provided for the movement of iron ore with a crew of one conductor and one brakeman, albeit this agreement was effective for only the 1974 Adams-Waukegan ore hauling season.

The Organization contends that the Carrier has refused to consummate a mutually acceptable agreement on terms comparable to those which exist in agreements which have been entered into with representatives of train service employees on other carriers. In this connection, the Organization directed the Board's attention to some 16 separate agreements, dating from March 17, 1978 (Chicago, Milwaukee, St. Paul and Pacific Railroad) to December 1, 1987 (Union Pacific Railroad—Former Chicago & Eastern Illinois Railroad), whereby it was mutually agreed that under specified conditions, in return for certain employee considerations, that the basic crew consist could be reduced to one conductor and one brakeman in road service and one conductor (yard foreman) and one helper in yard service.

The Organization submits that all of the agreements which it cites are "attrition type" agreements, with reduction to one conductor and one brakeman or to one foreman and one yard helper on covered assignments from "full crews" of at least one road conductor and two brakemen or one foreman and two yard helpers.

The Organization concedes that while the Carrier has some large railroad competitors, it disagrees with the Carrier concerning short line rail carriers being the Carrier's greatest competitors. It argues that the short line railroads mentioned by the Carrier as competitors operate over light density lines and handle very few freight trains. Further, the Organization offers that the short line railroads mentioned by the Carrier are in bankruptcy proceedings.

In addressing those duties which are now being or remain to be performed by conductors and brakemen in road service and by foremen

and helpers in yard service, the Organization submitted a job analysis summary setting forth the responsibilities of such employees.

Accordingly, on the basis of the above arguments and other various contentions, the Organization urges that the Carrier be required to enter into an agreement governing crew manning levels consistent with what it refers to as "national pattern agreements".

VI. Findings and Recommendations

"Crew consist", manning of engines and trains, has been the subject matter for review by numerous Emergency Boards in the past. We find no real necessity to detail the chronology of those Boards' activities and recommendations. It is sufficient, in our view, to quote certain findings made by one of those Emergency Boards, Emergency Board 172, which we find have some relevance to the dispute under consideration. That Board was convinced, as is this Board, that the process of good faith collective bargaining should be the mechanism that provides for the resolution of this dispute. That Board, like this Board, did not view itself as the final arbiter of issues as important as what the manning levels should be on the nation's railroads.

"The bargained solution may not be, in fact probably will not be, a perfect solution from the point of view of either party. As the Presidential Railroad Commission observed in 1962, 'Inescapably we find ourselves in an area where the best must yield to the better.' Of course there is a public interest in the terms of a collectively bargained agreement. But under the particular facts and circumstances of this case, the primary public interest here would appear to be not so much in the terms of the agreement, as such, as in the final resolution of this prolonged dispute through free collective bargaining."

The Board has had the opportunity to consult with the parties since they agreed to an extension of the 30-day period for the issuance of this Board's report which is established by the statute. Throughout this dispute, the Organization has taken the position that no change is necessary while the Carrier has indicated its desire for radical change in the present work rules. While the general outline of the Carrier desires is apparent from its submission, it is impossible in a proceeding such as this to enquire into all of the fine details and ultimate ramifications of the proposals which have been made. The Board cannot examine the way any particular train will operate and cannot do more than indicate the general guidelines which it believes

to be appropriate to resolve the dispute. It will, therefore, attempt to recommend resolution of this dispute by dividing the issues to be resolved into two main parts: the first is the issue of crew size and the second is the manner in which affected employees are to be treated.

A. Crew Consist Manning Levels

The Carrier has suggested that the model which the Board should follow in recommending appropriate crew size is the crew consist utilized for the operations on the Florida East Coast Railway Company; that is, operation of trains in through service with only a conductor and in yard service with only a conductor unless the Carrier believes that operational efficiency makes it desirable for a brakeman to be added to the crew. While yard trainmen are often referred to as "Yard Foremen" and "Yard Helpers", for simplicity throughout these recommendations all individuals will be referred to as conductor and brakeman regardless of whether they are in road or yard service.

