

**REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
NO. 225**

**Submitted Pursuant to Executive Order No. 12925
Dated August 29, 1994
and Section 10 of
The Railway Labor Act, as Amended**

**Investigation of dispute between the
Soo Line Railroad Company and
certain of its employees represented by
the United Transportation Union**

**(National Mediation Board Case
No. A-12455)**

**Washington, D.C.
October 14, 1994**

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The President
The White House
Washington, D.C.

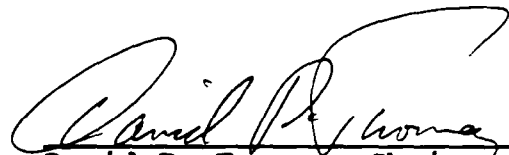
Dear Mr. President:

On August 29, 1994, you established this Emergency Board, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12925 we were authorized to investigate a dispute between the Soo Line Railroad Company and its employees represented by the United Transportation Union.

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

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

Respectfully,


David P. Twomey, Chairman


Richard R. Kasher, Member


Elizabeth Neumeier, Member

TABLE OF CONTENTS

I.	Creation of the Emergency Board.....	1
II.	Parties to the Dispute.....	1
	A. The Soo Line Railroad Company.....	1
	B. The Labor Organization.....	3
III.	Activities of the Emergency Board.....	3
IV.	History of the Dispute.....	5
V.	Positions of the Parties.....	7
	A. The Organization's General Position.....	7
	B. The Carrier's General Position.....	9
	C. Pay Issues.....	12
	1. Wages.....	12
	a. General Wage Increase.....	12
	b. Cost of Living Adjustment (COLA).....	13
	c. Lump Sum.....	13
	2. Basis of Pay.....	14
	3. Arbitraries.....	15
	D. Rules.....	16
	1. Probationary Period.....	16
	2. Road/Yard.....	17
	3. Yard Starting Times.....	17
	4. Customer Service.....	18
	5. Article XII of the 1985 Agreement (off the roster).....	19
	6. Elimination of Self-Executing Rules.....	19
	7. Cabooses.....	20
	8. Seniority Accumulation.....	20

9.	Conductor in Charge of Train.....	21
10.	Non-Discrimination Against UTU Engineers.....	21
11.	UTU Representation of Engineer Members.....	22
12.	Road Switcher Agreement.....	22
13.	General Moratorium.....	22
14.	Supersession or Amendment.....	23
15.	Expenses Away From Home.....	23
16.	Vacation.....	24
17.	Conductor Promotion and Moratorium.....	24
E.	Health and Welfare.....	24
F.	Crew Consist.....	25
1.	Crew Size.....	25
2.	Employee Protection.....	26
3.	Benefits for Employees on Reduced Crews.....	28
4.	General Benefits.....	29
5.	Amendment or Supersession.....	30
6.	Moratorium for Crew Consist.....	31
VI.	Recommendations of the Board.....	32
A.	Pay Issues.....	32
1.	Wages.....	32
2.	The Dual Basis of Pay.....	32
3.	Arbitraries.....	34
B.	Rules.....	34
1.	Probationary Period.....	34
2.	Road/Yard Restrictions.....	34
3.	Yard Starting Times.....	35

4.	Customer Service.....	35
5.	Article XII of the 1985 Agreement.....	35
6.	Self-Executing Rules.....	35
7.	Cabooses.....	36
8.	Road Switcher Agreement.....	36
9.	Seniority Accumulation.....	36
10.	General Moratorium.....	37
11.	Supersession or Amendment.....	37
C.	Health and Welfare.....	37
D.	Crew Consist.....	37
1.	Crew Size.....	37
2.	Joint Implementing Committees.....	38
3.	Utility Employees and "Separation of Crews"....	42
a.	Utility Employees.....	42
b.	Non-Separation of Crew When a Brakeman is Used.....	42
4.	Employee Protection.....	43
a.	Protected Employees.....	43
b.	Benefits for Protected Employees.....	43
1)	Voluntary Buyouts.....	43
2)	Reserve Boards.....	43
3)	Reduced Crew Allowance.....	45
4)	Productivity Fund.....	46
(a)	Buyout.....	46
(b)	Utility Employees.....	46
(c)	Contribution.....	47
5)	Personal Leave Days.....	47

6) General Benefits.....	47
(a) Signing Bonus.....	47
(b) Conductor Training.....	47
(c) Guaranteed Extra List.....	48
(d) Quintuple Damages for Violation of the Crew Consist Agreement.....	48
7) Moratorium for Crew Consist Agreement.....	48
E. Remaining Proposals.....	49
VII. Conclusion.....	49

I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 225 (the Board) was established by the President pursuant to Section of 10 of the Railway Labor Act, as amended, 45 U.S.C. § 160, and by Executive Order No. 12925. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between the Soo Line Railroad Company and its employees represented by the United Transportation Union. Copy of the Executive Order is attached as Appendix "A"

On August 30, 1994, the President appointed Professor David P. Twomey of the Boston College, Carroll School of Management, Chestnut Hill, Massachusetts, as Chairman of the Board, and Richard R. Kasher of Bryn Mawr, Pennsylvania, and Elizabeth Neumeier of Gloucester, Massachusetts and Pittsburgh, Pennsylvania as members. The National Mediation Board appointed Roland Watkins, Esq., as Special Assistant to the Board.

II. PARTIES TO THE DISPUTE

A. The Soo Line Railroad Company

The Soo Line Railroad Company (the Soo Line) is the ninth largest of the thirteen (13) Class I rail carriers in the country. The Soo Line operates over 5,000 route miles in eleven (11) midwestern states and generated \$593.3 million in revenue in 1993.

The Soo Line, Canadian Pacific Rail of Canada and the Delaware and Hudson Railway are the primary railroads that comprise the Canadian Pacific Rail System (CPRS). Each of these railroads is a wholly owned subsidiary or division of Canadian Pacific Limited, based in Montreal. For legal and operating reasons, the Soo Line has remained a separate United States company within CPRS.¹

Canadian Pacific Limited, one of the major investor-owned corporations in Canada, has extensive operating interests in transportation, energy, real estate and hotels. It also has major equity interests in the telecommunications, waste management and student/health care transport industries. CPRS remains a major component of Canadian Pacific Limited, accounting in 1993 for 33.9% of the total assets of the Corporation, 51.8% of revenue from continuing operations and 26.8% of the Corporation's operating income from continuing operations.

The Soo Line currently employs approximately 4,300 people in craft and certain supervisory positions, represented by fourteen different labor organizations. One organization has four separate divisions, each of which negotiates its own labor agreement. Therefore, the Soo Line must negotiate seventeen different labor agreements to cover its craft and certain supervisory employees.

¹ While the Section 6 notices were filed in the name of the Soo Line Railroad Company, the Soo Line is now referred to by the Carrier as CP Rail, Heavy Haul U.S.

