

REPORT  
TO  
THE PRESIDENT  
BY  
EMERGENCY BOARD  
NO. 222

Submitted Pursuant to Executive Order No. 12796  
Dated March 31, 1992  
and Section 10 of  
The Railway Labor Act, as Amended

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Investigation of disputes between the National Railroad Passenger Corporation and their employees represented by certain labor organizations.

(National Mediation Board Case Nos.  
A-12103, A-12198, A-12246, A-12263,  
A-12268, A-12290, A-12291, A-12309,  
A-12318, A-12391 and A-12467)

Washington, D.C.

May 28, 1992

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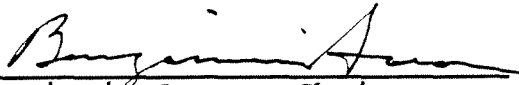
The President  
The White House  
Washington, D.C.

Dear Mr. President:

On March 31, 1992, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12796, you established an Emergency Board to investigate disputes between the National Railroad Passenger Corporation and their employees represented by certain labor organizations.

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

Respectfully,

  
Benjamin Aaron, Chairman

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## I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 222 (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. 12796. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between the National Railroad Passenger Corporation and their employees represented by certain labor organizations. 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. Preston J. Moore of Oklahoma City, Oklahoma, Eric J. Schmertz of Riverdale, New York, David P. Twomey of Quincy, Massachusetts, and Arnold M. Zack of Boston, Massachusetts, were appointed as Members. The National Mediation Board appointed Roland Watkins, Esq., as Special Assistant to the Board.

## II. PARTIES TO THE DISPUTE

### A. The National Railroad Passenger Corporation

The National Railroad Passenger Corporation (Amtrak) provides passenger service to 500 communities in 45 states nationwide. There are 60,500 daily passengers and 253 daily trains on Amtrak's nationwide route system; approximately half are passengers on the Northeast Corridor which runs between Washington, D.C., and Boston, Massachusetts. Outside the corridor, Amtrak provides short-distance passenger service to nearly 14,000 daily passengers in ten corridors nationwide, four of which serve more than 1,000 passengers daily. In the largest of these, Amtrak serves 4,700 passengers traveling between Los Angeles and San Diego, California.

In addition to passenger operations, Amtrak generates \$50 million in annual revenue from mail and express service. The majority of this service operates over the Northeast Corridor. The United States Postal Service is the largest customer, representing 92 percent of its nonpassenger revenue.

#### B. The Labor Organizations

The disputes before the NMB involved ten labor organizations that collectively represent most of Amtrak's employees. They are:

American Train Dispatchers Association (ATDA)

Brotherhood of Locomotive Engineers (BLE)

Brotherhood of Maintenance of Way Employees (BMWE)

International Association of Machinists & Aerospace  
Workers (IAM&AW)

International Brotherhood of Boilermakers and  
Blacksmiths (IBB&B)

International Brotherhood of Electrical Workers (IBEW)

International Brotherhood of Firemen & Oilers (IBF&O)

Transport Workers Union (TWU)

Transportation Communications International Union. (TCU)

United Transportation Union (UTU)

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#### III. ACTIVITIES OF THE EMERGENCY BOARD

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

On April 16-22, 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 carrier presented its position through written statements and oral testimony of W. Graham Clayton, Jr., Chairman and Chief Executive Officer of Amtrak; David Z. Zurowsky, Senior Director - Resource Management, Amtrak; John P. Prokopy, Director - Market Planning, Amtrak; William C. Harsh, Jr., Mercer Management Consulting, Inc.; John P. Lange, Assistant Vice President - Labor Relations, Amtrak; Robert M. Burk, Chief Mechanical Officer, Amtrak; John Livingood, Director-Labor Relations, Amtrak; Harold Bongarten, Bongarten Associates; G.R. Simons, Bongarten Associates; John J. Cunningham, Assistant Chief Engineer - Maintenance of Way and Structures, Amtrak; George Daniels, Vice Chairman of the National Railway Labor Conference; John S. Lightner, General Superintendent-Transportation, Amtrak; and David S. Evans, National Economic Research Associates, Inc. Amtrak was represented by Harry A. Rissetto, Esq., of Morgan, Lewis & Bockius.

The TCU's presentation consisted of written statements and oral testimony by Robert A. Scardelletti, International President, TCU; Mitchell M. Kraus, Esq., General Counsel, TCU; Robert Wojtowicz, TCU; William Fairchild, General President of the Brotherhood of Railway Carmen Division, TCU; Joel Parker, International Vice President, TCU; and James J. Kilgallon, President of Ruttenberg, Kilgallon and Associates.

The TWU's presentation consisted of written statements and oral testimony by George Leitz, President, Transport Workers Union of America and Joseph Madison, TWU. The organization was represented by Asher Schwartz, Esq., of O'Donnell, Schwartz, Glanstein & Rosen.

The ATDA's presentation consisted of written statements and oral testimony by Robert J. Irvin, President, ATDA; Harry Brandt, Assistant Chief Train Dispatcher, Amtrak; and James J. Kilgallon. The ATDA was represented by Michael S. Wolly, Esq., of Mulholland & Hickey.

The IBEW's presentation consisted of written statements and oral testimony by James A. McAteer, International Representative, IBEW; Robert Wood, Director of Research and Economic Department, IBEW; and Neil S. Gladstein, IBEW.

The IAM&AW's presentation consisted of written statements and oral testimony by Robert Reynolds, General Chairman, IAM District 19; 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., and John A. Edmond, Esq., of Guerrieri, Edmond & James.

The BMWE's presentation consisted of written statements and oral testimony by Jed Dodd, General Chairman, BMWE; Ivy Silver; and Thomas R. Roth. The Organization was represented by William A. Bon, Jr., Esq., General Counsel of the BMWE.

The BLE's presentation consisted of written statements and oral testimony by Edward Dubroski, General Secretary/Treasurer, BLE and Ronald E. Wiggins, General Chairman.

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 sessions to prepare its Report and Recommendations. The entire record considered by the Board consists of approximately eight



hundred (800) pages of transcript and thirty-three hundred (3,300) pages of exhibits.

#### IV. HISTORY OF THE DISPUTE

On or about January 20, 1988, the IBEW, in accordance with Section 6 of the Railway Labor Act, served notice on Amtrak of its demand to change the existing collective bargaining agreements. Amtrak served notice on or about April 1, 1988. The IBEW served an additional notice on or about April 18, 1988. Amtrak, on October 14, 1988, applied to the National Mediation Board (NMB) for its mediatory service. The application was docketed as NMB Case No. A-12103. Mediation was undertaken by Member Javits and Mediator Richard A. Hanusz.

On or about April 1, 1988, Amtrak served notice on the BMW. The BMW, on May 1, 1988, served notice on Amtrak of its demands for changes in the existing agreements covering employees on the Northeast Corridor portion of the Amtrak system. The BMW, on December 6, 1988, applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-12198.

On or about June 24, June 28 and July 25, 1988, the UTU served notice on Amtrak. Amtrak made counter proposals on or about January 5, 1989. Amtrak, on April 20, 1989, applied to the NMB for its mediatory services. The application was docketed as NMB Case No. A-12246.

On or about April 1, 1988, Amtrak served notice on the BMW of its demands for changes in the provisions of the collective bargaining agreements. The BMW, on or about April 11, 1988 and May 13, 1988, served its notices on Amtrak. On May 30, 1989, Amtrak applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-12263. Mediation was undertaken concurrently with NMB Case No. A-12198.

Amtrak served notice on the Joint Council of Carmen, Helpers, Coach Cleaners and Apprentices (composed of the TWU and the Brotherhood of Railway Carmen division of the TCU) of its demand for changes in the provisions of the collective bargaining agreements on or about April 1, 1988. The Joint Council, on or about May 18, 1988, served notice of its demands for changes. On June 14, 1989, Amtrak and the Joint Council applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-12268.

The BLE served notice on or about June 30, 1988. Amtrak served a counterproposal on March 9, 1989. The BLE, on June 25, 1989, applied to the NMB for its mediatory services. The application was docketed as NMB Case No. A-12290.

Amtrak served the American Railway and Airway Supervisors Association, a Division of the TCU, notice of its demands for changes on or about April 1, 1988. ARASA/TCU served, on or about May 30, 1988, a notice on Amtrak. On July 27, 1989, ARASA/TCU applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-12291.

Amtrak served notice on or about April 1, 1988, to the ATDA. On or about June 1 and July 1, 1988, the ATDA served notices. The ATDA, on September 27, 1989, applied for the NMB's mediatory service. The application was docketed as NMB Case No. A-12309.

On or about January 20, 1988, the IAM&AW served notice on Amtrak of its demand for a change in the collective bargaining agreements. Amtrak, on or about April 18, 1988, served notice of its demands for changes in the collective bargaining agreements. The IAM&AW served an additional notice on or about April 18, 1988. The IAM&AW, on November 3, 1989, applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-12318.

Amtrak served notice on the IBF&O on or about April 1, 1988. The organization served notices on May 19 and June 10, 1988 and December 28, 1989. On May 22, 1990, the IBF&O applied to the NMB for its mediatory services. The application was docketed as NMB Case No. A-12391.

On or about April 1, 1988, Amtrak served notice on the IBB&B of its demands. The IBB&B, on or about May 31, 1988, served its notice on Amtrak. The IBB&B, on May 3, 1991, applied for the NMB's mediatory service. The application was docketed as NMB Case NO. A-12467.

All of the mediation efforts were unsuccessful.

On March 2, 1992, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered all the organizations and Amtrak the opportunity to submit their controversy to arbitration. In NMB Case Nos. A-12198, A-12246, A-12263 and A-12290, Amtrak declined the proffer of arbitration. The organizations declined the proffer in NMB Case Nos. A-12291, A-12309, A-12318 and A-12467. Amtrak and the respective organizations declined the proffer in NMB Case Nos. A-12103 and A-12268. Accordingly, on March 4, 1992, the NMB notified all the parties that it was terminating its mediatory efforts.

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 substantially to 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 12796 on March 31, 1992, to create, effective April 3, 1992, this Board to investigate and report concerning these disputes.

The dispute in NMB Case No. A-12246, involving Amtrak and the UTU, was settled by an agreement dated May 4, 1992. The IBF&O and Amtrak, NMB Case No. A-12391, reached an agreement on April 3, 1992. On April 8, 1992, this Emergency Board was informed that the membership of the IBB&B had ratified its tentative agreement resolving the dispute in NMB Case No. A-12467. In NMB Case No. A-12291, ARASA/TCU ratified its tentative agreement on April 15, 1992.

## V. INTRODUCTION

The threshold question before us concerns the impact on this Presidential Emergency Board 222 of the recommendations of PEB 219, as enacted by Congress, and as reviewed by the Special Board.

The members of Emergency Boards 220 and 221 concluded that the recommendations of PEB 219 were presumptively applicable to the issues before those Boards, but rebuttable for persuasive reasons, issue-by issue. The determinative standard was whether a variation from what PEB 219 recommended would destabilize existing relationships between and among the parties involved in proceedings before those two Boards.

That presumption was founded primarily on the fact that organizations representing a majority of employees of carriers appearing before Emergency Boards 220 and 221 are now bound by the recommendations of PEB 219.

That is not the case with Amtrak. It has settled with a number of organizations representing about half of its employees on a wage package different from that recommended by PEB 219. By doing so, it has introduced into the present case an "internal model" different from that established by PEB 219. In short, through negotiations and its position before us, it has taken itself out of the PEB 219 mold, at least as to wages. Hence, the possibility of a "destabilizing" effect between those bound by the PEB 219 recommendations and others gaining a better wage benefit is not present. This is not to say that the PEB 219 recommendations may not be relevant. Rather, they will be considered, where appropriate, on the same footing as other probative material.

VI. ISSUES, POSITIONS OF THE  
PARTIES, RECOMMENDATIONS

A. APPLICABLE TO ATDA, BLE, BMW, IAM, IBEW, JCC

1. WAGES

Amtrak Wage Proposal

Amtrak has proposed either adherence to the PEB 219 recommendations, or in consideration of their requested work rule relief, the following schedule of general wage increases to the labor organizations involved in the cases before PEB 222.

\$2,000 lump sum	-	Immediate
5 percent	-	Upon ratification
4 percent	-	October 1, 1992
2 percent	-	January 1, 1993
3 percent	-	October 1, 1993
4 percent	-	October 1, 1994
2 percent	-	July 1, 1995

Amtrak also proposes a cost-of-living adjustment for each six-month period, beginning July 1, 1995, based upon the COLA formula previously utilized by the parties.

JCC Wage Proposal

The JCC proposes the following schedule of general wage increases:

4 percent	-	July 1, 1988
5 percent	-	July 1, 1989
5 percent	-	July 1, 1990
5 percent	-	July 1, 1991
3 percent	-	January 1, 1992
2 percent	-	July 1, 1992

3 percent	-	January 1, 1993
2 percent	-	July 1, 1993
3 percent	-	January 1, 1994

The JCC also proposes the abolition of all entry level rates. In addition, it requests that all positions designated as Coach Cleaner/Equipment Servicers receive a further \$.30 per hour increase, and that wage differentials for the second and third tricks be paid in the amounts of \$.25 and \$.30 per hour, respectively.