The Carrier points out that the new regional railroads which have been formed since deregulation also have used a crew consist of a conductor only and/or that of a conductor and one brakeman. The Carrier notes that at least two of these regional railroads, which are its direct competitors and were formed from the sale of trackage by existing Class I railroads, have collective bargaining agreements with the United Transportation Union.

The Organization does not wish the Board to consider these railroads as models, but insists that only Class I, organized railroads should be considered as models for crew consist on the Carrier. While the Organization has indicated that it was willing, under very limited conditions, to consider crew consist reductions, it would only do so provided its members receive a substantial portion of the resultant savings.

While neither of the Parties stressed it, the Class I, organized, railroad with the crew consist arrangement closest to that desired by the Carrier is the Consolidated Rail Corporation (Conrail). Conrail has a general consist of one conductor and one trainman on virtually all of its trains without any limit on train length. This consist is less than that agreed to on a system-wide basis on any other organized Class I railroads which have local agreements which, if considered *in toto*, have the effect of creating a crew consist very similar to that on Conrail. Conrail's crew consist arrangement is not the product of pure collective bargaining, but rather is the result of Congressional action.

In 1981, Congress passed legislation which transferred Conrail's freight properties to a railroad owned by individual investors. It also transferred Conrail's passenger service responsibilities to several

local public commuter authorities. As noted in the Senate Committee Report (1981 U.S. Code Congressional Service 620), section 413-1 of P.L. 97-35 contains:

A "Special termination allowance" allowing Conrail to "blank" the positions (eliminate the job with the man) vacated under the program. Separation would be limited to the numbers of excess . . . second and third brakemen . . . presently employed by Conrail (but not necessarily the individuals occupying those positions if more senior personnel wish to be separated). . . .

The program would operate at the discretion of Conrail but mandatorily as to affected employees (after voluntary separations were taken). The section provides for payments at the rate of \$200 per month of active service with Conrail or a predecessor, with a cap of \$25,000 (i.e., 4 years, 2 months service).

Provision was also made in the legislation for new career training assistance, continued medical insurance coverage for 6 months from the date of separation and moving expenses for employees forced to move to obtain employment on another railroad. There also was a provision for binding arbitration of any disputes involving the interpretation or implementation of the legislation. The Board understands that as Conrail actually implemented the legislation it was unnecessary to utilize those provisions which permitted force or involuntary separations as sufficient employees accepted the separation offer so as to reduce the work force to the required level on a voluntary basis.

There is no question that the situation on this Carrier is different from that which was present in 1981 on Conrail. There are no third brakemen on this Carrier; however, the agreement between the parties does allow for second brakemen where senior employees in the exercise of free choice select such positions. In fact, such selections are usually made. There also have been additional technological changes in the railroad industry since 1981. In 1986, in a national agreement, the UTU and the railroads contracted for the elimination of cabooses and it appears that the Carrier operates about sixty percent of its trains without a caboose.

In 1981 Conrail was being transferred from public ownership and the Congressional settlement, even if agreed to by the unions involved, was agreed to under the threat of action without the concurrence of the unions. Here the parties are not changing their relationship, nor is the Carrier undergoing a reorganization. Rather it is because the Carrier finds it needs increased efficiency in its operation of the railroad if it is to survive as a competitive force that it has served the section 6 notices requesting changes in crew consist.

As part of its presentation to the Board the Carrier utilized as an expert witness Robert W. Anestis. In his cogent presentation, Mr. Anestis made the following points: (1) Return on investment of the basic railroad (excluding WRPI) as computed by the ICC is the second lowest in the industry, with only the Southern Pacific (SP) being lower, and the return is half of that of the third lowest return on a railroad; (2) Chicago & North Western has a debt equity ratio twice that of the railroad industry average; (3) the operating ratio of the carrier is also the second highest in the industry, to SP; (4) the direct train crew labor costs as a percentage of freight related revenue is the second highest, again to SP; (5) the Carrier is the second most capital intensive railroad, to Conrail, yet it has the lowest debt rating in the industry as calculated by both Moodys and Standard & Poor; and, (6) the Carrier's profit was just barely in excess of the cash needed to pay the interest on its outstanding bonds, because of this, it was required to pay the highest rate of interest in the industry on its borrowing.

