

# *REPORT*

*to*

*THE PRESIDENT*

*by*

*EMERGENCY BOARD*

*NO. 234*

*SUBMITTED PURSUANT TO EXECUTIVE ORDER NO. 13060  
DATED AUGUST 21, 1997  
AND SECTION 10 OF  
THE RAILWAY LABOR ACT, AS AMENDED*

*Investigation of disputes between Amtrak and its employees represented by the  
Brotherhood of Maintenance of Way Employees*

*(National Mediation Board Case Nos. A-12791 and A-12813)*

*WASHINGTON, D.C.  
SEPTEMBER 21, 1997*

Washington, D.C.  
September 22, 1997

The President  
The White House  
Washington, D.C.

Dear Mr. President:

On August 21, 1997, you established this Emergency Board pursuant to Section 10 of the Railway Labor Act, as amended and by Executive Order 13060 we were authorized to investigate disputes between Amtrak and its employees represented by the Brotherhood of Maintenance of Way Employees.

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.

Respectfully,



---

Richard I. Bloch, Member

---

Roberta Golick, Member

## TABLE OF CONTENTS

	<i>page</i>
I. CREATION OF THE EMERGENCY BOARD .....	
II. PARTIES TO THE DISPUTE .....	1
A. Amtrak .....	1
B. The Brotherhood of Maintenance of Way Employes .....	1
III. HISTORY OF THE DISPUTE .....	
IV. REPORT AND RECOMMENDATIONS .....	2
A. Position of Amtrak .....	4
B. Position of the BMWWE .....	5
C. Discussion and Recommendations .....	6
1. Wages .....	7
2. Remaining Issues .....	
V. CONCLUSION .....	9
APPENDIX A .....	A-1

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

Emergency Board No. 234 (Board) was established by the President pursuant to Section 10 of the Railway Labor Act, as amended, 45 U.S.C. § 160, and by Executive Order No. 13060. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between Amtrak and its maintenance of way employees represented by the Brotherhood of Maintenance of Way Employees (BMWE). A copy of the Executive Order is attached as Appendix A.

On August 21, 1997, the President appointed Arnold M. Zack from Boston, Massachusetts as Chairman of the Board, and Richard I. Bloch from Washington, D.C. and Roberta Golick from Sudbury, Massachusetts as Members. All are full-time arbitrators. The National Mediation Board (NMB) appointed Joyce M. Klein as Special Counsel to the Board. The Board wishes to express its appreciation for her professional assistance and counsel. The Board also thanks Brian Lippa for his technical assistance.

## **H. PARTIES TO THE DISPUTE**

### **A. Amtrak**

Amtrak provides passenger service to approximately 239,000 daily passengers, including 179,000 commuters, in 507 communities in 44 states nationwide. Amtrak's nationwide route system serves approximately 60,000 daily non-commuting passengers, half of them on the Northeast Corridor which runs between Washington, D.C. and Boston, Massachusetts. Outside the corridor, Amtrak provides long and short haul passenger service along the East and West Coasts and along lines radiating from Chicago. Amtrak also provides contract commuter service in seven corridors nationwide, including Boston, Chicago, Los Angeles and Washington, D.C.

Amtrak's operations generate 79 percent of its revenue. In addition to income from passenger operations, Amtrak generates \$67 million in annual revenue from the U.S. Postal Service and other delivery services which operate throughout the country. The remainder is made up by Federal subsidies and State contributions.

### **B. The Brotherhood of Maintenance of Way Employees**

The Brotherhood of Maintenance of Way Employees (BMWE) represents approximately 2300 employees who maintain Amtrak's mainline right of way primarily along the Northeast Corridor. Maintenance includes over 2500 track miles, bridges, buildings, stations and electric traction power.