B. The Labor Organization

The United Transportation Union (UTU) is the collective bargaining representative under the Railway Labor Act for 1,057 employees of the Carrier. The employees are classified as road conductors and yard foremen, road brakeman and yard helpers, switchmen, locomotive firemen, and hostlers of engines. The Board will use the collective term "trainmen" to refer to all employees represented by the UTU.

III. ACTIVITIES OF THE EMERGENCY BOARD

Representatives of the Soo Line and the UTU met with the Emergency Board in Washington, D.C., on September 2, 1994 to discuss procedural matters.

On September 12-14, 1994, the Board conducted hearings in Washington, D.C., at which the issues were addressed. 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 time until October 14, 1994 for the Emergency Board to report its recommendations to the President.

The UTU presented its position through written statements and oral testimony by Lloyd W. Swert, Assistant President, UTU; Larry Olson, Senior Vice President, UTU; Chuck Davis, Ph.D., Labor Education Service, Industrial Relations Center, University of Minnesota; Bruce R. Wigent, Vice President, UTU; Dennis Baker, General Chairman, UTU; James E. Beyer, General Chairman, UTU; Eugene F. Von Essen, Sr., General Chairman, UTU; and Fred Croes, Vice General Chairman, UTU. The Organization was represented by Clinton J. Miller, III, Esq., General Counsel, of the UTU.

The Soo Line presented its position through written statements and oral testimony by Edwin V. Dodge, President and Chief Executive Officer, the Soo Line; Robert W. Anestis, President of Anestis & Company; Cathryn S. Frankenberg, Vice President - Labor Relations, the Soo Line; Patrick A. Pender, Vice President and Chief Operating Officer, the Soo Line; Vernon W. Graham, Senior Manager - Operations Administration, the Soo Line; John P. Weiland, Director - Cost Analyst, the Soo Line; Michael F. McNamara, Assistant Manager, Labor Relations-Operating, the Soo Line; Donald V. Brazier, Assistant Vice-President, Industrial Relations, CPRS; and Harvey M. Romoff, Canadian Transportation Consultant. The Soo Line was represented by Ralph J. Moore, Jr., Esq., of Shea and Gardner.

Pursuant to a request of the Board, the parties presented summaries of their contentions regarding the issues before the Board on September 19, 1994.

After the close of the formal hearings, the Board met with representatives of the parties, and also traveled to the St. Paul and Bensenville yards to view the operations. The Board then met in executive session to prepare its Report and Recommendations. The entire record considered by the Board consists of over eight hundred pages of transcripts and fifty-seven exhibits.

IV. HISTORY OF THE DISPUTE

On or about July 25, 1988 the UTU, in accordance with Section 6 of the Railway Labor Act, served notice on the Soo Line of its demands for changes in the provisions of the existing collective bargaining agreement. On November 2, 1988 the Soo Line served notice on the UTU of its demand for changes in crew consist and elimination of the productivity fund. On December 12, 1989, the Soo Line served notice on the UTU of its demand for changes in wages, work rules, and health and welfare benefits. In 1989 the Soo Line decided to handle negotiations locally with the UTU and the other organizations which had served Section 6 notices, rather than to participate in national handling and be represented by the

National Carriers' Conference Committee (NCCC)². Direct bargaining did not result in an agreement.

On March 13, 1991, the UTU applied to the National Mediation Board (NMB) for its mediatory service. The application was docketed as NMB Case No. A-12455.

Mediation between the Soo Line and the UTU was commenced by Mediator Joseph Anderson on June 20, 1991. Later such efforts were undertaken by NMB Member Patrick J. Cleary and Mediator Robert J. Cerjan. These efforts were also unsuccessful. Between August 6, 1991 and August 5, 1992, the Soo Line reached local agreements with the 16 organizations representing 75% of its craft and certain of its supervisory employees. On June 13, 1994, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered the UTU and the Soo Line the opportunity to submit their controversy to arbitration, the Soo Line declined the proffer of arbitration, and, accordingly, that same day the NMB notified the parties that it was terminating its mediatory efforts. On July 11, 1994, Member Cleary and Mediator Cerjan commenced mediation in the public interest. On July 14, 1994, the Soo Line promulgated rules changing wages, work rules, and health and welfare benefits. The UTU went on strike. NMB Member Magdalena G. Jacobsen resumed public interest mediation on July 25, 1994. An additional

² The national handling negotiations resulted in Presidential Emergency Board 219 (PEB 219) being appointed. PEB 219 issued its report on January 15, 1991.

mediation session was conducted by Member Jacobsen on August 22, 1994.

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

The President, in his discretion, issued Executive Order 12925 on August 29, 1994, which, effective that day, created this Board to investigate and report concerning the dispute.

V. POSITIONS OF THE PARTIES

A. The Organization's General Position

The UTU contends that the Carrier's plea of poverty, and consequent demands for radical changes in its contracts, cannot be considered in a vacuum. The Soo Line is a wholly-owned subsidiary of CP (the 25th largest transportation company in the world) and a component of the CPRS, including CP Rail in Canada and the Delaware and Hudson in the United States. The rail assets comprise 40% of the holding company's assets, but generate 60% of the holding company's revenues. Moreover, the UTU contends that the testimony presented regarding CP's contemplated partial merger with CN North

America (CN) and its obvious competitive consequences must be considered. The UTU further contends that CP's existing contract with the UTU in Canada, dated August 31, 1992, which does not permit foreman-only operations in yard service, must be considered.

Regarding the Carrier's suggestion that recommendations for detailed contract language be made and that, if the parties cannot arrive at contract language within 10 days after agreement in principle or Congressional implementation, any dispute would be submitted to binding interest arbitration under Sections 7-9 of the Railway Labor Act (RLA) (45 U.S.C. §§ 157-59), the UTU contends that the Carrier's position is totally unacceptable and beyond the jurisdiction of this Board.

Regarding the general issue of the insistence by the Carrier that the Board adopt the "pattern" set by the Soo Line's agreements with other unions on the property, as opposed to honoring the national pattern established by PEB 219, the UTU contends that UTU members' interests cannot be legitimately compared to the interests of non-operating unions, and that the analogy to the BLE is lacking, principally because the wage/rule dispute with UTU is inextricably linked to a resolution of crew consist, an issue that does not involve the BLE. Moreover, the UTU points out that the BLE agreement was clearly concessionary, and argues that each union must have the right to decide whether such agreements are justified.

The UTU contends that the financial data concerning CPRS, which it regards as the real party in interest before the Board, does not justify similar relief to that granted to the Southern Pacific Transportation Company (SPTC) during the PEB 219 process because, the UTU maintains, there is no cash flow inadequacy in this case, and CPRS did not have a \$363 million net operating loss as SPTC did in 1991. Moreover, the UTU asserts that the SPTC settlements with UTU exceed the Carrier's offer regarding wages and crew consist.

The UTU contends that, despite the Carrier's oral characterization to the Board that the UTU's 47-day strike was conducted in a "gentlemanly" fashion, the Carrier has two lawsuits pending against the Union; and at least two employees are out of service charged for use of mere words on the picket line during the strike. The UTU contends that the charges should be dismissed as part of a general no-reprisal clause recommendation.

