

REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 226

***SUBMITTED PURSUANT TO EXECUTIVE ORDER NO, 12950
DATED FEBRUARY 22, 1995
AND SECTION 9a OF
THE RAILWAY LABOR ACT, AS AMENDED***

Investigation of disputes between Metro-North Commuter Railroad and the Brotherhood of Locomotive Engineers, including the American Train Dispatchers Division; Brotherhood of Railroad Signalmen; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Brotherhood of Firemen & Oilers; International Brotherhood of Teamsters; Sheet Metal Workers International Association; Transportation Communications International Union-ARSA Division; Transport Workers Union of America; and the United Transportation Union,

(National Mediation Board Case Nos, A-12556, A-12578, A-12605, A-12683, A-12684, A-12685, A-12686, A-12687, A-12688, A-12689, A-12690, A-12691, A-12692, A-12693, A-12694, A-12695, A-12696, A-12697, A-12698, and A-12700)

***WASHINGTON, D.C,
APRIL 21, 1995***

LETTER OF TRANSMITTAL

New York, NY
April 21, 1995

The President
The White House
Washington, D.C.

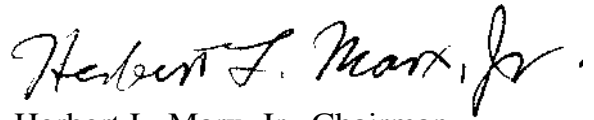
Dear Mr. President:

On February 22, 1995, pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order 12950, you created an Emergency Board to investigate disputes between Metro-North Commuter Railroad and certain of its employees represented by the Brotherhood of Locomotive Engineers, including the American Train Dispatchers Division; Brotherhood of Railroad Signalmen; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Brotherhood of Firemen & Oilers; International Brotherhood of Teamsters; Sheet Metal Workers International Association; Transportation Communications International Union-ARSA Division; Transport Workers Union of America; and the United Transportation Union.

Following its investigation and study of the issues in contention, the Board has prepared its Report, including Recommendations for settlement of the disputes. The Board now has the honor to submit its Report to you, with the hope that the parties will utilize our recommendations for a prompt resolution of the negotiations impasse.

The Board was most fortunate in being provided with the services of Joyce M. Klein, Esq., of the National Mediation Board. Ms. Klein was of invaluable assistance, and the Board wishes to record its gratitude to her.

Respectfully,


Herbert L. Marx, Jr., Chairman


Lois A. Rappaport, M



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. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 226 (the Board) was established by the President pursuant to Section 9a of the Railway Labor Act, as amended, 45 U.S.C. §159a, and by Executive Order 12950, dated February 22, 1995. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between Metro-North Commuter Railroad (Metro-North) and certain of its employees represented by the Brotherhood of Locomotive Engineers (BLE) (including the American Train Dispatchers Division) (ATDA); Brotherhood of Railroad Signalmen (BRS); International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (IBB); International Association of Machinists & Aerospace Workers (IAM); International Brotherhood of Electrical Workers (IBEW); International Brotherhood of Firemen & Oilers (IBFO); International Brotherhood of Teamsters (IBT); Sheet Metal Workers International Association (SMWIA); Transportation Communications International Union-ARSA Division (ARSA); Transport Workers Union of America (TWU); and the United Transportation Union (UTU). A copy of the Executive Order, as amended, is attached as Appendix A.

On February 22, 1995, the President appointed Herbert L. Marx, Jr., an arbitrator, of New York, New York, as Chairman of the Board, and Lois A. Rappaport, an arbitrator, of New York, New York and Josef P. Sirefman, an arbitrator and professor at Hofstra University, as Members. The National Mediation Board appointed Joyce M. Klein, Esq. as Assistant to the Board.

At the request of the parties, and with the endorsement of the Board, the time within which the Board would render its Report and Recommendations (Report) was extended by the President to April 21, 1995. This extension did not modify the time periods initiated under Section 9a of the Railway Labor Act when the Board was created on February 22, 1995.

II, PARTIES TO THE DISPUTE

A. THE CARRIER

Metro-North was created in 1982 by the Metropolitan Transit Authority (MTA) to operate commuter rail lines previously operated by the Consolidated Rail Corporation (Conrail). Metro-North, which includes the Hudson, Harlem and New Haven Lines, began operations on January 1, 1983. Metro-North operates the New Haven Line through an agreement with the Connecticut Department of Transportation. In addition to Metro-North, the MTA operates the NYC Transit Authority; Triborough Bridge and Tunnel Authority; Metropolitan Suburban Bus Authority; Staten Island Rapid Transit Operating Authority and the Long Island Rail Road (LIRR).

Metro-North employs approximately 5,880 employees, more than 4,000 of whom are covered by collective bargaining agreements which are at issue in this proceeding. Metro-North's employees are represented in 19 separate craft or classes (bargaining units) by 15 labor organizations. Twelve labor organizations covering 17 crafts or classes are participating in this proceeding.

Every weekday, Metro-North carries more than 107,000 passengers, most of them commuters. Its passenger service operates over a system covering approximately 737 miles of track. Metro-North uses its approximately 790 passenger cars and engines to carry passengers on an average of 575 weekday train trips. Metro-North receives approximately 56 percent of its operating revenue from passenger fares. Federal, state and local subsidies comprise the remaining operating revenue as well as revenue for capital improvements.

B. THE ORGANIZATIONS

Twelve labor organizations are parties to these disputes:

1. The American Railway & Airway Supervisors Association, a division of the Transportation Communication International Union represents Maintenance of Way Supervisors and Maintenance of Equipment Supervisors.
2. The American Train Dispatchers Division of the Brotherhood of Locomotive Engineers represents Train Dispatchers (Rail Traffic Controllers) and Power Department Supervisors.
3. The Brotherhood of Locomotive Engineers represents Locomotive Engineers.
4. The Brotherhood of Railroad Signalmen represents Signalmen.
5. The International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers represents Boilermakers.
6. The International Association of Machinists & Aerospace Workers represents Machinists.
7. The International Brotherhood of Electrical Workers represents Electrical Workers, Employees in the Electric Traction Department, and Electrical Supervisors including Assistant Engineers--Electric Traction, Supervisors, Assistant Supervisors and Foremen in the Electric Traction Department.
8. The International Brotherhood of Firemen and Oilers represents Firemen and Oilers.
9. The International Brotherhood of Teamsters represents Maintenance of Way Employees.