#### ATDA Wage Proposal

The ATDA proposes the following schedule of base rate increases and lump sum payments:

##### Base Rate Increases

4 percent	-	May 1, 1991
3 percent	-	July 1, 1991
2 percent	-	October 1, 1991
4 percent	-	October 1, 1992
2 percent	-	January 1, 1993
3 percent	-	October 1, 1993
4 percent	-	October 1, 1994

Parity with Conrail: 1.8  
percent for train dispatchers  
and power directors; .6  
percent for assistant chief  
dispatchers

January 1, 1995

##### Lump Sum Payments

\$2,000	-	Signing date
\$1,401	-	July 1, 1992
\$1,401	-	January 1, 1993
\$1,443	-	January 1, 1994
\$1,000	-	January 1, 1995

#### IBEW Wage Proposal

(On February 11, 1992, Amtrak and the IBEW reached an interim agreement covering, among other things, the IBEW wage demands for the period, July 1, 1988, through March 1, 1992.)

The IBEW proposes the following schedule of general wage increases:

4 percent	-	October 1, 1992
3 percent	-	January 1, 1993
4 percent	-	October 1, 1993
4 percent	-	October 1, 1994

In addition, the IBEW seeks a "skill adjustment" of four percent, to become effective with the consummation of an agreement with Amtrak.

#### IAM Wage Proposal

The IAM proposes the following schedule of general wage increases:

5 percent	-	July 1, 1988
5 percent	-	July 1, 1991
3 percent	-	January 1, 1992
3 percent	-	July 1, 1993
3 percent	-	March 1, 1994
3 percent	-	January 1, 1995

In addition, the IAM asks that all rates of pay be adjusted every six months, commencing July 1, 1992, by application of an automatic cost-of-living escalator clause based on a formula providing a one-cent increase for each .3 percent rise in the CPI-W (1967=100). Also, the IAM proposes a \$.25 per hour shift differential for employees required to work a second shift and a \$.35 per hour shift differential for those required to work a third shift.

#### BMWE Wage Proposal

The BMWE proposes the following schedule of general wage increases:

4 percent	-	July 1, 1988
4 percent	-	July 1, 1989
4 percent	-	July 1, 1990
5 percent	-	July 1, 1991
5 percent	-	July 1, 1992
5 percent	-	July 1, 1993
5 percent	-	July 1, 1994



The BMWE also proposes the elimination of reduced entry rates, and equalization of rates of pay of the same classifications between the southern and northern districts. In addition, the BMWE asks that all rates of pay be adjusted every six months, commencing July 1, 1992, by application of an automatic cost-of-living escalator clause based on a formula providing a one-cent increase for each .3 percent rise in the CPI-W.

#### BLE Wage Proposal

As nearly as the Board can determine, the BLE is asking, at a minimum, for general increases of 4.5 percent in 1988; 4.4 percent in 1989; 4.1 percent in 1990; 3.6 percent in 1991; and thereafter, 5 percent annually for the duration of its contract with Amtrak. It also wants cost-of-living allowances equivalent to the post-moratorium COLA recommended by PEB 219. Finally, the BLE demands full retroactivity, i.e., "[E]ach engineer who worked during the pendency of this dispute will receive the applicable percentage increases for the period he or she worked, without exception."

#### Amtrak Position

Amtrak points out that its proposals are consistent with the pattern established in agreements already reached with other organizations on Amtrak that provided greater wage settlements for additional rules relief. Such pattern agreements have been reached with the following organizations: The Amtrak Service Workers Council (ASWC), the Transportation Communications Union (TCU), the American Railway and Airway Supervisors (ARASA-M/E, ARASA-M/W, and ARASA-OBS), the Brotherhood of Railroad Signalmen (BRS), the Sheet Metal Workers' International Association (SMWIA), and the International Brotherhood of Boilermakers and Blacksmiths (IBB). Two of the organizations comprising elements of the ASWC -- the Transport Workers Union (TWU) and the TCU -- have accepted the pattern settlement. Those two unions also are part of the Joint Council of Carmen and Coach Cleaners (JCC), which, however, has not accepted the pattern settlement.

Amtrak advises that it has now negotiated agreements covering more than 60 percent of its workforce. More than 50 percent of those employees are covered by the Amtrak pattern. Agreements reached with the ARASA (ME), the SMWIA, the IBB, and the International Brotherhood of Firemen and Oilers (IBF&O) cover approximately 26 percent of Amtrak's shopcraft employees.

Amtrak argues that its wage proposal is clearly more beneficial to its employees than that proposed by PEB 219. It also claims that the proposed increases are competitive when compared to labor market increases and considering Amtrak's special financial situation and ability to pay. Amtrak insists, moreover, that its proposed wage package is fair. It provides a shopcraft journeyman with an increase of \$2.79 per hour (from \$12.81 to \$15.60) over the life of the agreement, for a total of 21.7 percent.

According to Amtrak, its financial position, despite substantial improvement in the 1980s, is still shaky. The carrier states that it is experiencing a short-term crisis: revenue and cash reserves are very low, and a budget deficit of \$67 million is projected for FY 1992, even after receiving a federal operating subsidy in excess of \$330 million. Indeed, it points out, the results for FY 1992 are hardly encouraging: ridership is down 5.6 percent; revenue is down .9 percent; expenses are up 1.8 percent.

Summing up, Amtrak declares that in order to survive it must hold down its costs and increase its capital investments, so that it can expand by extending its routes to areas needing more rail passenger service. It contends that its pattern proposal is consistent with those objectives and fair to its employees.

#### Organizations Positions

Each of the organizations whose wage proposals are summarized above presented extensive and detailed statements of its position

on the wage issues. A common theme, however, ran through all the presentations. It can be summarized as follows:

Amtrak workers in general have suffered a serious diminution of real pay over the course of the past decade, as well as a substantial further decline during the pendency of contract negotiations leading up to the proceeding before this Board.

The wage progress of Amtrak workers has been substandard when measured against that of almost all relevant comparators.

Amtrak wage levels for all classifications are below those paid to comparable workers in other industries throughout the U.S.

Even under the organizations' proposals, a full recapturing of lost wage progress will not be accomplished.

#### Recommendation

As we noted in the Introduction to this Report, through its negotiations with other rail labor organizations and in its position before us, Amtrak has removed itself from the so-called pattern resulting from the PEB 219 wage recommendations and the resultant federal law. It has, in fact, established a wage pattern of its own, now covering about 50 percent of its employees. To ignore that pattern and to grant each of the organizations here involved its own wage demand would reduce Amtrak's wage structure to chaos. We decline to make such a recommendation.

As the members of this Board stated in our Report in PEB 221, "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 inevitably destabilizing consequences, is damaging to the public interest." That observation seems to us to

be equally applicable to the instant case.

Despite the appeal of some of the claims advanced by the organizations in this case in support of their wage proposals and their request for skill differentials, we believe that Amtrak's wage proposal should be adopted. Because the JCC did not persuade us of the merit of its proposal to abolish entry rates, we recommend that it be withdrawn.

The proposals of the JCC and the IAM for increased shift differentials should be withdrawn.

## 2. TOTAL QUALITY COMMITMENT

### Amtrak Position

Amtrak proposes that the Board recommend adoption of its contract language on total quality commitment. It states that a joint approach involving employees and supervisors at the local level is essential to delivering total quality. It requests language stating that local supervisors and employees are encouraged to implement cooperative approaches, including quality circles, to improve quality.

### Organizations Positions

Some of the organizations have expressed opposition to this proposal; others have not.

### Recommendation

The achievement of quality performance and service is essential to the success of Amtrak and to the job security of its employees. The parties recognize this and appreciate that its attainment is based upon mutual cooperation, respect, and dedication. Although we do not think that this goal need be incorporated in their collective bargaining agreement, we encourage them to give joint attention to it and to consider undertaking mutually agreed-

upon arrangements to achieve that objective.

B. APPLICABLE TO IAM, IBEW, JCC

1. COMPOSITE MECHANIC AND MECHANIC A & B  
AND INCIDENTAL WORK RULE

Amtrak Position

Amtrak's proposal for a composite mechanic and Mechanic A & B classifications are related, and will be considered together.

Under the title "employee utilization," Amtrak seeks more work assignment flexibility in the assignment of both shopcraft and operating employees than would be available under the incidental work rule of the National Agreement. Its proposal, applicable to the JCC, the IBEW, and the IAM, is that "employees perform work they are capable of performing (after appropriate training) including work not traditionally associated with their craft."

Additionally, Amtrak seeks to establish Mechanic A & B classifications applicable to the JCC, the IBEW, and the IAM.

Amtrak claims that it needs further efficiencies in its shops. In the maintenance area, the carrier asserts, it is common for employees to possess mechanical aptitude and skills extending beyond artificial work-assignment barriers created by existing labor agreements. Performing assignments based on skills and abilities rather than classification, Amtrak insists, is an absolute necessity if it is to move forward.

Amtrak claims that present classification of work rules are complicated, location-specific arrangements of work jurisdiction. They divide work among crafts in a manner that bears no relation to the skills and abilities of the employee involved. It argues that employees from three or four crafts should not be required to work

on a project when the tasks involved are within the skills of one or, at most, two. Amtrak seeks increased productivity as the indispensable counterpart to the wage rate increase in the Amtrak wage and work rule pattern.

Amtrak points out that this flexibility has been agreed to by the SMWIA, the ARASA, the IBB&B, and the IBF&O, and that its proposal provides that no existing employee will be furloughed as a result of the rule relief.

Amtrak proposes the restructuring of its shopcraft employee classifications into two skill levels of work, Mechanic A and Mechanic B, with incumbent journeymen classed as A at the present journeyman rate. Only new hires and incumbent Helpers will be classified as B at a rate 85 percent of the Mechanic A rate. Future hires will be subject to the new classifications and rate structure, including entry rate schedules.

According to Amtrak, its proposal would allow for better utilization of skilled manpower by assigning the preponderance of work not of a journeyman level, to Mechanics B, and the skilled journeyman work to Mechanics A.

#### Organizations Positions

Each of the affected organizations strongly opposes the composite mechanic and Mechanic A and B proposals. Their collective position may be summarized as follows:

The purpose in establishing the composite mechanic classification is to obliterate all craft lines on Amtrak. The proposal constitutes an unwarranted modification of the current system, is directly contrary to historical practice, and conflicts with the Railway Labor Act and the NMB's craft and class rulings, which have been consistently construed to provide that employees be represent

ed in system-wide crafts or classes. Moreover, the proposal has been rejected by emergency boards since 1966.

The IAM, the IBEW, and the JCC claim that the incidental work rule, as extended by PEB 219, is all that Amtrak needs, and should be fully implemented for a period of time before a "radical" proposal such as the composite mechanic classification is considered.

The significance of settlements with SMWIA, IBF&O, and IBB&B in which composite mechanic provisions were accepted, is discounted. Together, the three organizations constitute only 19 percent of the shopcraft employees. According to the shopcrafts involved in this case, the three smaller organizations agreed to the proposal for self-preservation in the face of diminishing work within their crafts.

The IAM, the IBEW, and the JCC opposition to Mechanic A and Mechanic B classifications follows the same lines as their opposition to composite mechanic or employee utilization.

The IAM interprets the proposal to mean that one-half the workforce represented by the IAM would be at the lesser B rate, resulting in a significant lowering of IAM wage rates by reclassification of the majority of the craft as lower-skilled. Newly hired IAM mechanics, it charges, would work side by side with more senior employees doing the same work at lower wage rates. The IAM attacks the proposal as a two-tiered system that will inevitably result in lowered morale and productivity.

The IBEW interprets the proposal as Amtrak's attempt to establish a second-class group of craft workers that would be paid substandard wages. The IBEW argues that a craft work environment is entirely different from that of a production or manufacturing environment, and that while efficiency may be obtained by fragment-

ing the latter, the opposite result occurs when the work of a craftsman is fragmented. The IBEW concludes that the Amtrak proposal amounts to nothing more than a wage concession disguised as a classification scheme.

The JCC views the Mechanic A & B proposal as "another look at the composite mechanic." At 85 percent of the journeyman rate, it points out, the Mechanic B wage rate is 30 cents an hour less than helpers currently earn. The craft is basically comprised of journeymen, with only 3 percent as helpers. According to the JCC, the Mechanic A & B proposal would result in one-half the workforce being classified at the B rate, and over time, substantially more in that category.

#### Recommendation

We find no pattern as a result of agreements on "work flexibility" or "employee utilization" programs with a few of the smaller crafts; they represent a very small part of the workforce, and it appears that implementation of their arrangements will depend on similar arrangements with the major craft organizations.

What we do find, however, is that the proposal for a composite mechanic (or "employee utilization") and for the creation of Mechanic A & B classifications are premature. PEB 219, rejected a composite mechanic classification, but it did reiterate and expand the incidental work rule. PEB 219 said inter alia:

"...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. Too that end the Board recommends that: (1) The coverage of the rule be expanded to include all shop craft employees and the back shop. (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."

