# REPORT

# to

# THE PRESIDENT

# by

# EMERGENCY BOARD

# NO. 240

SUBMITTED PURSUANT TO EXECUTIVE ORDER DATED DECEMBER 6, 2006
ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN METRO-NORTH RAILROAD AND THE TRANSPORTATION
COMMUNICATIONS INTERNATIONAL UNION; TRANSPORT WORKERS
UNION OF AMERICA; SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION; INTERNATIONAL ASSOCIATION OF MACHINISTS &
AEROSPACE WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS; SERVICE EMPLOYEES INTERNATIONAL UNION – NATIONAL
CONFERENCE OF FIREMEN & OILERS; INTERNATIONAL BROTHERHOOD OF
TEAMSTERS; AND TRANSPORTATION COMMUNICATIONS INTERNATIONAL
UNION – AMERICAN RAILWAY & AIRWAYS SUPERVISORS ASSOCIATION
AND SECTION 9a OF
THE RAILWAY LABOR ACT, AS AMENDED

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(National Mediation Board Case Nos. A-13332, A-13333, A-13334, A-13335, A-13336, A-13338, A-13342, A-13343, A-13344, A-13345, A-13347, A-13378)

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**WASHINGTON, D.C.**
**JANUARY 19, 2007**

Washington, D.C.
January 19, 2007

The President
The White House
Washington, DC 20500

Dear Mr. President:

On December 6, 2006, pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order, you established an Emergency Board to investigate a dispute between the Metro-North Railroad and certain of its employees represented by the Transportation Communications International Union; Transport Workers Union of America; Sheet Metal Workers' International Association; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; Service Employees International Union – National Conference of Firemen & Oilers; International Brotherhood of Teamsters; and Transportation Communications International Union – American Railway & Airways Supervisors Association.

Following its investigation of the issues in dispute, including both hearings and meetings with the parties, the Board now has the honor to submit its Report to you setting forth our recommendations for equitable resolution of the dispute between the parties.

The Board acknowledges with thanks the assistance of Susanna C. Fisher and Norman L. Graber, staff attorneys of the National Mediation Board, who rendered invaluable counsel and aid to the Board throughout the proceedings.

Respectfully submitted,

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Peter W. Tredick, Chairman

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Patricia Hanahan Engman, Member

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Robert E. Peterson, Member

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## I. CREATION OF THE EMERGENCY BOARD

Presidential Emergency Board No. 240 ("PEB" or "Board") was established by the President pursuant to Section 9a of the Railway Labor Act ("RLA"), as amended, 45 U.S.C. § 151 *et seq*. including § 159a, and by Executive Order dated December 6, 2006, effective December 7, 2006. The Board was created to investigate and report its findings and recommendations regarding a dispute between the Metro-North Railroad ("Metro-North" or "Carrier") and certain of its employees represented by certain unions. A copy of the Executive Order is attached as Appendix A.

The President appointed Peter W. Tredick, of Santa Barbara, California, as Chairman of the Board, and Patricia Hanahan Engman, of Anna Maria, Florida, and, Robert E. Peterson, of Briarcliff Manor, New York, as Members. The National Mediation Board ("NMB") appointed Susanna C. Fisher, Esq. and Norman L. Graber, Esq., as Special Counsel to the Board.

## II. PARTIES TO THE DISPUTE

### A. Metro-North

Metro-North was created in 1982 by the Metropolitan Transportation Authority ("MTA") as a public benefit corporation to operate rail commuter lines between New York City and its northern suburbs in New York and Connecticut that were being operated by the Consolidated Rail Corporation ("Conrail"). Metro-North took responsibility for this rail commuter service on January 1, 1983, and operates rail service in Connecticut through an agreement with the Connecticut Department of Transportation.

Each weekday, Metro-North operates 620 trains transporting over 250,000 passengers over its 775 miles of track. Approximately 58% of its operating revenue comes from passenger fares. Federal, state, and local subsidies provide the balance of its operating revenue, as well as funding for capital improvements.

Metro-North has a total of 5,840 employees, with 4,880 of those employees represented by various labor organizations, which are, in turn, separated into 17 crafts or classes.

Other transportation subsidiaries in addition to Metro-North that are a part of the MTA include the Long Island Rail Road ("LIRR"); the New York City Transit Authority ("NYCTA"); the Triborough Bridge and Tunnel Authority; the Staten Island Rapid Transit Operating Authority; and, several bus lines.

### B. The Coalition

The Coalition represents about 3,500 Metro-North employees in 12 crafts and classes of work. The Coalition consists of the following unions: the Transportation

Communications International Union; Transport Workers Union of America; Sheet Metal Workers' International Association; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; Service Employees International Union – National Conference of Firemen & Oilers; International Brotherhood of Teamsters; and Transportation Communications International Union – American Railway & Airways Supervisors Association ("The Coalition").