B. The Carrier's General Position

The Soo Line sees two basic issues in this dispute. The first is whether the "local pattern" established by the Soo Line's settlements with all its other unions should be recommended as the basis for the settlement with the UTU concerning wages, work rules, and health and welfare. The second is whether and how the Soo Line's crew consist agreement should be changed.

The Carrier maintains that the Soo Line is an extremely light density railroad with short hauls and high switching costs as a result of its physical characteristics and commodity mix. It posits that the Soo Line is primarily a grain-gathering regional railroad, not a long haul road carrying large quantities of coal. The Soo Line states that its financial condition is dramatically weaker than that of the major U.S. railroads except Southern Pacific, and resembles Southern Pacific's; that the portion of each revenue dollar it spends on labor is much higher than the U.S. Class I average; that its operating ratio in 1993 was 12 points higher than the U.S. Class I average; and that its rates of return were correspondingly abysmal, far below the U.S. Class I average. It avers that the Canadian Pacific railroad in Canada is not dependent on the Soo Line, which carries only three or four trains a day into the United States, and could get along quite well if the Soo Line did not exist; and points out that Canadian Pacific, Ltd. tried unsuccessfully to sell the Soo Line in the recent past. Moreover, the Canadian Pacific railroad itself is a very light density railroad, with an operating ratio much higher, and rates of return much lower, than the major U.S. railroads, except Southern Pacific. The Carrier argues that, no matter how one views the Soo Line -- either as a stand-alone entity, or as part of the larger CPRS system -- it is much weaker and suffers from major disadvantages in competition with the major U.S. Class I railroads.

The Soo Line contends that it is essential to settle the common issues with the UTU on the basis of the "local pattern" established in the 16 agreements reached between August 6, 1991 and the end of August 1992. The Carrier maintains that there are no circumstances peculiar to the UTU that justify treating trainmen represented by the UTU differently and more favorably than their fellow employees in other crafts, particularly locomotive engineers represented by the BLE.

The Carrier contends that prior Presidential Emergency Board reports and arbitration decisions have emphasized that a local pattern should take precedence over an inconsistent national pattern because it would be particularly destabilizing to discriminate among employees who work in close proximity; that late settlements breaking a pattern are unacceptable because they penalize employees who agreed to the pattern earlier; and that uniformity of treatment of operating employees is particularly important because locomotive engineers (generally represented by the BLE) and ground service employees (generally represented by the UTU) work on each assignment together. The Soo Line contends that a broken local pattern leads inexorably to strife among the Carrier's employees and makes future bargaining nearly impossible, since no union would want to make the first agreement only to see competing unions obtain better deals later.

C. Pay Issues

1. Wages

a. General Wage Increase

Organization Position. The UTU contends that the report of PEB 219, as supplemented by the November 1, 1991 Implementing Documents signed by the UTU and the NCCC pursuant to the Congressional mandate in Pub. L. No. 102-29, should serve as the basis of resolution of the wage issues. The percentage rate increases provided for in the report of PEB 219 should be retroactively applied and paid with interest. In application of that principle, the UTU's position is that the hourly-rated employees it represents on yard jobs and road switchers should be paid the 10% increase required by PEB 219 as to yard jobs, but that those on road switchers must continue to be paid mileage or hours, whichever is greater. As to the employees it represents in all classes of road service, the UTU contends that the percentage increases under PEB 219 should apply.

Carrier Position. The Carrier proposes a six percent increase in hourly rates for employees paid on an hourly basis (yard service employees and road switchers), to be effective thirty (30) days after the new agreement goes into effect, without retroactivity. The rates of road service employees who are paid in part on a

mileage basis are discussed under Section 2 - Basis of Pay, below.

b. Cost of Living Adjustment (COLA)

Organization Position. The UTU contends that all COLAs should be computed by the PEB 219 method of calculation for COLA increases.

Carrier Position. A COLA will provide for lump sum allowances, which would not be rolled into the wage base, payable January 1 each year, based upon a formula that depends on movements in the CPI-W and the ability of the Soo Line to lower its operating ratio.

c. Lump Sum

Organization Position. The lump sum(s) required by PEB 219, Pub. L. No. 102-29, and the November 1, 1991 Implementing Documents should be paid to all current Carrier employees it represents at the PEB 219 level, retroactively applied.

Carrier Position. Lump sum payments totalling \$7,500 to be paid to employees who meet eligibility requirements, of which \$5,500 is to be paid within sixty (60) days after the new contract goes into effect, and \$2,000 is to be paid December 15, 1994.

2. Basis of Pay

Organization Position. The dual basis of pay should be retained as it was in PEB 219, albeit with an increase in basic day mileage to 130 miles.

Carrier Position. At present, the Soo Line's road service employees represented by the UTU are paid on a mileage basis with an additional time component. Under this complicated "dual basis of pay," which assumes that a train today travels 108 miles in 8 hours - or 13.5 miles per hour, earnings of through freight employees bear very little relationship to hours worked and have grown far more through the years than the pay of other employees on or off the railroad. Moreover, under the dual basis of pay, on shorter runs the longer it takes to complete a trip, the more the employees are paid (through overtime payments). Thus, on runs subject to overtime, the dual basis creates pay incentives that are at odds with expeditious customer service. This aspect of the dual basis of pay is the primary reason for the Soo's present proposal.

Consistent with its local agreement with the BLE, the Soo Line proposes to pay the trainmen based on miles operated, with the mileage rate corresponding to a category of service -- priority freight, through freight or local freight -- based on the amount of service performed en route. The new mileage rates would be determined by the same basic methodology used for the BLE

agreement. In addition, the new mileage rates under the BLE agreement were increased 4% on January 1, 1994, and under the Carrier's proposal the mileage rates for the UTU would contain this 4% increase. The Soo Line opposes the modification recommended by PEB 219, because with the increased overtime divisor a large percentage of the Soo Line's runs would become subject to potential overtime or increased overtime.

3. Arbitraries

Organization Position. The UTU contends that all arbitraries should be retained, as they were in the report of PEB 219, including: meals en route; lap backs; tow-ins; assisting other trains/set out bad orders en route; re-railing own train; Final Terminal Delay (FTD); Initial Terminal Delay (ITD); terminal switching (initial and final); held-away-from-home terminal; and interchange delays.

The UTU contends that to eliminate payment for these arbitraries would provide an unjustifiable windfall to the Carrier, and, by its computation, estimates that by elimination of the arbitraries for tow-ins, FTD, ITD, as well as overtime, which UTU also contends should remain in place, each employee affected would be paid \$4,000 to \$7,000 less per year. In the UTU's view, then, the enhanced lump sum offered by the Carrier in exchange for elimination of arbitraries would be eaten up in less than the first

year of the contract.

Carrier Position. The Soo Line proposes a package of eliminations and modifications of the following arbitrary payments: meals en route; lap backs; tow-ins; assisting other trains/set out bad orders en route; re-railing own train; FTD; ITD; terminal switching (initial and final); held-away-from-home terminal; and interchange delays.