10. The Sheet Metal Workers International Association represents Sheet Metal Workers.
11. The Transport Workers Union of America represents Carmen and Service Attendants.¹
12. The United Transportation Union represents Hostlers, Conductors, Trainmen and Yardmasters.

Organizations representing nine crafts or classes appeared before the Board as a Coalition. These organizations are ARSA representing Maintenance of Equipment SuperVisors; BLE; BRS; IBEW representing Electrical Supervisors; IBT; TWU representing Carmen and Service Attendants; and UTU representing Yardmasters and Hostlers, Conductors and Trainmen.

III. HISTORY OF THE DISPUTES

In 1983 the dispute over the terms and conditions of the transfer of operations from Conrail to Metro-North led to a strike and to the creation of Presidential Emergency Board No. 198. Since that time, Metro-North and its labor organizations have resolved their disputes through negotiations and mediation without the assistance of an emergency board.

However, despite negotiations and mediation conducted by National Mediation Board Chairman Ernest DuBester and Mediators Joseph Anderson and Paul Chorbajian, little progress at settling the 1992 round of negotiations had been made by the beginning of October 1994. After a period of intensive negotiations and mediation by Chairman DuBester, the parties entered into a novel agreement on October 25, 1994 to provide the means to resolve both the 1992 round and the subsequent round covering a new term beginning on January 1, 1995. In that agreement, IBEW, IBT, TWU and UTU and Metro-North created a process for the parties to resolve their disputes for both the old and new contract terms and permitted Metro-North to shift its health care coverage to the New York State Government Employees Health Insurance Program (Empire Plan) effective January 1, 1995. The process structured by the parties required them to enter into expedited negotiations and mediation to resolve the 1992 round of bargaining as well as the "subsequent contract period". If intensive negotiations failed to result in agreement, the parties agreed that they would jointly request the National Mediation Board to proffer arbitration. Within a few weeks of the October 25, 1994 accord, the other Organizations participating in this proceeding joined in the agreement.

Over the course of the next few months, all of the Organizations, except the Maintenance of Way Employees (IBT), the Signalmen (BRS) and the Maintenance of Equipment Supervisors (ARSA) reached agreement with Metro-North for the period from January 1, 1992 through

¹The Service Attendants are also represented by the Hotel & Restaurant Employees Bartenders International Union (HERE). HERE is not a party to this proceeding.

December 31, 1994. However, no agreements concerning the subsequent round commencing January 1, 1995 were reached by January 12, 1995, the parties self-imposed deadline for settlement. A list of open agreements appears as Appendix "B".²

Pursuant to the parties' agreement, each Organization and Metro-North requested a proffer of arbitration. Thereafter, on January 12, 1995, the National Mediation Board offered each of the Organizations and Metro-North the opportunity to arbitrate their disputes. Metro-North and the Organizations declined the proffer of arbitration. Accordingly, on January 23, 1995, the National Mediation Board released the parties from mediation and the statutory "status quo" period began to run.

On February 16, 1995, Metro-North requested that President Clinton create an emergency board pursuant to Section 9a of the Railway Labor Act, which provides procedures for the resolution of bargaining impasses involving publicly funded and operated commuter authorities. This Board was created on February 22, 1995, and a new status quo period was established.

IV. ACTIVITIES OF THE EMERGENCY BOARD

An organizational meeting was held with the parties on February 27, 1995, at which time procedural issues were discussed and the schedule was determined. Pursuant to that schedule, the parties filed extensive pre-hearing briefs and exhibits on March 17, 1995. On March 20, 21, 23, 24, and 25, 1995, the Board convened hearings in New York, New York, at which it heard testimony and argument and received exhibits. Subsequently, the Board held a series of separate meetings with each of the parties on March 25, 28, 29 and 31, 1995. The Board held executive sessions on March 31, April 16, 17 and 19, 1995, in New York City to prepare its report.

V. THE BACKGROUND FOR SETTLEMENT

A. INTRODUCTION

In preparing this report, the Board is faced with circumstances which are unusual if not unique. There is in place an agreement between Metro-North (Carrier) and most of the Organizations for the period (1992-94) immediately preceding the Board's deliberations. Based in substantial part on this 1992-94 settlement, the Board has before it the consideration of agreements to cover a period (1995-97) almost entirely prospective in nature. This is a rare opportunity for the Board to assist the parties in devising arrangements for their future relationship, rather than being confined to the more usual Emergency Board task involving the terms of a largely or entirely retroactive agreement.

²TWU and Metro-North reached agreement concerning the 1992 round for Carmen and Service Attendants after this Board was created.

Overshadowing this, however, is the Carrier's insistence that recent changes in the availability of funding from federal and state sources must necessarily impair consideration of increased employee compensation.

There are other aspects which offer opportunity for flexibility in accommodation of the parties' needs and wishes. One of these is the already accomplished agreement on a revised health care insurance plan, becoming effective in 1995, under which the Carrier will achieve substantial savings in contrast to what would have been its health care costs in the absence of such change.

What is not new to this relationship is the insistence by some of the Organizations on seeking to reduce or eliminate the disparity in wages rates and benefits provided by Long Island Rail Road and those in place with the Carrier. This, indeed, is the basic proposal for many of the Organizations which have agreed to the new 1992-94 terms, as well as those three Organizations which have not yet reached agreement with the Carrier as to 1992-94.

As a preliminary to presenting recommendations, therefore, the Board finds it appropriate to express its views and conclusions as to these underlying issues.

B. RELEVANCE OF LIRR WAGE LEVELS

There are few principles more deeply ingrained in the workplace ethic than "equal pay for equal work," that is, work of equal skill, effort and responsibility. That principle, however, is not adhered to within the MTA family of agencies. [The Carrier's] employees typically perform the same work as the LIRR's employees -- with the same (and, due to advanced technology, sometimes more) skill, effort and responsibility -- for much less pay. That situation is plainly inequitable.

