

**REPORT**  
to  
**THE PRESIDENT**  
by  
**EMERGENCY BOARD**  
**NO. 220**

**SUBMITTED PURSUANT TO EXECUTIVE ORDER NO. 12794  
DATED MARCH 31, 1992  
AND SECTION 10 OF  
THE RAILWAY LABOR ACT, AS AMENDED**

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**Investigation of dispute between CSX Transportation, Inc., and the  
railroads represented by the National Carriers' Conference  
Committee of the National Railway Labor Conference and their  
employees represented by the International Association of  
Machinists and Aerospace Workers.**

**(National Mediation Board Case Nos. A-11544, A-12250 and A-11071)**

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**WASHINGTON, D.C.  
MAY 28, 1992**

WASHINGTON, D.C.  
*May 28, 1992*

THE PRESIDENT  
*The White House*  
*Washington, D.C.*

DEAR MR. PRESIDENT:

On March 31, 1992, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12794, you established an Emergency Board to investigate disputes between CSX Transportation, Inc., and certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by the International Association of Machinists and Aerospace Workers.

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

Respectfully,

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BENJAMIN AARON, *Chairman*

(III)

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Norfolk Southern Railway Company  
Alabama Great Southern Railroad  
Atlantic and East Carolina Railway  
Carolina & Northwestern Railway  
Central of Georgia Railroad  
Cincinnati, New Orleans & Texas Pacific Rwy.  
Georgia Southern and Florida Railway  
Interstate Railroad  
New Orleans Terminal Co.  
Norfolk and Western Railway  
St. Johns River Terminal Company  
Tennessee, Alabama and Georgia Railway  
Tennessee Railway  
Oakland Terminal Railway  
Ogden Union Railway and Depot Co.  
Peoria & Pekin Union Railway  
Pittsburgh & Lake Erie Railroad  
Port Terminal Railroad Association  
Portland Terminal Railroad Company  
Richmond, Fredericksburg & Potomac Railroad  
Sacramento Northern Railway  
Southern Pacific Transportation Co.  
    Eastern Lines  
    Western Lines  
Terminal Railroad Association of St. Louis  
Texas Mexican Railway  
Union Pacific Railway  
    Western Pacific Railroad

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(NMB Case No. A-11071)

CSX Transportation, Inc.  
Louisville and Nashville Railroad (former)  
Seaboard Coast Line Railroad (former)

## RAILROADS

(NMB Case Nos. A-11544 and A-12250)

Alameda Belt Line Railway  
Alton & Southern Railway  
Atchison, Topeka & Santa Fe Railway  
Burlington Northern Railroad  
Canadian National Railways  
    Great Lakes Region Lines in U.S.  
    St. Lawrence Region Lines in U.S.  
Canadian Pacific Limited  
CSX Transportation, Inc.  
    Baltimore and Ohio Railroad  
    Baltimore and Ohio Chicago Terminal Railroad  
    Chesapeake and Ohio Railway  
    Clinchfield Railroad  
    Seaboard System Railroad  
        Louisville and Nashville Railroad (former)  
        Seaboard Coast Line Railroad (former)  
    Western Maryland Railway  
Chicago & Illinois Midland Railway  
Chicago & North Western Transportation Co.  
Colorado & Wyoming Railway  
Consolidated Rail Corporation  
Denver and Rio Grande Western Railroad  
Duluth, Winnipeg & Pacific Railway  
Elgin, Joliet & Eastern Railway  
Grand Trunk Western Railroad  
Houston Belt and Terminal Railway  
Illinois Central Railroad  
Kansas City Southern Railway  
    Louisiana & Arkansas Railway  
    Milwaukee (Soo Line)—KCS Joint Agency  
Kansas City Terminal Railway  
Lake Superior & Ishpeming Railroad  
Los Angeles Junction Railway  
Manufacturers Railway  
Meridian & Bigbee Railroad  
Missouri Pacific Railroad  
    Galveston, Houston and Henderson Railroad  
    Missouri-Kansas-Texas Railroad  
    Oklahoma, Kansas & Texas Railroad  
Monongahela Railway  
New Orleans Public Belt Railroad  
Norfolk and Portsmouth Belt Line Railroad

## **I. CREATION OF THE EMERGENCY BOARD**

Emergency Board No. 220 (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 No. 12794. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between CSX Transportation, Inc., and the National Carrier's Conference Committee of the National Railway Labor Conference (NRLC) and their employees represented by the International Association of Machinists and Aerospace Workers (IAM). The Board was also ordered to investigate and report its findings and recommendations concerning a specific dispute between CSX Transportation, Inc. and the IAM&AW. Copy of the Executive Order is attached as Appendix "A."