To partially offset the elimination and modification of various arbitraries, and of work rules as set forth below in Section B - Rules, the Carrier proposes to "roll" a per mile payment into the proposed mileage rates. In addition, the Carrier is willing to modify Article IV, Section 5 of the 1985 UTU National Agreement, under which those trainmen hired after November 1, 1985 do not receive three of the duplicate time payments provided in their agreements (ITD, FTD, and tow-in), and pay those "newly hired" trainmen those duplicate time payments in exchange for an agreement in this case.

D. Rules

1. Probationary Period

Organization Position. The 180-day probationary period applicable on the former Milwaukee Road portion of the Carrier

should be reduced to 60 days to conform to the period applicable on the Soo Line (proper) portion of the property and the rest of Class I carriers (Article VII of the 1978 UTU National agreement).

Carrier Position. The Carrier does not object to uniformity throughout the railroad, but contends that a 60-day probationary period is too short.

2. Road/Yard

Organization Position. The UTU's position is that the road/yard line of demarcation should be retained as it was in the report of PEB 219.

Carrier Position. The Soo Line's proposal would allow road service trainmen to perform three additional moves at the initial, intermediate, and final terminals without compensation. This proposal, the Carrier states, would contribute to greater efficiency and result in an estimated annual cost savings of \$75,262.

3. Yard Starting Times

Organization Position. The UTU contends that current rules with respect to yard starting times should be maintained as the Carrier has shown no concrete need for change.

...

Carrier Position. The Soo Line contends existing rigid starting times for yard crews have little correlation with the times when crews are needed, thereby inhibiting the Soo from offering the service its customers need. Accordingly, the Soo Line proposes a rule that would allow it to start a limited number of yard crews outside existing starting time brackets, depending on the number of yard crews scheduled for duty. In a yard with between 1 and 5 yard jobs, the Soo Line would be allowed to designate 1 job to operate outside the existing time brackets. In a yard with between 6 and 10 yard jobs, the Soo Line could designate 2 jobs to operate outside the existing time brackets. In a yard with 11 or more yard jobs, the Soo Line could designate 3 jobs to operate outside the existing time brackets. The BLE agreed to this identical proposal in 1991, but, unless the same rule is adopted for the UTU, the Soo Line will be unable to make use of the current BLE rule.

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4. Customer Service

Organization Position. As to the Carrier's request for relief from various rules in the interest of customer service, the UTU contends that no specific relief should be afforded since none was granted by PEB 219, and the Carrier has made no showing of the necessity for relief.

Carrier Position. The Soo Line proposes a rule that would

allow it to implement, on an experimental basis, customer service that would otherwise not be feasible under the existing road/yard rules where there is a bona fide need for the service in order to respond to the needs of a customer and to obtain or retain that customer's business.

5. Article XII of the 1985 Agreement (off the roster)

Organization Position. The UTU contends that Article XII of the 1985 Agreement, which permits removal from seniority rosters of employees who have less than 3 years of seniority and who have been on furlough for 365 consecutive days, should be eliminated since there is no need for it, as the Carrier's obvious problem is it does not have enough employees to do the work assigned.

Carrier Position. The Soo Line contends that no justification has been advanced for the proposal, which it opposes.

6. Elimination of Self-Executing Rules

Organization Position. The UTU argues that self-executing rules should be eliminated to require use of discipline rules to take an employee's seniority.

Carrier Position. The Soo Line does not believe that any self-executing rules should be changed, although the Carrier is

willing to communicate more effectively with the General Chairmen and the elected UTU representatives before the self-executing feature of those rules occur, if that is the UTU's concern.

7. Cabooses

Organization Position. The UTU asserts that there should be no further elimination of cabooses, since there was no change in PEB 219 and no evidentiary justification was offered by the Carrier.

Carrier Position. The Soo Line proposes to operate all of its trains without cabooses and to remove any limitation, restriction or additional compensation when trainmen handle end-of-train devices.

8. Seniority Accumulation

Organization Position. The UTU maintains that there should be a seniority accumulation provision providing that only ground service employees who pay dues to the UTU would continue to accumulate seniority while serving as engineers, as similar provisions have been upheld in the courts to date.

Carrier Position. The Soo Line maintains that this proposal is of questionable legality under Sections 2 Third, Fourth and

Eleventh of the Railway Labor Act.

9. Conductor in Charge of Train

Organization Position. The UTU seeks a declaration that the conductor is in charge of the train to confirm existing practice.

Carrier Position. The Soo Line maintains that this proposal would require a change in a tripartite agreement that cannot be made without the consent of the BLE.

10. Non-Discrimination Against UTU Engineers

Organization Position. The UTU seeks to end what it perceives as discrimination against UTU engineers by providing that the carrier's X-Y-Z Rule be changed from a property rule to a zone concept, so that firemen do not have to protect very remote engineer assignments.

Carrier Position. The Soo Line maintains that this proposal, and the proposals regarding Seniority Accumulation, Conductor in Charge of Train, and UTU Representation of Engineer Members, seek to put the Carrier in the "cross-fire" between the UTU and the BLE and would serve only to increase inter-union and inter-craft hostilities.

11. UTU Representation of Engineer Members

Organization Position. The UTU seeks a declaration that the UTU's representation of engineer members be confirmed as the existing practice, in line with the "Chicago Joint Agreement."

Carrier Position. The Soo Line argues that its position, above, regarding Non-Discrimination Against UTU Engineers, is applicable to this issue.

12. Road Switcher Agreement

Organization Position. The UTU maintains that the current rule in the 1987 Agreement should be retained.

Carrier Position. The Soo Line proposes a Side Letter which would alter past practice to impose territorial limits for the benefit of road switchers, eliminate the meal arbitrary and establish a 30-minute meal period instead, make road switchers eligible for holiday pay without regard to a mileage factor, change the monthly mileage guarantee to a weekly guarantee, and make clear that road switchers were not to be used in place of through freight service.

13. General Moratorium

Organization Position. The UTU submits that the moratorium should provide that Section 6 notices may be filed on or after November 1, 1994 with any new agreement effective January 1, 1995.

Carrier Position. The Soo Line contends that the agreement should contain a general moratorium provision similar to that in the 1991 agreement with the BLE, which is essentially the same as that proposed by the UTU, prohibiting service of notices to make any changes in the parties' agreements to be effective before January 1, 1995.

14. Supersession or Amendment

Organization Position. The UTU seeks a declaration that any changes in its agreement(s) constitute amendments, not outright supersession because that is the rubric of Section 6 of the Act.

Carrier Position. The provisions of the new agreement should modify or supersede any and all conflicting provisions contained in existing schedule rules, agreements, and practices, the Carrier avers.

15. Expenses Away From Home

Organization Position. The UTU requests that the Board provide expenses away from home consistent with those established

by PEB 219.

Carrier Position. The Soo Line is willing to agree, as part of an overall package, to increase expenses away from home in accordance with the national pattern, as the UTU has proposed.