## **III. HISTORY OF THE DISPUTE**

On or about November 3, 1994, BMWE, in accordance with Section 6 of the Railway Labor Act, served Amtrak with notices of its demands for changes in the provisions of the existing collective

bargaining agreements. BMW and Amtrak met several times during that period to discuss BMW's proposals. On or about October 27, 1995, Amtrak served Section 6 notices of its demands for changes in the provisions of the existing collective bargaining agreements on BMW. On December 15, 1995, Amtrak applied to the NMB for mediation services. The initial application was docketed as NMB Case No. A-12791. After an exchange of correspondence, on February 21, 1996, the Board divided the case into A-12791 covering the Northeast Corridor, and A-12813 covering Amtrak Corporate, which is the remainder of the Amtrak route system. Mediation proved unsuccessful.

On July 7, 1997, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered Amtrak and BMW the opportunity to submit their controversy to arbitration. On August 4, 1997, BMW rejected the proffer of arbitration. Accordingly, on August 5, the NMB notified the parties that it was terminating its mediatory services.

On August 20, 1997, pursuant to Section 10 of the Railway Labor Act, the NMB advised the President of the United States that, in its judgment, the disputes threatened to "substantially interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service".

The President, in his discretion, issued Executive Order No. 13060 on August 21, 1997, which, effective that day, created this Board to investigate and report concerning this dispute.

The parties to the disputes met with the Emergency Board in Washington, D.C., on August 22, 1997 to discuss procedural matters.

On August 26 through 29, 1997, the Board conducted hearings in Washington, D.C., where the issues were addressed. The parties were given full opportunity to present oral testimony, documentary evidence and argument in support of their respective positions. Each party provided detailed testimony and rebuttal. A formal record was made of the proceedings.

After the close of the hearings, the Board met in executive sessions to prepare its Report and Recommendations. The record considered by the Board consists of approximately 394 pages of transcripts and approximately 200 exhibits.

At the organizational meeting and at the formal hearings, the Emergency Board urged the parties to resolve their disputes and suggested they take advantage of mediation assistance from the NMB. The NMB assigned Mediator John J. Bavis to mediate the disputes during the Emergency Board process. The parties did not avail themselves of this opportunity.

#### **IV. REPORT AND RECOMMENDATIONS**

This Board was created as a product of the parties' failure to engage in the collective bargaining that is traditionally effective in achieving a mutually satisfactory resolution of differences. In a real sense this result was predictable. The Carrier, dependent in part on a Federal government

subsidy, finds it imprudent, at the least, to commit itself to any adjustment in wages, hours, or working conditions in advance of any assurance that it will be provided the funds to support such negotiated changes. Nor, given the continuing controversy over Amtrak's very existence, is there at present any discernable basis for confidence as to the sources or levels of funding.

The Organization, for its part, is predictably unable to accept an employer proffer of a wage freeze at 1995 rates even with COLA adjustments, given its other settlements and its adherence to the principle that comparable work should be compensated in a comparable fashion. Its reluctance to agree to the Carrier's freeze for the past two years is exacerbated by management's request to extend that freeze for at least 15 more months. Under the circumstances, the Organization saw little choice but to pursue its statutory avenues for achieving a negotiated agreement. Impasse was predictable, but it is an impasse that must be resolved if the public's access to commuter and long distance passenger rail service is to be protected. Passenger rail service must continue, and on terms that are fair and in an institution that is viable.

These observations are significant in terms of our perceived function. We reject the prospect of continuing the impasse by perpetuating the two-year-old stalemate for another 15 months, at minimum. We also are unwilling to endorse the further deferral of otherwise justifiable contract adjustments to the extent that they may exist. Rather, we deem it vital to the nation and to the parties to report our conclusions as to how the bargain should have been structured had the parties been successful in their 1995 bargaining.