On April 3, 1992, the President appointed Benjamin Aaron of Santa Monica, California, as Chairman of the Board, Eric J. Schmertz of Riverdale, New York, and David P. Twomey of Quincy, Massachusetts, as Members. The National Mediation Board appointed Roland Watkins, Esq., as Special Assistant to the Board.

## **II. PARTIES TO THE DISPUTE**

### **A. 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 NLRC and its negotiating committee (carriers).

### **B. CSX TRANSPORTATION, INC.**

CSX Transportation, Inc. is a Class I line haul freight railroad headquartered in Jacksonville, Florida.

### **C. THE IAM&AW**

The IAM&AW represents approximately 7800 employees involved in this dispute. This organization represents the craft or class of the carriers' employees who maintain and repair (i) all types of locomotive and freight cars, (ii) work equipment, and (iii) shop machinery and equipment. These employees also operate and maintain the carriers' stationary power plants and power stations.

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### III. ACTIVITIES OF THE EMERGENCY BOARD

The parties to the dispute met with the Emergency Board in Washington, D.C., on April 6, 1992, to discuss procedural matters.

On April 7-9, 1992, the Board conducted hearings regarding the issues in Washington, D.C. 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.

The parties agreed to and the President approved an extension of the time that the Emergency Board had to report its recommendations until May 28, 1992.

The IAM&AW presented its position through written statements and oral testimony by John F. Peterpaul, International Vice President of the IAM&AW; Milton Jolly, General Chairman of the IAM&AW on CSX Transportation, Inc.; Steven Thompson, machinist employed by the Burlington Northern Railroad; Michael J. McCarthy, machinist employed by the National Railroad Passenger Corporation; Ron Acampora, road mechanic employed by the National Railroad Passenger Corporation; Charles D. Easley, Grand Lodge Representative for the IAM&AW; Thomas R. Roth, President of the Labor Bureau, Inc; and Ivy Silver, Principal at Leshner, Silver & Associates. The IAM&AW was represented by Joseph Guerrieri, Jr., Esq., of Guerrieri, Edmond and James.

The Carriers presented their position through written statements and oral testimony by James A. Hagen, Chairman, President and Chief Executive Officer of the Consolidated Rail Corporation and Chairman of the Association of American Railroads; Charles I. Hopkins, Jr., Chairman, National Carriers' Conference Committee; Carl S. Sloane, Professor of Business Administration and consultant to Mercer Management Consulting; Robert W. Anestis, President of Anestis & Company; William E. Honeycutt, General Manager Mechanical Facilities, Norfolk Southern Corporation; Charles H. Fay, Ph.D., Associate Professor of Industrial Relations and Human Resources, Institute of Management and Labor Relations, Rutgers University; David S. Evans, Vice President of National Economic Research Associates, Inc.; Joseph J. Martingale, Vice President of Towers, Perrin, Forster & Crosby; Edward L. Bauer, Jr., Assistant Chief Mechanical Officer, Burlington Northern Railroad; Purdis Miller, Director of System Locomotive Shop, Union Pacific Railroad; and Edward Latchford, of CSX Transportation, Inc. The Carriers were represented by Ralph J. Moore, Jr., Esq., and Benjamin W. Boley, Esq. of Shea and Gardner.

CSX Transportation presented its position through written statements and oral testimony by David Miller, Assistant Vice President—Mechanical Operations and Planning, CSX Transportation Company; Edward Latchford, Vice President—Finance, CSX Transportation Company.



Pursuant to the request of the Board, on April 27, 1992, the parties presented written lists of the issues which they deemed still in dispute before the Board.

After the close of the hearings, the Board met in executive session to prepare its Report and Recommendations. The entire record considered by the Board in this dispute consists of approximately six-hundred (600) pages of transcript and twenty-seven hundred (2,700) pages of exhibits.