16. Vacation

Organization Position. The UTU proposes a system of "year scheduling" for vacations.

Carrier Position. The Soo Line is willing to agree, as part of an overall package, to modify the vacation work rule to provide for year scheduling, as the UTU has proposed.

17. Conductor Promotion and Moratorium

Organization Position. The UTU argues that the conductor promotion and moratorium provisions of PEB 219 should be adopted, as the Carrier offered no compelling evidence to the contrary.

Carrier Position. The Soo Line states that mandatory promotion to conductor shall be required as needed.

E. Health and Welfare

Organization Position. As a result of its dissatisfaction with the dispute resolution procedures (permitting the Carrier's President to be the final arbiter) and status of early retirees under the Carrier's self-insured plan, the UTU seeks, in line with PEB 219, that Travelers Group Policy GA-23000 be retained.

The UTU is agreeable to Carrier proposals for a 401 (k) plan and dependent care.

Carrier Position. The Soo Line proposes that the UTU accept the local health and welfare benefit plans established by the Carrier rather than The Railroad Employees National Health & Welfare Plan (the National Plan). The Soo Line asserts that the local benefit plans provide benefits that are equivalent to those under the National Plan, at less cost to the employees, and allow for greater involvement by the Carrier and its employees in the delivery and design of these benefits.

F. Crew Consist

1. Crew Size

Organization Position. The UTU is agreeable to a crew size of conductor-only in through freight service only, subject to existing restrictions as to train length and car count, work events en route limited to two work events, straight set-out or pick-up, "Belt

Railway of Chicago conditions" on use of conductor-only in yard transfer (including a 6-month cancellation clause), and language providing that employees cannot be forced to another crew board location. The UTU is agreeable to the use of utility employees in yard service, but not in road service, because the Carrier has not demonstrated feasibility in road service. The UTU also seeks a provision confirming non-separation of a crew when a brakeman is used, i.e., the brakeman becomes attached to the crew.

Carrier Position. The Soo Line contends that the dispute over crew consist is separate and apart from the "pattern disputes". It proposes to supersede the current crew consist agreement with a new agreement allowing unrestricted conductor-only operations in all classes of service with conductor/foreman-only crewing, sometimes referred to as "conductor-only," implemented immediately in all "basic services" including priority, through freight, yard transfer, road switchers, work train and Hours of Service relief. "Extended services" including all other yard jobs and local freight assignments would be implemented on an attrition basis. The Carrier proposes that there be no train length, car count or work restrictions on any train, and that no crew unity rules would apply. It also seeks the right to establish utility positions in both road and yard service.

2. Employee Protection

Organization Position. As to benefits for surplus employees as a result of crew consist changes, the UTU contends that the protection date should be the date of agreement, that attrition should be natural, that voluntary buy-outs may be provided at the Carrier's option, and reserve board positions created by the Carrier must be bid in seniority order, with a "rubber room" provision applicable thereto, i.e., employees may only be required to attend one day of instruction or meetings per month and cannot be disciplined in any form for refusing to attend more.

Carrier Position. The Soo Line contends that all employees with seniority dates prior to May 2, 1993 would be "protected" from the effects of implementing conductor-only operations. It states that new hires were advised when hired that they could not be assured of long-term employment because of crew consist negotiations underway at the time of hire; and it would be unreasonable to allow new hires after May 1, 1993 to qualify for buyouts or reserve board slots. Moreover, under the Carrier's proposal the new hires are eligible for a \$1,000 bonus upon the signing of a new crew consist agreement.

The Carrier proposes to establish reserve lists at each crew board point for protected employees who are unable to hold positions in active service due to the implementation of conductor-only operations. It also proposes attrition protection on extended service jobs and voluntary buyouts. As a result, the Carrier

states that no protected employees will be furloughed as a result of the conductor-only proposal.

3. Benefits for Employees on Reduced Crews

Organization Position. As to benefits for employees on reduced crews, the UTU contends that a reduced crew allowance (RCA) should be paid to whomever is employed on the date of the agreement in the sum of \$20 a day for conductor-only operations in road service; \$15 a day for conductor and brakeman operations in road service; \$20 a day for yard foreman [Belt Ry. of Chicago (yard transfer only)] service; and, \$15 a day for yard foreman and helper service. The UTU further contends that the crew consist productivity fund should be offered to be bought out in the sum of \$21,500 per employee at the option of each employee, which would not include the RCA, and would include an additional ERISA fund payable on retirement/resignation ranging from \$6,524 for employees with 1 year of service to \$163,100 for an employee with 25 years service (i.e., \$6,524 per year of service), with trip shares for utility employees (1 trip share per tour of duty) and trip shares for Union officers on Union business. The UTU also contends that personal leave days should be increased to 18 from 10, and carryover and accumulation of such days should be permitted. It is also the UTU's contention that those employees on guaranteed extra lists (GEL) should be paid 100% wage rates (on conditions specified in UTU's proposed crew consist agreement) because the Carrier's

position permits taking regularly assigned brakemen being paid at the 100% rate and putting them on a GEL, resulting in an unjustifiable 25% wage cut.

Carrier Position. The Carrier proposes (1) new "conductor-only" reduced crew allowances of \$13 for employees who qualify for the current \$6.87 allowance and do not accept the "buyout" and \$4.00 for the other protected employees and (2) to "buy out" current productivity fund and reduced crew allowances for \$20,000 plus contributions to a new ERISA-qualified pension plan yielding \$6,500 for each year of service after the new agreement is signed.

The Carrier contends that the UTU's request for eighteen (18) personal leave days is unreasonable, and objects to the carry over and accumulation of personal leave days.

4. General Benefits

Organization Position. The UTU contends that, among the general benefits accompanying a crew consist agreement, there should be a signing bonus payable to whomever is employed on the date of the agreement the sum of \$5,000, separate "guaranteed extra lists" (GELs) with a minimum of 20%, an absolute right for road service employees to lay off after 3,200 miles a month, and a monthly guarantee of \$3,726, and quintuple damages for violation of the agreement. While the UTU agrees that there should be a

conductor training provision, the UTU contends that there should be \$20 per day compensation for employees involved in the training, and minimum on-the-job qualification periods of one year or whatever state law requires, whichever is greater.

Carrier Position. The Soo Line proposes signing bonuses of \$5,000 for protected employees and \$1,000 for "new hires" since May 1, 1993; a new conductor training program paying trainees \$500 per week and conductor-instructors \$12 per trip; and separate or combined guaranteed extra boards for conductors and brakemen.

The Carrier contends that the UTU proposals to permit employees on guaranteed extra boards to lay off after working 3,200 miles in a month, for a 20% minimum on the extra board, and to provide for quintuple damages for violations are unreasonable.

5. Amendment or Supersession

Organization Position. The UTU insists that the crew consist agreement should serve as an amendment to existing provisions and not a supersession of them.

Carrier Position. The Soo Line proposes that the provisions of the new agreement modify or supersede any and all conflicting provisions contained in existing schedule rules, agreements, and practices.