Mr. Anestis noted that while the Carrier estimated that if its proposal for crew consist changes were to be adopted it would save approximately \$55 million, that amount would not of itself be enough to meet all of its needs. He concluded his comments:

In order to cope with these disadvantages, North Western must deal with its cost structure in a meaningful way. Crew consist savings of the magnitude proposed by North Western will serve to bring North Western's Basic Railroad closer to the point where it can carry its interest charges, but it can only bring down its indebtedness if it restructures the railroad by "disinvesting" poorly-performing segments. Recognizing the inherent problems in the Basic Railroad, North Western's management team successfully executed an extremely complex and critical strategic initiative by planning, financing and implementing WRPI. That effort saved the North Western. It has coped in the interim by "cross-subsidizing" the Basic Railroad with enormous infusions of cash from WRPI and from non-rail operations. Although this cross-subsidy may be justified in the short-term, it cannot continue indefinitely because the shareholders will not permit it. Moreover, even with WRPI included and with crew consist obtained, North Western will still not be revenue adequate—it will not earn its cost of capital.

On the basis of the presentations before it, the Board concludes that the Carrier, unlike many of the other railroads in the industry, has an economic need for relief from its present crew consist rules. Without such relief it will be forced to take more drastic economic action which could jeopardize the livelihood of *all* of its employees. This is not to say

that the employees alone should be expected to bear the burden of the structural problems of the railroad. Rather, they, like the shareholders, have to make some sacrifice in order to ensure the continued viability of the railroad.

As noted earlier, various railroads and the UTU have entered into local agreements which allow for the elimination of second brakemen. The Organization in this case has not been able to seriously contest the practicality of utilizing a crew consist of a conductor and one brakemen. It has rather indicated that its members should receive additional benefits for agreeing to this change in the manning of the trains if the change is to be accomplished in any way other than through attrition.

Congress mandated elimination of all but one brakeman on Conrail. That change was effectuated without serious disruption of the Conrail operating work force. A similar solution in this case would result in almost half of the savings that the Carrier has requested. Accordingly, we recommend that the parties agree that no train will have a crew consist greater than a conductor and one brakeman unless the Carrier in its discretion so desires.

Additionally, the Board notes that the UTU and various railroads have entered into agreements for through-freights, which do not make a switching stop, to operate with only a conductor (in addition to the engineer). The Organization has offered to allow a conductor-only consist on through-freights which are utilized for new business and which have a train length of no more than 35 cars. The Carrier in this case desires conductor-only crews but is not willing to limit train length below 120 cars. Were the Carrier's proposal implemented, the resultant savings would be approximately \$28 million of the \$53 million requested.

This Board has not had the time necessary to analyze the operation of any particular train. This Board, therefore, cannot determine whether it would be appropriate to allow a through-freight which does not make any stops to operate with only a conductor. Nor can it determine whether train length should be limited. However, it appears that there may be circumstances, in non-stop through-freight service, where "conductor only" operations will be appropriate. Therefore, the Board recommends, under the procedure to be set forth more fully below, that either party will have the right to request a change from the crew consist which it had previously determined to be appropriate. If such a request is made, the party making the request shall have the burden of proving that such a change does not diminish safety or efficiency, is consistent with industry practice, and will not increase the costs of operations substantially. If the parties cannot agree to such a change, the party requesting the change shall have the right to request binding arbitration of the matter in a

fashion to be described below. Arbitration shall be conducted on a train by train basis, if either party so desires, and the arbitration board shall have the power to recompense employees whose jobs are made redundant by their award in the same manner as this Board will hereinafter recommend in regard to the second brakemen's job which it has recommended be eliminated. The arbitration board will also have the power to settle any disputes arising out of the implementation of these recommendations.

The Board recommends that in order to settle the outstanding crew consist issues, if the parties cannot mutually agree upon a solution, an arbitration board composed of three neutral members, experienced in the resolution of railroad disputes be established. This board shall operate in the same manner as boards created under the provisions of Section 8 of the Railway Labor Act (45 USC 158), but without the partisan members and shall be compensated by the National Mediation Board in accordance with the same section.