#### IV. HISTORY OF THE DISPUTE

##### A. NRLC/IAM&AW

By letter dated January 12, 1988, the NRLC advised the NMB that the Health and Welfare issues from the previous 1984 Section 6 notice were unresolved and requested that the NMB reopen that case (NMB Case No. A-11544) for further mediation. The NRLC, on July 25, 1988, was informed by the NMB that the case was reopened pursuant to its request. On October 27, 1989, the NMB notified the parties that it would commence mediation of the remaining Health and Welfare issues.

On or about January 20 and April 18, 1988, the IAM&AW, in accordance with Section 6 of the Railway Labor Act, served notice on the individual railroads of its demands for changes in the provisions of numerous existing collective bargaining agreements. The railroads, on or about August 17, 1988, served their notices on the IAM&AW. The NRLC, on October 13, 1988, applied to the National Mediation Board (NMB) for its mediatory service. The application was docketed as NMB Case No. A-12250.

The NMB subsequently decided to conduct the mediation of the unresolved 1984 and the current 1988 Health and Welfare issue concurrently. Mediation of the non-Health and Welfare issues was undertaken by Member Joshua M. Javits and Mediators Samuel J. Cognata and Richard A. Hanusz. A separate mediation on the Health and Welfare issues was handled by Chairman Javits and Mediators Robert J. Cerjan and Thomas R. Green. All of these efforts were unsuccessful.

On March 2, 1992, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered the IAM&AW and the NRLC the opportunity to submit their controversy to arbitration. The organization declined the proffer of arbitration. Accordingly, on March 4, 1992, the NMB notified the parties that it was terminating its mediatory efforts.

##### B. CSX TRANSPORTATION, INC.

The IAM&AW, on or about October 30, 1981, served notice on CSX Transportation of its demand for a change in the existing collective bargaining agreements. On April 14, 1982, the IAM&AW applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-11071.

On March 2, 1992, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered the IAM&AW and CSX Transportation the opportunity to submit their controversy to arbitration. The Organization declined the proffer of arbitration. Accordingly, on March 4, 1992, the NMB notified the parties that it was terminating its mediatory efforts.

### C. NMB'S RECOMMENDATIONS

On March 5, 1992, 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 12794 on March 31, 1992, to create, effective April 3, 1992, this Board to investigate and report concerning these disputes.

### V. INTRODUCTION

The threshold question before us concerns the impact on this Presidential Emergency Board 220 of the recommendations of PEB 219 as enacted by Congress, and as reviewed by the Special Board.

The same carriers currently before us were before PEB 219. The organizations before PEB 219 represent about 95 percent of the organized work force employed by the freight carriers. The International Association of Machinists (IAM), the single organization before us in PEB 220, was not party to the PEB 219 proceedings; it represents an estimated five percent of the organized work force on the Class I railroads.

The unresolved contract issues before us between the carriers and the IAM cover the same subjects as those considered by PEB 219. The recommendations of PEB 219, as reviewed by the Special Board, are in effect between the carriers and all organizations except the IAM, either as the basis of settlements or as enacted by Congress. They cover such matters as wages, health benefits, skill differentials, incidental work rule, subcontracting, moratorium, and successorship.

The carriers' position is that the findings and recommendations of PEB 219 constitute a pattern; they offered to settle on that basis with the IAM. Recommendations more favorable to the IAM would in their view be unfair to the vast majority of employees working under the PEB 219 recommendations; would seriously disturb morale and orderly labor relations by establishing materially different conditions of employment among employees who work "elbow-to-elbow", cause "leapfrogging, me-tooism, and whipsawing" by other labor organizations as they competed with each other for superior benefits; and inevitably result in destabilization of parity arrangements, historical differentials, and established relationships.

The carriers claim that there is a history of so-called pattern bargaining in the railroad industry pursuant to which substantive agreements covering significant groups of employees have been replicated for other employees similarly situated. This is particularly true, they say, as between the IAM and the International Brotherhood of Electrical Workers (IBEW), which have been in "lockstep" with each other, and which began bargaining jointly in this round of negotiations.

Additionally, the carriers argue that on the merits, there is no justification for recommendations favorable to the IAM that exceed those proposed by PEB 219 on the same issues.