6. Moratorium for Crew Consist

Organization Position. The UTU contends that the moratorium period should extend until the last protected employee has attrited, and is not changeable by a PEB or Act of Congress.

Carrier Position. The Soo Line has never had a separate crew consist moratorium and asserts that there is no justification for the UTU's proposed moratorium.

VI. RECOMMENDATIONS OF THE BOARD

A. Pay Issues

1. Wages

Insofar as wages are concerned, it is this Board's finding that the percentage increases, the lump sum payments and the cost of living adjustments recommended by PEB 219 and the dates upon which those pay elements were made effective for trainmen represented by the UTU on the other Class I carriers are appropriate for UTU-represented employees on the Soo Line.

This recommendation is based, in significant part, upon our finding that, as the result of our recommendations concerning crew consist, the Soo Line's trainmen represented by the UTU, vis-a-vis their fellow Soo Line employees, will be contributing the overwhelming preponderance of the labor cost savings required to meet the Carrier's critical need for improved and more flexible operations.

2. The Dual Basis of Pay

The Carrier's proposal to eliminate the dual basis of pay and to pay trainmen on a pure mileage basis formula represents a substantial change in the manner in which trainmen's pay has been

traditionally calculated. The underlying rationale for the dual basis of pay, which balances the competing interests of trainmen and the Carrier for scheduling and use of employees' time, remains intact. While the Carrier's proposal would simplify payroll administration, and would arguably contribute to more efficient train operations, it would also tie trainmen's pay to mileage, while removing the incentive provided by the dual basis of pay system to control management's use of employees' time.

The Board recognizes that having different pay systems for train service employees vis-a-vis engineers may be awkward. However, given the minimal experience the Carrier's engineers have to date under the new mileage pay system, and the parties' apparent lack of consensus regarding the results of that experience, the Board has not been persuaded on this record that a change of the magnitude sought by the Carrier is appropriate at this time. Therefore, the Board recommends deferring this issue to the upcoming negotiations, and suggests that the UTU and the Carrier examine available payroll data to determine whether changing the dual basis of pay would prove to be mutually beneficial.

The Board further recommends that, in this subject matter area consistent with the recommendations of PEB 219, the basic day be increased to 130 miles upon the effective date of the parties' agreement but not later than January 1, 1995, and that the overtime divisor calculation shall, likewise, be consistent with the

recommendation of PEB 219.

3. Arbitraries

The Board recommends that the current rules regarding (1) meals en route, (2) initial terminal delay, (3) final terminal delay, (4) terminal switching and (5) held-away-from-home terminal be retained.

Insofar as the arbitrary payments for (1) lap backs, (2) tow-ins, (3) crews assisting other trains in setting out bad order cars en route and (4) crews rerailing their own trains are concerned, the Board recommends that the changes proposed by the Carrier be adopted.

B. Rules

1. Probationary Period - In the interest of uniformity, the Board recommends that the rules regarding the probationary period be made consistent, and that the rule on the Soo Line, which establishes a 60-day probationary period, be adopted.

2. Road/Yard Restrictions - Regarding road/yard restrictions insofar as road crew "moves" are concerned, this Board recommends, consistent with the standards established by PEB 219, that each road crew, without compensation, may make up to three

moves at the (1) initial terminal, (2) intermediate terminal and (3) final terminal. Those moves are described by PEB 219 in its January 15, 1991 Report and were clarified by Special Board 102-29 established pursuant to H.R. 222.

3. Yard Starting Times - The Board recommends that the current yard starting time rules be retained.

4. Customer Service - Consistent with the standards established by PEB 219, when the Carrier can show a bona fide need to obtain or retain a customer by servicing that shipper outside of existing rules, the Carrier should be allowed to institute such service on an experimental basis for a six-month period. The determination of whether a bona fide need exists should be made by a joint committee of Soo Line and UTU representatives. In the event of a deadlock, the service should be allowed; however, after the six months have expired, if the UTU continues to object, the matter should be referred to "parties pay" arbitration consistent with the arbitration procedures recommended by PEB 219.

5. Article XII of the 1985 Agreement - The Board recommends that this provision in the parties' agreement be retained.

6. Self-Executing Rules - In circumstances where the Carrier has information that an individual(s), who will be

adversely affected by a self-executing rule(s), cannot be located at his or her last known address, the Board recommends that the self-executing rule(s) be amended to require that the Carrier provide the appropriate General Chairman and Local Chairman with adequate notice of the situation prior to the date the self-executing rule would take effect.

7. Cabooses - The Board recommends that the provisions of the National Caboose Agreements, dated October 15, 1982 and October 31, 1985, and the parties' agreement implementing those National Agreements, which appear to afford the Carrier adequate relief, remain unchanged.

8. Road Switcher Agreement - The Board recommends, since this issue is intimately related to the Carrier's proposal regarding modification of the dual basis of pay system, that the parties discuss this matter in the upcoming negotiations as they explore the possibility of revising the method by which trainmen's pay is calculated.

9. Seniority Accumulation - Should the BLE obtain exclusive representation of engineers on the Soo Line pursuant to the recommendations of PEB 219 then, under such circumstances only, the Board recommends the adoption of the UTU's proposed seniority accumulation provision.

10. General Moratorium - The Board recommends a November 1, 1994 moratorium regarding the serving of Section 6 notices with the effective date of any new agreement to be no earlier than January 1, 1995.

11. Supersession or Amendment - All recommendations by the Board are intended to amend conflicting provisions in the parties' collective bargaining agreement(s) or, where appropriate, add to existing provisions.

C. Health and Welfare

The Board recommends that the UTU be given the option of having its members enrolled in the "new Travelers" health and welfare plan established by PEB 219 for UTU employees of other Class I carriers or of enrolling its members in the Soo Line's self-insured health and welfare plan.

D. Crew Consist

1. Crew Size

Under the language of PEB 219 and SB 102-29, and PEB 219 mandated arbitral decisions, it is very clear that foreman-only assignments in yard service were comprehended. PEB 219 adopted the standards of: (1) safety and efficiency of operations; (2) a

crew consist arrangement consistent with industry practice and (3) no substantial increase in a carrier's cost of operations. Additional guidance is obtained from crew consist agreements entered into with carriers and the UTU on contiguous properties. As long as the carrier's operations satisfy these standards there is no limitation on the classes of service in which conductor-only operations may be established.

At this late stage in the post-PEB 219 round of local bargaining over crew consist, it is unrealistic for this Board to accept the contention that there should be no conductor-only assignments in local freight assignments, yard assignments and road switcher assignments.

The Board recommends that upon the signing of an agreement, conductor-only operations may be instituted, at the Carrier's option, in all classes of service and at all locations without train length or car count restrictions. In through freight service there shall be no limitations upon crews performing work events en route; limitations on work events in initial and final terminals shall conform to those in the National Agreement.