We believe that recommendation is sufficient. The incidental work rule has not yet been fully implemented, and therefore has not yet been tested. We agree with the organizations that experience under that rule should be fully evaluated before the other Amtrak proposals discussed above are considered on their merits.

## 2. EXERCISE OF SENIORITY RIGHTS UNDER THE REDUCING & INCREASING OF FORCES RULES

### Amtrak Position

Amtrak seeks to amend the rules pertaining to reducing and increasing forces, which govern how employees move from one position to another in the event of job abolishment or displacement. Amtrak proposes the following modifications:

1. Require employees whose positions are abolished to exercise their displacement rights within 5 days of notice to be effective on the date of abolishment.
2. Require displaced employees to exercise displacement rights under two working days thereafter.
3. Require displacement of junior employees when an employee chooses to displace where positions are substantially the same or identical with the same hours, rest days, and supervisor.
4. When facility improvements require relocation of forces/operations, arrange forces at a facility without abolishing and readvertising positions when the hours, work days, assigned duties, conditions and/or rest days are unchanged.
5. Assign employees who fail to exercise displacement rights within specified time frames

to either displace the junior employee or be assigned to any available position or work at the location.

Amtrak presents a number of examples which it states demonstrate the need for reform in the exercise of seniority rights. It contends that the proposed changes will stabilize the workforce and cut down on the disruptive movement across jobs and work areas.

#### Organizations Positions

The IAM opposes Amtrak's proposal to reduce the advance notice Amtrak is required to give regarding decreasing and increasing force rules. It states that employees need as much advance notice of changes as possible.

The IAM also opposes the proposed change that would require displaced employees to exercise displacement rights within two days after the displacement. It states that there are so many factors that an employee needs to consider in large facilities like Beech Grove or Wilmington that the time should not be reduced from seven days to two. The IAM opposes, as well, Amtrak's proposal that an employee who chooses to displace, when positions are substantially the same or identical with the same hours and rest days and supervisor, must displace the junior employee. The IAM states that the proposal deprives the senior employee of significant job possibilities.

Finally, the IAM opposes Amtrak's proposal that when the relocation of forces or operations within the facility occurs due to facility improvements, the forces or operations can be moved without readvertising the involved positions. The organization sees no reason to modify the existing rule, pointing out that it has always tried to cooperate with Amtrak any time there is a demonstrated need to move people.

The JCC objects to Amtrak's proposals.

Amtrak notes the IBEW's opposition to its proposals.

#### Recommendation

The Board recommends that Amtrak's proposals be adopted by the IAM, the IBEW and the JCC. We believe that these concessions are needed to allow the carrier more quickly to stabilize its forces in the event of job abolishments or displacements, and will lead to significant productivity gains as a result.

### 3. PHYSICAL EXAMINATIONS

#### Amtrak Position

Amtrak proposes to extend to all shopcraft employees the medical examination schedule followed by the majority of its employees. It seeks a rule that allows the carrier the option of requiring employees who do not perform service for the company for 30 calendar days to submit to a complete medical examination to determine their fitness for service. Amtrak states that an absence of 30 days may suggest that a serious event or change has occurred, and that Amtrak is obligated to ensure that its employees are in good physical and mental condition, and capable of performing duties without harm to themselves or others. Amtrak seeks consistent contract language on this subject with all of its unions.

#### Organizations Positions

The IAM does not accept Amtrak's proposal relating to a required medical examination for employees who are off for more than 30 days. It states that employees may be off for numerous reasons that do not involve ill health. It also asserts that Amtrak has leeway under the existing agreement, Article 23, to determine an employee's physical fitness for service at any time it deems appropriate. Moreover, it points out, certain machinists in

safety-sensitive positions or subject to the Hours of Service Act are subject to random drug testing under FRA regulations.

The JCC objects to Amtrak's proposals.

Amtrak notes the IBEW's opposition to its proposal.

#### Recommendation

We are persuaded that Amtrak's proposal is reasonable. There is sufficient justification for the proposal in Amtrak's duty to the public and its own employees to make certain that Amtrak employees are medically fit, so that Amtrak service is performed in a safe manner. The Board recommends that Amtrak's proposal be adopted by the IAM, the IBEW, and the JCC.

#### C. APPLICABLE TO BMW, IAM, JCC

##### 1. HEALTH AND WELFARE, CONTRIBUTIONS AND SUPPLEMENTAL SICKNESS

#### Organizations Position

The organizations seek a separate plan for Amtrak employees they represent and their dependents.

#### Amtrak Position

Amtrak argues that the recommendation of PEB 219, as clarified by the Special Board, and as applicable to all the other organizations with which it has contracts, should be made applicable to these organizations. Included, Amtrak asserts, are the numerous detailed changes in the plan that are identical as to each organization. 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 Amtrak. The disaffiliation of the employees of the three organizations 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 Amtrak and those organizations.

The organizations' proposals should be withdrawn, and the Amtrak proposal, based on the PEB 219 recommendation, including the sharing of cost increases, should be adopted.

#### D. APPLICABLE TO IAM and IBEW

##### 1. MONTHLY RATED POSITIONS

###### Amtrak Position

Amtrak seeks the elimination of monthly rates and the conversion of monthly rated positions to hourly rated positions when they become vacant due to attrition. The jobs affected are roadway mechanic on the Boston Division and shop extension electrician on the West Coast Division, represented respectively by the IAM and the IBEW. These positions pay a monthly rate based on a scheduled 40-hour workweek with an additional eight hours' straight time for Saturday, whether worked or not. Hourly overtime pay does not begin until after the 50th hour worked in the week.

Amtrak's case centers on the roadway mechanic in the Boston Division. It states that there are few instances of such employees working more than 40 hours per week, and those instances are limited to individuals whose duties include securing high-speed surfacing and ballast cleaning equipment. Amtrak claims these employees averaged 41.7 hours of work, Monday through Friday, and

were paid a guaranteed eight hours for Saturday. Amtrak concludes that it is paying excess money.

#### Organizations Positions

Neither the IAM nor the IBEW responded to this proposal.

#### Recommendation

We see no reason to continue for new hires an arrangement that requires Amtrak to pay for time not worked. The IAM and the IBEW have not explained the reasons for this guarantee, nor has the IAM rebutted Amtrak's statistics showing that only a few roadway mechanics work on Saturday, with most gaining the extra eight hours' pay without working. On the other hand, Amtrak has provided no information on Saturday work or nonwork by the shop extension electrician in the West Coast Division. It is our recommendation therefore, that the monthly rate shall continue for incumbent roadway mechanics, but that for new hires the pay may be changed from a monthly rate to an hourly rate, with overtime in accordance with the contract for hourly-paid employees. The same shall apply to shop extension electricians only if the facts as to them are the same as with the roadway mechanics.

#### E. APPLICABLE TO ATDA

##### 1. COMBINING TERRITORIES AND JOBS

#### Amtrak Position

Amtrak seeks to relax present restrictions on blanking or combining positions. It wants the same right to determine manning as it has with other nonoperating groups with seven-day assignments, so that it will no longer need to use two employees when only one is required, or obtain the organization's approval for these changes. Amtrak seeks a recommendation that would enable it to combine positions on those shifts or days when there is a decreased workload.

### ATDA Position

The American Train Dispatchers Association (ATDA) sees no need to change the present requirement that its General Chairman, together with the carrier, must agree to permit blanking and combining. The organization claims that Amtrak has not shown any need for a change, and that if Amtrak's proposal is accepted, the ATDA will have no effective remedy if its contrary position in a particular case is upheld. In respect of the latter point, the organization contends that appeals to the Railroad-Train Dispatchers Joint Committee take a minimum of 90 days to decision, during which the combining or blanking would have long since been implemented. Moreover, it claims that Amtrak now states that the decisions of the Committee are not final and binding.

The ATDA cites several examples of Amtrak's present ability unilaterally to change the number of positions on a shift or add or abolish jobs as traffic volume changes. The organization claims that it has been cooperative in agreeing to the combining of territories, and points out that only once in 16 years has an Amtrak proposal for combining been rejected.

The ATDA also notes that PEB 219 rejected a similar proposal by the carriers. It claims that there are distinct differences between combining in repair facilities or clerical offices and the combining of dispatching functions. The latter involves substantial safety issues justifying organization consent for combining, particularly because dispatcher manning is at minimum levels.

The ATDA discounts its agreement on this proposal with Conrail. It would not have made such an agreement, it explains, had it known that Conrail, too, now deems the decisions of the Committee to be nonbinding and has refused to comply with them. In sum, the organization insists on a continued voice in the matter in light of its safety liability and potential stress factors. It

recognizes legitimate needs for reducing force (as on weekends) and has agreed to such reductions. According to the ATDA, the issue should be negotiated on a case-by-case basis.

#### Recommendation

Amtrak does not say that the ATDA has not been cooperative in circumstances in which reductions in traffic justify either the combining of jobs or the extension of territories. The organization has cited several instances when its General Chairman agreed to combine jobs and to change territorial restrictions. Conversely, Amtrak has not given specific examples of situations, which it believed warranted job combinations or territory changes, when the General Chairman has refused to agree to such changes. That being so, we see no pressing justification for Amtrak's proposal that it have the right to act unilaterally, when so far such requirements have been met by mutual agreement.

We recommend that Amtrak withdraw its proposal on combining jobs and territory changes. However, as it is a traditional managerial right to determine which jobs are actively worked, we see no reason why Amtrak cannot unilaterally decide on job blanking. We recommend that its right to do so be recognized, provided that another employee does not perform the duties of the blanked job.

## 2. QUALIFYING PAY

#### Amtrak Position

At present, dispatchers are paid while obtaining "territorial qualifications". Amtrak claims that guaranteed payment for all time spent qualifying leads to abuses. It alleges that employees bid to different assignments, thereby pyramiding qualifying pay and causing unnecessary expenses and an unstable workforce. Amtrak wishes to put a stop to what it characterizes as "professional qualifiers."



### ATDA Position

The ATDA denies that its members manipulate bids to pyramid qualifying pay or otherwise abuse the process. It points out that the procedure is rigid, coming into play only when a vacancy occurs, and may be used only when the bidding employee has been displaced. It notes that whatever the carrier spends on qualifying time and pay is off-set by later uses of the newly qualified employee, such as on assignments to maintain any desk in an office or to fill vacancies created by leaves and sickness, without additional compensation. The ATDA also argues that if employees must qualify on their own time, they will hurry their qualifying with an eye toward the cost they personally incur or take the chance of working a job even if unqualified, with unsafe consequences. Use of rest time for qualifying, it points out, has obvious inimical effects on safety. Finally, the organization argues that it would distort the seniority system to permit junior employees to qualify while senior employees are unable to take time off to do so.

### Recommendation

Amtrak alleges abuses, but has not particularized them. Qualifying on territories is a contractual part of a dispatcher's job security, when he or she is displaced. We fail to see under that circumstance why the dispatcher should be required to become familiar with a new territory and its job duties on his or her own time and without compensation. As the dispatcher has the right to qualify only when displaced, and is required to remain in the job after qualifying until again displaced, we do not see how alleged abuses by so-called "professional qualifiers" can be either widespread or represent a problem for Amtrak that it cannot control.

Accordingly, it is our recommendation that there be no change in the present qualifying rule.

### 3. POSTING ALLOWANCE/CALL ALLOWANCE

#### Amtrak Position

Amtrak claims that there is no justification for continuing the \$10.00 a day payment when a new employee is assigned to work with a more experienced employee. It argues and proposes that seasoned employees should be reasonably required to provide some on-the-job instruction without additional payment.

Amtrak also proposes eliminating the two-hour penalty payment when a management official calls a dispatcher at home for information regarding movement that the dispatcher was involved with during his or her tour of duty.

#### ATDA Position

The ATDA contends that the \$10.00 a day posting allowance is appropriate and moderate compensation for the extra duties and potential liability attendant to training new employees.

As to the call allowance, the organization points out that Amtrak is not required to pay \$2.00 for calls to an off-duty employee except when such a call is of a nonemergency nature. In the ATDA's view, such a charge is an appropriate deterrent to an unnecessary intrusion on an employee's time off.

#### Recommendation

In our opinion, the \$10.00 a day posting allowance is reasonably related to and justified by the additional instructional duties assumed by the experienced employee. The \$2.00 call pay can be controlled by Amtrak, which is required to pay it only for nonemergency calls. We recommend that Amtrak withdraw its proposals.

#### 4. SICK LEAVE

##### Amtrak Position

Amtrak claims that present sick leave benefits for ATDA-represented employees are well in excess of agreements with other Amtrak crafts. It points out that a dispatcher can receive sick benefits for up to 240 days in a calendar year, leading to excessive costs and encouraging abuses. Amtrak proposes alternatives. One is to reduce costs by not paying for the first day of illness and by paying reduced percentage amounts on the days for which benefits are paid. For new hires, benefits would be at parity with other Amtrak agreements. Another is a proposal that existing employees get benefits that are the same as what new employees would receive, but with an "up-front 'bank' of days credited."