With these words, the Coalition presents its principal argument designed to bring wages paid by the Carrier to a level equivalent to LIRR pay schedules. Where relevant, other Organizations join in this basic demand. For those Organizations whose wages meet or exceed those of comparable LIRR crafts and classes, this is, of course, not the basis for wage improvements.

This is not a new circumstance. Extensive bargaining history does not require review here. It is sufficient to say that, for many of Metro-North's crafts and classes, wage levels less than those at LIRR were established in 1983, when the Carrier succeeded Conrail and began operations on its own. To the extent that employees of Metro-North and LIRR received identical percentage wage increases in successive agreements, there resulted a widening gap in dollar amounts separating the same crafts on the two railroads. The Organizations contend that their agreement to 1992-94 percentage wage increases, again identical to LIRR, was with the understanding that this so-called "parity" issue would be addressed in the 1995-97 negotiations.

Indeed, those three Organizations which have not yet agreed to the 1992-94 terms based their position in major part on their perceived need to attain comparable LIRR wages.

In sum, the Organizations whose wage rates are inferior to those at LIRR maintain that both railroads provide identical services for commuters in the same metropolitan area, and both are under MTA control, receiving public subsidies from the same sources. As a result, the Organizations now seek to attain wage levels comparable to LIRR as a matter of logic and equity.

The Carrier's response is, first of all, that it believes any wage adjustment, at least for the first year, is unwarranted, based on current funding prospects. This argument is examined fully elsewhere in the Report. As to the question of "parity", "catch-up", or "equity", the Carrier is not persuaded that such is an appropriate measure. If comparisons within the MTA "family" are appropriate, then the Carrier looks to wage rates at the New York City Transit Authority (subways and buses), also under MTA jurisdiction. There, the Carrier states, wage levels for comparable skills and responsibility are lower than both Metro-North and LIRR. Further, looking elsewhere at commuter railroads in the Northeast, wage comparisons show Metro-North in a favorable light.

If comparison must be made, then the Carrier argues that there is as much reason to hold down LIRR wages until Metro-North catches up as there is in assuming that Metro-North should make up any differences. The Carrier also notes that those Organizations whose wages are currently at the same or higher levels than LIRR are not proposing to take wage reductions or even to be exempt from any wage increases which may be negotiated for 1995-97. The Carrier states that, in its 12-year wage history, negotiated wages at Metro-North have increased by 76 per cent, while those at LIRR have advanced 66 per cent, occasioned by instances when settlements for the two railroads have not been identical.

The Carrier summarizes its position by stating that Metro-North and LIRR are "two independent and distinct companies with very different histories, and there is no reason why wage rates should be the same".

The Board's recommendations on 1995-97 wage adjustments are found elsewhere in the Report. As for the so-called "parity" or "equity" issue, however, the Board cannot accept the recommendation that those Organizations whose wages are less than comparable LIRR wages should be brought to LIRR levels by 1997. First of all, the amount of new money involved in such an undertaking is far beyond what the Board is prepared to recommend as appropriate at this time.

There are, however, other factors to be considered. The Board does not believe that LIRR wages, however comparable the work, is an appropriate standard for Metro-North pay levels. Comparisons elsewhere also make sense, whether for similar work at other commuter railroads, for other MTA agencies such as the NYC Transit Authority, or for comparable railroad work in general. The Carrier presented significant data concerning other Northeast commuter railroads (New Jersey Transit Corporation and Southeastern Pennsylvania

Transportation Authority) as well as Conrail and the National Railroad Passenger Corporation (Amtrak). In all four instances, wage levels are considerably lower than at Metro-North, and wage increases granted in the 12 years' of the Carrier's existence have been considerably less for these four carriers than at Metro-North. In sum, the Board recognizes the perceptions of inequity and unfairness set forth by the Organizations but does not necessarily accept the view that LIRR wage rates are the "right" ones. In addition, there is no reason not to include other railroads, such as those mentioned above, in making comparisons.

Having said this, however, the Board does not fully accept the assertion that Metro-North and LIRR are "two independent and distinct companies". Certainly, both are guided and directed by MTA policy and supported by funds provided through the MTA from public sources. The disparity in wage rates between two units of the same agency offering closely similar services is surely cause for concern, even if immediate resolution of the differences is not practicable. For this reason, the Board has viewed with special interest the proposals for wage adjustments (in whatever form) put forth by those Organizations where the Metro-North-LIRR disparity is the greatest. The Board urges that its recommendations in this category receive the Carrier's particular attention, not only as to their intrinsic merits but also as to the ameliorating effect they would have on the disparity problem.

C. ABILITY TO PAY

In the face of proposals for a continuation of annual increases in wage levels, the Carrier now contends that no adjustment is appropriate for 1995 and that any possible changes in 1996 and 1997 should be left to future bargaining.

The Carrier maintains that 44 percent of its operating expenses and almost all of its capital expenses are based on public subsidies from the Federal Government and from New York State. The Carrier emphasizes that its undertaking in October 1994 to reach prompt agreements with the Organizations, at least as to 1992-94, was prior to the November 1994 change in the political environment in Congress and in New York State (with the election of Governor George Pataki). In its presentation to the Board, the Carrier noted the following changes in its financial prospects:

A delay in the receipt of federal operating assistance resulting in a loss of . . . \$18.5 million from the 1995 budgets of Metro-North and the LIRR;

The announcement on January 20, 1995 of the new Governor's proposed budget which . . . diverted for general State purposes \$220 million in the State's Metropolitan Mass Transportation Operating Assistance Fund that had been dedicated to the MTA for use by the commuter railroads and the TA to offset expected deficits in 1995 and thereafter. . . .

In addition to all this, the State threw the MTA's and Metro-North's capital programs into uncertainty by "delaying" at least temporarily the issuance of \$1.5 billion in bonds intended to finance capital projects. . . .