2. Joint Implementing Committees

After study of the entire record and viewing certain Carrier operations, and in the context of the operations of many carriers

contiguous to the Soo Line or operating in the United States, we are fully satisfied that foreman-only crews can safely and competently perform yard service assignments. So long as yards have adequate capacity, foreman-only operations may be efficient in the yards; and savings will accrue in the Carrier's cost of operations. Foreman-only operations in yards can also slow operations in the yards and may ultimately lead to delays in yarding road trains, and increase occurrences of road crews having to be relieved of duty en route because of the Hours of Service law. Fluidity in the yards, considerations for weather conditions, the volume of business, and service to customers are all factors which must be weighed when deciding which jobs should run foreman-only. A full range of efficiency considerations also exist in the operation of local freight assignments and road switcher assignments operated conductor-only. And, it goes without saying that certain local freight, road switcher and yard jobs are more amenable to early implementation on a conductor-only basis than others. Accordingly, we recommend that "joint implementation committees" be formed at both the divisional and system levels to deal with issues relating to the selection of the specific jobs to be converted into conductor-only operations, as well as matters such as employee safety, employee time off and undue work load pressures as follows:

- (a) Each division of the railroad shall form a joint committee made up of appropriate

Organization representatives and an equal number of management representatives, including the Division Manager. Specific assignments for conductor-only operations shall be proposed, and the committee members may evaluate the proposed assignments and express their views on safety and efficiency within seven (7) days. The Division Manager shall then furnish a final list of proposed conductor-only assignments. Should the Organization representatives disagree with any assignment on this final list, they shall have a right, within seven (7) days, to take this matter up with a "system joint implementation committee" made up of the Vice President of Operations and other management officials, and the General Chairmen and other Organization officials. The system joint implementation committee shall have seven (7) days to resolve the matter. If no resolution is reached in this time, the Vice President of Operations shall make the final decision(s).

(b) With reduced crews, there are more switches to be thrown by individual employees and more cars to be climbed, more brakes to be

tied, more pins to be pulled, and more ballast and snow to be traversed. Simply put, there is more wear and tear on employees. It is important that the joint implementing committees make certain that the employees be given sufficient rest and recreation beyond the minimal periods guaranteed under the Hours of Service Act. Such is very important for the safety, efficiency and morale of Soo Line trainmen.

(c) The joint implementing committees should meet regularly, monthly during the first year, to consider and adjust complaints raised at division and system meetings about cases of excessive workloads, pressures to work unsafely and any other matters of undue stress that may occur. They should also explore and consider ways to make conductor-only services more efficient. Our recommendations are based upon the fundamental requirement that the Vice President of Operations and the Division Managers view it as a moral imperative to make certain that employees will not be pressured into working in an unsafe manner nor deprived of reasonable time off.

3. Utility Employees and "Separation of Crews"

a. Utility Employees. We recommend that the Carrier have the right to establish utility positions in yard service to assist crews. Utility employees should be paid at the yard foreman's rate. These individuals may work with more than one yard or road crew within switching limits under the direction of proper authority and in compliance with FRA rules regulating utility employees.

Employees who do not possess valid driver licenses will not be censured in any way. However, employees who do possess valid driver licenses will be required to comply with the agreement as written.

b. Non-Separation of Crew When a Brakeman is Used. The UTU seeks a contractual provision whereby when a brakeman is used that brakeman will become attached to the crew and will have the right to work back to his or her home terminal along with the conductor. We do not recommend such a restrictive provision. However, should an employee be deadheaded back to his or her home terminal from the away-from-home terminal to meet the needs of the Carrier's service, that employee will be paid no less than the line miles from the away-from-home terminal to the home terminal for the deadhead.

4. Employee Protection

a. Protected Employees. The Board recommends that all employees hired prior to October 15, 1994 be protected.

b. Benefits for Protected Employees. Protected employees shall receive the benefits set forth below.

1) Voluntary Buyouts. The Board recommends that the Carrier be permitted to offer voluntary buyouts to all protected employees generally consistent with the Carrier's proposal. It is understood that the buyout of an employee is the buyout of a position, a right which the Carrier has obtained as a result of our recommendations regarding crew consist. The Board suggests that questions regarding the implementation of any such buyouts be an agenda item for the joint implementation committees.

2) Reserve Boards. The Board recommends that the Carrier establish reserve boards at each crew board point. Protected employees hired after May 1, 1993, who were advised at the time of hire that they could not be assured of long-term employment because of the pendency of crew consist negotiations with the UTU, who have a seniority date prior to October 14, 1993, shall be entitled to one month's reserve board status for each month of employee status up to October 14, 1994. All protected employees hired on or before May 1, 1993, who would otherwise be

subject to furlough because they are unable to hold positions due to the implementation of conductor-only operations, shall have unlimited reserve board status. Employees in reserve board status should not be required to perform any service for the Carrier, and they may take outside employment not in conflict of interest with the Carrier. One board may cover both road and yard crew members; and where yard board employees are unavailable for recall to a yard job, a road board employee may be recalled to fill the position rather than a new hire, and vice-versa.

The reserve rate of pay should be the greater of 75% of the basic five day yard helper rate or a daily rate calculated on the basis of the employee's W-2 earnings for 1993 either of which shall be exclusive of productivity fund distributions, injury settlements or moving, housing or relocation payments. The Carrier and the Organization may choose to determine how to deal with the situation underlying the Carrier's discussion in footnote 22, page 53 of Carrier's Exhibit No. 6. Some employees have "job security allowances" (JSAs) equal to an employee's average monthly earnings, during a test period preceding February of 1985 adjusted for future general wage increases and COLAs. These employees' pre-existing contractual protective benefits should not be reduced by this Board, even if they are unable to hold positions due to the implementation of conductor-only operations. The Carrier may want to provide these individuals with the right to exercise their seniority to a limited number of reserve board slots at 75% of the

employees' JSA.

Concerning the so-called "Rubber Room" provision, the Board recommends that Section 5(a) of the Carrier's proposed Article II, Reserve Status, be adopted with the deletion of the word "training" from the proposal.

3) Reduced Crew Allowance. The Board does not recommend adoption of the UTU's proposal which would increase the RCA for those working conductor/brakeman crews and make that RCA subject to future wage increases and COLAs, and extend that RCA to employees not now eligible. However, the Board recommends that the \$6.87 allowance shall continue to be paid to those employees who are currently entitled to receive this allowance for conductor-brakeman operations. The Board does recommend, below, that a RCA be paid to all current employees working conductor-only crews. If the parties wish to adjust the relative amounts of these two RCAs and eligibility for them, they may do so.

The Board has weighed all factors regarding the payment of RCAs including the language of the original crew consist agreement of the parties on the Milwaukee Road property, as applied to the combined Soo Line-Milwaukee Road operating system by the July 2, 1985 Employee Protective Agreement between the Soo Line Railroad Company, the Milwaukee Road, Inc. and the UTU, as well as the outcome of Case No. 6027 of SBA No. 140, the financial position of

the Soo Line, the variations in RCAs and signing bonuses on contiguous carriers as reconciled with other aspects of those agreements, and the fact that additional work is definitely required by the individuals manning the reduced crews. In consideration of the broad and immediate relief we have recommended regarding the establishment of conductor/foreman-only operations in all classes of service, we recommend that all road and yard assignments working conductor/foreman-only crews be paid a RCA of \$17 for each tour of duty worked. This RCA shall be subject to all subsequent general wage and COLA increases. Employees hired after October 14, 1994 would not qualify for this RCA.