Members of the Coalition entered into agreement on January 13, 2005 to form the "Metro-North Labor Bargaining Coalition, AFL-CIO." As described in the agreement, the Coalition's purpose was to "bargain with Metro-North during this round over rates of pay, pension and health and welfare." The agreement further states: "The Coalition shall represent its affiliates in all proceedings before Presidential Emergency Boards, arbitration panels, or any other forum where disposition of the Section 6 notices is placed at issue."

## III. HISTORY OF THE DISPUTE

In December 2002, pursuant to Section 6 of the RLA, each of the unions that comprise the Coalition served on Metro-North formal notices for changes in current rates of pay, rules, and working conditions.

Although each of the separate bargaining units commenced negotiations with Metro-North on an individual basis, they subsequently joined together as an informal Coalition and thereafter entered into mutual agreement as a formal Coalition.

While the Coalition was in negotiation with Metro-North, another body of bargaining unit employees that represents six of the bargaining units on Metro North, the Association of Commuter Rail Employees ("ACRE"), entered into an agreement with Metro-North on January 15, 2004 in disposition of their Section 6 notices.

Metro-North offered a like agreement to the other bargaining units. Although one current member of the Coalition, i.e., the Transportation Communications International Union – American Railway & Airways Supervisors Association ("TCIU-ARASA") expressed a willingness in June 2005 to enter into terms of agreement as in the ACRE Agreement, it failed membership ratification. The TCIU-ARASA thereafter joined the Coalition.

The parties were unable to resolve the issues in dispute in direct negotiations, and applications were filed with the National Mediation Board ("NMB") by the separate bargaining units in October and November 2004 by all but the TCIU-ARASA. The latter filed its application for mediation in July 2005.

Representatives of all parties thereafter worked with an NMB mediator and with Board Members of the NMB in an effort to reach agreement. Although various proposals for settlement were discussed, considered, and rejected, it was not until June 23, 2006 that the Coalition and Metro-North initialed a one-page Term Sheet that briefly set forth

an understanding as to the basis for mutual settlement. Although no vote was taken, this Term Sheet was opposed by some rank and file employees.

On November 1, 2006, the NMB, in accordance with Section 5, First, of the RLA, urged Metro-North and the Coalition to enter into an agreement to submit its collective bargaining dispute to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). Under dates of November 2 and 3, 2006, the Coalition bargaining units, individually, declined the NMB proffer of arbitration. Metro-North advised under date of November 6, 2006 that it would accept the proffer of arbitration. As the RLA provides that both parties must agree to a proffer of arbitration to establish an arbitration board, no board was established.

On November 6, 2006, the NMB served notice that its services were terminated under the provisions of Section 5, First, of the RLA. Accordingly, "self-help" became available to both parties as of 12:01 a.m., EST, on Thursday, December 7, 2006. The Coalition thereafter announced that at that time it would withdraw its represented membership employees from work on Metro-North.

On November 30, 2006, in accordance with Section 9a of the RLA, Metro-North requested that the President establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute. Section 9a(c)(1) of the RLA, in setting forth special procedures for commuter service, provides that any party to a dispute that is not adjusted under the other procedures of the RLA, or Governor of the State through which the service that is subject to dispute is operated, may request the President to establish an Emergency Board. Thereafter, on December 6, 2006, the President created this Emergency Board, effective December 7, 2006.

## IV. ACTIVITIES OF THE EMERGENCY BOARD

Both parties were requested to and did provide the Board with pre-hearing submissions on December 15, 2006. A hearing on the issues in dispute was held December 18 and 19, 2006, in New York, New York. Both parties were represented by counsel, and had a full and fair opportunity to present oral and documentary evidence and argument.

The Board thereafter took under advisement the arguments and positions of the parties, and continued in contact with the parties concerning a need for additional information involving various issues in dispute. The Board also reviewed the positions of the parties in joint telephone conferences and exchanges of electronic mail among themselves and with the parties.

When it became apparent additional time was necessary for the parties to prepare responses to certain requested information, and to enable the Board the opportunity to engage the parties in mediation, a request was made for an extension of time to January 19, 2007 for the Board to file its Report. The President approved this time extension on January 4, 2007. A copy of the extension approval is attached as Appendix B.

The Board met in executive session separately and jointly with the parties on January 16, 2007 in Washington D.C. The Board members thereafter met in executive session to finalize this Report.

## V. THE POSITIONS OF THE PARTIES

### A. Metro-North

It is the position of Metro-North that the Board should recommend an agreement comprised entirely of the understanding as outlined in the June 23, 2006 Term Sheet that was initialed by it and all representatives of the bargaining units that are members of the Coalition.