At the federal level, President Clinton has proposed a 30% reduction in transit operating subsidies from their present level for 1996. The Republican leadership in the House has proposed that such assistance be eliminated altogether. . . .

At the state level, all the MTA's subsidy streams are being reevaluated as Albany seeks to close an expected \$5 billion budget gap. One example is the new petroleum business tax which was responsible for \$34.4 million in commuter railroad operating subsidies for 1995. In December 1994, the incoming administration asked the MTA to delay a \$300 million bond issue that would have been repaid with receipts from this tax; thus suggesting that it is considering diverting petroleum business tax revenues to help close the State's budget gap.

The Carrier has not initiated a general fare increase since 1990. The Carrier states that it had planned a fare increase for 1995 but then decided to postpone it. According to the Carrier, this anticipated fare increase was scheduled to be used for service initiatives, and when the service initiatives were eliminated as part of the budget curtailments, the fare increase was also postponed. The Carrier asserts that it would be counterproductive to finance a wage settlement by raising the fare. The Carrier is still trying to put together a multi-year plan, and it considers an emergency fare increase to be a "quick fix" which would only alleviate an immediate budget problem.

Thus, the Carrier contends that, given the actual and anticipated reduction in subsidies, it is unable to grant a wage increase in 1995. Further, the Carrier argues that given the financial uncertainty which looms on the horizon it cannot commit in advance to any wage increase in 1996 or 1997.

The Organizations argue that the Carrier's reasons for refusing to grant a wage increase in 1995 do not reflect the reality of the Carrier's financial position. The Organizations maintain that the Carrier, in a report which it issued in February 1995 states that ridership and revenue were the highest ever in 1994, showing an increase of 5.2 per cent in ridership and a 7.3 per cent increase in total annual revenue over 1993. The Carrier at that time asserted that the ridership growth reflected the consistent on-time performance of 95.7 per cent and an increase in the customer satisfaction rating. In the face of these outstanding achievements, the Organizations argue that the Carrier should be required to share such productivity gains with its employees.

The Organizations assert that the Carrier, even after November 1994, took steps which indicated a more positive financial picture. The Carrier in December 1994 increased its supplemental pension plan for non-represented employees by three per cent and increased life insurance for managers to three times annual salary. While the Carrier announced a 1995 salary freeze for non-represented employees, the Organizations note there was a merit increase program of four per cent in place in 1994, which, since it was based on anniversary dates, flows over into 1995.

Finally, the Organizations maintain that for the last three years, the Carrier has consistently underprojected revenues from 2.5 to 3.8 per cent. For all these reasons, the Organizations assert that the Carrier has the ability to pay wage increases for 1995, 1996 and 1997.

The Board recognizes that the MTA and the Carrier as one of its agencies have good cause to revise its financial plans based on anticipated reductions in the governmental subsidies which have been so significant in its operations. To the extent these changes affect the Carrier in particular (as distinguished from the TA and other MTA agencies), the Board finds that such are not sufficient to eliminate consideration of the Organizations' wage and wage-related proposals.

This is particularly so in view of the stability of riders' fares over the past five years. It is clearly not within the Board's mandate to recommend to the Carrier that fares should be changed. What the Board must consider, however, is the Organizations' rational argument that receipts from fares, accounting for 56 per cent of the Carrier's available funds, are an integral part of the Carrier's "ability to pay".

D. 1992-94 SETTLEMENT

As indicated above in "History of the Disputes", 14 of the 17 crafts or classes reached agreement with the Carrier concerning wage increases for 1992-94, concurrence on implementation of the new health care plan as of January 1, 1995, and the means to continue negotiations, including a request for an Emergency Board, as to wages and all other open Section 6 matters for the period commencing January 1, 1995. The three crafts or classes which did not agree to terms for 1992-94 nevertheless have agreed to implementation of the new health care plan.

The wage settlement was for increases of 2.5 per cent as of January 1, 1992; 2.5 per cent on January 1, 1993; and 3.5 per cent on January 1, 1994. These adjustments were identical to those agreed to between LIRR and UTU.

Clearly the major purpose involved with the new health care plan as proposed by the Carrier was to provide satisfactory coverage at a substantially lower cost. While actual savings in such matters must await experience, the initial estimate was that the Carrier will be saving four and one-half million dollars annually for all represented employees.

As the Board perceives it, the 1992-94 settlements should properly be interpreted not as separate three-year arrangements but as essential underpinning to much broader and more inclusive agreements covering the period from 1992 through 1997. On this basis, it is possible to answer questions raised throughout the Board's hearings. Did the Carrier grant three annual wage increases on condition of implementing the new health care plan? Or, since health care plan savings do not commence until 1995, does this mean that the Organizations may expect to

begin sharing in such saVings through wage increases for 1995 and beyond? Or, is the health care change unrelated to whether or not wage increases beyond 1992-94 are warranted?

The Board was not involVed with the fashioning of the 1992-94 agreements. NeVertheless, the Board concludes that it is fully appropriate to consider the health care plan changes as releVant to the period commencing in 1992 and extending into the future. With this foundation, the Board states that its recommendations will encompass these guidelines:

a. By agreeing to wage increases identical to LIRR for 1992-1994, Organizations with wage levels inferior to those at LIRR did not and do not abandon their argument for equity with LIRR. (Indeed, three Organizations have not agreed to 1992-94 for this among other reasons.)

b. The "sharing" of savings from the new health care plan does not commence with 1995 simply because the plan was not in effect prior to 1995. Nor should it be claimed that the 1992-94 wage increases absorbed all such savings. Rather, the Board concludes that the Organizations' agreement to the new health care plan was and is one of the major factors to be considered in determining appropriate wage adjustments for the period from 1992 through 1997.

As to this second guideline, the Board fully concurs with the explanation presented by TWU Counsel at the hearings, in which he testified in pertinent part as follows:

The question has been raised . . . as to what set of years the saVings from the change in the structure of medical benefits ought to be assigned to. . . .