4) Productivity Fund. The parties have raised certain issues concerning the Productivity Fund. We recommend the following dispositions:

(a) Buyout. The basis for the Carrier's proposed combined buyout of the Productivity Fund and RCAs is clearly set forth in the record. Such a proposal is voluntary. Its merits may be evaluated by the Organization and individual employees and accepted or rejected as they see fit. The Carrier may choose to offer a voluntary buyout of the Productivity Fund only.

(b) Utility Employees. It is recommended that utility employees receive trip shares according to a formula agreed to by the parties.

(c) Contribution. The contribution to the Productivity Fund per trip shall be \$53.25.

5) Personal Leave Days. The Board recommends that the current rule of up to ten (10) personal leave days be retained and applied by the Carrier. Personal leave days shall be granted by the Carrier to employees requesting such days under the existing procedures, except in unusual circumstances. These days must be taken by December 15 of each calendar year unless the Carrier has previously granted an employee permission to take the personal leave day(s) after December 15 of the year in question. When an employee makes a timely request for a personal leave day or days and such a request is not granted, the employee shall, at the employee's option, receive pay in lieu of such a day or reschedule the personal day. Personal leave days not taken during the calendar year shall not be carried forward from one year to the next, nor shall payment be made in lieu thereof.

6) General Benefits

(a) Signing Bonus. The Board recommends a signing bonus of \$5,000 for employees hired on or before May 1, 1993 and \$1,000 for employees hired after that date, but prior to October 15, 1994.

(b) Conductor Training. The Board recommends that

the Carrier's optional conductor training program be adopted and that conductor-instructors be paid \$15 per trip.

(c) Guaranteed Extra List. The Board recommends that the UTU's proposal of a twenty percent (20%) minimum guaranteed extra list (GEL) be adopted. This proposal addresses the questions raised concerning the sufficiency of the number of employees available to provide employees with adequate time off.

We recommend that the UTU's proposal allowing employees to layoff at the employees option after 3,200 miles of service in a month be withdrawn because it is simply too restrictive. We recommend that the amount of the conductor or combined conductor/brakeman GEL be \$3,400 per month, and the brakeman's GEL be \$3,200.

(d) Quintuple Damages for Violation of the Crew Consist Agreement. The Board recommends the withdrawal of this proposal.

7) Moratorium for Crew Consist Agreement.

We recommend that a crew consist moratorium extend until the attrition of all protected employees hired on or before January 2, 1992. This extended moratorium will place the Soo Line and the UTU on approximately equal status with the other Class I rail carriers and the UTU on this matter.

E. Remaining Proposals

Where the Board has not addressed a specific issue raised by the parties in their submissions/presentations, while those issues have been fully considered, it is the Board's recommendation that those issues should be rejected or withdrawn; and in cases where the parties were in agreement such as vacation scheduling and expenses away from home, those agreements should be adopted.

VII. CONCLUSION

The Board has carefully and thoroughly considered the parties' arguments regarding the question of whether a "local pattern" exists which requires the Board to recommend rates of pay, rules and working conditions for UTU-represented employees which are consistent and/or compatible with the agreements between the Carrier and the other rail labor organizations who represent employees on the property. The recommendations of this Board require trainmen to make the greatest sacrifices in terms of job security and associated conditions of employment vis-a-vis their fellow employees in other crafts on the Soo Line. The trainmen represented by the UTU are contributing the overwhelming preponderance of the labor cost savings required to improve the Carrier's financial condition. It is only fair that the UTU's case be evaluated on the individual merits of the contributions being made by that Organization. UTU represented employees have made

similar contributions to Class I rail carriers throughout the country during the post-PEB 219 period. It would be inequitable to treat trainmen on the Soo Line substantially different from their counterparts on the other Class I rail carriers.

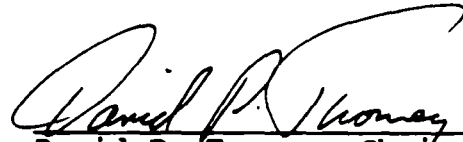
While Congress has extended the Railway Labor Act's cooling off period, so that the parties cannot resort to self-help until February, 1995, it is time for the parties' dispute to be laid to rest. Six years of collective bargaining agreement instability exceeds even the Railway Labor Act's prescription for "purposefully long and drawn out" bargaining. Our recommendations are manifestly reasonable in light of the voluntary agreements reached and arbitration awards issued on other properties in the context of the guidelines established by PEB 219. The fields have already been plowed with respect to the issues raised in this case and the Board has crafted very specific recommendations to help bring this matter to closure. The parties can now fulfill their responsibilities by utilizing the Board's recommendations as the basis for agreeing on contract language.

It would be most unfortunate and damaging to both the employees and the Carrier if the parties do not promptly resolve their differences. Further delay in resolving the issues addressed by the Board would unnecessarily postpone the payment of wage increases, lump sums and signing bonuses to UTU-represented employees who have been without a wage increase for six (6) years. And, it would delay the Carrier's compelling competitive need for immediate relief from crew size restrictions which currently apply only to the Soo Line among Class I carriers. Moreover, it would be untenable if either party were to resort to self-help and further adversely impact the area's economy and possibly require further intervention by the federal government. We are optimistic that the parties will promptly resolve this dispute.

The Board wishes to express its appreciation to the parties and their counsel for the thoroughness of their presentations,

their cooperation with our investigatory efforts, their courtesy during our visit to the property, and for the professional manner with which they articulated their respective positions.

Respectfully submitted,


David P. Twomey, Chairman


Richard R. Kasher, Member


Elizabeth Neumeier, Member

EXECUTIVE ORDER

12925
- - - -

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN THE SOO LINE RAILROAD COMPANY AND CERTAIN
OF ITS EMPLOYEES REPRESENTED BY
THE UNITED TRANSPORTATION UNION

A dispute exists between the Soo Line Railroad Company and certain of its employees represented by the United Transportation Union.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151-188) (the "Act").

In the judgment of the National Mediation Board, this dispute threatens substantially to interrupt interstate commerce to a degree that would deprive a section 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. Establishment of Emergency Board ("Board").

There is established, effective August 29, 1994, a Board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any railroad carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. Report. The Board shall report to the President with respect to the dispute within 30 days of its creation.

Sec. 3. Maintaining Conditions. As provided by section 10 of the Act, from the date of the creation of the Board and for 30 days after the Board has submitted its report to the President, no change in the conditions out of which the dispute arose shall be made by the parties to the controversy, except by agreement of the parties.

Sec. 4. Records Maintenance. The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. Expiration. The Board shall terminate upon the submission of the report provided for in sections 2 and 3 of this order.

William D. Clinton

THE WHITE HOUSE,

August 29, 1994.