Metro-North submits the Term Sheet, supplemented by work rule/productivity changes and other pension and benefit provisions as contained in Memoranda of Understandings as were distributed to each of the separate bargaining units of the Coalition in October 2006, provides terms that are equal to and consistent with those contained in Metro-North's agreement with ACRE-represented employees in six other bargaining units.

Metro-North further argues the Term Sheet and work rule/productivity changes are similar to and equal in value to the agreement it entered into with ACRE and the agreement the LIRR entered into with the United Transportation Union ("UTU").

Although the agreements cover some different subject matter or issues, Metro-North contends the ACRE agreement, as with the Term Sheet, contains significant differences with respect to a pension conversion to the MTA Defined Benefit Plan ("DB Plan") as compared with the LIRR. With respect to the pension conversion, Metro-North submits that ACRE members will receive service credit back to 1983 under the DB Plan, unlike the LIRR employees whose service credit extended only to 1988. However, Metro-North says, the parties agreed to provisions to offset the cost of the unfunded pension liability resulting from that additional service credit, as set forth in the Term Sheet.

### B. The Coalition

The Coalition argues that contrary to Metro-North's assertions that the Term Sheet comprised full agreement on all issues, there remained material provisions that were not agreed upon or reduced to writing. Therefore, the Coalition maintains, there was no meeting of the minds on a comprehensive agreement.

Moreover, the Coalition says, when it brought the Term Sheet to the attention of its membership, it was opposed as a basis for settlement.

The Coalition thus contends that a recommendation for settlement should be based on its pre-hearing proposal which it maintains affords a fresh approach that will allow the parties to reach an overall agreement that is fair, lessens the disparity between Metro-North and LIRR employees, can be ratified, and does not put significant strain on Metro-North's finances.

## VI. RECOMMENDATIONS

### A. The Term Sheet

On June 23, 2006 representatives of Metro-North and each of the Coalition's separate bargaining units initialed a one-page Term Sheet that summarized the terms of an understanding that represented a good faith effort to resolve the dispute. It was understood that Metro-North and each of the bargaining units in the Coalition would propose the Term Sheet to their respective constituencies for adoption.

The Term Sheet was not, however, presented for a formal vote to any of the Coalition's bargaining unit membership. The Coalition representative testified there was strong rank and file opposition to the Term Sheet because: 1) there was too little value in the Term Sheet to enable ratification; 2) there was disagreement over no fewer than six important issues; and, 3) it became apparent as a result of NYCTA/MTA arbitration proceeding on which the value of the Term Sheet provisions were based that Metro-North had undervalued the Term Sheet.

Notwithstanding the position of the Coalition that the Term Sheet is no longer a viable basis for settlement, Metro-North urges the Term Sheet be recommended for adoption as meeting agreed-upon components of settlement. Metro-North advocates this despite having stated to the Coalition at various times that it was withdrawing it from the bargaining table as a means of settlement.

### B. Wages and Wage Adjustments

Collective bargaining agreements between Metro-North and the 17 bargaining units of nine unions that represent its employees in various crafts and classes of service have been based over the years on the principle of *pattern bargaining and settlements.* In accordance with this principle, changes in established rates of pay are made so that the timing and amount of wage adjustment are alike over the term of agreement for each separate bargaining unit craft or class.

Metro-North submits that a pattern of wage adjustments generally exists in each round of negotiations between the separate MTA entities, i.e., the NYCTA, LIRR, and Metro-North. It points to the latest contract terms for represented employees of the NYCTA providing for a lump sum payment of $1,000 in the first year, and 3% wage increases in the second and third years.

As further evidence of this pattern, Metro-North points to the LIRR agreement with its largest union, the UTU, which represents 2,450 employees in train service, track maintenance, car repair, special services, and maintenance of way supervisors. This agreement is for four years, - January 1, 2003 through December 31, 2006, and provides the same wage increases for the first three years as the NYCTA agreement, i.e., $1,000 lump sum, 3%, and 3%, with an additional 3% for the fourth year.

With respect to its own workforce, Metro-North refers to an agreement with six bargaining units represented by ACRE. ACRE represents approximately 1,400 employees in engine and train service, traffic control, yard supervision, power, and signals. It entered into a four-year agreement with Metro-North similar to and equal in cost to the LIRR/UTU agreement. The agreement provides a $1,000 lump sum payment for 2003 and 3% general wage increases on January 1 of 2004, 2005, and 2006.

In keeping with this pattern of wage settlements, Metro-North proposes that the Coalition before this Board be in agreement to a six-year settlement that provides a $1,000 lump sum payment for 2003; 3% general wage increases January 1, 2004, 2005, and 2006; 4% January 1, 2007; and, 3.5% January 1, 2008.

In argument to the Board, the Coalition urges that the pattern of wage increases for Metro-North employees should mirror the *wage levels* of comparable crafts and classes on the LIRR because it is a rail commuter carrier like Metro-North that is also part of the MTA.