First of all, it's important to note that there was no assumption at all that the period involved was going to consist of two separate three-year periods.... At that time, there was certainly no assumption that any or let alone most of the unions would agree to resolve the first three years and then approach the second three years. In fact, although it's only obliquely relevant here, TWU at the point assumed, given the insistence of the Carrier, that only the Long Island pattern was available for the first three years, that we, along with other unions, would be here [arguing] the entire six years.

VI. WAGE AND WAGE-RELATED RECOMMENDATIONS

The parties are at diametrically opposite positions as to wage adjustments commencing in 1995. "Middle ground" between these positions could hardly coVer a wider area. As indicated in the discussion of LIRR wage levels, above, the Board cannot accept the concept of equalizing wages with the LIRR within the next three years. With equal conviction, the Board rejects the Carrier's position that no wage adjustment is appropriate for 1995 and that wage adjustments for 1996 and 1997 should be left to future bargaining and resolution.

The Carrier proposes a "freeze" (no change) in wage rates for 1995. For each of the ensuing two years, the Carrier proposes that the parties bargain on wages only and, if agreement is not reached, the dispute should be referred to binding arbitration pursuant to Section 7 of the Railway Labor Act.

The Coalition made emphatically clear that wages are, to an overwhelming degree, the controlling issue before the Board. Counsel for the Coalition argued as follows:

More than anything else, disputes that are before this Board are about wages. The question of whether and to what extent the parties should strive for wage equalization as between Long Island Rail Road employees and Metro-North employees has stymied bargaining on the Metro-North property since at least 1986. . . .

The Coalition Organizations' response to this problem, to this serious dilemma, is a wage equity plan. . . . The plan that we present today is designed to achieve equal pay for equal work.

The "equity plan" proposed by the Coalition has three elements: (a) acceptance of the 2.5 per cent, 2.5 per cent, 3.5 per cent general increases for 1992-94 by the three Organizations which have not yet done so; (b) general increases for all Organizations of 4.0 per cent for 1995, 3.2 per cent for 1996, and 3.2 per cent for 1997, apparently selecting increases identical to those negotiated by the New York City Transit Authority in a 39-month agreement commencing July 1994; and (c) "annual equalizer" wage increases to bring wages to equality with LIRR, spread over six years (1992-1997) for the three Organizations which have not yet reached agreement for 1992-94 and over three years (1995-97) for four other Organizations whose wages do not match those at LIRR. An additional element was also proposed -- a so-called "sharing" of the savings of the new health care plan -- but the Board assumes that this was entirely peripheral to the other three elements and requires no serious study.

Wage proposals by other Organizations are as follows:

IBEW -- 3.2 per cent for each of three years, plus an additional annual percentage increase representing one-third of the difference between IBEW Metro-North rates and comparable LIRR rates.

IAM, SMWIA, IBB, and IBFO -- Seven per cent for each of three years.

ATDA 10.5 per cent for each of three years, plus an initial six per cent as an adjustment at the outset.

ARSA Maintenance of Way Supervisors -- 10 per cent in each of three years.

A. GENERAL WAGE ADJUSTMENTS

1. 1992-94 Wage Increases

For the years 1992-94, the Board recommends that the IBT Maintenance of Way Employees, the Brotherhood of Railway Signalmen, and the ARSA Maintenance of Equipment Supervisors accept the general wage increases already agreed to by the other Organizations. While these three Organizations had their individual reasons for not accepting these wage changes earlier, the Board has no basis to make any different recommendation, particularly in the context of what the Board proposes for all Organizations for 1995-97.

2. 1995-97 Wage Increases

It is undisputed that the Carrier is now operating in a period of some financial uncertainty. Nevertheless, as stated earlier, the Board is convinced that a year's wage freeze is unacceptable for a number of reasons. It would cause a decline in the real income of employees, given the reasonable assumption that the cost of living continues to increase. Secondly, the Carrier is a thriving enterprise with increases in efficiency, ridership and customer satisfaction. Therefore, the Board considers it proper that the Carrier shares this success with its employees.

With regard to 1996 and 1997, the Board finds inappropriate the Carrier's proposals for reopening for wages only and subsequent interest arbitration. Such a proposal would negate the purpose for which the Board was created, which is to deal prospectively with issues dividing the parties. Delaying any decision for wage increases in the second and third years of the agreement could increase economic and operational uncertainty. In contrast, a relatively early settlement would enhance management's ability to formulate long range plans, which is a positive effect that is not possible when dealing retroactively.

At the same time, the Board must act within realistic restraints in making its wage recommendations. Matching wage rates with the LIRR is simply not attainable at this time. Aside from any comparison with LIRR, Metro-North's wage levels and wage increases since 1983 place it at the top of a comparison with carriers such as New Jersey Transit, Conrail and Amtrak. As to recent settlements, those within the MTA family cannot be ignored. The trend, whether generally or in the railroad industry, is for moderate increases. Given these basic considerations, the Board recommends the following general wage increases for all Organizations:

Effective July 1, 1995, a three percent across-the-board wage increase to be applied to the base wage rates in effect on June 30, 1995.

Effective January 1, 1996, a three per cent across-the-board wage increase to be applied to the base wage rates in effect on December 31, 1995.

Effective January 1, 1997, a four percent across-the-board wage increase to be applied to the base wage rate in effect on December 31, 1996.

In evaluating the Carrier's ability to pay, the Board considers the Carrier's economic condition in the coming months to be less problematic than has been argued. Despite the aforementioned uncertainty, the Board reiterates that Metro-North remains an efficient, thriving operation, providing transportation services for an economically stable region in which ridership can be expected to remain constant or to increase. It is within this setting that the Board has made reference to augmenting fare revenue.

Significant savings will continue to be available as a result of the changeover to the new health care plan, and there may be less subsidy reductions with its corresponding impact. The Board emphasizes that delaying the effective date of the recommended first year wage increase puts off the Carrier's need to find immediate funding. Also, changes in benefits and differentials (as discussed below) are not recommended to take effect until 1996.