##### ATDA Position

The ATDA responds to Amtrak's reduced sick leave proposal with a counter proposal, namely, to reduce daily full pay benefits for all employees to 90 percent; deny pre-1982 hires sick pay in the first day of sickness annually after 10 sick days are used; and, for new employees, off-set all sick pay by RUIA benefits, with a scale of sick days dependent on years of service. It also proposes that dispatchers be eligible for an additional supplement of 70 percent pay, less RUIA, excluding the first four days of each succeeding sickness absence, under a defined schedule. The ATDA views this as a significant concession, which reasonably accommodates Amtrak's concerns while maintaining an acceptable level of benefits.

##### Recommendation

There is inadequate evidence in the record to support a recommendation in favor of the diminution of sick leave benefits as proposed by Amtrak. More important, changes proposed by Amtrak might have a destabilizing effect, as other employees would be

working under different sick leave benefits. On the other hand, the ATDA has made a counter proposal which, if implemented, would appear to provide some savings to Amtrak, albeit not as much as if Amtrak's proposals were accepted. We think that the ATDA counter proposal should be implemented as a means of generating savings in the form of a voluntary give-back.

#### E. APPLICABLE TO BLE

##### 1. REDESIGNATION OF FIREMEN, FIREMEN MANNING, RATES & ROSTERS

###### Amtrak Position

Amtrak proposes that employees classified as passenger firemen be redesignated as assistant engineers. Under its current agreement, Amtrak employs passenger firemen on its off-corridor trains when the scheduled running time of the assignment exceeds four hours. These assignments are called "must-fill assignments." In addition, certain assignments in off-corridor service are identified as "blankable fireman assignments" and may be filled by a passenger fireman under certain limited circumstances. Amtrak has offered to increase the passenger fireman rate, in increments, by \$2.28 an hour over the life of the contract, over and above the contractual raises. Amtrak proposes that the must-fill requirement be increased to five hours running time, and blankable positions be eliminated, and that one extra board be established at each off-corridor crew base, which would be guaranteed 40-hours' pay at this newly-created rate.

Amtrak states that its blankable firemen positions are down from 23 to two. And, if under the new language an assistant passenger engineer would not have a place to go, he or she would have to take an engineer's position in the work zone. If none is available, these individuals would have an opportunity to occupy the two blankable positions.

### BLE Position

The BLE objects to increasing the running time from four hours to five hours before the must-fill requirement applies. The BLE states that any proposal to combine the engineer and fireman rosters must have protection built into it to protect prior rights of firemen in their crew bases.

The BLE also objects to the carrier's request for the establishment of common extra boards. It states that the original off-corridor agreement called for the establishment of application pools for future engine service positions. It states that a proposal to merge extra boards is premature while the pools exist, because these individuals have a contractual right to new engineer positions.

### Recommendation

The Board recommends that the title of passenger fireman should be redesignated assistant passenger engineer. This title reflects the fact that such employees must be qualified locomotive engineers, and are expected to share the duties of operating a train with a passenger engineer. Also, the name would be the same as used in the auto train service.

The Board recommends that Amtrak's proposal to increase the running time before the must-fill requirement applies from four to five hours be withdrawn. Amtrak has not presented persuasive evidence that it is safe for one individual to operate a passenger train for five straight hours.

The Board recommends that Amtrak's proposal to increase the off-corridor rate for the newly designated assistant passenger engineer position by \$2.28 per hour in the phases proposed by Amtrak be adopted.

The Board recommends that Amtrak eliminate the two remaining blankable positions, subject to the limited rights of the former firemen who could have occupied such blankable positions again to fill these positions, if they cannot occupy any engineer or assistant engineer position in their respective work zones. The BLE has not demonstrated to this Board that Amtrak has a continuing contractually obligation to fill new engineer positions with individuals in "application pools" established under the original off-corridor agreement, as opposed to the present passenger firemen (qualified locomotive engineers) employed on Amtrak's off-corridor trains.

The Board recommends that the parties negotiate an agreement combining the engineers and firemen rosters. The new roster must have protection built into it to protect prior rights of former firemen in their crew bases. Once the questions on the combining of the rosters are resolved, the Board recommends that the parties negotiate an agreement on both the establishment of one extra board at a location to fill both passenger engineer and assistant passenger engineer vacancies and the manner in which each vacancy is to be filled. The extra boards shall be guaranteed 40 hours per week. Employees on the extra board shall be paid at the rate applicable to the position occupied and for the entire weekly period (if the employee is available); and the employee shall be guaranteed the money equivalent of 40 straight-time hours at the assistant passenger engineer rate of pay. However should individuals listed on the present passenger engineer seniority roster as of May 28, 1992, be on the new extra board, their guaranteed rate shall be at the engineer rate of pay.

## 2. APPLY THE "8 WITHIN 9" TO THE NORTHEAST CORRIDOR

### Amtrak Position

Amtrak proposes to make the method of pay in the Northeast Corridor the same as is applicable now to the majority of engineers

in off-corridor service, under the "8 within 9" rule. Passenger engineer assignments in the Northeast Corridor run on a turnaround basis, with a passenger engineer having anywhere from a one to four hour paid release period at the turning point of the assignment. This proposal would give Amtrak credit for one of those paid hours if the assignment operates in excess of eight hours.

#### BLE Position

The BLE states that Amtrak alone has control over the working hours of engineers in the corridor. It points out that scheduling is done only by Amtrak. It states that Amtrak is seeking to cut the pay of crews in the corridor.

#### Recommendation

The agreement covering passenger engineers in the Northeast Corridor setting forth the method of paying for passenger engineers is presumptive evidence that both sides recognized that passenger engineers are subject to Amtrak's direction during the release period. Moreover, it is not controverted that Amtrak alone controls the scheduling of the engineers on the corridor. The carrier has not demonstrated to this Board that an underlying change in the basis for the agreement has occurred to justify the one-hour reduction in pay that would apply to the affected engineer. We therefore recommend that Amtrak's proposal be withdrawn.

### 3. REDUCTION OF YARD SERVICE RATE FOR NEW HIRES

#### Amtrak Position

Amtrak proposes to reduce by 10 percent the hourly rate of pay for yard service engineers hired after the date of the agreement. Existing employees would be grandfathered. Amtrak pays its engineers assigned to yard service the same hourly rate as that of engineers who operate over-the-road. This rate is considerably higher than the national rate for freight yard service.

### BLE Position

The BLE responds that it was Amtrak that wanted an across-the-board single hourly rate of pay. Now, the BLE states, the carrier wishes to undo the deal by creating a permanent two-tier wage system on the property.

### Recommendation

We recommend that new yard service engineers shall serve at 90 percent of the hourly rate just for the first two years of their service.

## 4. AUTO TRAIN: EXTRA BOARDS

### Amtrak Position

Fifteen passenger engineers and assistant passenger engineers are covered under a separate collective bargaining agreement for auto train service. The territory covered by the auto train is basically the same as the territory encompassed in off-corridor work zones 5 and 6. Amtrak's proposal is to use one extra board in zone 5, with the Board to be located in Washington D.C., to protect both the auto train and off-corridor vacancies. It also wants the option to eliminate the auto train extra board at Sanford, Florida, in zone 6, at a future time. Amtrak states that its proposal will increase administrative efficiency and eliminate the waste of manpower resources resulting from duplicate extra boards covering the same territory.

### BLE Position

The BLE states that Amtrak has not demonstrated an operational need for the change. The BLE further states that Amtrak does not want to change anything in the separate collective bargaining agreements, except those few things that would benefit the carrier. Auto train engineers must spend four more hours away from home than other Amtrak engineers before earning held-away-from-home payments.



Yet, according to the BLE, Amtrak does not want to correct that inequity.

#### Recommendation

Amtrak has effectively made out a case that increased administrative efficiency and elimination of the waste of manpower resources will be achieved by its proposal for zone 5. We therefore recommend that the auto train extra board at Lorton, Virginia, be eliminated and the existing work zone 5 extra board located in Washington, D.C., be used to cover auto train vacancies. Amtrak must allocate a percentage of extra board positions to auto train employees and must guarantee that no existing auto train or work zone 5 employee will be furloughed as a direct result of this combination of extra boards. An employee called off the extra board would be paid at the rate of the position worked and under the terms of the agreement covering the service. Because Sanford, Florida, is not within the effective reach of the Jacksonville extra board, we recommend that Amtrak's proposal for zone 6 be withdrawn.

### 5. CERTIFICATION ALLOWANCE

#### BLE Position

The BLE proposes that each engineer should receive a monthly allowance of \$250 for each full month he or she maintains certification. The BLE believes that this allowance is justified by the high speed operation of Amtrak trains and the critical position occupied in the safety chain by the engineer.

#### Amtrak Position

Amtrak opposes the BLE proposal on the ground that the parties agreed to a pay structure based on a straight hourly rate of pay and the elimination of arbitraries.

### Recommendation

The Board fully recognizes the high degree of competence required of passenger engineers and the significant responsibilities of their position. The factors cited by the BLE as justification for the proposed certification payment are factors which are properly considered when establishing the engineers' hourly rate of pay. The BLE has not presented additional justification for a certification payment. The Board recommends that the proposal be withdrawn.

## 6. EXTRA BOARD MARK OFFS

### BLE Position

The BLE proposes that the guaranteed extra board rule be amended to provide that an engineer who marks off will have his guarantee reduced by the greater of a pro-rata share of the guarantee or the earnings of the assignment the engineer would have worked. The BLE ties its discussion of this issue to its discussion of its proposal on the need for sick pay and the contention that sick engineers may be forced by economic consideration to run passenger trains. It states that under the present rule an engineer loses his or her entire weekly guarantee if the engineer marks off for a single day because of illness.

### Amtrak Position

Amtrak does not present a position on this proposal.

### Recommendation

Amtrak provides the economic guarantee of 40 hours of pay per week for those engineers who hold themselves available for service on a 24-hour-a-day basis for their entire workweek. The guaranteed payment is made as an incentive for engineers to maintain their availability for their entire workweek, and when an individual fails to be available, his or her entire guarantee is lost. We are persuaded that an exception is warranted for engineers who cannot

be available due to a verified illness, lest economic pressure force a sick engineer to perform passenger service. The Board recommends that the parties amend the guaranteed extra board rule to provide that an engineer who marks off because of verified illness for one day out of the entire workweek will have his or her guarantee reduced by loss of pay for that day and one additional day.

## 7. SICK DAYS

### BLE Position

The BLE proposes that engineers be granted one sick day per month of service, and be permitted to accumulate unused sick days up to a maximum of 36 days. It argues that engineers whose capacity is significantly impaired by illness should not be operating high-speed passenger trains. Yet, according to the BLE, economic realities may pressure engineers to perform service when they are in no condition to do so.

### Amtrak Position

Amtrak does not present a position on this proposal.

### Recommendation

On the record before the Board, we are simply not satisfied that we have been given sufficient information by the BLE to justify a positive recommendation on its proposal.

## 8. CREDIT FOR TRAINING AS SERVICE TIME

### BLE Position

The BLE proposes that the contract be amended to state that all time spent in training and in examinations be credited as service under the agreement. It states that engineers receive a basic day's pay for classes, but the time spent in classes is not counted as hours worked. Thus, they do not receive overtime pay

for a sixth day in a workweek consisting of three class days followed by three workdays.

Amtrak Position

Amtrak does not present a position on this proposal.

Recommendation

On this issue the BLE makes a brief proposal and Amtrak presents no response. We are not satisfied that the record justifies a determination on the merits of the BLE proposal. There is simply not enough information before us to make an informed decision. We recommend that the proposal be withdrawn.

9. PAY FOR QUALIFYING TIME

BLE Position

The BLE proposes that engineers be paid for all qualifying time, up to a maximum period for each territory based on a schedule negotiated by the parties. Pay for qualifying time is essential to promoting the highest performance levels for engineers, according to the BLE. It argues that paid qualifying time would markedly enhance safety by easing the financial burden on the engineer. The organization further states that when it suits Amtrak's purposes, Amtrak will pay for the engineer who must requalify, but it will not pay for others, after their first qualification.

Amtrak Position

Amtrak does not present a position on this proposal.

Recommendation

The record establishes that on certain occasions engineers are not paid for qualifying time. We are not persuaded that there is sufficient evidence before the Board to justify a change in the existing practice. The proposal should be withdrawn.

## 10. HOURS OF SERVICE ACT

### BLE Position

The BLE seeks a rule that would make engineers whole when they cannot work their assignment due to the Hours of Service Act. The BLE explains that an engineer may be ordered to report late for his or her regular assignment and, as a result, will not have a sufficient rest period to work the next assignment. Consequently, the engineer will lose the opportunity to earn pay for that assignment.

### Amtrak Position

Amtrak does not present a position on this proposal.

### Recommendation

We are persuaded that engineers need relief for those situations when, due to the Hours of Service Act, they cannot work their regular assignment, through no fault of their own. The BLE proposal will have no destabilizing effect on other operating craft employees, because the UTU and Amtrak have negotiated a rule on this matter. The Board recommends that the parties adopt a rule that will allow the engineer so affected the earnings of his or her missed assignment for the calendar day, with a maximum of eight hours' pay.

## 11. SERVICE CREDITS AND RELIEF DAY

This Board has disposed of a number of the BLE issues dealing specifically with firemen in its discussion of some Amtrak proposals. Some ambiguity may possibly exist on service credits for firemen, and that matter is dealt with below.