B. Separation Allowances

A great deal of this entire dispute has been about the price to be paid by the Carrier to its employees for the elimination of certain jobs. In this regard the Organization has taken the position that the employees who continue to work should have the right to receive a portion of the savings which result from the elimination of the second brakeman's job in perpetuity. The Carrier on the other hand has indicated a willingness to compensate the individuals whose jobs are being eliminated, but has been unwilling to compensate the remaining employees for work which it considers unnecessary if not non-existent.

A second point in dispute is how the jobs which are scheduled for elimination should be eliminated. It is the Organization's view that the elimination should occur by attrition; that is, by the passage of time. The Carrier on the other hand, believes that the jobs should be eliminated at one time and that time should be immediately. The Carrier offered convincing evidence before the Board that if the crew size reduction were implemented by natural attrition it would not result in financial savings to the Carrier in the reasonably foreseeable future.

This Board is of the view that while work force changes in the railroad industry have frequently been affected through attrition, that policy is not viable in the instant case in view of this Carrier's financial situation. We believe that the Carrier has made a creditable presentation that without immediate savings its future ability to continue to operate as a successful enterprise will be endangered.

The railroad industry has historically offered job protection to its employees which has been in excess of that offered to employees in other industries. Some fifty years ago the railroad industry and the organizations representing its employees entered into the Washington Job Protection Agreement which has formed the basis for the orders of the Interstate Commerce Commission regarding the rights of employees whose jobs have been eliminated by ICC action ever since. The protection required by the ICC includes displacement or dismissal allowance for six years; moving expenses if moving is required as a result of the job elimination; continuation of fringe benefits, including free transportation, medical benefits and pension benefits, for the protected period; and payment of any losses which may be suffered by the forced sale of a home below its fair market value by reason of a displacement or dismissal.

On the other hand, Congress in passing the Conrail legislation determined that a maximum of \$30,000 was allowable as a separation allowance for individuals who have "invested significant periods in service to Conrail and its predecessors." Congress also allowed a retraining allowance of \$5,000 per employee.

Information furnished to the Board by the Carrier indicates that the median yearly income for train service employees varies widely by years of service. For employees with less than eleven years of service it is \$23,964.00; for employees with more than forty years of service it is \$41,428.00; and for all employees it is \$35,554.50.

The record reflects that all potentially affected employees have had at least eight years of service with the Carrier, and therefore they may have had lifetime employment expectations. In these circumstances, the Board does not believe that the "junior" employees should be treated differently from those employees who are close to retirement age and who on a voluntary basis, are willing to terminate their careers. Accordingly, it is our recommendation that the separation payment not be varied on the basis of length of service, but should be \$50,000 for any employee whose service is voluntarily terminated as the result of the elimination of his or her job in accordance with this recommendation. This amount will allow separated employees who are not at or near retirement age to pay for the retraining which they individually believe they need to find new jobs, and also will cover moving expenses associated with obtaining meaningful future employment. If individuals are required by these recommendations to be involuntarily separated from the Carrier's service, the allowance will be \$45,000. It is the Board's view that implementation of these recommendations on a voluntary basis will be beneficial to all concerned. Therefore, the Board has concluded that voluntary withdrawal from service by individual employees should be encouraged by the use of this \$5,000 incentive.

C. Other Issues

The parties addressed a number of ancillary issues as part of their direct negotiations and during their conferences with the representatives of the National Mediation Board in the session in March of 1988.

It has been the position of the Organization that the employees who continue in the employ of the Carrier should receive additional compensation if jobs are eliminated. This Board does not believe that the compensation should be tied to job losses by fellow employees. Rather the compensation of employees should be determined in accordance with normal wage considerations, *including productivity*, and the ability of the employer to pay the wages requested. If employees are more productive, they should be rewarded. However, the rewards should be in the regular wage rates and not a special fund which over the course of time loses all relationship to the reason for its creation. For this reason, as well as the fact that it believes that it is the employees who will be suffering the loss of their employment and who need the maximum protection that can be afforded, the Board is not recommending that there be any change in the productivity payment which is presently being made by the Carrier. We, therefore, leave to the wage negotiations which the parties, as well as other railroads and organizations, will be entering into to reward the employees for any additional productivity which may result from this recommended settlement.