To that end, there are judgments we cannot make either because they are beyond the scope of our charge or because the record is not adequate to permit such conclusions. We join the parties in strongly endorsing the concept and the need for a national rail service. But we do not deign to substitute our judgment on that issue for that of Congress, the entity that bears the responsibility for such a policy-based decision. Nor do we seek to second-guess management's budgeting considerations. We recognize that the cost of labor, like the cost of any other industrial asset, must be considered in formulating priorities. Fair and reasonable labor costs are as integral a part of the budget picture as payment of the prevailing rates for power, equipment, supplies and the like. Labor costs should not be considered a residual element of funding dependent upon the availability of remaining money, or be temporarily suppressed to present an unduly rosy view of Amtrak's costs.

It is our charge and responsibility to determine the equitable terms and conditions of employment for BMW employees on Amtrak based on the record, and guided by the standard of people receiving comparable pay for comparable work. Congress must be informed of considerations of equity in labor costs, rules and conditions if it is to make realistic judgments on continuing funding of Amtrak. Only if properly apprised of the true cost of this enterprise, including the impact of fair wages and benefits, can Congress exercise a truly informed judgment as to the real costs, the pitfalls and shortfalls of running the system. Accordingly, we recommend a package which recognizes the costs of employing a skilled and dedicated work force and which permits the parties to resolve outstanding issues. We regard it essential that our recommendations reflect the reality of comparable relationships.

## A. Position of Amtrak

Amtrak argues that its current financial condition requires us to endorse its proposal for a wage freeze with COLA adjustments through December 1998, and to defer any changes in compensation or working conditions until the present crisis has passed. It traces its current problems to several factors. The first is the government's commitment to make Amtrak self-sufficient. Amtrak cites the December 12, 1994 letter from the Office of Management and Budget advising Amtrak management to plan for increased contributions from State and local beneficiaries of passenger rail service and for a phased diminution of federal operating subsidies. Congress endorsed that objective in its FY 1996 budget markup that assumed an Amtrak independent of Federal operating support by 2002.

Second, Amtrak cites the failure of Congress to provide an authorization bill for the past three years. Despite its capital budget of \$6 billion over the next five years, and a Congressional proposal for a \$2.3 billion capital fund as part of this year's tax bill, Congress has yet to authorize access to that money.

Third, the Carrier asserts that the lack of an adequate subsidy for even this year's operations has weakened its financial position and created increasing shortages of working capital. In 1995, with an appropriation of \$312 million, Amtrak undertook to follow a gradual decline of subsidy to \$225 million in FY 1998. Underfunding of that glidepath by Congressional appropriation in 1996 and 1997 resulted in a reduced target of \$200 million in subsidy in FY 1998. That subsidy cut has necessitated downsizing management, laying off several thousand employees, abandoning several routes, increasing passenger fares by 9 percent, and increasing charges to states by 30 percent to 50 percent for services Amtrak provides.

Fourth, the Carrier notes that outsourcing for its bank debt of \$3 billion has further restricted its freedom of operations. This debt has discouraged Amtrak from incurring any expenses other than those strictly required for its shoestring operation for fear that the banks would terminate support.

Finally, Amtrak cites the April 23, 1997 finding of the General Accounting Office that "Amtrak is still in a financial crisis despite the fact that its financial performance as measured by net losses has improved over the last two years." In the current year Amtrak President Thomas Downs characterized the requested \$245 million for operating assistance as "the absolute minimum need to meet its business plan". Yet the Administration reduced that request by \$43 million to \$202 million, while the House Appropriations Committee proposed only \$141 million. Viewed in this light and with the BMW reporting that a third of Congress is willing to vote to close down Amtrak altogether, the Carrier urges us to refrain from recommending any wage and benefit package beyond the status quo. It cautions that endorsing the alleged freight pattern might spell the end of Amtrak, since even now the Carrier is the subject of a GAO review for a possible unwinding and bankruptcy. The Carrier simply lacks the ability to fund beyond its proposal. In any event, it continues, Amtrak is not tied to any freight pattern, and has never rigidly adhered to freight compensation rates and rule changes. Amtrak concludes that it has no choice but to press for acceptance of its proposed freeze

of wages with COLA until after December 1998, when this crisis will have passed and when more meaningful negotiations may proceed. It estimates the cost of the BMW wage proposal at \$38 million, its productivity proposals at \$30 million and its other proposals at \$2 million.