### BLE Position

The BLE states that the current agreements between the BLE and Amtrak contain a multitiered wage system that provides for a five

year wage progression beginning at 75 percent of the full rate. An increasing number of new hires in engine service bring with them considerable prior experience. Amtrak credits this experience for those new hires engaged as engineers, but it does not do so for firemen. The BLE proposes that firemen also receive credit for prior engine service experience.

#### Amtrak Position

Amtrak does not present a position on this proposal.

#### Recommendation

We believe that this issue is resolved by our recommendation that firemen be redesignated as assistant engineers.

## 12. CALLING RULES

#### BLE Position

The BLE proposes that the calling rules be amended to provide engineers the option of obtaining two additional hours rest beyond that required by the Hours of Service Act. The BLE also proposes that engineers be given the right to request an eight hour call.

#### Amtrak Position

Amtrak opposes the BLE proposal. It asserts that it has worked out reverse lodging agreements with the BLE to accommodate employees rest requirements in conjunction with the calling rules.

#### Recommendation

The Board recognizes that the requirements of service for passenger engineers, including the calling rules, place very significant demands upon them. However, this Board does not have sufficient information before it to justify the changes that the BLE seeks on Amtrak. The BLE has not demonstrated that the provisions it would like to modify are more onerous than those which apply to other engineers or other operating craft employees

throughout the country. The Board recommends that the proposals be withdrawn.

### 13. MEAL ALLOWANCE

#### BLE Position

The BLE proposes that the meal allowance paid employees held away from home be raised from \$4.15 to \$10.00.

#### Amtrak Position

Amtrak does not present a position on this proposal.

#### Recommendation

The Board notes that \$4.15 is not a sufficient allowance for a meal. We recommend that the parties increase this allowance to \$5.00 upon the signing of a new agreement. Also, effective November 1, 1994, the parties should increase the allowance to \$6.00. Such allowance would be in parity with the operating crafts represented by the UTU, who now have a meal allowance of \$5.00, which will be increased to \$6.00 on November 1, 1994.

### 14. AUTO TRAIN: HELD-AWAY-FROM-HOME COMPENSATION

#### BLE Position

The BLE proposes extending to auto train service the present held-away-from-home compensation rule. It asks the Board to correct an anomalous situation that affects the small number of engineers who work in auto train service. Auto train engineers presently may be held away from home for up to 16 hours before they become eligible for compensation. Other off-corridor engineers, including some who work on other trains traveling the same route as the auto train, become eligible for compensation at the expiration of 12 hours. The BLE states its belief that the auto train rule is an anachronism that should be abolished, given the small number of employees involved.

### Amtrak Position

Amtrak does not present a position on this proposal.

### Recommendation

The evidence presented by the BLE is insufficient to justify changing the present agreement. We recommend that its proposal be withdrawn.

## G. APPLICABLE TO BMW

### 1. ENTRY RATES

#### BMW Position

The BMW seeks the elimination of entry rates. It asserts that the current five-year progression from 75 percent of the top rate is not justified, that it establishes a two-tier compensation system victimizing those who suffer the worst seasonality of employment, and that it subsidizes Amtrak through inadequate wages.

#### Amtrak Position

Amtrak argues that the recommendations of PEB 219 on this issue should be followed. PEB 219 recommended an exclusion from this rule for foremen, mechanics, and production gang members operating heavy, self-propelled equipment that requires skill and experience.

#### Recommendation

BMW employees in the highest-rated positions who work for freight carriers other than Conrail have already been granted the exclusion from wage progression sought by the organization in this case. There is some merit, however, in applying lower entry rates and wage progression to those working in lower-paying positions, in as much as they are likely to be less productive until they master the full range of their job duties. Nevertheless, we find a five-year progression based upon a 75 percent hiring rate to be



inequitable in the light of the lesser-skilled nature of the work involved and the greater burdens seasonality of employment imposes upon them. Accordingly, we recommend that the exclusion from rate progression accorded by PEB 219 be extended to BMW employees of Amtrak, and that those not covered by that exclusion be granted a two-year rate progression commencing at 90 percent and advancing to 95 percent at the end of the first year and to full rate at the end of the second year.

## 2. PER DIEM

### Amtrak Position

Amtrak proposes it have the option of providing per diem payments of \$29 for travelling gangs in place of the requirement of maintaining camp cars. It asserts that the Northeast Corridor is relatively compact compared to the size of other properties; that there are abundant overnight accommodations and lodgings available in the area; that many employees live nearby and commute; and that its proposal will reduce the burdens of camp maintenance and expenditure.

### BMW Position

The BMW asserts that Amtrak's proposal is inadequate; that employees who are required to live away from home are unable to do so at the rates provided by the carrier; that the area does not have abundant inexpensive facilities; and that the amount of per diem should be increased.

### Recommendation

Amtrak has the authority to determine whether to continue the operation of camp cars or to provide a reasonable level of per diem to cover the cost of lodging and meals to replace the facilities at the camp cars. The organization's claim for additional per diem has merit. The allowance should be raised to \$35 to cover the actual cost of food and lodging.

### 3. TRAVEL ALLOWANCE INCREASES

#### BMWE Position

The BMW asserts that employees incur considerable personal expense driving from their homes to temporary lodging locations and returning home on rest days. It proposes that a greater portion of the actual expense be compensated, and that employees be given cost-of-living adjustments of this benefit for the life of the contract.

#### Amtrak Position

Amtrak does not present a position on this proposal.

#### Recommendation

The BMW has not presented sufficient information to support its proposals. We recommend that it be withdrawn.

### 4. RESTRICTED EXERCISE OF SENIORITY

#### Amtrak Position

Amtrak proposes that BMW employees be restricted from bidding on lower-rated and lateral jobs and that employees holding temporary jobs fill them when those jobs become a permanent position. Amtrak also proposes that when displacements occur, the most junior employee be displaced.

Amtrak points out that when a senior employee exercises seniority to bid to an equal or lower-rated position, the carrier loses a certain level of experience, which when taken cumulatively, reduces the productivity of its work force. It also claims that even when an employee makes a voluntary lateral bid, the make-up and stability of a gang is affected by the movement and results in a loss of productivity.

Amtrak proposes that when a displacement is made within a gang, the junior such employee in that classification be bumped. It claims that at the present time employees engage in "chain bumping" which disrupts the work force until the junior employee is finally bumped.

Amtrak also proposes that furloughed employees be required to list on their furlough papers the work zones to which they will accept recall. An employee who then failed to respond to a recall for such work zone or zones would forfeit seniority. The carrier further proposes a rule which would prevent an employee recalled to a new position being displaced by an active employee. Amtrak points out that at the present time employees may leave their existing jobs without notice to their supervisors and bump the recalled employee.

According to Amtrak, it agreed with the BMWWE that available "qualified" employees must fill vacancies. The problem involves the definition of the term "qualified." Currently, any employee on the seniority roster of the vacant position is deemed "qualified." Amtrak urges that the definition needs to include those trained but not on the roster. It argues that those who have been trained are qualified, whether they are on the seniority roster or not.

#### BMWWE Position

The BMWWE takes the position that management has demanded many far-reaching, fundamental changes in the right of the organization to exercise and obtain seniority. It urges that the change proposed by Amtrak would eliminate the equity earned by each BMWWE member and replace it with a sophisticated version of the notorious "shape-up" system which existed on the nation's waterfront. The BMWWE notes that the current rule permits employees to bid as many times as they wish within a calendar year, with certain exceptions. This includes bidding up at the earliest opportunity. The

organization argues that there certainly should be no requirement to bid the higher-rated position at the first opportunity.

#### Recommendation

The Board finds that the proposals of Amtrak seeking to limit the current right to bid or bump imposes restrictions on the employees' right to move between positions. The Board recommends that employees be permitted to make one lateral bid per calendar year unless excepted from the limitation by the Assistant Chief Engineer. Also, the employees may voluntarily displace once per calendar year in a lower-rated position. The foregoing recommendations protect the employees' rights to some job movement while at the same time satisfying some of the carriers' concerns that employee movements might be excessive. The other proposal by Amtrak on forfeiture of seniority in a higher classification while working on a lower classification is not justified and should be withdrawn.

### 5. REGIONAL AND SYSTEM-WIDE GANGS

#### Amtrak Positon

Amtrak proposes that geographical restrictions on the use of traveling gangs be eliminated throughout the Northeast. Amtrak explains that these traveling gangs are frequently high-production units requiring experienced operators; therefore, the loss of highly proficient employees when equipment is sent across jurisdictional boundaries reduces productivity, disrupts the work force, and necessitates finding productive work for the special employees who are relieved from duty when the machine leaves their jurisdiction.

Amtrak asserts that its equipment is expensive and that operators require training experience, and skill. The cost of the recently purchased Unimat Interlocking Surfacing Tamper was \$900,000. However, Amtrak alleges it has been restricted by its

labor agreements from obtaining the maximum return on such investment.

According to Amtrak, the traveling gangs are popular because of compressed work weeks, overtime opportunities, per diem payments and the satisfaction of working with sophisticated, state-of-the-art equipment.

#### BMWE Position

The BMWE contends that there is no need to change the existing system of regional and system-wide gangs; that the employer has been able to utilize its high technology equipment under agreement between the parties; that employees should not be faced with the burden of extended travel from their homes; and that 53 percent of the employees do not return to traveling gangs.

#### Recommendation

The evidence is persuasive that high-technology equipment such as the Unimat Interlocking Surfacing Tamper requires employees who are trained and skilled in its operation. We recommend that geographical restrictions on the use of traveling gangs working on high-technology equipment be eliminated throughout the Northeast.

### 6. VACATION RULE

#### BMWE Position

The BMWE proposes that full-time union officials be allowed to accrue service for vacation eligibility, rather than having vacation entitlement frozen at the levels in effect when they went to work for the organization. It would make the benefit applicable to any employee who has been on union leave of absence since July 1, 1988, retroactive to the date such leave began. It argues that the current practice imposes an unfair financial impediment on those opting to work for the BMWE, and discourages such union activity. It notes that the employees affected would still be

required to achieve eligibility for vacation on their return to regular employment and that the proposal would affect only the quantum of vacation entitlement.

The BMWWE further proposes that employees be entitled to take their vacations in one-day increments. It declares that such a benefit is desirable for employees who need to attend to personal affairs from time to time, noting that such benefit is currently provided to employees on commuter lines.

#### Amtrak Position

Amtrak objects to both proposals. It argues that the union-business credit would force Amtrak to reward an employee with vacation credits even though it gains no benefits from the employee's labor. It asserts the proposal is for a gratuitous advantage and would urge its denial as well as the denial of the claim for retroactivity.

On the issue of the daily vacation increments, Amtrak asserts that the December 17, 1941, National Vacation Agreement does not contemplate taking vacation in less than weekly increments, and this is essential to facilitate the carrier's scheduling of work with expectation of full crews being available for the full workweek.

#### Recommendation

The BMWWE proposal for continued accumulation of vacation credit while on leave of absence for union business would provide appropriate recognition of the employees' seniority with the carrier and place them on a vacation level approximating that of their peers who did not go on union leaves of absence. Because Amtrak has recognized the retention of seniority and employment status of employees on union leave of absence, and because entitlement to such vacation in any particular year is dependent on the employee's fulfillment of the work requirements for eligibility

that year, we recommend that the benefit be adopted, but without the retroactivity proposed by the BMWWE.

On the issue of single-day vacation increments, we do not believe the BMWWE has presented a persuasive case. Vacation, particularly for those who spend such extended periods away from home, should be taken for its avowed purpose: to provide extended periods of rest and rehabilitation with families, at home, and away from work. Employees currently have available two personal days for purposes addressed in the BMWWE proposal. Vacation periods, we believe, should be confined to five-day increments. The BMWWE proposal on this issue should be withdrawn.

#### 7. CLOTHING ALLOWANCE

##### BMWWE Position

The BMWWE seeks partial compensation for safety shoes and clothing that wear out at work. It asserts that the work of the maintenance of way employees often involves working with substances that are destructive of clothing; that the current allowance for payment of work shoes is inadequate; and that there is justification in increasing the allowance for both clothing and safety shoes. It seeks an allowance of \$250 per year.

##### Amtrak Position

Amtrak takes the position that the current allowance levels are appropriate for both safety shoes and clothing; that shoes and clothes are not usually provided by employers in the industrial sector; that they both have use outside the work environment; and that the BMWWE's proposal should be denied.

##### Recommendation

We do not believe an adequate case has been made out for requiring Amtrak to provide work clothing for bargaining-unit members. That portion of the claim should be withdrawn. However,

we do believe that the allowance for safety shoes, which has remained unchanged since 1988, should be raised in recognition of the increasing cost of such items in the intervening years. We recommend that the allowance for safety shoes be increased to \$60 per year, payable at the first of the year.

#### 8. WORK CLASSIFICATION SIMPLIFICATION

##### Amtrak Position

Amtrak points out that at the present time there are over 70 different classifications or positions listed in Section B of the Scope and Work Classifications Rule of the Amtrak/BMWE (NEC) Agreement. According to Amtrak, many of these are archaic and not used, and others perpetuate arbitrary distinctions unrelated to the skills that could be expected of an employee. The carrier proposes to simplify and standardize the classifications on the Amtrak system and make them consistent with modern work practices.