B. WAGE-RELATED RECOMMENDATIONS

1. Brotherhood of Railroad Signalmen

a. Skill Differential. The BRS seeks a skill allowance to be applied to the basic pay rates for signal craft employees. This is in view of the "high level of skill and responsibility" required of signal employees, given the Carrier's introduction of "one of the most technologically advanced" signal systems in the railroad industry. The Board has ample grounds to accept this as a reasonable proposal, particularly in view of the Arbitrated Agreement between the BRS and the National Carriers Conference Committee, effective November 24, 1992. That Arbitrated Agreement called for a 65 cents an hour skill differential for signal employees assigned to specific work. With this and other similar agreements, the BRS states that 36 carriers, employing 87 per cent of the signal craft work force, have adopted skill differentials.

The BRS points to the administrative difficulties involved in the Arbitrated Agreement and urges application of a differential as part of the basic rate rather than as a separate payment. The Board accepts this as the preferable approach and recommends an increase of 50 cents in the basic hourly wage rate for positions of journeyman and above, effective January 1, 1996, prior to application of any other percentage general wage rate increase.

b. Wage Progression Entry Rates. Under a previously established agreement, employees in the signal training program achieved journeyman pay and seniority status when promoted to journeyman assignments. In 1988, however, the parties agreed that "all new hires" be subject to a five-year wage progression, commencing at 70 per cent of the Signalman rate. The Board notes that the BRS currently has claims pending before a Special Board of Adjustment concerning the Carrier's application of the entry rate progression to employees utilized in a journeyman's position. Pending resolution of these claims, the Board has no recommendation

as to the request to cease applying the entry rate provisions to employees promoted to journeyman positions.

3. International Brotherhood of Electrical Workers

a. Skill Differential. The IBEW notes that electricians responsible for federally regulated inspections or in positions requiring federal licenses receive differential payments above their basic wage rate. The Organization now seeks similar differential payments where employees are required to be trained and certified by the Environmental Protection Agency to perform required air conditioning work pursuant to the Clean Air Act of 1990. Similarly, a differential payment is requested for electricians performing cab signal work, involving testing and inspection subject to Federal Railroad Administration (FRA) requirements.

The Board concludes that such differential payments are in harmony with the increased skill and responsibility involved. The amount of the differentials and the particular conditions to which they are applicable should be resolved through bargaining by the parties and, upon agreement, should be effective January 1, 1996.

4. Brotherhood of Locomotive Engineers

a. Certification Allowance. Under the Federal Railway Safety Act, locomotive engineers must now obtain certification. The BLE seeks a certification allowance of \$15 a day for all engineers who receive and maintain their FRA Engineer Certification, in recognition of the additional skills, costs and potential penalties involved.

The Board concludes that a certification allowance is warranted by the more stringent performance standards and higher responsibilities which now obtain under the FRA certification program. Some provision for certification allowance is now included in a number of agreements throughout the country. However, the amount of the allowance and the particular conditions to which it is applicable should be resolved through bargaining by the parties, to be effective January 1, 1996.

5. IAM and SMWIA

a. License Fees. It is proposed that the Carrier pay the cost of training and fees for maintaining any licenses required by law or by the Carrier of an IAM or SMWIA employee. The Board concludes there is insufficient basis in the record upon which to make a recommendation.

b. Wage Progression Entry Rates. The IAM and the SMWIA seek an elimination or modification of the previously bargained entry wage progression rates. This is a similar although not identical proposal to that made by the BRS, discussed above. While wage progression for qualified journeymen is legitimately questioned by the Organizations, the Board

finds no significantly changed conditions to recommend removal of the previously bargained arrangement.

Similarly, the Board also finds no reason to recommend the change in rate progressions proposed by the IBFO and IBB.

6. UTU Yardmasters

a. **Supervisory Differential.** Yardmasters seek a supervisory differential of \$10 a day higher than any engine or train service personnel because they regularly direct such higher paid employees in the placement of equipment and personnel in the yards for which they are responsible. The Board is not persuaded that this adjustment is of sufficient priority to be required at this time.

7. Additional Compensation for Night Work

IBEW, SMWIA, IAM and IBB seek a differential for other than day shift work. These are widely accepted types of wage payments, and the request to institute them is certainly not unusual. The Board, however, must choose how and in what manner to recommend additional wage payments, and the Board concludes that provision for general wage increases must take priority.

8. Other Wage-Related Proposals

The Board has reviewed all other requests for wage adjustments and allowances and has no recommendation as to resolution, remanding such matters to the parties.

VII. RECOMMENDATIONS ON BENEFITS

A. REVISED HEALTH CARE PROGRAM

Although the newly adopted health care plan (Empire Plan) is not before the Board for review, concern has been raised on behalf of those employees who are not directly covered, specifically those who are located in Connecticut or elsewhere outside New York State. The Board recommends that the Carrier re-examine this aspect to assure the same coverage for such employees on the same financial basis as other employees.

B. LIFE INSURANCE

Most of the Carrier's represented employees are covered by \$10,000 life insurance. The Coalition and other Organizations seek an increase, some to \$35,000. This benefit has remained unchanged for some time. Improvement in this benefit is indicated, and it constitutes a relatively minor cost item. In addition, the Carrier advised its non-represented employees on December 29, 1994 that a "new Plan will provide an enhanced death benefit (up to three times annual

salary)". The Board recommends that the life insurance benefit be raised to \$28,000, effective January 1, 1996.

C. SICK LEAVE

Sick leave benefits, whether in terms of sick days or supplemental programs, Vary widely among the Organizations. The Coalition seeks a uniform plan for its Organizations based upon the current ATDA sick leave agreement with the Carrier. Whatever the differences in approach among the other Organizations, the common thrust is to standardize the benefits by establishing a set number of sick days per calendar year applicable to the first day of illness and by raising the percentage of the daily rate covered by the supplemental plan. In greater detail these proposals focus on such dimensions as banking and cashing out unused sick days and accruals based on years of service.

Currently, many employees do not get paid sick leave until several days into an illness. At first glance, it may seem that the proposals can be separated into two parts, allowing each to be considered on its own: (1) possible adjustment in the number of sick days (and/or supplemental benefits); (2) attempting to standardize the benefit among the employees.

