

REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 238

SUBMITTED PURSUANT TO EXECUTIVE ORDER NO. 13351
DATED AUGUST 9, 2004
AND SECTION 9a OF
THE RAILWAY LABOR ACT, AS AMENDED

Investigation of the dispute between the Southeastern Pennsylvania Transportation Authority and the
United Transportation Union

(National Mediation Board Case No. A-13220)

WASHINGTON, D.C.
OCTOBER 29, 2004

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October 29, 2004

The President
The White House
Washington, DC 20500

Dear Mr. President:

On August 10, 2004, pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order 13351, you established an Emergency Board to investigate a dispute between the Southeastern Pennsylvania Transportation Authority and certain of its employees represented by the United Transportation Union.

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

The Board acknowledges the assistance of Roland Watkins and Cristina A. Bonaca, staff attorneys of the National Mediation Board, who rendered valuable aid to the Board throughout the proceedings.

Respectfully Submitted,

Robert O. Harris, Chairman



Donna R. McLean, Member

Peter W. Tredick, Member

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I. CREATION OF THE EMERGENCY BOARD

Presidential Emergency Board No. 238 (PEB or Board) was established by the President pursuant to Section 9a of the Railway Labor Act, as amended, 45 U.S.C. § 151 *et seq.* including § 159a (RLA), and by Executive Order 13351 effective August 10, 2004. The Board was ordered to investigate and report its findings and recommendations regarding an unadjusted dispute between the Southeastern Pennsylvania Transportation Authority (SEPTA or Carrier) and certain of its employees represented by the United Transportation Union (UTU or Organization). A copy of the Executive Order is attached as Appendix A.

On August 10, 2004, the President appointed Robert O. Harris, of Chevy Chase, Maryland, as Chairman of the Board, and Donna R. McLean of Washington, D.C., and Peter W. Tredick of Santa Barbara, California, as Members. The National Mediation Board (NMB) appointed Roland Watkins, Esq. and Cristina A. Bonaca, Esq., as Special Counsel to the Board.

II. PARTIES TO THE DISPUTE

A. The Carrier

SEPTA is a regional transportation authority created by the Pennsylvania legislature in 1964 to provide mass transit service within the City of Philadelphia and the surrounding counties. Beginning in 1964, SEPTA absorbed the assets of numerous private companies operating bus and rail services in the Southeastern Pennsylvania area. Today, SEPTA is the fifth largest transportation system in the United States, providing approximately 300 million passenger trips a year. SEPTA serves the City of Philadelphia and Bucks, Chester, Delaware and Montgomery Counties. SEPTA's operations are overseen by a fifteen-member Board of Directors, who are appointed by the Governor of Pennsylvania (1), the Pennsylvania Senate and House of Representatives (4), the City of Philadelphia (2), and Bucks, Chester, Delaware and Montgomery Counties (2 each).

SEPTA provides transportation services in various modes, including bus, trackless trolley, subway, elevated, light rail, paratransit, shared-rides and commuter rail. In total, SEPTA operates and maintains 2,303 revenue vehicles on 195 routes covering approximately 1,918 route miles. SEPTA also operates and maintains 280 active stations and over 450 miles of track and related facilities. SEPTA employs a total of approximately 9,000 employees, of whom approximately 7,000 are represented by labor unions. Of SEPTA's unionized employees, approximately 5,700 (or 81 percent) are transit employees who are not covered by the RLA.

SEPTA's transit and rail operations are organized into four different divisions. The largest SEPTA division is the City Transit Division (CTD), which SEPTA has

operated since 1968. The CTD comprises 84 bus routes, five trackless trolley routes, five trolley routes, and two subway lines, the majority of which operate within the City of Philadelphia. The CTD employs a total of approximately 6,000 employees, including both management and union personnel.

SEPTA's suburban operations are divided between two operating divisions, the Victory Division and the Frontier Division, which primarily provide bus and some light rail service in the suburban counties.

The dispute before this Board involves SEPTA's Regional Rail Division (RRD). The RRD serves the City of Philadelphia, and Bucks, Chester, Delaware and Montgomery Counties, and offers service to Newark, Wilmington, and Claymont, Delaware, and Trenton and West Trenton, New Jersey. The commuter rail services provided by the RRD were formerly provided by the commuter rail divisions of the Penn Central and Reading Railroads, and were operated by Conrail from 1976 through 1982. SEPTA acquired Conrail's commuter operations in 1983. The RRD includes 13 separate train routes, and has approximately 1,763 employees, of whom approximately 1,300 are unionized. The RRD provided 28.1 million passenger trips in FY 2003, or nine percent of the total number of passenger trips system-wide.

B. The Organization

The UTU is a transportation labor union representing approximately 125,000 active and retired railroad, bus, and mass transit workers in the United States and Canada.

Membership is drawn primarily from the operating crafts in the railroad industry and includes conductors, brakemen, switchmen, ground service personnel, locomotive engineers, hostlers, and workers in associated crafts. More than 1,800 railroad yardmasters also are represented by the UTU. The UTU's 8,000 bus and transit members include drivers, mechanics, and employees in related occupations.

The dispute before this Board involves approximately 365 Conductors and Assistant Conductors in the RRD.