Amtrak also proposes the creation of the Technician classification in the track subdepartment. It alleges that this classification would encompass both the operation and repair/maintenance of highly mechanized and complex equipment. Amtrak explains that the Technician classification is not intended to replace the Repairman classification, but rather to work in concert with it.

Amtrak also proposes one classification for track welding. Presently, track welding is separated into Electric Arc, Oxygen/Acetylene, and Thermit categories. Amtrak argues that by combining all track welding into one classification, new job opportunities will open up for the existing senior welders, and future technological developments will not disadvantage current employees. Amtrak states that it is committed to providing further necessary training.



The proposed classification structure includes a combination B&B Mechanic/Trackman classification. Amtrak notes that this classification has been in use in Florida, under the Amtrak/BMWE (Corp) Agreement, since January 15, 1985, and has proved to be a cost-effective agreement that has functioned without complaint from the BMWE. The carrier notes that similar agreements with the BMWE have recently been reached for the Los Angeles and San Jose, California, Commuter Services.

Amtrak points out that its proposal would not reduce the pay rated for any existing employee. When rates are rationalized, employees whose pay rates would otherwise be reduced will be "red circled" until such time as their pay rates are exceeded by those under this proposal.

#### BMWE Position

The BMWE acknowledges the benefits of classification simplification. Rather than eliminate vacant classifications, however, it urges that they be merged with other classifications, in order to protect the employees' right to such work in the future. In addition it opposes the creation of new classifications such as Technician and B&B Mechanic/Trackman.

#### Recommendation

The Board recommends that instead of being eliminated, vacant classifications be merged with those that are active. We recommend the establishment of the new classifications proposed by Amtrak. We are persuaded that this will be cost-effective and that the employees will not be adversely affected economically or in terms of job security.

## 9. WORKSITE REPORTING

### Amtrak Position

Amtrak proposes that the workday for BMW employees begin and end at the worksite in the same manner that it does for nonrailroad employees, who commute one to two hours each way to their jobs.

Amtrak points out that current rules require pay to begin and end at established headquarters or camp cars, instead of at the worksite. The carrier also notes that headquartered employees may actually have a shorter commute with the change, which is estimated to save over \$3.4 million per year.

Amtrak also proposes that gangs which have consistent or at least readily predictable worksites report in advance of starting times to assembly points near such worksites, where they would be transported by Amtrak to the job. Again, the carrier points out that the employees' pay would start and stop at the worksite.

Amtrak cites a recent agreement with the Brotherhood of Railroad Signalmen, which incorporated such principles in the worksite reporting provision of their Construction/Rehabilitation Gang Rule.

### BMW Position

The BMW would agree that employees housed in hotels and fed in restaurants should be required to assemble 15 minutes in advance of a bulletined starting time and not draw pay until after such assembly time. This would obviate the need for employees to spend hours of commuting each day, so that the carrier can avoid the inconvenience of moving temporary lodging to maintain close proximity to daily worksites.

### Recommendation

We believe that it is unfair and unreasonable for an employee to report to headquarters or a camp car and then be required to travel two hours to a worksite without compensation. We recommend that the specific Amtrak proposal be withdrawn, but do recommend that the employees be paid for all travel time in excess of 15 minutes from established headquarters or camp cars to the worksite, and also be paid for all travel time, less 15 minutes, from the worksite to established headquarters or camp cars.

## 10. TRAINING PROGRAM

### Amtrak Position

Amtrak contends that under the present training scheme employees have the freedom to bid into training programs from any location on the system, but no obligation to take the position for which trained. It asserts that instead of junior employees benefiting from the training, it is invoked by the more senior employees as a break from regular tasks or to learn a new skill as a hedge against furlough. This practice, it continues, wastes from \$2,000 to \$13,500 per person per course in training costs, inasmuch as only 30 percent of those trained take the positions, thus depriving the employer of the skills which the training program was designed to fill. The carrier proposes limiting the bidding for such training to the work zone where the skill need exists. It also proposes giving preference in selection to the lower-rated employees in the specific area and subdepartment, and requiring, in the absence of any bid for the skill in which trained, that the employer have the right to lock a trained employee into the position for from nine to 12 months. It would also restrict compensation to eight hours of pay per day of training and travel.

### BMWE Position

The BMWE objects to Amtrak's attempts to restrict access to such training, and to its effort to deprive senior employees of the

training opportunities. It also objects to the carrier's proposal to force trainees into any position, location, or shift it wishes. It proposes that the present compensation of 24 continuous hours for travel time be retained.

#### Recommendation

Although we are unwilling to deprive employees throughout the system, regardless of their seniority, of their present right to bid for available training opportunities, the evidence indicates that the present training procedure has failed to provide management with the necessary number of trained employees to fulfill its needs. We believe that Amtrak is entitled to a reasonable expectation that its skill needs will be met by those who have completed the training. Accordingly, we recommend that access to such training be retained in its present form, including compensation for the time spent in travelling thereto, but that in the absence of any acceptable bidders for vacancies in such positions, the employer have the right to select one of the three most junior employees who have completed such training for assignment to the vacant position, with the understanding that the employee remain therein for a minimum period of one year.

### 11. CLAIMS AND GRIEVANCES

#### Amtrak Position

Amtrak proposes that the BMW be required to progress claims denied by the carrier's highest officer within 90 days, instead of nine months. Amtrak also proposes that all appeals should state the grounds for the appeal and the reason why previous claim responses were not acceptable.

Amtrak contends that the BMW continues to file grievances similar if not identical to previous claims that have proceeded to arbitration and been denied by arbitrators. Amtrak points out that it is less expensive to pay the claim than it is to take the claim

to arbitration. The carrier contends the disciplinary process suggested by the BMWE is unnecessary.

#### BMWE Position

The BMWE has proposed the discovery type rule in order to quickly determine whether a grievance/claim is valid; this would require the carrier to supply all relevant information to the organization. The BMWE requests that the carrier provide it with all documents which will be used in the disciplinary hearings at least five days prior to the investigation, and that the carrier be compelled to bring all witnesses necessary to investigations.

The BMWE contends that the Railway Labor Act requires nine months and the reduction from nine months to 90 days might not only be in violation of the Act but would also place the onus on the member to move quickly in the event the organization chooses not to pursue his/her case. The BMWE states that it does provide reasons why previous claim responses were not acceptable in conference with the carriers. It insists that the process is technical enough as it now stands.

Finally, the BMWE proposes that the Agreement include clear language with strict guidelines relating to when employees are removed from service.

#### Recommendation

We recommend that the nine months presently allowed to process claims be reduced to 90 days, which we believe to be an adequate period of time for the parties to process the claim. The employee may not be knowledgeable about the process but he or she has ready access to the assistance of the local chairman in processing the claim.

Amtrak's proposal that all appeals should state the grounds for the appeal and the reason why previous claims were not

acceptable should be withdrawn. Such a requirement places an excessive burden on the employee or the organization without appreciable benefit to the process.

The BMWWE has urged that it be provided, five days in advance, with copies of all documents the carrier intends to submit at the investigation. That arrangement would provide the BMWWE with an opportunity to determine the validity of the claim, and perhaps lead to settlement or withdrawal of claims.

The BMWWE contends that it is now required to bear the expense of some witnesses whom it deems to be necessary for the defense of the accused. The carrier is currently required to bear the expense of all "necessary" witnesses. We recognize that there is a difference of opinion as to who is a "necessary" witness, which will be resolved on appeal.

We recommend that the carrier be required to supply five days prior to the hearing all documents to be used in any investigation; that the present language providing a nine-month period for progressing claims denied by the carrier's highest officer be reduced from nine months to 90 days; that the present language requiring the presence of necessary witnesses be retained without change; and that the present language regarding removal of employees from service be retained without change.

## 12. SAFETY

### BMWWE Position

The BMWWE proposes a joint labor-management Health and Safety Committee, composed of an equal number of management and union representatives. The organization also proposes creation of a joint labor/management Health and Safety Committee in each BMWWE seniority district. Finally, the BMWWE proposes that employee members of the committee shall be paid at their regular rate for

any time required to investigate and meet on safety and health problems.

#### Amtrak Position

Amtrak contends that the proposed committee would be burdensome and unnecessary. It also asserts that the present safety committee has performed well and that Amtrak has an extremely good safety record.

#### Recommendation

The evidence is persuasive that the present safety program has improved substantially. We do not favor the proposals for change made by the BMWF and recommend that they be withdrawn.

### 13. NORTHEAST CORRIDOR AGREEMENT

#### Amtrak Position

Amtrak seeks to eliminate meals, lodging, and travel allowances currently provided to certain production and other special gangs, and to substitute therefor a flat \$29 per diem allowance.

#### BMWF Position

BMWF contends that the allowance is inadequate to compensate employees for actual out-of-pocket expenses that would be incurred if housing and meals were no longer provided.

#### Recommendation

The increased cost of lodging and meals along the northeast corridor would suggest that the allowance of \$29 in place of meals and lodging would not suffice. While we are unwilling to agree to the full reimbursement of the cost of meals and lodging, we do believe an increase to \$35 is warranted, and so recommend.

#### 14. ELIMINATION OF ARBITRARIES

##### Amtrak Position

Amtrak proposes that payment of eight hours' minimum for "Protect Service" under the Northeast Corridor Agreement Rule 54 be eliminated; that Rule 30 be amended to provide that when changing from standard time to daylight saving time, employees working one hour less be compensated for actual hours worked, and when standard time is restored, employees be compensated actual time worked at straight time; and that employees called in for work not continuous with their regular assignment be compensated for actual time worked on a per-minute basis.

Amtrak argues that arbitrary payments, which include "Protect Service" assignments under Rule 54 of Amtrak/BMWE (NEC) Agreement, reflect time not worked by employees for which compensation should not be received. Also, Amtrak urges that special payments associated with changing to and from daylight saving time should be eliminated.

Amtrak points out that Rule 54, which is entitled "Protect Service on Holidays or Employee's Rest Day," requires the payment of eight hours at time and one-half if employees are required to report to protect service. It notes that this rule is a carry-over from the 1945 Pennsylvania Railroad Company-Maintenance of Way Employees Agreement. According to Amtrak, this rule has been used infrequently and is applicable only to employees required to report for duty without specific assignment, to guard special train movements, and simply to be promptly available in case of trouble. It charges that an arbitration award on Amtrak years later improperly enlarged the rule to apply it to a regular overtime assignment.



### BMWE Position

BMWE contends that the so-called arbitrary under the 1991 Agreement between the parties is not really an arbitrary, but is a payment to employees who perform work under extraordinary conditions. It points out that this work is generally done at a time when employees should either be sleeping or attending to home matters, and represents not only pay for work but also compensation for substantial disruption of an employee's life. With reference to service performed on holidays under Rule 54, the BMWE contends that employees assigned to work on a holiday or a Sunday should be guaranteed eight hours of work at time and one-half.

The BMWE urges that the provisions of current Rule 53(a) of the Agreement should be modified to guarantee the employee four hours of straight time when required to perform service outside of and not continuous with the regularly assigned working hours. The organization also rejects Amtrak's proposal to pay employees for only 39 hours for the work week when daylight savings time begins. It notes that employees base their budget on a 40-hour paycheck.

### Recommendation

We recommend that all three of Amtrak's proposals be withdrawn. Pursuant to Rule 54, an employee is and should continue to be entitled to time and one-half compensation when performing work on a holiday or rest day that would otherwise be spent at home.

We see no reason to depart from the parties' negotiated arrangement to accommodate to change of hours on moving in and out of daylight saving time. It would be unfair to reduce the weekly take-home pay in the spring, or to deprive employees of the negotiated right to time and one-half after eight hours under the overtime rule.

Amtrak's proposal regarding employees being compensated for actual time worked on a per-minute basis in connection with work not continuous with their assignment is not justified. Interruption of off hours has a substantial detrimental effect on personal time. We recommend that employees be paid for a minimum of four hours under such circumstances, and for actual time worked beyond four hours.

#### 15. INTRACRAFT WORK

##### Amtrak Position

Amtrak proposes that when intracraft work of an incidental nature is performed, employees will be paid only the rate of their position.

Amtrak states that it is not attempting to eliminate distinctions between jobs within the BMWE. The carrier points out that under the Scope and Work Classification Rules, employees of one classification may perform work of another classification. It states that this is reiterated in Rule 58, with the proviso that employees filling higher-rated positions must be paid at the rate of the higher classification.

Amtrak states that despite the clear contract language, 12 disputes were progressed through three steps of the grievance procedure last year, but the organization did not bring one of these claims to arbitration. It objects that the meritless claims constitute a total waste of effort and resources.

Amtrak states that it should be able to assign incidental intracraft work without dispute or employee expectation of increased payments. Moreover, it argues that incidental work is not equivalent to filling a position and should not be compensated as such.

Amtrak asks for explicit recognition that intracraft assignments shall not be the basis of time claims. It believes that recognition of these intracraft work principles would be consistent with those enumerated in the recent national settlement.