However, closer examination suggests that the benefit (as existing or as proposed) consists of a number of interconnected facets which cannot be dealt with singly. For example:

- a) each Organization's bargaining history on the property which accounts for its particular variation;
- b) its relation to personal days; and
- c) the extent to which benefits under federal statutes replace lost earnings.

In addition, the Board recognizes that greater sick leave benefits will constitute significant expense. The Board recommends that improvements in sick leave provisions be reviewed by the parties for implementation gradually over a number of years.

D. HOLIDAYS

Except for special circumstances as to a single day, Service Attendants are not provided with paid holidays. The Organization seeks at least the same number of holidays received by all other employees with whom they work, i.e., 10 or 11 days. Apparently the absence of paid holidays for service employees antedates the Carrier's creation. Because it is an anomaly which runs counter to the well established concept of paid holidays, the Board recommends that, commencing in 1996, Service Attendants be entitled to the minimum number of holidays enjoyed by other Carrier employees.

Because this is a major improvement, however, the Board conditions this recommendation on the parties' reaching mutual agreement on two Carrier proposals. One of these is to adjust the separate seniority rosters of Service Attendants on the Hudson and Harlem Lines (TWU) and the New Haven Line (TWU-HERE) to eliminate duplication of assignments. The other Carrier proposal concerns the right to employ part-time personnel in Service Attendant positions for limited peak periods. This also merits consideration, provided rights of full-time service employees are adequately protected.

E. OTHER BENEFITS

The Board has carefully considered Organization requests to have the Carrier increase its contribution to the supplemental pension plan, to increase the number of vacation days, and to accelerate vacation eligibility based on the number of years of service. In the Board's judgment, there is justification for some improvement in these provisions. However, in view of other substantial cost items considered in this Report, the Board cannot recommend these changes at the present time.

VIII. RECOMMENDATIONS ON PROPOSED RULES CHANGES

In negotiations completed for 1992-94, the Carrier and most of the Organizations reached agreement not only on uniform wage increases but also on modest changes in rules and benefits, in varying terms as applicable to each craft or class. For the period commencing in 1995, the Carrier has requested an extensive number of rules changes, designed in its view to increase efficiency and to reduce operating costs. The Coalition and the other Organizations also proposed some rules changes, but they emphasized that wage levels were their principal concern, along with a number of benefits improvements and differential payments (which are discussed in this Report, above).

The Board has reviewed all these proposals and finds there has been insufficient exchange of information between the parties on a direct negotiations level. This is true particularly of the Carrier's proposals for a composite mechanic classification and changes in the incidental work rule. These changes in work assignment, if implemented, would be of fundamental significance to the affected crafts. It follows that any such changes must be the product of extensive discussion and compromise. Until it can be demonstrated, as it has not in this instance, that the parties have together fully explored the complex questions involved in division of work among the crafts, the Board has no basis on which to make recommendations as to specific revisions in longstanding scope and related rules.

On some other Carrier proposals on rules, the affected Organizations contend that the accommodations which the Carrier seeks can be attained either by more effective enforcement of present rules or modifications less sweeping than those proposed by the Carrier. This, too, indicates that further negotiation is appropriate.

What follows, therefore, are the Board's recommendations for certain of these proposals.

A. WORKFORCE SCHEDULING

The Carrier proposes several rule changes which affect workforce scheduling. These include changing the present Monday through Friday work week for the Maintenance of Way employees, establishing multiple start times within a shift, changing the starting times within the shift, and creating various configurations for a four-day work week. To the degree that the need for these changes can be demonstrated by the Carrier, the Board recommends that these be implemented. However, accommodation for the Carrier's scheduling needs should warrant an additional wage adjustment for affected employees. This is particularly true for Maintenance of Way employees, who have provided strong evidence as to their relatively low wage level standing.

B. PART-TIME EMPLOYEES

The Carrier seeks to employ part-time employees in the Assistant Conductor, Car Cleaner and Service Attendant positions during limited peak periods. In view of the obvious problems involved in commuter travel at the beginning and end of the day, the Board recommends that arrangements be made to provide for part-time employees, subject however to protection against displacement of employees from existing full-time positions.

C. CLAIMS PROCEDURE

The TWU Carmen propose a change in Rule 4-0-1(c), Claims and Grievance Procedure, and the UTU Yardmasters propose the same change in its Rule 25. The Board endorses the Organizations' proposal that the procedure be changed to provide the means to require a reasoned and timely response at each step of the claims handling procedure.

D. BREAK PERIODS

ATDA requests two fifteen-minute break periods in each shift for Rail Traffic Controllers (Train Dispatchers). The Carrier has been able to attain great manpower savings by tower closings throughout the system and the centralization and expansion of the Rail Traffic Controllers' responsibilities. There can be little doubt as to the high degree of concentration required in the operation of the electronic traffic control system. While the proposed change may require the assignment of an additional employee, the request for specific relief periods twice a shift is reasonable. Thus, the Board recommends that two fifteen-minute breaks be instituted on the day and afternoon shifts.

E. ADDITIONAL ROAD DAYS

The ATDA also requests the assignment of additional road days for Rail Traffic Controllers to permit them more frequent opportunity to observe the territories for which they

are responsible. In the absence of the former tower personnel who provided the "eyes and ears" for the Rail Traffic Controllers, the Board recommends that the parties implement this proposal, working out the details as to the frequency of such road days.

F. SWING TIME AND MEAL TIME

The BLE and the UTU Conductors propose the elimination of "swing time" and the application of Rule 2(b) in its place which provides an eight-hour day with time-and-one-half pay beyond eight hours. Swing time, in its present construction, releases employees during the work day for a period of one to four consecutive hours, with half straight time compensation. One of the complaints voiced by the Organizations is that the Carrier is scheduling short periods of swing time at various hours, rather than confining swing time to the extended period between the morning and evening rush hours.

In relation to this, there is a Carrier proposal to include specified meal time within the swing time period. The carrier is currently required to grant meal time outside the swing time period.

The Board recommends that the parties negotiate a swing time minimum longer than the present one hour and simultaneously include the meal period within those hours.