III. HISTORY OF THE DISPUTE

On February 12, 2002, the UTU, pursuant to Section 6 of the RLA, served on SEPTA a notice to amend their collective bargaining agreement with the Carrier pertaining to changes in rates of pay, rules, and working conditions.

In June 2002, the UTU filed a request for mediation with the NMB. The NMB docketed the mediation case on June 24, 2002.

After a year and a half of mediation sessions, the NMB, on December 4, 2003, in accordance with Section 5, First, of the RLA, urged SEPTA and the UTU to enter into an agreement to submit its collective bargaining dispute to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). The UTU unconditionally accepted the NMB's proffer of arbitration on December 13, 2003. On January 15, 2004, SEPTA advised the NMB that it would conditionally accept the NMB's proffer of arbitration.

On January 22, 2004, the NMB requested that SEPTA provide "unconditional acceptance or rejection" of the proffer of arbitration. SEPTA responded on January 26, 2004, stating: "SEPTA is not in a position to unconditionally accept the Board's [NMB] proffer of arbitration and submit all aspects of the dispute between SEPTA and the United Transportation Union to arbitration without any limitation on the arbitrator's authority."

On January 30, 2004, the NMB notified the parties that it considered "SEPTA's failure to provide an unconditional response to the Board's [NMB] proffer to be a rejection."

On March 12, 2004, the NMB advised the parties that it was the judgment of the NMB that "all practical methods provided in the RLA adjusting the dispute have been exhausted." The NMB stated that its services (except as provided in Section 155, Third and in Sections 159a and 160 of the RLA) were terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m. EDT on April 12, 2004.

On March 25, 2004, in accordance with Section 9a of the RLA, SEPTA requested that the President establish a PEB to investigate and issue a report and recommendations regarding the dispute. Section 9a(c)(1) of the RLA provides that any party to the dispute, or the Governor of any State through which the service that is the subject of the dispute is operated, may request the President to establish an Emergency Board. Upon the request, the President shall create an Emergency Board. Therefore, on April 10, 2004, the President created Emergency Board 237, effective April 12, 2004.

On May 11, 2004, Emergency Board 237 submitted its report and recommendations to the President. While the UTU agreed with the PEB's recommendations, SEPTA did not accept the recommendations of the Board. On June 7, 2004, a public hearing was held at the NMB's offices. On June 30, 2004, SEPTA requested that the President establish a second PEB to investigate and issue a report and recommendations regarding the dispute. On August 10, 2004, the President created this Board.

IV. ACTIVITIES OF THE EMERGENCY BOA

An organizational meeting was held by the Board with the parties on August 16, 2004, at the NMB's offices, where procedural matters and the parties' respective positions were discussed. Thereafter, the Board successfully convinced the parties to return to the bargaining table. On September 1, 2004, the parties entered into a proposed Memorandum of Agreement tentatively setting the dispute. On September 7, 2004, the President approved for a period of 60 days through November 8, 2004, an extension of time for the parties to submit final offers. The President also indicated that the maintenance of the status quo under Section 159a(h) was also extended for a period of 60 days. The extension was granted to afford the parties time to ratify their tentative agreement. On October 2, 2004, by an eight-to-one margin, UTU's Conductors and Assistant Conductors voted to ratify the tentative agreement. SEPTA's Board of Directors ratified the agreement on October 28, 2004.

V. REPORT

This Emergency Board is pleased to report to the President that the parties' agreement has been ratified and the dispute has been resolved.

Respectfully Submitted,

Robert O. Harris, Chairman

Donna R. McLean, Member

Peter W. Tredick, Member

PrLJdential Documents

Title 3—

Executive Order 13351 of August 9, 2004

The President

Establishing an Emergency Board To Investigate a Dispute Between the Southeastern Pennsylvania Transportation Authority and Its Conductors Represented by the United Transportation Union

A dispute exists between the Southeastern Pennsylvania Transportation Authority and its conductors 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").

A first emergency board to investigate and report on the dispute was established on April 12, 2004, by Executive Order 13334 of April 10, 2004. The emergency board terminated upon issuance of its report. Subsequently, its recommendations were not accepted by the parties.

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

Section 9A(e) of the Act provides that the President, upon such request, shall appoint a second emergency board to investigate and report on the dispute.

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

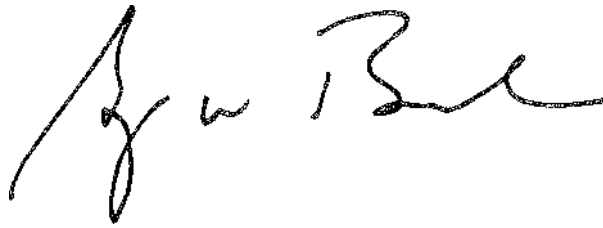
Section 1. Establishment of Emergency Board ("Board"). There is established, effective August 10, 2004, a Board of three members to be appointed by the President to investigate and report on this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. Report. Within 30 days after the creation of the Board, the parties to the dispute shall submit to the Board final offers for settlement of the dispute. Within 30 days after the submission of final offers for settlement of the dispute, the Board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. Maintaining Conditions. As provided by section 9A(h) of the Act, from the time a request to establish a second emergency board is made until 60 days after the Board submits its report to the President, the parties to the controversy shall make no change in the conditions out of which the dispute arose 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 section 2 of this order.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first name "G" being particularly large and stylized.

THE WHITE HOUSE,
August 9, 2004.