## B. Position of the BMW

The Organization points out that its members perform work identical to that done by their counterparts at \$3 more per hour at publicly funded commuter roads. Nonetheless, it offers to resolve this dispute with Amtrak by adhering to the recommendations of last year's Presidential Emergency Board No. 229 and the mediated settlement that followed. That settlement updated the wages and conditions for BMW employees on a national level. BMW stresses the Carrier's stipulation that Amtrak's maintenance of way employees do the same work as maintenance of way employees on freight lines. It also points to the long history of Amtrak's adherence to standards of pay for maintenance of way work on every other Class 1 railroad. Although those railroads are private and operate for profit, they still agreed to the settlement. BMW reminds the Carrier of its stance at hearings before PEB No. 222, that the Board should follow the freight pattern that was set in earlier agreements on several railroads. The Organization argues that Amtrak consigned its BMW workers to second class status substantially behind the national standard when it abandoned its tradition of following the freight pattern by refusing to join in the industry-wide settlement in 1995. Amtrak's recalcitrance has denied an increase for two years. It now seeks to extend that denial at least until 1999 or perhaps until 2002 or when this matter is addressed by a future Presidential Emergency Board. Amtrak's insistence on a freeze denies Congress the right to know the cost of a fair wage and rules package and the controlling facts and standards to properly address the funding issue.

The Organization claims there is uniformity of opinion among neutrals that a publicly funded commuter operation like Amtrak should not be permitted to hide behind private sector inability to pay arguments. It reminds us that Amtrak recovers 79 percent of its operating expenses from the fare box and that the Organization has cooperated in Amtrak's efforts to increase productivity and to reduce labor costs. Rail service is not only energy efficient and ecologically more friendly than auto and air travel, but it also helps alleviate crowded highway and sky traffic. The Organization observes that Amtrak's essential role in society is underscored by the very fact that the White House created this Presidential Emergency Board. BMW asserts that it is a misguided notion for Amtrak to be expected to make a profit, a requirement that is imposed on no other passenger service anywhere in the world. It was recognition of that reality that led Congress to spin off passenger service from the freight lines, with anticipated adherence to comparable pay and rules as well as congressional subsidy to ensure Amtrak's survival. BMW argues that congressional funding assistance must be extended to support legitimate industry-wide increases in compensation, just as it is for increases in the cost of fuel or food or electricity. Compensation should not be contingent upon the existence of leftover funds, if any.

BMW seeks adherence to the freight settlement of PEB No. 229, a five-year agreement for the period from January 1995 to January 1, 2000, with basic increases of 3.5 percent effective



December 1, 1995, July 1, 1997 and July 1, 1999. It also seeks a 35 cent per hour across the board equity adjustment effective November 30, 1995, and an additional 21 cents per hour effective December 31, 1999, a 5400 lump sum payment plus 3 percent of 1995 earnings payable within 60 days of ratification and 3.5 percent of 1997 earnings payable on July 1, 1998, with credit for Carrier's cost of living payments and another cost of living escalator adjustment effective January 1, 2000. Finally it proposes a number of rule changes to conform to the mediated settlement and to resolve other alleged inequities on the property.

### C. Discussion and Recommendations

In deliberating over our recommendations we rely heavily on the guidance provided by PEB No. 229. That report represents a relatively recent judgment as to the economics and other benefits that should obtain in the context of similarly situated employees. The Carrier has stipulated that Amtrak maintenance of way employees perform work similar to that done by maintenance of way employees on the freight carriers.

We recognize and accept the difficult political, financial and fiscal quandary in which Amtrak finds itself in seeking to provide the country with essential passenger transport while maintaining the loyal and cooperative services of its bargaining unit employees. We also recognize the Carrier's good faith effort in continuing to provide COLA improvements while seeking BMWV endorsement for its strategic efforts at survival.