G. BIWEEKLY PAY

Where not now currently applicable, the Carrier seeks to pay employees on a biweekly basis. To the degree that this method requires agreement adjustment, the Board recommends such change.

H. OTHER RULES

In a few instances, the Board has recommended Carrier rule changes in conjunction with benefits adjustments (see recommendations for TWU Service Attendants, above.) For the multitude of other proposed rule changes, the Board declines to provide recommendations, leaving these to the parties for resolution.

IX. SUMMARY OF RECOMMENDATIONS

In summary, the Board's recommendations are:

Wages: For the three Organizations which do not have agreements for 1992-1994, general wage rate increases as follows: 2.5 per cent effective January 1, 1992; 2.5 per cent effective January 1, 1993; and 3.5 per cent effective January 1, 1994. For all Organizations, general wage rate increases as follows: 3 per cent effective July 1, 1995; 3 per cent effective January 1, 1996; and 4 per cent effective January 1, 1997.

In addition, the Board recommends the following differentials effective January 1, 1996:

(1) A 50 cent per hour skill differential should be provided, prior to application of any other percentage general wage rate increase for employees subject to the BRS agreement.

(2) The parties should resolve through bargaining the amount and conditions to be applied to a differential for electricians: (a) performing federally regulated inspections; (b) requiring federal licenses; and (c) requiring EPA certification.

(3) The parties should resolve through bargaining the amount and conditions to be applied to a certification allowance for locomotive engineers.

The Board does not recommend other allowances or adjustments to wages.

Benefits: The Board recommends the Carrier re-examine health care coverage provided to employees located outside New York State to provide the same coverage for such employees on the same financial basis as other employees. Effective January 1, 1996, the Board recommends that the life insurance benefit be raised to \$28,000. The Board recommends the parties review sick leave provisions to implement improvements gradually.

Effective January 1, 1996, the Board recommends that Service Attendants receive the minimum number of holidays enjoyed by other Metro-North employees.

Work Rules: The Board recommends rule changes which would: (1) provide more flexible scheduling; (2) permit employment of part-time employees in Assistant Conductor, Car Cleaner and Service Attendant positions; (3) adjust Service Attendant seniority rosters to eliminate duplicative assignments; (4) require timely responses at each step of the grievance procedure for Carmen and Yardmasters; (5) provide break periods for Rail Traffic Controllers; (6) provide additional road days for Rail Traffic Controllers; (7) coordinate the scheduling of swing time and meal periods for Conductors and Locomotive Engineers; and (8) implement biweekly pay periods.

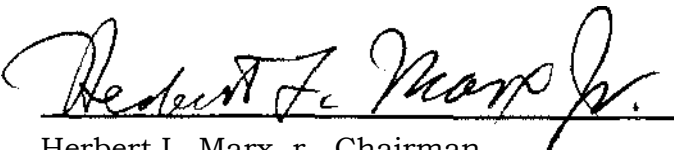
X. CONCLUSION

It would be wasteful indeed if the parties did not now turn to a prompt resolution of their differences within the framework of the recommendations of this Report. To fail to do so, and simply to await the running of time limits under Section 9a of the Act, would be to lose the opportunity for rational exploration by the parties of each others' goals and needs.

The Board recognizes the right of the parties to present the Board with widely disparate bargaining goals, even with the knowledge of their unattainability. However, the time is here, within the next few months, for free and full exchange of views and positions so as to reach

accord on what is possible and acceptable rather than continuing to seek what is impractical and unattainable. To that end, the Board commends the parties for their progress to date and urges a prompt completion of the task.

Respectfully,



Herbert L. Marx, Jr., Chairman



Lois A. Rappaport, Member



Josef P. Sirefman, Member

EXECUTIVE ORDER

12950

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN METRO NORTH COMMUTER RAILROAD AND ITS
EMPLOYEES REPRESENTED BY CERTAIN LABOR ORGANIZATIONS

Disputes exist between Metro North Commuter Railroad and certain of its employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made a part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 et seq.) (the "Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(c) of the Act provides that the President, upon such request, shall appoint an emergency board to investigate and report on the disputes.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 9A of the Act, it is hereby ordered as follows:

Section 1. Establishment of the Board. There is established effective February 22, 1995, a board of three members to be appointed by the President to investigate these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any 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 disputes within 30 days of its creation.

Sec. 3. Maintaining Conditions. As provided by section 9A(c) of the Act, from the date of the creation of

the board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier¹ or the employees in the conditions out of which the disputes arose.

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 submission of the report provided for in section 2 of this order.

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THE WHITE HOUSE,

February 22, 1995,

LABOR ORGANIZATIONS

Brotherhood of Locomotive Engineers

**Brotherhood of Locomotive Engineers--American Train
Dispatchers Division**

Brotherhood of Railroad Signalmen

**International Brotherhood of Boilermakers, Iron Shipbuilders,
Blacksmiths, Forgers and Helpers**

International Association of Machinists & Aerospace Workers

International Brotherhood of Electrical Workers

International Brotherhood of Teamsters

Transportation Communications International Union-ARASA

Sheet Metal Workers International Union

Transport Workers Union of America

United Transportation Union

Appendix "B"**Open Agreements
January 1, 1992 - December 31, 1994**

CRAFT OR CLASS	NMB CASE NO.
Maintenance of Way Employees	A-12556
Signalmen	A-12578
Maintenance of Equipment Supervisors	A-12605

Open Agreements Commencing January 1, 1995

CRAFT OR CLASS	NMB CASE NO.
Maintenance of Way Employees	A-12683
Trainmen, Conductors & Hostlers	A-12684
Maintenance of Equipment Supervisors	A-12685
Power Department Supervisors	A-12686
Train Dispatchers	A-12687
Electrical Supervisors	A-12688
Carmen	A-12689
Service Attendants	A-12690
Locomotive Engineers	A-12691
Electrical Workers	A-12692
Signalmen	A-12693
Machinists	A-12694
Boilermakers	A-12695
Firemen & Oilers	A-12696
Sheet Metal Workers	A-12697
Yardmasters	A-12698
Maintenance of Way Supervisors	A-12699