#### BMW Position

The BMW refers to the following language in the current Scope Rule paragraph (e):

... The listing of the various classifications is not intended to require the establishment or the prevent the abolishment of positions in any classification, nor to require the maintenance of positions in any classifications. The listing of work under a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of existing rules or agreement between the parties hereto.

It states that since Amtrak's inception in 1976 this language has existed in the current agreement, and that it is virtually identical to the language in the imposed national agreement-titled "Intracraft Work Rule". The organization believes that the language in the current agreement provides management with extreme flexibility to work employees out of or across classifications. It also suggests that Amtrak is trying to create a discipline and claims process under which no discipline or claims could be processed.

#### Recommendation

We agree with Amtrak that it has the right under the Scope and Work Classification Rules to require BMW employees of one classification to perform work of another classification. Moreover, we are persuaded that when work of an incidental nature is performed, employees performing such work should receive the applicable rate of their position only. Rule 58 requires that

employees be upgraded when "filling" a higher-rated position. However, upgrading is not required and should not be expected when an employee is asked to perform work incidental to his or her own duties or service, which has been traditionally associated with another higher-rated classification. Performing incidental work of this nature should not constitute a basis for any time claims by or on behalf of the employees performing the work or by other employees. Should an employee be assigned to fill a higher-rated position, that employee continues to have the right to be paid at the rate of the higher classification, as required by the agreement, and has the right to have a time claim filed and progressed.

We recommend that Amtrak's proposal be adopted and applied according to the above discussion.

#### 16. INTERCRAFT WORK

##### Amtrak Position

Amtrak proposes that work may be assigned to BMW-employees even if not traditionally associated with that craft; and that work traditionally "owned" by the BMW may be assigned to other crafts. It states that the purpose of this proposal is twofold: to preempt disputes over what exactly is "traditionally associated" with the BMW craft; and to promote a concept of teamwork that will provide for the efficient use of personnel and cost-effective, quality service.

Amtrak states that it is not uncommon in the maintenance area for employees to have skills that transcend the artificial work assignment barriers created by the labor agreements. The carrier identifies certain employee utilization agreements it has negotiated with other unions as support for the developing acceptance of the employee utilization concept.

Amtrak proposes that it will not furlough employees in service on the date of this agreement as a result of the implementation of this proposal.

#### BMWE Position

The BMWE considers Amtrak's proposal to be most problematic. It states that it is an attempt to permit bargaining unit work defined by the BMWE's scope rule to be performed by anyone at management's discretion. The BMWE believed this proposal to be a serious attack on the integrity of its collective bargaining agreement with Amtrak.

#### Recommendation

We are not persuaded by Amtrak's position. If Amtrak were allowed to assign work traditionally assigned to the BMWE craft to other crafts, and if Amtrak were allowed to assign the work of other crafts to the BMWE, at its discretion, the craft lines of all of the affected labor organizations would be destroyed. A much more substantial record than that presented by the carrier would be needed to support such a proposal. We recommend that Amtrak's proposal be withdrawn.

### 17. WORKWEEK

#### Amtrak Position

Amtrak proposes that any two or three consecutive days may be designated as rest days so that maintenance of way work can be scheduled on the days when work can be done most efficiently. Present workweek rules require Amtrak to give employees Saturday and Sunday off when they are employed in an operation that works five days a week, but Amtrak has an agreement with the Special Construction Gang permitting weekend work with weekday rest days. Amtrak cites figures showing heavy commuter traffic at Pennsylvania Station in New York City, 30th Street Station in Philadelphia,

Union Station in Washington, South Station in Boston, and Union Station in Chicago. Amtrak notes that some of those stations maintain seven-day coverage for the purpose of general maintenance and protection against potential breakdowns. Amtrak, however, cannot presently assign additional BMWF-represented B&B mechanics, plumbers, or similar craftsmen to a project that would take advantage of the weekends or evenings, when passenger traffic is comparatively light, without incurring overtime.

Amtrak proposes that it should have the option to establish compressed workweeks, rather than schedule five, eight-hour days, when conditions make them appropriate. At present, it may schedule four-day weeks of 10-hour days only for traveling gangs. It argues that longer shifts (e.g., 10 hours) would permit Amtrak to take advantage of the 9:00 pm to 6:00 am light-traffic period.

#### BMWF Position

The BMWF denies the operational need for any change. It asserts that the existing rules provide the flexibility sought by Amtrak. The organization argues that it can work Saturday as a regular day if the need is shown. The BMWF rejects the idea of straight-time pay for 10-hour days away from home, eight days in a row; it objects to giving Amtrak what it calls carte blanche to create chaos in employees' work lives, and urges that the proposal be denied.

#### Recommendation

The great number of passengers during working hours results in excessive interruptions to crews doing essential maintenance tasks. The proposal by Amtrak would result in substantial savings and increased ease of performing essential maintenance work. On that basis, we recommend that Amtrak be permitted to schedule four-day weeks of 10 hours per day, provided that there is one Saturday or Sunday rest day per week.

## 18. STARTING TIME

### Amtrak Position

Amtrak proposes that it be given discretion to schedule and adjust the starting times for BMW-employees to meet the exigencies of service, subject to the restriction that, except in emergencies, employees will receive adequate notice of any change in their starting times or workweeks.

Amtrak notes that at the present time the starting times of assignment must be between 6:00 a.m. and 8:00 a.m. The carrier has negotiated some relief from these restrictions for its special construction gangs under the 1976 Special Construction Gang Agreement. It points out that presently the vast majority of employees must be scheduled to work at times when because of train traffic, they will be the least productive.

Amtrak proposes that it be allowed to schedule work at any time without penalty. It declares that it is difficult to schedule work between 6:00 a.m. and 8:00 a.m. as specified by the contract. It asserts that the weekday train traffic on the Northeast Corridor is so heavy that work during the day is constantly disrupted, and it argues that working during light traffic hours would be both safer and more productive.

### BMW Position

The BMW takes the position that there is no showing of any operational need for changes in the present structure of starting times; that there could be abuses in granting Amtrak the right to start gangs at any time without penalty; and that the carrier is able to achieve its necessary scheduling with the present schedules and rules for starting times.

### Recommendation

The evidence of the pressures of continual train traffic on its routes where trains pass every 15-30 minutes persuades us of the need for Amtrak to have greater flexibility in starting its crews. We recommend that it be given the right to commence crew workdays at any time. For those starting times other than existing starting times crew members will receive \$.55 per hour in addition to their regular compensation.

## 19. OVERTIME

### Amtrak Position

Amtrak proposes that overtime should not be paid until the employee has completed 40 hours in a week.

### BMWE Position

The BMWE contends that for many years the agreement has included overtime for all time worked over eight hours and that there is no justification for modifying that overtime rule.

### Recommendation

It appears to us that this issue may have been withdrawn by Amtrack. If not, we see no persuasive reason for departure from the present commitment of both parties to adhere to the overtime rule for those employees currently working a five-day eight-hour per day work week. We see a different situation for employees who will be working a routine four-day week of 10 hours per day. For them, we recommend that overtime be paid after 10 hours' work per day or after 40 hours' work per week.

## 20. PAID HOLIDAYS

### Amtrak Position

Amtrak seeks the deletion of one holiday.



#### BMWE Position

The BMWE seeks the addition of a holiday commemorating the birth of Martin Luther King, Jr.

#### Recommendation

We believe the current complement of holidays is consistent with the practice under other collective bargaining agreements in the industry, and do not believe any increase or decrease is merited.

### 21. COMBINED SENIORITY DISTRICTS

#### Amtrak Position

Amtrak proposes that the geographic boundaries between the various seniority districts in the northeast be removed. It argues that the present boundaries make no sense and result in illogical restrictions on the use of employees; that seniority districts generally limit the use of employees beyond specific geographic boundaries; and that the efficient assignment of routine maintenance, even within communities, is restricted by seniority districts. Amtrak points out that in the vicinity of Boston and New York City, when work needs to be done which is just on the other side of a district line from the working employees, that work cannot be performed by them, but employees must be brought from miles away to perform it. Moreover, Amtrak asserts that employees would gain job stability and more opportunity to work under its proposal. Finally, Amtrak states that it is willing to provide the current employees in each of the present seniority districts with preferential treatment when exercising seniority in their current district.

#### BMWE Position

The BMWE takes the position that under the Amtrak proposal, employees would have to travel much further distances, and would

eliminate traditional ties to the carrier and the area where they provide service. The organization points out that at present there are two large territories, and that Amtrak already has the right to run some crews in both.

#### Recommendation

The evidence indicates that the present boundaries result in unreasonable restrictions to the efficient operation of the carrier.

The maintenance of way forces in the East are divided in four seniority districts and covered by two collective bargaining agreements. We recommend that geographic boundaries between the various seniority districts be removed, and that Amtrak be required to provide current employees in each of the present seniority districts with preferential treatment (prior rights) when exercising seniority in their current districts.

#### H. APPLICABLE TO IAM

##### 1. SUBCONTRACTING

#### IAM Position

The IAM proposes that Amtrak adopt Article II of the 1964 Agreement with the recommendations imposed by PEB 219, but with extensive restrictions. The IAM states that this protection is needed because Amtrak contracts out a great deal of work that has been performed by Amtrak machinists, or that should be performed by Amtrak machinists.

The IAM requests that the issue of electrical power purchase agreements (EPPAs) be addressed separately. It requests that EPPAs be outlawed, or put under the umbrella of the September 25, 1964,

Agreement. Alternatively, it requests that its Section 6 notice on EPPAs be exempt from the moratorium provision of the Report.

#### Amtrak Position

Amtrak states that it is not a party to the September 25, 1964, Agreement. It refers to 45 U.S.C. Section 565 (e) (1), which it states is the subcontracting provision by which it is governed, and which also contains a no-furlough statutory guarantee relating to subcontracting. Amtrak states that the IAM has not shown that Amtrak has abused subcontracting to the detriment of the IAM.

#### Recommendation

45 U.S.C. Section 565(e)(1) states:

(e) Contracts not to result in layoff

(1) Except as provided in paragraph (2) of this subsection, the Corporation shall not contract out any work normally performed by employees in any bargaining unit covered by a contract between the Corporation or any railroad providing intercity rail passenger service on October 30, 1970, and any labor organization, if such contracting out shall result in the layoff of any employee or employees in such bargaining unit.

The record indicates that when Amtrak has engaged in subcontracting, it has adhered to the statutory no-furlough guarantee.

Based on Special Board 102-29's response to Shopcraft Request No. 4, which determined that EPPAs are within the scope of the September 25, 1964, Agreement, it is now established that EPPAs are considered a form of subcontracting. Thus, IAM-represented employees would be protected from furlough under the statutory guarantee should Amtrak pursue such an arrangement.

Accordingly, the Board recommends that the IAM proposal on subcontracting, including its Section 6 notice on EPPAs, be withdrawn.

## 2. JOB CLASSIFICATION

### IAM Position

The IAM seeks a recommendation that eliminates the Mechanical Technician classification or, alternatively, makes such a classification subject to the bidding and bumping provisions of the agreement. The organization states that Amtrak has abused the selection of employees for this classification, causing an employee morale problem.

According to the IAM, the Mechanical Technician was a kind of lead mechanic, and the position was created for the purpose of instructing. Subsequently, the IAM was able to get language in its agreement with Amtrak on this classification that specifically required that mechanical technicians had to be instructing others. According to the IAM, the present rule states that all things being equal, the most senior individual is supposed to be the technician, but staff management has the discretion to decide whether or not to select that person, and the organization does not have a right to challenge the decision. The IAM seeks a recommendation requiring Amtrak to utilize the Field Technician - Train Riders machinist classification across the entire Amtrak system.

### Amtrak Position

Amtrak states that it has dealt with the issue of skill differentials among shopcraft employees by establishing wage differentials.

The carrier states in respect of the Field Technician - Train Riders classification that the work is currently performed by other crafts and by management. Moreover, Amtrak points out that the IBEW represents a significant number of train riders across the Amtrak system.

### Recommendation

Inasmuch as the IAM entered into an agreement with Amtrak, granting it certain unilateral rights regarding the selection of employees for the Mechanical Technician classification, the organization must show persuasive reasons why it should either be released from this bilateral agreement or the agreement should be changed.

The IAM has not shown any change in the instructional duties of the job, nor has it shown any change in the carrier's need for the classification from that which obtained when the bilateral agreement was reached. Additionally, we are not persuaded by the allegations of abuse in Amtrak's selection process.

We thus conclude that the IAM did not make out a persuasive case to justify either its release from the agreement and allowing for the elimination of the Mechanical Technician or modification of the agreement. The record before us shows that the IAM has four differentials, the JCC "several" and the IBEW eight. It would be destabilizing to the current structure of the shopcrafts were the Board to recommend that the Mechanical Technician classification be subject to the changes proposed by the IAM.

Because the IAM does not represent all train riders on the Amtrak system, a basis does not exist to recommend that Amtrak assign machinist Field Technician - Train Riders across the entire system. Accordingly, the Board recommends that both IAM proposals be withdrawn.