The IAM views this proceeding differently. It rejects the pattern theory and asserts that it is entitled to a de novo inquiry and a new set of recommendations by this Board on the merits of each of the issues in dispute. It emphasizes its lawful right to sever its bargaining from the IBEW and from other rail labor organizations. It disagrees with the view that it is bound by the recommendations of PEB 219, in whose proceedings it did not participate.

In short, the IAM disputes the alleged history of pattern applications in the railroad industry and rejects the claim that the recommendations of PEB 219 themselves constitute a pattern. It argues that a pattern does not emerge from terms and conditions which, rather than being voluntarily negotiated, were imposed by legislative fiat on 60 percent of the affected work force. It also points to wage differences between operating and craft employees that may well be changed if and when skill differentials are determined either by this Board or by the Skills Committee established pursuant to the recommendation of PEB 219. As far as the IAM is concerned, the possibility of such changes negates any notion of a presently existing pattern. Instead, it claims that based on their job duties, skills and hazards, as well as on relevant economic data and occupational comparisons, the employees it represents are entitled to the benefits and conditions sought, irrespective of what PEB 219 recommended as the basis of settlement for others. Finally, the IAM denies, for the previously stated reasons, that any such results on the merits would be destabilizing.

That the IAM was not party to the proceedings before PEB 219 is reason enough to conclude that the recommendations of that Board do not constitute an automatically binding pattern on it. As a present reality, however, effective for 95 percent of the industry's employees, those recommendations cannot be ignored in deciding the issues affecting the IAM.

The economic and bargaining relationships between the carriers and the IAM and the other rail labor organizations, and the hierarchical structure among the members of all the organizations make the recommendations of PEB 219 relevant and material. Certainly, the IAM was aware, when it elected to stay out of the PEB 219 proceedings, that specific findings of fact and recommendations would be made that dealt with the identical issues now in dispute between the carriers and the IAM, and that those recommendations would apply to the overwhelming majority of the unionized work force.

We consider it critical to the public interest that labor relations and collective bargaining on the nation's railroads be fair, stable, and reasonably consistent. Conversely, we believe that political competition between and among unions for supremacy of benefits, with its ineluctably destabilizing consequences, is damaging to the public interest.

Therefore, because the recommendations of PEB 219 are now in effect for most of the unionized employees in the railroad industry, we conclude that significant variations for the IAM-represented employees that change previously linked or stabilized economic and work relationships with other rail employees would produce the destabilization that we think must be avoided. We recognize, however, that exceptions may be made in special, compelling circumstances.

The foregoing reasons justify, in our opinion, treating the recommendations of PEB 219 as presumptively applicable to the IAM and the carriers in this case, whether or not they are characterized as a pattern. The presumption, however, is a rebuttable one. We shall weigh all the factors in each issue before us, including persuasive reasons, if any, why a given PEB 219 recommendation should not be made applicable to IAM-represented employees. Ultimately, we must make each decision on the basis of the total record before us.

## VI. ISSUES, POSITIONS OF PARTIES AND RECOMMENDATIONS

### A. WAGES

PEB 219 made the following general wage recommendations:

1. A lump-sum payment of \$2000 to each employee upon the signing of the agreement.
2. A 3-percent lump-sum payment effective July 1, 1991.
3. A 3-percent lump-sum payment effective July 1, 1992, which is to be considered as a cost-of-living adjustment and not part of the wage base.
4. A 3-percent lump-sum payment effective January 1, 1993, which is to be considered as a cost-of-living adjustment and not part of the wage base.
5. A 3-percent general wage increase effective July 1, 1993.
6. A 3-percent lump-sum payment effective January 1, 1994, which is to be considered as a cost-of-living adjustment and not part of the wage base.
7. A 4-percent general wage increase effective July 1, 1994.
8. A 2-percent lump-sum payment effective January 1, 1995, which is to be considered as a cost-of-living adjustment and not part of the wage base.

9. A cost-of-living adjustment for each 6-month period, beginning July 1, 1995, based upon the COLA formula which has previously been utilized by the parties.