The Coalition, contrary to Metro-North's argument, says the two railroads provide identical modes of passenger transportation; share the same fundamental economic characteristics; have similar sources of financial support and, thus, fiscal capacity to meet operating costs; and that the work functions and organization of work on the two properties are virtually the same.

In further support of its position, the Coalition argues that although members on Metro-North are performing the same job for essentially the same employer, the current wages of Metro-North employees are only 85% of employees in like crafts and classes on the LIRR. Even with the increases received by the LIRR over the course of the last round of LIRR bargaining, the Coalition says, the Metro-North rates of pay will remain nearly $2.00 per hour behind, or 7.7% below LIRR as of January 1, 2006.

This single central fact, the Coalition asserts, justifies its position that substantial movement toward pay equality with the LIRR must be achieved during this round of negotiations to produce what it says would be a fair and reasonable result.

To move Metro-North employees towards equality in compensation with their counterparts of the LIRR the Coalition proposes general wage increases of 4% on January 1, 2003; 3% on January 1, 2004, 2005, and 2006; an equity adjustment effective December 31, 2006, that is estimated to be the equivalent of a 1.75% increase; and, 4% on January 1, 2007, 2008, and 2009.

The Coalition request for wage parity with employees of the LIRR, or "equal pay for equal work," is a matter that has been considered and reviewed numerous times since 1982 when Metro-North was created by the MTA to operate commuter rail lines previously operated by Conrail.

More recently, PEB 226 in its Report of April 21, 1995 to President Clinton said the following with respect to the issue of wage level parity:

> 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 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.

When the recommendations of PEB 226 did not result in a resolution of the dispute, President Clinton created PEB 227 to select final offers of the parties. The Report of PEB 227 does not show the Organizations pursued their wage level parity argument with the LIRR to that Board. The Report of PEB 227 on the subject of Wages reads in part here pertinent:

> We agree with the findings of PEB 226 that the agreement should include "moderate increases" consistent with "the trend." Specifically, we have accepted the offers which provide for an aggregate ten percent (10%) wage increase commencing July 1, 1995 through December 31, 1997.

In overall study of the record before us, the Board finds no reason to conclude other than PEB 226 did that a need exists for an in-depth study of not only LIRR rates of pay, rules and working conditions, but also such factors as they exist with respect to other comparable commuter rail lines.

Moreover, as concerns a comparison of rates of pay, rules and working conditions of Metro-North employees with those of the LIRR, it would seem to the Board that is a subject to be considered when and if there is a consolidation of workforces, such as when the LIRR is brought to New York City's Manhattan's East Side under a $2.6 billion grant by the federal government that New York State Governor Pataki signed off on this past December.

It is, therefore the recommendation of the Board that the parties be in agreement to the pattern of wage increases as proposed by Metro-North, and contained in the Term Sheet initialed by the parties, i.e., a one-time lump sum payment of $1,000 for 2003; 3% general wage increases January 1, 2004, 2005, and 2006; 4% January 1, 2007; and, 3.5% January 1, 2008.

### C. Retroactivity

Metro-North's 2004 Agreement with ACRE provides that to be eligible to receive the lump sum payment of $1,000 for 2003, the employee must have been on the payroll between January 1, 2003 and December 31. 2003. The Agreement further provides that employees who were on the payroll during 2003 for less than 12 months, which includes retirees, new hires, or otherwise off pay status for one month or more, shall have their lump sum payment prorated based on the number of months on the payroll over a denominator of 12. Fifteen days or more on the payroll in a month is deemed to constitute a month of service. Employees who were terminated or voluntarily resigned during 2003 or before the final ratification of the ACRE Agreement were not entitled to the lump sum payment or any pro rata share thereof.

A similar retroactivity clause was made a part of the most recent LIRR-UTU Agreement of November 14, 2003.

In the October 23, 2006 draft agreements that Metro-North proposed to the individual bargaining units of the Coalition, as supplements to the Term Sheet, a similar retroactivity clause was included as concerns the $1,000 lump sum payment.

The Metro-North proposals to the Coalition members included an additional provision as follows:

> The retroactive payments commencing on January 1, 2004 shall only be granted to current employees for service performed in 2004, 2005 and 2006 and on a pro-rated basis for employees who since January 1, 2004 have: 1) retired; 2) died; or, 3) were dismissed and subsequently reinstated with full seniority restored.

Under these circumstances, it is the recommendation of the Board that the parties be in agreement to the retroactivity provisions in the Metro-North proposals of October 23, 2006.