### 3. SUPERVISORS' SENIORITY RETENTION

#### IAM Position

The IAM seeks to revise Article VII - Seniority Retention, of the December 18, 1987, Agreement to provide that supervisors must

pay a fee equivalent to monthly IAM membership dues to retain or accumulate seniority.

Amtrak Position

Amtrak does not present a position on this proposal.

Recommendation

PEB 211 addressed the matter of supervisors' seniority retention in its Report. It recommended in part that "person[s] promoted on or after October 1, 1986 must pay the appropriate fee to retain or accumulate seniority." We recommend that the IAM proposal be adopted to the extent that it requires supervisors to pay the appropriate fee to retain or accumulate seniority.

4. ADDITIONAL PAID HOLIDAY

IAM Position

The IAM proposes that Amtrak add an additional paid holiday by granting each employee an additional day of paid personal leave.

Amtrak Position

Amtrak points out that the median number of holidays reported in a Bureau of National Affairs survey is 11, and that Amtrak already provides 11 paid holidays for its employees.

Recommendation

The record does not indicate that the machinists have fewer paid holidays than other Amtrak employees or that the number of paid holidays is out of line with what other machinists in the railroad industry receive.

The Board recommends that the proposal be withdrawn.

## 5. AUTO TRAIN: AGREEMENT FOR IAM

### Amtrak Position

At present, machinists do not work on the auto train.

Amtrak proposes special provisions for such work. It states that the IAM is the only organization representing mechanical employees that has not entered into an auto train service agreement. Amtrak argues that its proposal will put the IAM on the same footing as the other shopcrafts in auto train service.

### IAM Position

The IAM responds that there is no justification for Amtrak's seeking a separate, substandard agreement for machinists to service the auto train. The IAM claims that such agreements do away with its C-2 protection, the 40-hour workweek, the five-day workweek, and overtime.

### Recommendation

The Board is not prepared to require members of any organization to work involuntarily in a special category of service that offers conditions of employment different from those obtaining elsewhere in the carrier's service. This is especially so in the case of the auto train, inasmuch as this service has been run since its inception without machinists.

The Board recommends that Amtrak's proposal be withdrawn.

## 6. REVISION OF RULE 44

### IAM Position

The IAM proposes to revise Rule 44 to provide that local chairmen may investigate alleged violations of the collective

bargaining agreement during regularly scheduled hours without loss of time or service credit. The IAM believes that Amtrak changed the longstanding practice in the industry in 1990 when it required local chairmen to punch out to discuss any problem involving IAM members, supervisors, or the collective bargaining agreement. The organization wanted to strike over the matter, but a U.S. District Court judge persuaded the parties to arbitrate. The arbitrator upheld Amtrak's position. The organization points out that Amtrak uses the local committee and the local chairman during regularly scheduled working hours when it is to its benefit, such as taking care of the realignment of forces or the administration of overtime.

#### Amtrak Position

Amtrak does not present a position on this proposal.

#### Recommendation

In 1990 Amtrak arbitrated the issue of whether or not the local chairman was entitled to investigate alleged violations of the collective bargaining agreement during regularly scheduled hours without loss of time or service credit. Amtrak's position was upheld by the arbitrator. Especially in view of the award rejecting the IAM position, the organization has the burden of demonstrating to this Board that the representation rights of employees are significantly impaired by requiring the local chairman to punch out when investigating grievances. Because this has not been shown, the Board recommends that the proposal be withdrawn.



## 7. DISTRIBUTION OF AGREEMENTS

### IAM Position

The IAM proposes that Amtrak print and distribute to each IAM represented Amtrak employee a revised, consolidated copy of the controlling collective bargaining agreement. It points out that the most recent printed version of the Amtrak-IAM agreement is the one effective September 1, 1977. The organization states that when this type of printing is done in the railroad industry, the railroads have always incurred the cost of providing employees with copies of these agreements.

### Amtrak Position

Amtrak does not present a position on this proposal.

### Recommendation

It is important that employees have an up-to-date agreement which identifies employees' rights and responsibilities regarding wages, hours, and working conditions. The Board recommends that the IAM proposal be adopted.

## I. APPLICABLE TO IBEW

### 1. SUBCONTRACTING

### IBEW Position

The IBEW seeks to apply the provisions of Article II of the September 25, 1964, Agreement, as revised and amended to date, including the recommendations of PEB 219, with the exception that neutrals should be appointed under the provisions of Section 3 of the Railway Labor Act. The IBEW sets forth certain work that is

not to be considered subcontracting; and identifies specific work that must not be subcontracted. The IBEW recognizes, however, that from time to time emergencies will exist; and it sets forth a process for resolving those situations.

#### Amtrak Position

Amtrak states that it is not a party to the September 25, 1964, Agreement. It refers to 45 U.S.C. Section 565 (e) (1), which it states is the subcontracting provision by which it is governed, and which also contains a no-furlough statutory guarantee relating to subcontracting. Amtrak states that it has not been shown that it has abused subcontracting.

#### Recommendation

45 U.S.C. Section 565 (e) (1) states:

(e) Contracts not to result in layoff

(1) Except as provided in paragraph (2) of this subsection, the Corporation shall not contract out any work normally performed by employees in any bargaining unit covered by a contract between the corporation or any railroad providing intercity rail passenger service on October 30, 1970, and any labor organization, if such contracting out shall result in the layoff of any employee or employees in such bargaining unit.

There has been no showing in the record before this Board that Amtrak has not lived up to its no-furlough statutory guarantee. Moreover, it has not been demonstrated that Amtrak has abused its subcontracting rights.

The Board recommends that the IBEW proposal be withdrawn.

## 2. ADDITIONAL PAID HOLIDAY

### IBEW Position

The IBEW proposes that the Board recommend the birthday of Martin Luther King, Jr. as a holiday. It states that such a holiday is consistent with the Federal Government's holiday schedule, and would also constitute recognition of the important contributions made by American minorities to our society.

### Amtrak Position

Amtrak states that it has offered to each organization to exchange a personal holiday for the Martin Luther King, Jr. holiday, and that all organizations have refused this offer. It points out that the median number of holidays granted employees, as reported in a Bureau of National Affairs survey is 11; Amtrak already gives its employees 11 paid holidays.

### Recommendation

The IBEW has not offered persuasive reasons why its request for the additional holiday should be approved. We recommend that the proposal be withdrawn.

## J. APPLICABLE TO JCC

### 1. NEW CLASSIFICATION OF WORK RULE FOR CARMEN

### JCC Position

The JCC requests that this Board recommend the adoption of the new classification of work rule it proposes. The rule is a synthesis of current carmen rules on the national freight railroads. The JCC states that the rule accurately describes the

work currently done by carmen on Amtrak. It asserts that Amtrak has refused over the years to follow through on an initial understanding Amtrak had reached with the JCC to adopt a national classification of work rule.

#### Amtrak Position

Amtrak does not present a position on this proposal.

#### Recommendation

The JCC concedes that the carrier has refused over the years to agree to a national classification of work rule for carmen. The rule proposed would give carmen exclusive right to all of the work listed in it. The JCC has not demonstrated that it exclusively performs all of the listed work, systemwide. The Board recommends that the proposal be withdrawn.

## 2. PART-TIME COACH CLEANERS

#### Amtrak Position

Amtrak makes its part-time proposal applicable to both mechanics and coach cleaners, subject to a cap on the number of part-time positions, which is not to exceed 10 percent of the full-time positions covered. Amtrak states that the use of part-time positions would permit it to restructure its work assignments more effectively to meet its servicing needs. Moreover, it points out that part-time positions would also be useful as a supplement to full-time forces where equipment is added to accommodate seasonal service requirements. In addition, it asserts, part-time coach cleaners could be used to provide extra attention to cleaning food service cars, and part-time positions would permit the establishment of more full-time Monday-through-Friday positions.

### JCC Position

The JCC asserts that it would be absurd to extend the part-time rule to carmen, given the training and skill level necessary to enter that craft. The JCC has offered a rule allowing for part-time coach cleaners under certain circumstances, with a requirement that full-time positions be established if duties exceed four hours in a 24-hour period.

### RECOMMENDATION

It makes sense to allow part-time coach cleaners where there is insufficient work for full-time positions. The Board is confident that the JCC and Amtrak can reach agreement on this matter, setting forth in workable detail when and where part-time coach cleaners may be used and when service requirements would justify the establishment of full-time positions at the locations.

The Board recommends that only coach cleaners be employed part-time, under the conditons set forth above.

### 3. AUTO TRAIN: RULES 11 AND 13

### JCC Position

By agreement dated August 31, 1983, Amtrak was permitted to be exempt from Rule 11 (Workday and Workweek) and Rule 13 (Overtime), in its auto train service. These exemptions were made at a time when the auto train was operating three days per week. Currently, the auto train operates on a regular, five-day-per-week schedule. The JCC contends that there is no longer any reason for the continued exemption from Rules 13 and 11.

### Amtrak Position

Amtrak states that the auto train service was and remains unique; therefore, this service should continue to be exempt from Rule 13 and Rule 11. It proposes that carmen be allowed to get to overtime faster, by crediting certain payments for working on a holiday towards overtime.

### Recommendation

The mere fact that the auto train was operating three days a week when the agreement between Amtrak and the JCC was signed in August, 1983, and that it now operates five days a week, does not provide a sufficient basis to change the Auto Train agreement dealing with workdays and workweek. The JCC has not demonstrated that the auto train agreement governing workdays and workweek was based on a three-day operating schedule. We therefore recommend that the JCC proposal to have Rule 11 apply to auto train service be withdrawn.

The JCC proposal to have Rule 13 apply to JCC auto train service would allow overtime to be paid under the Schedule Agreement. We see no destabilizing effect in such a proposal. Amtrak, in testimony before the Board, stated its willingness to provide some overtime relief to the carmen, the IBEW, and the IBB&B forces on the auto train. We think that stabilization would be served by establishing rule parity between the JCC and the IBB&O, which obtained the right in collective bargaining to be paid overtime under the Schedule Agreement. We therefore recommend that the JCC proposal on Rule 13 be adopted.

## K. APPLICABLE TO ALL PARTIES

### 1. 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 on another party no earlier than November 1, 1994.

#### VII. ISSUES NOT DEALT WITH

Any and all issues in dispute before this Emergency Board on which there are no recommendations, or which are not mentioned in this Report, shall be deemed withdrawn.

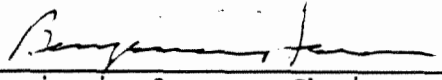
#### VIII. CONCLUSION

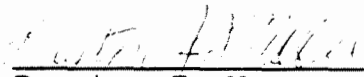
These recommendations represent our best judgement on the merits and equities of the issues in dispute. They also represent our estimate of a fair and realistic package of conditions, benefits, and benefit changes that, as a totality, should provide a basis for a acceptable, overall settlement.

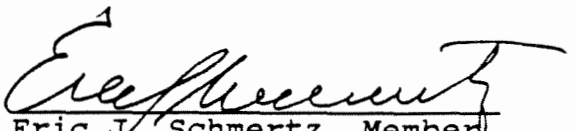
We think it would be unrealistic and a costly exercise in futility for all concerned if our total recommendations did not take into consideration, as a critical ingredient, their acceptability by the parties. Nevertheless, we think it impacticable to ask that the parties adopt these recommendations unconditionally 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.

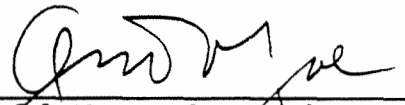
Respectfully,

  
Benjamin Aaron, Chairman

  
Preston J. Moore, Member

  
Eric J. Schmertz, Member

  
David P. Twomey, Member

  
Arnold M. Zack, Member



## EXECUTIVE ORDER

- 1 2 7 9 6 -

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES  
BETWEEN THE NATIONAL RAILROAD PASSENGER CORPORATION AND ITS  
EMPLOYEES REPRESENTED BY CERTAIN LABOR ORGANIZATIONS

Disputes exist between the National Railroad Passenger Corporation and its employees represented by certain labor organizations 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.

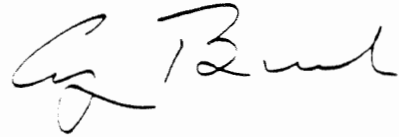
NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the Act, it is hereby ordered as follows:

Section 1. Creation of Emergency Board. There is created, effective April 3, 1992, a board of five members to be appointed by the President to investigate the disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any 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.

A handwritten signature in dark ink, appearing to read "G. Bush", is positioned to the right of the typed text.

THE WHITE HOUSE,

March 31, 1992.

LABOR ORGANIZATIONS

(NMB Case Nos. A-12309, A-12290, A-12198, A-12263, A-12268,  
A-12318, A-12103, A-12246, A-12291, A-12467, and A-12391)

American Train Dispatchers Association

Brotherhood of Locomotive Engineers

Brotherhood of Maintenance of Way Employes

International Association of Machinists &

Aerospace Workers

International Brotherhood of Blacksmiths &

Boilermakers

International Brotherhood of Electrical Workers

International Brotherhood of Firemen & Oilers

Transport Workers Union

Transportation Communications Union - ARASA

Transportation Communications Union - Carmen Division

United Transportation Union