In the case before PEB 220, the IAM proposes to modify that formula as follows:

Machinists represented by the IAM seek to receive general wage increases and COLAs, which are immediately rolled into the wage base, according to the following schedule:

July 1, 1988	10 percent
July 1, 1992	3 percent
Effective date	\$2000 retroactive lump sum
July 1, 1992	3 percent (rolled in COLA)
January 1, 1993	3 percent
January 1, 1994	3 percent (rolled in COLA)
January 1, 1995	2 percent (rolled in COLA)
Semiannual formula	COLAs commencing July 1, 1995

The carriers' proposal is to give the IAM-represented machinists what PEB 219 recommended, except that the first three-percent general increase would not be effective until the date of its new agreement with the IAM.

#### *IAM Position*

The IAM contends that the skilled workers it represents on the railroads have fallen behind comparably skilled employees in other industries. It also points out that since the expiration of the last collective bargaining agreement in 1988, while machinists' wages have been frozen on the railroads, the cost of living has risen over 16 percent. The organization emphasizes that it is not even seeking a full recovery of the real wages railroad machinists have lost as a result of uncompensated increases in the cost of living since 1978. According to its calculations, if its full wage demand were granted, and assuming a 3.5-percent annual rate of inflation throughout the balance of the contract period (i.e., until January 1, 1995), railroad machinists' real pay would be restored only to the level that existed in January, 1978.

The IAM explains that the 10-percent general wage increase included in its proposal reflects a "skill differential," but it asserts that the 10-percent general increase is fully justified and required, regardless of how it is characterized.

Anticipating a claim by the carriers that they cannot afford to pay the wage increases it demands, the IAM asserts that the carriers are not in economic distress. It cites unprecedented productivity increases, accelerating car loadings, reduction in fuel prices, and recent helpful legislation among other factors bolstering the railroads' financial position.

### *Carriers Position*

The carriers view the recommendations of PEB 219 as a constructive compromise, a balance between competing interests of the parties: wage increases versus productivity advances. Questions of pattern aside, they believe that the wage recommendations are fair and should apply to the machinists as well as to the other shopcrafts already covered. The key wage comparison for the IAM, they insist, is with the railroad shopcrafts, especially with the IBEW.

The carriers indicate a willingness to study the question whether journeyman machinists should receive a skill differential for specific work. They propose that any disagreement in that regard be submitted to a neutral for arbitration.

Contrary to the IAM, the carriers warn that their financial condition is perilous. They emphasize that while railroad workers' compensation is at the peak of compensation in American industry, the railroads are at the bottom of the heap in terms of profitability, and that only a few have been able to realize a return on their assets that exceeded the cost of capital. The economic outlook for their industry, the carriers argue, is anything but roseate. They foresee further inroads by the trucking industry in their market share; a rise in both fuel prices and taxes; and slower growth. They predict that the continued failure to earn the cost of capital will curtail their ability to attract sufficient funds to modernize equipment and provide service to customers and jobs to employees.

### *Recommendations*

As is apparent from our comments in the introduction to this Report, we think it inappropriate to treat this case as if it existed in a vacuum. We cannot ignore the fact that labor organizations representing 95 percent of the employees on the freight railroads recently participated in proceedings before PEB 219, asked for general wage increases approximating what the IAM is proposing, sought to justify such increases with arguments quite similar to those advanced by the IAM in this case, and ultimately accepted, or were statutorily bound by, the recommendations of PEB 219. However compelling the evidence adduced by the IAM in support of its position may seem, if considered without regard to what has occurred in the railroad industry in the past year, we are bound to conclude that endorsement of the proposal for a 10-percent general wage increase, even if limited to prospective application, would be profoundly destabilizing to the present wage structure of the railroad industry. We therefore decline to recommend it.

It may well be, as the carriers' own proposal implies, that certain types of work performed by some railroad machinists should receive a skill differential. The IAM insists that such a determination can and should be made by this Board on the basis of the ample record made before it. The carriers argue, however, that a far more detailed study must be made of the issue than can possibly be undertaken by this Board within

the narrow time limits within which it must complete its work. They urge that the entire matter be referred to a body similar to the current Brotherhood of Railroad Signalmen (BRS) Skill Differential Study Committee.

Although we sympathize with the IAM's desire to achieve a speedy resolution of this protracted dispute, we agree with the carriers that the matter of skill differential is best left to study and determination by a tripartite committee headed by a neutral, whose decision in the event of a deadlock between the parties shall be final and binding. We leave it to the parties to establish the committee.