But as we noted above, the issue of Amtrak's survival lies properly in Congress. That issue should not be confused with the obligation of the employer to continue to provide standards of fair compensation as it has in the past based on the traditional tests of cost of living, comparability, and inter- and intra-industry inequities. Once those standards of fairness are prescribed, it is within the authority of Congress to provide the funding so vital to Amtrak's ability to continue providing passenger train service. Congress has the ability to fund Amtrak's request; the issue is whether it has the willingness to do so.

Our obligation is to recommend a fair and equitable package of compensation for maintenance of way employees, and then leave to the funding authorities the issue of whether or not they wish to fund that package. We cannot, in good conscience, shirk that responsibility to the parties and to the collective bargaining process by surrendering to what might be characterized as political expediency. To recommend deferral of the resolution of the present dispute until the year 1999 or beyond, as the Carrier proposes, would not only impose a wage disparity with the usual comparators from which the employees might never recover, it would also improperly mislead the funders. Congress must consider the employee compensation costs associated with the operation of Amtrak to make an honest judgment as to whether it wishes to continue Amtrak operations.

We turn now to a consideration of the several issues submitted to us for recommendations:

### 1. Wages

The wage package portion of this dispute covers issues of actual wages, lump sum allowances and COLA, as well as retroactivity. When Amtrak was carved out of the freight railroads in 1971 to create a national passenger rail system, it initially utilized maintenance of way employees recruited from those freight railroads. In 1976, with the acquisition of the Northeast Corridor from Conrail, Amtrak placed Conrail employees on the Amtrak roster to assume station and maintenance of way functions. Until the early 1980s, wage increases, benefits and work rule changes were implemented through standby agreements that followed the results of national bargaining on the freight railroads. In the 1981 agreement, Conrail and Amtrak deferred the first 12 percent of total wage increases by different timing of their introduction.

In their 1982 agreement, the parties settled for lower increases than those received by employees in the freight railroads, but in 1984 they agreed to match the freight rail increases. The 12 percent deferral was preserved.

PEB No. 219 set the basis for the next round of bargaining by recommending a 10.3 percent national freight agreement over a 6.5 year term. That National Freight Agreement was followed by the report of PEB No. 222, which recommended the current wage rates in an effort to close the 12 percent gap. That recommendation led to a cumulative wage agreement of 21.8 percent. On June 23, 1996, PEB No. 229 submitted recommendations to resolve the wage and rule disputes between BMW and the national freight carriers. These recommendations provided the basis for a voluntary agreement dated Sept 26, 1996.

The Organization proposes that the voluntary agreement to which Amtrak was not a party now be applied to Amtrak employees. The Organization claims that between January 1975 and July 1997, BMW wage increases under the National Freight pattern have totaled 158 percent compared with 156% under the Amtrak agreements. It notes that heretofore all Amtrak agreements have been coterminous with the National Freight Agreements.

Amtrak's position, as noted above, is that, but for continuation of COLA payments, wage and conditions be frozen until Dec. 31, 1998.

To adopt the Carrier's 15 month proposal would depart from the tradition of matching the duration and expiration dates of freight industry agreements and trigger a new round of conflict between the parties for the period following December 31, 1998. Similarly, to adhere to the traditional moratorium by extending the status quo until 2000 would effectively destroy the historic relationships between Amtrak and freight industry BMW employees. Neither alternative is acceptable.

We recommend the following as a fair and reasonable set of conditions that are consistent with those of employees performing comparable work for freight railroads:

General Wage Increase

3.5 percent     December 1, 1995  
3.5 percent     July 1, 1997  
3.5 percent     July 1, 1999

Payments of retroactive pay are to be made within 60 days of ratification.

Equity Wage Adjustment

\$.35 per hour effective November 30, 1995  
\$.21 per hour effective January 1, 2000

Payments of retroactive pay are to be made within 60 days of ratification.