Another significant ancillary issue, tied to the question of the Carrier's right to establish various standard crew sizes, was the Organization's consistent contention that in order for employees to be properly treated under the terms of a crew consist agreement they must retain their right to a "free exercise of seniority". Implicit in the Organization's "free exercise of seniority" argument was its contention that any reduction of forces should be accomplished through "attrition". In the Organization's view, positions identified for abolishment would not be instantaneously abolished, even when the incumbents of those positions voluntarily elected to take separation pay, if other members of the craft or class determined that the positions being vacated by the recipients of the severance pay were positions that they wished to occupy.

While the Board recognizes the Organization's institutional and philosophical points of view, that is, employees who have "waited" for some period of time to occupy certain positions should not be restricted from exercising their seniority merely because of an agreement which recognizes that there will be a reduction in standard crew sizes, this Board concludes that to permit a "free exercise of seniority" in the context of the instant dispute is inappropriate and inconsistent with the thrust, if not the essence, of the relief sought by

the Carrier. As noted in our finding above, this Board has concluded that certain reductions in crew sizes may be made. In the Board's opinion, to postpone these reductions to some uncertain time, in what may be the far distant future, is not justified. While the Organization has "assured" the Board that the remaining employees would seek the jobs where the "money was", that is, they would gravitate to the crews that were operating with reduced ground service employees because they would benefit by the additional compensation (the "productivity" pay attached to those reduced crew jobs), there is no basis for this Board to conclude, with any certainty, that the Organization's prediction would come true. If we recommended that the employees retain the right of "free exercise of seniority" to second brakemen positions that were abolished, and if, in fact, a substantial number of employees exercised their seniority to those positions, any significant savings contemplated by the Carrier might be postponed indefinitely.

In light of the substantial and convincing evidence presented to us, regarding this Carrier's tenuous financial condition, the Board finds that the savings contemplated by the crew size reductions, which we have recommended, should be realized within a reasonably short period of time. The Organization's proposal that its members be entitled to a "free exercise of seniority" and that the positions identified for abolishment should only "disappear" through the process of "attrition" is inconsistent with the underlying basis for our recommendations. Therefore, we conclude that there should be no free exercise of seniority permitted for the positions identified for abolishment.

During negotiations, the Organization also raised the question of the date upon which employees would be considered as being "protected". As a practical matter, since the "junior" employees represented by the Organization on the Carrier's system have eight years of seniority, the date of protection does not appear to be a critical issue in dispute. Nevertheless, in order that the Organization be assured that any "present" employee, as of the date of the agreement or resolution, be protected, we recommend that the date for conferring protection be the date the parties reach agreement directly as a result of these recommendations or as of the day that these recommendations form the basis of a final resolution of this dispute.

During negotiations with the Carrier and in discussions with the Board an issue was raised by the Organization regarding the propriety of establishing guaranteed extra boards. Due to the uncertainty of the extent to which there will be remaining work on certain divisions and for certain crews and for certain assignments as a result of the impact of the reductions in crew size, the Organization proposed that the Carrier "guarantee" extra board work; using a minimum number

of days per month for yard extra board work and a minimum number of miles per month for road extra boards. This Board concludes that there is substantial merit to the Organization's proposal. This Board also recognizes that the parties have, in the past, established guaranteed extra boards and established a minimum number of days and/or miles that should be guaranteed; while giving the Carrier the unilateral right to "cut" or "regulate" those guaranteed extra boards.

Accordingly, this Board recommends that the parties incorporate in this crew consist agreement a provision guaranteeing the extra boards. We further recommend that the limitations that exist in the current guaranteed extra board arrangements be incorporated in any new guaranteed extra board arrangements.