In keeping with the general approach we have taken in respect of the wage issue in this case, we recommend that the parties adopt the general wage and cost-of-living increases and time schedule for such wage adjustments recommended by PEB 219. Achievement of the wage stability the carriers advocate can be attained only by making the first three-percent general increase effective on the same date (July 1, 1991) as that applicable to the organizations covered by the PEB 219 recommendations. We see no reason why the IAM should suffer any loss of retroactivity simply because it declined to participate in the proceedings before PEB 219, which it had the legal right to do.

## B. HEALTH AND WELFARE

### *IAM Position*

The IAM seeks a separate plan for its members and their dependents. Although the separate plan replicates the National Plan as revised, the IAM insists that it be funded entirely by the carriers, including any increased costs.

### *Carriers Position*

The carriers argue that the recommendation of PEB 219, as clarified by the Special Board, and as applicable to all the other organizations in contract with them, should be made applicable to the IAM. Included, the carriers assert, are the numerous detailed changes in the plan that are identical as to each union. The changes include provisions for employee cost-sharing commencing in 1993.

### *Recommendation*

This is an issue that should be resolved on the basis of the recommendation of PEB 219, as clarified by the Special Board, with the changes applicable to the other organizations. To do otherwise would create different health and welfare plans among employees of the carriers, with different cost contributions by the employees. The disaffiliation of the IAM-represented employees could detract from the fiscal vitality of the National Plan, with the attendant risk that benefits, experience-ratings,

and costs may differ. We think this would be destabilizing both to the relationships among the employees and their representative organizations and to labor relations between the carriers and those organizations.

The IAM proposal should be withdrawn, and the carrier proposal, based on the PEB 219 recommendation, including the sharing of cost increases, should be adopted.

### C. INCIDENTAL WORK RULE

#### *Carriers Position*

The carriers urge that the preexisting incidental work rule should be amended, in accordance with the recommendations of PEB 219, to include "simple tasks" requiring no special training or tools; to allow up to two additional hours of such work to be done per shift by each craft employee; and to apply to all backshop employees, as well as those in running repair locations.

#### *IAM Position*

The IAM opposes PEB 219's proposed expansion of the preexisting incidental work rule. It sees the expansion of the rule as an invasion of its scope rule. Under PEB 219's incidental work rule, according to the IAM's version of what is happening, a skilled machinist may well be replaced by a lower-rated employee, including laborers or firemen and oilers, to fill positions on a rotating two hour basis.

#### *Recommendation*

PEB 219's, recommendation on the incidental work rule reads in part as follows:

... [We] are persuaded that the time has come to eliminate some of the restrictions which unnecessarily add time, costs, and delays to the accomplishment of shopcraft work. To that end, the Board recommends that: (1) The coverage of the rule be expanded to include all Shop Craft employees and the back shops. (2) "Incidental Work" be redefined to include simple tasks that require neither special training nor special tools. (3) The Carriers be allowed to assign such simple tasks to any craft employee capable of performing them for a maximum of two hours per work day, such hours not to be considered when determining what constitutes a "preponderant part of the assignment."



Special Board 102-29, in the clarification stage, dealt with two questions, as follows:

*"Shop Craft Request No. 6*

"Does the PEB's recommended relaxation of existing work rules allow the carriers to assign an unlimited amount of such work across craft lines?"

*"Clarification or Interpretation of the Special Board*

"The PEB intended to allow two hours of incidental work per employee per shift."

At the contract clarification stage of Special Board 102-29, the Special Board chose the carriers' statement of the new incidental work rule. This Board has fully considered all of the IAM's views on the new incidental work rule. On the record before this Board, we cannot justify allowing the machinists craft to deviate from the PEB 219 pattern set forth above. It would be unworkable and unfair if the preexisting incidental work rule were to continue to be applied to the machinists, while all of the other shop craft employees were subject to the new incidental work rule. The Board recommends the adoption of the new incidental work rule, as developed by PEB 219 and Special Board 102-29.