**D. Pension**

The parties have engaged in extensive dialogue about the manner by which employees shall be covered by the MTA DB Plan. In letters of November 30, 2004 and December 6, 2004 to Metro-North, outlining its proposals for settlement of the various issues in dispute, the Coalition described its request concerning Pensions as follows:

> a) For vesting purposes the Defined Benefit Plan will vest in the year 1983.
>
> b) Employees will pay a 3% contribution of their gross wages for a maximum of ten years (120 months).
>
> c) All money in an employee's current defined contribution plan fund (Vanguard) that has been contributed by Metro-North will be contributed to the Metro-North defined benefit fund. Likewise, all monies in an employee's current defined contribution plan fund (Vanguard) that has been contributed by the employee will be retained in the employee's account.

Thereafter, by letter of February 9, 2005, the Coalition, in a counter-proposal to Metro-North, requested that the following terms be in addition to those mentioned above:

> On the date of agreement, each employee will be afforded a one-time option to elect to be covered by the Metro-North Defined Benefit Plan under the terms described in (c) above, or to remain in the Vanguard Defined Contribution Plan, in which case Metro-North will continue to make contributions according to the current negotiated schedule and the employee will retain all monies previously contributed to their account by Metro-North as well as their own contributions. Employees who elect to remain in the Defined Contribution Plan in lieu of being covered by the Defined Benefit Plan will not be required to pay 3% of their gross wages.

Although some subsequent changes in the provisions set forth above were discussed, when the parties initialed the Term Sheet on June 23, 2006, their understanding relating to the Pension issue was jointly outlined as follows:

> Eliminate DC Plan (Vanguard);
>
> Convert Vanguard Plan to MTA DB coverage;

Past service credited to 1983;

All employees contribute 3% on gross wages, effective 10/1/2005;

Employee contribution account, including associated earnings, remains with employee;

Employer contributions, including associated earnings, transferred to MTA DB Plan;

The Company paid life insurance policy will be eliminated upon ratification.

One time irrevocable option for current employees hired prior to 1/1/88 to opt out of participation in the MTA DB Plan. This election must be made within 90 days of final ratification, pursuant to a process establish[ed] by the employer. For all employees who elect to remain in a DC Plan, the employer shall continue to contribute at the current rates. These employees will not contribute 3% towards the DB Plan. For those employees who elect to remain in a DC Plan, the employer will do a non-tax transfer into the MTA DC Plan at the time of the transfer of DC Plan assets to the MTA DB Plan.

The plan of benefits cannot be unilaterally changed by the employer. All changes in benefit levels must be collectively bargained.

In hearings before the Board, the Coalition opposed what it calls the inequity of LIRR employees having to contribute 3% of earnings for only 10 years towards the MTA DB Plan, while Metro-North employees being asked to contribute 3% of earnings for their entire careers to accrue pension credits back to 1983, even though pre-1988 LIRR employees receive far superior retiree benefits.

The Coalition also now requests that Metro-North employees who were hired after 1988 have the same ability to opt out of the MTA DB Plan as employees hired before 1988.

According to Metro-North, the parties met in June 2006 to resolve their disagreement regarding the valuation of the five years of service credit under the MTA DB Plan, and this meeting resulted in acceptance of Metro-North's valuation of the five years service credit and the funding mechanisms that were necessary to offset the cost of that additional credit.

As indicated above, a number of matters related to the Pension issue have been raised and discussed between the parties in their negotiations. Some seem more intractable than others notwithstanding that both parties seem to be in agreement to a major change in the current Pension benefit.

Clearly, conversion of a DC Plan to a DB Plan is of significant benefit to the covered employees and, to a large extent, contrary to current trends involving such matters. As the Pension Benefit Guaranty Corporation has stated: "A defined benefit plan provides a stable source of retirement income to supplement social security," or, in case of rail carrier employees, a stable source of retirement income to supplement pension annuities under the Railroad Retirement Act.

Under the circumstances, the Board recommends that the parties be in agreement to the specific terms of the Pension issue as outlined in the Term Sheet. It seems to the Board that the representatives of both parties made a determined effort in their best professional judgment to arrive at an understanding that serves the interests of both parties.

### E. Health Care Contribution

The cost of health care insurance continues to escalate at a rapid rate. A survey sponsored by the Kaiser Family Foundation and conducted by the Health Research and Education Trust of Chicago, an organization affiliated with the American Hospital Association, reported the cost of family coverage to have risen by as much as 87% since 2000. Researchers also report that employers will face further increases in health care premium costs for their workers in the future.

The impact of these rapidly rising costs has led some employers to terminate health care insurance for their employees and other employers to shift some of the premium costs to employees.

It is in the face of escalating health care costs that Metro-North has requested that its employees contribute toward health insurance premium costs. Specifically, Metro-North asks that "active" employees represented by the Coalition contribute 1.5% of their gross wages with an "escalator" that would increase the amount of the contribution as the cost of the insurance premium rises.