During their negotiations the parties also addressed the question of whether employees should receive "personal leave days". It appears that during their negotiations, the parties were in agreement that at least ten personal leave days would be established. At one time, the Carrier proposed that half of the personal leave days be established upon the date of the agreement and that the other half of the personal leave days be implemented "when the railroad is operating one and one". The Board finds, in the context of our recommendation above regarding the establishment of an abolishment/separation pay program, which does not rely upon natural attrition, that it would be appropriate to grant the employees the full complement of personal leave days upon the effective date of an agreement and/or resolution which essentially embodies our recommendations.

In addition, the parties, in their direct negotiations prior to the serving of the Section 6 notice, had identified a number of items which would be the subject of side letters of agreement. For example, the parties had discussed and apparently agreed on certain items not being "held against" merger guarantees and that car retarder operators at Proviso receive certain additional payments. The Board believes that these items and any other "side letter proposals" that were agreed to and which have not been specifically addressed by our recommendations, should be incorporated in any agreement or resolution of the instant dispute.

D. Moratorium

It should also be noted that while neither of the parties has mentioned this point in their submissions to this Board, the request for changes which were made by the Carrier do not include a moratorium period; that is, a period during which changes in the collective bargaining agreement could not be requested.

The Board is of the opinion that its recommendations, if they are to form the basis for a collectively bargained settlement, cannot effect

all of the changes which are desired by the Carrier at one time. It is true that such a result might be imposed if the parties were free to resort to self-help and if the Carrier were to successfully impose its view. However, as we see our role it is to make recommendations which, if not desired by either of the parties, are at least sufficiently palatable to allow the unhappy party to consider that it is not engaging in organizational suicide if it agrees to the recommendations. It is also the Board's view that the changes that it recommends should be allowed to be in place for a period of time without additional changes being considered. Accordingly, the Board recommends that no section six notices regarding the issues here in dispute be allowed, without mutual consent, for a period of three years from the date that these recommendations go into effect.

In conclusion, this Board must observe that the dispute before us represents an issue of critical importance to these parties. We are not unmindful of the significant adverse impact which may result for a substantial number of employees in view of the significant number of job abolishments which may occur. We are also concerned because the demographic data we received indicated that there are few employees at the low end and the high end of the age curve on this Carrier. In these circumstances, it is likely that in effecting the job abolishments employees with substantial railroad service, who do not contemplate retirement in the near future, will find themselves deprived of employment in their chosen career. Therefore, this Board recommends that the Carrier, in effecting the job abolishments, agree with the Organization and establish a methodology that : (1) affords the entire craft or class an opportunity to choose the voluntary separation option; (2) canvasses the employees over a reasonable period of time, not less than six (6) months, in order to elicit as many voluntary separations as possible; (3) considers affording employees found to be surplus in one seniority district, who may desire transfer to another seniority district where vacancies could exist because there were more "volunteers" for separation pay in that district than redundant positions identified by the Carrier, the opportunity to transfer to that other seniority district, dependent upon appropriate relocation expense provisions and transfer and seniority revision procedures consistent in principle with the methodology agreed to by the parties under the so-called "Coal Line Agreement"; and, (4) affords the employees who become surplus the opportunity to elect a voluntary furlough at their home seniority districts awaiting the availability of a vacancy and deferring their option for separation pay for, at least, one year.

Respectfully submitted,

ROBERT O. HARRIS, *Chairman*

RICHARD R. KASHER, *Member*

ROBERT E. PETERSON, *Member*

EXECUTIVE ORDER
12636

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN THE CHICAGO AND NORTH WESTERN TRANSPORTATION
COMPANY AND CERTAIN OF ITS EMPLOYEES REPRESENTED
BY THE UNITED TRANSPORTATION UNION

A dispute exists between the Chicago and North Western Transportation Company and certain of its employees represented by the United Transportation Union.

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

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

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

Section 1. Establishment of Board. There is established, effective April 22, 1988, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. Report. The board shall report its finding to the President with respect to the dispute within 30 days from the date of its creation.

Sec. 3. Maintaining Conditions. As provided by Section 10 of the Act, as amended, from the date of the creation of the board and for 30 days after the board has made its report to the President, no change, except by agreement of the parties, shall be made by the Carrier or the employees in the conditions out of which the dispute arose.

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

THE WHITE HOUSE,
April 20, 1988.