Lump Sum Payments

\$400 signing bonus payable within 60 days of ratification  
3 percent of 1995 earnings payable within 60 days of ratification  
3.5 percent of 1997 earnings payable on July 1, 1998

Cost of Living Payments

Adoption of the cost of living formula in Article 2 of the Mediation Agreement in A-12718 offset by any cost of living payments made to date by the Carrier.

2. Remaining Issues

Turning now to the remaining issues before us, Amtrak's position is to maintain status quo in all existing rules. BMWF has proposed changes in the following areas:

- Intercraft Equity Wage Adjustment
- Entry Rates
- Dental Benefits
- Vision Benefits
- Vacations
- Supplemental Sickness
- Off Track Vehicle Benefits
- Successorship
- Supplemental Unemployment Benefit

- Meal (per diem) and Travel Expenses
- Production Gang Rules
- Flexible Hours, Flexible Work Week and Incentive Rules
- Retention of Seniority
- Reprinting the Agreement
- Due Process Improvement
- Rule 65 Reform - Rates of Pay for New Classifications, Job Content Adjustment
- Commercial Drivers License
- Master Plumber Rules
- Air Conditioning and Refrigeration Differential
- MTW-100 Catenary Inspection Vehicle Rules
- Rate Equalization
- Reform of Rule 8 and Rule 22 - Returning to Duty and Seniority

Among BMW's proposals are some, like its proposal on vacations, where the Organization seeks to extend the terms of the mediated settlement following PEB No. 229 to arguably analogous conditions at Amtrak. Others, like BMW's proposals on production gang rules, seek to apply the mediated settlement as tailored to Amtrak's specialized rules. Still others, such as BMW's proposal on air conditioning and refrigeration work differentials, are Amtrak-specific proposals and are not based upon PEB No. 229 or the subsequent mediated agreement.

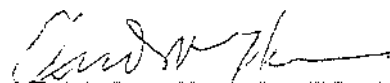
The differences between the parties on these additional issues could be resolved by resort to industrial patterns or general concepts of comparability, or in case of issues peculiar to Amtrak by a resolution unique to this particular employment relationship. But the record before us does not support our making such dispositions. The parties to this proceeding are best suited to forge such answers. Recognizing, however, their inability to resolve their impasse, and in view of the clear need for finality in this process, we recommend the following mechanism:

The parties shall engage in a mediation effort under the auspices of the National Mediation Board for a period of sixty days from the date of this award. If the parties are unable to resolve their differences, their respective final positions on all unresolved issues shall be submitted to an arbitrator who will choose one of the packages as a binding award. The parties shall jointly select and pay the arbitrator. If the parties are unable to agree on a selection within ten days after the mediation period, the NMB shall designate the arbitrator.

## V. CONCLUSION

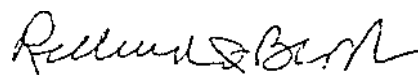
This Board has recommended a framework for settlement which provides Amtrak maintenance of way employees with wages comparable to those employees performing the same work for freight railroads and creates a process to allow the parties to reach a final and binding solution. The parties have not taken advantage of previous opportunities for meaningful negotiations. We urge them to do so now.

Respectfully,



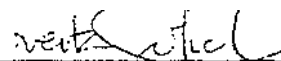
---

Arnold M. Zack, Chairman



---

Richard I. Bloch, Member



---

Roberta Golick, Member

## EXECUTIVE ORDER

13060

-----

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES  
BETWEEN AMTRAK AND ITS EMPLOYEES REPRESENTED  
BY THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**Disputes exist between Amtrak and its employees represented by the Brotherhood of Maintenance of Way Employees.**

These 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").

**In the judgement of the National Mediation Board, these disputes threaten 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 (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. Establishment of Emergency Board ("Board")

There is established, effective August 21, 1997, a Board of three members to be appointed by the President to investigate these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any railroad carrier. The Board shall perform its functions subject to the availability of funds.

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

Sec. 2. 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 disputes 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 J. Clinton

THE WHITE HOUSE,

August 21, 1997.