The most recent Agreement between Metro-North and its employees in the craft or class of Conductors, Assistant Conductors and Hostlers, for example, provides that "new hires" will contribute to the premium cost of their health insurance plan at the same rate paid by Metro-North management employees, including any future adjustments.

The recent Award of a Public Arbitration Panel involving represented employees of the NYCTA and Manhattan and Bronx Surface Transit Operating Authorities, subsidiary units of the MTA, directs that for the first time "active" members of the NYCTA will contribute 1.5% of their bi-weekly gross wages to pay a portion of their health care insurance premiums. This employee contribution was considered appropriate as an offset for the cost of retiree health care benefits.

The Coalition argues that Metro-North's proposal that employees contribute to health care insurance will exacerbate the benefit disparity between LIRR and Metro-North employees, since LIRR employees do not now contribute toward their health care insurance. The Coalition further maintains that tying contributions for uniform health care benefits to compensation and hours worked would result in employees who worked significant amounts of overtime paying substantially more for the identical health care benefit than an employee who does not work overtime hours.

The Coalition argues that a more equitable plan is contained in a recent Agreement between Southeastern Pennsylvania Transportation Authority and the Brotherhood of Locomotive Engineers and Trainmen, which caps employee contributions at 1% of gross wages for 40 straight time hours of work.

In view of the Board's other recommendations, and considering the equities of the situation, the Board recommends that the parties be in agreement to the following terms of settlement:

> Employees hired after the effective date of this Agreement will contribute 1.5% of 40 hours of their weekly gross wages by payroll deduction to offset premium costs for the current health insurance plan, with an "escalator" for the term of agreement, this escalator not to exceed 2% of gross wages in any one year.
>
> Employees hired after the effective date of this Agreement who subsequently go on leave of absence without pay shall be required to personally make their normal contribution of 1.5% of 40 hours of their regular hourly rate of pay, in addition to any applicable escalator cap on a schedule of payment basis as determined appropriate by Metro-North. If such contribution is not made as directed, Metro-North shall cancel that employee's health insurance coverage upon written notice to the employee.

**F. <u>Benefits</u>**

In addition to health care contributions, other benefit issues argued to the Board involve: 1) Coverage for Retirees Not Eligible for Medicare; 2) "Pop Up" Retiree Medicare Coverage; 3) Vision Care; 4) Life Insurance; and 5) Sick Leave Pay.

1. <u>Coverage for Early Retirees Not Eligible for Medicare</u>

The Coalition asks that employees who are at least 55 years of age with no less than 10 years service be entitled to receive health care benefits from Metro-North until they are eligible for Medicare.

In support of its position, the Coalition submits that the LIRR employees already receive this benefit. At the same time, the Coalition is aware that the Metro-North

Agreement with ACRE grants a somewhat similar benefit, albeit under that Agreement employees become eligible for this benefit after 20 years service rather than the 10 years service here sought by the Coalition.

Metro-North has proposed adoption of the health care benefits as contained in the ACRE Agreement.

The Board concurs with the position of Metro-North and therefore recommends that settlement of this issue be in keeping with the terms of the ACRE Agreement.

2. "Pop Up" Retiree Medicare Coverage

The Coalition requests payment to retirees who are eligible for Medicare, as is provided employees of the LIRR. The purpose is to allow retirees to supplement Medicare coverage.

The Coalition proposal recommends that employees who retire after the effective date of this Agreement receive a retiree "Pop Up" benefit upon becoming eligible for benefits provided under Medicare. Such retiree, the Coalition urges, should receive from Metro-North a monthly allowance of one hundred dollar ($100) for single person coverage; two hundred dollar ($200) for family coverage.

A provision covering this Coalition demand was set forth in the Term Sheet, and the Board recommends its adoption.

3. Vision Care

The Board recommends that effective the date of this Agreement, as with the ACRE Agreement, the Vision Care Plan for represented or agreement employees be eliminated and that all represented employees thereafter be covered by a Vision Care Plan providing benefits equal to those currently in effect for non-represented management personnel of Metro-North.

4. Life Insurance

The Coalition requests that Metro-North employees be allowed to retain an existing paid Life Insurance benefit of $100,000, and not be required to have that benefit eliminated with entrance into the DB Plan, as with ACRE.

The Board recommends that effective the date of this Agreement, the existing Metro-North paid Life Insurance benefit of $100,000 be eliminated and that employees in the DB Plan thereafter be covered by that Plan's $100,000 death benefit.

5. Sick Leave Pay

The Coalition proposal on Sick Leave Pay requests that Metro-North employees have the same benefit as on the LIRR. It asserts that on the LIRR employees receive 100% of their pay when using sick leave, whereas Metro-North employees only receive 90% of their wages. The Coalition says that it seeks this benefit to lessen the disparity between LIRR and Metro-North employees.