D. SUBCONTRACTING

*IAM Position*

The IAM offers a series of proposals, "to strengthen the recommendations of PEB 219." The General Chairman representing the IAM employees of CSX Transportation Company (CSXT) presented a statement that he says applies with equal force to the dispute between the IAM and the other carriers as well as to the dispute between the IAM and CSXT. The IAM proposes the following modifications to Article II of the September 25, 1964, Agreement on Subcontracting:

- a. Prohibit the continuing or permanent transfer of Machinists' work to third parties without prior agreement with the IAM.
- b. Prohibit the subcontracting of work while qualified Machinists are on furlough.
- c. Redefine cost criteria for subcontracting to exclude overhead costs and other costs not directly associated with the work in question.
- d. Require that the subcontractor pay a prevailing wage which is equivalent to the wages paid in the railroad industry.

The IAM believes that the Article II, Section 2, as amended by PEB 219, is flawed because it permits a carrier to control the timing of the expedited dispute resolution process, and can lead to the inundation of the organization with a series of notices, effectively destroying its ability properly to respond to the carrier's notices. It seeks to amend Section 2 of Article II to provide for a 30-day preliminary notice of a carrier's intent to subcontract.

The IAM contends that the Electrical Power Purchase Agreements, or EPPAs, go beyond subcontracting and are inherently destructive of the 1964 subcontracting agreement. The organization states that the practice is a subterfuge that should be condemned by the Board.

#### *Carriers Position*

The carriers contend that the IAM proposals are unreasonable and an attempt effectively to eliminate subcontracting. They state that without the ability to resort to outside contractors under the five criteria allowing subcontracting, as set forth in the 1964 Agreement, carriers would be forced to incur huge unnecessary expenses and delays to essential work.

The carriers state that nothing about the way in which machinists work or the way they are affected by the contracting out rules justifies any changes from the revisions of Article II made by PEB 219 and Special Board 102-29, which are applicable to the other shopcrafts. Moreover, the carriers assert that the same contracting-out rules must apply to machinists, as well as to the other shopcrafts, not only in order to reduce administrative costs, but also because many jobs being contracted out involve both machinists and nonmachinists work.

The carriers point out that the power purchase agreements are now within the definition of contracting out under the PEB 219 pattern, and that a carrier cannot enter into an EPPA without prior agreement with the affected organization or authorization by a neutral arbitrator.

The carriers state that it is clear that the machinists working for the CSXT are bound by the national bargaining on contracting out.

#### *Recommendation*

This Board cannot recommend, on the basis of the record before us, that the IAM alone should have the benefit of the changes it has proposed, while other shopcrafts would be limited to the recommendations of PEB 219, as clarified by Special Board 102-29, and as reduced to contract language. We believe that this would be destabilizing.

The record before this Board does not establish that the new dispute-resolution procedures developed by PEB 219 and Special Board 102-29, and reduced to contract language, are biased in the carriers' favor, as contended by the IAM. Certainly the carriers and the shopcrafts have a duty of good faith and fair dealing in regard to the application and utilization of these procedures. It is the expectation of this Board that the parties will fully live up to those obligations.

Special Board 102-29, in its interpretation and clarification phase, stated:

*Shop Craft Request No. 4*

Does the definition of covered work which the PEB recommended be included in the revised subcontracting provisions of the September 25, 1964 Agreement mean that EPPAs and similar arrangements are brought within the scope of the Agreement?

*Clarification or Interpretation of the Special Board*

The PEB intended that the EPPAs and similar arrangements are within the scope of the September 25, 1964 Agreement.

The Board believes that inclusion of EPPAs within the scope of the September 25, 1964, Agreement provides sufficient and appropriate relief for the IAM concerning power purchase agreements.

The statement of the IAM General Chairman on the CSXT applied not only to the CSXT and the IAM, but with equal force to the dispute between the IAM and all of the other carriers before PEB 220. It is clear that the recommendations of this Board must apply to all of the carriers before it, including CSXT.

The Board recommends that the PEB 219 recommendations, as clarified by Special Board 102-29, and as reduced to contract language, be applied to the IAM. We recommend that the IAM withdraw its proposals to amend Article II of the September 25, 1964, Agreement on Subcontracting.

E. SUCCESSORSHIP/LINE SALES

This issue bears two titles because the parties present it to us with two identifications. The IAM refers to it as "successorship," the carriers, as "line sales."