As the Board stated above, there is a need to keep health care costs in line with other Metro-North employees. The Board has not been directed to any Metro-North Agreement that provides employees receive 100% of their pay when using sick leave. The Board therefore recommends that the Coalition withdraw this proposal.

## G. Holidays

The Coalition requests that the number of paid holidays employees receive be increased from 11 to 12, which it submits will equal the holiday benefit received by LIRR employees. The Coalition specifically asks that the additional holiday be the date nationally designated to honor Dr. Martin Luther King, Jr.

Metro-North says the Coalition request for an additional holiday did not arise in bargaining talks until after it had entered into Agreement with ACRE. Further, Metro-North submits that the ACRE Agreement does not provide for an additional holiday, but rather replaces the Veterans' Day holiday with the day after Thanksgiving.

The Board recommends that effective the date of Agreement, the existing holiday provision be amended to allow Veterans Day to be replaced by the day after Thanksgiving. Moreover, the Board recommends the current Good Friday holiday be replaced by a Choice Holiday. This Choice Holiday may be used to celebrate any day including, but not limited to, the Dr. Martin Luther King holiday, subject to Metro-North's needs of service and in accordance with the notice procedures for requesting personal days.

## H. Rules

In on-property negotiations and in their respective presentations to the Board, both parties have proposed the addition, change, modification, or elimination of certain agreement rules.

Testimony and subsequent Board discussion with the parties indicates that in keeping with the Term Sheet mutual agreement was reached as to which productivity savings effective January 1, 2004, will achieve a percentage of savings sufficient to help offset some of the cost of settlement.

The parties have, however, in hearings before the Board, identified a number of issues that one party or the other maintains are open rules issues.

The Board finds no useful purpose to be served by listing each referenced open issue, which, depending upon the representations of one or the other of the parties, ranges from 6 to 12 matters in dispute. The Board will, however, recommend that where the parties have shown that they are presently in agreement, those matters be incorporated into final settlement of the dispute. As concerns the remaining issues, except as the Board herein addresses them, it is recommended that such issues be withdrawn by the parties.

### I. MTA Corporate Restructuring

Metro-North has requested as a part of the settlement a written commitment by the Coalition to work in harmony with the MTA in discussions involving the corporate restructuring of the MTA.

Metro-North notes that its most recent collective bargaining agreement with ACRE, as with the LIRR, contains a joint letter of understanding that reads as follows:

> This letter will confirm our discussions during the recently completed negotiations for a new collective bargaining agreement regarding the MTA's proposed corporate restructuring. We agree that the proposed restructuring provides potential opportunities for the MTA to operate more efficiently. We also agree that the best way to maximize those efficiencies is through cooperative efforts and good faith discussions which acknowledge the legitimate concerns of the workforce regarding seniority, earnings, job security and the like. We commit to using our best efforts to ensure that these discussions take place in a harmonious atmosphere and reach a timely and mutually acceptable conclusion.

The Board recommends that the parties agree to adoption of a like letter of understanding.

### J. "Me Too" Agreement Protection

The Coalition states that although it is agreeable to extending the term of agreement with Metro-North beyond the four-year term of the Metro North-ACRE agreement, it wants a so-called "me too" provision. Such a provision would provide that in the event any subsequent agreement with ACRE or other unions in the next round of bargaining contains provisions superior to those negotiated in its six-year Agreement, it be given the same or equivalent treatment on such matters.

Metro-North opposes this Coalition request. It submits it is not an on-property practice to enter into an understanding of this nature, and that such a clause is not contained in any of its past agreements.

This Coalition demand was not contained in the Term Sheet. Further, the Board has not been directed to any past situation where one labor organization on the property has gained an unfair settlement advantage over another.

In the circumstances, the Board recommends that the Coalition withdraw its demand for a "me too" clause.

### K. Term of Agreement – Moratorium

The Board recommends that the Agreement between the parties here at issue be in resolution of any and all pending notices served pursuant to the provisions of the Railway Labor Act, as amended, and the Agreement be effective January 1, 2003 and remain in effect thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

Further, the Board recommends that a moratorium clause provide that the parties be in Agreement that they shall not serve or progress prior to November 1, 2008 any notice or proposal for the purpose of changing agreements to become effective on or before April 1, 2009.

## VII. CONCLUSION

In arriving at its recommendations the Board carefully considered the June 23, 2006 Term Sheet that experienced negotiators for Metro-North and the Coalition arrived at after extensive bargaining and mediation over four years. This Term Sheet, initialed by all parties, was deemed at the time to be the best compromise of their divergent demands that either side was able to attain in this round of collective bargaining.

The last-minute proposal of the Coalition, that surfaced for the first time in hearings before the Board, is simply too far removed from the principles of pattern bargaining and the agreed upon objectives contained in the Term Sheet to be recommended as a basis for overall settlement of the dispute.