*IAM Position*

The IAM seeks a contract clause with "successorship language" that essentially requires that its recognition, its contract and the employment of its members be continued and assumed by a new owner, operator, or lessee of the carrier's line or any part thereof (e.g., "shortline transfers") in the event of rail line transfers, mergers or any similar transactions.

It argues that under present conditions, the carriers may engage in such practices, leaving machinists suddenly out of work or employed by the short line with grossly substandard wages and working conditions and without union coverage.

*Carriers Position*

The carriers doubt the bargainability of this issue. Alternatively, they rely on the outcome of the "identical proposal" by PEB 219. They point out that PEB 219 declined to make any recommendations on the proposal and that it would "flout" the intent of Congress in P.L. 102-29 under which Congress withheld this issue from the jurisdiction of the Special Board, and a fundamentally inequitable breach of the pattern principle, to grant the IAM proposal. They assert that the machinists have no greater need for protection from any form of job loss than other shopcraft employees.

*Recommendation*

We find that this issue is properly subject to collective bargaining. However, as virtually no other carrier has a protective clause in its agreements, we find that it would be profoundly destabilizing to recommend such a clause to the organization requesting it.

## F. SOUTHERN PACIFIC LINES

This Board has fully considered the positions of the parties as set forth in their confidential submissions to the Board.

*Recommendation*

The Board recommends that the IAM and the SP pursue a local process of negotiations concerning wages, culminating if necessary in arbitration, based on the July 18, 1991, Special Board 102-29 Report regarding the "Southern Pacific Transportation Company."

## G. MORATORIUM

We recommend a moratorium period for all matters on which notices might properly have been served when the last moratorium ended on July 1, 1988, to be in effect through January 1, 1995. Notices for changes under Section 6 of the Railway Labor Act accordingly may be served by any of the parties or another party no earlier than November 1, 1994.

## VII. CONCLUSION

These recommendations represent our best judgement on the merits and equities of the issues in dispute. They also represent our estimate of a fair and realistic package of conditions, benefits, and benefit changes that, as a totality, should provide a basis for an acceptable, overall settlement.

We think it would be unrealistic and a costly exercise in futility for all concerned if our total recommendations did not take into consideration, as a critical ingredient, their acceptability by the parties. Nevertheless, we think it impracticable to ask that the parties adopt these recommendations unconditionally and without modification. As the Railway Labor Act does not make them binding, we expect that the parties will make adjustments as needed, or if necessary, subject them to major revision. In any case, we hope that we have provided a well-marked road map for good faith use by the parties in completing their contracts through the process of free collective bargaining. We express to the parties our profound thanks for the intelligent, comprehensive, and professional presentation of their cases and for their patience and cooperation with our procedures. We also acknowledge with thanks the assistance of Roland Watkins, the Special Assistant to the Board.

Respectfully,

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BENJAMIN AARON, *Chairman*

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ERIC J. SCHMERTZ, *Member*

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DAVID P. TWOMEY, *Member*

**APPENDIX "A"**  
**EXECUTIVE ORDER**  
**12794**

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**ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE  
DISPUTES BETWEEN CERTAIN RAILROADS AND THEIR  
EMPLOYEES REPRESENTED BY THE INTERNATIONAL  
ASSOCIATION OF MACHINISTS AND AEROSPACE  
WORKERS**

Disputes exist between certain railroads and their employees represented by the International Association of Machinists and Aerospace Workers as designated on the attached list, which is made a part of this order.

These disputes have not been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151-188) ("the Act").

In the judgment of the National Mediation Board, these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive various sections of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the Act, it is hereby ordered as follows:

*Section 1. Creation of Emergency Board.* There is created effective April 3, 1992, a board of three members to be appointed by the President to investigate these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any railroad carrier. The board shall perform its functions subject to the availability of funds.

*Sec. 2. Report.* The board shall report to the President on May 3, 1992, with respect to these disputes.

*Sec. 3. Maintaining Conditions.* As provided by section 10 of the Act, from the date of the creation of the board and for 30 days after the board has submitted its final report to the President, no change in the conditions out of which the disputes arose shall be made by the railroads or the employees, except by agreement of these parties.

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

GEORGE BUSH

THE WHITE HOUSE,  
March 31, 1992.