Accordingly, with the Term Sheet in mind, but also recognizing the need for certain changes to its terms, as well as disposition of open issues that both parties knew required resolution, the Board has set forth its recommendations for settlement of the current dispute.

The Board understands from the record that the Term Sheet was opposed by at least some members of the Coalition. It well may be, however, that this opposition was because the Term Sheet was presented as a one-page document that only highlighted the terms of settlement and did not indicate that there were several open issues. In other words, the membership was not provided a document that fully spelled out the overall benefits of settlement, as is generally given to a membership before an agreement is placed for a ratification vote.

The Board would therefore recommend that before the terms of settlement as here recommended are released, negotiators for the parties reduce all terms of agreement to writing in plain language that will be understandable to employees.

There is also reason to believe that opposition to the Term Sheet was driven by an attitude on the part of some employees that a fundamental right exists for Metro-North employees to have wage parity with LIRR employees.

There is, however, no simple or quick answer to this wage parity issue, as past Emergency Boards involving Metro-North and its employees have also found. It is a subject that requires full consideration of numerous factors that affect pay comparisons, and not here in evidence.

To evaluate a wage parity demand there must be a detailed quantitative analysis of not only wage levels, but also differing agreement rules, fringe benefits, working conditions, job content, restrictions, practices, and other relevant matters that may impact work relationships, thereby allowing for resolution of wage level differences based on a complete knowledge of all the factors included in total compensation.

Further, equity considerations must also take into account what other Emergency Boards have held regarding comparisons and distinctions of comparable classes and similar sounding job titles of both Metro-North and the LIRR with other MTA agencies and other Northeast commuter railroads.

Attention must also be given to the financial health of the MTA; the historical perspective of political decisions that affected certain settlements; and, the impact of collective bargaining agreements that provide levels of compensation and benefits that go well above those of the average commuter or taxpayer. As with all businesses, there is a limit to the amount of increased costs of labor that can be passed onto customers or, in the case here at issue, passengers and taxpayers in general.

Finally, in the interests of promoting the stability of labor relations that attach to pattern bargaining, and to avoid the destabilizing effect of whipsaw or leapfrog bargaining the Board urges the parties to continue to adhere to the traditional principles of pattern bargaining relative to increases in rates of pay and other cost of agreement issues.

In summary, it is the opinion of the Board that the best interests of the parties and the public would be served by resolution of the respective collective bargaining demands of Metro-North and the Coalition for changes in current rates of pay, rules and working conditions without resort to self-help. The Board, therefore, urges the parties to resolve the issues that separate them on the basis of the above findings and recommendations of this duly appointed Presidential Emergency Board.

In closing, the Board gratefully acknowledges the counsel and professional assistance rendered by Susanna C. Fisher, Esq., and Norman L. Graber, Esq. of the National Mediation Board Office of Legal Affairs throughout this process.

Respectfully submitted,

_____
Peter W. Tredick, Chairman

_____
Patricia Hanahan Engman, Member

_____
Robert E. Peterson, Member

APPENDIX A

EXECUTIVE ORDER

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ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN METRO-NORTH RAILROAD AND ITS EMPLOYEES REPRESENTED BY CERTAIN LABOR ORGANIZATIONS

Disputes exist between Metro-North Railroad (Metro-North) 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 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. 151-188 (RLA).

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

Section 9A(c) of the RLA 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, including section 9A of the RLA, it is hereby ordered as follows:

Section 1. Establishment of Emergency Board (Board). There is established, effective 12:01 a.m. eastern time on November 30, 2006, a Board of three members to be appointed by the President

to investigate and report on 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 RLA, from the date of the creation of the Board and for 120 days thereafter, 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 section 2 of this order.

THE WHITE HOUSE,

LABOR ORGANIZATIONS

International Association of Machinists & Aerospace Workers
International Brotherhood of Electrical Workers
International Brotherhood of Teamsters
Service Employees International Union-National Conference of Firemen & Oilers
Sheet Metal Workers' International Association
Transportation Communications International Union
Transport Workers Union of America

APPENDIX B

THE WHITE HOUSE

WASHINGTON

January 6, 2007

Dear Mr. Tredick

The President approved on January 4, 2007, an extension for the reporting requirements for Presidential Emergency Board Number 240 until January 19, 2007, as requested by the parties to the dispute and recommended by the Board. I have noted that your initial report indicated that "[t]his extension would not modify the time periods initiated under Section 9A of the Railway Labor Act." I would like to express our gratitude to you and the other members of the Board for the work you are doing.

Sincerely,

Harriet Miers
Counsel to the President

Mr. Peter Tredick
Chairman
Presidential Emergency Board No. 240
c/o National Mediation Board
1301 K Street, N.W.
Washington, D.C. 20572